

Right to Information in India

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Information is indispensable for the functioning of true democracy. People need to be kept informed about current affairs and issues. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, information value as critical factor because every developmental process depends on the availability of information. That's the reason, that in the space of less than a decade, the burgeoning movement for the Right to Information in India has significantly sought to expand democratic space and empower the ordinary citizen to exercise far greater control over the corrupt and arbitrary exercise of state power stating clearly access to information as the rule and refusal as the exception. In today's context access to information is an inherent right of the the people in a modern democratic society, which cannot be denied on mere administrative discretion. Taking all this into account and due to the pressure from the group campaigning for access to information, the Right to Information Act come into effect all over India from October 2005 replacing the old Freedom of Information Act 2002, empowering citizens to make Government and society at large accountable and transparent and also to battle against corruption and mal-administration meaning there by People participation in democracy. This law was inspired by previous legislations from select states (among them Maharastra, Goa, Karnataka, Delhi etc.) that allowed the Right to Information (to different degrees) to citizens about activities of any State Government body. Thus in the present context the Preamble also states that democracy required an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and their instrumentalities accountable to the governed. Thus information is power and in the spirit, democracy and equality, it needs to be shared freely with all people. Entrenchment of the Right to Information is thus a practical first step towards the same.

Information has been frequently defined as "interpreted data" and, as such, the same data might cause different interpretations. Different persons might associate different meanings to the same data. This kind of definition is frequently found in information System textbooks, especially those oriented to information System (MIS). Data in a MIS should provide some meaning to some manager in order to fulfill its *raison d'être*, its reason or justification of existence. An interpretation is, by its own nature, Subjective, i.e. related to a subject, a "mind, ego, or agent of whatsoever sort that sustains or assumes the form of thought or consciousness." (Merriam-Webster, 1999) Consequently, it is easy to conclude that according to this kind of definition there is no IS without a subjective subsystem, i.e. any IS should have at least two subsystems: an objective (mechanical and/or electronic data proceedings sub-system) and a subjective one (biological/human data/information processing: a user, a manager, etc.).

Right to Information and Global Scenario

Citizens Right to Information is described on the International plane by different nomenclatures such as Freedom of Information Act, Access to Information Act, Citizens' Right to Information Act and the like. By 2005 over sixty countries around the world have implemented some form of freedom of information legislation which sets rules on governmental secrecy. Many more countries are working towards introducing such laws, and many regions of countries with national legislation have local laws - for example, all states of the US have access laws as well as the national legislation. In general, such laws define a legal process by which government information is available to the public. Many countries throughout the world have freedom of information regimes and they have proved to be an excellent, cost-effective means of giving power back to the people. The example of countries with well defined freedom for information legislations are Albania, Australia, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Hungary, India, Ireland, Israel, Japan, Norway, Republic of Moldova, Serbia and Montenegro, Slovenia, South Africa, Sweden, Thailand, Trinidad and Tobago, Paraguay and United Kingdom. The example of countries with pending Legislation are Argentina, Armenia, Azerbaijan, Botswana, Fiji, Ghana, Indonesia, Jordan, Kenya, Lesotho, the Maldives, Mozambique, Nauru, Nigeria, Sri Lanka and Uganda.

There is thus a global sweep of change towards openness and transparency.

Right to Information Movement in India

In 1994, the Mazdoor Kisan Shakti Sangathan (MKSS) started a grassroots campaign for the Right to Information in Rajasthan. Emerging from a struggle for minimum wages and land rights, the movement drew a clear link between the denial of rights to the persons. This movement grew and the campaign resulted in the Government of Rajasthan enacting a law on the right to information in 2000, prior to the Rajasthan Act, as early as 1997, Tamil Nadu and Goa became the first states to enact laws on Right to Information. Maharashtra and Karnataka also enacted their respective RTI law in 2000. The another entrant in this league was the National Capital Territory of Delhi, which enforced the Delhi RTI Act in 2001. Uttar Pradesh government had also issued similar orders on a pilot basis, restricting them to a few departments.

However, in history of the above state legislation lies the Press Council of India who prepared a draft Bill in 1996 to make a provision for securing Right to Information. This draft Bill was named Right to Information Bill, 1996. The Institute of Rural Development, Hyderabad also prepared a bill in 1997. Both the bills initiated a national debate on the issue of effective and responsive Administration. So the Govt. of India appointed a working group on January 2, 1997. The terms of reference of the Working Group included the examination of feasibility and the need to introduce a full fledged Right to Information Bill. This group recommended that legislation in this regard is not only feasible but is also vitally necessary. The Working Group recommended that the bill should

be named as Freedom of Information Bill as the Right to Information has already been judicially recognized as a part of the fundamental right to free speech and expression.

So, inspired and encouraged by the exercises taken up by the Press Council of India, Working Group and the central Government, the State Government also yielded under popular pressure and started preparing draft legislation on Right to Information. As stated above a number of States had already introduced the Bill on Right to Information before the introduction of the Freedom of Information Bill in Lok Sabha on July 25, 2000 which can be considered as the most significant milestone in the history of legislation of our country.

By this time many NGO's started raising the voice further by organizing Jan Sunwai (People's hearing) regularly where Politicians, administrators, landless labourers, private contractors were invited to listen, respond and if willing, to defend themselves thereby Pressurizing the enactment of Right to Information.

Ultimately the Right to Information Act came into force on the 12th October 2005 (i.e. from 120th day of its enactment on 15th June, 2005) Some provisions which were related to the preparations necessary for the implementation of the Act came into force from the date of enactment with immediate effect viz. obligations of public authorities, designation of Public Information Officers and Assistant Public Information Officers, constitution of Central Information Commission, constitution of State Information Commission, non-applicability of the Act to Intelligence and Security Organizations and power to make rules to carry out the provisions of the Act.

Thus the experience of RTI movement in India is unique, as it has emerged from and is located in people's struggle for justice and rights. However, there were many legislation's in India before RTIA, which to an extent provide for access to information such as the Factories Act, Environment Legislation's, Corporate Laws, Local Government (Access to Information) Act, 1985; the Environment and Safety Information Act, 1988, and the Access to Health Records Act 1990 whereas on the other hand, Data Protection Act, 1984 the Access to personal file Act, the Access to Medical Reports Act, 1988, and the Consumer Credit Act, 1974, all provide some protection for different aspects of personal information. Also the legal impediments come in the nature of the Official Secrets Act 1861. But anyhow with the enactment of RTIA India is now at par with the best global democratic practices Joining the league of several nations like the US, England and South Africa.

Right to Information Act, 2005

The term 'Information' has been derived from the Latin words 'Formation' and 'Forma' which means giving shape to something forming a pattern, respectively. Information as a concept bears a diversity of meanings, from everyday usage to technical settings. Generally speaking, the concept of information is closely related to notion of communication, constraint, control, data, from, instruction, knowledge, meaning, mental stimulus, pattern, perception and representation.

The meaning of information as stated in Right to Information Act, 2005 is as follows

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press release, circulars, orders, logbooks, contracts, report papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings."

And the Right to Information means the right to inspect works, documents, record as well as the right to take notes, extracts or certified copies of documents or records or sample of material and also to obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

But the Right to Information is not absolute as it has its own limitations. This is so because there always remains some areas of information that need to be protected in public and nation's interest. Moreover, this unrestricted right can have an adverse effect of an overload of demand on administration. So the information has to be properly, clearly classified by an appropriate authority. However it excludes Central Intelligence and Security agencies specified in the Second Schedule like IB, R&AW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Heveli and Special Branch, Lakshadweep Police. Agencies specified by the State Government through a Notification will also be excluded. The exclusion, however, is not absolute and these organization have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human right violations could be given but only with the approval of the Central or State Information Commission, as the case may be. The usual exemption permitting Government to withhold access to information is generally in respect of matter relating to Information relation and national security, Law enforcement and prevention of crime, Internal deliberations of the government, Information obtained in confidence from some source outside the Government. Information which, if disclosed, would violate the privacy of an individual, Information, particularly of an economic nature, when disclosed, would confer an unfair advantage on some person or subject or government, information which is covered by legal/professional privilege, like communication between a legal advisor and his client and Information about scientific discoveries and inventions and improvements, essentially in the field of weapons.

Although these categories are board and information of every kind in relation to these matters cannot always be treated as secret. There may be occasions when information may have to be disclosed in public interest, without compromising the national interest or public interest, without compromising

the national interest or public safety. For example, information about deployment and movement of armed forces and information about military operations, qualify for exemption. Information about the extent of defense expenditure and transaction for the purchase of guns and submarines and aircraft cannot be totally withheld at all stages.

The Application Procedure for Information is to apply in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO (Public Information Officer), specifying the particulars of the information sought for. The good thing is that the reason for seeking information is not required to be given. To get information a citizen is required to pay a reasonable fees as may be prescribed if he/she is no belonging to the below poverty line category. The time limit as stated to get information is 30 days from the date of application or 48 hours for information concerning the life and liberty of a person.

It states further that if information is not given in stipulated time then the PIO will be liable for fine of Rs. 250 per day up to a maximum of Rs 25,000/- for delay or destroying information sought or giving false information or refusing to accept an application for information here lies the teeth of the act. The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty. The Information Commission can also recommend disciplinary action for violation of the law against an erring PIO. Also, if the information isn't furnished in 30 days, the applicant will not be required to pay anything.

If the information seeker is not satisfied with the information given then the appeal against PIO's decision can be filed to the appellate authority. The Appellate authority for the first appeal is officer senior in rank to the PIO, Second appeal can be made to the Central Information Commission or the State Information Commission as the case may be and the third appeal can be made before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority. It states further that the first Appeal shall be disposed of within 30 days from the date of its receipt.

For effective implementation of RTI even Central and state Government has also been made accountable to Develop educational programmes for the public especially disadvantaged communities on RTI and to Encourage Public Authorities to participate in the development and organization of such programmes and also to Promote timely

dissemination of accurate information to the public along with training officers and developing training materials and to Compile and disseminate a User Guide for the public in the respective official language along with Publishing names, designation postal addresses and contact details of PIO and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

So, the Right to Information Act is very comprehensive and promising. The Constitutional aspect of the Right to Information lies in Article 19(1) (a) of the Constitution, which guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression, which includes the right to receive and collect information. It is hoped that this will also help the citizens to perform their fundamental duties as set out in Article 51A of the Constitution. As a fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations. This also shows that there has to be a greater sense of responsibility on the part of citizens who are the users of information.

A. Right to Information: The Theoretical Model

The realization of Human Rights is dependent on a democratic society, where the people empowered with information and knowledge, are able to scrutinize the functioning of their government and are capable of participating in a meaningful manner in the governance of the community.

Under this law the information has become a fundamental right of the citizen and all Government Bodies or Government funded agencies have to designate a Public Information officer (PIO). The PIO's responsibility is to ensure that information requested is disclosed to the information seeker within 30 days or within 48 hours in case of information concerning the life and liberty of a person.

Thus analyzing the theoretical model of Right to Information it can be accepted that the serious implementation of Right to Information can immediately set new standards for bureaucratic and parliamentary accountability. Usage of this law by Citizens will definitely force Public Officials to recognize that they work for the people's interests and that the people have the right to scrutinize their activities.

So, now if an Education Ministry says that it is going to retrench 100 teachers, the public will have the right to demand to see the government payroll to ensure that this promise has been carried out or if a Health Ministry says that it will conduct immunization camps in a particular district, people can demand to see lists of how many children were treated, at what cost and with what medicines or if a Police Ministry is given a budget of a set amount to provide certain outputs, it will have to publicly provide figures on its expenditure and activities at the end of the financial year.

Thus the theoretical model suggests that due to Right to Information bureaucratic and administrative reform can be seen in the days to come with a positive social change where blowouts and mismanagement will not be allowed to go unanswered in an environment of open government there by giving right

direction to social development. This is so because Right to Information is beneficial for both the citizens and the Government, which is as follows:

Importance for the Citizens

Citizens are benefited due to RTI because information allows them to participate in priority setting and decision-making, to hold their government accountable, and to assure equal treatment and equal justice. The message empowered to the citizens is that information belongs to the people and Government simply hold information in their name. Public documents include anything from a birth certificate to a contract for road construction to studies that underpin public policy. Thus with information, citizens can better secure their democratic rights.

Importance For the Government

Many Government are confronted with the urgent need to improve their economy. reform their constitution, strengthen institutions, modernize the public administration, fight corruption, and address civil unrest. For these Government, access to information can be used to achieve all of these objectives. With an access to information law. Government must establish record keeping and archiving systems. which serves to make them more efficient, reduce discretionality and allow them to make better decisions based on factual information. Moreover, greater transparency can help reestablish trust between government and its citizens. The process for incorporating access to information strategies into a country's consciousness changing a culture of secrecy to one of openness is a difficult task that can take generations. However, a first step is to raise the community's awareness of their right to information.

Consequences of Effective Implementation of RTI

Right to Information is often described as an all-important right for realising all other fundamental rights. The demand for strong and effective RTI implementation has been growing in the country, as are a variety of citizens' efforts to use RTI provisions to make transparency and accountability in governance more meaningful for ordinary citizens. This is, in several ways, the first step towards entrenching a more participatory democracy. Without the RTI, there is very little scope for accountability of the State or private actors to the citizens of a country and transparency and openness in governance and private activities within a country are precluded.

Access to information is thus one of the key to true democracy as allowing people to seek and receive public documents will serves as a critical tool for fighting corruption, enabling citizens to more fully participate in public life, making Government more efficient, encouraging investment and helping persons exercise their fundamental human rights. This in turn means that it empowers people to more meaningfully engage in the democratic process, increases government transparency and reduces corruption. Thus this openness and accountability can weed out the corrupt, lubricate administrative functioning and can improve the quality and delivery of governance in the days to come. At the same time open government and information sharing contributes to national

stability. This is so because openness weakens perceptions of exclusion from opportunity or unfair advantage of one group over another. it effectively reduces the distance between government and people and combats feelings of alienation.

Thus in all its might the Right to Information is expected to improve the quality of decision-making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision making process. It would enable groups and individuals to be kept informed about the functioning of the decision making process as it affects them and to know the kinds of criteria that are applied by government agencies in making these decisions. Right to information no doubt enhances the quality of participatory political democracy by giving all citizens further opportunity to participate in a more full and informed way in the political process. By securing access to relevant information and knowledge, the citizens are enabled to assess government performance and to participate in and influence the process of government decision- making and policy formulation on any issue, which concerns them.

Right to Information and Governance:

Thus the right to information ensures accountability and good governance.

Here there is a direct relationship between Governance and Right to information. More is the access to information more efficient would be government functioning. Right to information has a thrust for reforming government functioning as serious implementation of Right to Information will immediately set new standards for bureaucratic and parliamentary accountability. As Under this law the Public officials are forced to recognize that they work for the people's interests and that the people have the right to scrutinize their activities.

Even the assets and liabilities of government servants can be accessed by anyone under the Right To information Act.

It is a strongly felt that effective openness and accountability due to RTI will weed out the corrupt, lubricate administrative functioning and will improve the quality and delivery of governance at the same time enabling citizens to more fully participate in public life, making governments more efficient and helping persons exercise their fundamental human rights.

So now if a Health Ministry says that it will conduct immunization camps in a particular district, people can demand to see lists of how many children were treated, at what cost and with what medicines etc.

B. Right to Information: The Practical Scenario

There are some great examples throughout the world of the use of freedom of information law by citizens. Even in India, documents obtained through access to information requests uncovered the fact that money for infrastructure projects, such as a canal for clean water, was being stolen by the contractor and the paperwork forged. The example of Chhatisgarh is quiet enough to show how the Act can empower ordinary people and enable them to fight corruption. Nearly 80% of money allocated for a project under the National Food For Work

Programme in Surguja district was found embezzled by using this right. In Solapur (Maharashtra) District Collector Manisha Verma discovered a fraud of over Rs. 9 crores through public readings of the state's Employment Guarantee Scheme (EGS) muster rolls. Also the Right to Information campaign led by villagers in Kakku, Rajasthan, revealed siphoned funds, fudged records and colluding administrators.

Lets take a few individual efforts where an ordinary citizen has used RTI and was benefited. For the purpose of present study the cases has been analysed from Maharashtra, Pune and Delhi as the maximum application received for seeking information is from these states. So, a few of these cases are as under:

Cases:

- A. Prabha Nene (68-year-old), a city traffic warden was fed up with the constant digging up of roads and the PMC's ineffectiveness in speeding up the process. Nene asked the civic body how much money it had collected from telecom companies and the Maharashtra State Electricity Board (MSEB) between 2000 and 2004, as charges for road repair that had to be carried out following the digging.
- B. Vijay More, a resident of Katraj, who has to cope with an acute water shortage in his neighbourhood. He used the MRTI to ask how much water each person in a lower middle-class locality like his received compared to elite areas of Pune like Deccan Gymkhana and Fergusson College Road.
- C. Santosh Jagtap, owner of a video library and a Hadapsar resident used the RTI to demand details about a flyover being constructed in the area, which entailed road- widening (therefore land acquisition from local residents).
- D. Delhi's- Murky Water deal to privatise Delhi's water supply and Sanitation involving the Delhi Jal Board (DJB) and the World Bank was uncovered by the use of RTIA

Thus a number of high profile disclosures has been made by the citizens using RTI where in it revealed corruption in various government schemes such as scams in Public Distribution Systems (ration stores), disaster relief, construction of highways etc. So, the law itself has been hailed as a landmark in India's drive towards more openness and accountability.

So, Indians at large welcomed the law and are using their information right and in turn are getting the benefit. This is the good side of the story let's talk about the ground root realities and issues for concern. A few issue for concern are how many information are received everyday under RTI. Who are the citizens contributing to this flurry of activity? Are these applications indicative of the success of the recent legislation and the RTI movement? What are the experiences of citizens using RTI? Are the citizens facing violence for exposing corruption? If yes what are the security measures taken by the state authorities etc.

In the same sequence lets analyse the number of application received under RTI. The maximum is 20,000 applications filed under Maharashtra's model right to

info law 2002 followed by 7,000 applications filed in the nation's capital New Delhi under the Delhi RTI 2001 then comes Pune with 2,000 applications since 2002. Now taking the cumulative number from all the states and Union Territories together till date we will find that the total number of application is not representative of even one percent of the total population of India.

If we analyse the nature of the applications received under RTI in Maharashtra, Delhi and Pune we will find that nearly 50% of the enquiries relate to development, illegal construction, encroachments and related infrastructure issues. Around 10% of applications deal with taxes, while the rest relate to slums, water supply, road development, land acquisition, municipal schools, etc. For example the information request received by Pune Municipal Corporation range from the amenities provided in shims, number of saplings planted by the PMC within the last 10 years, the purchase of computers by the PMC, illegal land sanctions, non-payment of compensation for property acquisition and cases pending against the PMC in various courts.

In most of the cases people use RTI to seek redressal of their problems rather than targeting the corruption, mal-administrative practices, transparency and accountability. There are only a few NGO's who are using RTI for actual cause and are conducting Jan Sunwais regularly for revealing corruption, Scams, mal-administrative Practices and in a very committed way are striving for good Governance, accountability and transparency so as to contribute to true democratic set up.

If we talk of the experiences of the citizen who availed Right to Information we will find that it varies from person to person. For a few information seekers it was good and satisfactory and for others it was bitter and unsatisfactory.

Recently in Delhi there was the sixth incidence of violence against citizens exposing corruption where Santosh (20) was attacked murderously whereas the Delhi government is not pursuing the wrongdoers, and has instead projected the violence as an issue between an NGO and shop owners.

Then there's Madhuri Sahasrabuddhe who belongs to a family of entrepreneurs and is the founder-director of the Balranjan Kendra in Bharati Niwas Society, Pune. Sahasrabuddhe has filed numerous applications relating to land, cooperative societies and public amenities. But, she alleges, even the PIO has found ways to exploit procedural loopholes, use convoluted language, delay applications and generally obfuscate matters in a bid to discourage applicants. Meaningful information can only be extracted if a person persists despite his patience being stretched to the limit, she says. Sahasrabuddhe complains that her applications have been rejected on more than one occasion because she worded her request as a question -- apparently the way to get around this is to turn the question into a statement. For example: "Why has the approach road to the municipal school in ward number 25 been blocked?" should read: "I would like to know why the approach road to the municipal school in ward number 25 has been blocked."

Likewise, 48-year-old, self-employed Chandrashekhar Jadhav is disappointed with the implementation of the RTI. Jadhav is not very highly educated but he shows a motivation that few middle class people are able to sustain. "What no leader in the 60 years following Independence has been able to give the common man, this legislation seeks to deliver in one master stroke," Jadhav says. He has been working tirelessly, filing RTI applications for himself and on behalf of others on issues where the poor bear the brunt of official misappropriation and denial of crucial information. He tells of a case where a six- year-old boy was electrocuted in Pune's JJ Garden. The authorities, he claims, attempted to hush up the matter by handing the father a sum of Rs. 25,000. Although the onus rested on the contractor, the electrical inspector and the electrical engineer, no action was taken. Jadhav claims to be in possession of a lot of evidence of corruption in state administration. He cites cases of builder-contractor nexus in build-operate-transfer (BOT) deals, forceful extraction of money from students at Pune Municipal Corporation (PMC) schools, unsanctioned land transfers by political leaders and their beneficiaries, and property acquired in the name of dead people. He has been following these cases up with the collectorate and zilla parishad. The problem of evasion of responsibility by government agencies and the authorities requires urgent redressal, according to Jadhav. For instance, Jadhav claims the Pune Cantonment Board refused him information, stating that it did not fall under state government regulations but Jadhav has a copy of the central gazette. which places the cantonment board under the purview of the MRTI Act. So here legal confusion is acting as a stumbling block in using the right.

Not all applicants are cynical, though. Raghunath Parab, a lawyer who visited the PMC (Nine Municipal Corporation) on behalf of Madhumilind Housing and Construction Co. Pvt. Ltd, in Mumbai, is happy with the way the RTI Act is being implemented. The housing company he represents owns property in Pune and wanted information on compensation for land acquisition by the PMC, and the names of eligible developers in Pune for a slum development project planned in the city. In fact, the company has used the provisions of the RTI Act to access public information on a number of occasions, and has been satisfied with the information provided. Parab testifies that details like plans and expenditure break-up have all been provided when requisitioned.

Problems of Public Information Officer

According to the Pune Municipal Corporations Public Information Officer. almost all the RTI applicants have been provided the information they seek. All applications are preserved carefully in the PMC's records and are made available to the public if required. Pune Municipal Corporation deputy PIO, Vasant Kharpudikar. admits that most government departments are extremely uncooperative when information is asked for by unofficial agencies. Hence there is the need to back up RTI applications with the appointment of a PIO in every government office. Since the PIO is liable to disciplinary action as well as penalty if he does not furnish the required information so the PIO is bound to carry out his duties. Kharpudikar also pointed out that often people repeatedly invoke the RTI Act - sometimes between two to five applications at a time -- on various