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Paper delivered at the
5th International Conference of Information Commissioners

Central and State Information Commissions in India : Their inter-relationship

I. INTRODUCTION: THE CONSTITUTIONAL FRAMEWORK FOR INFORMATION FREEDOM IN INDIA.

A single national statute, the Right to Information Act, 2005 (RTI) determines the freedom of information (FOI) regime in India. The country has opted for a unitary legislative device to cover its vast union of twenty nine states and six centrally administered Union Territories (excluding the state of Jammu and Kashmir, which has a special constitutional status). In order to appraise the FOI regime in India, it is important to appreciate the emergence of the centre-state relationship in the country.

When India attained independence from British colonial rule on 15th August 1947, the country consisted of two categories of political entities. Some two-thirds of the country had been directly administered by the colonial Government of India. This was loosely labelled as '*British India*'. The remaining one third, composed of 563 princely states, all of whom enjoyed considerable autonomy for governance, was indirectly controlled by the British in regard to vital matters such as defence, foreign affairs, currency etc. The relationship between the paramount power, Britain, and these princely states, curiously termed as '*Indian India*', was determined by certain treaties of friendship between the Crown on one side, and each of the 563 ruling princes on the other. Immediately after

the British withdrew from the subcontinent in 1947 all the states acceded formally to one or other of the two new national entities India and Pakistan. Most of the princely states ceded to India.

After independence, the entire country that we know as India today was reorganized into a number of subnational political units that were thenceforth called the States. The erstwhile territories under the princes were merged generally into the adjoining States, which were reorganised on linguistic lines.

India is spacially vast (an area of 3,287,000 square kilometers), has a large population (1081 million), and a huge diversity in terms of language (15 recognized major languages and thousands of local dialects), religion (Hindu, Muslim, Christian, Budhist, Sikh and numerous other faiths), and socio - economic development. India's geographical zones extend from the Himalayan to tropical coastal, interspersed with fertile plains, low plateaus and arid deserts in between.

The framers of the Constitution of India accomplished a mammoth task of devising a democratic political system that assured national unity amid so many forms of diversity. When the new Republic came into being on 26th January 1950, India was declared “a Union of States” (Article 1). The Constitution of India elaborately addresses and defines the relationship between the Union Government and the State Governments. All matters relating to governance are apportioned in three different lists, each clearly defined in the seventh schedule to the Constitution, as the Union list, the State list, and the Concurrent list. Freedom of Information derives from the fundamental right of Freedom of Expression, guaranteed by Article 19. Being placed in the Concurrent List, both the Centre and the States are empowered to legislate on the subject. In India, where both a State and the Centre happen to legislate on a subject in the Concurrent List, the Central legislation prevails.

It is with this constitutional backdrop that the Right to Information Act 2005 was promulgated as a Central legislation on 12th June 2005 “*to provide an effective framework for effectuating the Right to Information recognized under Article 19 of the Constitution of India*”. RTI Act 2005 supersedes certain laws on information freedom passed by nine different states between 1996 and 2005. After the promulgation of RTI

Act these states have by and large repealed their state laws. Of these nine states, the State of Jammu and Kashmir, which enjoys a higher level of autonomy under special provisions in the Constitution, is presently engaged in bringing in fresh legislation on the lines of RTI Act, to replace its previous Act.

II. THE RIGHT TO INFORMATION ACT, 2005

Accepting the delicate balance of power between the Centre and the States that has emerged under the Constitution, the Act has a number of unique features.

1. Any citizen of India can demand, and obtain information from every single public authority in the country, whether such custodian of information is subject to the jurisdiction of any State Government, or of the Central Government.
2. The Central Government as well as the State Governments are both defined as “appropriate Governments”, whose responsibility for assuring information freedom under the Act is spelt out. For all public authorities that are established, constituted, owned, controlled or substantially financed by the Central Government, the “appropriate Government” is the Central Government. In the same way, where a State Government has a similar link with a public authority, that State Government is the “appropriate Government”.
3. The Act provides for the establishment of separate Information Commissions at the Centre and in the States, which wield powers that are absolutely identical. The Central Information Commission has powers of regulation and adjudication over all public authorities that fall within the jurisdiction and ambit of the Central Government. Identical powers over public authorities within the jurisdiction of each state are assigned to the respective State Information Commission.
4. In case supply of information is denied or delayed, the aggrieved citizen, after exhausting the remedy of first appeal, can seek redressal from the Central or State Information Commission, as the case might be. The procedure for addressing complaints and appeals to the Commissions at State and Central level is identical.
5. The responsibilities of all public authorities at State or Centre, in such matters as voluntary suo-motu disclosure, the appointment of Public Information Officers charged with supply, and in adopting the procedure for acceptance and delivery of items of information etc., are again identical. Categories of information exempt from disclosure are similarly defined in identical fashion for all public authorities, State or Central.

6. The RTI Act has parallel and identical sections that apply to Central and State bodies as under:

Sr. No.	Item	At the Centre	In every State
1.	Constitution of Commission	<ul style="list-style-type: none"> Chief Information Commissioner (CIC) Information Commissioners (upto 10 in number) 	<ul style="list-style-type: none"> State Chief Information Commissioner (SCIC) State ICs (upto 10 in number)
2.	Mode of appointment of Information Commissioners	Committee of <ul style="list-style-type: none"> Prime Minister, Leader of the Opposition A Union Cabinet Minister 	Committee of <ul style="list-style-type: none"> Chief Minister Leader of the Opposition A State Cabinet Minister
3.	Management and Administration	CIC	State CIC
4.	Headquarters of Commission	National Capital	State Capital
	Other offices of Commission	Anywhere in India	Anywhere in the State
5.	Term of office of Commissioners	5 years, or age of 65 years	5 years, or age of 65 years
6.	Salary & Allowances of Commissioners	CIC equivalent to Chief Election Commission of India ICs equivalent to Election Commission of India	State CIC equivalent to Election Commissioner of India. State ICs equivalent to Chief Secretary, State Government
7.	Final Controlling Authority	President of India	Governor of State
8.	Monitoring and Reporting	CIC for Central Ministries, Departments & Central Public Authorities	SIC for State Departments and State Public Authorities
9.	Action & reform by Government	CIC recommends to Central Govt.	SIC recommends to State Govt.
10.	Annual Report of Commission	To Central Government for placing before Houses of Parliament	To State Government for placing before house of State Legislature.
11.	Adjudication : The procedures, powers and functions, including powers for imposition of penalties are common for Central and State Information Commissions. <i>(Sections 18,19, 20)</i>		

It is seen from the above that the Central and State Commissions have identical powers and responsibilities, and exercise exactly the same authority, in respect of institutions within the jurisdiction of each. Following the provisions made in the Constitution of India, the Act clearly defines the role, responsibility and jurisdiction of the national and

sub-national bodies, the Central Information Commission and the State Information Commissions. Each is independent of the other. The relationship between a State Information Commission and the Central Information Commission in no way compares with that of a High Court in a State with the Supreme Court of India at the national level. The Supreme Court of India is the final court of appeal against orders emanating from every High Court, all High Courts being subordinate to the Supreme Court. In so far as Information Commissions are concerned, those at the Centre and in the States enjoy exactly the same powers, but over different Governments and public authorities. Judicial orders of the CIC are not in any way binding upon State ICs. Central and State Information Commissioners and SICs are both the final appellate authority for matters brought before them under RTI Act.

III. OPERATION OF RTI ACT AT THE CENTRE AND IN THE STATES

Even as the freedom of information regime in India is unitary, in actual operation of RTI Act some variations are observed in the method of implementation of the Act at the Central and State levels. Within the overall provisions of the common statute, the arrangements for assuring information rights vary even between state and state. We can appraise the factors responsible for such visible differences.

1. Differences in the nature of Public Authorities:

The institutions at the central level labelled as Public Authorities handle various matters in the Union List. A sample list would include the Comptroller and Auditor General of India, and the Ministries or Departments of Atomic Energy, Science & Technology, Mines, Civil Aviation, Railway, Defence, Chemicals & Fertilizers, Commerce & Industry, Information & Communication, Foreign Affairs and many others. The offices in the purview of the Ministries etc. being spread all over the country, directions from the national level percolate to the field offices for uniform application. The Public Authorities in the States relate to such matters as Police, Law and Order, Agriculture, Rural Development, Food and Supplies, Municipal Local Government, Education etc. These subjects fall generally in the State List. The Public Authorities in the States are found to be generally closer to the grassroots than those linked with the Centre. Institutions such as Municipal Local Bodies and Village *Panchayats*¹ impact directly the

¹ * Panchayats are village level institutions of local self Government in India.

day-to-day living of citizens. On the other hand, national level institutions such as, say, Ministry of Science & Technology, or the Boards of Direct and Indirect Taxes impact national policy making and might not immediately touch the day to day life of citizens. Thus there is a vast difference between the nature of information demanded from the Ministry of External Affairs at the Centre, and a *Village Panchayat* in a State. The mechanism for management of data in such disparate organizations has necessarily to be different one from the other.

2. Physical distance of the adjudicatory body from the information seeker:

Denial of information from a Public Authority such as a gas distribution agency in the Central Public Sector situated in a remote area, would require the appellant to approach CIC in the national capital for final redressal. Considering the present status of communications in the country, the seeker might be compelled to engage a lawyer to pursue his case with the CIC. On the other hand, redressal mechanism at the State level is comparatively easily accessible. It is observed that information seekers in the States have less need of professional lawyers for assistance, and usually pursue their cases on their own before State ICs. CIC is installing modern communication systems for video conferencing etc. for convenient hearings through electronic links all over the country.

3. Level of preparedness for data management

This varies considerably from State to State and between the Centre and the States. A good FOI regime rests on the base of systematic and accurate data management. Central bodies are by and large better organized in this respect. The major problem in the States is the codification of existing data, for convenient retrieval and delivery. Less frequent are instances of deliberate denial of information by the Public Information Officers. The road to the establishment of strong management information systems at all levels is long and tortuous. For example, in Punjab, which is a small state, the number of such Public authorities is close to 25000. Many of these are based at local levels, such as the village, small towns and colonies. The process of administrative reform for these innumerable bodies is inextricably linked to management and supply of data.

4. Public awareness

Public awareness, both at the Centre and in the States, about the Right to Information, is admittedly poor. Different mechanisms for enlightening the public are necessary at both levels. Under RTI Act the “appropriate Governments” have been charged with the responsibility of promotion of public awareness and also for training State Public Information Officers (PIOs) for handling and delivering information. The Central Government, as well as the State Governments, have both been limited and slow in taking initiatives for public awareness and education about RTI, and also in conducting training programmes.

5. Effectiveness of non-government organizations:

NGOs can play a significant role in the success of any FOI regime. There is wide difference in the seriousness, knowledge, and mode of functioning displayed by different NGOs working in various parts of the country. Active NGOs are seen to publicly expose malfunctioning of Public Authorities, even as they successfully take up vital causes of society and individuals under RTI Act.

6. Linkage of the FOI Regime with local laws:

RTI Act requires information to be supplied by Village *Panchayats* in villages as well as Municipal Councils in towns. Many States have not as yet adopted laws, as required by the Constitution of India, for decentralization of power and responsibility to the local self governing institutions, nor are these bodies as yet equipped to handle information systematically. Consequently the official departments of the Government are often required to handle requests that should normally have been settled at the local level.

7. Political Commitment:

Any regime for Freedom of Information is founded on the base of commitment by the political leaders to assure transparency and accountability. RTI Act had been adopted unanimously by India’s Parliament, reflecting a broad acceptance of the ideals of information freedom by all parties across the political spectrum at the national level. The political leadership charged with executive responsibility, especially at state level, is yet to realize that RTI is not an impediment in the pursuit of development and growth. The political executive has not yet accepted that openness can contribute to administrative

efficiency. Resistance to supply of “sensitive” information is not confined to developing countries alone.

8. Volume of Litigation:

Inevitably, the Central Information Commission in India has had to handle a huge volume of complaints and appeals regarding denial or delay in delivery of information. The burden of such litigation with the State Information Commissioners is somewhat smaller. The mechanism for settlement of the disputes at the Centre and the States has to be designed to secure expeditious disposal. Expectedly, the various Commissions have adopted procedures, within the mandate of the Act, most suitable to their respective needs and local situation. It is paradoxical that at early stages of establishment of an FOI regime, the number of matters for adjudication before the Commissions would be seen to rise, since the official machinery is not fully geared to organize, review and deliver data. As the system of data management improves the need for legal remedy should reduce. Some State Information Commissions have taken their own initiatives for disposal of complaints and appeals under RTI Act. They have also designed a user-friendly system of adjudication. A model of a user-friendly system of adjudication adopted by one of the State Information Commissions is described below:

- Citizens are encouraged to pursue their cases on their own, rather than take recourse to professional lawyers;
- During the process of adjudication, all Benches of the Commission conduct prompt hearings and avoid adjournments.
- In a majority of cases, the benches announce and record decisions in open court.
- All cause lists of matters for hearing are placed on the website well in advance.
- All proceedings, including interim and final orders are promptly displayed on the website. Litigations as well as other interested persons are free to download all such orders conveniently.
- All litigants and even members of the public are invited to give to the Commission their feedback on their experience of implementation of RTI Act at all levels, and also to give suggestions for improving the systems of

delivery. The Commission reviews the feedback so received for initiating measures for improvement.

- Benches of the Commission frequently visit various district headquarters to conduct hearings in cases emanating from and involving public authorities in the geographical areas adjoining these district headquarters. This helps to bring justice under RTI Act closer to the doorsteps of information seekers.
- The Commission does not believe that its role as adjudicator for information supply has ended with the issue of directions to public authorities to deliver information. After issue of such directions of delivery of information, all matters are marked for confirmation of compliance by the public authorities concerned. Thus the appeal or complaint is finally disposed of only after the Commission is satisfied that its orders have been duly complied with.

The public has generally welcomed the initiatives of the Commission to simplify procedures and facilitate delivery of information.

IV. CONCLUSION: SOME QUESTIONS

Given the basic framework of RTI Act 2005 in India, the following questions are posed.

- Q 1. Can there be a concerted approach to efficient data management at the national and state level?
- Q 2. The bureaucracy is proving to be an obstacle in the FOI regime. How can the bureaucracy be motivated to change its mindset?
- Q 3. Can the Centre and the States compete with each other in providing public satisfaction in delivery of information?
- Q4. Must empowerment of the public reduce the authority of the custodians of information?