



RTI ACT - GOVERNANCE MAINS

Q. The Right to Information (RTI) Act empowers participatory governance and gross root democracy in India. Discuss the importance of RTI Act in India and also trace its recent developments. (15 marks, 250 words)

News: *Central government exempts CERT-In from RTI Act*

What's in the news?

- The Central government has added the Computer Emergency Response Team (CERT-In) among a list of organisations that are exempted from the ambit of the Right to Information Act (RTI), 2005.

Key takeaways:

- CERT-In joins a list of 26 other intelligence and security organisations established by the Central government such as the IB, the R&AW, the ED and the NTRO that are exempt under RTI.

Importance of RTI Act:

1. Participatory democracy:

- Strengthening Participatory governance through the provision of required information along with ensuring **people centric governance**.

2. Mandate to change the attitude of Bureaucracy:

- This Act **does not create a new bureaucracy** for its implementation.
- Rather, it mandated the government officials to change their attitudes and duty from one of secrecy to one of sharing and openness.

3. Ensure Accountability:

- It empowers the Information Commission to be the highest authority in the country to mandate government offices to provide information in accordance with the provisions of the Act.
- It also empowers the Commission to find the officials who do not follow the mandate to make them accountable.

4. Welfare of people through information:

- This Act also empowers the poor and the marginalized by giving them rights to demand and get information about government policies and actions. This, in turn, leads to their welfare.

5. Improved decision making process:

- It further improves the decision-making capacity of the policymakers by removing unnecessary secrecy.



Present status and Challenges of RTI Act:

1. Rising pendency:

- The number of appeals and complaints pending from data obtained from 26 information commissions was 2,18,347 in 2019 to 2,33,384, 2,86,325 and 3,14,323 in 2020, 2021 and 2022.

2. Fallout in big states:

- The highest number of pending cases were in Maharashtra at 99,722 followed by Uttar Pradesh at 44,482, Karnataka at 30,358, the Central Information Commission at 26,724 and Bihar at 21,346.

3. Ineffectiveness of Information Commissions:

- The report says **two out of 29 information commissions across the country are completely defunct, four of them headless at the moment and only 5% of the positions being occupied by women.**
- Jharkhand and Tripura have been completely defunct for 29 months and 15 months respectively.
- Manipur, Telangana, West Bengal and Andhra Pradesh are without chiefs. Also,
- Several Information Commissions, including the Central Information Commission, are working at reduced capacity with less than the stipulated number of members being in office.

4. Laxity in functioning:

- An analysis of penalties imposed shows that the commissions **did not impose penalties in 95% of the cases where penalties were potentially imposable.**

5. Mushrooming vacancies:

- According to a separate report by the Transparency International, one-fourth information commissioner posts are vacant and there are only 5% (only 8) women information commissioners in the country.
- Out of a total 165 posts of information commissioners, 42 are vacant, including two chief State information commissioners.

6. Inaction by Commissions:

- The Transparency International report says that till now more than 4.2 crore RTIs have been filed and 26 lakh second appeals are there before the commissions.
- The States like Uttar Pradesh, Maharashtra and Tamil Nadu State information commissions are getting more appeals than the Central government CIC.
- The top information commissions receiving the maximum number of RTIs were the Central government 1.19 crore, Maharashtra 86.06 lakh, Tamil Nadu 36.99 lakh and Kerala 32.82 lakh.

7. No digitisation yet:

- The entire system was also in need of digitisation.
- **Only 11 information commissions out of 29 provide e-filing facility for RTI applications or appeals, but only five are functional.**

8. Poor compliance:



- In case of award of compensation to activists by public authority as ordered by commission, compliance cannot be secured.

9. Bureaucratic attitude:

- An oft-repeated excuse for this disdainful attitude is the number of inane queries or those with perverse motives.
- The reality, however, is that such queries constitute only around 4 percent of the total appeals and can easily be managed.

WAY FORWARD:

1. Reduce pendency:

- To begin with, the government could take steps to reduce pending appeals.
- Making Information Commissions functional by providing them **required autonomy and infrastructure** along with filling vacancies on time.

2. Prune the exemption list:

- In its current form, **Section 8 of the RTI Act lists ten exemptions**, ranging from any information that may hurt national security, impede the process of ongoing investigations to cabinet papers and deliberations of the council of ministers.
- The current exemptions are wide and have to be clarified and sharpened.
- **Section 24 of the RTI Act allows the government to increase the list of exemptions by an executive order.** Hence to strengthen the RTI Act, this should be only allowed through the legislature.

3. Protect whistle-blowers:

- According to a tracker of assaults on RTI activists set up by the Commonwealth Human Rights Initiative (CHRI), a Delhi-based international non-profit, 84 RTI activists have been murdered since 2005 for seeking information on illegal construction, alleged scams in social welfare schemes, and corruption in panchayats.
- Starting with timely and effective investigation, India needs to put in place long-term measures to prevent these assaults by providing open provisions on protection to whistle-blowers to ensure their safety and security in the Whistle Blowers Protection Act, 2014.

4. CIC as a constitutional body:

- While introducing the amendments to the RTI Act, the government had argued that the office of the information commissioner is a statutory body and not a constitutional authority like the election commission.
- RTI is safeguarding a fundamental right guaranteed under the Constitution and so the government should seriously look into the possibility of elevating the information commission to the status of a constitutional authority.

5. Political parties under RTI:

- All political parties claim to serve the public but are unanimous in their reluctance to share information with citizens.



- In 2013, the CIC had declared six national political parties as public authorities under the RTI Act and ordered them to make voluntary disclosures and respond to information requests.

6. Awareness Campaigns:

- Any empowerment or transparency drive is incomplete without the involvement of stakeholders which can be ensured by **mobilizing NGOs and citizens**.

7. Balancing RTI with Privacy and Official Secrets Act:

- The concern regarding sensitive data needs to be well defined to avoid any vague dismissal of RTI application by Public Information Officers.

Go back to basics:

Right to Information:

Backdrop:

- When the **Universal Declaration of Human Rights** was signed in 1948, it guaranteed that everyone has the right to seek, receive, and impart information and ideas through any medium and across all frontiers.
- **Kulwal vs. Jaipur Municipal Corporation**, a 1986 Supreme Court decision, established that the right to freedom of speech and expression guaranteed by Article 19 of the Constitution clearly includes the right to information, because freedom of speech and expression cannot be fully exercised without information.
- The RTI Bill was passed by Parliament and went into force in October 2005.

Objectives:

- By empowering citizens, we can encourage **transparency and accountability**.
- **Reduce corruption and boost public involvement in the political process.**

What are the provisions in the RTI?

- The Right to Information Act is considered to be one of the most successful laws in India.
- It is the law that gives an ordinary citizen the right to ask questions to the government.
- It dictates the government to provide a timely response to the citizen who seeks it.
- The Ministry of Personnel, Public Grievances and Pensions has taken the initiative to ensure that a portal is provided for the citizens so that they can search and obtain information quickly.
- According to estimates, nearly 60 lakhs applications were filed every year. It was used by both the citizens and the media.
- Under the RTI Act, 2005, Public Authorities are required to make disclosures on various aspects of their structure and functioning. This includes:
 - Disclosure of their organization, function and structure.
 - Powers and duties of its officers and employees
 - Financial information.



What is Public Authority?

"Public authority" means any authority or body or institution of self government established or constituted

- by or under the Constitution;
- by any other law made by Parliament/State Legislature.
- by notification issued or order made by the appropriate Government, and includes any
- body owned, controlled or substantially financed;
- non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

Important exemptions of RTI Act:

- **Section 24 of the RTI Act 2005** says that this law is not applicable to the intelligence and security organizations specified in the Second Schedule. However, the only exception these organizations have is for information on allegations of corruption and human rights violations.
 - **Second Schedule:** It includes 26 intelligence and security agencies under its ambit. Some of them are (i) Intelligence Bureau (IB), (ii) Research and Analysis Wing (RAW) of the Cabinet Secretariat (iii) Directorate of Revenue Intelligence (DRI), (iv) Special Frontier Force (SFF), (v) Border Security Force (BSF) (vi) National Security Guards (NSG) and (vii) Assam Rifles.
- **Section 8 of the RTI:** It deals with exemption from disclosure of information under this legislation. It says that there shall be no obligation on Government to provide any citizen information, disclosure which will affect (i) India's sovereignty and integrity, (ii) security, (iii) strategic, scientific or economic interests of the state and (iv) relations with foreign States or (v) will lead to incitement of an offence.

Functioning of Right to Information Act:

A three-tier structure for enforcing the right to information has been set up under the RTI Act 2005.

Public Information Officers: The first request for information goes to the Assistant Public Information Officer and Public Information Officer, designated by the Public Authorities. These Officers are required to provide information to an RTI applicant within 30 days of the request.

Appellate Authority: It caters to the appeals against decisions of the Public Information Officer.

State Information Commission or the Central Information Commission (CIC): Their major function is to listen to appeals against the order of the Appellate Authority. These



Information Commissions consist of a Chief Information Commissioner (CIC) and up to 10 Information Commissioners (ICs).

Whether the Supreme Court comes under RTI?

- Supreme Court of India vs Subhash Chandra Agarwal Case: **Supreme Court declared that the Office of the Chief Justice of India (CJI) is a 'public authority'** under the purview of the transparency law, Right to Information Act (RTI) and observed that the transparency does not undermine judicial independence.

Changes made in the RTI (Amendment) Act, 2019:

1. Central government notify the terms of Office:

- The Chief Information Commissioner (CIC) (at the federal and state levels) is appointed for a five-year term under the RTI Act of 2005.
- The Amended Act eliminates this provision and instead specifies that the Union government will notify the CIC and ICs of their terms of office.

2. Salaries, allowances notified by Central government:

- According to the RTI Act of 2005, the salaries of the CIC and IC (at the national level) will be equal to the salaries of the Chief Election Commissioner and Election Commissioners.
- The modified Act repeals these clauses and provides that the Central and State CICs and IC's wages, allowances, and other terms and conditions of employment shall be established by the Central government.

3. No reduction in salaries:

- The 2005 Act states that at the time of appointment of the CIC and ICs (at the Central and state levels) if they are receiving pensions or any other retirement benefits for the previous government services, their salary will be reduced by an amount equal to the pension.
- The 2019 amended Act removed this provision.