

RIGHT TO INFORMATION ACT 2005:
IS IT TIME FOR A COURSE
CORRECTION?

A Dissertation submitted to the Panjab University, Chandigarh for the award of the degree of Master of Philosophy in Social Sciences, in partial fulfilment of the requirement for the Advanced Professional Programme in Public Administration

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Certificate

I have the pleasure to certify that Ms. Julia Mohapatra has pursued her research work and prepared the present dissertation titled **“Right to Information Act 2005: Is it time for a course correction?”** under my guidance and supervision. The dissertation is the result of her own research and to the best of my knowledge, no part of it has earlier comprised any monograph, dissertation or book, without proper citation. This is being submitted to the Panjab University, Chandigarh in partial fulfillment of the requirement for the award of the degree of Masters in Philosophy in Social Sciences.

I recommend that the dissertation of Ms. Julia Mohapatra is worthy of consideration for the award of Masters in Philosophy from Panjab University, Chandigarh.

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Abstract

Right to Information, enacted in 2005 is a powerful and transformatory legislation formulated to uphold the great ideals of Indian democracy by increasing transparency, openness and participatory decision making. It has empowered citizens to demand information and hold public officials accountable for their actions. The Act has been credited with increasing transparency, lower levels of corruption and improved accountability in governance. However, the implementation of the RTI Act has not been without challenges. Lately it has been criticized to have lost its effectiveness because of various problems and bottlenecks present in the system and perceived to have moved away from its desired path. The current study attempts to review the importance and efficacy of RTI Act 2005 at present, after elapse of long 17 years from its enactment. Data through quantitative online survey was collected from stakeholders representing varied backgrounds including government, civil society, legal fraternity, common citizens, media, academia etc. Based on the findings, it has been suggested that proactive Suo-motu disclosure to be strengthened with structured and time bound monitoring, the PIOs and APIOs to be trained thoroughly and at regular intervals, awareness programs to be organized for citizens, suitable filtering mechanism to curb misuse of the Act, departments receiving higher number of applications to take special measures to facilitate information sharing and preparation and digitization of records to be prioritized. The measures have been suggested to strengthen the RTI Act, 2005 and make its more effective, meaningful and resilient.

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Executive Summary

The Right to Information Act (RTI) of 2005 was implemented in India with the objective of promoting transparency and accountability in governance by enabling citizens to access information from government institutions. It is a powerful tool for promoting openness, vigilance, fight against malpractices and corruption as also ensure greater participation of citizens in government decision-making processes.

However, there have been concerns about the erosion of the RTI Act and its impact on democratic governance in India. Over the years, there have been instances of the misuse of the Act, leading to delays and unnecessary burden on government departments. On the other hand non compliance to the statutory provisions of the Act by the public authorities and their apathy has led to the perception of the Act to have lost its steam.

The current research examines the efficacy of RTI Act in the prevailing environment after elapse of long seventeen years. An attempt has been made to shed light on what further improvements could be made to make it stronger and more resilient. The study also delves into secondary data available to see the degree of penetration achieved by the Act and its development trajectory. The research tries to see whether the RTI Act is still perceived as an effective and powerful tool to ensure transparency or certain existing loopholes and bottlenecks are affecting its relevance. The study focuses on suggesting measures to circumvent the problems and improve the overall effectiveness of the Act.

Quantitative technique of data gathering has been employed along with some Qualitative analysis of available literature, case studies and empirical data to support

the findings. Data was collected from a large cross section of people comprising of both government and non-government stakeholders. While the government sample comprised of officials from central government, state government, CIC, PIOs, APIOs, FAA etc. the non-government stakeholders included citizens, NGO workers, civil society, media and academia etc. The data was collected through survey method by using an appropriate instrument developed for the purpose.

The thesis identifies strong and weak aspects of the Act with an aim to provide suggestions for improvement. It was found that lack of awareness about the Act's provisions, insufficient and incomplete disclosures, lack of requisite training of the PIOs/APIOs, the absence of any mechanism to deter misuse, and the unavailability of digitized and well documented system of record maintenance are the main factors affecting the effectiveness of RTI Act. The gist of research findings points towards criticality of voluntary disclosure and constant capacity building of PIOs to ensure effectiveness of implementation.

The research concludes that while the RTI Act has been an important tool for promoting transparency and accountability in India, the problems and issues present in the system need to be addressed urgently to ensure that the grounds gained by the good law is not lost. There is a need for a comprehensive review of the RTI Act to plug the loopholes and ensure that it serves its intended purpose. Various measures have been suggested to achieve this, viz. ensuring time bound suo motu disclosures through structured and strict monitoring mechanism, providing training to public authorities to handle such requests effectively, increasing awareness among citizens about proper use and benefits of the Act, introducing filtering mechanism for

frivolous applications, enhancing supervision and time bound monitoring by CIC/SIC and prioritizing digitization of records and document etc.

Overall, the thesis attempts to make some relevant addition to the ongoing discourse on the RTI Act and provides valuable insights into how the Act can be strengthened to promote transparency and accountability in governance.

CHAPTER - I

INTRODUCTION

Is there a greater strength than that of knowledge? - Vivekananda

1. What is Right to Information Act, 2005?

1.1 The Right to Information Act, 2005 is generally considered a historic legislation, a piece of transformatory ruling which fundamentally altered the citizen-state relationship in India forever. The enactment of this Act speaks volumes about the democratic deepening in the country. Its base originating in India's grassroots, its trajectory involving multitudes of both educated and un-educated people; both young and old; men and women; urban and rural; rich and poor; literate and illiterate mass; cutting across caste, creed and religions and through the length and breadth of this beautiful country.

1.2 The Right to Information (RTI) Act, 2005, is a landmark legislation in India that empowers citizens to access information held by public authorities. It is a powerful tool for promoting transparency, accountability, and participation in government decision-making processes. The RTI Act came into force on October 12, 2005, replacing the earlier Freedom of Information Act, 2002. It applies to all central, state, and local government bodies, as well as non-governmental organizations that receive public funds. This includes government departments, public sector undertakings, local bodies, educational institutions, and other bodies that receive public funds.

1.3 The Act gives citizens the right to request information from public authorities, which must respond within 30 days. This information can be about anything related to the functioning of the government, including policies, decisions, budgets, contracts, and projects. The RTI Act has been widely used by citizens, journalists, and activists to expose corruption, mal-administration, and abuse of power by government officials. It has also helped to bring about positive changes in government policies and programs.

1.4 Under the RTI Act, citizens have the right to:

- a. Request information in writing or through electronic means
- b. Receive a response within 30 days
- c. Receive information in the form they prefer (unless it compromises national security or privacy)
- d. Inspect documents or records held by public authorities
- e. Take certified copies of documents or records
- f. Appeal if they are dissatisfied with the response or if they do not receive a response within the stipulated time frame (The RTI Act, 2005)

1.5 The Act has been particularly effective in empowering marginalized communities and weaker sections of the society such as Dalits, Adivasis, women and the poor, who were excluded from the decision-making processes. It has given them a voice and a mean to hold the government accountable for its actions.

1.6 RTI Act, though often considered a great victory of the people, but in reality, it actually was the triumph of the democratic processes of India. The overarching

framework of moving away from secrecy and arbitrariness, the faith that legislative intervention holds the key to fight corruption as also placing the demand within the permissible and flexible framework of India's democratic processes makes the RTI Act a truly comprehensive tool in the hands of citizens to usher in a transparent, corruption free nation. Further, the fact that it evolved from a people's movement pointing to a mature and deep democracy, the involvement of civil society in drafting the bill along with the government functionaries and its subsequent enactment in 2005 makes the Act a mirror image of real as well as meaningful democracy, both in terms of its process and outcome.

1.7 As may be seen from the opening words of the Act, it reveals that its core aim is to empower, give voice, accord respect to the views of people and civil society within the framework of deliberative democracy. It states boldly "Whereas the Constitution of India has established democratic Republic; And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and to contain corruption and to hold governments and their instrumentalities accountable to the governed" (RTI Act, 2005 Preamble).

1.8 This clearly delineates the goals envisaged in the Act, to change the practices of the public offices, transform the existing systems of governance, intensify citizen's involvement and participation, bring in an environment of transparency, accountability as also a culture of shared decision making. It can therefore be inferred safely that this monumental Act was designed to push the country to new horizons of deeper democracy, as revealed by the opening statements of the Act itself, the primary rational was to achieve the cherished 'democratic ideal'.

2. Importance of Right to Information

2.1 Information is power. It is the fundamental source of knowledge, awareness and the building block for informed decision making. The Supreme Court of India through its judgment in the case of *S. P. Gupta & others v. The President of India & others* in 1982 reinforced the idea of freedom of information being implicit in the right to free speech and expression, guaranteed under Article 19 (1)(a) of Indian Constitution (Sharma, 2015).

2.2 The Right to Information Act, hailed as a landmark legislation of India has been credited with increasing transparency and accountability in governance by removing prevalent culture of secrecy and opacity. It has empowered citizens to demand information and hold public officials accountable for their actions. It is regarded as the Act which empowers citizens for information age, perfects democracy and promotes all round development by controlling corruption and ushering in an era of transparency, accountability and responsive governance.

2.3 The Act has been used by citizens to expose corruption, irregularities in government functioning, and other malpractices. It has also been used to obtain information about government schemes and policies, which has helped in improving the effectiveness and efficiency of government programs. The Act has played a crucial role in unearthing malpractice in various government departments, including the police, judiciary, and bureaucracy. It has also been used to obtain information about public spending, government policies, and environmental impact assessments.

2.4 From the standpoint of social, political, economic and philosophical aspects, people's right to know necessary information from government records, files and documents on public issues is imperative for attainment of great and noble values and human goals like participatory democracy, good governance, sustainable

development, open government, responsive, responsible people welfare centered government and human rights (Bava, 2009). These are the core values of the RTI Act.

2.5 Enlightened and informed citizens enhance the democratic values of a country. The right to information in a democratic set up is recognized all over the world and it is a natural right flowing from the very concept of democracy. In modern democracies, citizens have a right to know about the affairs of the Government and its policies aimed at their welfare. In a democratic government of the people, by the people and for the people, the foundation of a healthy democracy lies in well-informed citizens (Jain, Online article).

2.6 In modern and mature democracies, citizens have every right to know about every public act done in a public way, especially about the public functioning of the government institutions. It is pertinent to note here that the foundation of a solid democracy starts with culture of openness in government functioning and exercise of public power for improving the state citizen interface which is a fundamental requirement of democratic governments.

2.7 The information laws therefore are at times also referred as ‘Open Records’ and ‘Sunshine Laws’ (like letting light shine on the process). Some countries also have the related concept of open meetings legislation which allows public to access government meetings and not only their records. Basically, Access to Information (hereinafter referred to as ATI) laws are ways in which citizens access, participate and involve themselves effectively and meaningfully in the government processes and systems.

3. Primary Objectives of RTI Act 2005

3.1 The world has seen a paradigm shift in the 21st century in terms of openness and transparency in government functioning and more than 120 countries across the globe including India have enacted their comprehensive right to information laws so far. This landmark legislation, Right to Information Law of India, commonly known as RTI Act 2005 was introduced with its primary goals to bring higher degree of transparency, objectivity and accountability in the functioning of public authorities and governance structure, eradicate corruption as also create an informed citizenry through their participation and involvement in administrative decision making process.

3.2 The Right to Information Act (RTI) of India, passed in 2005, aims to promote transparency and openness in government functioning by empowering citizens to access information and thereby remove the prevalent opacity. The Act provides a mechanism through which citizens can demand information from public authorities and public authorities are obliged to provide the desired information.

3 Following are the objectives of RTI:-

- a. To set-up practical regime
- b. For citizens
- c. To secure access to information under the control of public authorities
- d. To promote transparency and accountability in the working of every public authority
- e. To constitute a Central Information Commission and State Information Commissions

f. For matters connected to Public Authority or incidental thereto

3.4 The RTI Act, 2005 is enacted with the avowed objective of conferring a statutory right on the citizens of India to have access to Government-controlled information or to seek information from Central Government/State Governments, local bodies and other competent authorities as a matter of right. The idea is that it would prove to be instrumental in bringing in transparency and accountability in Government and Public Institutions which would help in bringing the growth of corruption in check (Decision in case of Phairembam Sudesh Singh v. The State of Manipur and Ors. 2016).

4. Statement of the Problem

4.1 Any law, once framed is not going to remain relevant for indefinite period. Each and every law, act or rule needs constant analysis, review, modifications, additions and deletions to adapt it suitably to the needs of changing times and requirements. Such changes and modifications should be a regular ongoing process and not one off incident.

4.2 In fact, the Prime Minister of India while presenting this momentous bill in Lok Sabha had clearly highlighted - “This is an innovative Bill, where there will be scope to review its functioning as we gain experience. Therefore, this is a piece of legislation, whose working will be kept under constant reviews” (First Report of 2nd Administrative Reforms Commission, 2006, Preface). But after long 17 years of its enactment, the RTI Act 2005 has hardly undergone any change, seen any reviews or amendments.

4.3 Further, after a decade and half of passing of this monumental Act, there have been certain concerns about the erosion of the Act and its impact on the governance

system. It is currently being perceived by some as less effective and treading from its desired path because of the loopholes present in the Act. Some people even complain that at present RTI Act has lost its sheen, its vitality, and has primarily become a tool of harassment in the hands of a few, who are misusing the provisions of the Act with mala-fide and malicious intent.

4.4 Moreover, it has been pointed out that one of the highlights of landmark RTI Act 2005 which is the information seeker does not need to provide any reason for seeking the information or share any personal details is also being misused leading to weakening of the Act. Because this salutary provision prohibits the authorities from knowing about the intention of the information seeker, what use it's being put to and what are the purpose of using this information.

4.5 It has recently come to light that in some cases, taking advantage of the loopholes and flaws in the legislation, offenders misuse the powerful act to fulfill their vested interest or glean out sensitive information from public authorities. Sometimes the information obtained through RTI are also used for personal court cases or score settling.

4.6 On the other hand, in certain cases non-compliance with the statutory provisions in the part of public authorities whether because of lack of availability of information or otherwise also impacts the Act and leads to the public losing faith in the Information law and the perception about its erosion.

4.7 Even though Hon'ble Supreme Court of India, other Courts and CIC/SICs have been trying to curb such problems, by providing suitable clarifications, interpretations and passing necessary orders but it is not clear how far this has been successful in keeping the Act relevant and meaningful.

4.8 As can be surmised from the above, there exists a clear ground to study the status of the RTI Act, its current level of effectiveness and impact, to see whether the Act is still being perceived as relevant and powerful tool to ensure transparency or not. One of the main reason being elapse of a decade and half since its enactment. It will be interesting to see whether any bottlenecks present in the system could be removed to strengthen the Act further and whether a course correction would be able to circumvent the persisting problems as also propel and facilitate the Act to achieve its cherished goals. Moreover, in India, we have seen many Acts like Prevention of sexual harassment against women or Dowry Act getting misused. Therefore, there is a need for a closer re-look at the RTI Act 2005, to review the Act and see how can we make it stronger and better.

5. Objectives of the Study

5.1 The study aims to examine the efficacy of the RTI Act 2005 after elapse of long Seventeen years and to see what changes could be made to strengthen the Act and make it more appealing. The research also intends to explore the importance and relevance of this Sunshine Law in the context of Indian democracy. It also intends to explore what measures can be taken to strengthen the system and make the Act stay relevant and become more effective. The main objectives of the dissertation are as follows:

- (i) To study the need and importance of the Right to Information Act, 2005.
- (ii) To understand the development of RTI Act, 2005 in the Indian context.

- (iii) To study the status of the RTI Act 2005, its current level of efficacy and impact. To see whether the Act is still being perceived as relevant and powerful tool to ensure transparency or not.
- (iv) To suggest suitable mechanisms to address the gaps, for removal of the bottlenecks and streamlining of the RTI Act, 2005.
- (v) To suggest corrective measures to make the Act stronger, resilient and improve its effectiveness.

6. Research Questions

6.1 The study analyses the effectiveness of the RTI Act at the present juncture and attempts to see whether the Act could be further improved and strengthened. The study aims to explore suitable measures to fill up the gaps, remove the bottlenecks present and streamline the RTI process. Accordingly, the research questions have been formulated to examine the objectives stated above:

6.1.1 Is the RTI Act 2005 seen as important, necessary and a key enabler of participatory democracy?

6.1.2 What has been the development trajectory of the Right to Information Act, 2005 in India so far?

6.1.3 Is the RTI Act still effective and relevant or are there any problems and bottlenecks in it?

6.1.4 What mechanism would be able to counter and remove the bottlenecks/loopholes present and make the Act stronger and resilient?

6.1.5 What steps can be taken to strengthen the Act and increase its effectiveness?

7. Research Methodology and Research Design

7.1 The study follows a 'Mixed Research Strategy' combining both Quantitative and Qualitative strategies. The research employs the techniques of descriptive design of quantitative research along with some qualitative strategies like Case Law analysis and Secondary data analysis. The Design is a convergent parallel design, where both quantitative and qualitative research techniques were carried out con-currently. Based on the experience gathered, a Questionnaire was developed and circulated to chosen sample of stakeholders. The sampling method followed was convenience sampling. The sample comprised of government and non - government respondents. Efforts were made to widen the data base to avoid possibility of error. The data type is quantitative data and data has been analyzed and presented in a simple graphical format for ease of understanding.

8. Rationale

8.1 Although the identified issue/problem has been existing in the public domain, but there has not been many attempts to carry out any systematic quantitative study in this area so far. As may be seen from the foregoing discussion, there is an urgent need to study the current level of efficacy of RTI Act and recommend measures to make it stronger. Further, in a huge and vibrant democracy like India, the Right to Information Law holds special significance and we need to study and review it from time to time to make sure it remains relevant.

8.2 It is expected that the research would shed light on some of the critical but hitherto neglected aspects of the Right to Information Act, 2005. Further, the research

would identify the key strength and weak areas of Right to Information Act, 2005 where improvement can be effected to make the system robust. Moreover, the research aims to examine the growth index of the Act in the national perspective to see its degree of penetration in the governance mechanism. In addition by suggesting comprehensive measures to improve and strengthen the RTI Act, the research aims to boost transparency, contain corruption, promote openness in governance and give further impetus to participatory democracy, which is the cherished goal of this landmark law.

9. Scope, Limitations and Delimitations

9.1 As may be seen from the above, the scope of the study is primarily to understand the effectiveness of the RTI act and what more could be done to strengthen it further. It would be a study involving respondents across the board and representing all segments of stakeholders viz. PIOs, ACPIOs, FAAs, RTI Applicants, civil society, legal practitioners and common people. The limitations placed on the research are the study would not be looking into any specific impact of the Act (for ex. Corruption etc.), the research puts limitation about examining applicability of RTI Act 2005 and broadening its base, the study would not venture into amendments of 2019 or other fundamental features or components concerning the Information Law.

9.2 The delimitations put on the research are, the study would focus on only the aspects already mentioned under Research problem/objectives and except these specific areas, other aspects or extraneous variable viz. type of department, size of department, profile or eligibility of PIOs, demographic aspect of the applicants etc. would not be studied.

10. Structure of the Dissertation

10.1 The Dissertation has been divided into the Following Chapters:

CHAPTER I: INTRODUCTION

The Chapter introduces the Subject matter viz. the RTI Act, 2005, its importance and relevance as also its main objectives. It also contains details about the objectives of the research, research questions, rationale and research methodology followed in the study.

CHAPTER II: HISTORICAL BACKDROP OF RIGHT TO INFORMATION ACT

This Chapter traces the doctrinal philosophy of right to Information, the relationship between Democracy and Access to Information, the movement of RTI in India and events leading to enactment of the Act in India.

CHAPTER III: THE INTERNATIONAL EXPERIENCE OF RTI ACT

An effort has been made in the chapter to plot the evolution of Right to Information in the global context. Starting from Sweden to United Nations, the Commonwealth experience and Rio declaration. Global trend as also spreading of the concept of Access to Information in various continents have been touched upon in this chapter.

CHAPTER IV: RTI ACT 2005 - ESSENTIAL FEATURES

This chapter enumerates the mechanisms of implementation of the RTI Act in India. It also contains a brief synopsis of important features of the Act, some of its unique aspects and the setting up of the Commissionerate viz. CIC at the national level and SICs at the State level as an institutional oversight mechanism.

CHAPTER V: DEVELOPMENT TRAJECTORY OF RTI ACT 2005 IN INDIA

Important and key parameters of the RTI Act 2005 have been analyzed and interpreted in the chapter to ascertain the growth and penetration achieved by the Transparency law till date. Based on data obtained from the CIC website, tables have been prepared to present a comparative picture of cases received, disposed, refused etc. to draw inferences about the Law's performance and achievement till date.

CHAPTER VI: LITERATURE REVIEW

In this chapter, critical literature, prior research, articles, studies and work have been analyzed to highlight the importance of the subject and the problem being studied. The implementation issues, loopholes, recent experiences and critical aspects relating to the Act are discussed at length. An in-depth analysis of some landmark judgments of Court and CIC decisions has also been done.

CHAPTER VII: ANALYSIS OF STAKEHOLDER'S FEEDBACK

This chapter contains details of Primary Data collection and the process employed for the same, the Sampling method used and the background information on preparation of the Questionnaire. The chapter also contains step by step analysis of stakeholder's responses along with a summary of findings.

CHAPTER VIII: RECOMMENDATIONS AND CONCLUSION

Based on the findings of the study, an attempt has been made to give some concrete recommendations and suggestions to further improve the RTI act 2005 and strengthen it.

The chapter is followed by Bibliography and Annexure.

CHAPTER - II

HISTORICAL BACKDROP OF RIGHT TO

INFORMATION ACT

Knowledge will forever govern Ignorance. And a people who mean to be their own governors, must arm themselves with the power which knowledge gives. - James Maddison

1. Right to Information: Definition and Doctrine

1.1 Information refers to knowledge or facts about person, event or situation obtained from any source. Freedom of Information has been acknowledged as a fundamental right and the touchstone for all other freedoms. The core of all freedom to information law lies in transparency and accountability. Accordingly, RTI Act 2005 aimed to make the government processes and systems more transparent and open to public scrutiny.

1.2 Right to information could be defined by 4 elements:- A subjective right for any individual (1) without particular personal intent or standing (2) to compel disclosure of any information held by the public authorities (3) limited only by exception explicitly stipulated by law and subjected to independent review (4) in short, an individual, positive, unconditional and justiciable right of access to official information (Reigner, 2017).

1.3 The doctrinal consequences of the RTI Act could be understood simply as 'government information are assumed public unless specifically exempted' and information seeker need not justify their request. RTI Act in this sense shifts from a

‘need to know’ formulae to a ‘right to know’ principle. The theoretical, political and philosophical justification for right to information rests squarely on the ideals of liberty and equality on one hand and democracy and development in the other. According to some authors freedom of information runs deep roots in the lineage of liberal thinkers, it is considered a pre-condition for freedom of opinion and expression. The core value of RTI thus resonates with the essence of the democratic justification which embodies the principle of collective self-determination.

1.4 The justification links the right to information with desirable social outcomes such as economic development, effective service delivery and corruption control. Drawing on Lewis Brandei’s famous dictum that ‘Sunlight is the best disinfectant’, RTI is credited with reducing corruption and improving accountability, rule of law and service delivery in general. So one can safely assume that making the governmental information available in the public domain has led to generation of new information or knowledge base, thereby leading to better cognitive capital of society as a whole.

1.5 The underlying philosophy of RTI Act, 2005 which aims to make the workings of the public authorities transparent is rooted in the modern liberal democratic theory. Transparency or openness is often described as an essential pre-requisite of functional liberal democracy. Political theorists, economists like John Locke, J. S. Mill, Jean Jacques Rousseau, Jeremy Bentham, Immanuel Kant, John Rawls and Friedrich Hayek through their writings and works have advocated transparency in government functioning (Fenster, 2006).

1.6 As may be seen, these theories perceive human rights as the ‘universal ought’ against abuse and arbitrary use of power. Such a move pluralises the theoretical understanding of ATI, drawing attention to the jurisprudence of the IACtHR

according to which the individual rights of freedom of expression and information imply a collective right to receive any information whatsoever and to have access to the thoughts expressed by others (IACtHR, note 48 para 30).

2. Democracy and Access to Information

2.1 RTI Act has been often posited as the ultimate achievement of ‘democratic ideal’ - a seemly conflation of democracy and informed citizenry. The civil society, media, academia even government have converged in their opinion to call RTI as the pinnacle of India’s robust democracy. In the space of less than a decade, the burgeoning movement for the right to information in India has significantly sought to expand democratic space (Mander and Joshi, 1999). Similarly, Roy and Dey (2002) declare that the demand (for an RTI Act) was not to do away with democracy but to create opportunities for more meaningful and appropriate democratic practice. Right to Information has been seen as the key to strengthening participatory democracy and ushering in people centered governance (2nd ARC, 2006).

2.2 In democracies, state is considered to be a combination of institutional, judicial and social process manifestations. The State is characterized by struggles of power, status, livelihood of its citizen, among its groups, classes in society and agents in control of state apparatus. On the other hand, social movements refers to mass involvement, movement and collective action in historically specific circumstances in which demands, resistances, negotiations, strategies and concerted joint mobilization leads to policy innovations, legislations, network, strategies and processes and thus lead to construction of state and its processes in a way (De, 2016).

2.3 Democratic set up demands constant selection, nurturing and development of capable leadership. If the best men and women in society are pushed back by the

political process, then politics acquires a pejorative connotation, it results in the collapse of ethics in public life and with it public confidence in governance also receives a set-back. In order to deal with this ordeal, one needs to adapt a human rights based approach so that 'good governance' does not remain a policy goal or an institutional aspiration (Kumaiyan and Padalia, 2013).

2.4 In addition, to be meaningful, democracy requires public deliberation and opinion formation; and these in turn need to be based on adequate information about public offices, but as we know, most of the information used to be either generated or held by the government. In fact, in a catena of judgments since early 2000, the Indian Supreme Court interpreted the constitutional rights to information in the electoral politics as requiring candidates for elected offices to disclose their financial assets, criminal convictions and educational background to the voters.

2.5 The overarching evidence bringing forth such limitation of democracy in practice and applications resulted in finding of solutions across spaces, forms and processes, to plug such deficits. Although such solutions and nuanced conceptualizations which proposed a paradigm shift in the governance structure with altering the basic relation between the government and the governed were given many names but the underlying principle remained same -that, control by citizens over their collective affairs, and equality among citizens in the exercise of that control are the key democratic principles (Bentham,1999).

2.6 Along with the concepts of good governance came the idea of 'new public management' which saw the convergence of demands for transparency, participation in decision making along with accountability. These ideas permeated into the mind space of average Indian public and combined with India's robust democracy turned

into a mass movement which propelled the law makers towards the monumental RTI act.

2.7 With deepening of India's democracy into a mature, vibrant and stronger version, we have seen and experienced many a mass social movements. But none more significant and none more critical and uplifting than the movement which led to formulation of the law of Right to Information Act. Especially, in contemporary India, the entire trajectory of the law and policy formulation of Right to Information Act, with several policy innovations like setting up of the Commission specifically tasked to administer and with dedicated oversight function, nomination of PIOs/APIOs in public offices and concept of social audit etc. has changed the face of democratic governance forever.

3. Evolution of the concept of Right to Information in India

3.1 For long India's administrative system was driven by secrecy, withholding of information from public, granting privilege to the ruler rather than the ruled, a systematic principle of exclusion where citizens were concerned. This all flowed from the rules in vogue from the British era administration viz. Official Secrets Act 1927, Indian Evidence Act and Civil Service Act where -in sharing of information was a punishable offence. This culture of secrecy had created an ambience of distrust, absence of confidence, partisanship, favoritism which ultimately culminated in massive disparity in development, discrimination and widespread corruption. The numerous scams and the extent of their financial implications bear testimony to this.

3.2 While discussing about right to information and its backdrop situation, we need to understand that the prevailing atmosphere at the time was of secrecy in government offices. It is pertinent to give a brief introduction about the laws and acts which

played pivotal role and contributed to creation of 'poverty' of information in India.

3.2.1 The Official Secrets Act, 1923

The culture of secrecy in the government offices of India emanated more or less from this act. The Official Secrets Act 1923 made disclosure of government held information an offense. This colonial law covered all kinds of information classified as 'secret'. And most interestingly, the term secret has not been defined in the Act, thus giving the discretion to the officials to classify anything as secret. The implicit spirit and message of the Act was to exclude citizens completely from government functioning. The effect of this denial of information to the people alienated them from public administration, stifled intelligent criticism of government and promoted arbitrariness in decision making.

3.2.2 The Indian Evidence Act, 1872

Three sections of the Indian Evidence Act relates to disclosure of information viz. sec 76, 123 and 124 and reflects the deeply colonial mindset of the then British government. While section 76 allows disclosure, sec 123 and 124 are prohibitive in nature. They forbid giving of evidence from unpublished official record. Similarly, section 124 states that no public officer shall be compelled to disclose communications made to him in official confidence when he considers public interest would suffer by the disclosure. But since the public interest is not defined, the easiest interpretation was not to disclose anything.

3.2.3 The Civil Services Conduct Rules

The members of the Central Civil Services are bound by rules called the Central Civil Services (Conduct) rules, which provides that no government servant should

communicate directly or indirectly any official document or its part to anyone who is not authorized. As may be seen, the emphasis in the rule was on denial of information to the public.

3.3 For a long time, not openness but secrecy was the hallmark of government functioning across the globe. Secrecy could be defined as an invention that comes out of the public secret. Further, public secret is that which is generally known but cannot be articulated (Taussing, 1999). If the public secret is a known - unknown, almost demanding defacement at some point all these public secrets erupt despite great strategies of concealment (Sundaram, 2015).

3.4 Under the veil of secrecy government decisions were not available for public scrutiny in India for nearly five decades. In order to address the prevalent deformities and democratic deficits, within the framework of available democratic means and vocabulary, civil society, people and other groups started clamoring. This available democratic mean was establishing accountability of the administration. Once the deficit gaps were articulated, thereafter the obstructions were identified, solutions were proposed in the form of a legislation to bring in transparency and accountability.

3.5 Accountability remains a main pillar of this empowering act. Whenever power of decision making is developed (transferred) from the original one (people/citizens) to the agent (government) then a mechanism has to evolve to ascertain the agent's accountability regarding the decisions they take, sanctions they place and tools they employ (Sharma, 2015).

3.6 Although in India accountability in traditional sense did exist viz. internal governmental mechanism of accountability, traditional checks and balances, audits and evaluation, quality checking, intra- governmental sanctioning powers etc. but

these proverbial accountability measures could be categorized as more or less horizontal accountability; whereas the new principles (rules of good governance, public interest and management) needed a more complex three-dimensional accountability which would enable individual citizens hold not only government but private bodies, corporate, NGOs, Political parties and judiciary also accountable. This budding concept gathered momentum in the form of a notion of right to information.

4. Movement for Right to Information in India

4.1 Democracy in India is a work in progress. The constitution of India which is the bedrock of India's democratic polity has undergone several amendments in the past seven decades. Apart from the free speech and equality in the eyes of the law, one can say universal franchisee, an egalitarian society and adoption of de-centralization culminating in the 73rd and 74th amendment in 1991 led to actual and final empowerment of grass-root Indians, both common man and woman.

4.2 While these democratic decentralization measures laid the foundation of a diverse, structured 3 tier local self-government, at the same time certain social movements attempted to change the face of structural governance in the country. These social movements – local, regional and national were either issue based, identity based or cutting across issue or identity based movements. Such social movements “whose politics are rooted in a transformative vision of social change often seeking to remain at least partially disengaged from the institutions of the state in order to work at the grassroots supporting and creating consciousness change and seeking to reframe public discourse” (Katzenstein et al. 2002).

4.3 The conflict between power and justice, it was assumed, would be resolved only by institutionalizing right to information. This assumption was duly supported by the

Supreme Court of India way back in 1975 in its landmark decision in the *State vs Raj Narain* case as also many other pronouncements, which had expanded the scope of 'right to know' with the meaning of 'right to freedom of speech and expression'.

4.4 There were sporadic demands for governmental transparency right since independence, however no sustained national campaign emerged till the middle 1990s. In the interim, the Supreme Court of India, in *State of UP vs Raj Narain, 1975*, ruled that, "In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings" (*AIR 1975 SC 865*).

4.5 Subsequently, in 1982 the Supreme Court of India, hearing a matter relating to the transfer of judges, held that the right to information was a fundamental right under the Indian Constitution. The judgment stated that: "The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest," (*SP Gupta & others vs The President of India and others, 1982, AIR (SC) 149, p. 234*). But lack of any formal call from the public for a systemic change prevented in forming any legislation.

4.6 In a country as big as India, corruption free governance, accountability and transparency cannot be left to only internal checks and balances of government machinery, nor to the investigating agencies and institutions alone. The problem of corruption exists because of existence of gap between theory and practice, policy and its implementation, ideals and reality. Right to Information law aimed to bridge this gap by setting up the facilitation process for free flow of information which forms the base of healthy citizen centric and people friendly governance structure.

5. From Slumber to Awakening

5.1 The initial calls for ‘openness’ in governance and administration traces back to Sixties and Seventies in India, although concrete action started much later. The legal position for RTI deepened through a number of Supreme Court decisions, given in the context of ‘Right to know’. A few of this landmark decisions are discussed below.

A) *Benett Coleman Co. Vs Union of India (AIR 1973 SC 783)*: The path-breaking case referred to Freedom of Press in India. Judge Sh. K. K. Mathew observed ‘it is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed.’

B) *Prabha Dutt Vs UOI (AIR 1982 SC 6)*: In the annals of having a transparent criminal justice system, free from arbitrariness, this case is historic. Court gave directions to the law enforcement agencies to ensure transparency in their functioning in order to avoid violations like illegal arrests, detentions, torture in custody etc.

C) *UP vs Raj Narain (AIR 1975 SC 865)*: In this critical judgment Justice

Mathew remarked that ‘in a govt. of responsibility like ours, where all the agents of the public must be responsible for the conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries’.

(Case references taken from Madhukar, 2013)

These significant cases formed the stepping stone and provided rational for the formulation of the powerful law which became India’s new principle for governance.

5.2 The RTI Movement in India was a multidimensional, temporally expansive movement which saw participation of many diverse groups, classes of societies starting from illustrious MKSS (Mazdoor Kisan Shakti Sangathan) to many landmark court verdicts like Raj Narain Vs UOI, involvement of civil society activists, NGOs, Academia and Media, Journalists and whistleblowers and last but not the least the ordinary citizen.

5.3 Through everyday persistent negotiations, mobilizing and converging these forces led to formation of committees to look into possibility of a legislation. The protests were in waves and cycles and the state response were in bits and pieces but it all joined together uniquely to formulate one of India’s strongest act ever.

5.4 The first and most well known right to information movement in India was the MKSS (Mazdoor Kisan Shakti Sangathan) which began its struggle in Rajasthan during the early 1990s. This very incident catapulted the demand for right to information into a national movement. In August, 1996, the National Campaign for People’s Right to Information (NCPRI) was formed following a meeting at the Gandhi Peace Foundation, New Delhi. NCPRI had activists, journalists, lawyers, retired civil servants and academics as its founding members. A draft for right to

information law was prepared by NCPRI which could form the basis of the proposed national Act.

5.5 Not only the outcomes as has been brought out in the above paras, but the process of RTI also bears testimony that it was a mass social movement in which people from all walks of life including grass-root activists and groups participated. And further, what needs to be noted that this movement emanated from the lower grass root struggles of common men and women seeking to establish their rights, which got converted into a mass movement, carried forward and grew into a national umbrella struggle where it got articulated and posited as a popular demand for legislation creating sufficient pressure which eventually culminated in enactment of a strong and robust legislation squarely within the bull-work of democratic boundary.

6. Events Leading to Enactment of the RTI Act 2005

6.1 The MKSS which has been a source of inspiration for civil society and activists not only in Rajasthan but across Pan-India was formed in 1990 and started its agitation and 'Jan Sunwais' from this time onwards. In response to their demands, the Consumer Education and Research Council (CERC), Ahmedabad came up with a draft Right to Information Law in 1993. But this yielded no result. Similarly, the attempt of Press Council of India (PCI) headed by Justice P. B. Sawant which prepared and presented a draft model Law on right to information in 1996 before GOI did not succeed. Though later it got updated and renamed as PCINIRD Freedom of Information Bill 1997, however, no concrete outcome came out of it.

6.2 But MKSS's appeal led to the formation of NCPRI (National Campaign on People's Right to Information) to address the issues at the national level. The government finally appointed a working group under Sh. H. D. Shourie in 1997,

which came to be known as 'Shourie Committee' to draft a legislation on freedom to information. The committee report and draft law though published in 1997, however was never introduced in the parliament or made into a law. Eventually, though this draft law was reworked into Freedom of Information Bill in 2000 and became Freedom of Information Act, 2002. Unfortunately, this act did not come into operation as no date of enactment was mentioned.

6.3 Among States, Tamil Nadu was the frontrunner bringing a legislation as early as 1997. This was followed by Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), MP (2003) and J&K (2003). Concerted efforts in other states too achieved some results, UP framed an executive code on access to information in 2000 and Odisha and Kerala prepared draft bills.

6.4 On enactment of Rajasthan's Right to Information Act in May 2000, the tireless campaign of MKSS bore fruit and it became clear that the demand for access to information was not merely information but for having transparency and accountability in the functioning of government. The campaign was now being recognized as leading to the wider movement for participatory democracy (Roy and Dey, article available online).

6.5 It may be seen from the above that MKSS acted as a catalyst in the pyramidal development of the historic law relating to freedom of information in the country. It was during MKSS's struggle for minimum wages that everyone understood the significance of transparency and access to information. This culminated in various states legislating their respective information laws and providing what is today known as 'statutory back -up' to the 'right to information'. On the national level the Bill viz. 'Freedom of Information Act, 2002' was presented in the parliament in 2002 and it

received President's assent in January, 2003. Though the Act got published in the Gazette on 06.01.2003 but its enactment date was never notified. Between 2002 to 2005 the nomenclature of Freedom to Information morphed into Right to Information as the Act of 2002 now got repealed by the Act of 2005 named 'Right to Information Act, 2005'.

6.6 Finally, on 15th June 2005, the President of India gave his assent to this historic law, Right to Information Act, 2005, which changed the state and citizen relationship, making the citizens equal stakeholders and decision makers in the process of governance. In words of M. Veerappa Moily, Chairman of Second Administrative Reforms Commission (hereinafter referred to as 2nd ARC), "The Right to Information Act is a path breaking legislation which signals the march from the darkness of secrecy to dawn of transparency".

7. Significance of RTI Act for the Disadvantaged and Marginalized

7.1 In order to promote transparency and accountability in administration, the Indian Parliament enacted the Right to Information Act, which came into force on 12 October 2005. The new law empowers Indian citizens to seek information from a Public Authority, thus making the Government and its functionaries more accountable and responsible. The Act has now been in operation for over seventeen years and has benefited many, including the poor and the underprivileged.

7.2 For decades, the policies and programs in India, envisioned, designed and implemented by the government failed to deliver the desired outputs and often led to complaints, mis-management and pilferage. Not only these flawed policies failed to translate to development but also many a times they would culminate in wide spread corruption also. The reason for this was rightly attributed to the opaque nature of

government administration system, lack of openness in sharing of critical information relating to decision making process and lack of information about monitoring status. The marginalized and disadvantaged strata of society, especially the rural poor who lacked the voice are the worse hit by the transmission losses which occur in the implementation of development programs. The onus for these situations is on the Indian bureaucracy which continued its British Legacy of being secretive in nature (Roberts, 2010).

7.3 Many new stories highlight how lack of information can bar the economically disadvantaged from opportunities. Because of this, as we know, many major reform movements of 20th century called for a shift in the role of citizens in public administration to correct the principle of discrimination and exclusion prevalent in the structure. The citizens were not included in any part of the decision making process, the main reason for this was that the government processes and mechanisms were shrouded in secrecy (Ghuman and Sohail, 2017).

7.4 The Act mentions the responsibility of the 'appropriate' Government to develop and organise educational programmes to advance the understanding of the public, and the disadvantaged communities in particular, on how to exercise the rights outlined in this Act (Section 26 (1) A). However, during a study PWC concluded that only 13% of the rural population and 33% in urban population were aware of RTI Act where as only 12% of the women and 26% of men were aware of RTI Act (Pricewaterhouse Coopers, 2009).

7.5 According to Cramer (1997) value lies in impact. The value thus could be increased more and more when it can serve for the disadvantaged in the remote areas those who have a real need for it. In a detailed analysis in their paper, Seth and Parida

(2005) has brought out how seats reserved for disadvantaged in Delhi university are wasted every year because the necessary information has not been available to the needy students. They opine while more government funds still need to be allocated to education, the discovery that allocated funds are going unspent suggests that the right to information must be a concerted primary goal (Seth and Parida, 2005).

7.6 Therefore, it can easily be concluded that the access to information can make a big difference in the exercise of people's choice, can politically empower ordinary citizens, especially the weak and vulnerable communities, the marginalized and the SC, ST, physically challenged group, the women, aged and the minorities to successfully participate, contribute and hence, benefit from the decision making process and development activities of government. Access to information empowers the citizen, especially the poor, to demand their rights, thereby leading to their welfare (2nd ARC Report, 2006).

CHAPTER - III

THE INTERNATIONAL EXPERIENCE OF RIGHT TO INFORMATION

Freedom of Information is the blood which runs in the veins of freedom of expression. - Reigner (Australian Judge)

1. The Notion of 'Freedom of Information'

1.1 The notion of 'freedom of information' (FOI), 'access to information' (ATI) and 'right to information' (RTI) are often used interchangeably to describe the same legal institution. On 10.12.1948, the UN General Assembly adopted and proclaimed the United Declaration of Human Rights and Article 19 of UNHR which embodies that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers (UDHR Article 19, 1948).

1.2 Right to information, today is considered the fourth wave of rights, equivalent to civil, political and social rights. The access to information (ATI) is seen as a powerful individual right since the turn of the millennium. Since the 1990s, there has been a veritable global explosion of freedom of expression, as new democracies and constitutions enshrined the right to information in form of legislations and courts came forward to enforce and upheld individual guarantees to seek information from public authorities. The importance of RTI can be understood in the context of universalizing the values of liberty, equality and democracy, which points towards the

global convergence of positive laws and underlying values in the post cold war era of the 90s.

2. United Nations and Access to Information

2.1 In the world arena, Sweden was the first country to enact this revolutionary law for access to information (known as ATI in short) way back in 1733. But the rest of the world only caught up in the 20th century.

2.2 In 1946, the General Assembly of United Nations passed a significant resolution 59 (1) which provided that freedom of information is a fundamental human rights and the touchstone for all freedoms to which UN is consecrated. It was also realized that the right to information is embedded in the Universal Declaration of Human Rights, 1948 (UDHR 1948). UDHR, in fact is regarded as the first and one of the most critical documents in the history of United Nations conferring freedom of opinion and information on everyone (Rattan and Rattan, 2017).

2.3 Apart from UDHR, other International Instruments which have conferred right of information include, The International Convention on All Forms of Racial Discrimination 1966, The United Nations Convention on Right of Child 1989 where even children have the right to freedom of expression and to receive information; The Rio Declaration on Environment and Development 1992, which mentions that freedom to access information on hazardous material which was endorsed by UN GA in 1997.

2.4 Subsequent to Rio Declaration, in 1993, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of opinion and expression. Part of the Special Rapporteur's mandate is to clarify the precise content

of the right to freedom of opinion and expression.

2.5 Right to Information is considered as an indispensable instrument for achieving universal human development. Based on this principle, more than 120 countries in the world have enacted Freedom to Information Laws, most have done so in the last three decades.

3. Commonwealth Experience

3.1 In 1980, in the Commonwealth meeting at Barbados, all Law Ministers stated that public participation in the democratic and government process was at its most meaningful when citizens had adequate access to official information.

3.2 Further to this, in 2000, the United Nations adopted certain principle on freedom of information, generally known as United Nations Principles on Freedom of Information 2000. The basic purpose of these principles was to set a standard for everyone to check whether the democratic internal laws actually permit access to official information and to give the government a clear and precise mandate to achieve maximum transparency following international standards and practices.

4. Global Trend

4.1 Getting a boost from the United Nation's principle on Freedom of Information 2000, many nations enacted information laws aiming to develop an informed citizenry. This move at the international level encouraged nations all over the world to enact their composite State Right to Information Law. As on date, more than 120 nations have framed their respective comprehensive Access to Information legislation.

4.2 Sweden was the pioneer to provide this law way back in 1733. In Sweden, it was

outcome of an intense struggle during the last half of eighteenth century between the two main political parties of Sweden, the Hats and the Caps.

4.3 Europe and USA: Subsequent to Sweden, however, the Access to Info law took a long time to come. Finland's Freedom of Information (FOI) legislation came in 1951, US in 1966 (later amended in 1974). Austria, Netherlands and France brought out their own laws in the 70s. Bulgaria, brought out the Act in June 2000.

4.3. European Parliament: Regulation 1049/2001 of the European Parliament grants right of access to official documents to citizens in member states. In Greece, the right has been granted to citizens to read all administrative documents since 1996. It has been made into a law in 1999.

4.4 Australia and New Zealand: Australia, Canada and New Zealand enacted their ATI Laws in the early 80s. Many states of US, Canada and Australia also have their own information laws.

4.5 Africa: In South Africa, information became a key to the liberation movement both within the government system and outside. So the architects of new SA recognized the freedom of information in their constitution. The Act was finally got adopted in February 2000.

4.6 Latin America: Columbian constitution grants the right to access to information from 1985. Mexico, though got a freedom of information law in 2002, but further work is necessary on this to bring positive results. In Brazil the constitution guarantees the information.

4.7 Asia and Middle East: Nearer home, Philippines recognized the right to access to information in the form of a Code of Conduct in 1987. Similarly, a Code on Access

was adopted in Hong Kong in March 1995 and Thailand enacted its official Information Act in December, 1997. The Act on Disclosure of Information by Public Agencies came into effect in South Korea in 1985 while the law was enacted in April 2001 in Japan. In Israel, the Freedom of Information Law is supported by Freedom of Information regulation 1999, though it is not very effective.

4.8 80s and 90s saw the emergence and flooding of world with the ATI Acts and laws mainly on account of end of the ‘cold war’ which led to an atmosphere of openness. This emphasis on openness instead of opaque structures, from arbitrary decisions making way for responsibility and accountability, from divine supremacy to transparency, ushered in the need to bring in laws like ATI or RTI across the world. Some of the countries to join the RTI world in the last decade are Brazil (2012), Bhutan (2014), Philippines (2016), Sri Lanka (2016), Argentina (2016), Tunisia (2016) and Seychelles (2018).

5. UNESCO and Right to Information

5.1 In 2015, the United Nations Educational Scientific and Cultural Organization (UNESCO) General Assembly declared 28th September as the International Day for the Universal Access to Information, to spread greater awareness amongst the people.

5.2 On 18th July 2019, the UNESCO conducted a global survey of countries to identify existing laws on the right to information and how they are observed. It found that 125 countries have enacted right to information (RTI) laws or similar provisions (ref: UNESCO’s report titled, Powering Sustainable Development with Access to Information: Highlights from 2019 UNESCO monitoring and reporting of SDG Indicators 16.10). The SDG Target 16.10 states that, “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation

and international agreements.”

5.3 As can be seen from the global statistics, compared to the European countries, few Asian countries have enacted ATI rules to strengthen citizen participation and the number is especially low in the countries of Middle East. A detailed study based on collected data shows a strong correlation between Right to Information and transparency by the Transparency International’s Corruption Perception Index. “It showed that countries which utilize RTI as an anti-corruption tool are less corrupt than those countries whose information is in iron-clad confidentiality” (Kumaiyan and Padalia, 2013).

CHAPTER - IV

RTI ACT 2005 - ESSENTIAL FEATURES

*A society that is not well informed is not a society that is truly free. -
IACtHR*

1. Mechanism of Right to Information

1.1 Information is key to participatory governance. It is the fundamental source of knowledge, awareness and the building block for informed decision making. RTI Act 2005 has certainly succeeded to a great extent and has brought about increased partnership between citizens and government authorities, has steered the government departments away from secrecy, towards open and participatory environment, has unearthed corruption, there-by fulfilling its cherished dreams of transparency. Thus, the RTI Act has provided the Indian citizens a much coveted freedom to know about public affairs, the underlying factors behind important policy decisions, enabling them to become contributing stakeholders instead of mere spectators or receivers of interventions and benefits given under various policies.

1.2 As has been brought out in the previous chapters, the formulation of RTI Act addressed the cumulative and perceived deficits of democratic processes. By allowing citizens to exercise their option to seek information it makes up for intense citizen involvements and thereby prevents hollow citizenship, by providing a legal mechanism to citizens it ensures vertical accountability and participative decision making thereby broadening the democratic discourse. Similarly, accountability and transparency of authorities are guaranteed by it. Further, the Act is posited in such a

way as to make ordinary citizens also act to uncover, punish and therefore prevent corruption. Last but not the least by providing an appellate mechanism embedded in the implementation architecture of the Act provides ample opportunity to information seeker to achieve both horizontal accountability along with controlled checks on the administrators.

1.4 The RTI Act covers all public authorities at the central, state, and local levels, including bodies owned, controlled, or substantially financed by the government. This includes government departments, public sector undertakings, local bodies, educational institutions, and other bodies that receive public funds.

1.5 Under the Act, any citizen can file a request for information with the relevant public authority. The request must be made in writing, either in hard copy or through electronic means, and must specify the information sought. The public authority is required to provide the information within 30 days of receiving the request, unless the information falls within one of the exempt categories specified under the act.

1.6 The exempt categories include information that would harm national security, commercial interests, personal privacy, and other protected interests. However, even in cases where information is exempt, the public authority must provide reasons for denying the request.

1.7 The act also provides for the appointment of Information Commissioners at the central and state levels to oversee the implementation of the act and resolve disputes between citizens and public authorities. The Information Commissions have the power to impose penalties on public officials who violate the provisions of the act.

2. The Salient Features of RTI Act

2.1 Some of the salient features of this monumental act are discussed below.

2.1.1 Public Authority

As per Section 2(h) of the RTI Act, 'Public Authority' refers to any government or semi-government authority or institution established under the Constitution, or any law made by the Parliament/ State Legislature and notification issued by the appropriate government. It also includes body owned, controlled and substantially financed by the government and even NGOs substantially financed by the government.

2.1.2 Right to 'Information'

Information being the key operational word in this legislation has been defined in detail in the Act. Section 2 (j) of the RTI Act, 2005, contains the definition of Right to Information. It is defined as the rights of a citizen to seek any information accessible under this Act, which is held under control of any PA and includes the right to inspection of work, documents, records etc. The 'record' has been specifically described under Section 2 (i) of the Act as including any document, manuscript and file and electronic records, microfilm, facsimile etc. Citizen can take notes, extracts or certified copies of documents or records, take certified samples of material and obtain information stored in form of diskettes, floppies, tapes, video cassettes to access this information.

2.1.3 Suo Motu Disclosure

This is one of the fundamental aspects of the law, laying down the provision of obligations of PAs regarding mandatory disclosure about role and functioning of PAs

under Section 4 of the Act. Pro-active disclosure of critical information by the authorities is the essence of transparency as envisaged by the Information Law. It requires the PAs to make suo motu disclosure in public interest through various means of communication.

2.1.4. Exemption from Disclosure of Information

RTI Act harmonizes the dissemination of information with withholding and protecting certain information which may be critical or vital for our national interest. Such information has been placed under exempted category in Sections 8, 9, 10, 11 and 24 of the Act. Subjects and information of these sections are kept outside public domain. Certain security and intelligence organizations have been exempted under Section 24. But the beauty of RTI Act 2005 is that there is exemption to the exemption, i.e. the exempted information has to be shared when pertaining to corruption, human rights violations and moreover when larger public interest warrants disclosure.

2.1.4 Three Tier System

RTI Act 2005 is implemented through a three tier hierarchical structure. The first tier consists of PIO and APIO is (Public Information Officer and Assistant Public Information Officer respectively) who are mandated to provide information within 30 days. The second tier is designated as the First Appellate Authority or Departmental Appellate Authority (FAA/DAA) who deals with the appeals. The Central Information Commission or State Information Commission (CIC/SIC) form the third tier of the pyramid as the apex appellate authority under the RTI regime. As per section 19 (3) of the Act, any citizen can file a second appeal before the CIC against the order of FAA, if he/she is not satisfied.

2.1.5 Complaint

One of the unique features of the RTI Act 2005 is the provision to file complaint. In certain cases when the remedy of appeal is not available or the applicant is aggrieved, complaint can also be filed before the Central Information Commission (CIC) and State Information Commission (SIC) as the case may be under Section 18 of the RTI Act. This can be done because of (i) where the PA has not appointed a PIO or (ii) the PIO has refused to accept an RTI application, or (iii) the PIO has not given a response within the specified time limit or (iv) the PIO has given incomplete, misleading or false information or (v) where unreasonable fee has been demanded by PIO, etc.

2.1.6 Fees and Cost

The cost of accessing information under the RTI Act 2005 in India is as low as Rs.10 and that too is not necessary for people who belong to the Below Poverty Line. However, in 2012 certain basic costs like photocopying and making diskette etc. were introduced by the Nodal authorities.

3. Unique Aspects of RTI Act 2005

3.1 Locus Standi: One of the most unique aspect of RTI Act 2005 is the information seeker need not give any ID proof or reason for seeking the information. On the other-hand, it's incumbent upon the Public Information Officer (PIO) to give justifications for not supplying the information.

3.2 Exemption to Exemptions: Another critical aspect of the Act is although certain organizations are excluded under Section 24 of the Act from disclosure but if the information relates to Human rights or Corruption, the same has to be furnished.

Further, whenever information relating to 'life and liberty' has been sought the same has to be provided within 48 hours.

4. The Institutional Mechanisms

4.1 Under RTI Act PIOs, APIOs and FAAs have been appointed by the Public authorities for dealing with the request, supplying the information, ensuring suo motu disclosure etc. The Act also included guidelines for establishing institutional oversight mechanism in form of Information Commissions at both Centre and State level (viz. CIC and SICs) to steer the implementation of the Act, interpret the rulings, address the appeals and grievances and initiate punitive measures against erring public authorities.

4.2 This special aspect of providing an appellate cum oversight mechanism embedded in the implementation architecture of the Act to oversee its implementation, ensure compliance to the laid down provisions, monitor its growth and act as arbitrator cum ombudsman has made RTI Act 2005 of India unique as also effective.

CHAPTER - V

DEVELOPMENT TRAJECTORY OF RTI ACT IN INDIA

Information is the seed for an idea and only grows when it's watered. - Heinz V Bergen

1. Corruption Perception Index and India

1.1 In the Transparency International index (transparency.org/available online) India has been ranked at 85 in the 'Corruption Perception Index' with a score of 40. But the measurement of right of access to information is still in its infancy even after the initiatives taken by UNESCO, OECD etc.

1.2 On the other hand, as per 'Access Information of Europe' Global right to Information, places India within the top 10 nations at 8th position with 127 points out of total 150 points (the RTI Ratings). It examines particular features of a strong legal regime for RTI – divided into 7 categories:

1. Right to Access
2. Scope
3. Requesting Procedure
4. Exceptions and Refusals
5. Appeals
6. Sanctions and protections
7. Promotional measures

1.3 The performance shows significant achievement of India's Transparency Law and

its depth and spread, with India getting a score as high as 85% (125 points and more) and a few countries scoring as low as 33% (Access Information Europe/ available online).

1.4 A vast no of countries in the world now have a RTI law, with many joining in the last decade or so. A statistical analysis shows the quality of law has been improving steadily, especially in the countries formulating the laws in the recent years.

2. The Performance Yardsticks of RTI Act (Based on Available Secondary Data)

2.1 The data speaks volumes and narrates its own story. The statistics available in the CIC website shows the distance traversed by this unique law in the past decade and half. The success of the Law could be measured from the fact that there has been improvement in almost all the parameters over time. Lacs of applications and appeals filed under the Act demonstrates that people are aware about their right and have been utilizing it to access information.

2.2 During the year 2021-22, the CIC had registration of 2278 PAs; 66,680 ACPIOs; 24,631 CPIOs and 10,075 FAAs. Further, during the said period a total of 18.32 lac requests were dealt under RTI (OB 4.10 lac plus receipt 14.21 lac). This receipt of 14.21 lac was 87,424 (about 6.55%) more than the previous year 2020-21 which had seen 13.33 lac RTI requests. In addition to this, it was seen that out of the 14.21 lac applications 53,733 (3.78%) were rejected. During the year, 2.05 lac applications were transferred to other PAs, 1.63 lac appeals were received out of which 1.05 lac (about 65%) appeals were disposed off.

2.3 As against this, during the year 2020-21, the CIC had registration of 2275 PAs; 66,278 ACPIOs; 23,012 CPIOs and 9660 FAAs. Similarly, during the said period 16.82 lac total requests were processed (OB 3.48 lac plus receipt 13.34 lac). This 13.34 lac requests was 40,000 less (about 3%) than the previous year 2019-20 which had received 13.74 lac requests. During this period, 51,390 (3.85%) requests were rejected and 1.95 lac applications were transferred to other PAs. Moreover, 1.50 lac appeals were received out of which 90,982 were disposed off.

2.4 Apart from the RTI requests and Ist Appeals, during the year 2022, total 19,604 2nd Appeals were received with CIC and 28,793 cases were disposed off, leaving a balance of 29,213 pending cases. A further analysis shows that during this period, out of total 19,390 cases (appeals plus complaints registered), 4545 cases (nearly 12.06%) were returned by CIC on the grounds of premature appeal, time barred, multiple RTI, duplicate case etc.

2.5 The sheer magnitude of PIOs, APIOs, FAAs registered by the Public Authorities points towards the massive penetration and impact of the RTI Act. It may also be noted that there is a constant rise in the number of these registrations across the years. Further, if the number of requests and appeals are any indicator, that too speaks volumes about the trust and utility of the Act as a tool to usher in an era of transparency and accountability. It is pertinent to add here that during the above periods, PIOs shared desired information for roughly 96% of the requests while the DAAs disposed about 60% of the appeals annually. This too indicates towards effectiveness of the Act.

(All data collected from CIC website www.cic.gov.in Annual report and other MIS reports, accessed on 10.02.23)

3. Analysis of Key Statistical Parameters

3.1 The impact of this monumental Act could be better understood by analyzing the secondary data to see the extent to which RTI Act has succeeded in promoting transparency and accountability. A comparative picture of the RTI Requests received, transferred, cases where information was refused, number of first appeals etc. for last 5 years is presented in Table 1 below for better appreciation. Similarly, the particulars of second appeals and complaints received and disposed at the Central Information Commission (CIC) have been brought out in the Table 2 below. Analysis on this data is presented at paragraph 3.2.

Table 1: A Snapshot of Number of RTI Requests Received, Transferred, Information Rejected and First Appeals Received for Last 5 Years

Year	Opening Balance	No. of RTI Requests Received during the Period	Total Requests	No. of Requests Transferred (%)	No. of First Appeals Received (%)	No. of Cases where Disciplinary Action was initiated against Officers	No. of cases where Information Rejected (%)
2017-18	215466	1233207	1448673	155812 (12.6)	140810 (11.4)	3	63206 (5.13)
2018-19	259919	1370129	1630048	186084 (13.6)	151481 (11.1)	9	64344 (4.7)

2019-20	310110	1374315	1684425	182988 (13.3)	152354 (11.1)	23	58634 (4.27)
2020-21	348410	1333802	1682212	195403 (14.7)	150036 (11.2)	16	51390 (3.85)
2021-22	410907	1421226	1832133	204607 (14.4)	162990 (11.5)	16	53733 (3.78)

(Data collected from CIC Annual Reports available on CIC website. All percentage are with reference to the requests received)

Table 2: A Snapshot of Second Appeals/Complaints Received and Disposed by the CIC for Last 5 Years and the amount of penalty imposed and recovered during the period

Year	No. of RTI requests Received	No. of Second Appeals/Complaints received (%)	No. of Second Appeals/complaints Disposed	No of Second Appeals/complaints Pending at the end of the period	Penalty amount imposed (Amt in Rs.)	Amount of Penalty Recovered (Amt in Rs.)
2017-18	1233207	25815 (2.09)	29005	23541	3362000	1639484
2018-19	1370129	22736 (1.66)	17188	29655	3041000	3210527
2019-20	1374315	22243 (1.62)	16720	35178	1062000	640500
2020-21	1333802	19183 (1.44)	17017	38116	1486750	1114225
2021-22	1421226	19604 (1.38)	28793	29213	655350	495700

(Data collected from CIC Annual Reports available on CIC website. All percentage are with reference to the requests received)

3.2 Analysis

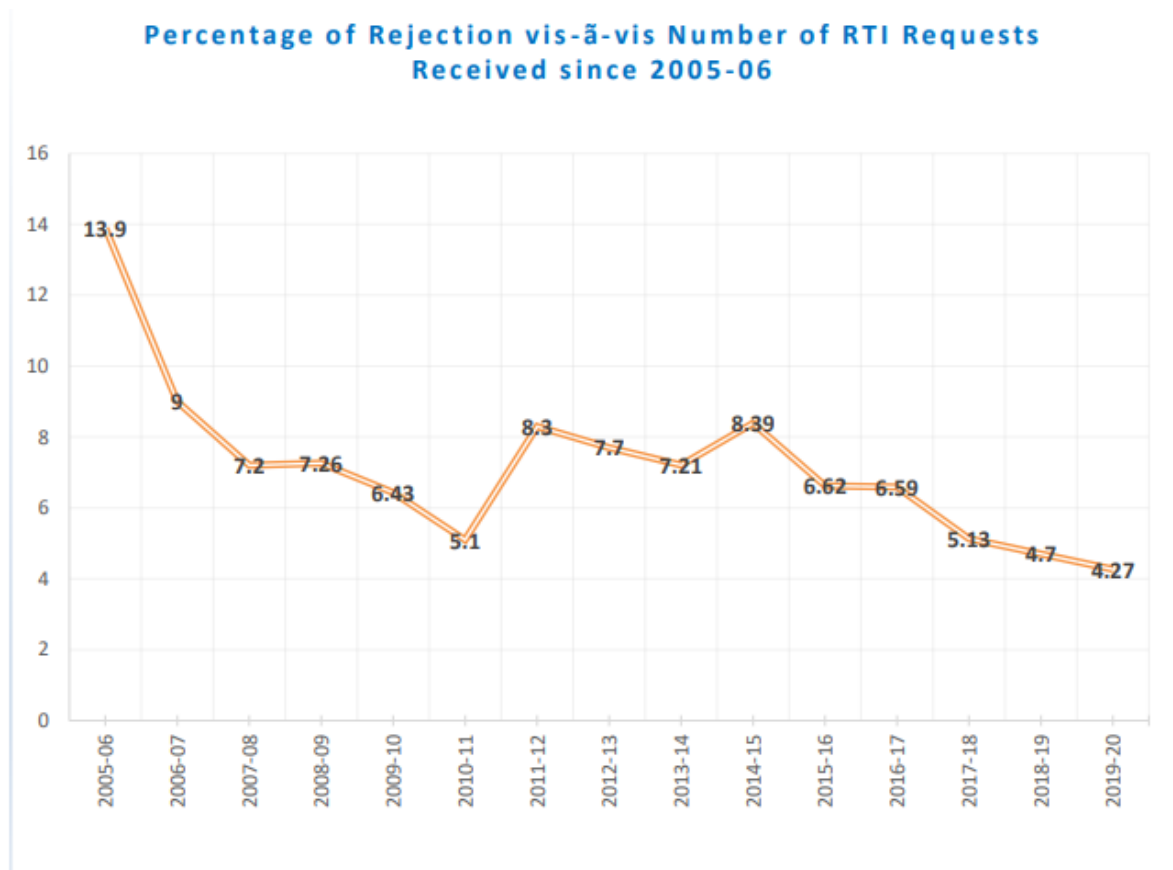
3.2.1 It may be seen from Table 1 that in the past 5 years the number of RTI requests have gone up steadily. It may also be seen that although the total number of cases where information was refused has gone up but its percentage vis-à-vis the total requests has decreased steadfastly. This speaks about maturing of the system and improved response of

the PIOs/APIOs. The percentage of such cases in which information was rejected in the past few years is seen to be between 3% to 4%. This used to be much higher and in the range of 7% and more up to 2013-14. This might have impacted the number of appeals and complaints received at the CIC, the Second Appellate Authority, as it may be seen from Table 2 that there has been a steady decline in the number of such appeals and complaints.

3.2.2 It is interesting to note that the amount of penalty levied by the CIC has come down drastically in the recent years compared to the past period (Table 2). However, during these last 5 years period, the number of cases transferred have increased. As far as the First appeals are concerned the figure seems to be more or less unchanged at 11% of the original RTI requests during the last five years (Table 1).

3.2.3 The percentage of cases in which information was rejected across the years starting from the year of launch of the Act in 2005 to the pre - Covid times is presented through a comparative chart to highlight the difference. It may be noted that this decline has gone further down to 3.85 and 3.78% in 2020-21 and 2021-22 respectively (Ref: Table 1).

Chart -1: Showing the Percentage of Rejection from 2005-06 to 2019-20



(Chart quoted from CIC Annual Report 2020-21, available online)

3.3 Further, it may also be noted from Table 3 that disciplinary action has been initiated against more number of officers relating to administration of RTI Act in the recent years compared to the past period (Table 3).

Table 3: Showing the no. of Disciplinary cases initiated against Officers for past 5 years

Year	No. of Cases where Disciplinary Action was initiated against Officers in relation to administration of RTI Act
2017-18	3
2018-19	9
2019-20	23

2020-21	16
2021-22	16

(Data collected from CIC Annual Reports available on CIC website)

3.4 While studying the secondary data for understanding the performance of RTI Act, it was revealed that CIC compiles and uploads a monthly report on the number of cases registered/ returned due to various reasons and how many of these are re-submitted. The data for last 4 years is compiled and presented in the table as follows.

Table 4: Showing CIC “Monthly Report on Registered and Return Cases” for Past 4 years

Year	Total Dak Received	Total Appeals/ Complaints	No. of cases returned (Procedural incompleteness)	No. of cases not resubmitted out of returned (%)	No of cases returned due to premature appeal, Time Barred, Multiple RTI, Duplicate case (%)	SIC Matter
2019	41843	22906	11835	8686 (20.76)	4211 (10.06)	2086
2020	35228	18972	11206	9179 (26.06)	3786 (10.74)	1396
2021	38455	19759	13293	10730 (27.9)	3872 (10.07)	1815
2022	37680	19390	11906	9963 (26.44)	4545 (12.06)	1825

(Data collected from the CIC Reports available online. All percentage calculated with reference to the Total Dak received during the year)

3.5 Analysis:

It may be seen from the table above that about 30% to 35% cases are returned every year by the Commissionerate due to procedural incompleteness as per the provisions of RTI act 2012 and out of this, about 5% to 7% gets resubmitted after fulfilling the requirements, but more than 25% cases are not re-submitted. Moreover, another 10%-12% cases are returned by the commission on the grounds of duplication, multiple RTI etc. From the above, it could be concluded that there is a need to educate the public and spread awareness about the procedures, provisions and mechanisms of the RTI Act. Such awareness programs and workshops would have multiple advantage.

4. Transparency Audit Report, November 2018

4.1 The report on “Transparency Audit of Disclosures u/s 4 of the Right to Information Act by the Public Authorities” was submitted to Central Information Commission, New Delhi in November 2018 by A. N. Tiwari & M. M. Ansari. The report primarily focused on the suo motu disclosures done by public authorities. Out of 2092 PAs, to whom an instrument was sent, only 838 (40%) PAs responded. After examining their responses and evaluating their performance by giving a score, the report found that only 158 PAs (19%) had a score between 90-100% so could be placed in Category A, 157 PAs (19%) scored between 80-89% there by qualifying to be in Category B, 118 PAs (14%) scored between 70-79% there by qualifying to be in Category C, 113 PAs (13%) with score between 60-69% in category D and remaining majority around 292 PAs (35%) scored below 60% and were placed in category E.

4.2 The report also highlighted efforts made by some of the PAs to promote transparency pro-actively in their function. During the study of various facets of online disclosure, it was found that several government agencies had done quite

serious work specially in regard to introduction of advanced transparency – promoting technologies, use of social media and improving and standardizing website designs, among several other similar initiatives. The study of these initiatives outside the remit of the RTI Act lent credence to the point that transparency is a much broader and deeper concept and multi-dimensional too, which cannot be limited by any straitjacket (Transparency Audit Report, 2018).

4.3 It could be seen from the above report as also the data and figures quoted supra that the Right to Information Act has travelled far from its commencement and has gone deep into the workings of our governance system bringing in an atmosphere of openness and transparency.

CHAPTER - VI

LITERATURE REVIEW

Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws. - Plato

1. Implementation issues relating to RTI Act 2005

1.1 An open administration is a good proposition for both, the administrator and public (Pope, 2003). The RTI Act 2005 marks a paradigm shift in the annals of the democratic republic of India. It opens yet another door for strengthening the process of participatory democracy, participatory development and corruption - free governance through citizen empowerment and giving the people of India an effective weapon to fight corruption (Bava, 2009).

1.2 According to Rattan and Rattan (2022), though we are moving in the right direction of enhancing transparency through the Right to Information Act, 2005 there are some important loopholes in the legislation. Dhaka (2016) adds that even after passing of 11 years, there are inadequacies in the implementation of the Actwhat is most important at this juncture is to give an honest chance to the Act to operate without creating negative stumbling blocks and bottlenecks (Dhaka, 2016). The RTI Act, which was considered to be one of the strongest and powerful laws ever to be enacted for access to information, is being perceived as in-effective and pointless. In fact, some also describe the act to be on life-support and dying a slow but certain death (Chhibber, 2020).

1.3 According to Ghuman and Sohail (2017) the Act is slowly moving away from its desired goals and objectives because of various reasons which include lack of awareness, improper maintenance of records, poor compliance to public disclosure of information mentioned under Section 4 of the Act, inconvenient fee depositing mechanism, lack of sustained training mechanism for employees and misuse of the Act etc.

1.4 The ingenuity of the Indian public is at its best while innovatively using the RTI Act. Though the Act is mainly about seeking information, and given the fact that it is often far more effective than other available remedies for inaction or delay, the people of India have perfected methods by which they not only register complaints but actually get them acted upon, all in the guise of seeking information (People's Monitoring of RTI Regime in India, 2014).

1.5 However, from the limited experience we have had in implementing this Act we find that various issues have come up since October 2005 which merit the attention of all authorities, activists, citizens, media, NGOs and Parliamentarians so as to make the Act more effective mainly for the citizens. Some of the issues which are rattling, nagging the minds of people need debating throughout the length and breadth of the country so as to reach towards some concrete solutions, interpretations and clarifications for further improving the effectiveness of the Act. This will further strengthen the democratic institutions in the country (Sawant, 2007).

2. Recent Experience

2.1 Recently, in an online Article of 'The Wire' (August, 2022), the decisions of the Gujarat Information Commission (GIC) banning 10 RTI applicants since January, 2021, was discussed by the National Campaign for People's Right to Information

(NCPRI) titled 'Banning citizens from using the RTI Act: A discussion on the legality of orders of information commissions' in July/August 2022. It emerged from the discussion that the SICs are stepping up, banning people and blacklisting RTI applicants for various reasons including the arguments that the applications were frivolous, repetitive or simply very vexatious because they wasted the time of public authorities.

2.2 Other reasons included seeking third-party, voluminous information; having mala fide intentions; wasting the time of public authorities; or the Commissions being duty-bound to prevent the misuse of the RTI Act. Of those banned, it was pointed out that one has been banned from filing RTI applications in the entirety of Gujarat while all the others have been barred from filing applications with particular authorities from whom they were seeking information earlier (Online Article in 'The Wire' August 2022).

2.3 In an unprecedented move, the Gujarat Information Commission has blacklisted nine persons for harassing officials by filing repeated RTI. The Commission stated that these nine persons were 'repeatedly using the RTI Act', 'harassing officials by filing RTI applications', filing queries with 'malafide intentions' and it also found an applicant 'cantankerous'.

2.4 Apart from these nine individuals, the GIC has also barred one Hitesh Patel of Petlad town in the Anand district from filing RTI applications for five years and imposed a ₹5,000 penalty on him for misusing the RTI Act (Online article in the Hindu, 2022).

2.5 In a similar case in July 2022, at Chandigarh, the SIC Punjab has issued a ban against an applicant, reports TOI. In a decision that may act as a deterrent for those

abusing the RTI Act by moving repeated applications, the Punjab SIC debarred/black listed a self-styled activist and ‘whistle blower’. The person cannot seek information under the RTI Act or file any first or second appeals for one year. The direction was issued by IC Maninder Singh Patti while hearing a bunch of 13 appeals filed by a resident at Faridkot. The Commission observed that the conduct of the appellant not only amounts to ‘abuse’ of the processes of law but also links in a state violation of the statement of objectives of RTI Act (TOI RTI Act Abuse. Online article, 2022).

3. Words of Caution

3.1 As early as in 2008 India’s the then Prime Minister spoke out against it at the annual convention of the Central Information Commission. Similar concerns were voiced by him in 2011 and 2012. (relevant extracts of the PM’s speeches given below).

“I must also take this opportunity to caution that we need to strike a balance between the need for disclosure of information and the limited time and resources available with the public authorities. Also, vexatious demands should not be allowed to deprive genuine information seekers of their legitimate claims on limited public resources. I do hope your Convention will bring out certain suggestions to deal with this situation.”

(Dr. Manmohan Singh, 2008 - <http://cic.gov.in/>)

“Even as we recognize and celebrate the efficacy and the effectiveness of the Right to Information Act, we must take a critical look at it. There are concerns that need to be discussed and addressed honestly. I had mentioned last time the need to strike a balance between the need for disclosure of information and the limited time and

resources available with the public authorities. A situation in which a public authority is flooded with requests for information having no bearing on public interest is something not desirable. We must, therefore, pool all our wisdom, our knowledge, and our experience to come to a conclusion on how to deal with vexatious demands for information, without at the same time hindering the flow of information to those whose demands genuinely serve public interest.”(Dr. Manmohan Singh, 2011 - <http://cic.gov.in/>)

3.2 As has been brought out above, the Act puts stringent obligations on the PIOs to act as a facilitator for the information seeker. But as has been noted by Dhaka (2016), “many times the PIOs are very junior officers, who are unable to collect information from the departmental employees. While only PIOs can be penalized under the act, they have not been provided with adequate infrastructure for performing their duties and discharging their responsibilities. This demonstrates the existing flaws in the act which need addressing. The experience of 11 years shows that the response to the RTI act has been positive, however, there have been large scale instances of misuse of the act, blackmailing of the officers, apart from the extra burden on the government exchequer”.

3.3 Sounding a note of caution to all the public authorities of the Central and State, the Department of Personal & Training Government of India issued a circular, warning them to desist from supplying such information to the applicant which is nonexistent and non-available, but is based on drawing assumption. The circular states that, ‘public information officer is not supposed to create information or interpret information or solve the problem raised by the applicant or furnish replies to their hypothetical questions.’

3.4 The 11th annual report of the State Information Commission (SIC) draws attention to possible ‘misuse’ of the RTI Act by certain users. While the Public Information Officers (PIOs) and Appellate Authorities (AAs) have been speaking about the issue, this perhaps would be the first time when the SIC admitted to such ‘misuse’. The various benches of the SIC have come across cases of a single person filing multiple appeals. Similarly, there have been cases of misuse of the financial leeway given to below the poverty line applicants. Misuse of the RTI Act has been noticed in some instances and it is the duty of social organizations and activists to take cognition of the same and devise measures to stop it (Indian express Online article).

4. 2Nd ARC and Right to Information

4.1 Although the subject has not been researched or studied by many so far, therefore availability of literature is limited, but one of the seminal works available is the ‘First Report’ of Second Administrative Reforms Commission (2006). At Para 6.9 titled ‘Frivolous and Vexatious Requests’ the commission notes that certain instances have been brought to the notice of the commission in which the requests were patently Frivolous or Vexatious (or mala fide). There are also cases in which public servant under a cloud and facing grave disciplinary charges have repeatedly attempted to use the Act to intimidate, harass or at times even humiliate seniors with requests that have been vexatious.

4.2 2nd ARC further records that if safeguards are not provided in such situations, there could be three dangers. First, such frivolous and vexatious requests may overwhelm the system and defeat the very purpose of the Act. Second, the even tenor of the administration may be paralyzed, seriously undermining delivery of services.

Third, if public servants facing serious charges successfully resort to such tactics directly or through proxies it may lead to breakdown of discipline, in-subordination and disharmony in public institutions. The commission therefore feels that adequate safeguards should be provided against vexatious and malicious requests (2nd ARC, 2006). But unfortunately, the recommendations of the Commission though partially accepted by the government did not find a mention in the Act.

4.3 A further comparative analysis of International laws of information given in the said report of 2nd ARC clearly shows that there are clauses of ‘Absolute’ exemption available in the laws of United Kingdom, South Africa and Canada with UK and South Africa specifically providing for ground of refusal ‘as the request is manifestly frivolous or vexatious’. As against this, India’s RTI law has very specific exemptions which are highly restrictive in nature and no provision for refusal on vexatious ground is available (Ref: 2nd ARC report, 2006).

4.4 A critical review by Jaytilak Guha Roy (2007) summarizes that ARC had made quite a few laudable recommendations so as to make RTI act more meaningful and effective. The sooner the recommendations of the ARC are examined and implemented by the Union and the State governments, the better would be for the state and public authorities in our country (Roy, 2007).

5. Cases other than Actually Seeking Information

5.1 At a discussion on RTI Act (2017) CIC Yashovardhan Azad referred to a flood of vexatious appeals and demanded that a mechanism be devised to deal with frivolous applications which seek volumes of information (The Wire, 2017).

5.2 According to Saxena (2007) there is likelihood that the requestor may not turn up to pay the additional fees once the information is ready. It is also unfortunate that the language being used by requestors is at times, intemperate and impolite; to say the least. The RTI Act is being used by business competitors of public authorities. In certain cases, some NGOs are indulging in getting projects sanctioned from international agencies which they complete by simply filing a RTI application in the Central Ministry concerned, which in turn has to procure the data from various states and districts. The Commission has now started looking at some alternative remedies while dealing with information requests. It now insists that if a normal internal mechanism for assessing information is good enough, recourse to RTI Act may not be permissible.

5.3 In their study, People's Monitoring of RTI Regime in India (2014) collected, compiled and presented relevant information to throw light on the complaints about misuse of the Act. Some of their findings are as follows: From time to time there is negative propaganda against the RTI Act and accusations that it is being misused to file frivolous, vexatious, or voluminous applications. It is alleged that such applications waste the time of the public authority without serving any public purpose. Our analysis suggests that less than 1% of the applications were vexatious or frivolous, and a little over 1% were voluminous, in terms of requiring a lot of information (see Table 5.6).

5.4 Table 5.6 of 'People's Monitoring of RTI Regime in India' Showing types of Misuse/other than RTI requests received as RTI applications is reproduced below.

Table 5.6: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>Problematic Applications</i>							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentage						
Vexatious	0%	0%	1%	0%	0%	0%	0%
Frivolous	1%	0%	0%	0%	0%	0%	0%
Unclear	0%	0%	0%	1%	0%	0%	3%
Voluminous	1%	2%	3%	1%	0%	1%	1%
Infringement of privacy	0%	1%	0%	1%	1%	1%	0%
Long time span	1%	1%	2%	1%	2%	1%	4%
Complaint - not RTI	4%	0%	2%	1%	2%	2%	0%
Grievance - not RTI	2%	0%	3%	3%	2%	2%	1%
Asking for help - not RTI	2%	4%	2%	6%	3%	3%	4%
Others	0%	0%	0%	0%	1%	0%	1%

(Table Courtesy: People's Monitoring of RTI Regime in India)

5.5 Jain and Jain (2009) note in their article that the RTI requests, at times, are not simply to satisfy one's doubt but also to derive vicarious pleasures. Public interest which the Act intends to secure is missing in many RTI applications. There have been instances where applicants seek policy related information and many a times the applicants have vested interests. At times the Act is used by people to harass their colleagues or blackmail the authorities. Moreover, there are numerous instances of applicants demanding irrelevant or frivolous information. Such a selfish and unintelligent use of the Act will defeat the high objectives of the Act. It has also been observed that the Act is frequently being used by government servants, mostly disgruntled, under disciplinary proceedings to settle their service matters. It is also being misused by people interested in gathering evidence in their litigation cases.

5.6 As every coin has two sides, one being useful and other the flipside, is misused. Same is the case with the RTI Act too. As the law doesn't enquire about the purpose of the information which is shared with people, the supplier of information viz. the

PAs/PIOs are often at the receiving end not knowing where or how the information is being used. There are many cases where junior officers try to monitor the functioning of their bosses, by using the RTI Act. This exasperates the seniors, and perhaps often that is the purpose of it. A good example of this was the RTI application filed by a junior functionary of the DOPT (Department of Personnel and Training) asking his seniors for certified copies of the pollution check certificates of official vehicles used by DOPT officials (People's Monitoring of RTI Regime in India, 2014).

5.7 Shailesh Gandhi, ex CIC, puts the percentage of such vexatious applications and appeals under 10% of the appeals and complaints. According to him, the applicants who file a large number of RTI applications can broadly be divided into the following categories:

1. Those who filed RTI applications with the hope of exposing corruption or arbitrariness and hoped to improve and correct governance.
2. Those who filed RTI applications repetitively to correct a wrong which they perceived had been done to them. Their basic intention is to get justice for themselves.
3. Those who used RTI to blackmail people. This category largely targets illegal buildings, mining or some other activity which runs foul of the law.
4. Those who use this to harass a public official to get some undue favour.

All these categories together comprise around 20% of the total appeals and complaints before the Commission. These represent persistent users of RTI who are generally knowledgeable about appeals and procedures. Generally most of us have a strong aversion for the third and fourth category who are making it a money-earning racket or putting pressure to get an undue favour. The last two categories certainly does not exceed 10% of the total appeals and complaints (Gandhi, 2017).

6. CJI of India on RTI Act 2005

6.1 Similar opinions and concerns have been voiced by CJI also. Right to Information good law, but being misused says Ex. CJI S. H. Kapadia. “In RTI matters, since I took over as CJI, I have given answers to all questions except very few things. But the kind of questions and their number is also exceeding limit.” He gave samples of the irrelevant questions that were being put to the Judges taking away their precious time which could have been utilized in studying petitions and case materials. “Why did you attend Nani Palkhivala Lecture? What time did you leave? Did you eat lunch or had tea? Which lawyer invited you for the function? We are working hard but we are not being able to concentrate many a times because of these kinds of questions” the CJI said (TOI India Times online article).

6.2 In an online article in December 2019, similar serious concerns were voiced by a bench of Supreme Court Bench, comprising of Chief Justice S. A. Bobde, Justices B. R. Gavai and Surya Kant. The Bench was quoted as saying by PTI “People who are in no way connected to an issue file RTI. It sometimes amount to criminal intimidation, which is a nice word for blackmail. We are not against the right to information. But there is a need for guidelines. It cannot be an unrivalled right...We want to find a way to stop the abuse of RTI Act. Let somebody in the business do this. One can understand if a connected person file an application under RTI. It cannot be (the case) anybody seeking anything..There has to be some kind of filter and some guidelines(Indian Express Online article, 2019).”

6.3 The Bench referred to the huge flow of RTI applications a serious problem, and remarked that though it was not opposed to the transparency law, there was a need to evolve a mechanism to ensure that only affected or concerned person take recourse to the legislation. While sharing his personal experience as a judge of the Bombay High Court, the CJI said that an official once told him that functioning in Maharashtra *mantralaya* (ministries) was ‘paralyzed’ because of queries under RTI.

6.4 Even the Central Information Commission (CIC) had cautioned professionals in particular and the people in general against using the RTI Act to settle personal or professional scores. In a case, of a petitioner seeking personal and official details of one of his relatives, then Information Commissioner M. M. Ansari, observed that unfortunately, the provisions of RTI are being increasingly used by a large number of persons for settling personal and family disputes, including divorce and claim of maintenance related cases.

6.5 Singh (2020) in his online article has defended the utterances of the apex court quoted at para 6.2 in the following manner. One of the criticisms made is that the apex court had gone beyond the relief that had been demanded. Since the applicants had sought transparency in appointments, the court should have stuck to that one issue instead of straying into other observations. If this narrow approach is to be the method, then many path breaking verdicts would not have come viz. the *Kesavananda Bharati versus State of Kerala* (1973). Here, the petitioner, His Holiness Kesavananda Bharati, had petitioned the Supreme Court against the Kerala land reforms which had affected the properties of his religious institution. It was a straightforward matter of right to property, but the court proceeded to also lay down what came to be called the ‘Basic Structure Doctrine’ of the Constitution of India.

6.6 Yet another example is that of Maneka Gandhi versus Union of India (1978). Here, the petitioner had approached the apex court against the revocation of her passport, and here too the issue was simply that of deciding whether the revocation was right or wrong. The court used the occasion to not only expand on the fundamental rights enshrined in the Constitution but also held that the various rights should be read in totality and not in isolation. Both these verdicts set the tone for how the fundamental rights are to be seen and interpreted (Singh, 2020).

7. Some Loopholes Present in the Act

7.1 According to Paranjape (2014) in the provisions of RTI Act, as is indicative from the statement of objects and reasons, the said Act is for securing access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. In studying cases of RTI law it has been brought out that it is being misused by casual or habitual information-seekers for two obvious reasons. Firstly non-applicability of *locus-standi* rule to RTI case and secondly, non-requirement of giving reasons for seeking information leave ample scope for non-serious information seekers to misuse it for their personal interest.

7.2 It was witnessed that in a lot of cases, the RTI Act was actually being misused by people for satisfying their personal grudges in service related matters, for getting the orders passed with respect to inquiries, for seeking clarifications and interpretations, filing multiple RTIs for seeking same information, etc. and thereby harassing the Public Authorities (Rathi, 2018).

7.3 Instances of misuse of RTI Act are numerous. It has also been observed that the Act is frequently being used by disgruntled government servants, usually under

disciplinary proceedings to settle their service matters. It is also being misused by people interested in gathering evidence in their litigation cases. On the other hand, issues of frivolous complaints filed show the misuse of the Act by the citizens. The filing of frivolous applications and appeals not only deviates the resources of the public authorities but is also against the basic purpose of the Act (Ghuman and Sohail, 2017).

7.4 Even the Central and State Information Commissions are aware of the fact, but currently, there is no provision available to restrain such offenders. According to State Information commissioner in Nagpur Bhaskar Patil, who has vast experience in dealing with the cases under RTI Act, the information sought was sometimes misused for alleged blackmailing. However, providing information can't be stopped as there is no provision of asking for a motive or reason to be asked to the RTI applicants. Although many times the information sought violated an individual's privacy, but without addressing the faults in the process it may not be possible to prevent entrenched interests from abusing the Act (Legal service India E-Journal).

7.5 One of the significant aspects of this blatant abuse is that the individuals misusing the Act are adept at twisting the provisions of the rules to make it appear as if their personal vested interest is actually public interest. This is particularly harmful. India is gifted with brilliant minds, but negative side is that many in India misuse brilliance of their minds for negative deeds. Miscreants have started misusing RTI Act in India...Based on RTI workshops with public-authorities, one gets practical feedback about the grim situation of large-scale misuse of RTI Act faced by public-authorities (Agarwal, 2016).

8. Compliance by the Public Authorities

8.1 Dhaka (2016) observes the public authorities are yet to give shape to any time-bound action plan for the implementation of RTI Act, especially volunteering suo-motu disclosures. It may be attributed to the reason that under this Act, there are no penal consequences for public authorities for incomplete or insufficient disclosures.

8.2 Rathi (2018) has noted that in a lot of the cases, the CPIO either denies the information quoting unavailability initially and then submits a fresh reply at later stages of the proceedings, provides wrong/ misleading reply which not only affects the applicants but adds to the stages of proceedings and ultimately leading to the wastage of time and efforts not only of the applicant, but the public authority and the commission as well, which could have otherwise been utilized had correct information at the initial stage been provided.

8.3 Some public-authorities (also) are in habit of misusing section 6 (3) of RTI Act by unnecessarily transferring RTI applications to hundreds/thousands offices even though information might exist with the transferring public-authority itself (Agarwal, 2016).

8.4 According to Deshmukh (2020), the Right to Information Act, 2005 which has empowered citizens to demand information from public authorities, has been time and again diluted by the establishment in an attempt to neutralize the act's power to ensure transparency and accountability. Mostly, it is the public information officers (PIOs), most of whom may not have competency or knowledge to assess what should be denied but who deliberately sabotage dissemination of information, that has led to the subverting of the powerful transparency law. Twisting the knife in the wound is the judiciary which, time and again, has given judgments against the spirit of the transparency law.

8.5 Delving further into the responsibilities of the PAs/PIOs Ghuman and Sohail (2017) notes that, it may be noted that Section 4 (1)(a) of RTI Act stipulates that public authorities have to ensure that all records that are appropriate to be computerized (digitized) and connected through a network, so that access to such records are facilitated. Full conformity to this section yet to be achieved and digitization, management and well-keeping of office records remains a major challenge in the implementation of the act. One of the surveys has revealed that 38% of the PIOs observed that delay in replying to an RTI application is mainly due to mismanagement of records.

9. CIC on the Public Authorities

9.1 According to Ex CIC Dr. Acharyulu, after 15 years of the RTI Act, we should be looking at the possibility of misuse, not from petitioners but from the angle of officers. When I was CIC, I observed that most of the PIOs are using exemption clauses without any application of mind. This is because they are entrusted with the heavy responsibility of defining the exemptions which they find hard to do as they do not have the knowledge, experience or infrastructure to assess what constitutes disclosures and non-disclosures. This, in my view, is a very serious stumbling block in the implementation of the Act.

He further added that the burden of the PIO has further increased terribly with the amount of discretion as laid out by November, 2019 judgment of the Supreme Court. He says the PIO is now expected to understand the terminology and language used by the petitioner and think of the probable consequences of disclosure and entire nuances of the RTI Act. The PIO is expected to follow the principles of interpretation as the Supreme Court does and then decide whether to approach the competent authority or

higher officers of public authority to decide the larger public interest. And because there are two or three levels of public interest to justify the disclosure in Section 8, the PIO is bound to get confused. Because, in some of the provisions, the PIO can decide all by himself, while, in others, a competent authority will give the decision. So this being the dichotomy, he (CPIO) is not independent and is under instructions of the superior by law. This is a general limitation (Deshmukh, 2020).

9.2 Ex CIC Gandhi (2017) observes that, the misuse of RTI by the PIOs at times is deliberate and some other times unavoidable. It may be submitted here that the powerful find RTI upsetting to their arrogance and hence try to discredit it by often talking about its misuse. It is accepted widely that freedom of speech is often used to abuse or defame people. It is also used by small papers to resort to blackmail. The concept of paid news has been too well recorded. Despite all these, there is never a demand to constrict freedom of speech. There is widespread acceptance of the idea that statements, books and works of literature and art are covered by Article 19 (1) (a) of the constitution, and any attempt to curb it meets with very stiff resistance. However, there is no murmur when users of RTI are being labelled deprecatingly, though it is covered by the same article of the constitution.

It is unfortunate public authorities were not castigated for flouting their obligation to ensure that information is available suo moto under section 4 of the RTI Act to the public and instead citizens are upbraided for using their fundamental right. There was no evidence for the statement made by the apex court, yet the latest plea before the Supreme Court appears to rely on this judgment.

10. Other Factors Affecting the Implementation of the Act

10.1 It has been acknowledged by many authorities that RTI Act has a few loopholes which needs correction. Some of the loopholes have been narrated below:

The RTI Act makes the right to information a tool to control the abuse of administrative discretion, yet it has significant flaws that impair the right. The loopholes are:

- a) Section 2(h) does not provide a clear cut definition of public authorities, which may lead to ambiguity. Since some NGOs get funding directly or indirectly from the public, the question arises as to whether these NGOs are public authority.
- b) Section 7(1) of the legislation stipulates that the applicant should get the information requested within 30 days of receiving it. If the time limit is exceeded or the work is not completed, then no proviso is there about informing the applicant or other actions.
- c) The Act does not lay down any qualification or experience for the nomination of CPIO. In fact, even if an official is unaware of the Act, he or she may still be assigned as a CPIO. Also, new employees and appellate authorities should be trained periodically to ensure that they are well aware about the provisions of the Act.

10.2 The RTI Act, 2005 mandates that information be provided to the public within 30 days after application, or face a fine. It is not feasible to collect all information accurately and timely for each application. Elections, holidays, emergencies, disaster management, and obsolete data from various branches can cause delays in information delivery (Legal service India E-Journal).

11. Case Law References

11.1 A significant part of the literature on this topic is contained in the landmark judgments of Hon'ble courts including the Supreme Court of India decision in the case of CBSE vs Aditya Bandopadhyay (2011) and The Delhi High Court judgment in the W.P of Shail Sahni vs Smt Valsa Sar Matthew & Others (2016) which are noteworthy in this context.

11.2 In addition to the above, in order to enable the PAs to guard against misuse, the CVC circulated its circular Dated 10.03.2017 to all the CVOs (of various Pas) communicating CIC's decision dated 25.06.2014 in the case of Shri Ramesh Chand Jain vs DTC. This circular of CVC had to be issued because of detection of rampant misuse of RTI Act. The said CIC-verdict observed as under:

“Even a single repetition of RTI application would demand the valuable time of the public authority, first appellate authority and if it also reaches second appeal, that of the Commission, which time could have been spent to hear another appeal or answer another application or perform other public duty. Every repetition of RTI application which was earlier responded will be an obstruction to flow of information and defeats the purpose of the RTI Act (CIC Decision in Shri Ramesh Chand Jain vs DTC).”

11.3 There are a number of cases, decisions and catena of judgments which have been considered significant and which have been often quoted and cited while deciding other cases. A few of such cases are discussed below. All these cases are available in the 'open source'.

12. Landmark Decisions of Supreme Court on the RTI Act

12.1 Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay

(2011) 8 SCC 497

12.1.1 In its much quoted judgment of the case, Supreme Court rightly held that the right to information is a precious right and hence should only be used for genuine public interest. Right to information and relevant information are intended to be effective tools in the hands of responsible citizens to fight corruption.

The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption.

Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens.

The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.

12.1.2 Right to information implicit in Article 19(1) (a) which guarantees freedom of speech and expression is sacrosanct but it is not fair that everyone should approach the court after obtaining information under RTI Act without giving notice to the concerned authorities. The petitioners should first approach the government before moving the Court for redresses of their grievance.

12.2 SC's order in Shaunak H Satya v ICAI (2011)8 SCC 781

12.2.1 Democracy aims to bring about transparency and accountability to contain corruption. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information.

We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Sections 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of

public authorities and the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

12.3 Misuse of RTI in the guise of whistle- blower

In many cases RTI Act has been misused by certain disgruntled employee within the organization who assumes the role of conscience keeper. But in the pretext of public interest all they seek is to settle a personal grudge.

12.4 Nimmagadda Prasad v. CBI (AIR 2013 SC 2821)

12.4.1 The Supreme Court in this case expresses that RTI Act has made it possible to expose the corrupt public officials and whistle blowers especially play an important role in cleansing an organization so as to bring in transparency and openness in the system of governance. They act as a vigil mechanism to detect and deter fraud. But there are cases not wanting when “*RTI Act has been misused by certain disgruntled employees within the department or organization who assume the role of so called whistle blower to accomplish their ulterior motives or take revenge against their rival competitor by tarnishing his image as a corrupt person*”.

12.5 Manoj Mishra v Union of India (2013) 6 SCC 313

12.5.1 Supreme Court in this case warned against misuse of RTI law by persons who assume the role of vigilante merely for the sake of cheap publicity or for achieving some ulterior or selfish motive. In the instant case, appellant had indulged in making scandalous remarks by alleging that there was widespread corruption within the sensitive atomic organization. The Court found that conduct of the appellant in this case did not fall within the high moral and ethical standard that would be required of a bona fide whistle blower.

13. Important High Court Cases on RTI Act

13.1 Diwakar S. Natarajan v State Information Commissioner

(AIR 2009 AP 1362)

13.1.1 Expressing concern over misuse of RTI law, the High Court of Andhra Pradesh, observed that:

“Indiscriminate efforts to secure information just for the sake of it, without there being any genuine and useful purpose to serve, would only put enormous pressure on the limited human resources that are available. Diversion of such resource for this task would obviously be at the cost of the ordinary functioning. Beyond a point it may become harassment for the concerned public agencies. Therefore, much needs to be done in this direction to impart a sense of reasonability on those who want to derive benefit under RTI Act, to be more realistic and practical in approach.”

13.2 Shail Sahni vs. Valsa Sara Mathew and Ors. MANU/DE/1897/2013

(W.P © 406/2016)

13.2.1 The Delhi High Court in its judgment has categorically directed to deal with such misuses sternly and effectively failing which people’s faith in the act would be diminished which seems to be the case at present.

“Consequently, this Court deems it appropriate to refuse to exercise its writ jurisdiction. Accordingly, present petition is dismissed. This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with, otherwise the public would lose faith and confidence in this “sunshine Act”. A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. A copy

of this order is directed to be sent by the Registry to Defence and Law Ministry, so that they may examine the aspect of misuse of this Act, which confers very important and valuable rights upon a citizen.” (emphasis supplied)

“Keeping in view the width and amplitude of the information sought by the petitioner, it is apparent that the prayers in the writ petition are nothing short of an abuse of process of law and motivated if not an attempt to intimidate the respondent. In fact, even two days ago, this Court had dealt with a writ petition filed by the present petitioner being W.P.(C) 784/2014 wherein equally wide information had been asked for under the RTI Act.”

“this Court deems it appropriate to refuse to exercise its writ jurisdiction. Accordingly, present petition is dismissed. This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. A copy of this order is directed to be sent by the Registry to Defence and Law Ministry, so that they may examine the aspect of misuse of this Act, which confers very important and valuable rights upon a citizen.”

Since, despite the aforesaid judgment, the petitioner is still filing general, irrelevant and vague queries, this Court dismisses the present writ petition with costs of Rs.25,000/- to be paid by the petitioner to the Lok Nayak Hospital, New Delhi within a period of three weeks.

13.3 K. K. Sharma v. State of Haryana (W.P (C) No. 4930 of 2011)

13.3.1 Hon’ble Punjab and Haryana High Court in this case observed that:

“Clearly, the provisions of the RTI Act would not be available to a disgruntled employee seeking information as regards public officials which is otherwise personal in nature on account of furtherance of a personal vendetta.”

13.4 Rajni Maindiratta v Directorate of Education (North West – B) (W.P.(C) No. 7911/2015)

13.4.1 The Hon’ble High Court of Delhi has held that:

“Though undoubtedly, the reason for seeking the information is not required to be disclosed but when it is found that the process of the law is being abused, the same become relevant. Neither the authorities created under the RTI Act nor the Courts are helpless if witness the provisions of law being abused and owe a duty to immediately put a stop thereto.”

13.5 Shail Sahni v Sanjeev Kumar (W.P (c) No. 845/2014)

13.5.1 In this case, the Hon'ble High Court of Delhi has held that:

“In the opinion of this Court, the primary duty of the officials of Ministry of Defense is to protect the sovereignty and integrity of India. If the limited manpower and resources of the Directorate General, Defense Estates as well as the Cantonment Board are devoted to address such meaningless queries, this Court is of the opinion that the entire office of the Directorate General, Defense Estates Cantonment Board would come to stand still.”

“This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law.”

13.6 Paardarshita Public Welfare Foundation vs. Union of India (UOI) and Ors.

13.6.1 W.P.(C) 6802/2010

In this case, Delhi High Court slapped a fine of Rs 75,000 on an NGO, which used the Act to abuse two MCD engineers and seek distasteful personal details about them. Though the plea in the court was for probing the corruption indulged in by the two engineers, the court found NGO Paardarshita Welfare Foundation had questioned the parentage of the engineers through an RTI application. Observing that it amounted to abuse of law, judges said,

“Seeking information on parentage of a person and his medical history is unwarranted and uncalled for. RTI law was not enacted for abusing people and seeking personal details.”

13.7 Chandrakant Vrajlal Fichadiya v. State Of Gujarat (C/SCA/20547/2016)

13.7.1 In this case the petitioner filed an application for third party information that could only be revealed after giving the notice to third party with his consent or if the public interest in disclosure outweighs harm to personal privacy. *The provisions of RTI Act, as is indicative from the Statement of Objects and Reasons of the said Act is for securing access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. This Court finds that such pious object of the Act is on the contrary misused by the petitioner that there is no public interest in disclosure.*

13.8 Hardev Arya v Chief Manager (Public Information Officers) & others (Rajasthan High Court AIR 2013 Raj 97)

13.8.1 In this case, the petitioner sought information about details with regard to opening of bank account of an institution named Arya Kanya Gurukul Chhawani, Sheoganj (District Sirohi) which was a registered society running educational schools etc. The petitioner having doubt about the legality of the said institution sought information allegedly for safeguarding public interest at large. The Bank refused to disclose information claiming exemption under *Section 8(j)* of the RTI Act and *Section 13* of the Banking Companies Act, 1970, and informed the petitioner that it being a third party information, cannot be imparted to him because it was not in public interest. Disposing of the writ petition, the High Court of Rajasthan held that the petitioner was neither the member of Arya Kanya Gurukul, Chhawani nor he had disclosed in his petition how he is interested with the functioning of the said institution and there appeared no relationship of the information sought with any public activity or interest. *Therefore, it was evident that the purpose of obtaining information was to misuse or threaten the institution and it is for this reason that the petition deserves to be dismissed. The Court warned that RTI has been enacted to bring transparency in administration and strengthen the faith and trust of the people in the governance of the country. Therefore, the RTI law is a vital weapon in the hands of the citizens but at the same time, it cannot be allowed to be wielded unlawfully so as to be abused or misused by unscrupulous information-seekers. The conduct of the petitioner in this case was far from fair and therefore, the writ was dismissed with a cost of Rs 10,000/- which the petitioner was directed to deposit with the Free Legal Aid Board of the High Court, Jodhpur within one month*(Case references contain case number and date for ease of retrieval. All available in open source).

14. Critical Decisions of CIC on Misuse of the RTI Act

14.1 Jagdish Kumar Koli Vs. Department of School Education & Literacy, MHRD, GOI

CIC/SA/A/2015/001849 Decision Dated 25.02.2016

14.1.1 The appellant in this case filed the RTI application seeking information about daily progress report on some letters with respect to his promotion to which the CPIO replied that the available information was provided to him and that he has filed a number of representations on the same issue to the Bal Bhawan.

14.1.2 In this case afterwards heard all the submissions by both the parties, commission perused the record and other papers presented during hearing; and holds that:-

“There is no merit in the second appeal filed by the appellant; the appellant has sufficiently used the RTI Act for his self-interest, without any public interest for his personal vengeance against the public authority for denying him promotion/enhanced pay”.

*“Therefore, the Commission admonishes the appellant for the **misuse the RTI** Act just for the sake of vengeance forcing them to devote all their valuable time, energy, etc. The appellant had chosen to send email directly to the Commission, after the hearing was over, which was also perused by the Commission and finds no merit in the same. The Commission, therefore, rejects the appeal, with admonition”.*

14.2 Mr. Narayan Singh vs Delhi Transport Corporation

14.2.1 The Commission observed him in dozens of the cases and found him misrepresenting the matters very cleverly, hiding information, contradicting himself etc. He takes every matter to first and second appeal, deliberately so that such

attendance itself would harass the officers. He drafts such RTI questions that at least half dozen officers to attend the first and second appeals. It appears he has a property dispute with his brother Hoshiar Singh or some other private vengeance. The Commission observed that *it has seen many cases of misuse of RTI but, this appellant is the worst among all and his vengeance against his brother has no bounds at all. It is surprising that the DTC has not taken any steps to stop his blatant misuse of RTI. His multiple, repetitive and vexatious questions about trivial things of his brother resulting in the choking the system in DTC is the most serious misuse of RTI Act. Because of this, the Public Authority is being engaged continuously to answer his meaningless questions. Dozens of RTI applications and hundreds of questions filed against Mr. Hoshiar Singh are either his personal information or third party information. Appellant relentlessly pursues as if he does not have any other work, causing criminal waste of time of PIOs, FAAs and the Commission.*

14.3 Sanjeev Sharma v.CPIO Indian Air Force

14.3.1 In this case, the Commission ordered in its judgment:

“Commission sparingly acknowledges that this is an attempt on the Appellant’s part to fight corruption within the IAF, and based on the facts on record, the Respondent’s submissions also find equal consideration. On the hindsight, however noble the end of this vociferous attempt of bringing about probity in the functioning of IAF would have been, fact remains that the means adopted by the Appellant regrettably speaks volumes of his ignorance of the spirit of the RTI Act.

RTI Act is a powerful tool in the hands of the informed citizenry, and it has to be utilised while keeping in mind the balance between the applicability of different provisions therein. These provisions while allowing maximum disclosure, have also

limited the access to information under Sections like 8 & 9 of the RTI Act and other Sections like 2(f), 2(h), 7(9) for such interpretation, which does not obliterate the primary purpose of the Act.

As much as the CPIO has a statutory responsibility of complying with the provisions of the RTI Act, it is also expected of the RTI Applicants to not transgress the spirit of the RTI Act and resort to clogging the functioning of the public authority by filing mundane RTI Applications merely claiming that it is intrinsic to fighting corruption. Appellant is a learned advocate apart from being an ex-serviceman, such recourse to RTI Act is perhaps more of an abuse of the process of law.

It would have been cogent for the Appellant to have filed RTI Applications systematically in a structured manner i.e. with specific requests bringing them clearly within the definition of Section 2(f) of the RTI Act, which would have avoided the apparent relentless prejudice done to valuable resources of time, money and paper.

It appears that the Appellant has grossly misconceived the idea of exercising his Right to Information as being absolute and unconditional.”

14.4 Asking for frivolous information or to settle personal score

The spirit of the RTI Act is to bring transparency and curb corruption and not a tool for vendetta or promoting ulterior motives in the garb of seeking information. Therefore the provisions of RTI cannot be used to settle the grievances or to arbitrate on disputes.

14.5 Jawahar Singh v. Department of Information and Publicity

CIC/SA/A/2015/001463

14.5.1 In this case the appellant filed the RTI application seeking information pertaining to an advertisement on Doordarshan channel depicting claim of Delhi Government CM Mr. Arvind Kejriwal that there have been deductions in bill payable with respect to electricity & water. The appellant sought information as to whether the claim of the Chief Minister is indeed correct with respect to the fact that there is widespread happiness in every household pursuant to such deductions of bills. Also, amount spent on such advertisements. He sought how many homeless; slum dwellers were given housing facility ever since Mr. Kejriwal came to power in Delhi.

“The Commission advises the appellant not to misuse the precious Right to Information for disclosure of all and sundry information by asking disorganized, vague and voluminous information under the RTI Act. The appellant is therefore recommended to limit and prioritize the requirement of information, so that the same could be provided with ease. The cost effectiveness aspect of disclosure of information also cannot be discarded”.

14.6 Smt. Uma Kanti & Shri Ramesh Chandra v. Navodaya Vidyalaya Samiti
No.CIC/OK/C/2007/00362 & 367 Dated: 5 January 2008

14.6.1 In this case, being aggrieved by transfers the appellant tried to harass the Public authorities in the pretext of seeking information.

Decision of CIC: *This is perhaps the worst case to have come to this bench showing the worst misuse of the RTI-Act. The Commission directs the Respondents not to consider the RTI-applications filed by this Appellant and his wife since the RTI cannot be turned into a tool for vendetta of an employee against his Organisation for some grievance that one harbours against it. The present case is an example to the*

ridiculous length to which a person can take a beneficial piece of legislation and make a mockery of it.

*The Commission feels that this case together with some others like **Shri Faqir Chand Vs. North Western Railway, Bikaner** (No.CIC/OK/A/2007/00951) show the necessity of some provision in the RTI-Act for taking punitive action against the Appellants who seek to misuse the RTI-Act in such a blatant fashion.*

14.7 C Sunil vs. CPIO, Water Works Department, Secunderabad Cantonment Board

14.7.1 *“Commission in this case heard a number of Appeals of the same Appellant and concedes with the contention of the FAA that most of the RTI Applications are frivolous in nature.*

It appears that the Appellant has grossly misconceived the idea of exercising his Right to Information as being absolute and unconditional. Appellant is hereby cautioned to take note of the aforesaid dicta and is advised to exercise his right to information judiciously in future.”

14.8 H. J. Mahtre v. Commissioner of Central Excise CIC/MA/A/2006/00221.

14.8.1 In this case the appellant is superintendent of central excise working in the commissionerate and he has sought information from his own office. The information sought relate to the details of cars used by the officers, the facilities like stereo and other accessories with which the cars are equipped, the extent of their use for office and personal purposes, residential address of the commissioner for a particular period. The CPIO contended that the appellant has personal interest, rather than public interest, in seeking information. Since the appellant was under suspension and

suffered a major penalty, he was trying to harass and malign the staff, particularly senior officials. He has therefore been putting frivolous application the RTI Act. In this case after hearing both side submissions,

“Commission admonished the appellant for seeking voluminous and frivolous information. Commission further submitted that the appellant being an official from within the organization is part of the process of creation and generation of information, which are in his possession. He has also not indicated any bona fide public interest in seeking information. In view of his dubious credentials as reported to the commission, which is indeed the matter of evidence, and frivolous nature of information sought, he is undoubtedly seeking information for promotion of the personal interest rather than public interest”.

14.9 Ramakrishna v. Ministry of Steel CIC digest (Vol. II) 2186. (1207).

14.9.1 Section 228 of IPC is reproduce herein: - Intentional insult or interruption to public servant sitting in judicial proceeding.—Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

14.9.2 In this case CIC advised the appellant to refrain from misusing the provisions of RTI Act, failing which appropriate action would be taken against him. The Scope of RTI Act is very clear that is to provide the information that exist and in accordance with the RTI Act and rules the information can be provided. Any application which is made against the spirit of RTI Act should be discouraged by imposing penalty.

14.10 Asking for voluminous information

14.11 Dinesh K. Gohil v. All India Radio dt. 27.02.2008, CIC Digest (Vol. II) 2079 (1074).

14.11.1 In this case Commission held that there should be some provision for punitive action against the Appellant for **misusing the RTI** Act asking for desperate and **voluminous information** thereby making the application itself meaningless. While leaving in a huff, the Appellant left behind all the 1800 odd pages of information that had been supplied to him telling the Commission that he was throwing all the pages here. Nothing could be a more solid proof of the fact that he actually did not require the information but had put in an application only for harassing the public authority and trying to put it under undue pressure.

14.11.2 *The conduct of the Appellant is, therefore, an intentional insult caused to the Presiding Officer of the Commission sitting in a judicial proceeding and the same, therefore, is an offence punishable under Section 228 of the IPC. This further reveals that the appellant never needed any information and that the application under RTI Act was moved by him only with a view to causing harassment and wrongful loss to the Public Authority. In fact, the information has been extracted from the PIO of the Public Authority holding out a threat of eventual imposition of penalty on him. This conduct of the Appellant is tantamount to an offence punishable under Section 189 of the IPC. Under the circumstances, the Commission, directs the Respondents (Station Director of All India Radio, Ahmedabad), to take steps for filing a complaint case under the appropriate provisions of penal law against the Appellant in the Court of the CMM/CJM.*

14.11.3 Section 189 of IPC is reproduced as follows:- Threat of injury to public servant.—Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

14.12 J.I. Buck v. State Bank of Saurashtra2010 (1) ID 291

14.12.1 In this case the appellant had sought a large number of information which covered not only all branches and offices of the bank but also pertained to several years in time.

“The CIC upheld the view of the CPIO that collection and collation of such voluminous information would indeed divert resources of the Public Authority disproportionately from its normal public duty. In the instant case, the appellant agreed to revise his request for information

and file a revised request before the CPIO concerned to enable the CPIO to provide him the information”.

14.13 Deepanshu Kamboj Vs. CPIO, National Highways Authority of India,CIC/NHAI/A/2019/129053 Dated 2.11.2019

14.13.1 The Appellant sought tracking details of 2 vehicles with nos. HR 55 W 6168 and RJ 06 GA which were headed to Delhi from Mumbai on 28.09.2017, morning and timings of reaching these vehicles to Delhi.

Decision : *In the instant case, the Appellant wants CPIO to collect & collate information from Toll Operators on Mumbai-Delhi National Highway regarding movement of two vehicles belonging to one of his Suppliers in a commercial deal. Commission observes that collection and collation of information sought in the instant RTI Application will disproportionately divert the resources of public authority thereby attracting provisions of Section 7(9) of the RTI Act. No relief is ordered in the matter.*

14.14 Repetitive RTI Applications

14.15 Amar Kumar Jha vs. Indian Army

14.14.1 After taking into consideration the response of both the Appellant and the Respondent in this case, *“the commission has observed that appropriate reply has been provided on the RTI Application by the concerned CPIO’s leaving no scope for intervention of the Commission.*

There has been consistent record of adverse remarks made by this bench for the Appellant’s apparent misuse of the RTI Act to garner some sort of relief in his service related grievances. It is also imperative to note that Appellant also has a number of RTI Applications and Appeals filed on behalf of him through his wife Munni Jha seeking the same kind of information as him.”

14.15.2 Commission strongly denounced the approach of the Appellant of seeking information on repetitive matters resulting in misusing the channel of RTI Act. *“The Appellant appears to be doing so despite the express knowledge of the fact that he is pursuing a matter of no larger public interest, rather concerning only his perceived personal grievance. It is appalling to note that the public authority is being*

unabashedly harassed by filing umpteen vexatious RTI Applications. It is also not clear as to what kind of information will satisfy the Appellant as it appears he is merely intending to compel the public authorities into addressing his grievances. This being the ulterior motive is manifest from the bare perusal of the queries of these RTI Applications.”

14.15.3 The larger issue then here is the repetitive nature of these RTI Applications and the motivated attempt at putting the public authority as well as the Commission to test. To highlight this larger issue, it is imperative to refer to certain observations of the Commission in this regard. Some of these being:

- File No.CIC/MA/A/2006/00374 & 375 decided on 28.08.2006

“...the nature of queries and the information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public interest, was dominant, as the appellant had sought redressal of grievances.”

- FileNos.CIC/SG/C/2011/000760,CIC/SM/A/2011/000926/SG,CIC/SM/A/2011/001111/SG,CIC/SG/A/2011/002909 decided on 17.10.2012

“...though the right to information is a fundamental right of the citizens, it cannot be used indiscriminately to fulfil the demands of one individual...The Commission is also conscious of the fact that it is financed by the poorest man in this country who may be starving to death. The complainant by repeatedly filing similar RTI applications and appeals with the respondent public authority and the Commission, is wasting public resources.”

14.16 Mr. Ashok Kumar Goel v. Department Of Trade & Taxes, Govt. of NCT of Delhi CIC/AD/C/2011/001410

14.16.1 In this case over 100 RTI Applications being filed by the Appellant with various Government departments with the sole intention of seeking information about the Third Party and harassing him. It has submitted by the Third Party that even after obtaining all the documents from the various departments, the Applicant had failed to prove what public interest was being infringed by the Third Party. The Third Party also contended that the Applicant had even tried to blackmail the suppliers supplying goods to the Third Party thereby having dealt adverse blows to its business. According to the third party, since the Appellant and he are in the same business any disclosure of information as sought by him in the RTI application will harm his position in the market as the information deals with commercial confidence. The Commission observed that the RTI application in this case is nothing but a vindictive tool being abused by one of the warring brothers in order to draw benefit out of putting his own brother to inconvenience.

*“This case depicts how a weapon designed to ease the problems of the citizens is at times being **misused**. Such abuse in the hands of people like the Complainant in this case to settle personal scores brings a bad name to the RTI Act”.*

14.17 R.K. Chauhan v. North Delhi Municipal CorpF.No.CIC/DS/A/2013/001038-YA ;F.No.CIC/DS/A/2013/001079-YA ; F.No.CIC/DS/A/2013/001039-YA

14.17.1 In this case commission found that repetitive RTI applications are indeed filed by the same person, in different names, on the same address. The respondent stated that they are compelled to answer each RTI application by the appellant, even when he is agitating similar matter in different name. The respondents urged that due to shortage of staff in their Dept., a lot of time is spent in replying to the appellant who has filed at least 30 RTI applications in different names with similar queries, having

the same handwriting regarding pending payment of M/s Gyan Const Co. against work done by the agency

14.17.2 Commission held that it is certain that this variety of the vexatious and frivolous petitions is not going to serve the interest of the Right to Information the self-serving, pious protestations of serial petitioners such as this one notwithstanding.

Further, the Appellant is warned to desist from misusing the provisions of the RTI Act for settling his personal scores with the respondent. In case the appellant continues to prefer RTI applications which are vexatious and frivolous in nature with a view to disproportionately divert the resources of the public authority, then the PIO will be free to deny information under the provisions of section 7 (9) of the Act. (Case details collected from CIC website and other open sources).

14.18 Summary: As may be seen from the above cases, the applicants and appellants have tried to misuse the provisions of the Act or taken advantage of the loopholes present for their self interest, for taking revenge or to settle score against the public authorities. There are many instances where even the CIC and the Judges have had to impose penalty. However, it is necessary to note that there are currently no provision available in the Act to deter misuse by defaulting applicants and appellants.

Therefore, Rattan and Rattan (2022) suggest, “for the further improvement and to ensure a transparent, corruption free and accountable government, the loopholes in the existing Right to Information Act 2005 must be plugged at the earliest...”.

15. Important CIC Decisions on non - compliance by PAs

15.1 The RTI Act is predominantly about the demand side of information dissemination, with the citizen demanding for information disclosure. But, there is

also a supply-side to this Act, which relates to both furnishing of information to applicants on receipt of request and voluntary disclosure of information held by Public Authorities. The mandate for suo motu disclosure is contained in Section 4 of the Act. This section has now emerged as the focal point where most disclosure related effort of the Public Authorities converge.

15.2 A few recent cases are quoted below which shows non-compliance of RTI Act by PIOs/APIOs. The Sections of non-compliance or violation has been indicated within brackets at the end of each decision.

15.3 CIC Decision dated 06.01.2023 on the Second Appeal filed by Ms Renu Bala Kochhar Vs. Public Information Officers, DDA, New Delhi

The Commission directed the then PIO through the present PIO to send his/her written submissions to justify as to why action should not be initiated against him/her under Section 20 of the RTI Act for the gross violation of its provisions. Further, in doing so, if any other persons are also responsible for the omission, the then PIO was required to serve a copy of this order on such other persons to ensure that written submissions of all such concerned persons are sent to the Commission. [Section 20; CPIO's role]

15.4 CIC Decision dated 11.11.2022 on the Second Appeal filed by Shri Chitresh Kumar Banjare Vs. PIO (1) Delhi Police & (2) Delhi State Legal Services Authority

CIC: "Yet, it is found that the Appellant has undermined the spirit of the RTI Act by clogging the system with a barrage of RTI applications, merely claiming irregularities within the JNU administration. In the light of the aforementioned

decisions, and the fact that more than 118 cases of the same Appellant on the same subject matter have so far been adjudicated by different Information Commissioners of this Commission, the Commission is not inclined to entertain any further adjudication on the same subject, since no cause of action subsists under the RTI Act.”[Multiple RTI Applications]

15.5 CIC Order dated 16.09.2022 on the Second Appeal filed by Gautam Saren Vs. CPIO, National Test House, Kolkata

The Commission observed that the reply provided by the then CPIO was inappropriate and that a blanket denial of information under the garb of Section 8 (1) (j) of the RTI Act was inadequate as no personal information of third party has been sought by the Appellant. The Commission admonished the then CPIO for providing such mindless and incongruous replies. Hence, the Commission deemed it fit to direct the present CPIO to provide revised and specific information qua the instant RTI Application to the Appellant. [Sections 8(1)(j), 5(4); Dates of Joining of Officers, National Test House]

15.6 CIC Decision dated 06.06.2022 on the Second Appeal filed by Dr. Rajiv Khatri Vs. CPIO, University Grants Commission, New Delhi

CIC: “..... the Commission is extremely irked to note that the onus of replying to the instant RTI Application is being shifted across different division of UGC. The Commission expresses severe displeasure for showcasing lackadaisical approach of the Respondent in the instant matter. The Commission further notes that even after an efflux of 2 years of time, the Respondent public authority is yet to ascertain the actual custodian of the information. The Commission treats this as a blatant error and willful violation of the provisions of the RTI Act and the said conduct of the

Respondent Authority is highly admonished.”[UGC, Grievance Redressal Mechanism in UGC]

15.7 CIC Decision dated 25.05.2022 on the Second Appeal, Complaint filed by Prason Shekhar Vs. CPIO, Bar Council of India, New Delhi

CIC: “The FAA burst into frenzied arguments with the Appellant for bringing up allegations of lack of transparency and for insisting on non-compliance of earlier Commission’s directions. The Commission took exception to the disdainful conduct of the FAA and closed the hearing proceedings.” The Commission directed the FAA to place this order before their competent authority to ensure that action is expedited with respect to the upgradation of the BCI website while also incorporating the stipulations of the Commission in the H N Pathak case. The Commission also directed the CPIO to reiterate the opportunity of inspection of the available records to the Appellant and facilitate the same on a mutually decided date & time.[Conduct of FAA, Bar Council of India, Inspection of Colleges by BCI]

15.8 CIC Decision dated 25.04.2022 on the Second Appeal filed by Savio J.F. Correia Vs. CPIO, Mormugao Port Trust, Goa

The CIC, inter alia, observed that “The Commission is thus unable to appreciate the square applicability of Section 8(1)(d) of the RTI Act to the specific information sought for in the RTI Application in the absence of any justification to this effect by the CPIO as required under Section 19(5) of the RTI Act, and therefore the denial of the information is not acceptable.” The Commission, therefore, directed the CPIO to provide the available information under the categories mentioned in the RTI Application in the form of a written reply or an extract wherein only these heads of

information figure, as per the provisions of the RTI Act. [Secs. 8(1)(d) & (j), 19(5); Financial Investment by Statutory Body]

15.9 CIC Decision dated 23.02.2022 on the Second Appeal/Complaint filed by Sh. Nagsen Rajaram Suralkar Vs. Department of Posts, Office of Supdt. of Post Office, Bhuswal, Maharashtra

The CIC, inter alia, observed that the CPIO has erred in providing the caste related information of all the employees in response to point no. 1 of RTI Application to the Appellant without seeking consent of said employees under Section 11 of RTI Act. In this regard, the CPIO was advised to follow due process of law as envisaged under the RTI Act before parting with any information which stands exempted from disclosure under Section 8(1)(j) of RTI Act. [Section 8(1)(j); Caste-Related Information of Employees]

15.10 CIC Decision dated 22.02.2022 on the Second Appeal/Complaint filed by Sh. J.P. Tiwari Vs. CPIO, Department of Personnel & Training, New Delhi

The CIC decided that it (the facts of the case) reflected on the then CPIO's gross non-application of mind and a lackadaisical approach in executing the statutory duty cast upon him by virtue of the RTI Act. Nonetheless, the US & then CPIO was directed by the Commission to send his written explanation stating as to why no effort was invested by him in locating the averred complaint despite being provided with the reference of the relevant CVC's forwarding note. [Acton Taken, Complaint Matter, File Notings]

15.11 CIC Order dated 03.01.2022 on the Second Appeal filed by Mr. Om Prakash Vijaivergia Vs. CPIO, State Bank of India, Siliguri, Darjeeling, West Bengal

The appellant attended the hearing through audio-call. The respondent, Shri Rajiv Kumar Mishra, CPIO/ Regional Manager attended the hearing through audio-call. Both the parties submitted their written submissions and the same were taken on record.

CIC: “8. In view of the above, the Commission hereby issues strict warning to the concerned CPIO for not providing the available information for so long. That the conduct of the concerned CPIO is highly objectionable and same should be brought to the notice of his controlling authority for an appropriate view. He is being reprimanded for future as the information that could have been provided on time, also not provided by the concerned CPIO. That the conduct of the concerned FAA is also found to be lacking as the first appeal has not been disposed off meticulously, therefore the FAA’s conduct should also be examined by its controlling authority.

9. xxx xxx Further, the Commission observes that if the technical vendor is not cooperating with the CPIO, the controlling authority should take an appropriate view on competence performance of the vendor.” [Conduct of the CPIO; FAA]

15.12 CIC Decision dated 22.10.2021 on the Second Appeal filed by Love Gogia Vs. CPIO, Bharat Sanchar Nigam Ltd., Office of CGM, Pune

The CIC has held that “Under the provisions of Section 19 (5) of the RTI Act, 2005, in an appeal proceeding, the onus to prove that a denial of a request was justified shall be on the CPIO. The CPIO in his reply had clearly failed to justify his position as to how the disclosure of information would be in contravention of

the provisions enshrined under Section 8 of the RTI Act, 2005 and what commercial confidence would be breached as the information sought by the appellant is very general in nature.” The CPIO was directed to re-visit the RTI application and provide a revised reply to the appellant and it was also directed that he should note that in case he is unable to justify the exemption so claimed, the sought for information should be provided to the appellant free of cost. [Sections 8(1)(d), 19(5); BSNL’s ERP System]

15.13 CIC Decision dated 10.02.2020 on the Second Appeal filed by Ajay Kumar v. CPIO, Northern Central Railway, Agra.

CIC: “7. Further, this Commission observes that the reply dated 21-03-2018 on point no. 2 is evasive in nature wherein the then CPIO did not apply his mind while replying to the RTI application and therefore, the CPIO is hereby issued a warning for future to be careful and not to contravene the provisions of the RTI Act, 2005. [Sections 19(3), 20; Warning to CPIO, Recruitment]*

15.14 CIC Decision dated 29.04.2019 on the Appeal filed by Shri Manoj Kumar v. CPIO, Central Bureau of Investigation, Anti-Corruption Branch, Patna

CIC: “Even further, Commission summarily rejects the contention of the CPIO that he is required to provide information only on those allegations of corruption that pertains to their own employees, as RTI Act nowhere provides for any such exception. Similarly, Section 24 of the RTI Act does not provide for any further exemption from disclosure once it is established that the information sought pertains to allegations of corruption and/or human rights violation. In view of the foregoing, Commission directs the CPIO to provide available and specific information sought in the RTI Application in a point-wise manner to the Appellant. Further,

Commission finds that the incorrect connotation ascribed by the CPIO to the proviso to Section 24(1) of RTI Act that it is only applicable to cases involving CBI's own employees may result in gross violation of the provisions of RTI Act by the Respondent office in future.” [Section 24(1); Corruption, Appointment]

15.15 Summary: The above cases are merely indicative samples. As may be seen in many of the cases, the PIOs and Public Authorities had withheld information, had shown lackadaisical attitude, unnecessary transfer of application was also highlighted in a few cases, in some cases CIC held that the information should have been shared *Suo motu*, in other cases PIO's intention and attitude were questioned. Ghuman and Sohail (2017) quote that, “citizens also face challenges like lack of assistance provided in filing the application as envisaged in the Act under section 5 (3). Non-friendly and hostile attitude of the PIOs towards citizens remains a major challenge. Quality of information provided is found to be unsatisfactory as most of the citizens were not satisfied with the quality of information on account of being incomplete and irrelevant” (Pricewaterhouse Cooper, 2009).

CHAPTER - VII

ANALYSIS OF STAKEHOLDER'S FEEDBACK

If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best obtained when all persons alike share in the government to the utmost. - Aristotle

1. Primary Data Collection

1.1 Data Collection was done employing Online Survey Method from sample subjects. Aim was to broaden the base and get the views and comments of different categories of Respondents. As divergent population have diverse opinion, their response makes the research findings balanced and error free.

1.2 Target Respondents: The RTI Movement in India was a multidimensional, temporally expansive movement which saw participation of many diverse groups, classes of societies starting from grassroots organizations to involvement of Civil Society, Activists, NGOs, Academia and Media, Retired Civil servants, Government nominees, Journalists, whistleblowers and last but not the least the ordinary citizen. In this transformational Law, there are multiple stakeholders with distinct opinion and interest. The study has tried to capture the views of these diverse population to the extent possible, keeping in view various constraints, the chief one being time. As the government servants or the public authorities are the only supplier of information and the rest are from the demand side, care was taken to balance out the participants on the government and non-government side. On the above lines, the sample subjects were drawn from the following groups:

- Government Servants (PIO/APIO/DAA/FAA/Other Officials)
- NGO workers
- Legal Fraternity (Lawyers/Advocates/Judges)
- Civil Society
- Media (Journalists/Reporters/Editors)
- Academia
- Common public
- CIC/SIC
- Others

2. Sampling Method

2.1 As has been brought out above as also in the research methodology, the study aimed to obtain the views and responses from different type of stakeholders, primarily from government and non-government stakeholders. Further, the Non-government respondents were drawn from diverse backgrounds to get representation from a wide cross section of the population. However, due to paucity of time, the ‘Nonprobability’ method of Sampling was followed with ‘convenience sample’ selected.

3. Questionnaire

3.1 Primary data in a Quantitative Research can be gathered by different ways, starting form observing the subjects and noting their behavioral changes to asking people to respond to open ended questions. “Questionnaires also called *instruments* – are the most popular way to gather primary data. It has been estimated that questionnaires are used in 85% or more of all quantitative research projects. They are particularly appropriate when the research problem calls for a *descriptive* design”, (Mcnabb, 2012).

3.2 In order to collect the primary data it is imperative to prepare a set of questions. A questionnaire refers to a set of such questions, either open ended or closed, which is administered on the subjects to measure their response. Questionnaire have a number of advantages, they can be used to gather data from either the universe of population or a representative sample, they offer flexibility to the researcher to design and prepare suitable questions to elicit appropriate responses, and they can be structured as per the need of the research.

3.3 Data Gathering Method: There are three data gathering methods to collect data by using a questionnaire. They are face to face interview, telephonic interviews and self-administered mailed survey instruments. This research used a mailed Survey instrument which the respondents self-administered.

3.4 The Survey Instrument: A 20 point questionnaire was carefully prepared and administered to government and non-government stakeholders from varied background. Clear, unambiguous and simple questions were formulated. Efforts were made to keep the questions/statements balanced, unbiased and objective. The length of questionnaire was kept brief to motivate the respondents to apply their mind and give honest opinion and avoid boredom and irritation as lengthy questionnaire may tire and annoy the respondents.

4. Analysis of Feedback

Total 248 responses of stakeholders were received back in which government accounted for 52.7% (130) and Non Government sector for 47.6% (118). Apart from this a few face to face interviews were carried out using the open ended question set. **(The Questionnaire and Open ended Question set are enclosed as Annexure II and III respectively).**

4.1 Classification of the whole respondent group into Government and Non-government stakeholders:

Apart from the 20 questions certain classification information was also collected from the respondents. The findings regarding broad bifurcation of the respondents relating to government and non government sectors are reflected in the figure 1 below.

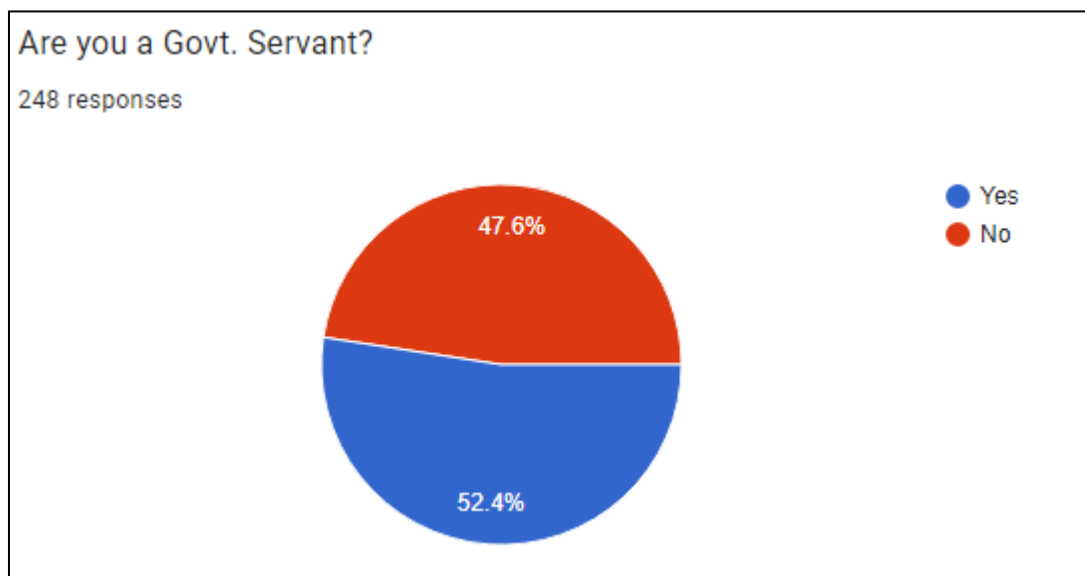


Figure 1: Showing the distribution of the sample population relating to Government and Non-government stakeholders

4.2 Diverse background of the respondents: The government functionaries were a mix of different levels from very senior, to senior, middle level and lower officials to have a balanced representation of PIOs, APIOs, FAA/DAAs, and other levels as well. Further, an attempt was made to get the respondents from centre and state government, however, only 5% of the respondents were found to be from the state, 7% from other government sectors while the central government was the biggest chunk with 88%. In the Non- government respondents however, responses from people from varied backgrounds were obtained to make the data robust and error free. In spite of much pursuing only 8 (about 3.2%) responses could be obtained from CIC/SIC offices.

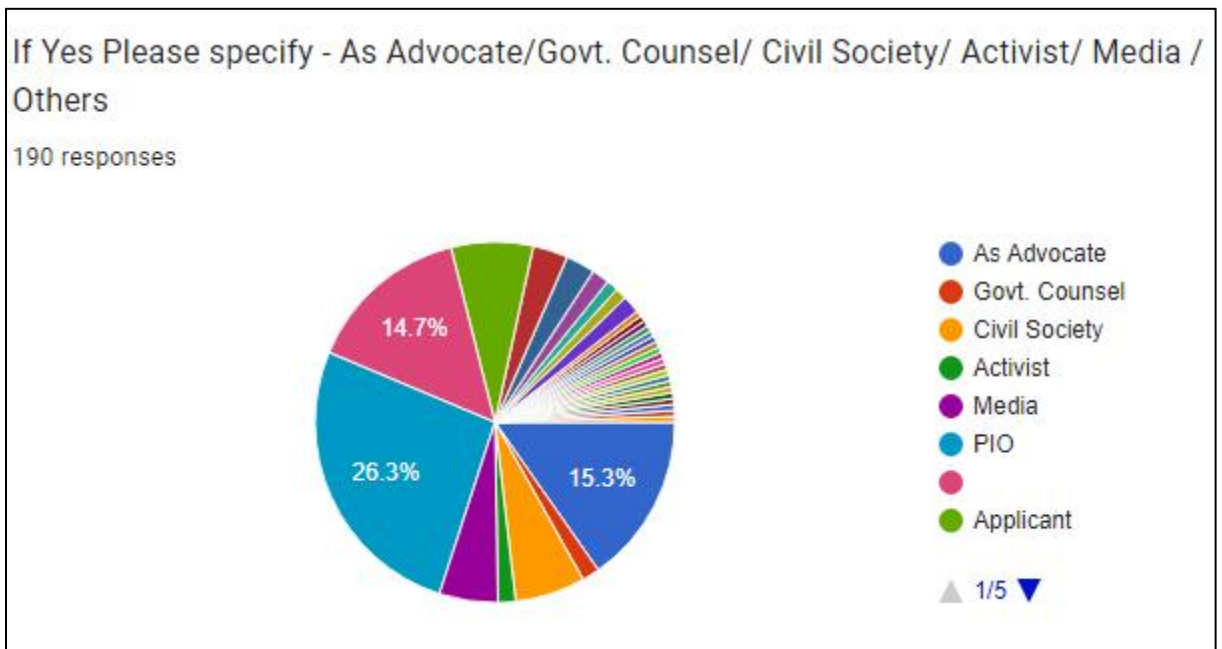


Figure 2: Showing the distribution of the sample population from varied backgrounds

4.3 Age profile: The age profile of the population is given in the charts below. It is interesting to note that while the government group was mostly in the age group of 40-60, a big majority of the non-government respondents were between 20-30 age group.

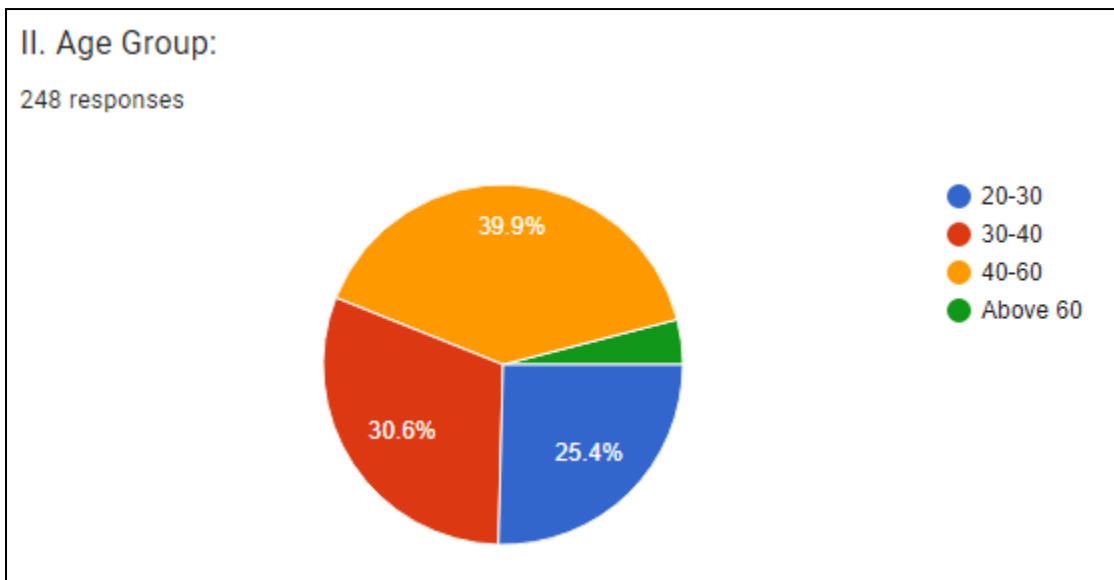


Figure 3: Showing the age profile of the whole sample population

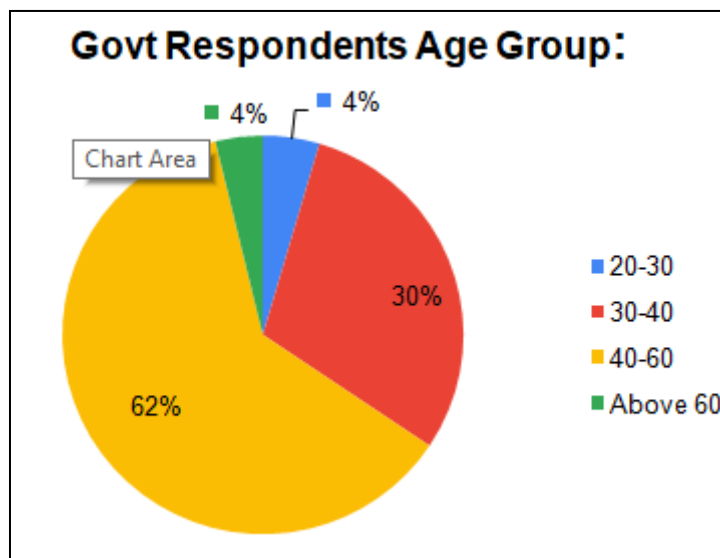


Figure 3A: Showing the Age profile of Government Stakeholders

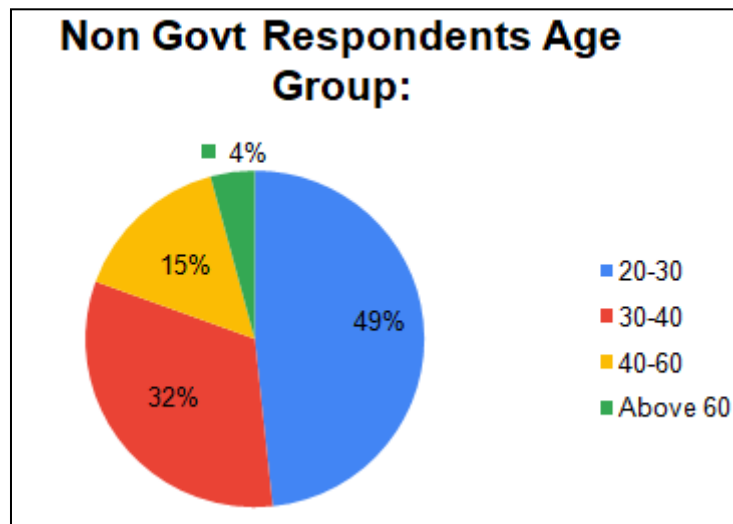


Figure 3B: Showing the Age profile of Non-government Stakeholders

4.4 Filing of RTI Applications by the Respondents:

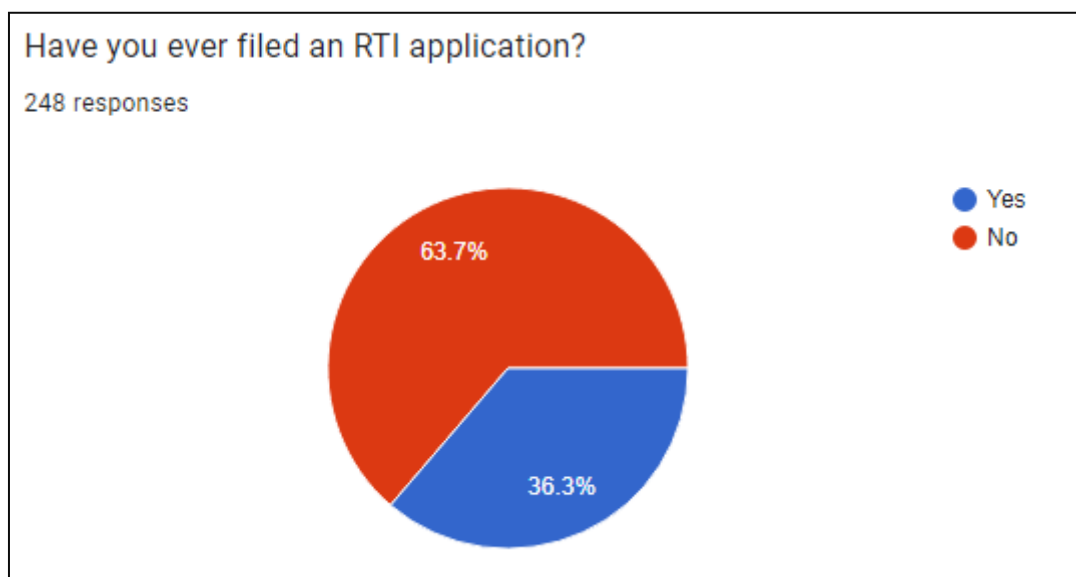


Figure 4: Showing the Percentage of Respondents who have filed an RTI

When asked about whether they had ever filed an RTI application, overall it was found about 36.3% had filed an RTI where as 63.7% had not filed any RTI in their life. But when the issue was further narrowed down to government and non government respondents, it emerged that among the government respondents, only 23.66% had ever filed an RTI request whereas a vast majority of about 76% had never filed any RTI application. In Contrast, the non government population about 50% had filed RTI application at some point or other.

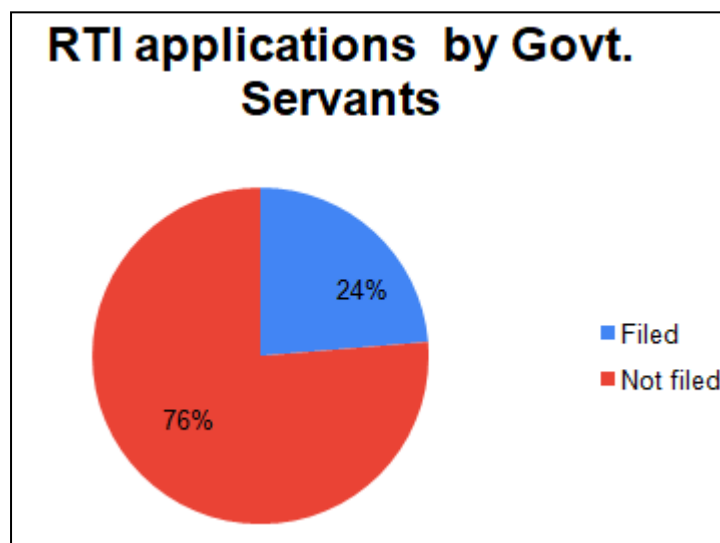


Figure 4A: Showing the proportion of government respondents who have filed RTI

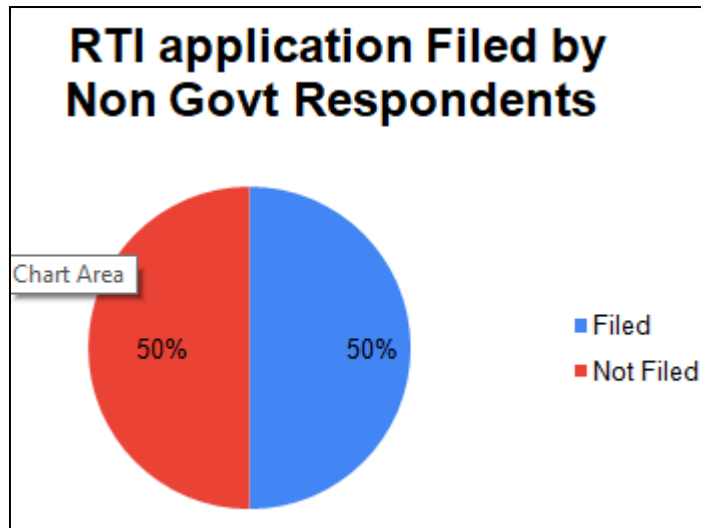


Figure 4B: Showing the proportion of non-government respondents who have filed RTI

4.5 Being part of RTI Process:

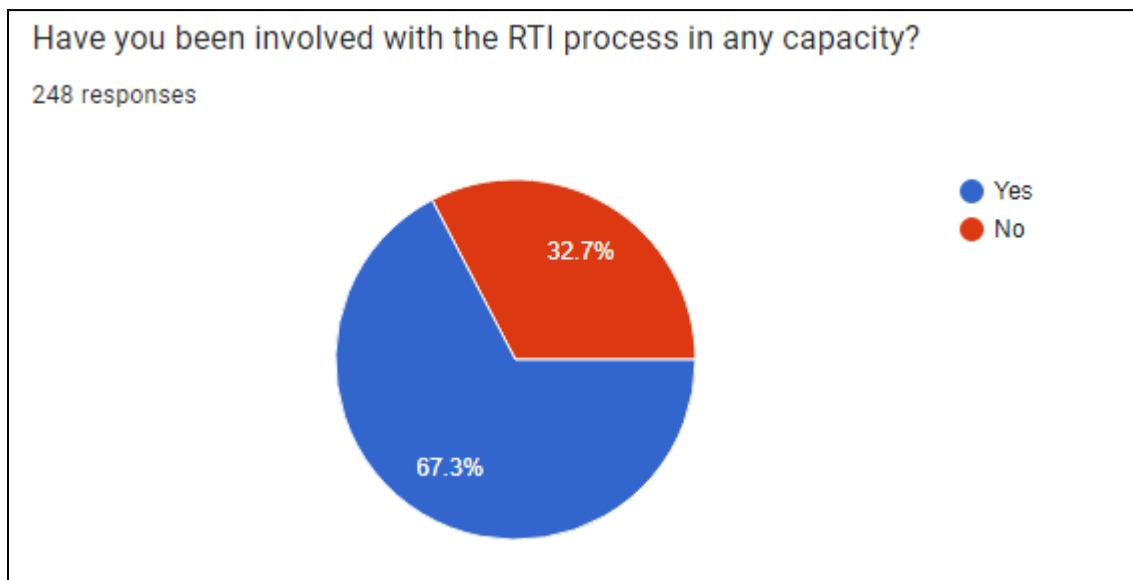


Figure 5: Showing the proportion of stakeholders involved with the RTI Process

Similarly, when asked whether they had ever been part of the RTI process, 67.3% (167 out of 248) of the total respondents said yes while 32.7% (81 out of 248) declined thereby confirming to have no personal involvement in the matter.

4.6 Q1. RTI Act 2005 is an enabler for participatory democracy and holds the key to Good Governance

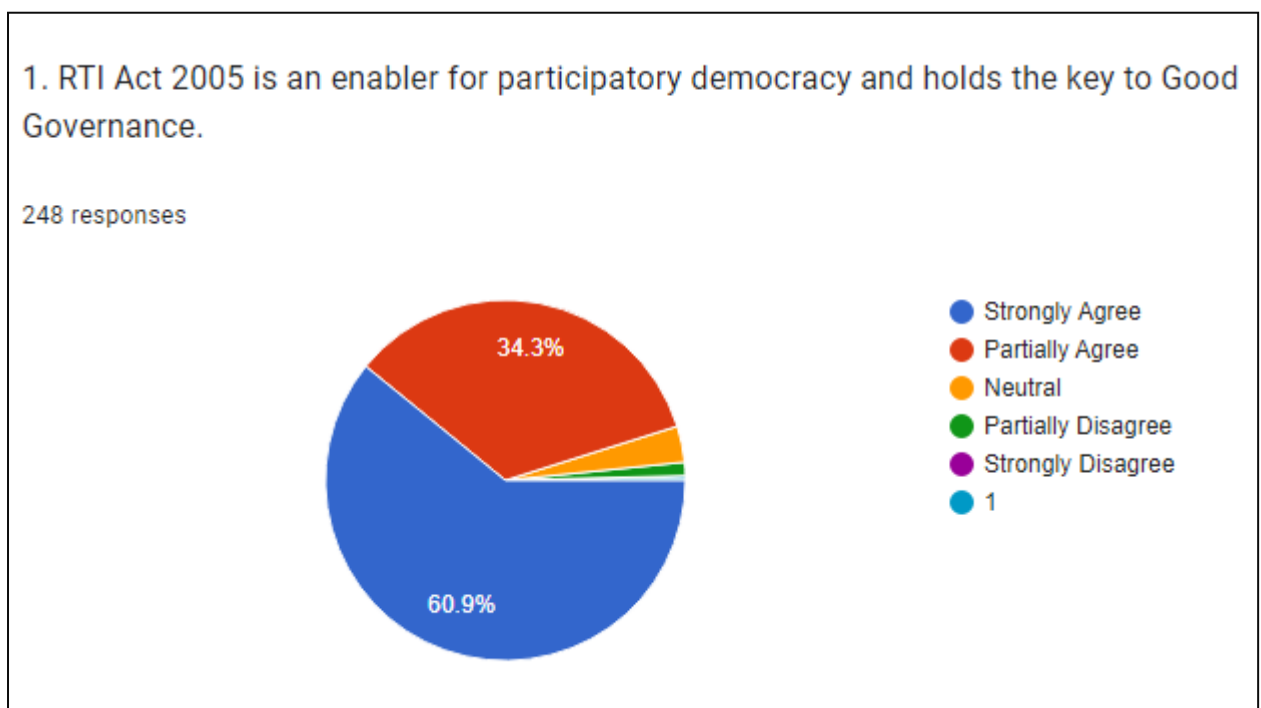


Figure 6: Showing Response to Q1 mentioned above

In response to the statement above, as may be seen from the figure (Figure 6), an overwhelming 236 respondents (about 95%) agreed with the statement. As we know the enactment of RTI act is considered as a watershed moment in the history of our country. Not only the act is empowering for the common man and woman but also it guides the state ideals to be achieved and our democracy to be a true and meaningful

one. Hence, it is no surprise that most of the respondents strongly agreed to this.

4.7 Q2. There are certain grey areas and loopholes present in RTI Act, removal of which will strengthen the Act

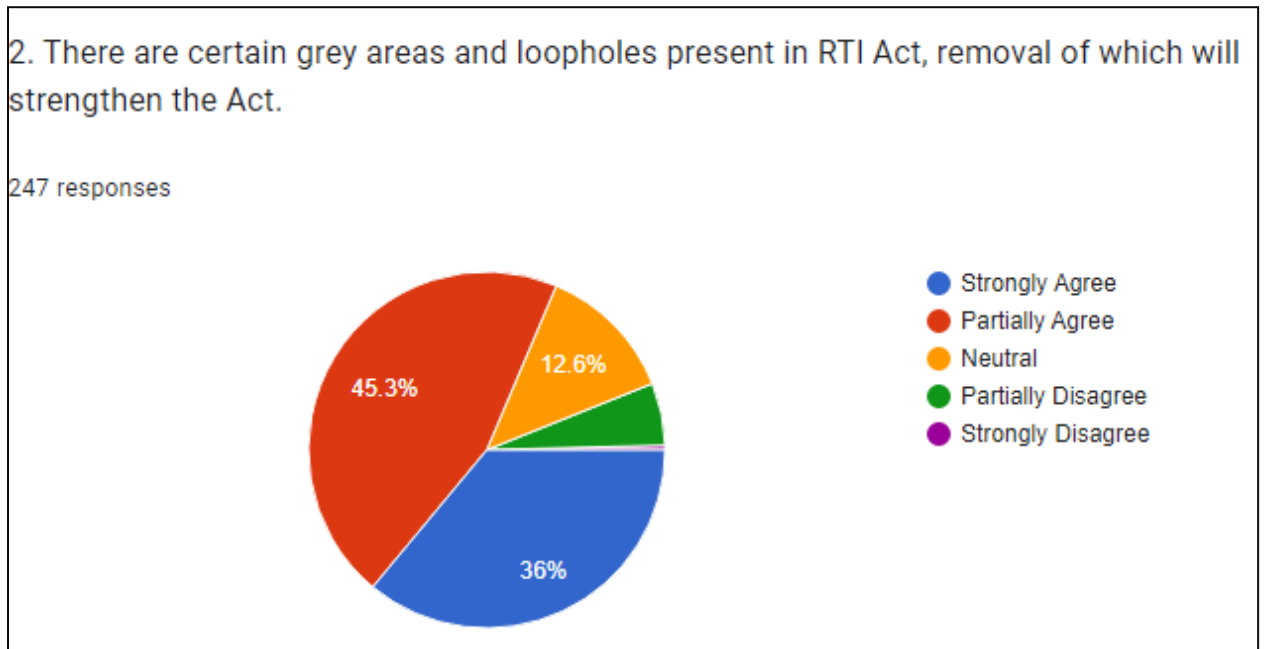


Figure 7: Showing Response to Q2 mentioned above

To the statement number 2 also majority of the stakeholders nearly 81% agreed, though 45% agreed partially. It can be well concluded that the stakeholders are aware about the existing loopholes, bottlenecks and issues within RTI Act and would like these to be tackled to further strengthen the Act.

4.8 Q3. A number of RTI applications/appeals received at present are manifestly Frivolous and Vexatious in nature, which are causing harassment to PIOs/FAAs

Although in response to this above statement (Statement No. 3), about 61% respondents agreed, but a further analysis showed difference in the pattern of

responding between the government and the non government stakeholders. The picture is clear from the charts 8A and 8B given below.

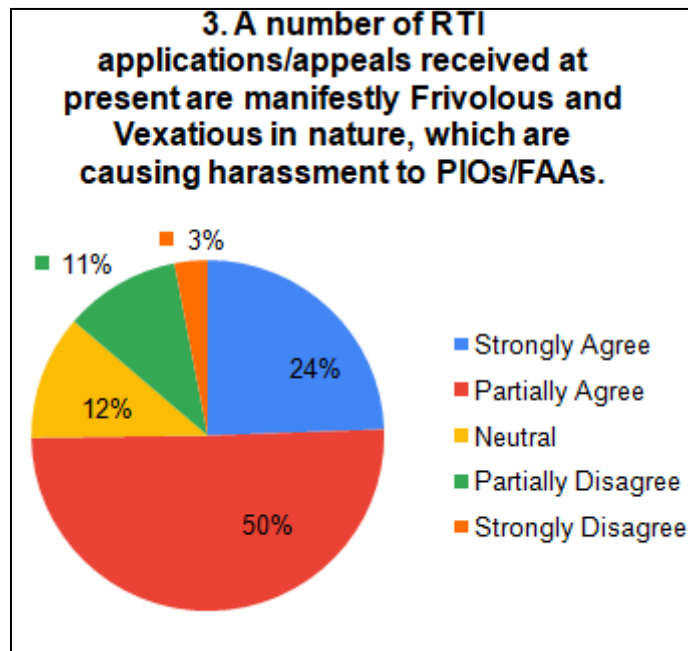


Figure 8A: Showing the response of Government Stakeholders to Q3

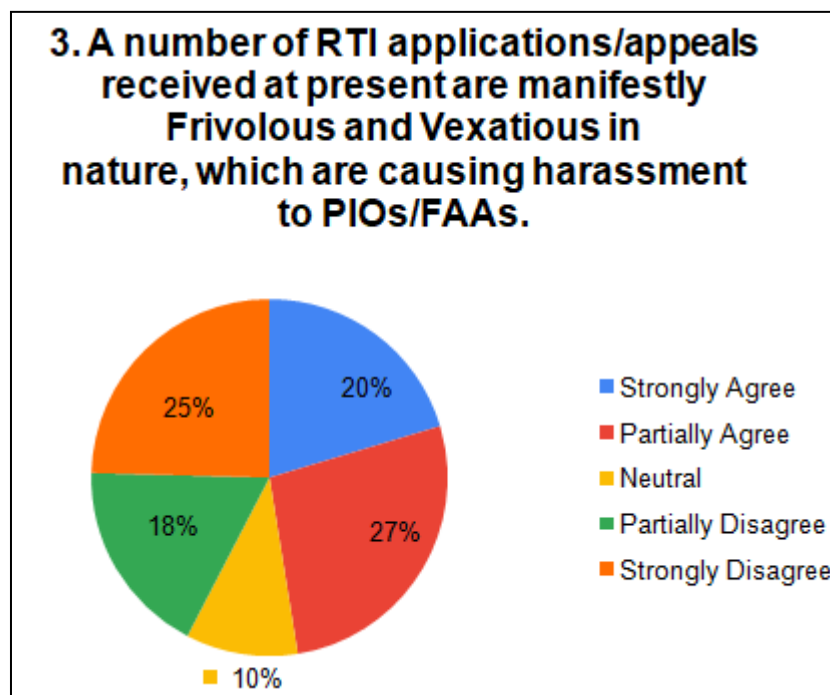


Figure 8B: Showing the response of Non-Government Stakeholders to Q3

As may be seen from the charts above, response of Government Stakeholders showed that 74% (98 respondents out of 131) agreed with the given observation, 24% strongly and 50% partially agreed and only 15% disagreed with the given observation among the government respondents. As against this, response of Non-Government stakeholders reflects that about 43% (50 out of 118) of the respondents did not agree with the statement with 25% strongly disagreeing with this.

4.9 Q4. A number of the RTI applications/appeals received are manifestly frivolous and vexatious which results in blocking of Govt. resources, i.e., time, money, manpower etc.

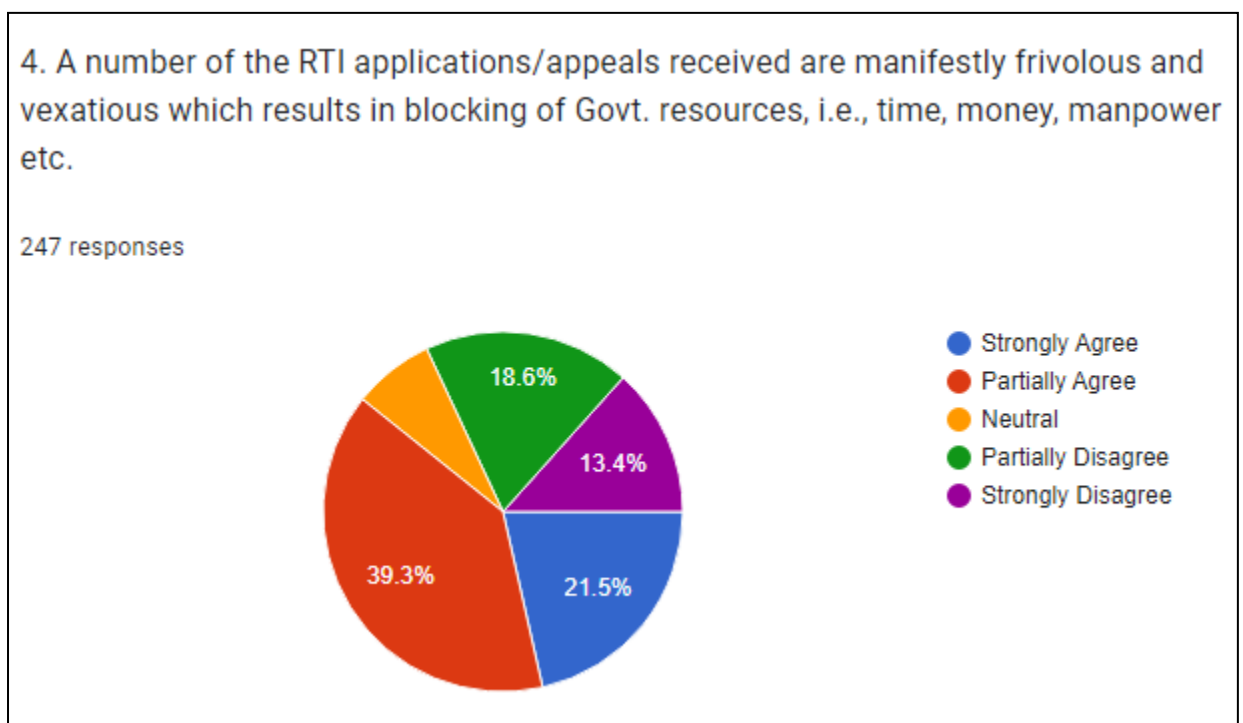


Figure 9: Showing Response to Q4 mentioned above

A similar pattern was seen in the response to this question as it was in the previous question. Although overall nearly 60% of the respondents agreed with the observation but finer analysis showed there is distinct difference between the government and non-government respondents. While in the government stakeholders about 75% of the

respondents agreed with the statement, the non government stakeholders had quite an opposite view with about 54% not agreeing to this (25% strongly disagreed, 20% partially disagreed to the observation while 9% chose to stay neutral).

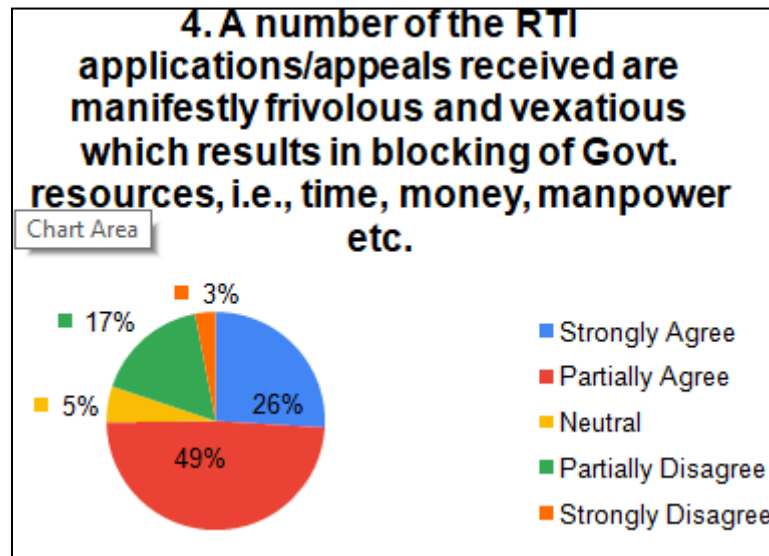


Figure 9A: Showing the response of Government Stakeholders to Q4

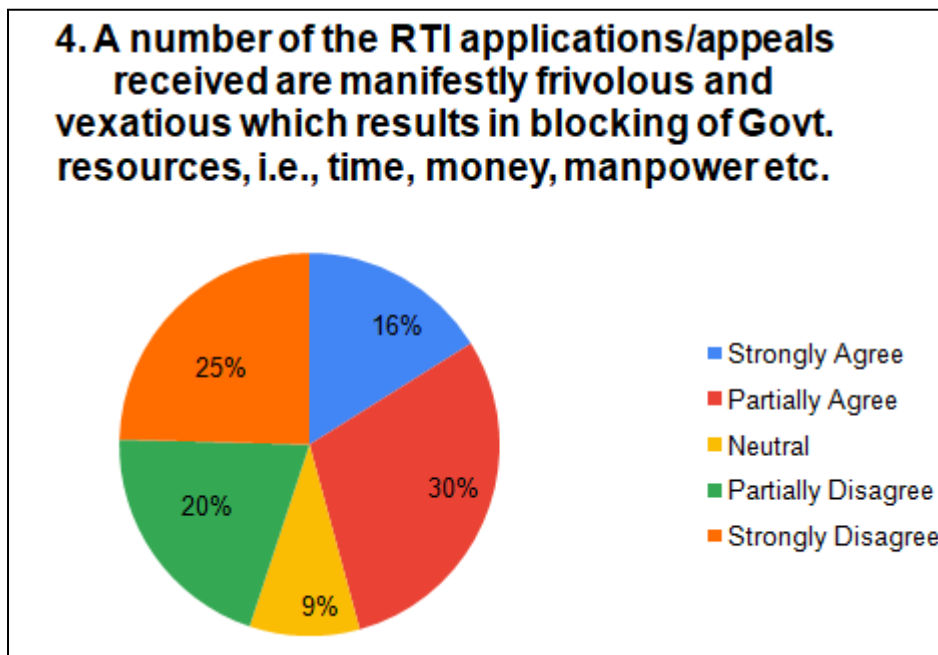


Figure 9B: Showing the response of Non-Government Stakeholders to Q4

4.10 Q5.RTI Act needs amendment to introduce suitable filtering mechanism to weed out manifestly Frivolous/Vexatious applications

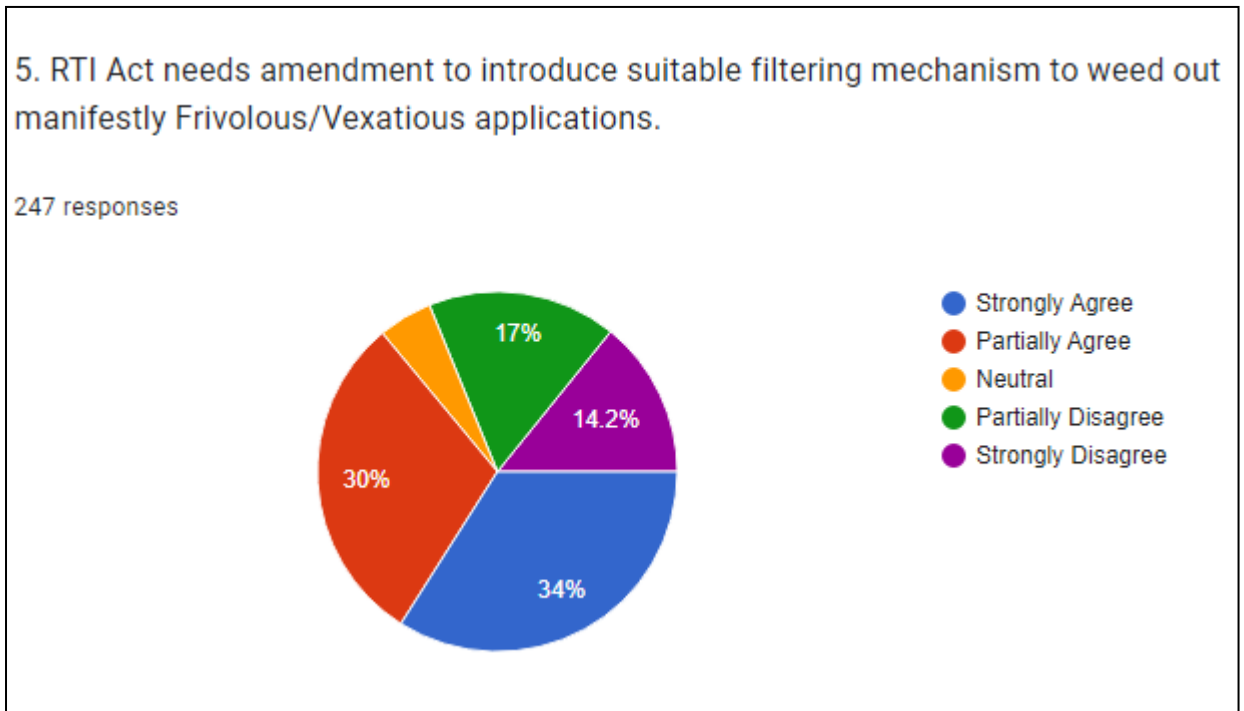


Figure 10: Showing Response to Q5 mentioned above

The Response to this was similar to question 3 and 4. In all 64% agreed that some kind of filtering mechanism is needed to combat the manifestly frivolous, vexatious and repetitive requests pointing towards the necessity for an effective filtering mechanism. It may be noted here that 31% of the respondents did not agree with the statement and about 5% decided to remain neutral.

4.11 Q6. The respondents were asked to rank given options between 1 to 5 according to their effectiveness to filter or curb Frivolous/Vexatious applications where 1 is most effective and 5 is least effective.

The option and the respective ranks received by each is shown in the chart below:

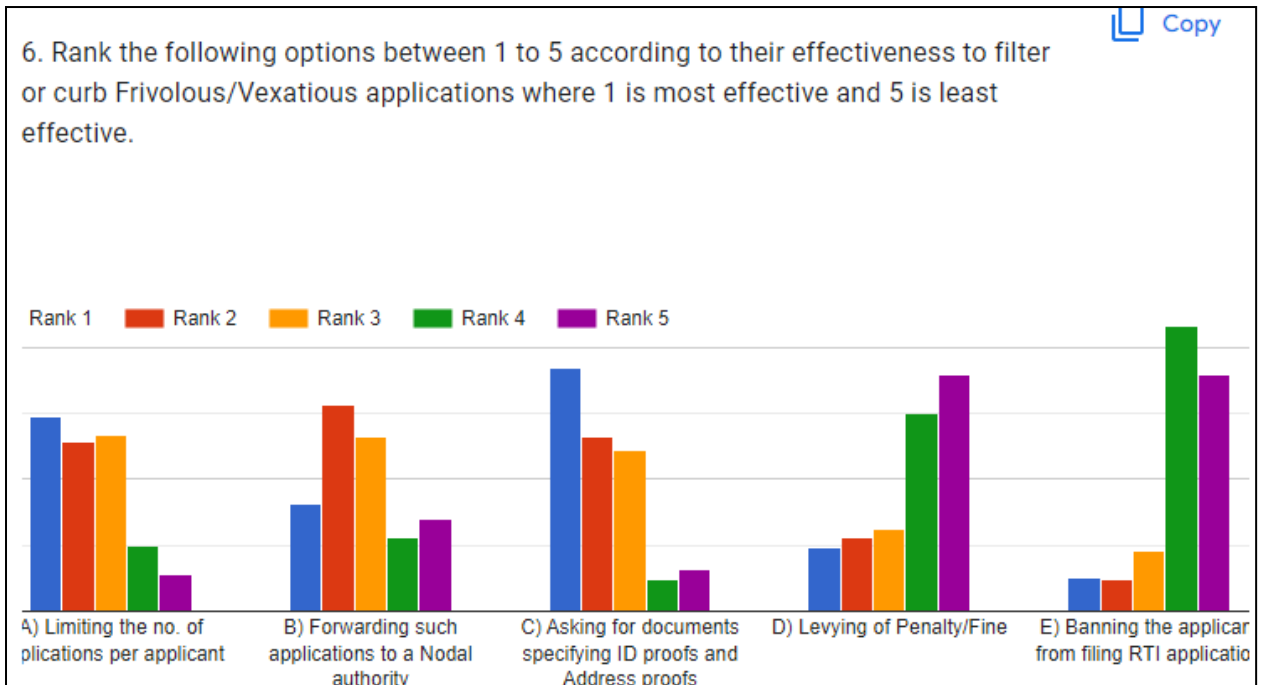


Figure 11: Showing Response to Q6 mentioned (Ranking effective filtering options)

As may be seen from the chart above option ‘limiting the no. of applications per applicants’ and ‘asking for documents towards ID and Address proof’ were ranked above the other options as the most effective solution to filter or curb the frivolous and vexatious requests. It is necessary to add here that options – ‘levying a penalty’ and ‘banning the applicants from filing RTI applications’ were given the lowest ranks. Both the government and non government stakeholders agreed that levying of penalty should be one of the last options.

4.12 Q7. The participants were asked to rank the authorities between 1 to 5 in terms of their suitability to enforce the filtering of Frivolous/Vexatious applications under RTI Act, with 1 as the most suitable and 5 as the least suitable

The feedback of the stakeholders is shown in the chart below.

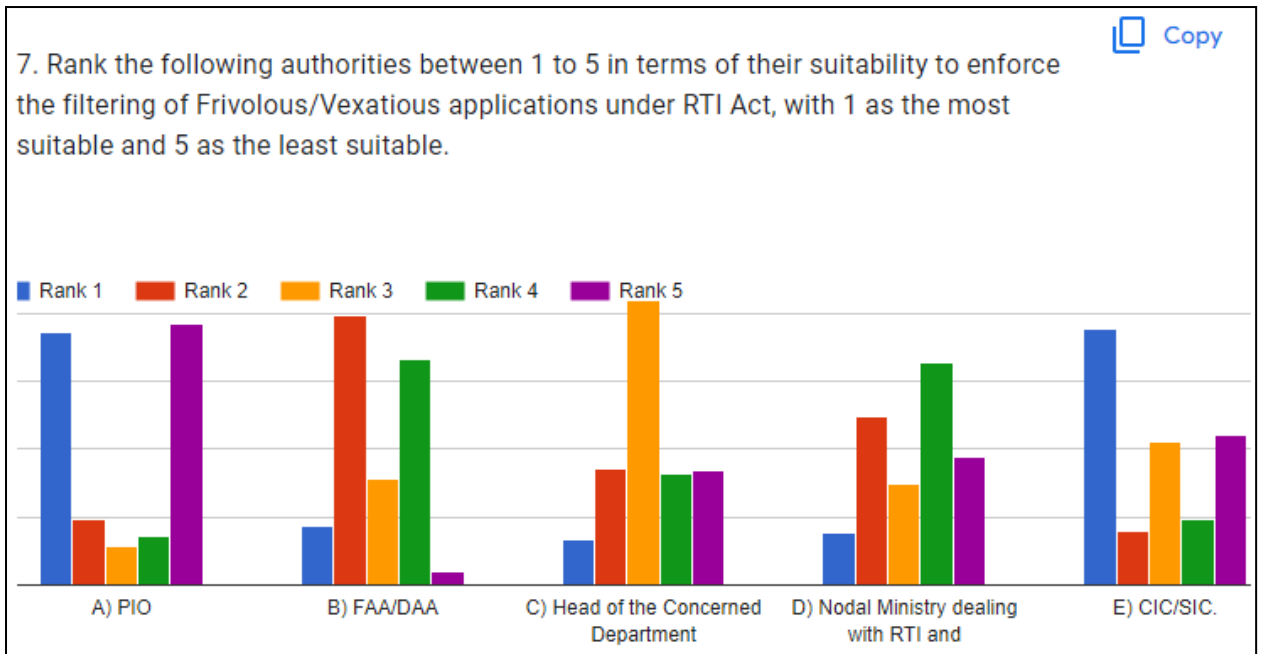


Figure 12: Showing Response to Q7 mentioned (Ranking the authorities as per their suitability to enforce the filtering mechanism)

Here, an interesting pattern emerged. As may be seen from Figure 12 PIO has been given Rank 1 and Rank 5 by most of the respondents. On further analysis it was revealed that while the government officers favored the PIO and FAA as the suitable authority to enforce discipline the non government stakeholders rated the PIO and FAA as last preference viz. Rank 4 or 5. This is demonstrated clearly in the charts given below.

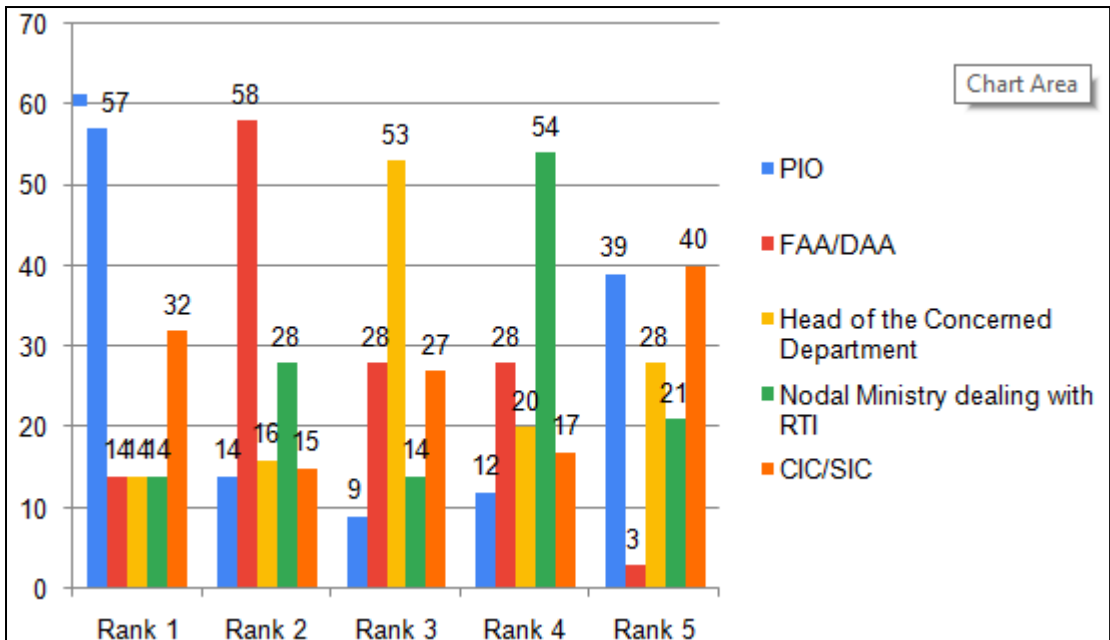


Figure 12A: Showing choice of Government stakeholders

Choice of the Government Stakeholders: The government stakeholders preferred the PIO and FAA to be the appropriate authority to administer the proposed filtering mechanism to tackle frivolous and vexatious requests.

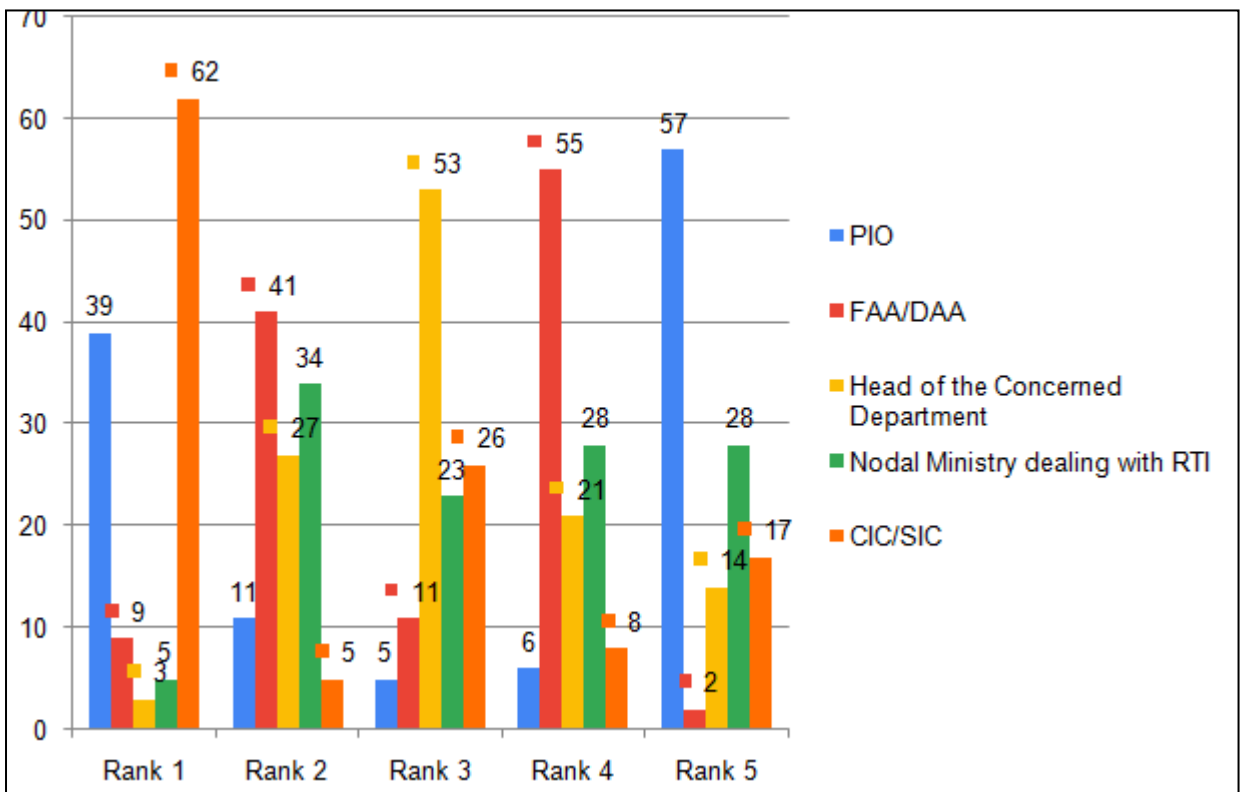


Figure 12B: Showing response of Non-Government stakeholders

Choice of the Non government stakeholders shows a diametrically opposite view. As may be seen from the above Figure (Fig. 12A) more than 50% Non-government respondents showed inclination for making CIC/SIC the appropriate authority to enforce the filtering mechanism and about 49% ranked the PIO as the last option.

4.13 Q8. Dealing with a large number of RTI applications, a number of which are either repetitive or frivolous is putting a burden on the government machinery in terms of time and resources

The feedback of the respondents is reflected in the figure below.

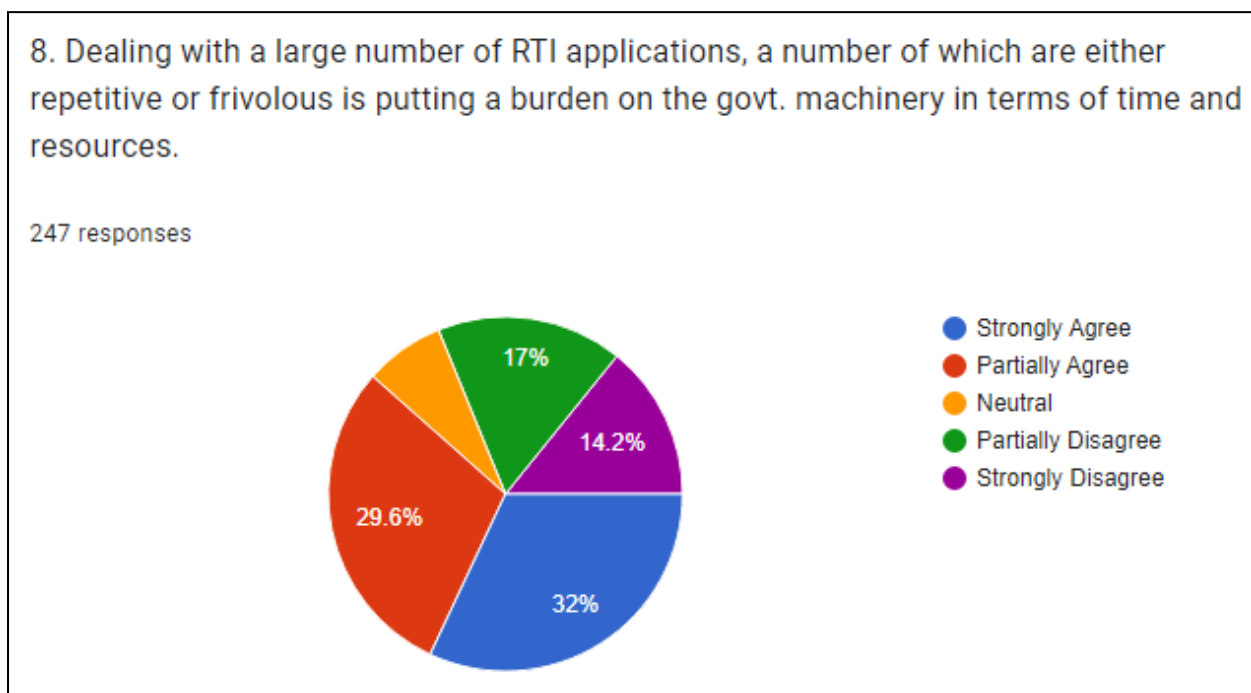


Figure 13: Showing Response to Q8 mentioned above

This statement ‘that dealing with large no. of RTI applications, many of which may be repetitive or frivolous’ elicited mixed response from the stakeholders. About 30% strongly agreed with the observation and another 29% partially agreed. However, at the same time roughly 35% of the stakeholders did not agree that any burden is being put on the government resources because of such vexatious requests. It can be safely inferred that the disagreement would be predominantly from the non-government stakeholders.

4.14 Q9. Putting a limit to number of applications per applicant will help save scant resources of small government offices

The feedback of the stakeholders is presented in the pie chart below.

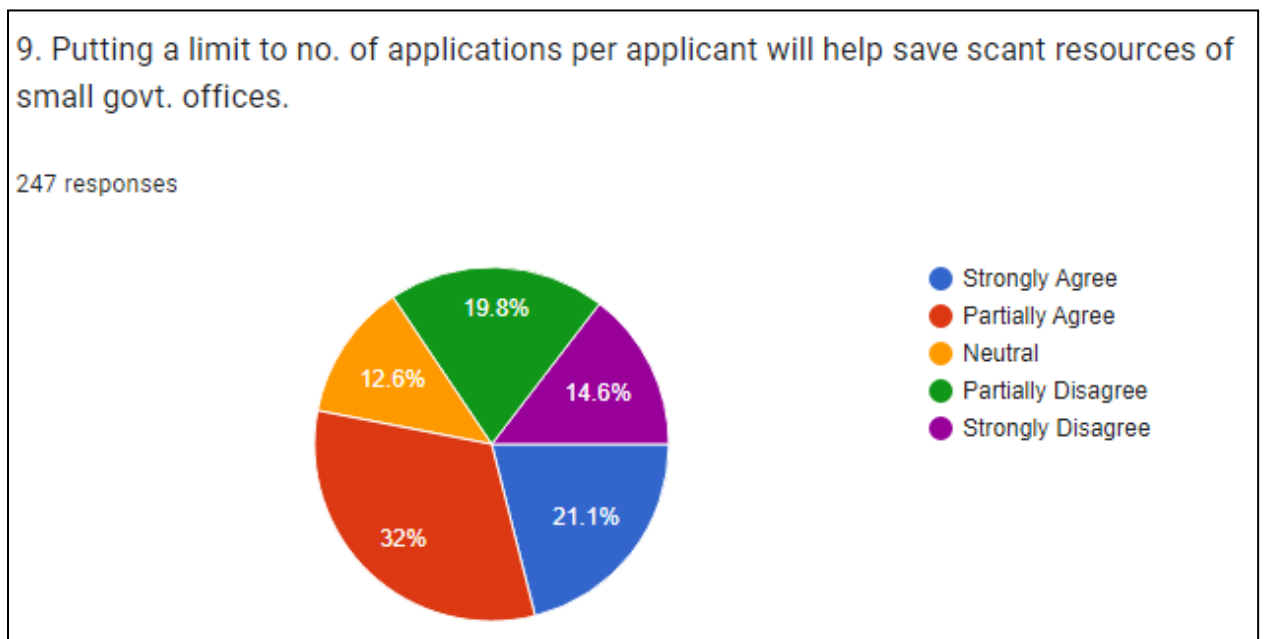


Figure 14: Showing Response to Q9 mentioned above

As may be seen from the chart, only 50% of the stakeholders agreed to this observation. About 35% of the respondents did not agree with the observation that putting a limit to no. of applications per applicant would be able to help preserve the resource of government offices or solve the problems being faced at present.

4.15 Q.10 The PIO should be able to refuse information, if the same information has already been furnished to identical/ substantially similar requests

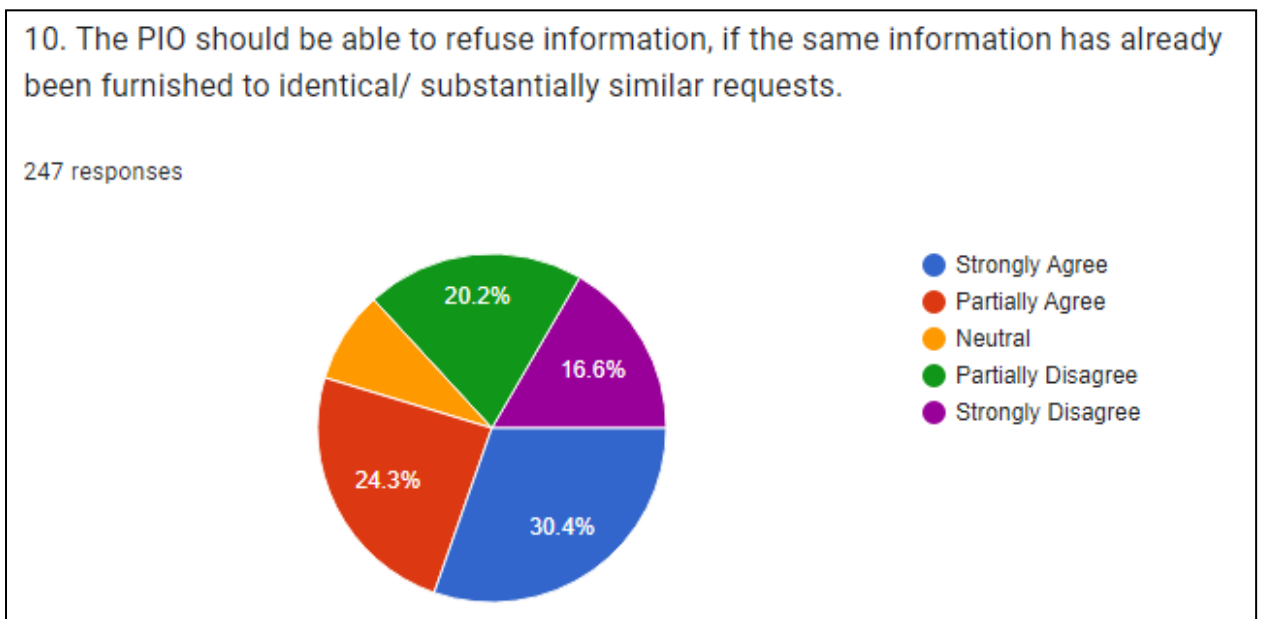


Figure 15: Showing Response to Q10 mentioned above

It may be noted from the figure above that 54% of the total respondents agreed to the proposal with 36% stakeholders disagreeing. The government respondents generally opted in favour of the statement.

4.16 Q11. The mishandling of RTI applications by PIOs (viz. unnecessary transfers, delays, deliberate refusals, incomplete and misleading information, displaying antagonistic attitude etc.) is leading to increased number of appeals, complaints and penalty

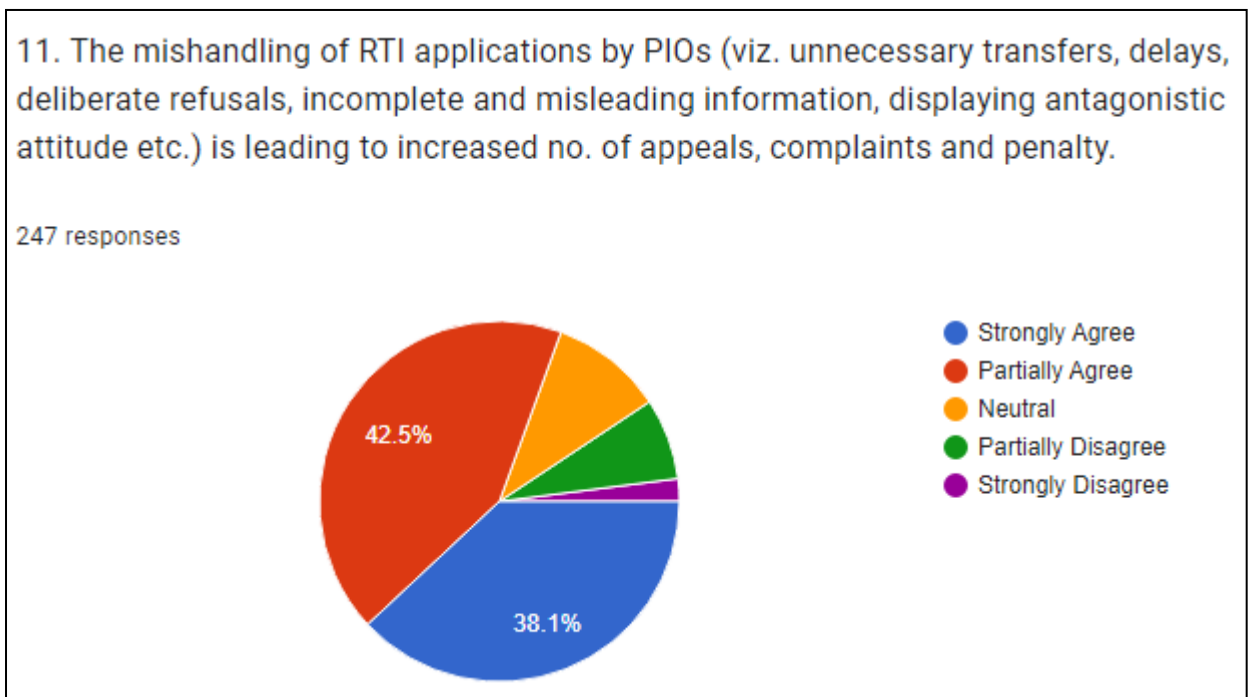


Figure 16: Showing Response to Q11 mentioned above

Most of the stakeholders agreed with the given statement that mishandling of applications by PIOs is leading to increased no. of complaints and appeals. About 80% of respondents converged in their agreement to this statement.

4.17 Q12. Kindly rank the following types of mishandling by PIOs (viz. unnecessary transfers, delays, deliberate refusals, quoting wrong provisions, and displaying antagonistic attitude) between 1 to 5, with 1 being most serious to 5 being least serious

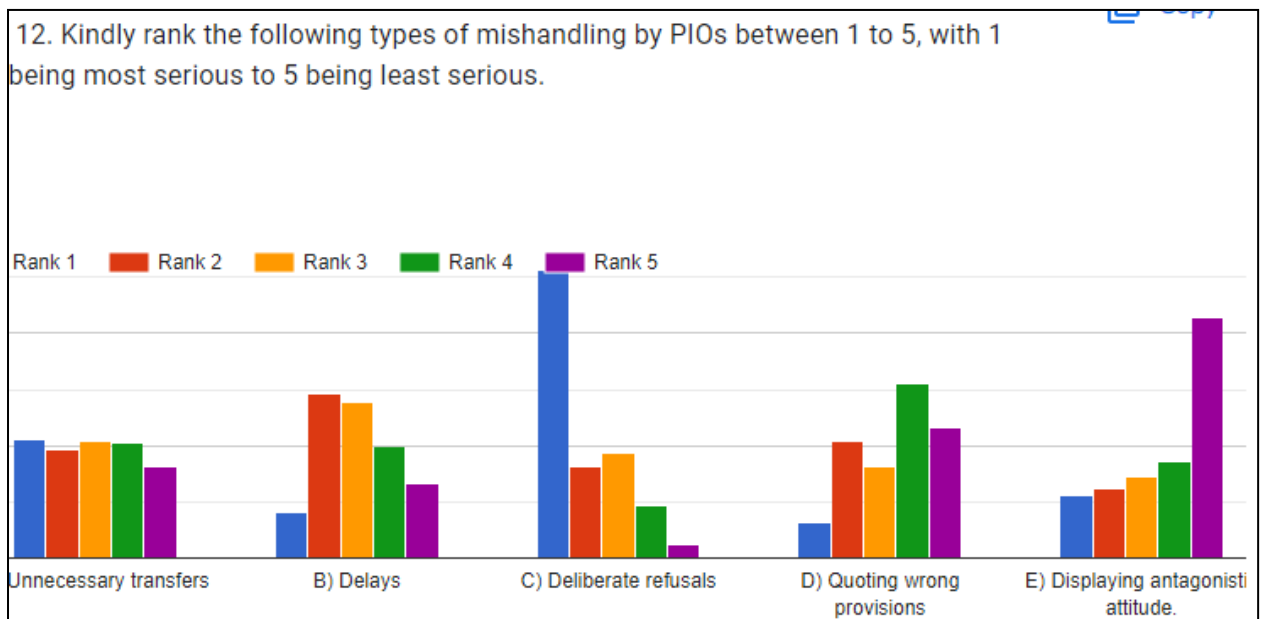


Figure 17: Showing Response to Q12 mentioned above

As may be seen from the above, that in the corollary statement to the earlier one as to which of the mishandlings by PIOs being considered most serious, ‘deliberate refusal’ was given the most serious followed by delays and unnecessary transfers as the more critical mishandling by the PIOs. Quoting wrong provisions and displaying antagonistic attitude were not considered to be too serious.

4.18 Q13. Kindly rank the following between 1 to 5 according to their effectiveness to reduce/minimize mishandling of RTI applications by PIOs with 1 as most effective and 5 as least effective

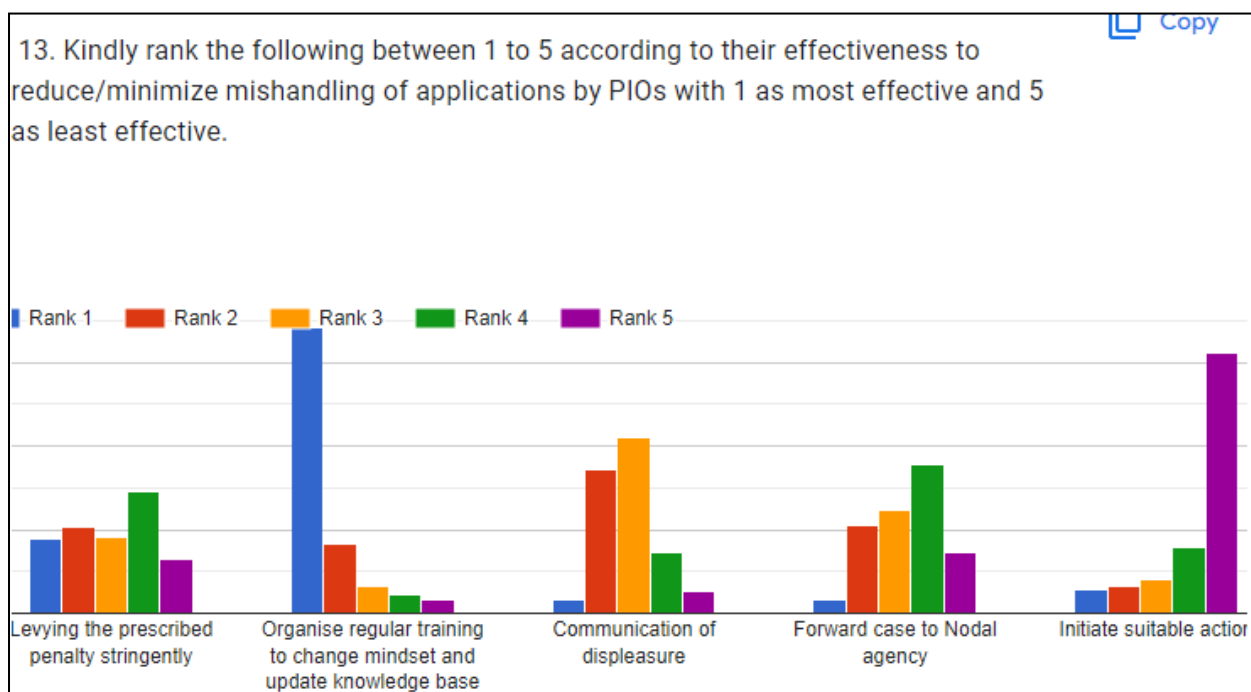


Figure 18: Showing Response to Q.13 mentioned above

When the stakeholders were asked to rank available options to ascertain the effectiveness of corrective actions against the erring PIOs and APIOs a majority chose organizing trainings and capacity building measures than levy of penalty or initiating action.

4.19 Q.14 Suo- motu disclosure of information by PAs should be implemented stringently to strengthen RTI Act

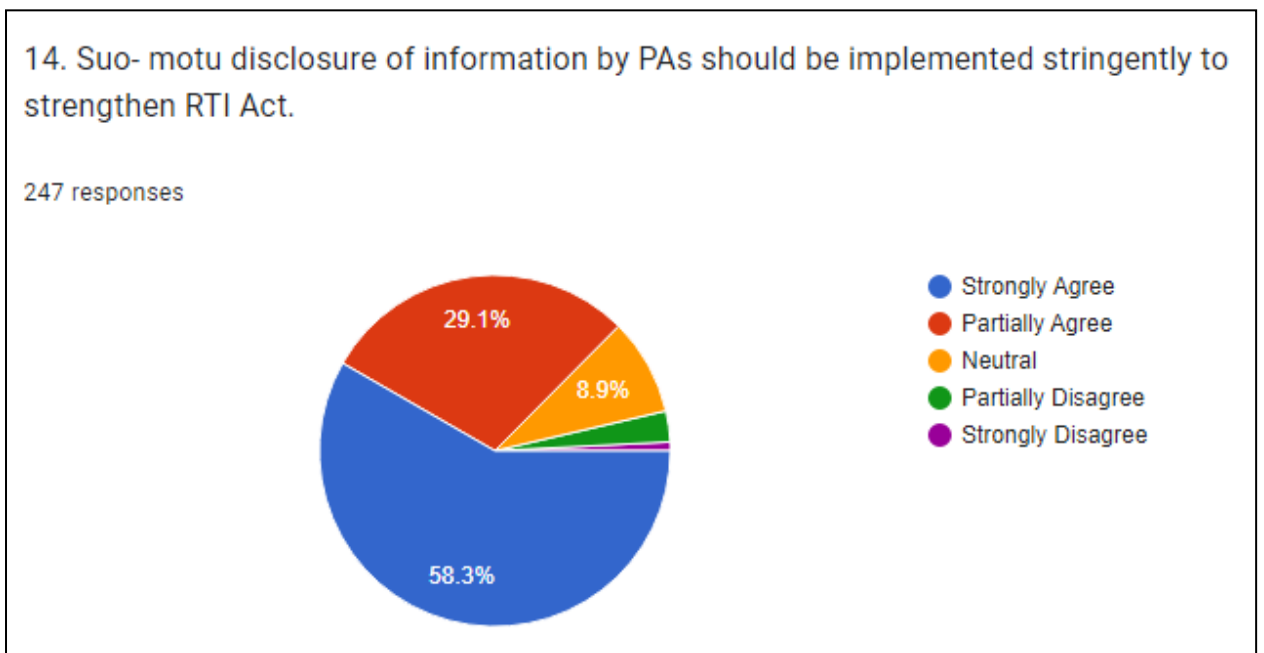


Figure 19: Showing Response to Q.14 mentioned above

It's quite clear from the research findings that most of the stakeholders believe that the RTI Act could be strengthened by strengthening the Suo-motu disclosures.

More than 85% of the stakeholders agreed that Suo-motu disclosure holds the key to making RTI Act effective, with nearly 60% agreeing strongly with the statement. The PAs need to pay closer attention to those 17 parameters prescribed under section 4 1 (b) of the Act and try and disclose all important details through the disclosures and also ensure that the shared information is updated from time to time.

4.20 Q.15. Some sort of penalty/punitive measure to be introduced for failure in Suo-motu disclosure on the part of PAs, wherever noticed

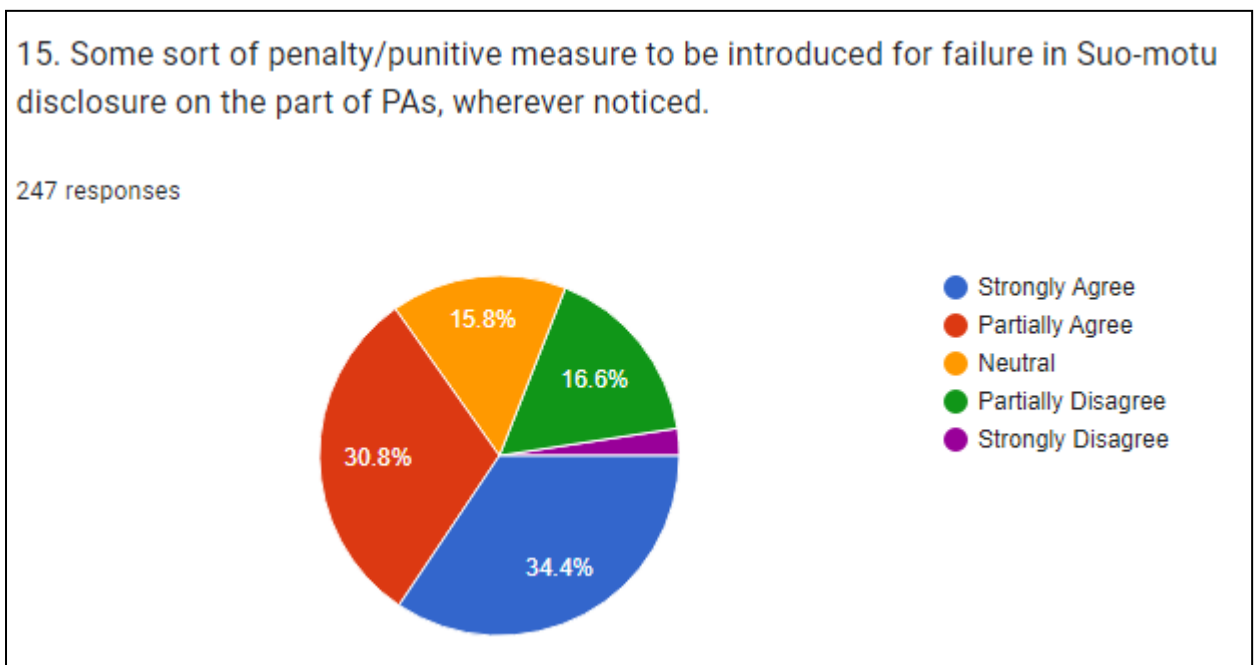


Figure 20: Showing Response to Q.15 mentioned above

The feedback of the respondents when posed with the question that whether some punitive action should be introduced for failure in suo motu disclosure shows about 64% agreed to the suggestion.

But when the responses of the government and non government respondents were analysed separately, it was revealed that as against 54% of the government respondents more than 75% non government respondents agreed to the proposed levying of penalty for failure in suo motu disclosures. The Figures are placed below.

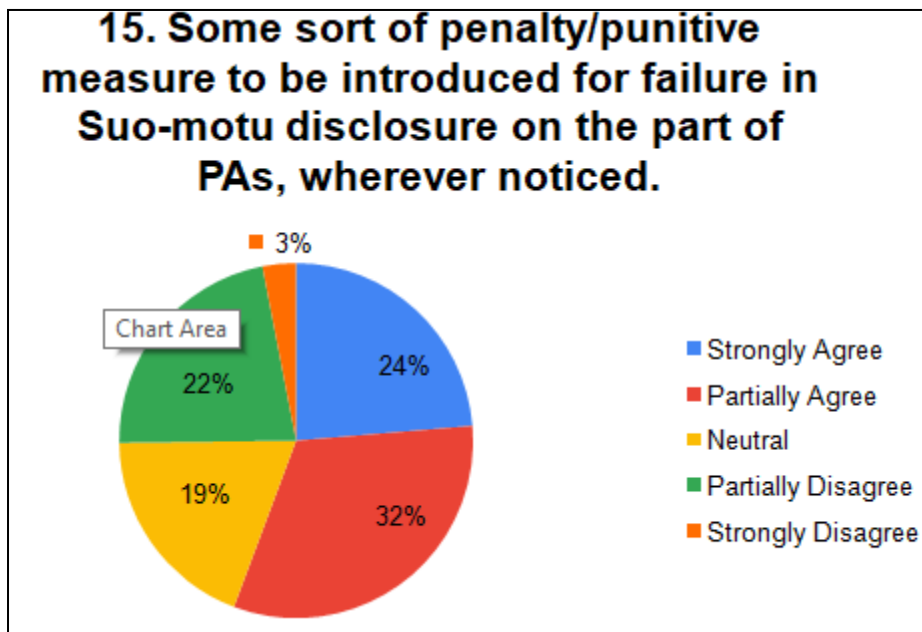


Figure 20A: Showing choice of Government stakeholders

The responses of the non government participants reflected below.

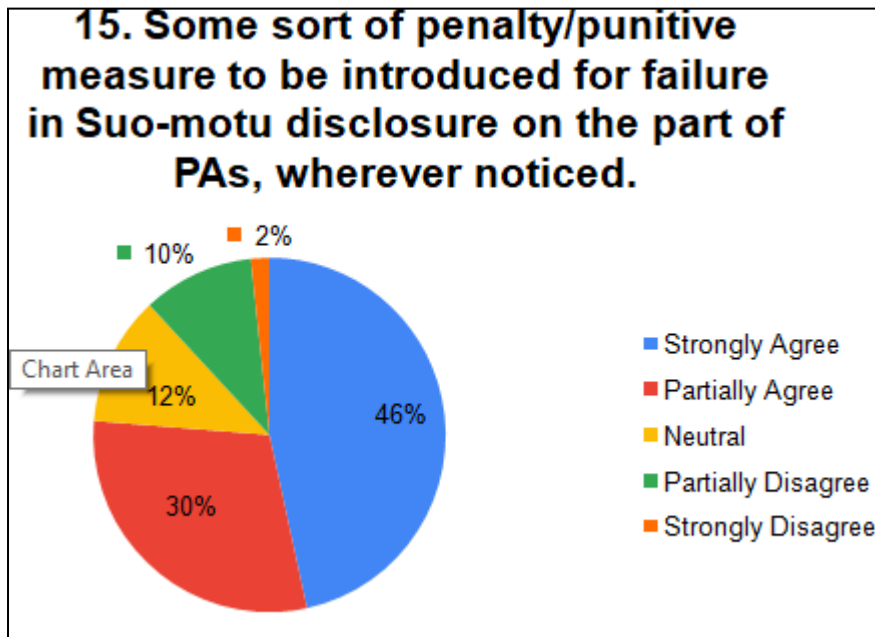


Figure 20B: Showing choice of Non-Government stakeholders

4.21 Q.16 Some sort of penalty/punitive measure should be introduced with/without the filtering mechanism to control the number of frivolous/vexatious applications received

16. Some sort of penalty/punitive measure should be introduced with/without the filtering mechanism to control the number of frivolous/vexatious applications received.

247 responses

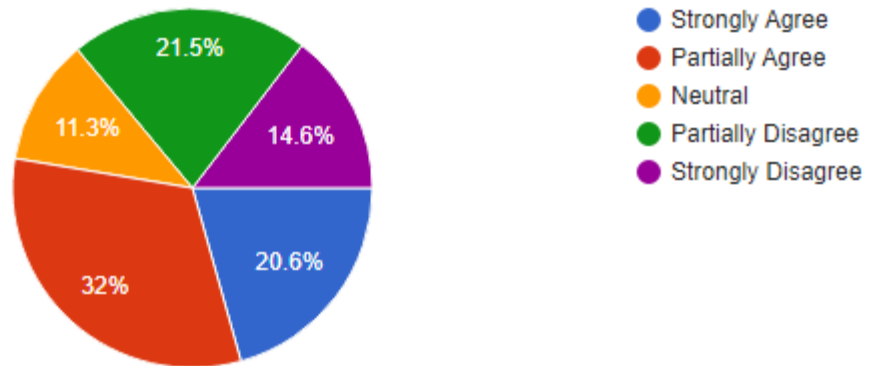


Figure 21: Showing Response to Q.16 mentioned above

The respondents were divided evenly in their opinion to this statement. While 52% agreed to the statement 48% chose not to agree.

It was seen from the responses that the non - government respondents did not see any point in levying of penalty to counter the problem of vexatious applications and appeals. As also in response to statement No 6, levying of penalty was considered the least effective option.

4.22 Q.17 The penalty to be imposed against applicants filing frivolous/vexatious applications should be similar to the penalty prescribed against the PIOs under section 20 of RTI Act.

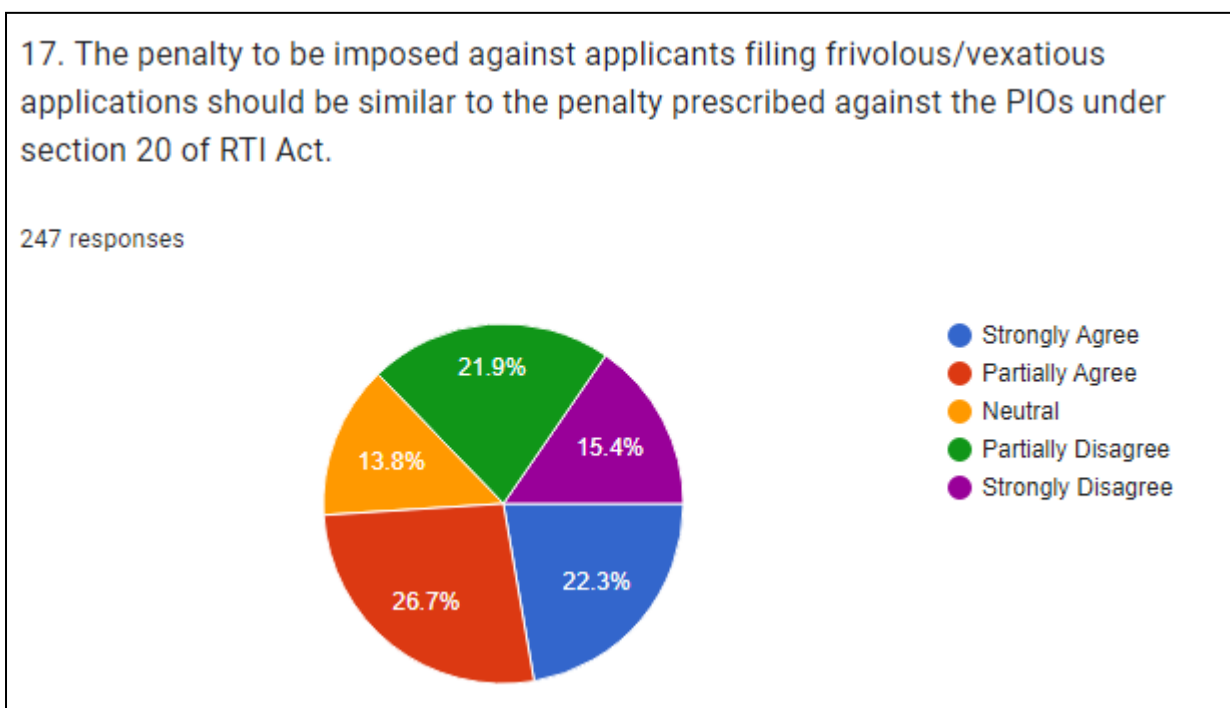


Figure 22: Showing Response to Q.17 mentioned above

As has been brought out in the analysis of the previous question, the idea of punitive measure was not found palatable to most of the respondents. Similar to the earlier statement, only 49% of the stakeholders agreed to this while 51% chose not to. Majority of the non - government respondents did not find the statement to have any merit.

4.23 Q.18 Kindly rank the following authorities between 1 to 5 in terms of their suitability to levy penalty against applicants filing frivolous/vexatious applications with 1 as the most suitable and 5 as the least suitable

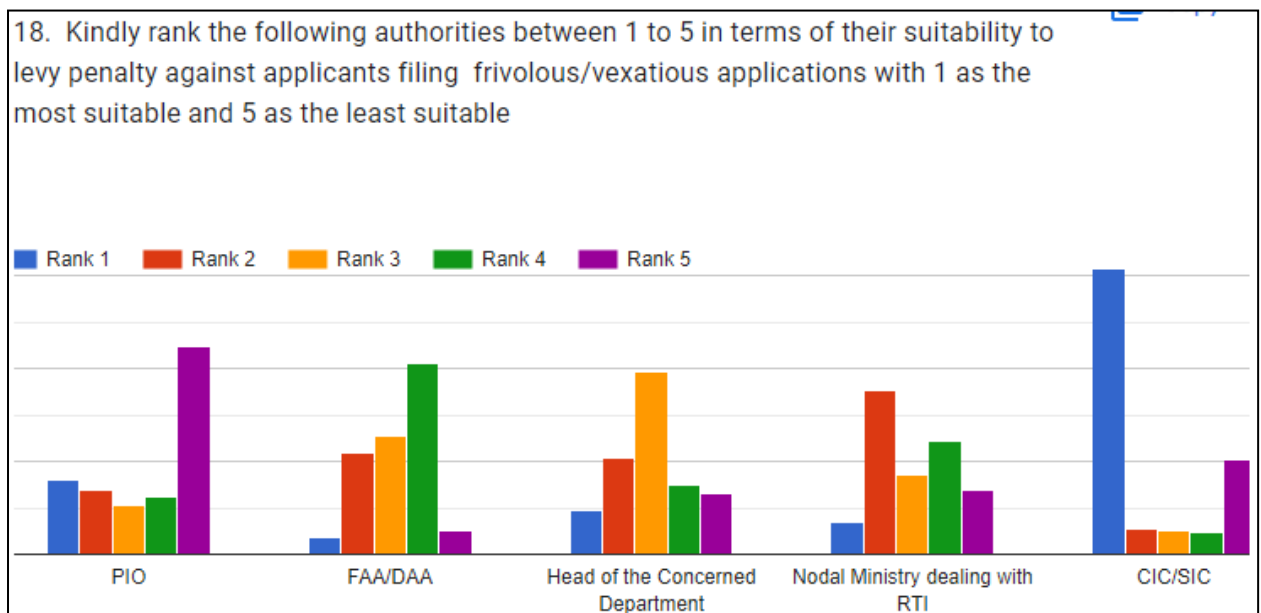


Figure 23: Showing Response to Q.18 mentioned above (ranking of authorities according to their suitability to levy penalty)

When the participants were asked to rank authorities as who they chose as suitable to levy penalty, most participants chose the CIC/SIC as the suitable authority. This demonstrates people's reliance on the oversight mechanism created for the Transparency Law in India.

As many as 154 stakeholders out of 248 (62.5%) chose CIC/SIC as the first and most suitable authority to implement any measures relating to RTI Act.

4.24 Q.19 Separate resources should be earmarked in departments/ministries to handle RTI cases

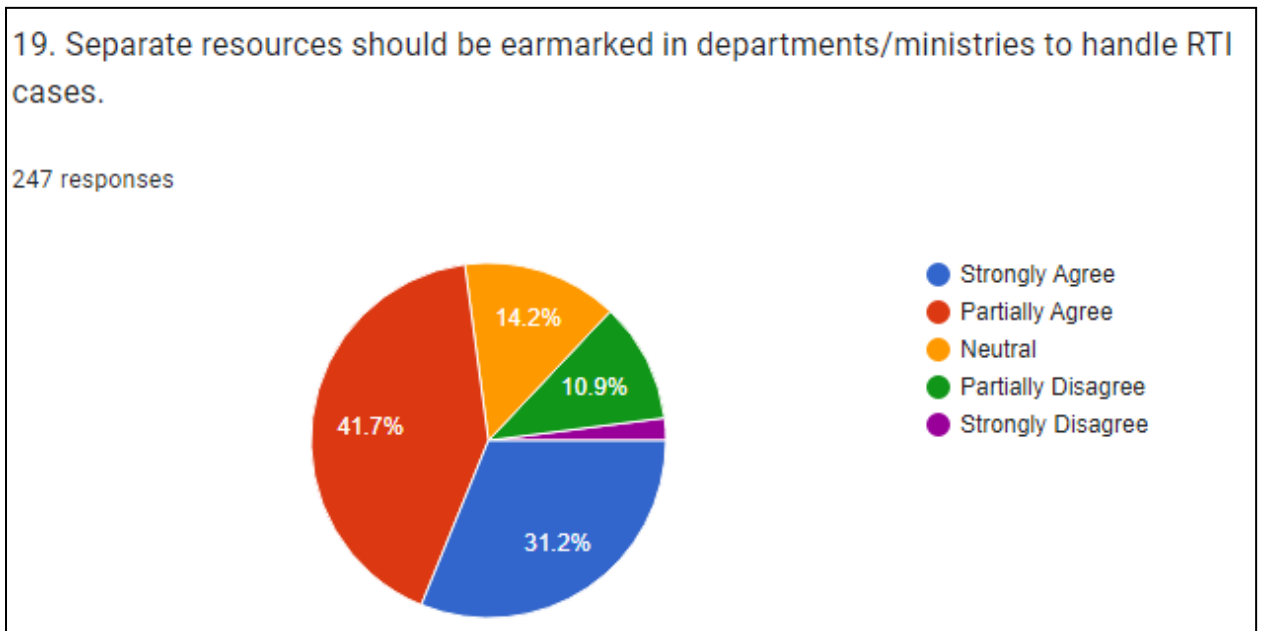
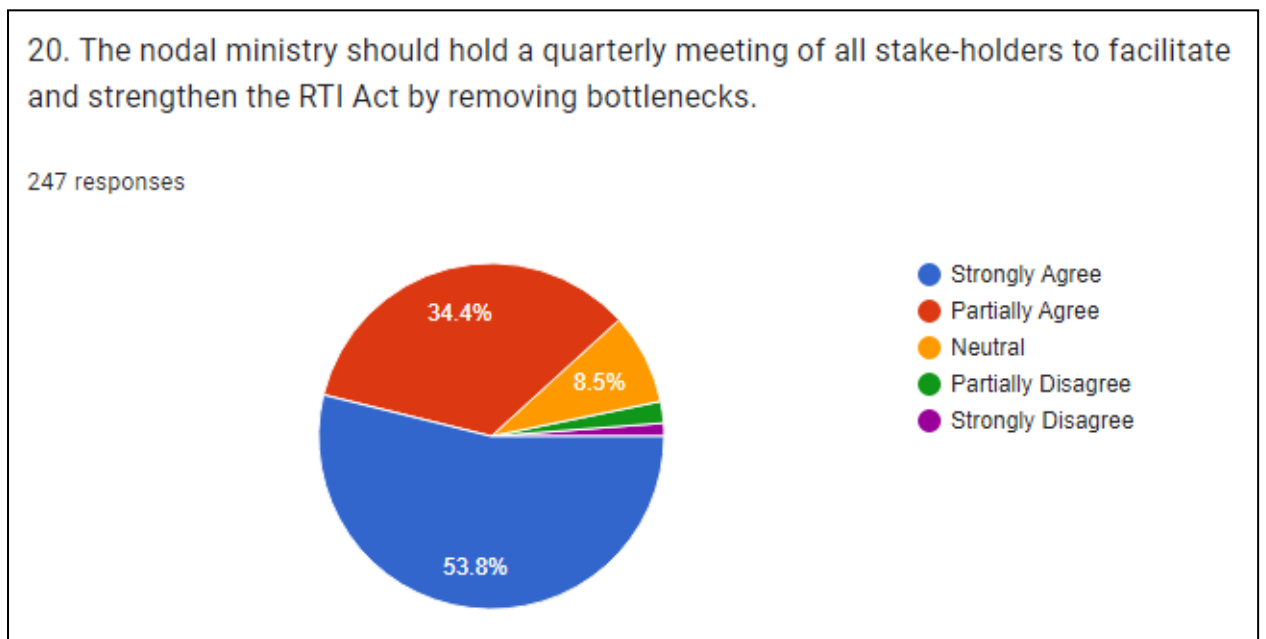


Figure 23: Showing Response to Q.19 mentioned above

Majority of the respondents (roughly 72%) agreed to the statement. Since, this study had 48% non government respondents, it means that both the government and non government sectors agree that suitable budget and resources are necessary to make the implementation of the Act effective.

4.25 Q.20 The nodal ministry should hold a quarterly meeting of all stake-holders to facilitate and strengthen the RTI Act by removing bottlenecks



Both the government as also the non government stakeholders in their feedbacks unanimously agreed that this is highly desirable. May be this is the missing link to make the Act resilient and stronger.

As may be seen from the chart above, about 88% of the respondents (218 out of 248 total people studied) agreed that the nodal ministry needs to be involved closely with the implementation of the Act.

5. Summary of Findings

5.1 To summarize the major findings, a majority of the respondents (95%) agreed that the Right to Information Act 2005 is a strong and effective tool to ensure clean and open governance system. The majority of respondents (81%) also agreed that certain loopholes and bottlenecks do exist in the system which needs to be tackled to further improve the Act and make it resilient. Most of the participants (88%) opined that the proactive disclosure mechanism provided in the Act viz. suo motu exposures under section 4 holds the key to make RTI Act robust and needs to be ensured and further bolstered to strengthen the Information Law.

5.2 Maximum stakeholders (73%) agreed that earmarking separate resources both in money and manpower terms would help to make the implementation a success thereby implying that at present there is a need to improve the system of data creation and maintenance in the public offices. Most of the stakeholders (70%) perceived that capacity building and training initiatives are the answer for bringing in more capable and responsive PIOs and APIOs and to tackle the current maladies experienced with the public authorities.

5.2 More than half of the respondents (64%) also agreed that some suitable filtering mechanism is needed to curb current misuse. This should be administered by either the CPIO/FAA or the CIC/SIC. The respondents perceived measures viz. asking for ID proofs, limiting the no. of applications per applicant and forwarding such requests to a nodal agency to be useful to combat the problem. About 60% of the respondents agreed that the vexatious applications are blocking government resources. However, response to putting a limit to such vexatious complaints would help save the government resources was found to be inconclusive. Similarly,

whether PIO should be able to refuse in the case of a repeat application was found to be inconclusive with the stakeholders having divided opinion on the issue.

5.3 The majority of stakeholders (about 80%) agreed that mishandling by the PIOs is leading to increased no of appeals, complaints etc. The deliberate refusal to share information was adjudged the most serious of the problems followed by delays and unnecessary transfers. Further, when the respondents were asked to rank various options to counter the problem, most of the participants (nearly 70%) chose organizing training and capacity building programs to be more effective. It is however pertinent to note here that as may be seen from the secondary data analysis done in Chapter V, the number of second appeals/complaints as also the amount of penalty has reduced remarkably in the recent years compared to the past period.

5.4 As against this, maximum stakeholders (about 87%) expressed that Suo-motu disclosure by the PAs holds the key to effective implementation of RTI act. From this it can safely be concluded that people think that timely disclosure of important information and their up-dation would lead to achieving the desired goals of RTI.

5.5 As regards levying penalty to curb misuse of the Act, it had few takers. However, most of the participants agreed that any measure to be taken should be administered by CIC/SIC. This shows that most repose their faith on the commission which was created as the oversight and supervisory mechanism for the landmark Act in India.

5.6 Approximately 72% of the participants agreed with the statement with about 31% agreeing strongly that separate resources should be earmarked for RTI related activities in the office of public authorities elicited positive response from majority stakeholders.. This implies that sufficient budget, time and earmarked resources

when deployed exclusively for RTI related activities, would perhaps improve record maintenance, attention to preparation and safekeeping of data and records. Similarly, most of the stakeholders (88%) were unanimous in their opinion that the nodal authority needs to be closely involved with the process especially identifying and removal of bottlenecks.

5.7 Apart from the quantitative data, a few interviews were also conducted with a few representative individuals. The interviews were primarily done to have a preliminary understanding of the issues involved and to help carry out the quantitative survey. The interviews were conducted based on an open ended question set. The view of the participants revealed similar trend as the quantitative data above with the government functionaries asking for some kind of filtering measure to curb the misuse, a mechanism to refuse information on repeated and vexatious applications/appeals and removal of bottlenecks to facilitate sharing of information and the non-government participants asking for strict implementation of suo motu disclosures, conducting awareness workshops, scrupulous adherence to RTI Act provisions by the PIOs, and increased 'openness' on part of public authorities.

CHAPTER VIII

RECOMMENDATIONS AND CONCLUSION

If only the state can finally be made to disclose itself, to tear down the informational walls that keep it secret, the authentically democratic state that we deserve will finally emerge. - Mark Fenster

1. Key Findings of the Study

1.1 Need for Improvement: The study found that though majority of the stakeholders (about 95%) agreed that the Right to Information Act 2005 is a strong and effective tool and holds the key to participatory democracy but it needs fine - tuning to make it more effective. Nearly 201 out of 248 total respondents (approximately 80%) expressed that a few loopholes and bottlenecks do exist in the system which needs to be tackled to further improve the Act.

1.2 Reinforce Suo-motu Disclosures: Most of the participants opined that the proactive disclosure mechanism provided in the Act viz. Suo motu disclosures under section 4 holds the key to make RTI Act robust. More than 85% of the stakeholders (about 216 of 248) converged in their opinion that Suo-motu disclosure need to be implemented stringently and further bolstered to strengthen the Information Law. The PAs need to disclose information on 17 parameters prescribed under section 4 (1) (b) and also comply with the directions under 4 (2) of the Act and try and disclose all important details and also ensure that the uploaded information is updated from time to time.

1.3 Capacity Building Programs: Most of the stakeholders perceived capacity building and training initiatives would lead to bringing in more capable and responsive PIOs and APIOs and will tackle the current maladies experienced with the public authorities. 171 stakeholders (nearly 70%) ranked Capacity building as the best option to make the PIOs and APIOs more responsive to the RTI requests and handle the requests better.

1.4 Need to Curb Misuse: Many of the respondents (65%) also agreed that the current misuse in the form of manifestly vexatious and frivolous requests need to be filtered with some suitable filtering mechanism. This should be administered by either the CPIO/FAA or the CIC/SIC. The respondents perceived measures viz. asking for ID proofs, limiting the number of applications per applicant and forwarding such requests to a nodal agency would be useful to combat the problem.

1.5 Monitoring and Supervision by CIC/SIC: In many of the issues, most of the respondents agreed that the measures to be taken regarding the Act should be administered by CIC/SIC. This shows that most repose their faith on the commission which was created exclusively as the oversight and supervisory mechanism for the landmark Act in India. Therefore, active monitoring by CIC/SIC is expected to strengthen the Act.

1.6: Earmarking Separate Resource: Maximum stakeholders (72%) agreed that earmarking separate resources both in money and manpower terms would help to make the implementation a success implying that at present there is a need to improve the system of record creation and maintenance in the public offices.

1.7: Involvement of the Nodal Agency: A high number of stakeholders (88%) agreed in their opinion that the nodal authority needs to be closely involved with the

process of identifying and removal of bottlenecks. The nodal authorities may organize awareness programs and workshops to educate the stakeholders and engage with the stakeholders to streamline RTI system.

2. Recommendations for Strengthening the System

2.1 RTI Act empowers citizens by sharing information. It improves the state citizen partnership and augurs well for the democracy of our country. But we must remember that it is not an absolute right or an unrivalled one. Further, any law when abused loses its sanctity and defeats the very purpose for which it was formulated. Therefore, there has to be harmony and balance on both sides. On one hand there has to be clarity among the public agencies, who are the primary holder and suppliers of information, between what and how much information is to be shared and what sensitive information is to be withheld from public scrutiny and on the other hand, there has to be understanding and discretion on the side of the citizens or the information seekers to keep a check on what and how much information to be sought.

2.2 It is pertinent to note here that in the preamble of the historic Act itself it was spelt out that disclosure of information is likely to lead to conflict with public interests including efficient government operations, optimum use of limited resources and the preservation of secrecy of sensitive information. Therefore, it is imperative to harmonize and balance these conflicting interests while upholding our democratic ideals as envisaged under legislation of the Information Law.

2.3 Currently, the RTI system is riddled with a few problems and some bottlenecks which need to be streamlined. As we saw from the previous chapters, the problems plaguing the system are manifold and multi-layered, both from the PAs side as also

the applicants side. Further, it is necessary to remember that any legislation which is made does not become fool-proof at one go. It requires constant monitoring, reviewing, guidance, interpretations and whenever required amendments and course corrections to keep it meaningful and relevant. Even India's great constitution which embodies the key values of our haloed democracy and is the mother of most Acts and Laws in India has undergone many changes and amendments since its inception.

2.4 In order to develop a holistic view of the subject matter and provide necessary and practicable recommendations to improve the system, the relevant literature was analyzed, the views and observations of the CJIs, CIC and other concerned authorities were synthesized with the literature, the statistics and secondary data was summated, the Case Laws and the critical verdicts of Hon'ble Supreme Court, High Court benches were corralled, the gist of the decisions of CIC/SICs were referenced in the context of the existing issues and correlated with the data findings of the current study.

2.5 Based on the above, the following recommendations are offered:

A) Strengthening Suo-motu disclosure: It can be inferred from the discussions and findings of the study that some mechanism is needed to strengthen these pro-active disclosures. It is expected that timely disclosures and up-dation of critical and relevant information would lead to citizens accessing the information on their own without resorting to applying for the same under the RTI Act and there-by achieve the desired goal of transparency. Therefore, the Public Authorities should be asked to pay close attention to the 17 parameters prescribed under Section 4 (1) (b) and section 4 (2) of RTI Act dealing with Suo- motu

disclosure. Further, although information audit has been launched by the oversight authorities but putting a structured and time-bound system in place, which would undertake a regular and systematic monitoring of the disclosures will be highly beneficial.

B) Filter mechanism to flag frivolous/vexatious requests: The following mechanism is suggested to flag the manifestly frivolous and vexatious requests. The PIO may flag these cases to the CIC/SIC for Central and State Public Authorities respectively, within 10 working days, after due approval of the concerned FAA/DAA and under intimation to the applicant. The CIC/SIC can then take a final call on the matter. There may be two scenarios here; i) CIC/SIC if agreed with the PIO may close the case/take other requisite action or ii) if not agreed with the PIO and in case the application is not considered manifestly frivolous or vexatious, the CIC/SIC may return the application to the PIO for furnishing of reply. CIC/SIC may be given necessary power to initiate suitable action on this issue.

C) ID Proofs: The applicants/appellants may be asked to give ID and address proof except in cases pertaining to ‘Corruption’ and ‘Human Rights Violation’. This will not only act as a deterrent for the abusers of the Act but also reduce wastage of government resources being spent on disgruntled and interruptive elements.

D) Awareness and Education Programs: It is of paramount importance to create awareness among all stakeholders about the significance of this monumental Act and the need to uphold its sanctity by not abusing the

Act for any vested interest or personal gains. Awareness programs and workshops could be organized from time to time apart from advertisements and publications. If people are educated and made aware not to misuse the act, it will lessen the burden on the PAs as also lead to achievement of the desired goals of RTI Act by focusing on genuine cases.

E) Capacity Building of PIOs/APIOs: PIOs/APIOs need to be trained continuously on the latest rulings, interpretations and provisions apart from the basic Act. All the important judgments and orders of the CIC/SIC/SC of India/ and High Courts of India should be available online/offline to the PIOs to facilitate discharge of function scrupulously and sincerely. Further, care needs to be exercised in appointment of PIOs/APIOs and very junior officers should not be given this critical responsibility.

F) Record Creation and Digitization: This needs to be prioritized. Separate budget, resources including manpower etc. may be earmarked by the concerned departments which could be used dedicatedly for not only processing of requests and their faster disposal but also for preparation, development, and maintenance of records. Wherever possible steps may be taken for converting the existing documents in to digital format for easy sharing and access.

G) Special Measures for Ministries/Departments which get maximum requests: The ministries/departments which receives most number of RTI requests/appeals (incidentally, CIC's Annual Report compiles this

information for top 20 ministry/departments and the same is readily available) may be requested to take special measures for suo motu disclosures, share information especially on FAQs (Frequently Asked Questions) on their website, convert all necessary data and records to digital form, do timely up-dations of shared data (because data shared once may lose relevance over time). They may also be advised to share all RTI applications and appeals along with their replies on their designated online sites/webpage to prevent duplication of requests and saving resource in future.

H) Workshops and Seminars: It is desirable that the nodal ministry may conduct workshops with the stakeholders to address the issues being faced by them thereby removing the hurdles from the system to make it effective.

I) Monitoring by CIC/SIC: The CIC/SIC may broaden their supervisory role and carry out necessary social audits and information audits which is likely to bridge the gaps in the system and make it a strong, vibrant and resilient Act it is meant to be. As has been noted above, certain structured and time-bound audit mechanism may be evolved to check that the action envisaged under the Act are being carried out scrupulously by the concerned authorities. As has been brought out in previous chapters, the establishment of the Commissionates as an appellate cum oversight mechanism embedded in the implementation architecture of the Act was especially designed to ensure smooth functioning of the system and for

monitoring its growth as well as performance. However, necessary power must be shared with the CIC/SIC to enable them to carry out the mandate.

3. Conclusion

3.1 The Right to Information Act (RTI) of India, passed in 2005, aims to promote transparency and accountability in government functioning by bringing in informed citizenry and participatory decision making. The Act provides a mechanism through which citizens can demand information from public authorities, hold public officials accountable for their actions and thus promotes greater openness and accountability in governance.

3.2 As has been established from the data and documents analysis of previous chapters, the RTI Act has penetrated deep into the democratic governance of our nation, proved itself as a powerful tool for the citizens and also has succeeded to a great extent in increasing transparency, lowering levels of corruption and improving accountability in governance. It has also been used to obtain information about government schemes and policies, which has helped in improving the effectiveness and efficiency of government programs. The steady increase in the number of RTI requests points towards its efficacy, utility and popularity as an efficient medium for deliberative decision making and partnering between the state and citizens.

3.3 However, the implementation of the RTI Act has not been without challenges. Public authorities have been criticized for delaying or denying information, and for not proactively disclosing information in the public domain. There have also been cases of abuse and misuse by the information seekers including harassment and intimidation of public authorities.

3.4 Despite these challenges, the RTI Act remains an important tool for promoting and ensuring transparency, openness and increased engagement of citizens. It has become an integral part of India's democracy, enabling citizens to participate in governance and decision making process ushering in an era of openness, accountability and corruption free administration. Further, with the help of suggested measures, the Act could be made more robust and resilient.

3.6 RTI Act has been described as the greatest law ever enacted by the dynamic Indian democracy and India is also being called the poster nation of RTI. Hence, the onus is on us, the Indian citizens, authorities, law makers, government functionaries, civil society, activists, Judges and advocates, media and academia and each one of us to do our bit and discharge our function because ultimately we are the owners as also stakeholders of this powerful Act. We, therefore have to work in harmony, be circumspect, vigilant and sensitive to ensure that RTI Act remains relevant, effective and meaningful; so that it achieves its desired goals of making India a harmonious, resilient and vibrant democracy.

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List of Abbreviations Used

<u>Abbreviations</u>	<u>Full Forms</u>
ATI	Access to Information
APIO	Assistant Public Information Officer
CAPIO	Central Assistant Public Information Officer
CBEC	Central Board of Excise and Customs
CBI	Central Bureau of Investigation
CIC	Central Information Commission
CJI	Chief Justice of India
CPIO	Central Public Information Officer
DoPT	Department of Personnel and Training
DTC	Delhi Transport Corporation
DAA	Departmental Appellate Authority

FAA	First Appellate Authority
GOI	Government of India
GNCTD	Government of National Capital Territory of Delhi
IAF	Indian Air Force
IACtHR	Inter - American Court of Human Rights
IC	Information Commissioner
ICAI	Institute of Chartered Accountants of India
IOCL	Indian Oil Corporation Ltd.
MCD	Municipal Corporation of Delhi
MHRD	Ministry of Human Resource Development
MKSS	Mazdoor Kisan Shakti Sangathan
NCPRI	National Campaign for People's Right to Information
NGO	Non-Governmental Organization
NIC	National Informatics Centre

Ors.	Others
PA	Public Authority
PIO	Public Information Officer
RTI	Right to Information
SIC	State Information Commission
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Program
UOI	Union of India
V	Versus

Questionnaire

Dear Respondent,

The Right to Information Act passed in 2005 has empowered Indian citizens to participate meaningfully in the administration of the country and foster an era of transparency and accountability. It is often seen as holding the key to strengthening participatory democracy and people centered governance. However, now that considerable time has elapsed since the path breaking law was enacted and implemented, it's time to evaluate its efficacy as also see the lacunae rendering it ineffective, so that the same could be addressed, to make it stronger and more appealing.

I, Julia Mohapatra, am presently pursuing M.Phil (2022-23) from Panjab University - under the guidance of Prof. Sapna Chadah, at Indian Institute of Public Administration (IIPA), New Delhi.

Your views on the subject are very valuable for me, because as a researcher and student, I am trying to explore the strength and loopholes of the mighty RTI Act. I, therefore, would request you to kindly take a few minutes out to fill the following questionnaire; it won't take more than a couple of minutes. Your feedback and suggestions would add value to the research and beneficial for future policy formulation.

I assure you that the information being collected is for purely academic purpose and all information/statements and views of the participants will be kept

strictly confidential. The basic data privacy norms will be adhered to and your personal information would be kept anonymous.

Clarifications, if any may kindly be sought on Mob. No 9868146880.

Warm Regards,

Julia Mohapatra

Kindly State:

- I. Your name:
- II. Designation and Organization
- III. Age Group: 20-30, 30-40, 40-60, Above 60
- IV. Email:
- V. Specify:
 - A. Are you a Govt. Servant? Yes/No
 - i) If yes - Central/State/Others
 - ii) Have you ever handled an RTI application or RTI matter as CPIO/ACPIO/FAA/Others
 - B. Have you ever filed an RTI application? Yes/No
 - C. Have you worked in either CIC/SIC in any capacity? Yes/No
 - D. Have you been involved with the RTI process in any capacity? Yes/No

If Yes Please specify - As Advocate/Govt. Counsel/ Civil Society/ Activist/
Media / Academia/ NGO/ PIO/ Others

Abbreviations used

RTI: Right to Information Act, 2005

PA: Public Authorities

PIO: Public Information Officer

APIO: Assistant Public Information Officer

FAA: First Appellate Authority/ Departmental Appellate Authority

SAA: Second Appellate Authority i.e CIC/SIC

CIC: Central Information Commission

SIC: State Information Commission

Kindly attempt the questions choosing between number 1 to 5, where 1 = Strongly Agree, 2 = Partially Agree, 3 = Neutral, 4 = Partially Disagree and 5 = Strongly Disagree, unless specified otherwise.

1. RTI Act 2005 is an enabler for participatory democracy and holds key to Good Governance.
2. There are certain grey areas and loopholes present in RTI Act, removal of which will strengthen the Act.

3. A no. of RTI applications/appeals received at present are manifestly Frivolous and Vexatious in nature, which are causing harassment to PIOs/FAAs.
4. A no. of the RTI applications/appeals received are manifestly frivolous and vexatious which results in blocking of Govt. resources i.e time, money, manpower etc.
5. RTI Act needs amendment to introduce suitable filtering mechanism to weed out manifestly Frivolous/Vexatious applications.
6. Rank the following options between 1 to 5 according to their effectiveness to filter or curb Frivolous/Vexatious applications with 1 as most effective and 5 as least effective A) Limiting the no. of applications per applicant B) Forwarding such applications to a Nodal authority C) Asking for documents specifying ID proofs and Address proofs D) Levying of Penalty/Fine E) Banning the Applicant from filing applications.
7. Rank the following authorities between 1 to 5 in terms of their suitability to enforce the filtering of Frivolous/Vexatious applications under RTI Act, with 1 as the most suitable and 5 as the least suitable – A) PIO B) FAA/DAA C) Head of the Concerned Department D) Nodal Ministry dealing with RTI and E) CIC/SIC.
8. Dealing with a large no. of RTI applications, a number of which are either repetitive or frivolous is putting a burden on the govt. machinery in terms of time and resources.
9. Putting a limit to no. of applications per applicant will help save scant resources of small govt. offices.

- 10.** The PIO should be able to refuse information, if the same information has already been furnished to identical/ substantially similar requests.
- 11.** The mishandling of RTI applications by PIOs (viz. unnecessary transfers, delays, deliberate refusals, incomplete and misleading information, displaying antagonistic attitude etc.) is leading to increased no. of appeals, complaints and penalty.
- 12.** Kindly rank the following types of mishandlings by PIOs between 1 to 5, with 1 being most serious and punishable to 5 being least serious A) Unnecessary transfers B) Delays C) Deliberate refusals D) Quoting wrong provisions E) Displaying antagonistic attitude.
- 13.** Kindly rank the following between 1 to 5 according to their effectiveness to reduce/minimize mishandling of applications by PIOs with 1 as most effective and 5 as least effective A) Levying the prescribed penalty stringently B) Organise regular training to change mindset and update knowledge base C) Communication of displeasure D) Forward case to Nodal Agency E) Initiate Suitable Action.
- 14.** Suo- motu disclosure of information by PAs should be implemented stringently to strengthen RTI Act.
- 15.** Some sort of penalty/punitive measure to be introduced for failure in Suo-motu disclosure on the part of PAs, wherever noticed.
- 16.** Some sort of penalty/punitive measure should be introduced with/without the filtering mechanism to control the no. of frivolous/vexatious applications received.

- 17.** The penalty to be imposed against applicants filing frivolous/vexatious applications should be similar to the penalty prescribed against the PIOs under section 20 of RTI Act.
- 18.** Kindly rank the following authorities between 1 to 5 in terms of their suitability to levy penalty against applicants filing frivolous/vexatious applications with 1 as the most suitable and 5 as the least suitable – A) PIO B) FAA/DAA C) Head of the Concerned Department D) Nodal Ministry dealing with RTI and E) CIC/SIC
- 19.** Separate resources should be earmarked in departments/ministries to handle RTI cases.
- 20.** The nodal ministry should hold a quarterly meeting of all stake-holders to facilitate and strengthen the RTI Act by removing bottlenecks.

11. Is the Nodal ministry playing its role properly? Could something more be done by them?

12. What according to you is needed to make the Act resilient and vibrant? (Kindly be specific. For ex. Policy/ supplementary laws/ penalty/ audit and oversight/ involvement of civic society/volunteers /others)