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STATE INFORMATION COMMISSION

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ABSTRACT

The State Information Commission is considered to be a Quasi-Judicial body which is constituted under RTI Act 2005. This commission is an independent body which look towards the complaints and decide appeals. The complaints and appeals which are entertained are relating to financial institutions, offices, Public Sector Undertakings under the respective state governments. There are several problems one of which is the problem created by RTI rules 2019 as centre took power over state Information commission which is considered against the federal character of government. The rules of this draft were not made available to public and were not even consulted prior to make such draft or Bill. The central Government is currently not spending any of their funds for the purpose of allowances and salaries of the State Information Commissioner. The Centres is extending their full control over state Information Commissioner which is not only unreasonable but also arbitrary, illegal and unconstitutional as it is destroying the very nature of federal structure. This is an obligation of Information Commission during the situations of emergencies regarding public health to fulfil and protect right to know of citizens of our country but an unconcerned behaviour was shown by State Information Commission during the existing situation of pandemic (COVID-19). Our country is also facing the problem of pendency of cases by these information commissions and there are states which will even fail to dispose of cases in next seven years also. The vacancies are not filled in several state and even minimum criteria is not fulfilled the backgrounds of several Information commissioners also do not matches the eligibility criteria. The RTI Act clearly mentions that the annual reports are to be duly submitted to ministries and departments and also should be available online for general public but there are states who have not submitted their annual reports and even not accessible online for general public. If in such manner the clear violation of right to know of citizens will continue this will end up in shaking the functioning and good governance of State Information Commissions also affecting the public at large.

KEYWORDS - State Information Commission, RTI rules 2019, Vacancies, Pendency, Annual Reports, Salaries, Arbitrary, COVID-19

1. INTRODUCTION

Rights to Information Act (RTI), was enacted in 2005 for better governance in the country and was framed with support of Article 19(1) (a) of Indian Constitution. For the due exercise of this right, it is necessary to provide sufficient information about the Government. Public authority has a broader meaning than government alone. The **RTI Act of 2005 has two purposes:**

(a. provide transparency and accountability to management

(b. Establish the (CIC) and (SIC) to hear various complaints and also appeals.

Some state commissions perform well, while others lag behind. Most SIC face problems in regard to their vacancies, culminating in the formation of backlogs of complaints and several appeals. *“The second biggest challenge is the appointment of good Information Commissioners, who can resolve cases in an effective and timely manner.”*¹ The role of ICs is fundamental to the successful implementation of the RTI Act of 2005.

1.1. Composition of the State Information Commission (SECTION 15)

It consists of Chief State Information Commissioner and also 10 other commissioners who are appointed by Governor by notifying in official Gazette. They are appointed by recommendations by a committee in which Chief Minister is regarded as chairperson, Leader of the Opposition in National Assembly and a Minister of State appointed by “Prime minister”. They must be eminent person in public life and should not hold any

¹ S.L. Goel, ‘ Right to Information and good governance’ Deep and Deep Publications, 2007 8176299790 327 pages

office of profit or already in any political party, engage in commercial activity, practice of profession.²

1.2. Tenure and Services (SECTION 16)³

PROVISIONS	RTI Act, 2005	RTI Rules, 2019
<ul style="list-style-type: none"> • TERM • SALARY 	<ul style="list-style-type: none"> • Information Commissioners will be holding office till the age of 65 years or time period of five years whichever is lower and will not be reappointed. • salary same as paid to Chief Election Commissioners (Rs. 250000 p.m) 	<ul style="list-style-type: none"> • They will be holding office for 3 years. • They will receive a pay of Rs 2,50,000 and Rs 2,25,000 p.m. respectively.

1.3. Power and function of SICs

- Commissions present an “annual report” to state government on the implementation of the provisions of this law. Further, such report submitted to state legislature.⁴
- In situations of logical causes commission may also request for investigation.
- It has authority to ensure that public authorities comply with its decisions.
- It is the commission's duty to collect and investigate on appeals and complaints and during such investigation commissions should review record and thus during such investigation commissions have power of civil court in relation to below mentioned issues:⁵
 - Requires discovery and inspection of documents
 - Summon and enforce the existence of people and oblige them to provide “oral or written evidence” under oath.

²Section 15, Right to Information Act, 2005

³ Ram, A. B. (2019, October 29). Tenure and salaries of CIC and ICs under the Right to Information Rules, 2019. *PRS Legislative*. Retrieved from <https://www.prsindia.org/theprsblog/tenure-and-salaries-cic-and-ics-under-right-information-rules-2019>

⁴ CHRI, ‘Information Commissions: Roles and responsibilities (2016)’ ISBN 8188205257s

⁵ Sudhir Naib, *The Right to Information Act 2005: A Handbook*, (ISBN 019806747X, Oxford University Press 2011) 329

- Receive evidence in an affidavit
- Request any public record from any court or office.

1.4. Compensation

The Information Commissions can compensate the claimant for any loss during decision of an appeal. There is existence of minimal cases where Information Commission has awarded damages to the plaintiffs. This is left to the discretion of the information commissioners to award compensation to the injured party.⁶ In *OP Gandhi v. Tihar Jail*⁷, - “ordered the public/state authorities to pay a prisoner who lost his freedom due to excessive detention, violating his right to a meaningful life guaranteed by the Constitution of India.”

1.5. The efficiency of the information commission

“Information Commission has become the biggest threat to the transparency movement.”⁸ There is a lack of effective information commissioners. The foremost reason is an arbitrary appointment⁹. Currently, several curators are not passionate about their work, which causes production, eminence to be fatally affected.

"Comments from RTI Activists on performance of Information Commission"

YASH DAVE

“Government agencies are trying to avoid true information one way or another, they are misinterpreting the questions knowingly and very skilfully and sometimes state information commission is also favouring and protecting them as head of organizations and commissioners are IAS officers.”

HANGLUR SRINIVAS VARNA

“Number of appeals rotting in Karnataka State Information Commission. The useless Information Commissioners sitting there are not interested in disposing of any of the cases filed, and I do not know why they are there and what for the Government is paying them.”

⁶ CHRI, ‘Information Commissions: Roles and responsibilities (2016)’ ISBN 8188205257s

⁷ CIC, New Delhi CIC/SA/A/2016/000884, Decided on September 27, 2016)

⁸Mr. Shailesh Gandhi, “Former Central Information Commissioner”

⁹ Polanki Pallavi (2012), “Selection of RTI Commissioners flawed, arbitrary: Shailesh Gandhi” retrieved from <<http://www.firstpost.com/india/selection-of-rti-commissioners-flawed-arbitrary-shailesh-gandhi-367915.htm>>

“The reason for observing view of RTI activists is that they participate in RTI activities on a daily basis.”

2. HYPOTHESIS

The following hypothesis is proposed in this research paper:

1. The problem associated with RTI Act Rules 2019 on the Right of Information commissioners laying down an arbitrarily control over them and affecting their salaries and allowances.
2. There are backlog of cases in several states and vacancies available in State ICs but positions are not filled and thus fewer Information Commissioners are currently working across the country, despite creation of more posts.
3. There is a poor compliance of statutory requirements by State ICs as there is lack of timely submission of annual reports to Parliament or respective state legislatures and not even displayed in their respective official website after they are tabled before concerned legislature.
4. The citizens have right to know which should be even fulfilled even during the emergency during health crisis which is currently during these pandemic situations but offices of state Information Commissions were closed during lockdown, no information provided by them and many states also didn't start online hearing of appeals and complaints.

3. RESEARCH METHODOLOGY

As the title of the research suggests, the aim of the study is to study and analyse the concept of State Information Commission and issues related with it in the context of present-day scenario. The research involves involvement of several set of problems therefore it would not be possible to make use of a single uniform methodology throughout the research. Therefore, the study is “*Exploratory Research*” which is further divided into two parts:

- ***PART -1 –Qualitative Research***

The qualitative research is holistic in nature and it involves an ample amount of collection of data from several resources to receive a deeper understanding of participants and of their

opinions, attitudes and perspectives. This part of research will start with qualitative investigation and further will proceed to substantiate theories based on every fact available, for this purpose themes and ideas will be converted into numerical data for providing comparison and evaluation. These numerical data tend to raise new questions that are supposed to be answered using systematic qualitative analysis. This will be done by analysing annual report of every state commissions and also the annual report of J&K which though comes under different act and not under RTI Act, 2005 but survey will be done of every information available regarding every state commissions and the data will be provided in form of percentages, averages and text form for critical analysis on their functioning, their pendency, vacancy and backgrounds of information commissioners. The surveys of CHRI will also be analysed to study the functioning the of these state information commission during current pandemic situation. This part of research will help in preparing an exhaustive list of every expectation criteria.

- ***PART- 2 – Secondary Research***

This will help researcher in selection of states wherein a Quantitative survey is required. Several articles, journals, websites, news articles, directories, annual reports of State Information Commissions of every state are referred to generate initial information regarding this subject and also with an objective to facilitate collation of present information in relation to every state. It will also be an aid to determine the amount of government interactions or governance in every states, the vacancy in every state, the number of appeals received, the penalties imposed every year, the amount of time which will be required to dispose pending cases, the proper and timely functioning of states. The citation referred in this research paper is *APA Style (6th Edition)*

4. LITREATURE REVIEW

- **The Information Commissions in India: A Jurisprudential Explication of Their Powers and Functions by Rajvir S. Dhaka¹⁰**

¹⁰Dhaka, R. S. (2018, August 13). The Information Commissions in India: A Jurisprudential Explication of Their Powers and Functions. (I. J. Adminstration, Ed.)

This article to evaluate the functioning of these commissions and also about the interpretations given by High Courts (HCs) and Supreme Court (SC) about the Constitution, transaction of business, powers of the Information Commissions. This article also gave a brief analysis of Sections 15-20 of RTI Act, 2005. It also talks about penalties and disciplinary actions against public information officers

- **The Right to Information Act 2005: A Handbook by Sudhir Naib¹¹**

The Chapter IV of this book deals with State Information Commission and gave an in-depth analysis of constitution of these commissions and their terms of office, their conditions of service. An insight also provided of monitoring and reporting of state Information Commissions. One may receive a thorough idea of functioning of these information commissions and their roles by this book.

- **Right to Information and Good Governance by S. L. Goel¹²**

This book gives a detailed analysis of state information commissions by giving the idea of complaints, appeals put forward to them. It gives an insight of how the people rights are taken care of and functions of these information commission to fulfil rights of people.

- **Information Commissions: Roles & Responsibilities (2006) by CHRI¹³**

This e-book is divided into several parts from which a lot of informational content could be extracted regarding State Information Commission. The first part of the book deals with coordination among Information commission and gave this insight with precedents. The second part deals the relation of information commissions with human rights. The part of the book deals with handling of complains and appeals by Information Commissions and this part is thoroughly explained with summaries, hearings, decisions. The fourth part of the book deals with implementation of state information commission, its monitoring and annual reports analysis.

¹¹Naib, S. (2011). *The Right to Information Act 2005: A Handbook*. Oxford University Press

¹²Goel, S. (2007). *Right to Information and good governance*. Deep and Deep Publications

¹³CHRI. (2016). *Information Commissions Roles and responsibilities*. Retrieved August 02, 2020

5. EFFECT ON INFORMATION COMMISSION BY RTI RULES, 2019

The RTI rules 2019 is creating a “big mess” in all Information Commissions of states and thus facilitating the government to act arbitrarily while taking decisions regarding salaries, allowances and also tenures of Information Commissioners. In recent times there is no such instances where India would have taken a long term planning as taken by the countries USA, Japan, China, to ensure well being and progression of its citizens and the existing political economy.

5.1. Impacts

- a.) Every chief Information Commissions which are serving all over India (except J&K) retire or they resign from office there will be system of grade pay within these ICs. *"Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made there under as if the Right to Information (Amendment) Act, 2019 had not come into force."*¹⁴ This implies that the existing Chief ICs and ICs will be continued to paid same “salaries and allowances” as paid earlier until were retired or resigned from their office but further who will be appointed will take an amount of INR 25,000 less from their salaries drawn by existing Information Commissioners. *“This will lead to an anomalous situation as the new appointed Information Commissioner will draw a salary which is much lower than older appointees as the SCICs appointed henceforth will receive INR 25,000 lesser salary as compared with the current SCICs”.*¹⁵ This will not led to “collegial functioning” of Information Commissions.
- b.) **Central government controls all Information Commissions so they may vary with their “salaries and allowances” in accordance with their preferences for the newly appointed team and final arbiters in all matters of interpretation. Giving such extreme authority to Central Govt. is arbitrary, unreasonable and violating**

¹⁴ Section 2, RTI Amendment Act, 2019

¹⁵ Acharyulu, M. S. (2019, October 28). The Right to Information Is Dead. Here Is its Obituary. *The Wire*. Retrieved October 27, 2020, from <https://thewire.in/government/the-right-to-information-is-dead-here-is-its-obituary>

federal procedure of RTI law and also considering the fact that they do not spend on “salaries and allowances” of SICs.¹⁶ *“The State Information Commissioner is always paid and will continue to be paid by the consolidated State Fund.”*¹⁷ The Central Government will have no control over how it uses funds from the consolidated State Fund unless and until the state is placed under the Presidential Rule under Article 356. It should be interpreted as a basic main challenging ground for these rules in the Court.

- c.) As equality in the Information Commissions and the Indian Electoral Commission has been reduced at the registrar level, it is considered quite unlikely in a situation where the rule of law is not at a strong level embedded in bureaucracy, senior administrative staff will always be hauled up before Information Commissions for non-compliance with the provisions of the RTI Law. It is a bureaucratic nature to compare maturity, authority and power with pay grades. Thus, there will be an undesirable impact on prestige and also on the ability of Information Commissions to carry out the work assigned to them by the RTI Law.
- d.) Allowing Central Government to comply with the 2019 Rules for a category of Information Commissioners is confusing. *“Is the government contemplating a long-term issuance or higher salary or benefits for certain Information Commissions? Can Rule 22 be used to reduce cost or salary or allowances of some Information Commissioners”*, for example parts of North eastern India where work pressure is not as much as those in other states where more amount of disputes are reported to Commissions?

5.2. The way forward

- a.) It is important to note that the RTI Regulation of 2019 is in accordance with the requirements of "Section 29 of the RTI Act." Parliamentarians have already been asked to take steps to revise this Act as much as possible. *“In other words, the Rules must be reviewed by Parliamentary Committee on subordinate Legislation, with high*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

loopholes and opportunities for people to provide their comments and opinions on the fact that why these Laws should not be allowed to stay."

- b.) If such attempts are unsatisfactory and the result more provocative, then these rules must be challenged by our courts.
- c.) We, as transparency , must precisely demand all materials provided based on the 2019 RTI Amendments and 2019 RTI Regulations be made public according to provisions of "*Section 8 (1) (i) of the RTI Act.*"

6. VACANCIES AND BACKLOGS IN THE INFORMATION COMMISSION

6.1. Vacancies in State Information Commission

"**Sections 12 (2) and 15 (2) of the RTI Act**" allows establishment of ICs consisting of a Chief Information Commissioner and a maximum of 10 Information Commissioners at the central and state levels, respectively. However, the J&K RTI Act permit for 3 member as J&K State Information commissioners.

6.1.1. Major Findings:-

- **Nine of the 29 information commissions (31%) in the country operate without a single information commissioner.** The absence of a chief information commissioner has serious implications for the effective operation of CIs, as the RTI Act establishes a fundamental role for the Chief, which includes the administration, management and direction of affairs.
- Even the Central Information Commission has not had a chief since August 27, 2020. "*This is the second time during the review period (April 2019 to July 2020) that the position of Chief is vacant.*"¹⁸ Adding that this is the fifth time in six years that the CIC has lost its head due to delays in the appointment of a new leader to the resignation position.

¹⁸ Bhatnagar, G. V. (2019, October 12). RTI 'Report Card' Laments Pending Cases, Vacancies in Information Commissions. *The Wire*. Retrieved from <https://thewire.in/government/rti-information-commissions-vacancies-pending-cases>

- The Maharashtra SIC, which has an authorized force of 11 officers, including the chief, operates with only five and the number of pending cases has risen from nearly 46,000 in March 2019 to nearly 60,000 today. Furthermore, the number of pending cases in Odisha SIC and Rajasthan SIC increased to 15,000 and 14,000, respectively.
- In Tamil Nadu, there are vacancies until October 2020 and until May 2019 there is no Chief Information Commissioner in Rajasthan and Tamil Nadu.
- In 2018 - *“a total of 153 Information Commissioner Positions (including Chief Information Commissioners) were created across the country (including JKSIC) and SICs in Kerala, Manipur, Meghalaya, Mizoram, Sikkim, and Tripura have all members. Maharashtra has been Acting Chief Information Commissioner (SCIC) since mid-2017.”*¹⁹
- After Telangana was ousted from former Andhra Pradesh, the SIC was originally created for a state-wide state to operate for several months.
- 2014, there were nearly 120 CIs serving nationwide.
- Since May 2014, every time the Chief Information Commissioner retires, there is a gap (up to nine months) between the incumbent's retirement and the appointment of a new leader and people have to go to court to force the government to fill the vacancy.

In the case of *Anjali Bhardwaj vs Union Of India*²⁰ This case was filed to seek instructions issued by the Supreme Court to governments related to:

- Fill vacancies in their respective Information Commissions.
- Initiate the selection process at least three months before the vacancy begins.
- Publish all notes of consideration and reasonable criteria associated with the initial selection of candidates for their respective information committees.
- Develops a transparent procedure to select the “Chief Information Commissioner” and other Commissioners.

¹⁹ *Ibid.*

²⁰ *Anjali Bhardwaj v. Union of India*, 2019 SCC OnLine SC 205

Court also ruled that “*in the event that the CIC does not have a Chief Information Commissioner or other Commissioners with the necessary powers, the operation of the Law could be seriously affected, which could also mean rejecting the very purpose for the that this Law was introduced in force.*”

- **Further Drawback** - As RTI Act states that commissioners must be appointed from a variety of sources but up to 58% of information commissioners for whom the information is accessible are retired government officials. The 115 chief information commissioners, 83% are retired civil servants, with 64% retired employees of the Indian Administrative Service. When it comes to gender equality, it is observed that there is a definite imbalance with only 10% of all women reporting. When it comes to being the chief information commissioner, the figure is even lower, 7%.

6.2. Backlog and Pendency Statistics

The performance of the Information Commission is the primary reason of backlog of cases. “*RTI machinery is suffering from backlog of cases as Indian Judicial system.*” Approximately 40-60 Lakh RTIs are filed every year and the law is applied nationally. The RTI Act helps people hold “local governments” and officials accountable for lapses in providing services to people and ensuring them their basic rights.

After 15 years after the implementation of the RTI Act, the experience in India and the national analysis indicate that the operation of ICs is a foremost obstacle to effectual law enforcement in RTI. A huge backlog of resources and complaints has resulted in excessive delays to resolving cases. Neither RTI Law nor Rules notified by the Central or State Government mentions that the Information Commissions show statistics of receipts, removals and pending appeals and complaints in their jurisdiction. The Information of appeals, pendency, and backlog of cases of several Commissions is not even displayed in their websites or in some cases not timely submitted every year.

The Supreme Court in the case of *Anjali Bhardwaj vs. Union of India*²¹ of held that “*the RTI Act is a time bound legislation and prescribes statutory timelines for providing information and that Central/State Information Commissions ought to decide the appeals/complaints*”

²¹ *Ibid.*

within the shortest time possible, which should normally be a few months from date of service of complaint or appeal to the opposite side".

6.2.1. Major Findings - 2018 - 2020

- In **Maharashtra**, the number of pending cases was 46,000 appeals and complaints as of March 31, 2019.
- In **Uttar Pradesh**, the number of pending cases increased from 47,000 on January 1, 2019 to 51,682 at the end of February.
- In **Kerala**, which has only operated with the chief information commissioner since 2016
- **SIC Telangana** was formed in Sept. 2017, but cooperates with only two information commissioners, whose number of pending appeals reached 9,000 on March 31, 2019.
- **Bengal**, which has only led two commissioners since mid-2017, has more than 8,000 appeals pending.
- The Central Information Committee and nine SICs, such as those from "**Gujarat, Haryana, Jammu and Kashmir, Kerala, Maharashtra, Nagaland, Odisha, Uttarakhand and Uttar Pradesh**", present pendency updated data on their websites. Of the 19 Information Commissions, there are 1,96,268 secondary appeals and complaints pending, based on data accessed on websites or obtained from Information Commission staff. Of 41,537 cases of second appeals and complaints pending at the beginning of 2018.

"Maharashtra tops the list, with Uttar Pradesh following close to 40,248 cases (as of January 31, 2018)."

- "Karnataka with 29,291 pending cases (as of February 23, 2018) is in third place, followed by the Central Information Commission in fourth place (23,989 cases)."

"Kerala in fifth place has 14,253 pending cases at the beginning of 2018."

- "Together, these five jurisdictions constitute more than 77% (1,49,318 appeals and complaints) pending among the Information Commissions where the data is available."

6.2.2. MAJOR FINDINGS TILL 2017 (Some of these situations still observed.)

- "If an RTI application will be filled in the state of **Madhya Pradesh information commission appeal would come after 60 years and similarly it would wait for 43 year in the state of West Bengal**"²². For example, if an RTI appeal is filed with the West Bengal State Information Commission on November 1, 2017, it will be resolved in 2060, after 43 years.
- In **Rajasthan the appeal would take over a period of 3 years while two years will be the waiting period of appeals to be heard in Assam and Kerala.**
- In **Kerala, it will take six years and six months and in Odisha five years and three months.** The prime reason for so many wait times is the small number of information commissioners employed by the commissions "*West Bengal is currently working with only two information officers. At the time of the review, for almost 12 months (November 2015 to July 2016 and April 2017 to July 2017), the committee had not heard any appeal because there is only one commissioner.*"
- **The Andhra Pradesh information commission has not been functional.**
- **The Maharashtra, Gujarat and Nagaland information commissions work without a chief Information commission,** which is last resort for the average person to complain about illegal rejection of information, is increasingly returning cases.

²² Sharma, N. (2018, March 09). Bengal to take 43 years to address wrongful denial under RTI Act. *The Economic Times*. Retrieved October 25, 2020, from <https://economictimes.indiatimes.com/news/politics-and-nation/bengal-to-take-43-years-to-address-wrongful-denial-under-rti-act/articleshow/63239101.cms>

- The CIC returned the largest number of cases, followed by Gujarat, Assam and Uttarakhand.

7. ANNUAL REPORTS AVAILABILITY ON WEBSITES

Under Sec. 25 of RTI Act, every public authority under Central and State Govt. are required to submit annual reports to departments for proper implementation of law under their jurisdiction. Further “Ministries and departments” submit them to further Information Commission of respective states.²³ “Section 21 of the J&K RTI Act requires the J&K State Information Commission to submit a similar Annual Report to the State Legislature through the State Government.” Various ICs have made online platforms for display of annual reports to public and also to receive online reports but there is no such strict compliance and many states do not make available their annual reports to public time to time.

7.1. Findings

1. **SICs of Assam** have pending annual reports of year 2005, 2006, 2007, 2010, 2011, 2012, 2013, 2019 in their respective website. Several states used to publish their reports annually basis. “Assam switched to financial year cycle in 2010.”
2. The Website of **Andhra Pradesh State Information Commission** is not available to public.
3. The Annual reports of state of **Kerala SIC** is available in their respective website from 2005-2016. But the annual reports are pending after 2016 till date.
4. The Information on any Annual report is not available on official website of **Madhya Pradesh SICs**. “The SICs of Bihar and Madhya Pradesh do not have websites which can be traced on any Internet browser. The Bihar SIC is reportedly working on migrating from their old website to a new one. Madhya Pradesh SIC’s website became dysfunctional within a couple of years of its activation; now it is not detectable at all.”

“The lone example of perfect statutory compliance among the ICs reviewed here Chhattisgarh SIC has displayed on its website all Annual Reports that are due as per the RTI Act.”

²³ CHRI, ‘Information Commissions: Roles and responsibilities (2016)’ ISBN 8188205257

5. Telangana SIC was constituted in 2017, and the state submitted every annual report.²⁴
6. After year 2014 **Tripura SIC** has not submitted any annual report in their official website and same is the condition of **Uttarakhand SIC**.
7. The site is not working of **Uttar Pradesh Information Commission** that is there is no such availability shown of annual report of this state of any year.
8. The **Rajasthan** State Information Commission has submitted there all annual reports till 2018 in their official website.
9. **Punjab SIC** has pending annual reports after year 2012.
10. There is no such availability of annual reports in the official website of **Sikkim, Mizoram, Jammu- Kashmir and Orissa SICs**.
11. **Bihar SIC** has been non-functional for nearly 18 months.

8. SITUATION OF STATE INFORMATION COMMISSION DURING LOCKDOWN

The current lockdown scenario led to a halt in the working of State Information Commissions because offices of 29 SICs were closed during this period²⁵ whereas Delhi CIC has continued to hear appeals and complaints since April 20, 2020, its peers in the states are still not working. Regarding the SICs, none of them work and, therefore, pending issues, which are large in several SICs, are frozen until lockdown gets over. In most SICs with ineffective RTI online enrolment capabilities, the transparency framework under the RTI Act is much darker. *"The lock-down has effectively prevented citizens from filing RTI applications by post"*²⁶. Some governments have implemented facilities for RTI online, such as those in the Center, Maharashtra and Delhi. *"Media reports and ad hoc helpline numbers are unable to effectively substitute the regime of transparency and accountability established by the RTI Act in which citizens play an active role as seekers of information. The COVID lock-down has turned most of the citizenry into passive consumers of information that the administration releases on a 'need to know' basis."*

²⁴ State Govt. was obliged to "publish annual reports" when it was carved out from undivided Andhra Pradesh.

²⁵ 21 of 29 state information commissions did not hold any RTI hearings during lockdown. (2020, May 21). *The Print*. Retrieved from <https://theprint.in/india/21-of-29-state-information-commissions-did-not-hold-any-rti-hearings-during-lockdown/426103/>

²⁶ Gupta, K. L. Information Commission Under RTI Act, 2005 : An Appraisal. *Academia*, p. 17.

✚ There are a number of issues where transparency is obligatory during severe pandemic crisis:- *“The COVID-19 pandemic was a good excuse for the government to seal the open door policy under the RTI Act.”*

- a.) The problem either due to restrictions of quarantine or due to closed borders between states has created a problem to migrant workers of private and government-run camps both and also there is no such availability of their data.
- b.) **Information of states regarding transportation of food grains and other essential requirements** is not available with any such transparency regarding the distribution at fair prices at district and state level.
- c.) The government-purchased Corona test kit is defective. There are barely any details available to public regarding *“decision-making process”* as who is responsible for approving the purchase of unsatisfactory test kits.
- d.) Large numbers of **healthcare professionals** have contracted “COVID-19 infection” amid complaints of improper distribution or poor quality of personal care equipment (PPE).
- e.) The arrogance of the **police** in imposing restrictions on the movement of people manifests itself every day. There is no information about the actions taken against security personnel who attack people, especially the poor who are looking for food and clean water.

8.1. Office status of the different SICS (according to the CHRI report²⁷)

- Only the **Haryana, Rajasthan and Uttarakhand SICS** opened in first phase, with only one or two employees each. Uttarakhand is run by two “junior-level” employees who are unaware of opening of SIC.
- **Goa SIC** has resumed working with some “junior level” employees who are not sure if the hearing will continue. Only one employee is present in **SICs in “Andhra Pradesh, Telangana and Tamil Nadu.”** They all were not sure of the exact date for

²⁷ State information commissions inactive during COVID-19: Survey. (2020, April 28). *Down to Earth*. Retrieved October 25, 2020, from <https://www.downtoearth.org.in/news/governance/state-information-commissions-inactive-during-covid-19-survey-70736>

the resumption of the hearings in their respective SIC. The SICs in Goa and Telangana is managed by each employee.²⁸

- Assam SIC was opened during “second phase”. Odisha SIC is also closed and none of them responds to calls.²⁹ The same condition is of Sikkim SIC.
- “Five SICs, including those in Assam, Bihar, Goa, Rajasthan and Uttar Pradesh, are headless.”³⁰ Position of chief information commissioner of the state remained vacant in recent months in these bodies.
- The Bihar and MP SICs also lack functional websites and not found in any Internet browser. The Nagaland SIC became inactive during lockdown.

9. CONCLUSION AND RECOMMENDATIONS

The state commission submits “annual report” to state govt., also inquires complaints from any person. They are essential to help in combating with tyranny, discrimination, corruption and misuse of the authority. They play an essential role in ensuring transparency in the lives of public and are provided with wide powers under RTI Act, 2005 but still misuse of power is still prevalent in several cases. They are overburdened with cases as similar to the case of centre commissions and cases are increasing because of the shortage of staff and non-fulfilment of vacancies. “The maximum number of appeals and complaints are also pending in several states but there also states like Mizoram, Tripura, Sikkim which are not having any backlog of cases.” Even there is existence of anomalies the power of commission is only limited to provide information and not to take any actions. These commissions were also inactive when they were required the most as they are non-functional since Covid-19 began. In contrast to this Centre commission started work since mid of April but state commission failed to do so even during the second phase.

We may observe the significance of Information Commissions in successful implementing “RTI” law. Several Information commissions issued landmark orders given by superior

²⁸ Mishra, S. State information commissions non-functional, courtesy lockdown. *The Week*. Retrieved from <https://www.theweek.in/news/india/2020/04/28/state-information-commissions-non-functional-courtesy-lockdown.html>

²⁹ *Ibid.*

³⁰ Mishra, S. (2020, June 07). Information gap. Retrieved from <https://www.theweek.in/theweek/current/2020/05/28/information-gap.html>

courts but on the other side there are cases where orders not carried out, such as the case of political parties and so on. The public authorities do not comply with the orders of the Information Commissions. Thus it shows that role of government is shaking in regard with RTI as observing several backlogs of cases and various vacancies in offices and above all India also fell down to sixth place in RTI ranking.

❖ RECOMMENDATIONS

There are some suggestions mentioned below for enforcement of RTI Law where government support is required. Without it, the Information Commissions could not function effectively.

- a.) Standard RTI Request / Appeal Formats
- b.) Different payment options for RTI registration fees.
- c.) Establishment of fee banks in state as needed
- d.) The “video conferencing facility” to be in every Commission to hear appeals / complaints. This will speed up hearing.
- e.) Vacancy Commissioners of Information to be filled as soon as possible, both at central and state levels. Various complaints and appeals are pending because of vacancies in state Information Commissions.
- f.) Appropriate training to Public Information officer for properly handling of cases and various appeals.
- g.) Strong, centralized online ITR request / appeal mechanism that will be set up to streamline the request / appeal / complaint process.
- h.) Helpline center for creating an RTI application / resource.

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