

RTI Act: A Cadaver in the Morgue of Indian Democracy

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Abstract: *The Right to Information Act, 2005, marked a watershed in Indian democracy by institutionalizing transparency and empowering citizens to challenge entrenched bureaucratic secrecy, yet nearly two decades later its decline illustrates a profound democratic regression. Initially celebrated as a triumph of participatory governance, the RTI regime now stands weakened by legislative, administrative, and social erosion. The RTI (Amendment) Act, 2019 weakened the autonomy of the Information Commissions by making appointment to them, along with its tenure and service conditions, subject to the executive. The Digital Personal Data Protection Act, 2023, furthered exemptions to the disclosure of personal information on a broad basis diluting the overriding public interest test, as well as limiting the scope of the available data source. Administrative Laziness compounds this crisis with positions left in commissions, backlogs way beyond 400,000 cases way beyond easy compliance with statutory time limits and non-compliance with the requirement of Public Information Officers being the rule rather than the exception. Institutional inertia has been underpinned by judicial reluctance to act decisively in openness despite earlier decisions that had favoured openness. More troubling is the coercive environment in which RTI activists and users operate, facing harassment, threats, and even fatal violence, while civil society organizations that once supported transparency face regulatory curbs that weaken citizen initiatives. These developments have turned the RTI framework into a system of democratic empowerment into an instrument of executive hegemony, inefficiency, lack of judicial spirit and in-hostility to citizen engagement. The erosion of the RTI regime is not a procedural setback but a distortion of democratic ethos, where accountability and participatory governance are increasingly subordinated to opacity. Reviving the RTI Act requires legislative reform, institutional reinvigoration, and a reaffirmation of the constitutional vision of democracy as a shared enterprise between state and citizen.*

Keywords: Right to Information, transparency, accountability, governance, democracy, civil society, legislative erosion

1. Introduction

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."

—Justice P N Bhagwati¹

In the theatre of Indian democracy, where transparency was once celebrated as the cornerstone of governance, the Right to Information Act, 2005, stood as a triumph of participatory citizenship. Enacted after years of relentless civil society activism and inspired by the global wave of open governance, the RTI Act was heralded as a revolutionary tool empowering ordinary citizens to challenge the might of the state. For a nation long burdened by bureaucratic opacity and political arbitrariness, the RTI Act has become the common man's weapon.¹ But today, the decline in its effectiveness is evident; what was once a robust tool for civic engagement has now been undermined by a procedural formality, a ghost of its former self.

However, almost two decades after its passing, the RTI framework is in grave danger—grave danger, we say, legally, institutionally, and socially. It began as a law empowering citizens, but since then it has been subjected to sustained and varied erosion. Recent legislative changes, through the RTI (Amendment) Act 2019 and the Digital Personal Data Protection Act 2023, have completely undermined the autonomy of Information Commissions and shifted the

balance between the right to information and the right to privacy in favour of increased secrecy.

Michel Foucault once said that "power is derived from knowledge and knowledge is the basis of information." In this age of rapid change, it is the possession of accurate information that gives an individual the wisdom to better intermingle with society and the governing processes. This being said, the government must provide timely and seamless flow of information to the citizens about the governmental functions as well as the day-to-day operation of government.²

Access to information is one of the many rights associated with individual autonomy and participation in democratic activity. Under the Indian Constitution Article 19³, the right is guaranteed as an extension to the rights conferred to citizens to secure their freedom of speech and expression from the infringing reach of State authorities. Such a right makes citizens informed participants in a democratic society. Whereas the Indian Constitution, Article 21⁴, provides that no liberty of an individual shall be curtailed.⁵

At the same time, the architecture of implementation is in a phase of administrative paralysis. Empty positions in Information Commissions, bureaucratic non-compliance, and the declining interventionism of the judiciary all make the Act increasingly ineffective in practice. Its deterioration is not only procedural but is also visible in the treatment meted out to those using the law. That is, the rising violence against RTI

¹ RTI ACT – Is Dilution Killing It?, Centre for National Policy Research (Sept. 17, 2021), <https://cnpr.in/rTI-act-is-dilution-killing-it/>.

² Swati Daga, *Critical Analysis of The RTI Act, 2005 In Light Of The Recent Amendment Act Of 2019*, 1 J. Applicable L. & Juris. 1 (2021), <https://calr.in/wp-content/uploads/2021/05/Critical-Analysis-of->

The-RTI-Act-2005-In-Light-Of-The-Recent-Amendment-Act-Of-2019.pdf.

³ India Const. art. 19.

⁴ India Const. art. 21.

⁵ Ruchi Singh, *Right to Information: A Toothless Tiger, Burnished L.J.*, Vol. 1, Issue II, at 68 (2020).

users, along with the specific design to weaken those civil society organisations that represent transparency, suggests a much wider democratic regression.⁶

Legislative and Institutional Undermining of the RTI Framework

In recent times, the Right to Information Act-2005 was once considered a revolutionary instrument in the domain of transparency and participatory governance but has faced erosion in many respects. The most glaring instance of legislative interference came in the form of the RTI (Amendment) Act of 2019. This amendment, framed as an administrative reform, significantly altered the tenure and salary provisions for Information Commissioners, weakening their statutory independence.⁷

Before the impugned amendment, the Chief Information Commissioners and the Information Commissioners had fixed tenures and salary structures identical to those for Election Commissioners. This ensured some measure of insulation from the executive. The amendment of 2019, however, transferred the power of prescribing their tenure, salaries, and service conditions to the Central Government. Thus, all powers of the executive became unchecked by transforming a constitutionally envisaged independent oversight mechanism into an appendage of the ruling establishment. The Digital Personal Data Protection (DPDP) Act, 2023, has caused more harm as it has, in effect, undermined the very foundation of transparency of the RTI framework.⁸ Under the pretext of protecting privacy, the government has amended Section 8(1)(j)⁹ of the RTI Act, giving a general exemption for disclosure of personal information. The erstwhile provision involved the public interest override and proportionality test, which got lost in the DPDP regime. The enactment permits public authorities to withhold a broader range of information, including details previously accessible under public interest overrides about the assets of their elected representatives, the conduct of public officials, and the beneficiaries of welfare schemes in the name of so-called "personal information."¹⁰

This development represents a legislative manipulation of jurisprudential principles from *K.S. Puttaswamy v. Union of India*¹¹, where the Supreme Court upheld the right to privacy without placing it in absolute terms against the right to information. Ironically, the State tends to draw on privacy

concerns about issues such as Aadhaar linkage and other mass-surveillance activities without consideration of the individual's right to privacy. Legislative amendments have diluted the RTI Act's enforceability, creating conditions where transparency is increasingly discretionary.¹² It systematically neutralized what had functioned for citizens in power as an instrument through subtle but decisive legislative acts favoring executive supremacy over independent scrutiny.

Administrative Paralysis and Judicial Apathy

The Right to Information system is suffering from administrative attrition, which has virtually made it inoperative in much of the country, aside from legislative interference. Presently, the Central Information Commission, which ought to consist of eleven members including the Chief Information Commissioner, is functioning with only three. At least seven State Information Commissions are completely non-functional, while many others operate well below sanctioned strength. This administrative void has resulted in an unprecedented backlog of appeals and complaints that now exceed 400,000 pending orders, with some Information Commissions having waiting periods for hearings stretching to several years on average.¹³ Systemic delays and understaffing have reduced accountability for Public Information Officers (PIOs), leading to frequent non-compliance, many of whom reject information requests without qualms based on arbitrary or misapplied exemptions or by misquoting judicial precedents. The absence of punitive consequences for such acts therefore engenders further threats to compliance. The net effect of this noncompliance is that Section 7(1)¹⁴ of the RTI Act, which calls for a response in thirty days, has been rendered almost imaginary. Judicial inactivity has compounded this malaise for administration.¹⁵ In *Girish Ramchandra Deshpande v. Central Information Commission (2012)*¹⁶, the Supreme Court expanded the reach of "personal information" widely so as to enable denial of information which is related to the service record of public officials. Moreover, in *Anjali Bhardwaj v. Union of India (2019)*¹⁷ the Supreme Court noted the apocalyptic delays in the appointment of commissioners-but neither issued coercive nor time-bound directions.¹⁸ The overall reluctance of the judiciary to act decisively has signalled an institutional retreat away from its earlier proactive role as a champion of transparency and accountability. Result in a paralyzed administrative machinery emboldened by judicial inertia that deprives citizens of their statutory right to know.

⁶ Raman Jokhakar & Tarunkumar Singhal, *Changes to RTI Act Will Make It Toothless*, Bombay Chartered Accountant Journal (Dec. 2009), <https://bcajonline.org/journal/changes-to-rti-act-will-make-it-toothless/>.

⁷ NewsClick Report, 18 Years of RTI: Empowering Journey of the Act and its Eventual Decline, NewsClick (Oct. 12, 2023), <https://www.newsclick.in/18-years-rti-empowering-journey-act-and-its-eventual-decline>.

⁸ *Data Protection Act: How Modi Govt's New Law Kills Your Right to Know*, The News Minute (Aug. 14, 2023), <https://www.thenewsminute.com/videos/data-protection-act-how-modi-govts-new-law-kills-your-right-to-know-70>.

⁹ Right to Information Act, No. 22 of 2005, § 8(1)(j), Acts of Parliament, 2005 (India).

¹⁰ Rani, Sweta & Singh, Dinesh. (2022). A CRITICAL ANALYSIS OF THE RIGHT TO INFORMATION IN INDIA. v. 2348-5485.

¹¹ Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., (2017) 10 SCC 1.

¹² Ruchi Singh, Right to Information: A Toothless Tiger, Burnished L.J., Vol. 1, Issue II, at 68 (2020).

¹³ *RTI ACT – Is Dilution Killing It?*, Centre for National Policy Research (Sept. 17, 2021), <https://cnpr.in/rti-act-is-dilution-killing-it/>.

¹⁴ Right to Information Act, No. 22 of 2005, § 7(1), Acts of Parliament, 2005 (India).

¹⁵ Avinash Kumar, Right to Information Act 2005: A Critical Analysis on Its Enforcement and Effectiveness with Special Reference to Proactive Information (2016) (Ph.D. dissertation, Patna Univ.), <http://hdl.handle.net/10603/270678>.

¹⁶ *Girish Ramchandra Deshpande v. Cent. Info. Comm'r & Ors.*, (2013) 1 SCC 212.

¹⁷ *Anjali Bhardwaj v. Union of India (2019)*, AIRONLINE 2019 SC 533.

¹⁸ LexLife India, Analysis: RTI Amendment Bill, LexLife India (Oct. 28, 2019), <https://lexlife.in/2019/10/28/analysis-rti-amendment-bill/>.

Threats to Activists and Civil Society Retrenchment

The dilution of the RTI regime does not constrict itself to the legislative or administrative modes of dilution but includes the coercive environment with which an active seeker for transparency has to cope. Since the act has been made effective, more than 100 users and activists have been murdered for their efforts to raise questions against authority and expose corrupt practices. The number so far presented here is frightening, but it is only a small tip of the iceberg. Many of them have had to cope with physical intimidation, social ostracism, legal harassment, recollect criminal cases against them, a complete absence of a witness protection mechanism, and failure to provide security to the whistleblowers emboldening the criminals and dissuading civic participation.¹⁹

Civil society organizations have made a transition into the darkness, away from the enlightening themes of transparency and accountability. Several NGOs operating for the sake of transparency have faced frequent regulatory interventions—drifting in and out under the scrutiny of the FCRA—that led eventually to their licenses' cancellation and freezing of funding channels. Such targeted restrictions would have severely diluted the institutional support system for users of the Right to Information Act, particularly in the case of marginalized communities that would rely on these organizations for legal and procedural assistance. The risks faced by activists and regulatory constraints on civil society organizations raise concerns about declining space for democratic accountability.²⁰ In other words, the suppression of transparency is by no means a mere collateral damage of poor governance, while these days it forms the very essence of a concerted design to insulate power from accountability. From this point onward—for all intents and purposes—every effort made to give the public access to information becomes life-threatening; and thus, the very integrity of participatory democracy has been betrayed.

Need for Good Governance

Democracy is often declared broken, but that is not the complete story. Rather, it is a system that has to be worked on from time to time for improvement and not one that has to be given up as soon as it shows signs of failure. The most powerful public official in any democracy is not the minister or bureaucrat but the private citizen. Now, if we look closely at the turnout in the polls, we find that only a mere 60 per cent of the population participates in national elections, and just 27 per cent engage in the local authority elections. It means an enormous gap that works against the social contract on which our democratic framework stands.²¹ If citizens back off, the State becomes indifferent. Hence, we should not only think about the failures of governance but also about our role in the whole democracy process, to come up with this construct. The act of governance is not confined to politics, nor is it the

glorification of personalities. While politics is often a field of personal ambitions, governance is truly about delivery for the common good. The Right to Information Act of 2005 stands out as the biggest landmark in the way democracy deepens itself in India. It thereby rescripts the contours of the citizen-state relationship by giving people the right to question how power is exercised by the state through the agency of law. There's the near delusion of accountability that existed for the government before RTI. The citizens, for instance, lack any right to question how policies were framed, who made what decisions, and why the promised outcome failed to materialise.²² With the RTI Act, however, transparency converted into a legal necessity and governance into a participatory act. In a way, good governance makes it possible for citizens to access information. With access to information, they can make a transition from the passive role of receiving public policy to that of active citizenry involved in its creation. Such is the realisation of democracy in all its aspects, not.

2. Conclusion

The Right to Information Act of 2005 is far more than a legal instrument; it has become a watershed in democracy, redefining the relationship between the citizen and the State. Instead of granting transparency as an ideal, the Act worked towards ensuring accessibility to this right with an objective to extricate the culture of secrecy that had come to characterize the public institutions in India. Nearly two decades after its enactment, one is left with grievous concerns about the constitutional and democratic standing of a piece of legislation.

With the introduction of legislative changes like the RTI (Amendment) Act, 2019, and the Digital Personal Data Protection Act, 2023, the institutional autonomy and operational clarity of the RTI regime have been considerably undermined. These legal modifications, disguised in officialese as "streamlining" or "privacy protection," therefore subjugate the right to information under the discretion of the executive branch. Through this reconstitution of statutory safeguards into tools for instrumentalisation of centralised control, there has been regression in governance philosophy from participatory democracy to administrative insulation.

Thus, such irresponsible administrative non-compliance and deliberate inaction have rendered the Information Commission toothless. They're examples of deliberate inefficiency and reflect a systemically indifferent approach to transparency obligations: staggering backlog of appeals, chronic understaffing of the commissions, and blatant violations by public authorities of RTI mandates. When confronted with such challenges, however, the judiciary has shown reluctance to intervene, even in cases where its

¹⁹ Amarnath Tewary, *20 RTI Activists Killed in Bihar in Past 11 Years*, The Hindu (Sept. 28, 2021), <https://www.thehindu.com/news/national/other-states/20-rti-activists-killed-in-bihar-in-past-11-years/article36717769.ece>.

²⁰ Priya Rathi, *Misuse of RTI Act, 2005*, Campus Law Centre, Faculty of Law, University of Delhi (2018), <https://www.iitrpr.ac.in/sites/default/files/Misuse%20of%20RTI%20Act%20by%20Priya%20Rathi.pdf>.

²¹ Swati Daga, *Critical Analysis of The RTI Act, 2005 In Light Of The Recent Amendment Act Of 2019*, 1 J. Applicable L. & Juris. 1 (2021), <https://calr.in/wp-content/uploads/2021/05/Critical-Analysis-of-The-RTI-Act-2005-In-Light-Of-The-Recent-Amendment-Act-Of-2019.pdf>.

²² Ruchi Singh, *Right to Information: A Toothless Tiger*, Burnished L.J., Vol. 1, Issue II, at 68 (2020).

precedents support transparency and constitutional underpinnings in support of the right to information, therefore instilling an ever-deeper culture of institutional apathy.

But perhaps most alarming are the lived realities of RTI users on the ground. Increasing incidence of violence, intimidation and retaliatory legal action against activists, it lays the threshold for existential risks attached to exercising this right. Seeking information now carries significant risks, transforming the issue from a legal challenge into a democratic concern. Concurrently and alongside that, civil society organizations are weakened through regulatory constraints, which deepens this crisis, removing support systems necessary for grassroots transparency initiatives. These trends suggest a broader shift toward centralized executive control, limiting avenues for public scrutiny.