

STEADILY SCUTTILING OF RIGHT TO INFORMATION ACT: INDIA LOSING ITS CHERISHED RIGHT TO KNOW

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ABSTRACT

This paper is an attempt to study the reasons behind the downfall of the Right to Information Act in India. This paper delves into the background of how the judiciary evolved the right to information and how it leads to the passing of the Right to Information Act, 2005. This paper further discusses how the judiciary itself led to the decline of the Right to Information Act, 2005. Furthermore, this paper delves into the comparative study of the Freedom of Information Act of other jurisdictions. The paper also points out the reasons and chain of events that led to the decline of the legislation and provides suggestions to improve the transparency of the same.

Keywords: Accountability, Transparency, Right to Information, Amendments, Data Protection Bill, Public Authorities.

INTRODUCTION

“The right to information is crucial for the efficient operation of democracy, openness, and accountability as a sine qua non in a genuine democracy. It is not intended to satisfy idle curiosity or simple inquisitiveness.”

- Soli J. Sorabjee

Information access is crucial for inclusive development, empowering citizens, and a democratic community. The freedom to receive and seek information is a precondition for transparency, openness, and accountability in the management and operation of a democratic government.

Democracies won't last unless people are given the freedom to pose pertinent questions. The foundation of democracy is the ongoing dialogue between the populace and the government.¹

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¹Public Concern for Governance Trust V. State of Maharashtra, 2019 SCC OnLine Bom 5303

Despite not being specifically mentioned in the Indian Constitution, the right to information is derived from the freedom of speech and expression. For the first time, the Supreme Court stated unequivocally in *State of U.P. v. Raj Narayan*² that the Right to Information is a basic right and is a key component of Article 19(1)(a) of the Constitution. Constructive discourse cannot flourish in the absence of knowledge, and a strong democratic system becomes a pipe dream.

The Right to Information Act of 2005 offers a well-organized system for maximizing democracy's potential. The RTI Act, one of the most effective transparency laws, was enacted in India on October 12 of the same year after being published on July 15, 2005.

This article will explain the present situation in relation to the RTI Act, as well as the significance of the law and its current deterioration.

LITERATURE REVIEW

Singh (2011)³ conducted research on the Right to Information Act of 2005's role in human development from an Indian viewpoint and found that the right to information is essential for the nation's development and for citizens' participation in the democratic process.

Subhani et al. (2012)⁴ did a study on the right to information and came to the conclusion that democracy means accountability and information transparency, which ultimately reduces corruption and promotes national advancement.

Kaur (2012) examined the right to information from a global viewpoint and reported on it. These rules must be explained in terms of an intricate web of rights. Citizens who are engaged and involved will be able to use this tool to its utmost potential.

Nichappan (2013) did research on people's awareness of their right to information and found that there is a dearth of knowledge.

²State of U.P. v. Raj Narayan, 1975 AIR 865.

³Ved Pal Singh, Role of Right to Information Act 2005 in the Human Development: Indian Perspective, Research on Humanities & Social Science, Vol 1, No 2 (2011).

⁴Shalini Singh, Dr. Bhaskar Karn, Management of Information And Records Under Right To Information Act, 2005 In India, INTERNATIONAL JOURNAL OF SCIENTIFIC & TECHNOLOGY RESEARCH VOLUME 1, ISSUE 5, JUNE 2012,

FROM MAKING FUNDAMENTAL RIGHTS TO INFORMATION TO CURBING IT – ANALYSIS OF JUDICIAL PRONOUNCEMENT

One of the most important human rights is the freedom to information. The right to freedom of opinion and expression, which includes the freedom to search out, obtain, and disseminate information, is guaranteed by Article 19 of the Universal Declaration of Human Rights of 1948. The sacrosanct basic rights are incorporated in Part 3 of the Indian Constitution. The scope of these rights has expanded over time thanks to a number of landmark court rulings. Due to numerous petitions, the press submitted for the enforcement of particular incidental implications of the said Right, the scope of the Right to Freedom of Speech and Expression has also been expanded. This ultimately opened the door for the Right to Information and the Right to Know.

In *Bennette Coleman v. Union of India*⁵, our Supreme Court declared in 1973 that the right to information was included in the freedom of speech and expression protected by Art. 19(1)(a).

Justice Mathew expressly stated in *State of UP v. Raj Narain*⁶ in 1975 that it was not in the public's best interest for officials to conceal routine business under a shroud of secrecy and that this was the main defense against oppression and corruption.

In *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal*⁷, the Supreme Court ruled in 1995 that the freedom of speech encompassed the right to disseminate and receive information through electronic means.

The right of the people to know about every public action and the details of every public transaction done by public officials was illustrated in *S.P. Gupta v. Union of India*⁸ in 1982.

*People's Union for Civil Liberties v. Union of India*⁹ decided in 2004, elevated the right to information to the status of a human right, essential for making governance transparent and accountable. It was also stressed that participatory governance is required.

According to all of these court rulings, the freedom of speech and expression includes the rights to information and knowledge.

⁵Bennette Coleman v. Union of India, [1973] 2 S.C.R. 757

⁶State of UP v. Raj Narain, 1975 AIR 865

⁷Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal, 1995 AIR 1236

⁸S.P. Gupta v. Union of India, 1982 AIR 149

⁹People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568

Due to these developments, the nation as a whole became acutely aware of the need for a systematized framework to implement the Right to Information. The Right to Information Act of 2005 was passed by the government after a protracted public campaign.

Ironically, the judiciary has frequently disregarded the word and spirit of the RTI Act's regulations. Although the Supreme Court in *Central Public Information Officer v. Subhash Chandra Agarwal*¹⁰ claims that the RTI act applies, the court has actually placed significant limitations.

Similarly to this, the Supreme Court tried to increase opacity in *Chief Information Commissioner v. High Court of Gujarat*¹¹ by requiring parties to give justifications for their requests for information about judicial proceedings. Section 6 of the RTI Act expressly states that no justification is necessary when submitting RTI applications.

COMPARATIVE STUDY OF RTI WITH OTHER JURISDICTIONS

The concept of the right to information is not new but rather has a long history. It first emerged in the 18th century, and many modern-day nations adopted it, primarily at the end of the 19th century. Sweden passed the original RTI legislation in 1766. There are currently over 50 nations in the world where people have the freedom and the right to information.

An increasing number of intergovernmental organizations that have FOI policies tie all these countries together. The World Bank, the European Union, the UNDP, and other intergovernmental organizations are examples. The 1948 Universal Declaration of Human Rights issued by the UN had a significant impact on global campaigns for open government.

Legislation granting people access to information held by the government and its agencies has already been passed in many democratic nations around the globe. The USA enacted the Freedom of Information Act in 1966, which was then significantly amended in 1974, 1976, and 1983. In Canada, the Access to Information Act was passed in 1982.

Similar laws were also enacted in 1982 and 1983 in Australia and New Zealand, respectively. The basic rights listed in Part III of the Constitution also include the freedom of speech and expression.

¹⁰Central Public Information Officer v. Subhash Chandra Agarwal, AIR 2010 Delhi 159

¹¹Chief Information Commissioner v. High Court of Gujarat, Civil Appeal No. 1966-1967 of 2020

RTI's past has always been marked by conflict between the state's power and that of the state's civil societies. RTI hasn't been implemented in many areas until the authoritarian government has fallen. The **Global Right to Information Rating**, however, shows that since the passage of RTI, the right to information has been steadily deteriorating in India. India debuted in the global index of Right to information in 2011 at number 2, the year the global RTI agency was established. However, due to India's failure to protect officials who provide information, India has dropped four places in the last seven years to land at number 6.

WEAKENING OF THE RIGHT TO INFORMATION – A CRITICAL ANALYSIS OF ITS DOWNFALL

One of the best statutes promoting transparency that Parliament has ever passed is the RTI Act. Unwarranted amendments, pointless administrative meddling, and restrictive judicial interpretations have gradually weakened the RTI Act 2005.

There have been numerous attempts to weaken this legislation and restrict access to information ever since it was passed. For instance, numerous efforts were made in 2006 and 2009 to halt "vexatious" and "pointless" RTI questions by removing "file noting" from the Act's purview. But due to strong public opposition, these planned amendments were scrapped.

However, almost 14 years after the Act's implementation, the Central government eventually amended some crucial Act provisions in 2019 and the most recent change and several incidents this year have effectively killed the Act's original intent.

RTI (Amendment Act) 2013 & 2019: Making Transparency Legislation Opaque

Political parties are no longer included in the 2013 Amendment's definition of public authorities, and as a result, they are no longer included in the RTI Act's legal structure. The 2017 draft provision, which called for the closure of a case in the event that an applicant passed away, may soon have an impact on the RTI Act but has not yet been enacted.

The 2019 Amendment is riddled with contradictions, including the lack of convincing justifications, the lack of public input, the failure to address the actual gaps in the RTI institutions, and the unintentionally hurried passage of the measure in the parliament. As a result, the transparency framework was destroyed because the Central government was given the authority to decide on its own the conditions of service for Information Commissioners,

including their tenure, pay, and benefits (both at the Centre and the States). The Commission, which is given status, independence, and authority by legislation, will now work as a department of the Central government.

Government keeping IC posts vacant

By having the positions of information commissioners vacant, the federal and state governments have developed an efficient method to thwart activists' attempts to obtain information. The Supreme Court actually ordered the central and state administrations to name information commissioners in CIC and SICs "within three months" on December 16, 2019. Only 10 of the 29 Information Commissions were operational even during the Covid-19 pandemic, and even these commissions could only consider a small number of appeals because of technical difficulties.¹² According to the SSN-CES "Report Card" for 2018–19, 83% of Chief Information Commissioners and 58% of Information Commissioners chosen during this time were previously employed by the government.¹³ Figure 1.1 shows data for the same issue through the year 2020.

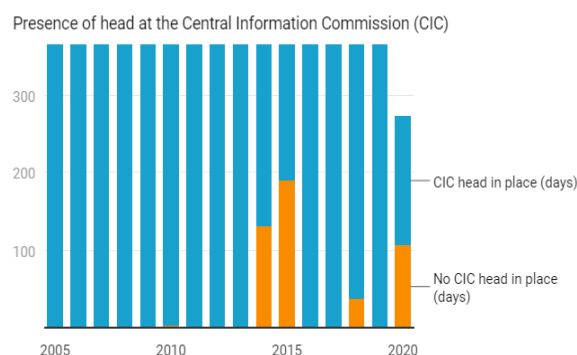
Pendency of Cases

In a study released by Satark Nagrik Sangathan (SSN) and the Centre for Equity Studies, it was found that the Central and State Information Commissions are currently handling more than 2.2 lakh cases.¹⁴

The research, which looked at data from 16 commissions in 2019–20, showed that only 2.2% of cases that were resolved involved penalties. Sixteen committees decided about 90,000 cases between April 2019 and July 2020. Only 1,995 of these cases resulted in penalties being imposed, despite the fact that roughly 15,700 show-cause notices were given.¹⁵

Public officials receive a signal when intended penalties are not applied that breaking the law

The CIC has been headless for significant periods in four of the last seven years



Note: Data for 2020 till October 31.

Source: Central Information Commission annual reports • Get the data • Created with Datawrapper

¹²Status of Information Commissions in India during Covid-19 Crisis, Satark Nagrik Sangathan & Centre for Equity Studies, <http://snsindia.org/wp-content/uploads/2020/05/IC-Covid19.pdf>.

¹³Maneesh Chhibber, In 15 years, RTI has gone from Indian citizens' most powerful tool to an Act on life support, The Print, (Jun. 24, 2020) <https://theprint.in/opinion/in-15-years-rti-has-gone-from-indian-citizens-most-powerful-tool-to-an-act-on-life-support/447507/>

¹⁴*Supra* 12.

¹⁵*Ibid*

will not result in serious repercussions. Over time, the Act's brittleness will render it ineffective.

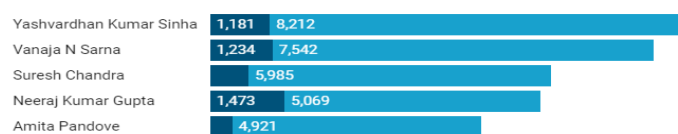
Since second appeals and complaints are wallowing in the Information Commissions for unsure amounts of time, transparency and accountability are also suffering. The committees are not keeping to deadlines because of vacancies or pending business. At the CIC, there are about 40,000-second appeals and grievances pending, and there is about 2 lakh on the State ICs.¹⁶

Case-load

Since 2015, CIC has been returning a rising number of appeals, but its caseload has been growing. Only five of the ten information commissioners are currently in office, and each one has a sizable workload. (Figure 1.3)

Cases pending with Information Commissioners

■ Pending complaints ■ Pending appeals

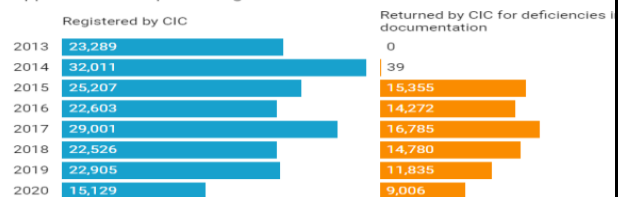


Note: There are 41 cases with the full bench and 30 unassigned cases.

Source: Dashboard on Central Information Commission website - Get the data - Created with Datawrapper

The number of case rejections for incomplete documentation have shot up since 2015

Appeals and complaints registered or returned



Note: Data for 2020 till October 31.

Source: Dashboard on Central Information Commission website - Get the data - Created with Datawrapper

Low Public Awareness

In India, there is a very low level of public awareness of the legislation, rights, etc. The primary cause of this, along with other factors, is a dearth of education. Only 13% of rural residents and 33% of city dwellers were aware of the RTI, according to a PriceWaterhouseCoopers' survey from June 2009. The amount of cases that are rejected because of insufficient documentation makes this obvious. (Figure 1.4)

Lack of Privacy of RTI Applicants

There have been cases in 2020 where RTI applicants' personal information has been made public. On its website this year, the Ministry of Information and Broadcasting (I &B) published the personal information of about 4000 RTI advocates who had requested information. The impact of this is evident in the fact that over the past 15 years, at least 86 RTI applicants have been killed, 175 have been seriously assaulted, more than 184 have

¹⁶M. Sridhar Acharyulu, It's Been 15 Years Since RTI Act Was Passed, But Is it Really Working?, The Wire, (Oct. 19, 2020) <https://thewire.in/rights/rti-act-15-years>

experienced harassment, and 7 have committed suicide.¹⁷ An activist named Gokhale petitioned the Bombay High Court, which ruled that this was an invasion of privacy.¹⁸

The Digital Data Protection Bill, 2022

The RTI Act is being proposed for amendment in the Digital Data Protection Bill, 2022. The current bill's clause 30(2) proposes an unjustified and possibly harmful change to Section 8.1(j) of the RTI Act. According to the amendment clause, the central government is not required to make material relating to personal information public. The 2022 bill also aims to remove the clause that states that no one will be denied access to material that cannot be withheld from a State Legislature or the Parliament. Transparency is further weakened by this.

Other Incidents

After the lockdown was implemented on March 29, an RTI request was made to obtain information about the PM CARES Fund. The Prime Minister's Office (PMO) rejected the request, claiming that the "PM CARES FUND" is not a "public authority."

Similarly to this, the CIC stated on December 21 of this year that political party members getting contributions under the electoral bonds will not be named. Since it is not in the "public interest," the same.

In the midst of all of this, the Supreme Court delivered another blow to the RTI Act that struck directly in its core. The Supreme Court further constrained the application of the RTI Act in *Chief Information Commissioner v. High Court of Gujarat*.¹⁹ It was decided that if a High Court rule contains a provision for information disclosure, it cannot be deemed incompatible with the law.²⁰

It is unnecessary to stress that the 2020 Judgement by the Supreme Court violates the Act's letter and nullifies Section 22's directive.

¹⁷*Supra* 12.

¹⁸*Saket S Gokhale v. Union of India*, WRIT PETITION (L) NO. 2678 OF 2020.

¹⁹*Supra* 11.

²⁰Civil Appeal nos. 1966-1967 of 2020.

This great legislation could turn into a "Right to Denial of Information" if the judiciary keeps limiting the scope of the Act while failing to protect its spirit²¹. The "sad regression for democracy" that follows.

CONCLUSION & SUGGESTIONS

The simplest and most cost-effective tool to guarantee government accountability is an RTI application. In a democracy, the people are the true owners of all knowledge, and the government is the only trustee of that information. The government has a responsibility to handle and disseminate information in the general interest as a trustee.

Since the Information Commissioners are in charge of ensuring that the Act is implemented correctly, any reliance on the government will inevitably undermine their independence. The court has both the constitutional right and the duty to deem such an amendment invalid.

Only upright, independent, capable, and courageous information commissioners can carry out their duties bravely and support the institution's dignity.²² But it's difficult to determine whether the same can be regarded as the norm.

Information commissions are also needed to act as a regulator and an adjudicator. The adjudication procedure must be made more user-friendly and convenient for those seeking information, and the second appeal must be resolved quickly if the commissions are to accomplish the goals of the Act to empower the common man.

Public information officers (PIOs), assistant PIOs, and appellate authorities must also receive basic training.

Furthermore, governments should make an effort to designate RTI activists, human rights activists, or academicians as Information Commissioners rather than just former government employees. so that the institution's effectiveness and variety can be preserved.

A strong system is also required to prevent harassment and violence against RTI applicants. Additionally, the Information Commissions and the judiciary should liberally interpret the RTI Act's provision and provide the necessary details to ensure the free flow of information, keeping in mind the significance of public involvement in democratic governance.

²¹Shailesh Gandhi, *Will the Right to Information Act Become the Right to Denial of Information Act?* The Leaflet (Dec. 9, 2020)

²²Yashovardhan Azad and M Sridhar Acharyulu, *RTI: A Bill That May Kill a Right*, Hindustan Times, (Jul. 22, 2019)

It is obvious that without information, there can be no thought, without conversation, there can be no response, and without public activities, democracy devolves into tyranny. Promoting information freedom is urgently needed to combat tyrannical tendencies and strengthen democratic principles.

