

**PARADOXICAL RTI: GOVERNMENT JUST GIVING AN ILLUSION OF
EMPOWERMENT TO THE MASSES**

*Nipun Arora**

Right to Information was given as a fundamental right to all citizens of India in 2005, enabling the citizens of India to seek information to ensure that scams, misappropriation of funds, and other forms of flaws in governing are exposed to the general public. Although it aims to give powers to the public, it actually gives a majority of powers to the state instead. In this paper I bring forward the hypocrisy of state in saying that citizens have a right to information when in fact state has a huge control over what information is supplied to the general public. There are various structural issues that the government has failed to address to ensure proper delivery of information. The general public is kept in an illusion that they have the right and power of getting the information from public authorities.

An applicant seeking information under Right to Information Act has to follow a set procedure which is laid down under the RTI Act and the RTI Rules of the public authority. This includes sending an application (or a form, if prescribed under RTI Rules of concerned public authority) along with application money prescribed under the RTI Rules. If the public information officer (PIO) does not reply with satisfactory information within thirty days, the applicant has to submit an appeal with the first appellate authority (FAA). If the applicant is still not satisfied with the decision of FAA, he can move to Central Information Commission or State Information Commission, depending on the nature of public authority. However, it is often that the public authorities mock these rules by making loopholes in this procedure, harassing the applicant, hiding the information, and ultimately depriving common man of his fundamental right.

Although Central and State Information Commissions were constituted to ensure that information is delivered to the applicants in timely and proper manner, they are not functioning properly in the way they were expected to. Information Commissions are becoming just another place for retired bureaucrats to work at. Most of the people in CIC are now just retired bureaucrats leaving the number of RTI activists in the Commission to a few.¹

Nipun Arora* - Student, Jindal Global Law School

¹ Central Information Commission, <http://cic.gov.in/> (last visited May 12, 2016)

This raises a question about whether retired bureaucrats should be allowed to be in the Commission. This is because these people were working in public departments for the government, and it is possible that they could be responsible for not providing information to applicants. Making them in charge of deciding whether they and their colleagues were in violation of the RTI Act would cause injustice. **Dr. J.N. Barowalia in this regard says:**²

"It is also not clear whether all of [Information Commissioners] can be former bureaucrats. However there may be doubts whether the Chief Information Commissioner or the Information Commissioner, who was Secretary or Head of Department, immediately before his/her appointment as such Commissioner can hear appeals pertaining to refusal to supply information in respect of the ministries/departments for the period he or she was heading the same, because such information may be regarding order passed by him/her."

This means that if retired bureaucrats are allowed to be in the Information Commission, the maxim *Nemo iudex in causa sua* (No man can be a judge in his own case) would be violated. However, the Act specifically restricts any MLA or MP or anyone holding "any other office of profit or connected with any political party" to become an Information Commissioner to avoid any such conflict of interests from the political sphere. No such restriction is in place for the bureaucrats to avoid such a conflict.

Political pressure, too, could be present on the members of the Information Commission. The Central Information Commissioners are appointed by a committee consisting of the Prime Minister, the leader of opposition, and a cabinet minister nominated by the Prime Minister. In case of State Information Commissions, the committee comprises the Chief Minister, the leader of opposition, and another person nominated by the Chief Minister. In both the cases, the ruling party or the CM has control over two-thirds of the Commission. This means that his decision will always prevail, and it is very hard to disqualify a person he has suggested from the appointment process. With such absolute control over who is part of the Commission and who is not, political pressure could easily be exerted over the Information Commissioners. A government with wrong intentions may not allow honest officers, whom they know to be working against the government, to enter the Information Commissions.

² Dr. J.N. Barowalia, *Commentary on The Right to Information Act*, 3rd Edn. (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2012), p: 331.

Government has failed to ensure proper compliance of the RTI Act, even in case of authorities like the Information Commissions. Section 4 of the Act makes it obligatory for every public authority to disclose certain categories of information *suo-moto* through official websites and keep the information updated regularly. But the implementation of this provision has been so poor that even authorities like CIC have not shown compliance with it. The reason behind such a disregard for the law is because Section 4 does not impose any penalty on the authorities for not disclosing the information mentioned in it. Even until as late as 2010, that is five years after the enactment of RTI, Central Information Commission did not have proper information on its website. Renowned RTI activist, Mr. C.J. Karira pointed out the non-compliance to the Chief Information Commissioner in January 2010,³ following which CIC issued an internal circular allocating responsibilities to officers for updating the website with correct information.⁴ However, as per a desktop recording by another RTI activist, even this circular was not complied with even until November that year.⁵ Even in January 2014, the information on the website was wrong, as Mr. C. J. Karira complained again.⁶ With such disregard and non-compliance with Sections of RTI Act even by public authorities like the Central Information Commission, which is supposed to ensure delivery of information, it is clear that a lot of things are still not in the reach of a citizen of India.

Another issue that discourages the use of this right is the low speed of providing information. If the PIO does not provide satisfactory information, the person first appeals to FAA. If there is no satisfactory response by the FAA, he can move to the Information Commission. However, the rate of disposal of complaints at the Information Commission is so low that by the time a person would get the desired information, the information would have lost its meaning and value. Average annual disposal by Central Information Commission is of around 3100 complaints.⁷ That is a little less than eight times the total number of cases pending with the CIC, which is over 24,000.⁸ Around eight years for hearing and decision of

³ Karira, 'Sec 4 Suo Moto Disclosure on CIC Website', RTI India, <http://www.rtiindia.org/forum/42026-sec-4-suo-motu-disclosure-cic-website.html> (last visited 15 May, 2016)

⁴ Circular by Central Information Commission dated Feb 23, 2010, http://www.cic.gov.in/CIC_Circulars/Circular-23022010.pdf (last visited 15 May, 2016)

⁵ Suo Moto Disclosure of Central Information Commission.avi - Youtube, <https://www.youtube.com/watch?v=PxZTwGr572c> (last visited 15 May, 2016)

⁶ The Telegraph - Calcutta (Kolkata) | Nation Briefs, "RTI Panel Charge", http://www.telegraphindia.com/1100114/jsp/nation/story_11982347.jsp (last visited 15 May, 2016)

⁷ Press Release, Press Information Bureau, Government of India, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=108622> (last visited 16 May, 2016)

⁸ The Economic Times, "Over 24,000 cases pending in Central Information Commission as on October 31", http://articles.economictimes.indiatimes.com/2014-11-05/news/55798379_1_basant-seth-central-information-commission-chief-information-commissioner (last visited 16 May, 2016)

a case regarding supply of information would obviously not be a viable option for anyone and would act as a deterrent for RTI activists.

CIC is trying to operate at a better efficiency at the cost of just and fair rulings. As a solution to the problem of piling up of cases in the CIC, it has started setting targets for the Information Commissioners. According to a news report, Venkatesh Nayak's compilation noticed:⁹

"Between January and October this year, no Information Commissioner has maintained a consistent average disposal rate of 267 cases per month. In 2011, CIC had this target for itself.

"However during this 10-month period, M Sridhar Acharyulu met or exceeded this target four times, Yashovardhan Azad twice, and Vijai Sharma and Basant Seth only once each. The remaining three Information Commissioners have not been able to reach this target even once," said the compilation.

This report raises two questions: (i) Is it right to have targets for the Information Commissioners?; and (ii) Why is there such a gap between the number of cases heard by Information Commissioners? The answer to the first question is obvious. Having targets for authorities who are supposed to give just and fair decision would obviously make them compromise reasonable rulings in exchange of a better disposal rate. Regarding the answer to the second question, it is observed by Mr. Nayak in the same news report that there is a need to reallocate departments among the Information Commissioners for better output.

One way to address this issue of poor efficiency without compromising on quality of rulings is by having more staff not only in the CIC but also in the public authorities. There is acute shortage of staff in all government departments. Even in the CIC, there are presently only seven information Commissioners against its strength of ten.¹⁰ How, then, is CIC expected to deliver fair rulings quickly if even the Information Commissioners are missing?

Even the judicial bodies with highest authority and duty to serve justice flaunt these laws and maintains arbitrariness. As per RTIs filed by Commonwealth Human Rights Initiative, the Supreme Court of India has not issued any guidelines or rules to govern the procedures for

⁹ *ibid.*

¹⁰ *ibid.*

RTI applications.¹¹ The Chief Justice of India, who is supposed to issue these rules, has not issued any notification regarding adoption of RTI Rules prescribed by the central government for its departments, either.¹² This is clearly a violation of the RTI Act, as it was mandatory for every public body to issue RTI Rules within 120 days of enactment of the Act.¹³ Similarly, the Delhi High Court and Rajasthan High Court took 10 months and 24 months respectively over and above the deadline to notify the rules regarding RTI. It is sheer disregard for responsibility towards their responsibilities just because there is no one to govern these bodies.

The RTI Act provides for arbitrariness in various parts, leaving loopholes and places for the public authorities to escape into and not provide information to the applicants. Section 8 of the Right to Information Act lists various cases in which the public authorities are exempted from the obligation to provide information to the public. Some of these exemptions are left to arbitrary interpretation, and even misuse by the public authorities. For instance, subsection 1 (b) of the aforementioned section says that information that has been expressly forbidden by the courts shall not be disclosed to the public. This is contradictory to the fact that the courts of law are covered under the ambit of RTI Act as 'public authorities'. Such an exemption leaves space for the court to hide any information that the judges so desire and not disclose it to any member of the general public.

The government is supposed to be providing everyone access to their fundamental right. However, as we have seen, the government has failed in many ways to successfully create conditions for the people to properly enjoy their right to information. The government needs to further work on improving the provisions of the Right to Information Act and make it more practical. It also needs to work on providing adequate staff to the public bodies and the Information Commissions to ensure speedy disposal of complaints by the RTI activists. Further it needs to ensure that people's personal interests do not conflict with settlement of complaints in the Commission by restricting the recruitment of retired bureaucrats as Information Commissioners. Finally there is a need to maintain balance between the autonomy of judiciary and ensure its accountability to the public to allow people to truly enjoy their right to information. If all this is not done, how does the government expect a person to enjoy his fundamental right without providing proper elements required for it? Is it

¹¹ Venkatesh Nayak, Vrinda Choraria; *An Analysis of the RTI Rules of the Supreme Court, the Delhi High Court and the Subordinate Courts*, CHRI, 2010: p. 6.

¹² *ibid.* p. 7

¹³ *ibid.* p. 11

not then just the hypocrisy of the government by saying that it is people's fundamental right, but not actually doing anything to get this right in the reach of a common man?