Tilting the Balance of Power

Adjudicating the RTI Act

An analysis of the orders of the Supreme Court, high courts and information commissions, pertaining to the Right to Information Act in India

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About the report

The Right to Information (RTI) Act has undoubtedly been one of the most empowering legislations for the people of this country. Being one of the few legal instruments in India that empower the people to regulate the government, in contrast to most others that empower the government to regulate the people, the RTI Act has been continuously attacked. Earlier assessments have studied in detail the various challenges faced in the proper implementation of this Act. This report focuses on the independent adjudicators, essentially the information commissions, the high courts, and the Supreme Court of India. The report provides a detailed analysis of the orders of these adjudicators pertaining to the Right to Information Act.

For the common public, and especially for the RTI user, this report not only provides an assessment of the functioning of the various adjudicators, but also highlights some of the common errors and illegalities inhibiting access to information. It provides arguments and lists judicial citations that could help in avoiding these errors and in getting fuller access to information. It describes some of the contentious issues that require public debate and consideration, and indicates methods and priorities for pressurising the government to be more transparent and for adjudicators to be more effective.

Specifically, for the judiciary, various critical issues are flagged, including:

- The quality of orders of adjudicators, especially inadequately reasoned orders (chapter 1a) and orders going beyond the law (chapter 1c), despite clear and unambiguous Supreme Court orders to the contrary.
- The relationship of the higher judiciary with the RTI Act, especially in terms of the jurisdiction of higher courts under the Constitution to adjudicate on matters arising from the RTI Act (chapter 4a), some debatable orders related to this (chapter 4b), the issue of RTI rules of courts restricting the scope of the RTI Act (chapter 4c), and the rights of citizens under the RTI Act to access information from and about the judiciary (chapter 4d and 4e).
- Interpretations of the definition of 'information' especially in terms of accessing reasons for decisions and actions under the RTI Act (chapter 6a), seeking information in question/query form (chapter 6b & 6f), and the right to access information from private bodies (chapter 6e).
- Interpretation of what constitutes 'substantially financed' in the context of the right to access information from non-government institutions/organisations (chapter 7b).
- The importance of proactive disclosures as per section 4 of the RTI Act (chapter 9a), the obligation to ensure compliance with legal provisions for proactive disclosure by penalising, or compensating for violations by invoking the doctrine of *implied power,* as laid down by the Supreme Court (chapter 9d).
- The applicability of section 6(2) to courts, which states that information seekers do not need to specify reasons for seeking information (chapter 10b).
- The legality of the practise of public authorities of invoking section 6(3) to transfer information requests within the same public authority (chapter 11a).
- Interpreting "fiduciary relationship" in terms of the exemption listed in section 8(1)(e) and restricting the use of this exemption, in accordance the progressive interpretation provided by the Supreme Court (chapter 16).
- The need for a public debate on the orders of the SC regarding secrecy pertaining to information relating to examinations and examiners, and regarding selection for jobs, and the identity of selectors and interviewers (chapter 17).
- The seeming lack of transparency about decisions of the cabinet, and about cabinet papers, despite the legal requirement to proactively disclose these after the decision has been taken (chapter 19)
- The tendency among public authorities and adjudicators to ignore the statutory public-interest override, and the legislature-access exception, over exemptions to disclosure of information, as mandated in the RTI Act (chapter 21).

- Redefining 'confidential' in the context of safeguarding third party interests, and examining the legitimacy of holding that third parties enjoy veto powers in deciding whether their information can be disclosed (chapter 23).
- Questioning the widespread tendency among adjudicators of ignoring the statutory provision that the onus of proof is on the PIO to establish that information was denied in compliance with the RTI Act, or that they are not legally liable for a violation of the Act (chapter 27).
- Discussing the almost universal tendency of ICs to not impose penalties even where the law mandates them, and the consequences of not imposing statutorily mandated penalties, especially in light of the SC's interpretation of the doctrine of *implied powers,* that obligates ICs to penalise violations even where the RTI Act does not specifically prescribe a penalty (chapter 28).

In addition to the above, some of the other concerns pertaining to information commissions include:

- The poor quality of orders, as listed above (chapter 1a and 1c), and especially the lack of essential facts and details in many IC orders (chapter 1b and 5i). Chapter 5k provides statistics on orders of ICs that are not in compliance with the RTI law.
- Problems with the functioning of information commissions, including the lack of transparency about their operations (chapter 5b), non-compliance with the statutory requirement of publishing annual reports (chapter 5c), problems relating to the number of appeals and complaints dealt with by ICs in terms of delays and backlogs (5e), time taken by ICs to dispose cases (5f), lack of imposition of penalties even in cases of established violations (5g), and the legal implications of the loss to public exchequer in terms of penalty foregone (chapter 5h).
- Ignoring the legal right of information seekers to access information free of cost, if it is delayed (chapter 12b).
- Ignoring the right to access information in the form asked for by either insisting on inspections (chapter 13a), or denying information altogether on the plea that it disproportionately diverts resources (chapter 13c).
- The illegitimate practice of ICs condoning denial of information because the matter is sub-judice (chapter 18a).
- The common tendency of ICs to ignore the severability clause and to deny the whole document even when only part of it qualifies to be exempt (chapter 22).
- The need for ICs to recognise and use their powers to ensure compliance with the RTI Act (chapter 24b), especially powers relating to management of records and 'missing' records (chapters 24c & d), the powers to institute an enquiry in appeals and complaints (chapter 24e), and the need to streamline the processes and functioning of ICs (chapter 24f).
- The tendency among some ICs to illegitimately remand back appeals and complaints, without adjudication, to the PIOs or FAAs (chapters 26a & b).

The government also needs to take cognisance of all the above listed issues, and especially note:

- The need to harmonise RTI rules across the country to ensure ease of access to information for citizens across the country (chapter 8c).
- The need to comprehensively clarify what constitutes a single public authority, especially in light of the recommendations of the Second Administrative Reforms Commission (chapter 11b).
- The need for legislative and administrative reforms to ensure public access to details of assets and liabilities of public servants, and details of their performance and service records (chapter 20).
- Issues related to appointment of information commissioners, including composition of commissions, timely appointments, and transparency in the appointment process (chapter 5a and 24a).

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