

# Efficacy of the Right to Information Act: An Assessment Through Primary Research

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## **Abstract**

This paper explores the efficacy of the Right to Information (RTI) Act as a tool of enforcing greater accountability in governance. Through primary research conducted by interviewing an RTI activist and an ex-Chief Information Commissioner of Maharashtra (the highest state official responsible for the functioning of the Act), the paper seeks to compare viewpoints of both sides of the issue. It seeks to recognise areas where the Act has been effective while also pointing out issues and brings forth some suggestions to continue to strengthen the imp. It highlights common ground between the respondents on recognising areas where the RTI act has helped advance the objective of greater transparency in public decision-making while also acknowledging clear gaps in structure and processes related to the implementation of a robust system. Lastly it also brings forth some suggestion on how to further strengthen the implementation of the Act to ensure that its objectives continue to be met.

## **Introduction**

The Right to Information Act, 2005 (RTI Act) was an important addition to the Indian constitution and grants every Indian citizen unrestricted access to information related to the government and its actions, only barring the exceptions listed in the Act. The RTI Act is a landmark piece of legislation that was enacted to promote transparency, accountability, and citizen empowerment. It came into effect on October 12, 2005, and has since played a pivotal role in transforming the country's governance landscape.

## **Objectives of the Right to Information Act**

The primary aim of the RTI Act is to empower Indian citizens by providing them with the legal right to access information held by public authorities. The Act seeks to achieve several key objectives:

- *Transparency*: The Act aims to make government functioning more transparent by ensuring that citizens have access to information about government decisions, policies, and actions.
- *Accountability*: It promotes accountability among public officials by enabling citizens to seek information about government activities and decisions, thereby reducing the likelihood of corruption and maladministration.
- *Empowerment*: The RTI Act empowers citizens to actively participate in the democratic process, enabling them to question government actions, demand accountability, and contribute to good governance.

## **Implementation of the Right to Information Act**

The implementation of the RTI Act involves several key components:

- *Designated Public Information Officers (PIOs)*: Every public authority is required to designate PIOs who are responsible for providing information to citizens upon request.
- *Request for Information*: Citizens can file requests for information in writing or electronically to the designated PIOs. The request must specify the information sought and the contact details of the applicant.
- *Timeframe for Response*: The Act stipulates that PIOs must respond to RTI requests within 30 days. In certain cases, this period may be extended by 15 days.
- *Fees and Exemptions*: A nominal fee is charged for filing an RTI request, and certain categories of information may be exempted from disclosure, such as national security and personal privacy.
- *Appellate Authorities*: If an applicant is dissatisfied with the response of the PIO or does not receive one, there is a process of appeal defined. The first appeal lies within the public authority itself and is designated as the First Appellate Authority (FAA).

The FAA is an officer within the public authority and is senior to the PIO. If the response to the first appeal is not received within 90 days or the applicant is not satisfied by the response, then a second appeal can be filed. This appeal is filed with the information commission. For departments that fall under the Central Government, a Central Information Commission (CIC) has been formed while for the departments under the states, State Information Commissions (SIC) have been formed in each state. However, there is no timeline set out in which the Information Commission has to respond to an appeal.

- *Redressal mechanisms:* The CIC or the SIC have the ability to order the public authorities to respond to the RTI requests and also impose a penalty on them if they do not. The maximum amount of penalty is set at Rs. 25,000. They can also initiate a departmental inquiry against the individuals if they do not adhere to their orders. The commissions also have the power to award compensation to the applicants for any harassment – mental or physical – in obtaining the information. Applicants can also go to the High Court to seek a writ petition to force the Information Commissions to hear their case.

## **Profile of Interviewees**

For this project, the views of 2 respondents were sought, one representing the establishment view (Establishment Interviewee or EI) and the other representing the view of civic society and those using the Act for public good (Public Interviewee or PI).

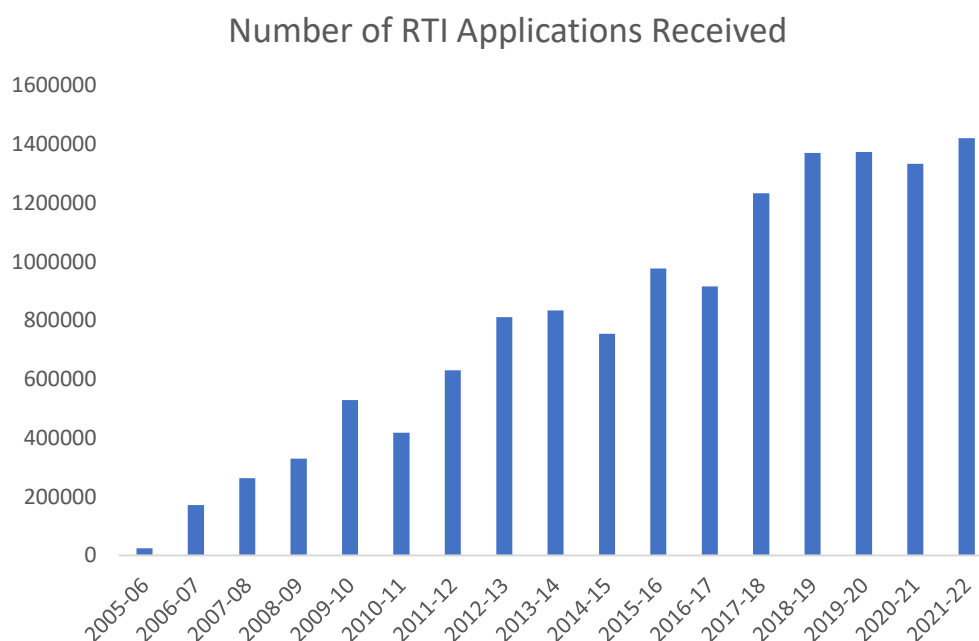
- **Mr Sumit Mullick**, ex Chief Information Commissioner of the State of Maharashtra. Mr Mullick joined the IAS in 1982 after a master's in economics and development studies from the University of Wales and a MBA from the Indian Institute of Management, Bangalore. He served as the Chief Secretary of Maharashtra and was appointed as the Chief Information Commissioner of the state in May 2018.
- **Mr. Ranga Rao**, social and RTI activist. Mr Rao has been working for over 10 years with the Public Concern for Governance Trust (PCGT), a Mumbai based NGO working towards promoting honest, transparency, and accountability in governance.

## Key Messages

- *The RTI act has made a positive contribution towards increasing transparency in public decision-making.*

Both respondents concurred that the RTI Act had a positive impact on strengthening transparency and accountability in public bodies. From 2005, when the Act was introduced, the volume of RTI requests have been increasing over the years as people have understood the power of the legislation and how to use it.

Data from the CIC Annual Report for 2021-22 shows that the number of RTI requests made to Central Government departments grew fifty-seven-fold between 2005-06 to 2021-22. Similar growth in the number of requests have also been seen in the states.



Source: CIC Annual Report, 2021-22

Both respondents also related anecdotal cases where they were involved in situations in which the Act played an important role in assessing the quality of decision making in public authorities. The PI pointed out a case where a widow who was denied her pension for 7 years was awarded a positive verdict within 3 months based on

petitioning under the Act. In another situation, the practice of paying bribes to facilitate the payment of pensions to officials of the Mumbai municipal authority were brought to light by using the tools of the RTI Act and the problem was solved. He also mentioned that in all matters where the public authority or the politicians do not have vested interests, the information is provided as per prescribed norms and in the prescribed timeline.

The EI mentioned that the Act has brought down corruption in public authorities over time as each officer is aware that anything they write on a file can one day be in the public domain and hence they must be careful. He said there were many examples where the RTI Act had been used for public good. Aruna Roy, an ex IAS officer and one of the architects of the RTI movement in India had used the provisions of the Act to help rural workers in Rajasthan get their dues from the government.

- ***A lot of time is wasted in accessing information that should anyway be in the public domain.***

The PI mentioned that Section 4 of the RTI Act lays down that all government departments maintain data in a form that is easy to disseminate and that within a short period of 4 months from the date of the Act, all data related to the organization, structure, decision making, key officials, all programs and a host of other things about the functioning of the department should be published and easily available for public consumption. However, even 18 years after the Act coming into force, the compliance with this Section 4 of the Act is quite limited.

Another part of Section 4 of the Act laid down the following principle:

*“It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause... 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.”*

The PI further said that in 2015, the Prime Minister in an annual conference of all Information Commissioners across the country further reiterated this principle and asserted that his government would ensure that all public data was automatically disseminated such that no citizen would have to file an RTI application to access it. However, implementation on this promise is abysmally low.

As a result of lack of voluntary disclosure of public information, a lot of effort of citizens and activists is wasted in accessing information that should in the normal course of action be available in the public domain.

The EI accepted the fact that this has not happened and pointed out a resource constraint in not being able to adhere to these guidelines. He agreed that providing the voluntary information laid out in Section 4 of the Act was important and that the Information Commission was keen to ensure that departments adhered to this. He also felt that while initially most departments had provided the information, they were falling behind in keeping the information updated. In his view this was not because they didn't want to provide the information but rather the key issue was the lack of resources as the Act had not provided any additional budgets to hire resources for all the extra work that the Act had created for public authorities.

- ***There are significant delays in getting RTI appeals heard and one of the big causes of that is the widespread misuse of the Act by vested interests.***

The PI mentioned that there is a long wait in getting RTI appeals heard by the Information Commissions. It could be years before an appeal might be adjudicated and there are many pending appeals before the Information Commission.

The EI conceded there is a huge backlog of appeals, and the backlog is only growing with time. When he demitted office in April 2023, there were almost 100,000 appeals pending before the State Information Commission, Maharashtra. However, he felt that the driver of this was the misuse of the Act by various agencies for personal gain.

The EI mentioned that while the Act was supposed to provide a tool to hold public authorities accountable for their action and reduce corruption or vested interests, there

is also a significant misuse of the Act to achieve the exact opposite objectives. There are organizations employ a large number of people, who keep filing RTI applications to get information on each and every government action. Most often, these applications are not driven by any public issue but just a mechanism to get detail on the internal workings of the departments. These organizations then use a large number of trained people to go through this volume of data to find any discrepancy or loophole which they can use to go after the public officials and threaten them with public disclosure of the mistakes unless they pay them or do favours for them. In this way, even honest mistakes or any lack of proper documentation by a public official becomes an issue even though they may not have had any vested interest in that decision. As an example, the EI mentioned that for any public work, the agencies will want to see all bills, all contracts and invoices, all measurement of materials used etc. and look for even minor discrepancies between the contract terms, measurement of materials and payments made. There is no public issue or interest other than a desire to “frame” some honest officials for any minor slip-up.

By the estimate of the EI, these types of applications focusing on blackmail and extortion made up 85-90% of the appeals that came to him for adjudication. He believed that another 10% of appeals were to solve an individual’s problem such as old property records getting lost, while 2-3% were to harass a public official in the form of taking revenge (e.g. if you were removed from a job or contract and filed hundreds of applications against the officer who took that action as a way of harassing him). Lastly, less than 1% of the appeals that came to him were in genuine public interest, where the issue affected a broader citizen group. As a result, there was a severe burden on the system and resources were clogged. While Information Commissioners such as the EI tried to prioritize the genuine cases for faster resolution, the overall burden on the system took its toll in terms of higher delays for everyone.

- ***Since the introduction of the Act, its implementation hasn’t seen much positive evolution to improve its effectiveness; on the margin, it has regressed.***

The PI mentioned that in addition to the *suo moto* disclosures required under Section 4 not being provided by various public authorities, there were other instances as well

where the practices have regressed over time. For example, he mentioned that there isn't adequate disclosure of the contact information of the First Appellate Authorities in various departments. In fact, applicants are often not encouraged or even intimidated in appealing against the initial response. Further, the practice of publicly displaying past RTI applications and their replies to help others with similar issues see the responses has been done away with. He also mentioned that while timelines exist for responding to the initial application and the first appeal, no timelines have been introduced for the second appeal process even after 18 years of the Act having been introduced.

The EI conceded that in some instances, practices and implementation have in fact regressed and that this was unfortunate. He mentioned that the government has over time reduced the tenure for which the Information Commissioners are appointed and reduced their rank, thereby making the posts less attractive for senior and experienced officials. Partly as a result of this and also for other reasons, a number of sanctioned Information Commissioner posts are not actually filled, e.g. in Maharashtra there were only 7 commissioners while he was the Chief Commissioner even though the Act provides for up to 10 to be appointed.

The EI also mentioned that earlier, State Information Commissions could make their own rules on operating procedures which were helpful in addressing local needs. For example in Maharashtra, they had implemented a policy where anyone could visit a public office on a Monday to seek any public information without an appointment and without filing an application. However, over time the central government has taken away the ability of the State Commissions to frame their own rules. He also felt that there should have been an upward revision in the penalty that the commission imposes on public authorities for non-compliance. The penalty has stayed static at Rs.25,000 even though 18 years have elapsed.

- ***There is no protection for whistleblowers or applicants to take on powerful vested interests.***

The PI mentioned that there was no provision in the Act to safeguard the interest of whistleblowers and others who take on powerful vested interests. He gave an example



of an employee of the Mumbai municipal body who was harassed by his superiors for helping a colleague in his RTI application. In another example, RTI applicants who had filed applications to prove that the education degrees of some judges in Tamil Nadu were fraudulent were victimised and jailed.

The EI mentioned that in his experience this not a big issue but of course there are situations where people misuse positions of power to go after others who may be against them. In cases, where the members of the commission come to know of such cases of harassment or violence against RTI activists, they do report it to the police and direct the government to provide them protection as well punish the culprits.

- *Educating and building awareness among people about the RTI Act and how it can improve the quality of democracy is important.*

Both respondents felt that education and building awareness among people about the Act and its correct usage was important. The PI felt that there should be audits of different public authorities on their compliance on RTI matters and such reports should be made public. The EI mentioned that the commissions have a budget to spend on consumer awareness and run programs to train NGOs on how to use the Act. However, he reiterated that the biggest change needs to be in terms of using the Act for genuine public interest as opposed to using it as a tool for blackmail and extortion, which is the root cause of a lot of the problems in the backlog and delays.

## **Conclusion**

The RTI Act was a significant step forward in making India's democracy more robust. The conversation with the RTI activist and the ex-Chief Information Commissioner of Maharashtra helped identify several issues where the RTI Act need to be improved for it to meet its full objectives. While perspectives between the two respondents often differed, it was interesting that they often concurred as well.

Both respondents agreed that despite the various challenges, the RTI Act in India remains a potent tool for citizens to exercise their democratic rights. It has facilitated countless disclosures of information, exposed corruption, and empowered individuals to hold the

government accountable. As India continues to evolve as a democracy, the RTI Act remains a vital instrument in ensuring transparency and citizen participation in governance. Efforts to address its shortcomings and improve its implementation are ongoing, ensuring that it continues to serve its noble objectives.