

# INDIA IS LOSING ITS CHERISHED RIGHT TO KNOW

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'The CIC was a functioning institution until four years ago' | Photo Credit: Getty Images/iStockphoto

The most vital mandate of the Central Information Commission, the apex body under India's transparency regime, is to decide whether certain information sought by a citizen ought to be disclosed or not. Its primary duty is to decide the disclosure or the non-disclosure of information. But the commission has seemingly relinquished this primary duty in cases of larger public importance.

Citizens can file applications under the Right to Information Act with any public body and are guaranteed a reply from the public information officer of that public body within 30 days. In case of a no reply or dissatisfaction with the response, the citizen can file an appeal at the departmental level and then a second and final appeal with the Information Commission. Each State has its own State Information Commission to deal with second appeals concerning State bodies.

At the centre, it is the Central Information Commission (CIC). Until the 2019 amendment to the RTI Act, Information Commissioners (ICs) appointed to the CIC were equal in status to the Chief Election Commissioner, and that of a Supreme Court judge. They had a five-year fixed term and terms of service. After the amendments of 2019, the Centre gave itself powers to change and decide these terms whenever it wished, thereby striking at the independence of the commission and those who man it.

The CIC was a functioning institution until four years ago. It had passed orders seeking transparency in many cases of public importance — from boldly pronouncing that political parties were under the RTI Act's ambit, and hence accountable to the public, to ordering disclosure of the current Prime Minister's education qualifications and the Reserve Bank of India's list of willful defaulters of loans. The commission acted as a strong proponent of transparency in public life.

Now, the CIC has become more like a walking dead institution, where records will show that not a single order for disclosure has been forthcoming in matters of public importance. The present set of Information Commissioners have together adopted a new jurisprudence that has created additional hurdles in a citizen's quest for accountability.

Cases at the CIC come up for a hearing roughly after a two year wait. If the matter is not already infructuous or lost its significance, one can look forward to the commission deciding one's case. But in matters of public importance, such as cases seeking disclosure of files related to the national lockdown during COVID-19, or the case seeking disclosure of data pertaining to phone tapping orders passed by the Home Ministry, the Commission has adopted a new way of delegating its mandate — to decide cases — to the Ministry before it (the very same party that stands accused of prohibiting transparency). In most cases, the Ministries reiterate their earlier stand of non-disclosure, most often under vague grounds of national interest.

More worryingly, after these public authorities pass fresh orders, which are usually a reiteration of their earlier stand against disclosure, the CIC refuses to accept any further challenge to such orders, therefore, refusing to do its duty of deciding the cases. One of the cardinal rules of natural justice is that no one should be a judge in their own cause. However, the commission now allows, or rather wants, the very Ministry that stands accused of violating the RTI Act to act as the judge in their own cause and decide whether a disclosure is necessary.

A similar situation arose when the CIC refused to hear the Internet Freedom Foundation's challenge to the fresh non-disclosure order passed by the Home Ministry in the phone tapping case. The organisation had the resources to challenge this before the Delhi High Court and enforce their right to a fair hearing before the Commission. But many do not, in a country where a small percentage of the populace has the access and the resources to justice redress. And it is not as though the Information Commissioners were not made aware of this problem with their orders. They were. Hence, the need to strongly protest such conduct on their part which continues.

More recent examples from CIC cases do not instill confidence about where India's information regime is headed. In a case seeking disclosure of documents relating to the making of the Unlawful Activities (Prevention) Amendment Act, 2019, the commission has resorted to keeping the matter pending for final order for more than three months now, something which is unheard of. Unlike court cases, RTI matters do not involve complex legal arguments and are fairly simple to adjudicate. In another case related to disclosure of non-performing assets and top defaulters of a co-operative bank, the matter was listed out-of-turn to issue a "stay" order against the Bank's First Appellate Authority's order for disclosure. A stay order is unheard of and there is no provision in the RTI Act for the same.

One cannot help but ask whether actions or inactions such as these are meant to deliberately frustrate citizens who dare to seek answers from the powers that be, and reduce the efficiency of the RTI Act. The effects are already being felt. It is getting more difficult, if not impossible, to extract any information of importance under the present dispensation. Bureaucrats reject RTIs with glee with no fear of facing penal provisions outlined in Section 20 of the RTI Act, knowing fully well that they have a free hand under the Information Commissioners.

To even think of the possibility of the very institution mandated to guard India's transparency regime to be responsible for its downfall should set alarm bells ringing as far as civil society and citizens who care and dare to question are concerned. Dark clouds surround India's transparency regime. Citizens have to mount intense pressure on authorities to act and appoint commissioners of integrity. Lawyers have to help willing citizens take matters to court and seek justice. If there is a failure to do so, India will lose its cherished right to know.

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