

RIGHT TO INFORMATION ACT, 2005

Examining Key Challenges within India's Transparency Regime

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RGICS, New Delhi





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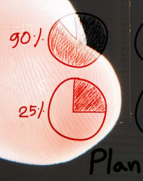
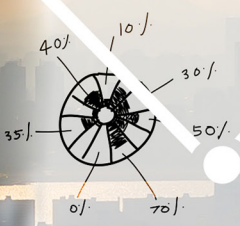
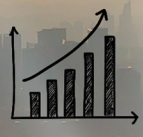
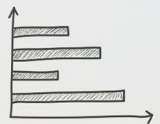
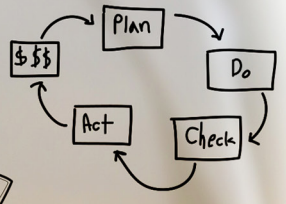
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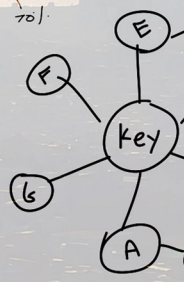
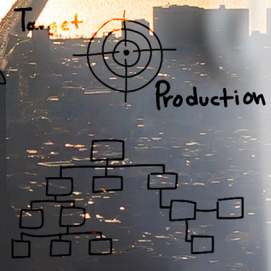
Examining Key Challenges within India's Transparency Regime

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Plan



Foreword

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) is an independent national policy think tank promoted by the Rajiv Gandhi Foundation. RGICS carries out research and policy development on contemporary challenges facing India. RGICS currently undertakes research studies on the following five themes of general public utility including:

- i. Constitutional Values and Democratic Institutions
- ii. Growth with Employment
- iii. Governance and Development
- iv. Environment, Natural Resources and Sustainability
- v. India's Place in the World

The RGICS, under the theme Constitutional Values and Democratic Institutions, undertook a study on the Right to Information, and the mechanisms to enforce it, which are an important determinant of the transparency and accountability of the Executive. In the absence of information about the policies, programs and specific decisions of the Executive, it becomes difficult, if not impossible to realise many of the rights enshrined in the Constitution. As the paper shows, the Courts have long enjoined the Government to enhance its information disclosure both suo moto as well as in response to specific requests. The RTI Act, 2005 was a culmination of the widespread and persistent demand for this from citizens and activists.

The RGICS commissioned Mr Arnab Bose, a public policy graduate from the National Law School University of India, Bangalore, to undertake a detailed study of the status of RTI Act, 2005 in 2020, fifteen years after its notification. The paper begins with a brief introduction of the Act and its main provisions and some concerns that emerged related to the provisions as they were tried to be implemented. Thereafter the paper focuses on the performance vis-à-vis the provisions and the bottlenecks faced in implementation. The paper ends with a number of suggestions for the way forward, mostly for the government but also for Civil Society organisations.

We hope the paper is found useful by policy makers, information commissioners, as well as NGOs involved in the Right to Information.

Vijay Mahajan,
Director, Rajiv Gandhi Institute for Contemporary Studies (RGICS)



WE ALL
HAVE
RIGHT TO
INFORMATION

Executive Summary

The RTI Act was enacted in the parliament of India in June 2005. It provides a practical regime for citizens to gain access to information under the control of public authorities with the objective of enhancing government transparency. With 40-60 lakh RTI applications each year, it has been a game-changer for good governance with stories abound highlighting the empowerment of people in getting their dues. However, over the years the effectiveness of its implementation seems to be fading.

This report seeks to highlight some of the key challenges in implementing the RTI Act. It is divided into four sections. The first section provides a brief account of the emergence of the RTI regime in India. It emphasizes the role played by people's movements spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS) and the National Campaign for People's Right to Information (NCPRI) which finally lead to the passing of the Act.

The second section provides an assessment of the challenges. It begins by listing out the changes over the years that have compromised the autonomy of the Information Commissions and resulted in the dilution of the Act. It then highlights some of the obstacles faced during the process of information access and dissemination, and within grievance redressal. The report has shown that the waiting period for applications is getting longer, suo moto disclosure of information is not happening, there are frequent violations of important provisions and very little penalties for these violations. This section ends by highlighting some overarching concerns such as the extensive violence faced by RTI activists and the huge divide in the rural and urban populations in using the RTI for getting their dues.

The third section looks at the way forward and provides some recommendations to the government as well as civil society organizations in dealing with these challenges. The report finally concludes by suggesting how the realization of the aims of RTI depends upon the success of the rights advocates in securing acceptance of transparency as a fundamental feature of modern Indian democracy.

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RIGHT TO INFORMATION



1 Emergence of India's Transparency Regime

In India the demand for greater transparency in government began in the initial decades after independence. These demands were mostly sporadic and were concerned with specific issues and events¹. However, it was only in 1975 that the Supreme Court of India took cognizance of this demand. In *Raj Narain v the State of UP* 1975, the court had ruled that: “In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.”

The notion of information as a right received further impetus in *SP Gupta and Ors. vs The President of India* in 1982 when the SC held the right to information to be a fundamental right and made the following observation:

The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest bearing in mind all the time that disclosure also serves an important aspect of public interest

In spite of the repeated recognition of the RTI by the Supreme Court there was very little effort by the government to institutionalize this right through an appropriate legislation. It was only in 1990s with the emergence of various people's movements spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS) which led to a concerted effort towards institutionalization.

The MKSS movement began in the mid 90s in the grassroots of Rajasthan. It was a movement of peasants and labourers which demanded social audit of village level accounts to expose rent seeking at lower levels of administration. They employed a direct method in their fight for greater transparency, namely, the use of *jan sunwais* or public hearings². While the movement began at the grassroots its impact was felt across the country and gave rise to the National Campaign for People's Right to Information (NCPRI), which was formed as a support group for the MKSS and to do advocacy on right to information at a national level. The efforts of MKSS and NCPRI resulted in many state governments passing their own state level RTI Acts, beginning

¹ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

² <https://www.humanrightsinitiative.org/programs/ai/rti/india/history.htm>

with Tamil Nadu (1997) and Goa (1997)³. This was followed by Rajasthan (2000), Maharashtra (2000), Karnataka (2000), Delhi (2001), Assam (2002), and Jammu and Kashmir (2003). At the national level the Freedom of Information bill was introduced in 2000.

It was around this time that many sections of the government started becoming concerned about the growing demands for transparency and it marked the beginnings of an organized opposition to the proposed bill⁴. While there were many people in the government and administration who were supportive of the right to information, there were many others who were opposed to this notion. Some of this opposition came from sections which saw the RTI as a threat to their rent seeking activities. Yet many others believed this would have a detrimental impact on governance. They believed that the government would become too rigid and no officer would like to exercise discretion which could later be questioned. There were apprehensions that many decisions would be criticized with hindsight, and the competence and sincerity of the officers would be questioned. Given the extent of opposition to the right to information, while the freedom of information Act was passed in 2002, it was a highly diluted version of the original bill drafted by the activists⁵.

Thereafter, in May 2004 the United Progressive Alliance (UPA) came to power at the national level and brought out a Common Minimum Programme (CMP) which included a promise to make the Right to Information Act “more progressive, participatory and meaningful”⁶. This was recognized as a rare opportunity by the NCPRI to get a stronger law that recognized the people’s access to information as a right. As a matter of strategy it was decided to make amendments in the existing law rather than get a completely new law⁷. Consequently, after a lot of discussions, the RTI Act was passed by both houses of the Indian Parliament in May 2005, with around 150 amendments. Since then, the RTI Act has been used effectively to fight corruption at various levels of administration and has exposed deep-rooted graft in India.



2

Key Challenges for RTI Implementation

This section examines some of the key challenges for implementing the RTI Act. The first part of this section highlights the changes that have resulted in the dilution of the Act. The next part details some of the important constraints faced during information access and dissemination and within grievance redressal. And the last part of this section highlights some overarching concerns.

³ <https://www.hindustantimes.com/books/excerpt-the-rti-story-power-to-the-people-by-aruna-roy-with-the-mkss-collective/story-V5AWqGRa84dCxyoVsR2o4L.html>

⁴ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

⁵ *ibid*

⁶ <https://www.rediff.com/election/2004/may/21cmptext.htm>

⁷ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

2.1 Dilutions in the Act

i. Appointment of Information Commissioners

Section 12(3) of the Act provides for the appointment of the Chief Information Commissioners and Information Commissioners selected by a committee consisting of the Prime Minister, the leader of the opposition and a Union Cabinet Minister nominated by the PM. Similarly at the state level committee a cabinet minister is nominated to the committee by the Chief Minister. In the original version of the bill⁸ the committee was to be comprised of the PM, leader of the opposition and the Chief Justice, which was changed before the Act was finally passed in 2005. These changes have allowed a more government controlled appointment.

ii. 2019 Amendment

The RTI Act was amended in 2019 to make made changes in the service conditions of the various information commissioners at the Centre and the states as shown in Table 1.

Table 1: Changes made to the RTI Act by the 2019 Amendment

Provision	RTI Act, 2005	RTI (Amendment) Act, 2019
Term	Sections 13(1) and 13(2): 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 Act removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
Quantum of Salary	Section 13(5): 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. Section 16(5): 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.	The Act 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, their salaries will be reduced by an amount equal to the pension. 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.	The Act removes these provisions.

Source: PRS 2019

⁸ https://www.humanrightsinitiative.org/programs/ai/rti/india/national/rti_bill_2004_tabled_version.pdf

When the Amendment bill was introduced in 2018 there was a huge outcry from activists who raised two important concerns. The first was regarding the rationale behind these amendments. According to the government, the Election Commission (EC) is a constitutional body and performs a different function as compared to the Information Commission (IC), which is a statutory body. It is also possible to challenge the decision of ICs in a high court. Therefore, the ECs and ICs cannot have same status. However, critics have argued that while it may be true that the ECs and ICs perform different functions, since the function performed by the ICs is concerned with article 19(1) of the constitution they also need to be given constitutional status, even if the ICs' decisions can be challenged in the high court (Kumar 2019). The second issue was concerned with the autonomy of the ICs. According to critics, this amendment allows the central government to intervene in the tenure and other terms of service of Commissioners, thereby having a serious impact on their independence (Roy and Dey 2019).

2.2 Obstacles in Information Access and Dissemination

i. Different Rules across Different States

Section 27 of the RTI allows each “Appropriate Government” which includes the central and state governments to make rules in relation to RTI. Additionally, section 28 of the Act allows a “Competent Authority” which includes Chief Justices, Speakers, President and Governors to formulate rules for RTI implementation. Consequently, as highlighted by an independent research group RaaG (2017), this has led to a situation where there are hundreds of rules with each state having its own set of rules. The RaaG report further observes, this is a problem because the RTI allows citizens to access information from any public authority anywhere in the country irrespective of where they are located. The burden of knowing all the rules however, is on the information seeker which becomes a challenging task. Having different rules for different states makes sense where the scope of the law is limited to the state itself for e.g. different states having different minimum wages. Since this is not case for the RTI, having variations in rules creates unnecessary problems for information seekers.

ii. Problems in Accessing Reasons for Government Decisions

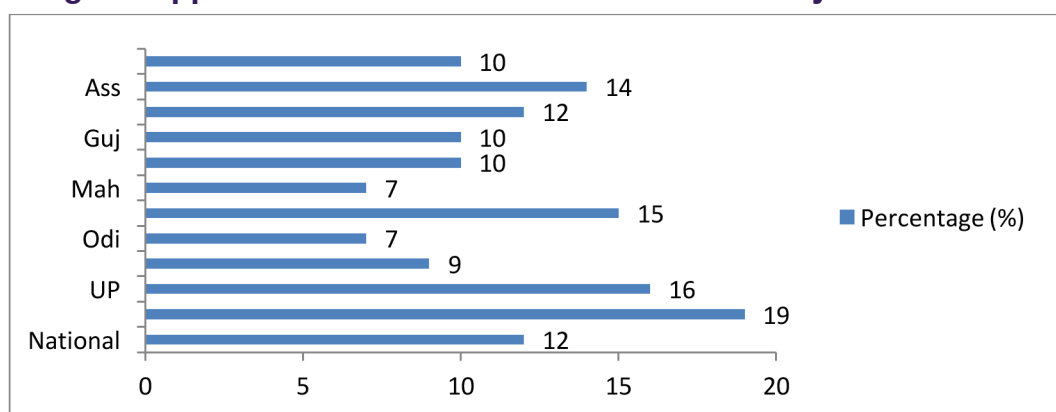
Section 4(1)(d) of the RTI stipulates that every public authority shall proactively provide “reasons for its administrative or quasi-judicial decisions to affected persons”. Unfortunately, the RaaG report (ibid) has observed that many PIOs continue to violate this provision and continue to deny information where reasons for decisions are sought. Even ICs are found to be upholding this position of the PIOs as highlighted by the following example (ibid).

“..appellant had sought information on 3 points relating to non-inclusion of Maithli language for the Central Teacher Eligibility Test...PIO vide letter dt 4.10.12 informed the appellant that as

per the provisions of the RTI Act, public authority is not required to provide reasons. ... in response to his appeal, he received a response from the AA in March 2013 reiterating the stand of the PIO. ... The Commission sees no reason to interfere with the orders of the PIO/AA.” (CIC/000018 dated 13.08.2013)

Empirical data (on 10 SICs and the CIC) as reported by Transparency Advisory Group (2015) shows that at the national level 12% of the RTI applications are about decisions made by public authorities, and the number is as high as 19% for the CIC (Figure 1).

Figure 1: Percentage of Applications about the Basis of Decisions by Public Authorities



Source: TAG 2015

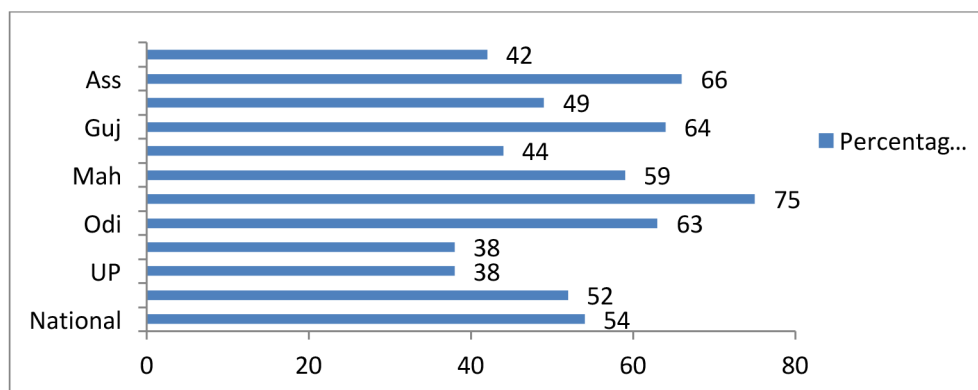
The data suggests that there is a desire in the public to engage with policies and the decision making process. It needs to be recognized that recording and allowing access to reasons for decisions is not just mandatory as per the RTI, but also essential for making policy making a consultative process which is important for a democracy.

iii. Lack of Suo Moto Disclosure

Section 4(2) of the Act states that “It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.” Section 4(1)(b) gives 16 categories of information that needs to be declared proactively while keeping open the possibility of adding additional categories. Additionally, section 4(1)(c) obliges proactive disclosure of all relevant facts related to any policy or decision that affect the public while formulating the policy, and 4(1)(d) stipulates disclosure of reasons for decisions. As noted above, an important purpose of proactive disclosures of decisions and their reasons allows the public to be aware of any decision that is being taken and provide feedback, thus making policy formulation more participative.

There is a common argument made by the governments that the volume of RTI applications is diverting time and resources of public authorities from their regular work. However, evidence on 11 ICs as reported by TAG (figure 2) suggests that more than 50% of the RTI applications nationally are about information that should have been disclosed proactively.

Figure 2: RTI Applications where Information should have made Public Proactively



Source: TAG 2015

Since proactive information dissemination is part of the regular work of public authorities and should not require RTI applications, the data suggests a complete failure in compliance with 4(2) and effectively counters the argument around diversion of resources.

The importance of suo moto disclosures has also been recognized by the SC in *CBSE vs Aditya Bandhopahyay and Ors. in 2011*⁹. The court has observed:

The effect of the provisions and scheme of the RTI Act is to divide 'information' into the three categories. They are : (i) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act). (ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act). (iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force. Information under the third category does not fall within the scope of RTI Act. Section 3 of RTI Act gives every citizen, the right to 'information' held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category,

⁹ SLP [C] No.7526/2009

there is also a special responsibility upon public authorities to suo moto publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act...

iv. Illegitimate Transfer of RTI Applications to different PIOs

Section 5(4) of the Act states: *“The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.”*

Section 6(3) states: *“Where an application is made to a public authority requesting for an information, — (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer: Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”*

These provisions are in recognition that common citizens making RTI applications may not be aware of the departments holding the required information. However, it has been observed that instead of helping applicants they are actually misused by PIOs in hindering access to information. There have been instances of PIOs using section 6(3) to transfer a single application to multiple PIOs, even within the same public authority, and asking these PIOs to directly communicate with the applicants (RaaG 2017). This has created a situation where the applicant is first required to find out the specific information available with specific PIOs and then make multiple applications to these PIOs to get the same kind of information, thereby unnecessarily shifting the burden on the applicant. This issue can be illustrated by the following example (ibid).

...when an application was filed with the Delhi Urban Shelter Improvement Board as part of the 2014 study undertaken by RaaG, it was transferred u/s 6(3) by the DUSIB HQ to more than 70 PIOs within the same PA. Clearly, the information sought was within the same public authority, and yet the application was transferred under Section 6(3). Therefore, seventy PIOs had to be contacted, and seventy appeals filed, instead of one.

The Act clearly states that it is the responsibility of the PIO to gather all the required information and provide it within time. However, the above example suggests an illegitimate use of section 5(4) and a contravention of duty by PIOs.

2.3 Challenges in Grievance Redressal

i. Shortcomings in Composition of Information Commissions

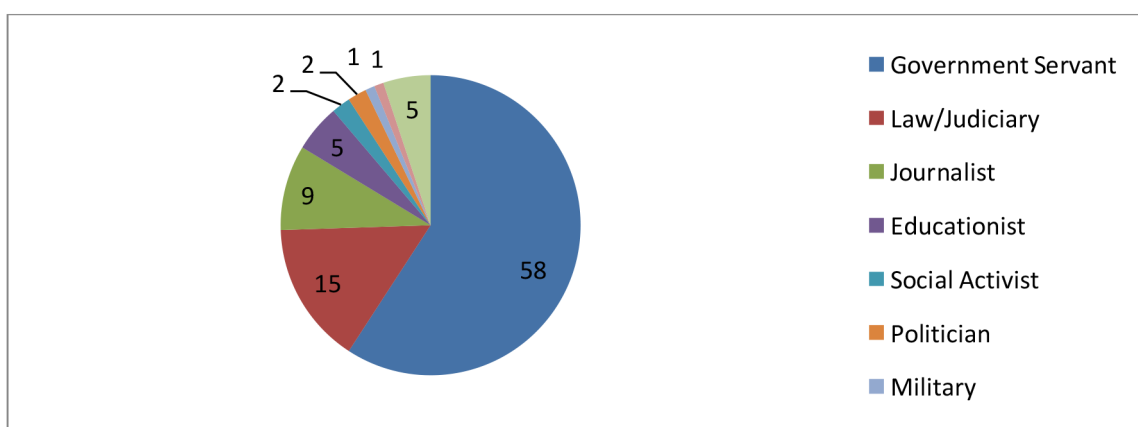
The RTI Act provides for the formation of Information Commissions at the centre and the states. As per the Act these commissions are the final appellate authority for grievances and are envisioned to be functioning with complete independence.

Section 12(2) states: *“The Central Information Commission shall consist of— (a) the Chief Information Commissioner; and (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.”* Section 15 similarly provides for commissions at the state level.

Section 12(5) lists the required background of Information Commissioners, stating that they *“shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.”* Similarly section 15(5) lists the background of state level commissioners.

In spite of the importance of timely appointment of ICs in the functioning of SICs it has been reported that there have been cases where SICs remain completely non-functional. In particular the SIC of AP remained defunct for 17 months from May 2017 to October 2018 and Tripura has remained non-functional since April 2019 (SNS 2019). There are also a large number of vacancies in the ICs. The SIC of Rajasthan has been functioning without a Chief Information Commissioner since December 2018 and Tamil Nadu since May 2019. Additionally, the Central IC has a vacancy of 4 commissioners and the SICs of Maharashtra, UP, Karnataka, West Bengal and Odisha are also functioning with only 3-4 commissioners (ibid). On the issue of background of commissioners it has been reported that in recent years a majority of the appointments are made from retired civil servants as shown in fig 3.

Figure 3: Background of Information Commissioners



Source: SNS 2019

The disproportionate representation of civil servants not only goes against the spirit of the Act but can also affect the autonomy of ICs. In February 2019, in *Anjali Bhardwaj and Ors. vs Union of India*¹⁰, the Supreme Court had questioned the government on the short list of 14 Commissioners which only had former bureaucrats. The court had observed:

... However, a strange phenomenon which we observe is that all those persons who have been selected belong to only one category, namely, public service, i.e., they are the government employees. It is difficult to fathom that persons belonging to one category only are always be found to be more competent and more suitable than persons belonging to other categories. In fact, even the Search Committee which short-lists the persons consist of bureaucrats only. For these reasons, official bias in favour of its own class is writ large in the selection process.”

Another concern in the composition of ICs is the lack of representation of women. The report by Satark Nagrik Sangathan (ibid) has highlighted that since the passing of the Act only 10% of commissioners have been women and the figure for Chief Information Commissioners is even lower at only 7%.

ii. Backlogs and Delays within ICs

According to the RTI, in case of a grievance, an applicant can file an appeal to the first appellate authority and the decision has to be taken within 45 days of filing the appeal. If the applicant remains unsatisfied a second appeal can be filed with the respective IC, however, there is no prescribed time limit for the second appeal. This discrepancy has resulted in a huge backlog of cases in the ICs. The SNS report (ibid) has shown that the total number of pending appeals at national level is 2,18,347 (table 2).

Table 2: Pending Appeals in various ICs

S. No.	Information Commission	31-Mar-2018	31-Mar-2019
1.	Uttar Pradesh	42,866	52,326
2.	Maharashtra	39,946	45,796
3.	Central Information Commission	24,248	29,995
4.	Kerala	14,990	12,638
5.	Odisha ^③	10,422	11,595

¹⁰ Writ Petition (Civil) No. 436 of 2018

6.	Chhattisgarh ^②	8,565	9,137
7.	Telangana	9,878	8,829
8.	Tamil Nadu ^②	6,395	8,756
9.	West Bengal	7,828	7,754
10.	Rajasthan ^④	4,267	7,372
11.	Madhya Pradesh	5,575	6,069
12.	Gujarat	4,209	5,689
13.	Andhra Pradesh ^①	NA	4,578
14.	Haryana	2,313	2,689
15.	Punjab	2,432	2,370
16.	Jharkhand	NA	1,362
17.	Assam	648	727
18.	Himachal Pradesh	434	285
19.	Goa	NA	170
20.	Manipur	110	140
21.	Arunachal Pradesh	23	63
22.	Nagaland ^③	4	5
23.	Mizoram	0	2
24.	Meghalaya	0	0
25.	Sikkim	0	0
26.	Tripura	0	0
TOTAL		1,85,153	2,18,347

Bihar, Karnataka, Uttarakhand did not provide requisite information.

NA means not available

Notes: ^① Data as of May 31, 2019 not March 31, 2019 ^② Data as of January 1, 2018 and January 1, 2019 not March 31, 2018 and March 31, 2019 ^③ Data as of Jan 1, 2018 not March 31, 2018 ^④ Data as of Feb 28, 2019 not March 31, 2019 & excludes complaints

As per the report the highest number of pending cases is in the ICs of UP followed by Maharashtra and the CIC. Further, it suggests that there has been an increase in the number of pendency since 2018 by almost 18%. This is a matter of serious concern because a large number of applications are about basic entitlements where delayed hearing of appeals may become meaningless for the applicant. The high pendency also links to the issue of large vacancies within the commissions. In this context in February 2019 the SC had observed¹¹:

...Of course, no specific period within which CIC or SICs are required to dispose of the appeals and complaints is fixed. However, going by the spirit of the provisions, giving outer limit of 30 days to the CPIOs/SPIOs to provide information or reject application with reasons, it is expected that CIC or SICs shall decide the appeals/complaints within shortest time possible, which should normally be few months from the date of service of complaint or appeal to the opposite side.

iii. Perceived Leniency towards PIOs

As per Section 20 of the RTI Act *“Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information.....it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees”.*

In spite of the stipulated penalties there has been a tendency within ICs to show leniency towards PIOs. Data from various ICs as reported by RaaG (2017) suggests that at the national level 59% of the appeals recorded a violation under section 20 where penalty was imposable; however, actual penalty was imposed in only 1.3% of the cases. Additionally, the report shows that the total loss of revenue through penalties was of the order of Rs 285 crore.

A lack of imposition of penalties is not only a huge loss to the public exchequer, but more importantly, it leads to serious a lack of deterrence for committing violations. Consequently, an increase in the number of violations may further increase the workload of ICs. The failure in adhering to the spirit of section 20 affects the disincentive structure of the Act and has a huge impact on its implementation.

¹¹ Anjali Bhardwaj and Ors. vs Union of India, 2019

iv. Irregular Publishing of Annual Reports

According to section 25(1) of the Act, *“The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.”*

However, analysis of various ICs reveals that implementation of this provision has been very poor. As per SNS (2019), 22 out of the 29 ICs (76%) assessed did not publish their report for 2018. The performance of some of the state ICs was even worse. The Punjab SIC had not published an annual report since 2012 and Telangana and AP had not published their reports since their reformation in 2017. Further, 26% of the ICs had not published their latest reports on their respective websites. The SIC of Uttarakhand had published its reports till 2018, however, they had not presented their reports to the assembly since 2014.

These annual reports are important to ensure the transparent functioning of India's transparency regime. They also allow scrutiny and assessment of the performance of RTI, thereby enabling constructive feedback to improve the system. It is alarming to note that the very institutions vested with the responsibility of RTI are themselves failing to adhere to this important provision.

2.4 Some Additional Concerns

i. Violence Against RTI Activists

In a country entrenched with corruption and local power structures the RTI becomes an inconvenient tool for those benefitting most from the corruption. This poses a particular threat to the lives of RTI activists trying to uncover such wrongdoings, especially at the local level away from the media attention. According to media reports in between 2014 and 2019 more than 80 RTI activists have been murdered and many more have been assaulted or harassed (Counterview 2019). In spite of the gravity of the situation the government has failed to take any steps in ensuring their security. The Whistleblowers Protection Act, 2011 which was passed and notified in 2014 remains in-operational¹². There has also been an attempt to overturn a 2011 CIC order which stated¹³:

the Commission resolves that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.

¹² <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/icici-loan-scam-exposed-by-shareholder/slideshow/71770817.cms>

¹³ <https://www.theindiaforum.in/article/defanging-rti-step-step>

In 2017 the DoPT had issued a draft rule 12 which asked the CIC to terminate pending appeals on the death of an appellant. This rule if applied would have further endangered the life of activists. After protests this rule was then rolled back. In order for the transparency regime to function properly and be effective in bringing



SALUTE THE HEROES RTI ACTIVISTS WHO WERE KILLED IN INDIA



out corruption it is important to ensure that the common public feels secure. There needs to be confidence amongst the public that filing RTI applications cannot lead to any violent retaliation even if it threatens the powerful.

ii. Rural-Urban Divide

An assessment of RTI applications found that 20% of applications are from metros and another 60% are from urban areas, whereas applications from villages are only at around 24% (TAG 2015). While the sample did have an urban bias the figure still points to an under representation of rural areas where 60% of the population still lives. In order to make the RTI an effective empowerment tool within rural areas it is important to generate further awareness encourage its use within villages.



3 The Way Forward

3.1 Recommendations for the Government

- i. The RTI is a fundamental right guaranteed by the Constitution, so the Parliament should consider elevating the Information Commissions to a Constitutional authority. If Constitutional status is provided the Commissioners can be treated on par with Election Commissioners which is important for their autonomy.
- ii. The CJI and the Chief Justices of the various high courts should be brought to the committee for appointing Information Commissioners instead of cabinet ministers to ensure greater autonomy.
- iii. The Parliament should consider having one set of rules equally applicable to all public authorities across the country to allow simplification of the application process.
- iv. Reasons for decisions should be accessible through RTI applications. The DoPT should send a circular to all Public Authorities bringing to their notice the various judicial rulings which define 'information' as per the RTI, which includes reasons for decisions.
- v. Public Authorities should take steps to ensure all necessary information as per section 4(1)(b) is proactively disclosed. Additionally, periodic assessment should be conducted to identify the type information that is repeatedly asked for in RTI applications. All such information if not exempt should also be proactively disclosed. This will also help reduce the backlogs within ICs.
- vi. Information Commissions should conduct periodic audit of each public authority to assess their performance on proactive disclosure and give necessary directions. Similarly, each appeal should also be assessed and if applicable all such information should be disclosed suo moto in the future.
- vii. ICs need to ensure that section 5(4) is not misused by PIOs. There needs to be a direction to PIOs that only section 6(3) can be used for transfers. In all other cases where the information asked for is in the same PA or closely related to the PA the applications cannot be transferred. In case of misuse appropriate penalties must be imposed.
- viii. All Appropriate Governments need to ensure timely appointment of the required number of Information Commissioners. The appointment process of new Commissioners should be conducted well in advance before the end of tenure of existing Commissioners to prevent any gap in appointment.

- ix. It is important to standardize the number of cases that each commissioner can handle in a year. The number of Commissioners that need to be appointed should be based on this figure and the number of pending cases in each IC. Deciding on the required number of Commissioners and their timely appointment will have a significant impact in reducing backlogs.
- x. While appointing new Commissioners section 12(5) needs to be strictly followed to ensure a balanced composition of ICs. Diversity of backgrounds will ensure greater independence and enrich their functioning. There also needs to be a special focus in ensuring gender parity.
- xi. The ICs need to become strict about violations by PIOs. There needs to be rigorous imposition of penalties whenever applicable. Ensuring a deterrence will significantly improve adherence to the RTI and will also help reduce the workload of Public Authorities and ICs.
- xii. The ICs need to ensure timely submission of its annual reports to the appropriate legislature. Any violation should be dealt with strictly. The reports should also be published on the respective website.
- xiii. The Whistleblowers Protection Act 2011 needs to be made operational on an immediate basis.
- xiv. The Police needs to consider any threat on RTI activists as a serious matter and appropriate security needs to be ensured based on the merit of each case.
- xv. RTI awareness campaigns for villages need greater focus. More effort needs to be made to make RTI an empowerment tool for rural India.

3.2 Recommendations for Civil Society Organizations

- i. CSOs need to form and strengthen horizontal as well as vertical linkages to strengthen support for proper implementation of RTI
- ii. Suo moto disclosure by public authorities should be made a priority for CSOs and they should take the help of the media to apply pressure for better compliance.
- iii. CSOs need to conduct independent audit of ICs to highlight the shortfall in ensuring gender balance and diversity in composition and autonomy in their functioning.
- iv. Independent status reports about the various aspects of RTI implementation need to be brought out regularly by CSOs to highlight the challenges.
- v. Mobilizing support to ensure the Whistleblowers Protection Act is operationalized should be an urgent priority.
- vi. Awareness campaigns and training programmes should be conducted in rural areas with the help of local CBOs to enable greater use of RTI in villages and to make it a tool for their empowerment



4 Conclusion

The enactment of the RTI has marked a paradigm shift in Indian democracy. The experience of the last one and a half decades has shown how it has been a game-changer for good governance with stories abound highlighting the empowerment of people in getting their dues. However, the initial enthusiasm surrounding the Act seems to be fading. Citizens are still filing RTI applications but the effectiveness of implementation seems to have lost its initial vigour. As highlighted in this report there currently are many obstacles which are compromising the larger objectives of the Act. The waiting period for applications is getting longer, suo moto disclosure of information is not happening, there are frequent violations of important provisions and hardly any penalties for these violations. With all these challenges there is much work to be done by transparency advocates in consolidating the progress made in the last 15 years. The realization of the aims of RTI in both letter and spirit will largely depend upon the success of the rights advocates in India in securing acceptance of transparency and participation as fundamental features of a modern democracy.



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