



## Reinforcing the Right to Information

*This editorial is based on “[Scuttling people’s right to information](#)” which was published in The Hindu on 14/10/2024. The article brings into picture the systematic weakening of the RTI Act, citing government inaction, biased appointments, and recent legislative changes as key issues. It stresses the need to address these challenges to uphold transparency and accountability*

**For Prelims:** [Right to Information \(RTI\) Act of 2005](#), [Digital Personal Data Protection Act, 2023](#), [Emergency period](#), [State of U.P. v. Raj Narain \(1975\)](#), [Freedom of Information Act](#), [Central Information Commission](#), [Whistleblowers Protection Act](#), [Common Service Centres](#).

**For Mains:** Evolution of Right to Information in India, Issues Undermining RTI’s Effectiveness.

The [Right to Information \(RTI\) Act of 2005](#) has been a cornerstone of transparency and accountability in India for nearly two decades. It has empowered citizens to expose corruption and hold power to account, from **uncovering irregularities in basic rights delivery** to revealing the **truth behind opaque schemes like electoral bonds**. However, the effectiveness of the RTI Act is being **systematically undermined through various means**.

The delay in appointing information commissioners has caused commissions to become defunct, leading to a rising backlog of appeals. When appointments are made, they often favor retired officials or those with political connections, resulting in a reluctance to enforce the law stringently. Recent legislative changes, including amendments to the [RTI Act and provisions in the Digital Personal Data Protection Act, 2023](#) have further weakened the law's potency. As we enter the **20th year of this landmark legislation**, it is crucial to address these challenges to preserve the spirit of transparency and accountability that the RTI Act embodies.

### How has the Right to Information Evolved in India?

- **1975-1977-Seeds of Transparency Movement:** During the [Emergency period](#), civil liberties were suspended, highlighting the need for government accountability.
  - This period in Indian democracy sparked discussions about the **right to information among activists and intellectuals**.
  - While **no concrete legislative steps were taken at this time**, the experience of the Emergency laid the groundwork for future transparency initiatives, as citizens realized the dangers of an opaque government.
- **1975- Supreme Court Judgment on Right to Information:** In the case of the [State of U.P. v. Raj Narain \(1975\)](#), the Supreme Court recognized the **right to information as part of the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution**.
  - In the case of [S.P. Gupta Vs. Union of India \(1981\)](#), SC emphasized that the **principle**

**of open government** stems from the implicit right to know within the right to free speech and expression under Article 19(1)(a).

- SC stated that **government information disclosure should be the norm**, with secrecy as the exception.

- **1990-Mazdoor Kisan Shakti Sangathan (MKSS) Movement:** The **MKSS**, founded in **Rajasthan**, began a grassroots campaign for the right to information, focusing on access to local government records.
  - Their innovative "**Jan Sunwai**" (**public hearings**) **exposed corruption** in public works and galvanized support for transparency.
  - This movement demonstrated the **power of information in combating corruption** and became a model for RTI advocacy across India.
- **1997-2001-State-level RTI Laws: Several states**, including **Tamil Nadu (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001)** enacted their own RTI laws.
  - These state-level initiatives served as precursors to the national law and provided valuable experiences in implementation.
  - For instance, the **Maharashtra RTI Act of 2002 was particularly robust and became a model for other states**.
  - These state laws varied in their effectiveness but demonstrated growing public demand for transparency legislation across India.
- **2002-Freedom of Information Act:** The central government passed the **Freedom of Information Act**, but it was never notified and thus never came into force.
  - This act was criticized for its **weak provisions and numerous exemptions**.
  - The failure of this act highlighted the need for a more comprehensive and citizen-friendly law.
  - Civil society organizations continued to push for a stronger national RTI law, using the **shortcomings of the Freedom of Information Act** to argue for more robust provisions.
- **2005-Enactment of the Right to Information Act:** The RTI Act was passed by Parliament and came into force in **October, 2005**.
  - It mandated **timely response to citizen requests for government information**, established Information Commissions at the central and state levels, and included provisions for penalties for non-compliance.
  - The Act **covered all levels of government and even included private bodies substantially funded by the government**.
  - This landmark legislation was hailed as one of the world's most progressive transparency laws at the time.
- **2006-2010- Early Implementation and Impact** The initial years saw a surge in RTI applications, with citizens using the Act to expose corruption and demand accountability.
  - Notable exposures included the **Adarsh Housing Society scam and irregularities in the 2G spectrum allocation**.
  - However, challenges such as **backlogs in Information Commissions** and resistance from bureaucracy also became apparent.
- **2011-2019-Judicial Interventions and Expansion:** Several Supreme Court judgments further strengthened the RTI Act.
  - In 2013, it mandated that **political parties should be considered public authorities under the RTI Act**, though this ruling faced resistance in implementation.
    - However, the assassination of prominent RTI activists like **Shehla Masood** in 2011 highlighted the **growing risks faced by information seekers**.
  - In 2019, the Supreme Court held that the **Office of the Chief Justice of India (CJI)** is a '**public authority**' under the Right to Information (RTI) Act
- **Right to Information (Amendment) Act, 2019:** This amendment changed the tenure of the Chief Information Commissioner (CIC) and Information Commissioners (ICs) to a **3-year term** set by the central government, replacing the previous **5-year term**.
  - It also allowed the central government to determine their salaries and removed pension deductions for prior government service upon their appointment.
- **Amendment in 2023: Section 44(3) of the Digital Personal Data Protection Act** **exempted all personal information from RTI disclosure** and removed previous exceptions allowing its release.

## How is the RTI Act's Effectiveness Being Undermined?

- **Understaffed and Defunct Information Commissions:** Many state information commissions are either **non-functional or severely understaffed**, leading to massive backlogs of appeals and complaints.
  - According to the **2023-24 Satark Nagrik Sangathan report**, **7 out of 29 information commissions** were defunct for varying periods last year.
    - **Jharkhand's commission has been non-functional for over 4 years**, while **Tripura and Telangana** have been defunct for 3 years and one and a half years, respectively.
  - The **Central Information Commission** has **8 out of 11 posts vacant**. This severe understaffing has resulted in **over 4 lakh pending appeals and complaints** across India, with some states like **Chhattisgarh and Bihar not expected to dispose of fresh appeals until 2029**.
- **Deliberate Weakening of the Act through Amendments:** Recent legislative changes have significantly diluted the **RTI Act's powers**.
  - The 2019 amendment empowered the **central government to determine the tenure, salaries, and post-retirement benefits** of all information commissioners, potentially compromising their autonomy.
  - More recently, the **Digital Personal Data Protection Act, 2023, amended Section 8(1)(j) of the RTI Act** to exempt all personal information from disclosure, removing the earlier provision that allowed disclosure if there was a larger public interest.
  - These amendments have **made it easier for authorities to deny information requests, citing personal privacy concerns**, even when there might be a compelling public interest in disclosure.
- **Lack of Penalties for Non-Compliance:** Information commissions are **failing to impose penalties on officials who violate the RTI Act**, creating a culture of impunity.
  - The Satark Nagrik Sangathan report reveals that **commissions did not impose penalties in 95% of the cases** where penalties could have been imposed.
  - This lack of consequences for non-compliance **encourages public information officers to take liberties with the law**, leading to unanswered applications, delayed responses, or illegitimate refusals.
  - The **absence of a robust penalty system** undermines the Act's effectiveness in ensuring timely and accurate information disclosure.
- **Political Appointments and Lack of Diversity in Information Commissions:** Critics argue that the majority of appointees to information commissions are **either retired government officials or individuals with political connections**, potentially compromising the commissions' independence.
  - This lack of diversity can lead to a **reluctance to act against violations of the transparency law**, as commissioners may be inclined to protect their former colleagues or political patrons.
  - The **absence of representation from diverse backgrounds**, such as academia, civil society, or journalism, limits the commissions' ability to bring fresh perspectives and rigorous scrutiny to information requests, particularly those that might be politically sensitive.
    - Also, a recent report reveals that since the passage of the Right to Information Act in 2005, **merely 9% of all information commissioners across the country have been women**.
- **Threats and Violence Against RTI Activists:** The dangerous environment for RTI activists severely hampers the Act's effectiveness.
  - According to **Transparency International India**, nearly 100 people have been fatally harmed for using the RTI Act, and thousands more have been assaulted, threatened, or faced false cases.
  - The **Whistleblowers Protection Act**, passed in 2014 to address this issue, remains **unimplemented due to the government's failure to formulate necessary rules**.
  - This climate of fear **discourages many citizens from filing RTI requests or pursuing appeals**, especially on sensitive issues involving powerful interests, thereby limiting the Act's potential to expose corruption and maladministration.

- **Increasing Use of Exemption Clauses:** Public authorities are increasingly using exemption clauses within the RTI Act to withhold information.
  - The recent amendment expanding the scope of personal information exemption is a prime example.
  - Additionally, authorities often invoke **Section 8(1)(a)** related to national security or **Section 8(1)(d)** concerning commercial confidence to deny information requests.
  - For instance, in 2023, the **government refused to disclose details about the PM CARES Fund**, citing these exemptions. This trend of liberal interpretation of exemption clauses is significantly reducing the transparency that the Act was designed to promote.
- **Technological Challenges and Digital Divide:** While digitalization has improved access to information in some ways, it has also created new barriers.
  - Many **government websites are poorly maintained**, with outdated or incomplete information.
  - The shift towards **online RTI filing** has excluded citizens without internet access or digital literacy.
  - **45% of the Indian population, or about 665 million citizens**, do not access the internet as of 2023, according to a IAMAI-Kantar study.
  - This digital divide is **creating a new form of information inequality**, contrary to the Act's intention of **universal access to information**.

## What Measures can be Adopted to Enhance the Effectiveness of RTI?

- **Streamline and Expedite Appointment Processes:** Implement a transparent and time-bound process for appointing **Information Commissioners at both central and state levels**.
  - Establish an **independent selection committee** that includes opposition members, civil society representatives, and legal experts to ensure diverse and qualified appointments.
  - Mandate that **vacancies be filled within a specified timeframe**, perhaps 30 days before a position becomes vacant.
  - This measure would address the current crisis of understaffed commissions and reduce political interference in the appointment process.
- **Enhance Digital Infrastructure and Accessibility:** Integrate **artificial intelligence to categorize and route applications efficiently**, for tracking RTI applications across all public authorities, reducing processing time.
  - Establish **RTI kiosks in rural areas and provide mobile RTI services using [Common Service Centres](#)** to bridge the digital divide.
  - This digital transformation would **improve accessibility, reduce processing times**, and create a more transparent system for monitoring RTI applications.
- **Strengthen Penalty Provisions and Enforcement:** Amend the RTI Act to include **mandatory penalties for officials who willfully deny or delay information** without reasonable cause.
  - Introduce a system of **personal accountability where repeated violations** affect an official's service record and promotion prospects.
  - Establish an **independent enforcement wing within Information Commissions** to investigate and prosecute serious violations of the RTI Act.
  - These measures would create a stronger deterrent against non-compliance and foster a culture of transparency within public authorities.
- **Implement Comprehensive Protection for RTI Activists:** Enact and operationalize the **Whistleblower Protection Act** with robust provisions for protecting RTI activists.
  - Establish a **dedicated helpline and rapid response system for RTI** users facing threats or harassment.
  - Create a **special investigative unit at the state level to handle cases of attacks on RTI activists**, ensuring swift and impartial investigations.
  - Introduce provisions for exemplary punishment for those found guilty of harming or threatening RTI users. These steps would address the growing concerns about the safety of RTI activists and encourage more citizens to use the Act without fear.
- **Mandatory Proactive Disclosure and Open Data Initiatives:** Expand and strictly enforce **[Section 4\(1\)\(b\) of the RTI Act](#)**, which mandates proactive disclosure of information by public authorities.
  - Implement an '**Open by Default**' policy where all non-sensitive government data is automatically made public in machine-readable formats.



- Introduce **penalties for public authorities** that fail to comply with proactive disclosure norms. This approach would reduce the need for individual RTI applications and promote a culture of openness in governance.
- **Regular Training and Capacity Building:** Institute mandatory, regular training programs for **Public Information Officers (PIOs) and First Appellate Authorities on RTI Act** provisions, recent judicial pronouncements, and best practices.
  - Develop a certification program for PIOs to ensure a high standard of knowledge and competence.
  - Introduce **RTI literacy programs in schools and colleges to create awareness among youth.** Conduct periodic workshops for citizens, especially in rural and marginalized communities, on effectively using the RTI Act.
    - These initiatives would improve the quality of RTI responses and empower citizens to use the Act more effectively.
- **Revise and Clarify Exemption Clauses:** Review and tighten the exemption clauses in **Section 8 of the RTI Act to prevent misuse and overly broad interpretations.**
  - Introduce a **mandatory 'harm test' for invoking exemptions**, requiring authorities to demonstrate specific, substantial harm that would result from disclosure.
  - Establish clearer guidelines on the application of the **'larger public interest' override clause**.
  - **Mandate periodic review of classified documents** to declassify information that no longer requires protection.
    - These revisions would limit the arbitrary use of exemptions and ensure that the spirit of transparency is maintained.
- **Integrate RTI with Governance Reforms:** Link RTI compliance to performance evaluations of government departments and officials.
  - Mandate the **inclusion of RTI performance in annual reports** of all public authorities.
  - Use insights from RTI applications to drive systemic reforms in governance processes and public service delivery.
    - This integration would **create institutional incentives for transparency and use RTI** as a tool for continuous improvement in governance.

## Conclusion:

As we approach the **20<sup>th</sup> anniversary of the RTI Act**, it is crucial to address the challenges it faces to preserve the spirit of transparency and accountability. The effectiveness of the RTI Act can **only be maintained through urgent reforms** and a collective commitment to uphold the right to information in India.

### **Drishti Mains Question:**

Discuss the impact of the Right to Information (RTI) Act on governance and accountability in India. In your view, what are the major challenges faced by the RTI framework in recent years, and how can these challenges be addressed to enhance its effectiveness?

## **UPSC Civil Services Examination, Previous Year Question (PYQ)**

**Q.** The Right to Information Act is not all about citizens' empowerment alone, it essentially redefines the concept of accountability." Discuss. **(2018)**

