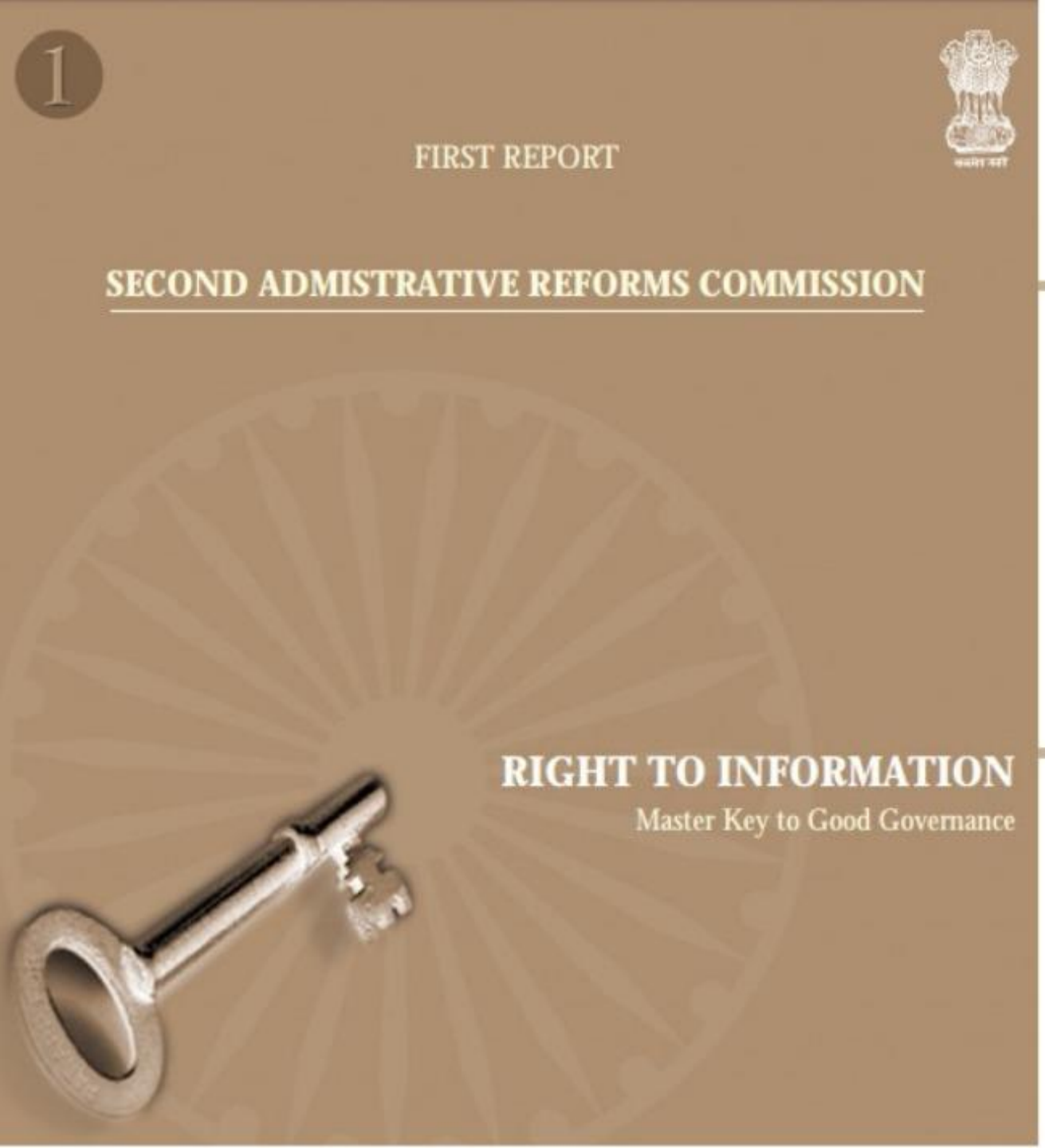


Unacademy Articulate

COMPLETE SUMMARY

2ND ARC REPORT ON RIGHT TO INFORMATION

2 Hrs MARATHON-II

#UPSC #IAS

By Sumit Kumar Thakur



Follow my telegram channel for related PDFs of all the classes and important updates related to future courses for Civil Services Exam

Channel link: t.me/roadtoCivils

Follow me on Unacademy**: https://unacademy.com/@sumit1920**

RSTV – THE BIG PICTURE DEBATE ANALYSIS

Starting on YouTube – **Unacademy UPSC Current Affairs, 7PM from 13th May, every alternate Day**

For all relevant updates, **Telegram Channel – t.me/ roadtoCivils**

unacademy

LET'S CRACK IT!

UNACADEMY SUMMIT 2020

in association with

THE HINDU GROUP

A summit to transform your UPSC prep





With power-packed sessions, this 3-day summit is a must-attend for every UPSC CSE aspirant. Succeed in the country's most coveted exam with this free-to-attend summit.

June 26 • 27 • 28 - 2020

3	56	56	29
Insightful Days	Talks & Panel Discussions	Iconic Speakers	Hands-on Workshops

unacademy

LET'S CRACK IT!

UNACADEMY SUMMIT 2020

in association with THE HINDU GROUP

50+ Speakers. 3 Days. 1 Mission.

To transform your UPSC CSE learning journey



Dr. Shashi Tharoor
Member of Parliament



Dr. Kiran Bedi
Ex. IPS Officer, Lt. Governor (Puducherry)



Kapil Dev
Former India Captain



Shri Pranab Mukherjee
Former President of India



Jairam Ramesh
Economist, MP



Rajkumar Rao
Bollywood Actor

Attend this free summit

Register now

https://unacademy.com/upscsummit2020

unacademy

LET'S CRACK IT!

UNACADEMY SUMMIT 2020

in association with THE HINDU GROUP

50+ Speakers. 3 Days. 1 Mission.

To transform your UPSC CSE learning journey



DP Agrawal
Ex. UPSC Chairman



Armstrong Pame
IAS, Deputy Commissioner, Tamenglong District



Prashant Nair
IAS, MD - KSINC, MD - KIIDC



Roopa DM
IPS Inspector General of Police - Railways, Bengaluru



Sanjukta Parashar
IPS Superintendent of Police, NIA



Vipul Pandey
IFoS Officer



Chhavi Rajawat
India's first and youngest village sarpanch with an MBA degree



Rujuta Diwekar
Dietician

Attend this free summit

Register now

https://unacademy.com/upscsummit2020

unacademy

LET'S CRACK IT!

UNACADEMY SUMMIT 2020

in association with

THE HINDU GROUP

Why UPSC?

11 events

Preparation Journey

8 events

Unacademy - A Perfect Study Partner!

4 events

Be a Leader!

3 events

Aftermath of failure!

2 events

Workshops and Discussions!

34 workshops

UPSC CSE

Crack UPSC CSE on

India's largest learning platform with Top Educators

Chat with us

Get subscription

Leadership skills: From the dressing room to the field- Sour...

Starts on Jun 13, 4:00 PM

Enroll



Experience Plus For Free

See all



Browse

Syllabus

Tests

Subscribe

Subscription plans for

UPSC CSE

Most Popular

12 MONTHS

SAVE 54%

₹3,667/mo

24 MONTHS

SAVE 67%

₹2,667/mo

No cost EMI available on 6, 12 and 24 months

SUMITYT10

₹64,000

for 24 months

Proceed to payment

Subscription plans for

UPSC CSE

Most Popular

12 MONTHS

SAVE 54%

₹3,300/mo

24 MONTHS

SAVE 67%

₹2,400/mo

No cost EMI available on 6, 12 and 24 m s

10% off applied 'UPSCYT'

₹57,600

for 24 months

Proceed to payment

UPSC CSE

Crack UPSC CSE on

India's largest learning platform with Top Educators

Chat with us

Get subscription

Leadership skills: From the dressing room to the field- Sour...

Starts on Jun 13, 4:00 PM

Enroll



Experience Plus For Free

See all



Browse

Syllabus

Tests

Subscribe

Subscription plans for

UPSC CSE

6 MONTHS SAVE 25% ₹6,000/mo

Most Popular

12 MONTHS SAVE 54% ₹3,667/mo

24 MONTHS SAVE 67% ₹2,667/mo

No cost EMI available on 6, 12 and 24 months

SUMITYT10

₹44,000

for 12 months

Proceed to payment

Subscription plans for

UPSC CSE

6 MONTHS SAVE 25% ₹5,400/mo

Most Popular

12 MONTHS SAVE 54% ₹3,300/mo

24 MONTHS SAVE 67% ₹2,400/mo

No cost EMI available on 6, 12 and 24 months

10% off applied 'UPSCYT'

₹39,600

for 12 months

Proceed to payment

Before we Begin…

- Consistency is the key (Plan to cover all relevant ARC reports)
- Just going through the pdf won’t suffice, classes will have elaborate explanation, interlinking and dynamic interaction (questions will be asked)
- Will serve the purpose of both fresher and veterans
- What mode of language u want ?
- Finally, power-packed class, full attention required for your better understanding

Contents

1. Introduction

2. Official Secrets Act and Other Laws

3. Rules and Procedures

4. Confidentiality Classification

5. Rights and Obligations

6. Issues in Implementation

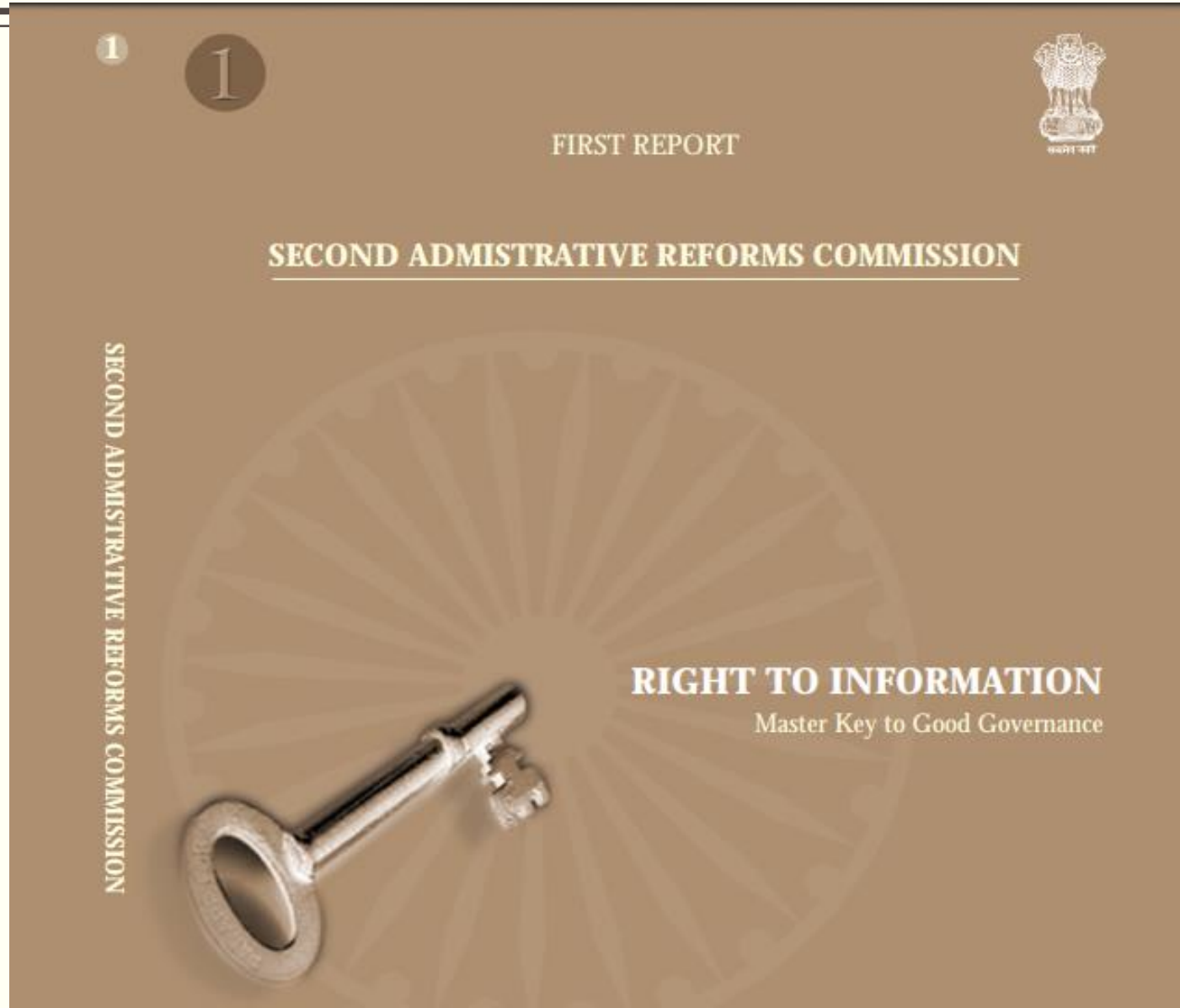
7. Application of the RTI Act to the Legislature and the Judiciary

8. Removal of Difficulties

9. Conclusion

Quotes & Visuals

- “If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost” - Aristotle



Introduction

- Right to information has been seen as the key to strengthening participatory democracy and ushering in people centred governance
- Access to information can empower the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare
- Good governance has four elements- **transparency, accountability, predictability and participation**.
- Transparency refers to availability of information to the general public and clarity about functioning of governmental institutions.
- Right to information opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable

Introduction

- Information about functioning of government also enables citizens to participate in the governance process effectively. In a fundamental sense, right to information is a basic necessity of good governance
- In recognition of the need for transparency in public affairs, the Indian Parliament enacted the Right to Information Act (hereinafter referred to as the RTI Act or the Act) in 2005.
- It is a path breaking legislation empowering people and promoting transparency.
- While right to information is implicitly guaranteed by the Constitution, the Act sets out the practical regime for citizens to secure access to information on all matters of governance.

Introduction

- Access to information under this Act is extensive with minimum exemptions. Even these exemptions are subject to strict safeguard

Official Secrets Act and Other Laws

- The most contentious issue in the implementation of the Right to Information Act relates to official secrets
- In a democracy, people are sovereign and the elected government and its functionaries are public servants
- Therefore by the very nature of things, transparency should be the norm in all matters of governance
- However it is well recognised that public interest is best served if certain sensitive matters affecting national security are kept out of public gaze
- People should have the unhindered right to know the decisions of the Cabinet and the reasons for these, but not what actually transpires within the confines of the ‘Cabinet room’. The Act recognizes these confidentiality requirements in matters of State and Section 8 of the Act exempts all such matters from disclosure

Official Secrets Act and Other Laws

- The Official Secrets Act, 1923 (hereinafter referred to as OSA), enacted during the colonial era, governs all matters of secrecy and confidentiality in governance.
- The law largely deals with matters of security and provides a framework for dealing with espionage, sedition and other assaults on the unity and integrity of the nation
- OSA created a culture of secrecy. Confidentiality became the norm and disclosure the exception
- This tendency was buttressed by the **Civil Service Conduct Rules, 1964** which prohibit communication of an official document to anyone without authorization

Official Secrets Act and Other Laws

- Not surprisingly, **Section 123 of the Indian Evidence Act**, enacted in 1872, prohibits the giving of evidence from unpublished official records without the permission of the Head of the Department, who has abundant discretion in the matter
- The **Right to Information Act has a non-obstante clause**: "**Sec. 8(2)**: Notwithstanding anything in the **Official Secrets Act, 1923** nor any of the exemptions permissible in accordance with sub-section (1), **a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests**"
- Thus OSA would not come in the way of disclosure of information if it is otherwise permissible under the RTI Act

Official Secrets Act and Other Laws

- Section 5 of OSA, is the catch all provision. Any kind of information is covered by this Section if it is classified as ‘secret’. The word “secret” or the phrase “official secrets” has not been defined in the Act. Therefore, public servants enjoy the discretion to classify anything as “secret”
- The Law Commission in its 43rd Report (1971), summarised the difficulties encountered with the all inclusive nature of Section 5 of OSA, in the absence of a clear and concise definition of ‘official secret’
- **The Law Commission also recommended consolidation of all laws dealing with national security and suggested a “National Security Bill”**

Official Secrets Act and Other Laws

- The various enactments in force in India dealing with offences against the national security are:-
- (i) chapters 6 and 7 of the Indian Penal Code ;
- (ii) the Foreign Recruiting Act, 1874;
- (iii) the Official Secrets Act, 1923;
- (iv) the Criminal Law Amendment Act, 1938;
- (v) the Criminal Law Amendment Act, 1961; and
- (vi) the Unlawful Activities (Prevention) Act, 1967

Official Secrets Act and Other Laws

- The Official Secrets Act, 1923 is the main statute for fighting espionage activities which vitally affect the national security. The main offences created by this Act are as follows:-
- (i) “spying”, or entry into a prohibited place etc., transmission or collection of secret information, and the like ;
- (ii) wrongful communication of, or receiving secret information of the specified type;
- (iii) harbouring spies;
- (iv) unauthorized use of uniforms, falsification of reports etc., in order to enter a prohibited place, or for a purpose prejudicial to the safety of the State ;
- (v) interference with the police or military, near a prohibited place

Official Secrets Act and Other Laws

- The primary object of the Criminal Law Amendment Act, 1961 is to punish persons who question the territorial integrity or frontiers of India in a manner prejudicial to the safety and security of the country.
- Though there is undoubtedly necessity for retaining some of these provisions which have a direct bearing on national security and integrity, in view of the passing of the Unlawful Activities (Prevention) Act, 1967, some of the provisions of the earlier Act may not be necessary
- The **main advantages of consolidation of various statutes are these**:-

1. Consolidation diminishes the bulk of the statute book and makes the law easier for those who have to administer it (including Judges, administrators, the Bar and the litigant public); for they have only one document to consult instead of two or more

Official Secrets Act and Other Laws

2. The consolidated Act speaks from one and the same time, and thus the convenience arising from the interpretations of sections of various Acts speaking from different times is avoided

3. Some of the provisions of the earlier Acts may have to be omitted as unnecessary

The Shourie committee recommendations on OSA:

“It is the Official Secrets Act that has been regarded in many quarters as being primarily responsible for the excessive secrecy in government. Its “Catch-all” nature has invited sustained criticism and demand for its amendment. Section 5 of this Act provides for punishment for unauthorized disclosure of Official secrets but omits to define secrets”

Official Secrets Act and Other Laws

2nd ARC recommendations regarding OSA –

a) The Official Secrets Act, 1923 should be repealed, and substituted by a chapter in the National Security Act, containing provisions relating to official secrets

b) The equivalent of the existing Section 5, in the new law may be on the lines recommended by the Shourie Committee as quoted below

“ 5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

b1. his holding or having held an office with or under government, or

b2. a contract with the government, or

Official Secrets Act and Other Laws

b3**.** it being entrusted to him in confidence by another person holding or having held an office under or with the government, or in any other manner,

i. communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

ii. fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

iii. wilfully fails to return the official secret when it is his duty to return it, shall be guilty of an offence under this section

Official Secrets Act and Other Laws

5(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it, that the official secret is communicated in contravention of this Act, shall be guilty of an offence under this section

5(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both

Explanation: For the purpose of this section, 'Official Secret' means any information the disclosure of which is likely to prejudicially affect the sovereignty and integrity of India, the security of State, friendly relations with foreign states, economic, commercial, scientific and technological matters relating to national security and includes: any secret code, password, sketch plan, model, article, note or document in relation to a prohibited place."

Official Secrets Act and Other Laws

Governmental Privilege in Evidence:

- The term “privilege” as used in Evidence law means freedom from compulsion to give evidence or to discover material, or a right to prevent or bar information from other sources during or in connection with litigation, but on grounds extrinsic to the goals of litigation
- Section 123 of the Indian Evidence Act, 1872 prohibits the giving of evidence derived from unpublished official records relating to affairs of State except with the permission of the Head of the Department. This Section reads as follows:
- *No one shall be permitted to give any evidence derived from un-published official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit”.*

Official Secrets Act and Other Laws

- Further, Section 124 of the Act stipulates:
- "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure"
- **2nd ARC recommendations –**

a) Section 123 of the Indian Evidence Act, 1872 should be amended to read as follows:

"123.(1)Subject to the provisions of this section, no one shall be permitted to give any evidence derived from official records which are exempt from public disclosure under the RTI Act, 2005

Official Secrets Act and Other Laws

(2) Where he withholds such permission, he shall make an affidavit containing a statement to that effect and setting forth his reasons therefor

(3) Where such officer has withheld permission for the giving of such evidence, the Court, after considering the affidavit or further affidavit, and if it so thinks fit, after examining such officer or, in appropriate cases, the Minister, orally:

a) shall issue a summons for the production of the unpublished official records concerned, if such summons has not already been issued

b) shall inspect the records in chambers; and

c) shall determine the question whether the giving of such evidence would or would not be injurious to public interest, recording its reasons therefor

Official Secrets Act and Other Laws

(4) Where, under sub-section (3), the Court decides that the giving of such evidence would not be injurious to public interest, the provisions of subsection (1) shall not apply to such evidence

- Provided that in respect of information classified as Top Secret for reasons of national security, only the High Court shall have the power to order production of the records."

➢ Section 124 of the Indian Evidence Act will become redundant on account of the above and will have to be repealed.

➢ Accordingly, the following will have to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973:

Official Secrets Act and Other Laws

“Any person aggrieved by the decision of any Court subordinate to the High Court rejecting a claim for privilege made under section 123 of the Indian Evidence Act, 1872 shall have a right to appeal to the High Court against such decision, and such appeal may be filed notwithstanding the fact that the proceeding in which the decision was pronounced by the Court is still pending.”

The Oath of Secrecy:

- A Minister is a bridge between the people and the Government and owes his primary allegiance to the people who elect him.
- The existence of this provision of oath of secrecy and its administration along with the oath of office appears to be a legacy of the colonial era where the public was subjugated to the government

Official Secrets Act and Other Laws

2nd ARC recommends –

a) As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency alongwith the oath of office and the requirement of administering the oath of secrecy should be dispensed with. Articles 75(4) and 164 (3), and the Third Schedule should be suitably amended.

b) Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets

Exempted Organizations:

Official Secrets Act and Other Laws

Certain categories of organizations have been exempted from the provisions of the Act:

“24. (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government”

2nd ARC recommends –

a) The Armed Forces should be included in the Second Schedule of the Act.

b) The Second Schedule of the Act may be reviewed periodically.

c) All organizations listed in the Second Schedule have to appoint PIOs. Appeals against orders of PIOs should lie with CIC/SICs. (This provision can be made by way of removal of difficulties under section 30)

Rules and Procedures

The Central Civil Services (Conduct) Rules:

- The **Shourie Committee** examined this issue and stated as follows:
- " There is a widespread feeling that the Central Civil Services (Conduct) Rules, 1964, and corresponding rules applicable to Railways, Foreign Services and All India Services, inhibit government servants from sharing information with public. The accent in these rules is on denial of information to public. This situation has obviously to change if freedom of Information Act is to serve its purpose and if transparency is to be brought about in the system"
- **2nd ARC recommends –**

a) Civil Services Rules of all States may be reworded on the following lines:

Rules and Procedures

- “Communication of Official Information:

➢ Every Government servant shall, in performance of his duties in good faith, communicate to a member of public or any organisation full and accurate information, which can be disclosed under the Right to Information Act, 2005.

➢ Explanation – Nothing in this rule shall be construed as permitting communication of classified information in an unauthorised manner or for improper gains to a Government servant or others.”

Rules and Procedures

2nd ARC recommendations regarding The Manual of Office Procedure

Para 116 of the Manual of Office Procedure needs to be reworded as follows:.

“Communication of Official Information: Every Government Servant shall, in performance of his duties in good faith, communicate to a member of public or any organization full and accurate information, which can be disclosed under the Right to Information Act. (Nothing stated above shall be construed as permitting communication of classified information in an unauthorized manner or for improper gains to a Government Servant or others).”

b. Para 118 (1) should be deleted.

c. The State Governments may be advised to carry out similar amendments in their Manuals, if such provisions exist therein

Confidentiality Classification

The Shourie Committee considered the issue of classification of information and noted:

“A major contributor to the lack of transparency is the tendency to classify information even where such classification is clearly unjustified.

There is also the tendency to accord higher classification than is warranted.

The Manual of Departmental Security Instructions, issued by the Ministry of Home Affairs, and the Manual of Office Procedure, which incorporates some of these instructions, do lay down the criteria and guidelines for classification and specify the authorities competent to authorise classification gradings viz. Top Secret, Secret and Confidential.

Confidentiality Classification

- While the criteria for classification have perhaps necessarily to be broad, it is desirable, in the interest of a proper approach to classification that they should be backed up by a suitable illustrative list for guidance of officers
- While drawing up such a list, the principle to be adhered to is that ordinarily only such information, as would qualify for exemption under the proposed Freedom of Information Act, should be classified."

2nd ARC recommends –

a) The GOI should amend the Manual of Departmental Security Instructions in the following manner:

Confidentiality Classification

i. **Information Deserving Classification**

- It would be advisable for each Ministry/Department to identify the information which deserves to be given a security classification. Ordinarily, only such information should be given a security classification which would qualify for exemption from disclosure under the Right to Information Act, 2005. The Classification of documents should be done as per the following guidelines:-

Confidentiality Classification

Sl.No.	Section of the RTI Act to which information pertains	Classification
1	8(1)(a)	Top Secret
2	8(1)(b)	Confidential
3	8(1)(c)	Confidential
4	8(1)(d)	Secret
5	8(1)(e)	Confidential
6	8(1)(f)	Secret
7	8(1)(g)	Top Secret/Secret
8	8(1)(h)	Secret/Confidential
9	8(1)(i)	Confidential
10	8(1)(j)	Confidential/restricted
11	9	Confidential/restricted

Confidentiality Classification

- **Explanation:** The above mentioned classification should be generally followed. It is quite possible that information may be covered by more than one exemption; in that case the information should be given the classification of the higher category. Also if it is felt by the competent authority that circumstances of a case demand a higher classification than what is indicated above, then the same may be done by an authority, which is empowered to give such a classification
- Provision should be made to include annual confidential reports of officers and examination question papers and related matters in the exemptions under the RTI Act. This may be done by way of removal of difficulties under Section 30

Confidentiality Classification

ii. Upgrading and Downgrading - Documents once classified as “Top Secret” or “Secret”, should remain so classified as long as required but not exceeding 30 years. Documents classified as confidential and restricted should remain so for a period not exceeding 10 years

iii. Officer Authorised to Accord the Grading:

Top Secret: Not below Joint Secretary

Secret: Not below Deputy Secretary

Confidential: Not below Under Secretary

The State Governments may authorise officers of equivalent rank to accord the grading.

Rights and Obligations

In order to enforce the rights and fulfil the obligations under the Act, **building of institutions, organization of information and creation of an enabling environment** are critical.

Therefore, the Commission has as a first step reviewed the steps taken so far to implement the Act as follows:

I. BUILDING INSTITUTIONS:

a. Information Commissions

b. Information Officers and Appellate Authorities

Rights and Obligations

II. INFORMATION AND RECORD-KEEPING:

a. Suo motu declaration under Section 4

b. Public Interest Disclosure.

c. Modernizing recordkeeping

III. CAPACITY BUILDING AND AWARENESS GENERATION

IV. CREATION OF MONITORING MECHANISMS

Rights and Obligations

2nd ARC recommendations regarding Building Institutions:

a) Section 12 of the Act may be amended to constitute the Selection Committee of CIC with the Prime Minister, Leader of the Opposition and the Chief Justice of India. Section 15 may be similarly amended to constitute the Selection Committee at the State level with the Chief Minister, Leader of the Opposition and the Chief Justice of the High Court.

b) The GOI should ensure the constitution of SICs in all States within 3 months.

c) The CIC should establish 4 regional offices of CIC with a Commissioner heading each. Similarly regional offices of SICs should be established in larger States

Rights and Obligations

d) At least half of the members of the Information Commissions should be drawn from non civil services background. Such a provision may be made in the Rules under the Act, by the Union Government, applicable to both CIC and SICs

Recommendations regarding Designating Information Officers and Appellate Authorities:

(i) All Ministries/ Departments/Agencies/Offices with more than one PIO have to designate a nodal Assistant Public Information Officer with the authority to receive requests for information on behalf of all PIOs. Such a provision should be incorporated in the Rules by appropriate governments.

Rights and Obligations

ii) PIOs in Central Secretariats should be of the level of atleast Deputy Secretary /Director. In State Secretariats, officers of similar rank should be notified as PIOs. In all subordinate agencies and departments, officers sufficiently senior in rank and yet accessible to public may be designated as PIOs

iii) All public authorities may be advised by the Government of India that along with the Public Information Officers they should also designate the appellate authority and publish both, together

iv) The designation and notification of Appellate Authorities for each public authority may be made either under Rules or by invoking Section 30 of the Act

Rights and Obligations

Recommendations regarding Organizing Information and Record Keeping:

A case in Point –

Box No. 1: BBC News story

"When Rakesh Shukla, a poor farmer from the central Indian state of Chhattisgarh, asked local authorities for information on paddy field purchases in his area, he was handed a bill for 182,000 rupees. Authorities told him that the bulk of the expenses-108,000 rupees had been spent photocopying over 90,000 copies of official papers relating to the purchases.The documents filled an entire room."

Rights and Obligations

a) Suo motu disclosures should also be available in the form of printed, priced publication in the official language, revised periodically (at least once a year). Such a publication should be available for reference, **free of charge**. In respect of electronic disclosures, NIC should provide a single portal through which disclosures of all public authorities under appropriate governments could be accessed, to facilitate easy availability of information

b) Public Records Offices should be established as an independent authority in GOI and all States within 6 months by integrating and restructuring the multiple agencies currently involved in record keeping. This Office will be a **repository of technical and professional expertise** in management of public records. It will be responsible for **supervision, monitoring, control and inspection** of record keeping in all public offices

Rights and Obligations

c) Public Records Office would function under the overall supervision and guidance of CIC/SIC

d) As a one time measure, GOI should earmark 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals and establishing the Public Records Offices. (An amount not exceeding 25% of this should be utilized for awareness generation.)

e) As a one time measure, GOI may create a Land Records Modernization Fund for survey and updation of all land records. The quantum of assistance for each State would be based on an assessment of the field situation

Rights and Obligations

Recommendations regarding Capacity Building and Awareness Generation –

a) Training programmes should not be confined to merely PIOs and APIOs. All government functionaries should be imparted atleast one day training on Right to Information within a year. These training programmes have to be organized in a decentralized manner in every block.

A **cascading model** could be adopted with a batch of master trainers in each district

b) In all general or specialized training programmes, of more than 3 days duration, a half-day module on Right to Information should be compulsory

Rights and Obligations

c) Awareness campaigns may be entrusted to credible non profit organizations at the State level. They should design a multi media campaign best suited to the needs, in the local language

d) Appropriate governments should bring out guides and comprehensible information material within the prescribed time

e) The CIC and the SICs may issue guidelines for the benefit of public authorities and public officials in particular and public in general about key concepts in the Act and approach to be taken in response to information requests on the lines of the Awareness Guidance Series

Rights and Obligations

Recommendations regarding Monitoring Mechanism –

a) The CIC and the SICs may be entrusted with the task of monitoring effective implementation of the Right to Information Act in all public authorities. (An appropriate provision could be made under Section 30 by way of removal of difficulties)

b) As a large number of Public Authorities exist at regional, state, district and sub district level, a nodal officer should be identified wherever necessary by the appropriate monitoring authority (CIC/SIC) to monitor implementation of the Act

c) Each public authority should be responsible for compliance of provisions of the Act in its own office as well as that of the subordinate public authorities

Rights and Obligations

d) A National Coordination Committee (NCC) may be set up under the chairpersonship of the Chief Information Commissioner with the nodal Union Ministry, the SICs and representatives of States as members. A provision to this effect may be made under Section 30 of the Act by way of removing difficulties. The National Coordination Committee would:

i. serve as a national platform for effective implementation of the Act,

ii. document and disseminate best practices in India and elsewhere,

iii. monitor the creation and functioning of the national portal for Right to Information,

iv. review the Rules and Executive orders issued by the appropriate governments under the Act,

Rights and Obligations

v. carry out impact evaluation of the implementation of the Act; and

vi. perform such other relevant functions as may be deemed necessary

Issues in Implementation

Let’s look into a CASE STUDY –

Box-3-Cost of a bank draft

Information was sought from Department of Industrial Policy & Promotion. Application was made on 23.1.2006. The applicant went to Udyog Bhawan, which houses this Department. At the Reception, there was a board, which displayed the name of the CPIO. His office informed that the requisite fee is not acceptable in cash and a demand draft in favour of Pay and Accounts Officer, Department of Industrial Policy & Promotion will have to be made. A service charge of Rs.35/- had to be paid to the bank for issuing a demand draft of Rs.10/-. Thus, for a fee of Rs.10/-, the applicant had to incur a cost of Rs.45/-. On the basis of the demand draft the Office of the concerned CPIO accepted the application

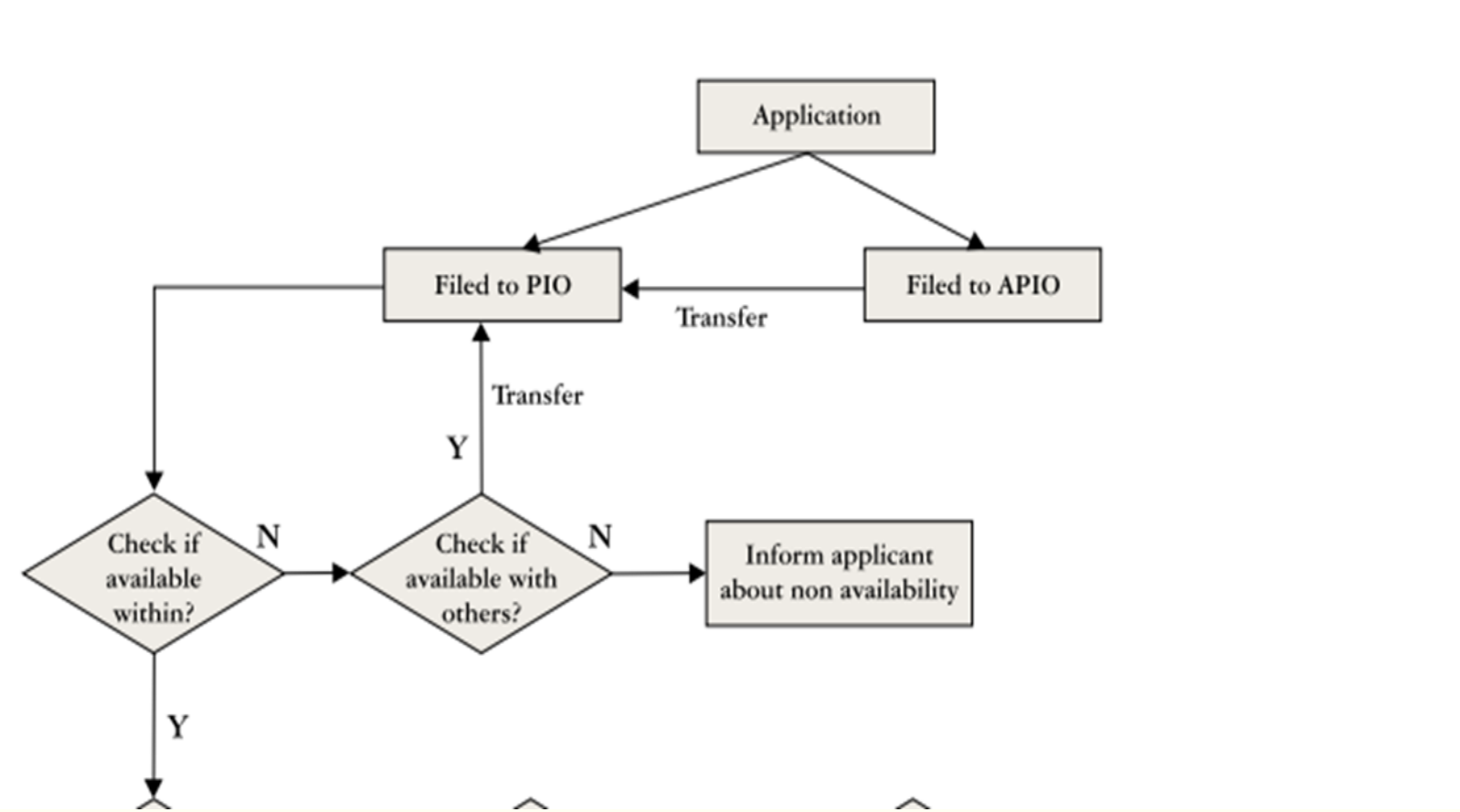
Issues in Implementation

Based on the case studies conducted by the Commission, responses of various Ministries to a questionnaire, and interactions with the stakeholders, a number of difficulties /impediments were noted:

- ✓Complicated system of accepting requests
- ✓Insistence on demand drafts
- ✓Difficulties in filing applications by post
- ✓Varying and often higher rates of application fee
- ✓Large number of PIOs

Issues in Implementation

- **Stages involved in giving information under RTI:**



Issues in Implementation

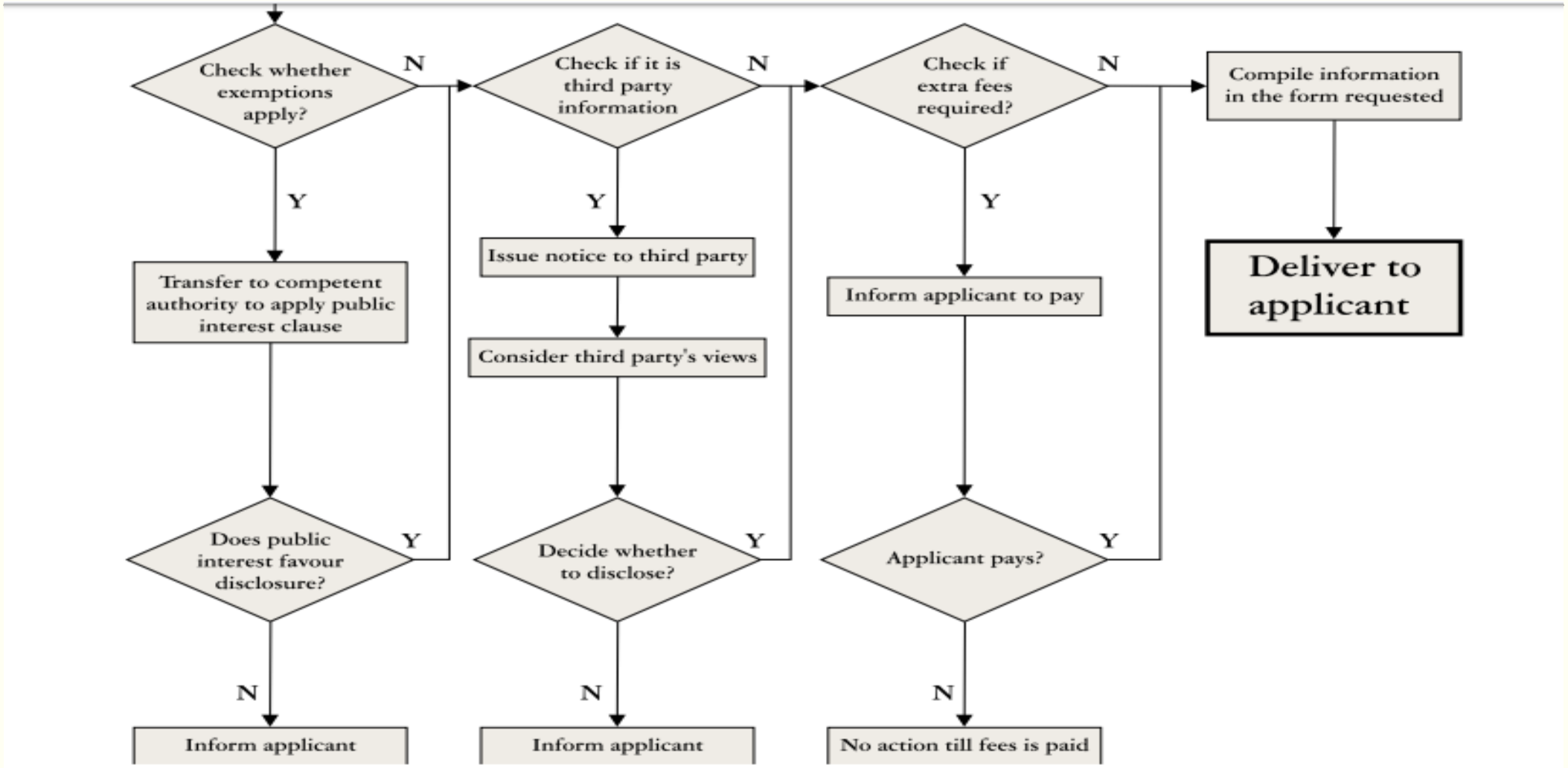


FIG. 1 FLOWCHART OF THE PROCESSES INVOLVED IN GIVING INFORMATION UNDER RTI ACT

Issues in Implementation

2nd ARC recommendations –

a) In addition to the existing modes of payment, appropriate governments should amend the Rules to include payment through postal orders (online payment ?)

b) States may be required to frame Rules regarding application fee which are in harmony with the Central Rules. It needs to be ensured that the fee itself does not become a disincentive

c) Appropriate governments may restructure the fees (including additional fees) in multiples of Rs 5. {e.g. instead of prescribing a fee of Rs. 2 per additional page it may be desirable to have a fee of Rs. 5 for every 3 pages or part thereof}

Issues in Implementation

d) State Governments may issue appropriate stamps in suitable denominations as a mode of payment of fees. Such stamps would be used for making applications before public authorities coming within the purview of State Governments

e) As all the post offices in the country have already been authorized to function as APIOs on behalf of Union Ministries/Departments, they may also be authorized to collect the fees in cash and forward a receipt along with the application

Recommendations regarding Inventory of Public Authorities –

Issues in Implementation

a) At the Government of India level the Department of Personnel and Training has been identified as the nodal department for implementation of the RTI Act. This nodal department should have a complete list of all Union Ministries/ Departments which function as public authorities

b) Each Union Ministry/ Department should also have an exhaustive list of all public authorities, which come within its purview. The public authorities coming under each ministry/ department should be classified into (i) constitutional bodies, (ii) line agencies, (iii) statutory bodies, (iv) public sector undertakings, (v) bodies created under executive orders, (vi) bodies owned, controlled or substantially financed, and (vii) NGOs substantially financed by government. Within each category an up-to date list of all public authorities has to be maintained

Issues in Implementation

c) Each public authority should have the details of all public authorities subordinate to it at the immediately next level. This should continue till the last level is reached. All these details should be made available on the websites of the respective public authorities, in a hierarchical form

d) A similar system should also be adopted by the States

Recommendations regarding Single Window Agency at District Level –

- A Single Window Agency should be set up in each District. This could be achieved by creating a cell in a district-level office, and designating an officer as the Assistant Public Information Officer for all public authorities served by the Single Window Agency.
- The office of the District Collector/ Deputy Commissioner, or the Zilla Parishad is well suited for location of the cell

Issues in Implementation

Subordinate Field Offices and Public Authorities

‘Public authority’ has been defined as any authority or body or institution of self-government established or constituted by or under the Constitution, by any other law made by Parliament, by State Legislatures, and by any notification issued by the appropriate Government, including institutions substantially funded by the appropriate Government. This would extend the spread of public authorities to the level of panchayats and village patwaris across the country

2nd ARC recommends –

The lowest office in any organization which has decision making power or is a custodian of records should be recognized as a public authority

Issues in Implementation

Recommendations regarding Application to Non Governmental Bodies –

a) Organisations which perform functions of a public nature that are ordinarily performed by government or its agencies, and those which enjoy natural monopoly may be brought within the purview of the Act

b) Norms should be laid down that any institution or body that has received 50% of its annual operating costs, or a sum equal to or greater than Rs.1 crore during any of the preceding 3 years should be understood to have obtained ‘substantial funding’ from the government for the period and purpose of such funding

c) Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution

Issues in Implementation

d) This could be achieved by way of removal of difficulties under section 30 of the Act

Recommendations regarding Time Limit for Information Beyond 20 Years –

a) The stipulation of making available 20-year old records on request should be applicable only to those public records which need to be preserved for such a period. In respect of all other records, the period of availability will be limited to the period for which they should be preserved under the record keeping procedures

b) If any public authority intends to reduce the period upto which any category of record is to be kept, it shall do so after taking concurrence of the Public Records Office

Issues in Implementation

Recommendations regarding Mechanism for Redressal of Public Grievances –

- States may be advised to set up independent public grievances redressal authorities to deal with complaints of delay, harassment or corruption
- These authorities should work in close coordination with the SICs/District Single Window Agencies, and help citizens use information as a tool to fight against corruption and misgovernance, or for better services

Recommendations regarding Frivolous and Vexatious Requests –

South African law addresses the problem effectively, even as the citizen's right to information is fully protected, Hence 2nd ARC recommends –

Issues in Implementation

a) Section 7 may be amended to insert sub section (10) as follows:

- “The PIO may refuse a request for information if the request is manifestly frivolous or vexatious.
- Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority
- Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIC shall dispose the case as if it is an appeal under section 19(3) of the RTI Act”

b) It may be provided that information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public body

Issues in Implementation

- Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority
- Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIC shall dispose the case as if it is an appeal under section 19(3) of the RTI Act.
- This may be accomplished by way of removal of difficulties or framing of appropriate Rules

Application of the RTI Act to the Legislature and the Judiciary

2nd ARC recommendations regarding the same –

a) A system of indexing and cataloguing of records of the legislatures, which facilitates easy access should be put in place. This could be best achieved by digitizing all the records and providing access to citizens with facilities for retrieving records based on intelligible searches

b) A tracking mechanism needs to be developed so that the action taken by the executive branch on various reports like CAG, Commissions of Enquiry and House Committees is available to legislators and public, online

c) The working of the legislative committees should be thrown open to the public. The presiding officer of the committee, if required in the interest of State or privacy, may hold proceedings in camera

Application of the RTI Act to the Legislature and the Judiciary

d) The records at the district court and the subordinate courts should be stored in a scientific way, by adopting uniform norms for indexing and cataloguing

e) The administrative processes in the district and the subordinate courts should be computerized in a time bound manner. These processes should be totally in the public domain

Removal of Difficulties

Section 30 of the Act stipulates as follows:

“30 (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act”

The implementation of the Act is yet to stabilize and it is perhaps too early to identify difficulties that may be encountered. The Commission however has identified some initial difficulties which could impede smooth implementation of the Act

Removal of Difficulties

i. All organizations listed in the Second Schedule have to appoint PIOs. Appeals against orders of PIOs should lie with CIC/SICs.

ii. Provision should be made to include annual confidential reports, examination question papers and related matters in the exemptions under the RTI Act

iii. Provision has to be made for designation and notification of Appellate Authority for each public authority

iv. The CIC and the SICs should be entrusted with the task of monitoring effective implementation of Right to Information in all public authorities

Removal of Difficulties

v) A National Coordination Committee (NCC) may be set up under the chairpersonship of the Chief Information Commissioner with the nodal Union Ministry, the SICs and representatives of States as members. A provision to this effect may be made under Section 30 of the Act by way of removing difficulties

vi) The following norms should be followed for determining applicability of the Act to non governmental organizations.

a. Organizations which perform functions that are ordinarily performed by government or its agencies, and those which enjoy natural monopoly should be brought within the purview of the Act.

b. Norms should be laid that any institution or body that has received 50% of its annual operating costs, or a sum equal to or greater than Rs.1 crore, during any of the preceding 3 years should be understood to have obtained ‘substantial funding’ from the government for the period and purpose of such funding.

Removal of Difficulties

c. Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution

vii) The stipulation of making available 20-year old records on request should be applicable only to those public records which need to be preserved for such a period. In respect of all other records, the period of availability will be limited to the period for which they should be preserved under the record keeping procedures

If any public authority intends to reduce the period upto which any category of record is to be kept, it shall do so after taking concurrence of the CIC/SIC as the case may be

Removal of Difficulties

viii) It may be provided that information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public authority.

Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority.

Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIC shall dispose the case as if it is an appeal under section 19(3) of the RTI Act

Conclusion

- The Right to Information law of 2005 signals a radical shift in our governance culture and permanently impacts all agencies of state.
- The effective implementation of this law depends on **three fundamental shifts**: from the **prevailing culture of secrecy to a new culture of openness**; from **personalized despotism to authority coupled with accountability**; and from **unilateral decision making to participative governance**

The Commission, therefore, focused on two broad categories of issues:

i) The first set of issues relates to changes in other laws and practices involving state secrets, civil service conduct rules and classification of documents

Conclusion

ii) The second set of issues relates to implementation of the RTI Act itself, in particular process engineering, record keeping, disclosures, access and monitoring

- It is well recognized that right to information is necessary, but not sufficient, to improve governance.
- A lot more needs to be done to usher in accountability in governance, including protection of whistle blowers, decentralization of power and fusion of authority with accountability at all levels

Footnotes

- **Linking RTI Act 2005 with the RTI Amendment Bill 2019**
- RTI Amendment Bill, 2019 has been passed by both the Houses of Parliament
- Notified as an Act in The Gazette of India on 1 August, 2019
- The amendments to RTI Act has been passed by both Loksabha and Rajya sabha which focuses on the principle of **'maximum governance, minimum government**'. The essence of these amendments is aimed at accountability and citizen-centric approach of the Government
- **Right to Information (Amendment) Bill, 2019:**
- The Bill changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states

Footnotes

- **Term**
- At present, the Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.
- The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs
- **Quantum of Salary**
- At present, the salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively

Footnotes

- The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government
- **Deductions in Salary**
- The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service ((includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government)), their salaries will be reduced by an amount equal to the pension
- *The Bill removes these provisions*

Footnotes

- **Criticisms of the bill:**
- The proposed changes to the RTI Act were introduced in complete secrecy without any public disclosure and consultation on draft legislations.
- The Bill seeks to amend the RTI Act to empower the Centre to unilaterally decide the tenure, salary, allowances and other terms of service of information commissioners (CIC and SICs) at the Centre and in the States.
- Without a fixed tenure and salary, which will now be decided by the government, information commissioners will lack the teeth to force public bodies to part with information

Footnotes

- By **diminishing the status of the CIC, IC and State CIC from that of a Supreme Court judge** would reduce their ability to issue directives to senior government functionaries
- **The Argument of Govt. in favor of the Bill:**
- The statement of objects says “the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, **their status and service conditions need to be rationalised accordingly**”
- **CIC has been given the status of a Supreme Court Judge**, but his **judgments can be challenged in the High Courts**

Footnotes

- Therefore, the amendments Have been brought to correct certain anomalies in the RTI Act.
- It does not dilute the Act in anyway and it was passed in a hurry in 2005.
- **RTI Amendments would strengthen the overall RTI structure**

Footnotes

- As the amendments dilute the law, the Centre could simply transfer any authority be it the CIC or any of the SICs — in the event a case was thought to be directed against the interests of the government, thus weakening the democratic institutions
- **What needs to be done?**
- **Reduce pendency**
- To begin with, the government could take steps to reduce pending appeals. In June 2019, about 31,000 appeals were pending, out of which, over 9,000 are pending for over a year. Currently, four out of the ten positions of information commissioners are vacant. According to the National Campaign for People's Right to Information (NCPRI), several information commissions in the states were either non-functional or working at a reduced capacity

Footnotes

- **Prune the exemption list**
- According to an RTI ratings report by the Canada-based Centre for Law and Democracy, India’s rank slipped from second position in 2011 to eighth in 2018.
- In its current form, Section 8 of the RTI Act lists ten exemptions, ranging from any information that may hurt national security, impede the process of ongoing investigations to cabinet papers and deliberations of the council of ministers.
- Section 24 of the RTI Act allows (the) government to increase the list of exemptions by an executive order. To strengthen the RTI Act, this should be only allowed through the legislature

Footnotes

- **Protect whistle-blowers**
- According to a tracker of assaults on RTI activists set up by the Commonwealth Human Rights Initiative (CHRI), a Delhi-based international non-profit, around 90 RTI activists have been murdered since 2005 for seeking information on illegal construction, alleged scams in social welfare schemes, and corruption in panchayats.
- While seven activists have committed suicide, more than 350 have either faced assault or harassment.
- The central government should enforce the Whistle Blowers Protection Act enacted by the Parliament in 2014

Footnotes

- **Making CIC as a constitutional body**
- As RTI is safeguarding a fundamental right guaranteed under the Constitution (Article 19 (1)(a) of the Constitution guarantees freedom of speech and expression to citizens) the government should seriously look into the possibility of elevating the information commission to the status of a constitutional authority.
- The Supreme Court has also interpreted RTI as a fundamental right—in 1975 and 1982
- **Political parties under RTI**

Footnotes

- In 2013, the CIC had declared six national political parties as public authorities under the RTI Act and ordered them to make voluntary disclosures and respond to information requests.
- However, all parties refused to comply with the decision, prompting the petitioners in the case to approach the Supreme Court in 2015, which is still hearing the case