



## THE RIGHT TO INFORMATION ACT PRESENTS CHALLENGES

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### ABSTRACT

The Right to Information (RTI) Act in India has been a cornerstone of democratic governance, promoting transparency and accountability by empowering citizens to seek information from public authorities. However, the Act faces multiple challenges in its implementation. This research article explores the critical issues affecting the effectiveness of the RTI Act. These include bureaucratic resistance, which hampers timely and complete disclosure of information; the lack of awareness among citizens about their rights under the Act; inadequate infrastructure and resources allocated to the RTI mechanisms; and the impact of recent amendments and new data protection laws that potentially dilute the Act's provisions. Additionally, the article examines the role of the Central and State Information Commissions, highlighting the backlog of cases and the need for capacity building. Through an analysis of these challenges, the article aims to comprehensively understand the RTI Act's hurdles and suggest policy recommendations to enhance its implementation and effectiveness.

**Keywords:** Information, responsiveness, participation, accountability, empowerment, challenges, threats, public Authority

### Introduction

**"Information is the currency of democracy." :  
Thomas Jefferson**

**Democracy itself is in danger if we choose to ignore the suffering of RTI users who are being killed in the name of preserving it.<sup>255</sup>**

The Right to Information Act was enacted in 2005. The act gives Indian citizens the right to request accessible information from public authorities and makes the government and its officials more accountable.

In 1766, Sweden adopted the world's first access-to-information law. The law establishes press freedom, including printing and disseminating materials about the government, courts, and parliament. It recognizes that press freedom is contingent upon access to information and states, "To that end, free access should be allowed to all archives to

copy such documents in loco or obtain certified copies of them."

In India, V.P. Singh was the first PM to advocate for RTI. In 1994, a grass-roots organization called the MKSS (Mazdoor Kisan Shakti Sangathan) started a movement to demand the Right to Information Act, and the RTI Act came into force in 2005

RTI—Right to Information Act, 2005—has been one of the most powerful tools for the citizens of the nation for more than 18 years now. The information obtained through the RTI Act has not only created a sustainable amount of transparency in the government system but also incited fear among public servants that the people are monitoring them.

RTI was brought in to ensure good governance and social accountability. The information sought through RTI will bring accountability, transparency, and responsiveness, ensure the participation of the people in decision-making, and management efficiency. But like other legislation, RTI also has challenges in its way.

<sup>255</sup><https://www.thehindu.com/opinion/lead/we-need-to-protect-whistle-blowers/article65698564.ece>



In recent years, though, activists worry that this system is being made less and less effective, shutting off a crucial means of holding public officials accountable. These issues are distinct from problems that have been debated with regard to the law since it was passed, such as its limited applicability to (or broad exemptions for) political parties, the judiciary, and intelligence agencies<sup>256</sup>.

There are many other challenges in the way, that is being discussed in the paper.

### Pendency of RTI applications

In every public authority, there is a public information officer who is responsible for providing information sought under the RTI. According to section 6 of the RTI Act, To obtain any information we need to request the public information officer in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed.<sup>257</sup>

Two phases of appeal are outlined in Section 19 of the Right to Information Act: The First Appeal is to be made to the appellate body, and the Second Appeal is to be made to the Central Information Commission or the State Information Commission, as applicable.

If we do not get the information within 30 days then the first appeal can be filed to a departmental Appellate Authority. If you don't receive a reply within 45 days of filing the first appeal, you can file a second appeal within 90 days from the end of that period with the Central Information Commission (CIC) or the State Information Commission.

The number of RTI applications has increased by 83%; however, the number of PIOs rose by only 13% according to a study and this has resulted in the piling up of cases, festering into huge backlogs, delays, secrecy and inevitably impeding a citizen's right to hold the state

accountable. It is destroying the faith of the people in the system.

The number of appeals and complaints pending in 2019, according to data obtained from 26 information commissions, was 2,18,347. In 2020, the number climbed up to 2,33,384 with data obtained from 23 information commissions, in 2021 the number was 2,86,325 with data from 26 commissions; and in 2022, it was 3,14,323.

### *Why are cases pending in the information commissions?*

As of November 2023, there are a total of 25 state information commissions one Central Information Commission (CIC). The RTI Act mandates that each commission have one Chief Information Commissioner and up to 10 Information Commissioners, depends on the workload. In 2019 hon'ble Supreme Court in *Anjali Bhardwaj and others vs. Union of India* held that there is a huge gap between sanctioned posts and realized posts of the information commissioner. ICs in India operate at a reduced capacity or without a Chief Information Commissioner and at times are defunct, according to the NGO Satark Nagarik Sangathan.

According to one of the reports of the Satark Nagrik Sangathan, at least six ICs were functioning without a chief officer and Several others did not have the required staff to address a rising number of appeals and complaints.

According to a 2020 report by Transparency International found that during the pandemic, one-fourth of information commissioner posts were vacant, and women held only eight out of 165 posts.

The main reason for the number of pending cases is because there are increase in the number of cases but not in the number of information officers.

The appointments are not being made in a timely manner and not at a scale needed to meet the required workload. Under the RTI Act,

<sup>256</sup> <https://www.thehindu.com/sci-tech/technology/explained-has-right-to-information-weakened-over-the-years/article67259315.ece>

<sup>257</sup> RTI ACT, 2005



the Chief supervises and manages information; coordinates with dispatch staff and engineers; and directs the flow of operations. The RTI requires the chief to cater to the urgent need for accurate information regarding any government welfare scheme . example: During the crisis like covid period, there was a urgent need of information regarding the available hospital beds or essential drugs.

The highest number of pending cases was in Maharashtra at 99,722 followed by Uttar Pradesh at 44,482, Karnataka at 30,358, the Central Information Commission at 26,724, and Bihar at 21,346.

The report says two out of 29 information commissions across the country are completely defunct, four of them headless at the moment, and only 5% of the positions are occupied by women.

Three information commissions were found to be non-functional for varying lengths of time during the period under review, as all posts of commissioners were vacant, while two commissions were found to be completely defunct at the time of the compilation of the report by Sangathan.

Jharkhand and Tripura have been completely defunct for 29 months and 15 months, respectively. Manipur, Telangana, West Bengal, and Andhra Pradesh are without chiefs. Also, several information commissions, including the Central Information Commission, are working at reduced capacity, with less than the stipulated number of members in office.

Under the RTI law, information commissions are the final appellate authority and are mandated to safeguard and facilitate people's fundamental right to information.

The report says that till now more than 4.2 crore RTIs have been filed and 26 lakh second appeals are there before the commissions.

PIO/First Appellate Authority while rejecting RTI applications are major challenges in the 17-year journey of RTI in India,"

### Threat to RTI activists

Up to six RTI activists lost their lives in 2018 alone when they went to government offices to obtain information about corruption. Similarly, in the district of Bikram near Patna, RTI activist Pankaj Kumar, who had started a campaign against the State's illicit sand mining, was murdered in 2020.<sup>258</sup>

The RTI does not provide any protection to the RTI activists or the whistle-blowers who play a key role in implementing the RTI Act.

According to Commonwealth human rights initiatives across India, 100 RTI activists have lost their lives; more than 180 cases of physical assault and 187 cases of threats against RTI activists have been registered because the law does not provide for the protection of RTI activists who play a key role in the implementation of the RTI Act.

The issue of protecting the whistleblowers caught the attention of the entire nation when National Highways Authority of India engineer Satyendra Dubey was killed after he wrote a letter to the office of the then Prime Minister detailing corruption in the construction of highways. His confidential letter was leaked out, and after a few days, he was murdered. This led to a national outcry regarding the safety of RTI activists. The Supreme Court taking notice of this issue pressed the Government to take notice of this matter and give immediate effect to the cause.

National Human Rights has a policy to take action in matters relating to human rights. RTI activists are also covered under the definition of human rights defenders, and NHRC may be impressed to recognize them as such. This will help in police to take complaints from the victims.

### Unwilling to share information

The Centre for Equity Studies (CES) and Satark Nagrik Sangathan (SSN) released the "Report

<sup>258</sup> <https://www.thehindu.com/news/national/other-states/20-rti-activists-killed-in-bihar-in-past-11-years/article36717769.ece>



Card of Information Commissions in India, 2018–19," which shows that of the total applications filed, less than 45% of them received the information they requested, and less than 10% of the remaining 55% of them filed appeals.

The CPIO often rejects the RTI request by quoting it as third-party information, even when the information can be provided under the RTI Act, and it is not termed confidential.

When the information is provided by a public institution to another public institution and the public institution (provider) turns the information as confidential then the information cannot be provided and if it is not termed as confidential then it can be provided.

The Public Information Officer in many agencies who is required to respond to RTIs is not familiar with the procedure. "A lot of officials typically don't respond until the 30-day window that is given. If the applicant files an appeal, the officer will simply deny the request for information by providing an ambiguous response. Even if the executive had all the answers, it still only results in a gradual but definite death.

RTI inquiries can result in harassment or retribution, particularly when the information requested is about sensitive topics or influential people. People may be deterred from utilizing RTI by fear of such repercussions.

**Bureaucratic opposition:** One of the most frequent problems is bureaucratic opposition. Information that might reveal misconduct, inefficiency, or corruption inside their own agencies may be withheld by public authorities. The spirit of RTI may be compromised by this opposition. Long wait times for information might result from purposefully sluggish bureaucratic responses to RTI requests. Effective use of the RTI system by citizens may be discouraged by delays.

#### **Unclear definition of public authorities**

The definition of 'public authorities' under the Right to Information Act, 2005 ("RTI Act") has been an extremely contentious issue since the RTI came into force.

The Act thus defines public authorities in two parts. The first part of the definition (clauses 2(h)(a) to (d)) delineates bodies created by the Constitution of India (Union and state executives, Election Commission, etc.), by-laws made by Parliament and state legislatures (Central and state universities, regulators such as RBI, SEBI, TRAI, etc.), and by government orders or notifications (Planning Commission) as public authorities.

The second part broadens the scope of the definition of a public authority to include anybody owned, controlled, or substantially financed, and any non-governmental body substantially financed by the appropriate government. This second part of the definition has been the subject of much controversy largely because it leaves the question of what constitutes, ownership, control, or/and substantial financing open to interpretation. Unsurprisingly, therefore, most of the case law related to the question of public authorities is linked to this aspect of the definition.

A contentious issue surrounding the first section of the definition—which refers to bodies established by law—is whether or not institutions registered under different laws automatically acquire public authority status simply by virtue of their incorporation or registration.

In making a decision on this matter, the Delhi High Court made it clear that a body does not immediately become a public authority for the purposes of the RTI Act just because it was established in accordance with a statute. Therefore, just because Section 2(h)(d) of the RTI Act applies to corporations incorporated under the Corporations Act of 1956, societies, and trusts registered under legislation providing for their incorporation and registration, do not automatically make them public authorities.

Control by the government. What does the government define as control? The definition of "State" in Article 12 of the Constitution (most courts have held that the Article 12 test is not relevant for the RTI Act) and the supervision and



regulation of government agencies under laws like the Kerala State Co-operatives Act have led high courts to conclude that entities are under government control. Conversely, some courts have adopted the stance that control cannot be equated with regulation and monitoring.

Significant Funding, Substantial financing is not defined in the RTI Act. As a result, courts frequently have to determine whether a specific kind and amount of financial assistance qualify as substantial financing. Courts have not consistently interpreted what constitutes.<sup>259</sup>

### **RTI Amendment 2019 undermines the independence of the Act.**

The amendment of 2019 made several changes in the act, which has increased the government's control over the appointments of the information commissioner and chief information commissioner.

The Act states that the CIC and other ICs (appointed at the central and state levels) 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, which will affect the decision of the commissioner as there is no security of the term and ultimately it will affect the decision.

Earlier the salary of the chief information commissioner was equal to the salary of the chief election commission and the information commission salary was equal to the salary of the other election commission. after this amendment, it will be determined by the government.

This will undermine the transparent functioning of the commission as after the amendment the dependency on the government has increased.

### **The Digital Personal Data Protection Bill, 2023**

The new data protection law supersedes the provision that forbids the disclosure of personal information. It simply states that any response

that "relates to personal information" may be rejected, which may include any response that gives away a person's identity.

Before, there was a filter that said personal information might be rejected if it had anything to do with public activities or an unjustified invasion of privacy. It further stated that if information cannot be refused to a legislature, it should not be denied to an individual in order to facilitate the law's implementation.

The fact that "you could relate any information to a person one way or the other" makes the current absolute ban on personal information problematic.

The Digital Personal Data Protection Act, of 2023 prohibits the personal data disclosure of citizens by the government which would make "social audits" impossible to carry out which would affect the implementation of welfare schemes.

**Political Interference:** Through RTI, political pressure can affect whether information is revealed or kept secret. To safeguard particular interests, politically sensitive material may be kept secret.

It will take constant work to overcome these obstacles and hurdles in order to fully realise RTI's promise. This entails raising awareness and educating people, increasing bureaucratic accountability and openness, allocating enough funds, and fixing infrastructural and technology flaws. In order to strike a balance between transparency and privacy and security concerns, it's also critical to pass and implement laws that safeguard whistleblowers and make sure that exemptions are applied carefully.

### **Some policy recommendations to enhance the implementation and effectiveness of the RTI Act:**

**Capacity Building:** Strengthening the capacities of Public Information Officers (PIOs) and the Information Commissions through regular training and development programs can ensure better handling of RTI requests.

<sup>259</sup> [https://accountabilityindia.in/sites/default/files/rti\\_brief\\_no.\\_5-\\_who\\_is\\_a\\_public\\_authority\\_0.pdf](https://accountabilityindia.in/sites/default/files/rti_brief_no._5-_who_is_a_public_authority_0.pdf)



According to Section 5(1) of the Central RTI Act, every public authority is required to appoint as many Public Information Officers as necessary to provide the public with access to information<sup>2</sup>

While the Act does not prescribe specific qualifications for PIOs, it is generally recommended that the PIO should be a senior person in the office. This ensures that they have the authority to make decisions on whether to release documents.

If a junior person is appointed, they might be more reluctant to release information for fear of making mistakes and facing consequences

**Digital Infrastructure.** Training of PIOs and Upgrading the digital infrastructure to facilitate easy filing, tracking, and processing of RTI applications can improve the efficiency and transparency as the

**Awareness Campaigns:** Conducting awareness campaigns to educate citizens about their rights under the RTI Act through Organizing seminars, Engaging directly with communities, especially in rural and underserved areas, Utilizing various media platforms to run campaigns, Conducting workshops for Public Information Officers (PIOs) and Distribution of Material by Releasing posters, brochures, and other informational materials to reach a wider audience can lead to more informed and active participation.

**Penalty Enforcement:** The low penalty provision under the RTI Act is its limited deterrent effect. The maximum penalty of ₹25,000 might not be substantial enough to dissuade certain PIOs from non-compliance, especially when the cost of disclosing potentially sensitive or embarrassing information is higher. Additionally, the penalties are not always strictly enforced, further reducing their impact as a deterrent. Strict enforcement of penalties for non-compliance and delays can act as a deterrent against bureaucratic resistance to current information.

**Timely Appointments:** Ensuring timely appointments of Information Commissioners can reduce the backlog of cases and expedite the resolution process.

**Resource Allocation:** Adequate allocation of resources, both human and financial, to the RTI machinery can enhance its functioning.

**Periodic Review:** Conducting periodic reviews of the RTI Act and its implementation to address any emerging challenges and incorporate best practices.

**Integration with Other Laws:** Ensuring the RTI Act is harmoniously integrated with other relevant laws, like the Digital Personal Data Protection Act, to maintain a balance between transparency and privacy

### Conclusion

RTI was a forward step taken to move away from the colonial system of arbitrary government to a more accountable and transparent government. There have been a variety of reasons that led to the enactment of the RTI Act, like corruption and scandals, modernization and the information society, international pressure, and wider recognition of the public interest.

Notwithstanding the shortcomings and concerns mentioned above, the RTI has unquestionably proven to be one of the important turning points and a crucial step in guaranteeing the nation's development process is transparent and inclusive.

The RTI Act in India is currently going through a pivotal stage, but much more work is required to support its expansion and advancement.

Active civil societies and political will are both necessary for this law to be applied more strictly.

It is not enough to merely oppose the law's lack of application; in order for the legislation to



develop and mature, one must support the initiative taken.<sup>260</sup>

The protection of whistleblowers, the decentralization of power, and the integration of authority and accountability at all levels are only a few of the many things that must be done to bring accountability to governance.

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