

COMMON CAUSE

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POLICY-ORIENTED JOURNAL SINCE 1982



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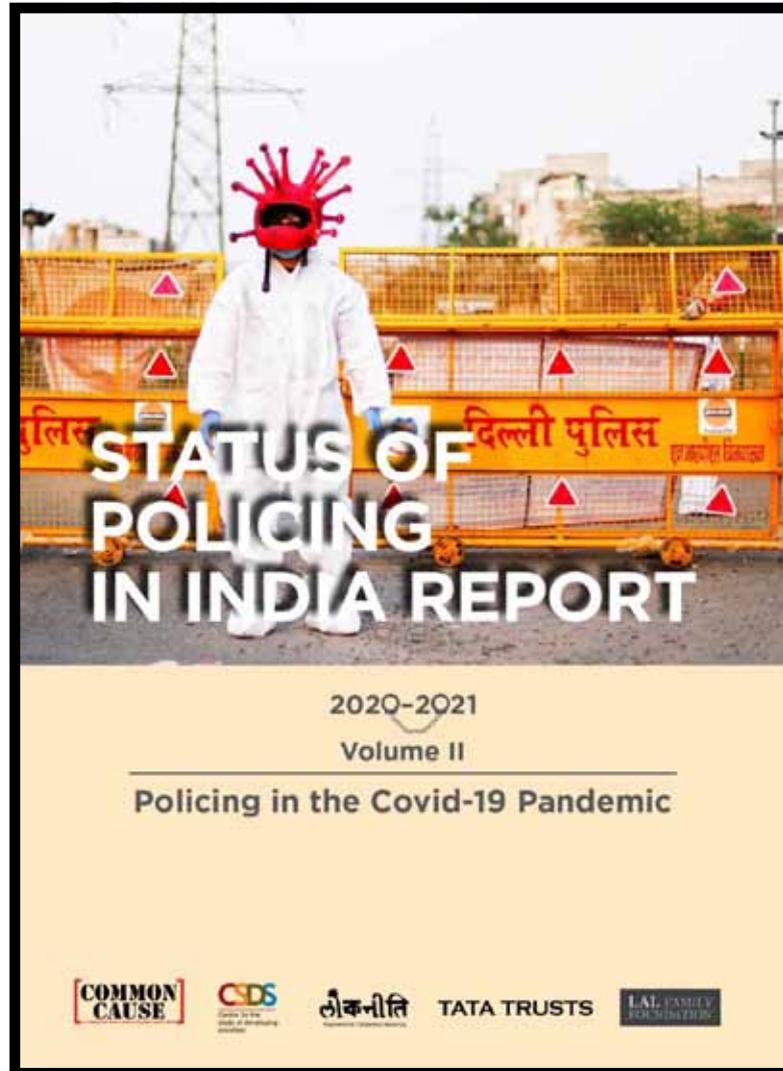
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Jointly prepared by Common Cause and its academic partner, CSDS, The Status of Policing in India Report (SPIR) 2020-2021, Volume II: Policing in the Covid-19 Pandemic, covers a range of citizen-police interactions during the lockdown, the handling of the crisis, and the emergence of new challenges for the law enforcement apparatus.

The report analyses data from a survey of common people and police personnel from Tier 1 and Tier II/ III cities of 10 states and Union Territories. It also looks at the media coverage of the nature of policing during the initial phases of the national lockdown.

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SAVE RTI, SAVE DEMOCRACY

It is a Part of Citizens' Fight Against Injustice

Keeping people in the dark is the easiest way to disempower them. Secrecy and opaqueness work perfectly for those who have something to hide. An open flow of information, on the other hand, liberates minds and brings transparency to systems. And for that reason alone, there is always a tug of war between the mutually hostile devotees of secrecy and transparency in day-to-day governance. This, in nutshell, is the story of RTI in India. The moot question, however, is if secrecy is winning again.

Our experience has been that the politicians champion the idea of RTI when in the opposition but do everything to demolish it when they come to power. RTI defenders accept this as a fact of life but they get apprehensive when the denial of information becomes a rule rather than an exception by the omissions and commissions of successive governments. They see it as a sign of rising autocracy and the decline of public participation in governance. The founding fathers of the Indian Constitution provided enough powers to the elected executive to undertake good governance but they also gave fundamental rights to the people to lead a dignified life and to check the misuse of power when necessary.

The RTI Act is one such law that balances the dignity of citizens against the power of a few. Even though the Act came into existence over half a century after Independence, the underlying idea had been upheld by the Apex Court in many earlier cases. In the landmark State of UP Vs Raj Narain judgment, the court held in 1975 that secrecy could be applied only when there is a direct threat to public security. In SP Gupta Vs Union of India (1982), also known as the judge's transfer case, the court ruled that disclosures were necessary because the right to information was implicit in the fundamental Right to Freedom of Speech and Expression under Article 19 of the Constitution.

Why should We Worry about RTI?

The RTI law is under fresh attack and the denial or delay of information is becoming the new norm. According to a study by RTI Assessment and Advocacy Group (Raag), only fewer than five percent of the first appeals have a chance of getting proper responses. This is another way to weaken the Act since the mechanism of appeals is crucial to its working. But a bigger irony is that nearly half of the RTI applications (49%) are filed because of the authorities' failure to make proactive disclosures mandated under the Act. Clearly, the information in nearly half of all cases should have been in the public domain anyway, obviating the need for an RTI application to be filed in the first place.

The study also reveals that the applicants, particularly from the weaker sections of society, are routinely threatened or assaulted when their queries seek to expose wrongdoings of high ups. Over half of the urban applicants and nearly all of the rural applicants were, significantly, living below the poverty line. In fact, about 2% of the urban RTI applicants and nearly 90% of the rural applicants belonged to the poorest of poor sections of society. It is well-known that hundreds of RTI seekers have been threatened, assaulted, or killed year after year.

This, without doubt, calls for strengthening the RTI Act but the successive governments have done the opposite: they have tried to weaken it in the name of administrative efficiency. It is sad that even the courts have not gone out of the way to protect the spirit of the Act. Shailesh Gandhi, a former Central

Information Commissioner, maintains that a majority of the Supreme Court judgments regarding disclosures under RTI have ended up expanding the scope to exemptions.

The Curious Case of the Top Court!

The Supreme Court itself came under RTI only in November 2019, when a Constitutional Bench ruled that it is a 'public authority' and the office of the CJI is a part and parcel of this institution. "Transparency and accountability should go hand in hand..." the judgment famously held. On a cautionary note, the Bench also observed that the Act should not be allowed to be used against an individual's privacy or as a tool of surveillance.

The judgment took years of circuitous legal wrangling. In a contentious case of denial of information in 2009, the CIC had directed the Supreme Court CPIO to furnish the information requested but the latter approached Delhi High Court which upheld the CIC's ruling. The CPIO's appeal to a full High Court Bench too was dismissed. This led to the unprecedented event of the executive side of the Supreme Court approaching its judicial side against the High Court's ruling. It took the court over a decade to concede that it indeed was a public authority.

The Apex Court is yet to recognize, in a similar vein, that India's all-powerful political parties too are 'public authorities.' A full bench of the CIC had earlier ruled that the big six political parties (BJP, Congress, NCP, BSP, CPI, and CPI-M) were public authorities under the RTI Act. The logic was that the political parties needed to be transparent since they worked for the public good controlling mighty governments at the Centre and in the states, and MPs and MLAs in Parliament and Assemblies. Besides, they routinely get government land, buildings, bungalows, and tax exemptions. The case is now pending for years.

New and Disturbing Trends

In 2019, the Right to Information Act 2005 was amended effectively diluting many of its provisions. The service terms of Information commissioners and parity with the highest benchmarks like Election Commissioners and the Central Secretaries/ State Chief Secretaries were brought down to "as may be prescribed by the Central government." It is believed that the amendment would restrict the Act's capacity to hold the highest government functionaries to account. See it in the light of persistent denials of information and questionable appointments to the commissions, and you get the larger picture.

We, as citizens, must remember that the RTI law in India has not been gifted to us by anyone. It is a result of long and arduous mass movements and it should not be allowed to be eroded by vested interests. The spirit of openness brought to us by the RTI has strengthened India's democratic ethos by boosting public participation, despite occasional setbacks. Any further damage to this spirit would deprive the common citizens of their voice and weaken this great nation's fight against inequality and injustices.

This issue of your journal refreshes the spirit of RTI. As always, your feedback is welcome. Please write in to us at commoncauseindia@gmail.com

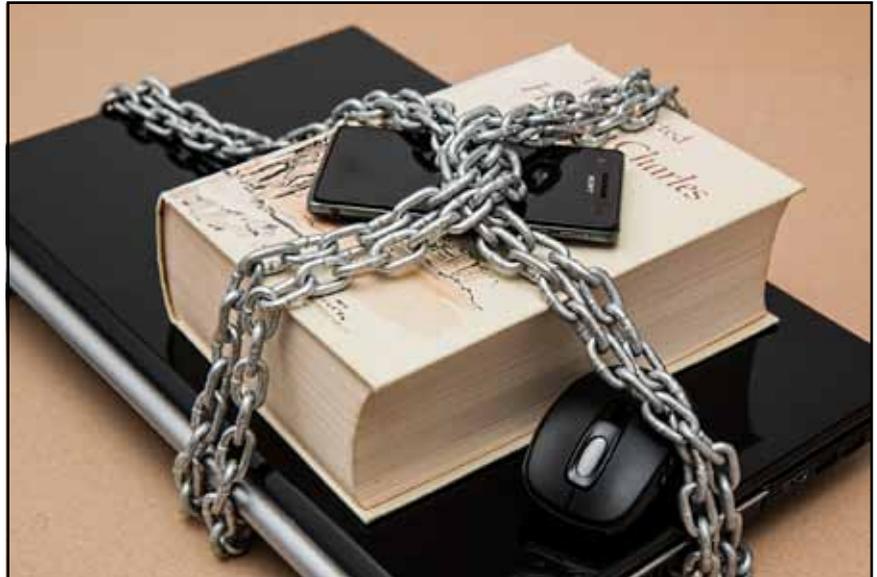
Vipul Mudgal
Editor

INFORMATION: THE CURRENCY OF POWER

A Primer on the Right to Information Act, 2005

The Right to Information (RTI) Act 2005, a legislation firmly anchored to ideas of transparency and democracy in India, has also been consistently undermined by political regimes. Built on the premise of dusting the cobwebs of secrecy around governance and helping the disenfranchised access crucial information, the law has been backed over the years by several Supreme Court judgments. The Apex Court, had time and again, given legitimacy to information access, ruling that the right to information is implicit in the right to freedom of speech and expression, explicitly guaranteed in Article 19 of the Indian Constitution. Its judgments, over the years, have added more vigour to the transparency legislation by linking the right to information with the right to life, enshrined in Article 21 of the Constitution.

Despite rapidly losing ground (dysfunctional Information Commissions in several states, glaring vacancies in state and central commissions and swelling pending appeals and complaints), the RTI Act continues to be regarded as a powerful tool for unravelling the truth and challenging arbitrary power¹. It is the only means available to the oppressed and marginalised to push back against their exploitation.



This article attempts to simplify as well as add clarity to the transparency law through a series of edited extracts. The extracts are part of 'Right to know, right to live -- A Primer on The Right to Information Act, 2005,' written by Anjali Bhardwaj and Amrita Johri, who work with Satark Nagrik Sangathan (SNS), the National Campaign for Peoples' Right to Information (NCPRI) and the RTI Assessment & Advocacy Group (RaaG). This primer, prepared in 2016, provides an introduction to the RTI Act and has been compiled in a question-answer format for easy comprehension and reference. The authors updated the primer for publication in 2021 to reflect the changes made since the original version was prepared.

What is the meaning of Right to Information?

The RTI Act provides a practical regime for people to access information from public authorities. Under the Act, people have the right to seek any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form which is held by or under the control of any public authority (Section 2(f)).

Further, it includes the right to:

- (i) inspect work, documents, records;
- (ii) take notes, extracts, or certified copies of

- documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, tapes or electronic mode etc. (Section 2(j)).

Using the RTI Act, citizens can access copies of contracts, receipts, estimates, details of development funds, information about implementation of laws, schemes and policies, status of application forms, requests or complaints submitted to the government, samples of material used in construction of roads, buildings etc.

The Supreme Court in the matter of *CBSE Vs. Aditya Bandopadhyay* in August 2011, held that if a public authority has any information, an applicant may access such information, subject to the exemptions of the Act.

Where the information requested is such that it is required to be maintained under any law, or as per the rules or regulations of the public authority, there is an obligation on the public authority to provide this information, subject to the provisions of the RTI Act.

The Supreme Court in another case, *T.S.R. Subramanian Vs. Union of India*, held that all verbal and oral instructions to civil servants must subsequently be recorded so as to facilitate their disclosure under the RTI Act.



Who is covered under the RTI Act?

The RTI Act originally extended to the whole of India except the State of Jammu and Kashmir (Jammu and Kashmir had its own state RTI law). Following the abrogation in 2019 of the special status guaranteed under Article 370 of the Constitution to the state of Jammu & Kashmir and the concomitant administrative reorganisation, the state specific RTI Act of J&K stood repealed and now all appeals/complaints from J&K and Ladakh are heard by the Central Information Commission. Under the Act, people can seek information from public authorities. Public authority means any authority or body or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any law made by Parliament or State Legislature;
- (c) by notification issued or order made by Central or State Government;

It also includes any-

- (d) body owned, controlled or substantially financed directly or indirectly by Central or State Government;
- (e) non-Government organisation substantially financed, directly or indirectly by funds provided by Central or State Government; (Section 2(h))

Information can therefore be accessed from the central, state and local governments; the executive, legislature or judiciary; corporations established through law or notifications and all bodies owned, controlled or substantially financed by the government. Further even those non-government organisations which are substantially financed by the government are public authorities under the law.

An RTI application can be directly filed to seek information from any of the public authorities.

Apart from this, the Act also

empowers people to seek information relating to any private body which can be accessed by a public authority under any other law for the time being in force (Section 2(f)). In order to access information related to a private body, the RTI application has to be filed to the public authority which is empowered by law to seek that information from the private body.



Intelligence and security organisations which are listed in the Second Schedule of the Act are exempt from disclosing information, except information pertaining to the allegations of corruption and human rights violations (Section 24).

What information is exempt from disclosure?

The following categories of information which are listed in Section 8 and 9 of the RTI Act are exempt from disclosure-

- Where disclosure would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or leads to incitement of an offence;
- Where release of information has been expressly forbidden by any court/ tribunal;
- Where disclosure would cause a breach of privilege of Parliament or Legislature;
- Commercial confidence, trade secrets or intellectual property, where disclosure would

harm competitive position, unless larger public interest so warrants;

- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Which endangers life or physical safety or identifies confidential source of information or assistance given in confidence for law enforcement or security purposes;
- Which impedes the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers, provided that after the cabinet has taken its decision and the matter is complete, the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public;

- Personal information which would cause invasion of the privacy unless larger public interest justifies it.
- Which would cause an infringement of copyright, subsisting in a person other than the State.

To narrow the scope of exemptions, the Act specifies-

- Information which cannot be denied to the Parliament or a State Legislature cannot be denied to any person.
- If public interest in disclosure outweighs the harm to the protected interests, then even exempted information is to be disclosed (Section 8(2)).
- Most exempt information to be released after 20 years

Apart from categories of information listed in Section 8 and 9, all other information can be accessed under the RTI Act.

Further, Section 10 provides that if part of a record is exempt, then that part may be severed and the rest released.

The RTI Act overrides the Official

Secrets Act, 1923, and any other law which is inconsistent with the provisions of the RTI Act (Section 22).

How to use the RTI Act?

A person can apply for information to the Public Information Officer (PIO), by making an application in writing or electronically, along with the prescribed fee. A Public Information Officer (PIO) has been designated in each department/agency to receive requests and provide information. Further, to ensure ease of use in remote places, Assistant PIO (APIOs) have been designated at sub-district levels to receive applications and forward them to the appropriate PIO.

There is no mandatorily prescribed format for applying for information and therefore, an application can be made on a blank sheet of paper. The applicant must include their contact details; the name of the public authority from whom information is sought and details of information sought under the RTI Act in their application for information. The Central government provides a facility for filing online RTI applications to all the ministries and departments of the Central government. The facility can be accessed at <https://rtionline.gov.in/>

Upon receiving an RTI application, the PIO is either required to provide the information, after collecting

the stipulated fee, or reject the application citing any of the exemptions enumerated in Section 8 or 9 of the Act (Section 7(1)). Where further fee is charged, the PIO must inform the applicant about the calculation used to arrive at the exact fee.

Whenever an information request is rejected, the PIO must communicate the reasons for such rejection to the information seeker. Further, every reply must contain details of the right of the applicant to appeal the decision, including the particulars of the appellate authority.

Time frame for receiving information

The RTI Act clearly defines the time-frame within which the PIO is required to provide information. Ordinarily, information is to be provided within 30 days. In certain circumstances, a different time-frame has been defined, details of which are given below-

- Where the RTI application pertains to life or liberty: 48 hours
- Where the RTI application was filed to Asst. PIO: 35 days
- Where information pertaining to allegation of corruption or human rights violation is sought from an exempt agency: 45 days

Upon receipt of an RTI application, the PIO is required to within 30 days of the receipt of the request, either provide the information on payment of

further fee or reject the request for any of the reasons specified in Sections 8 and 9. Where the PIO is seeking further fee, the period intervening between the despatch of the intimation of further fee and payment of fees is excluded for the purpose of calculating the period of thirty days.

The failure of the PIO to respond to the RTI application within the stipulated time-frame is a deemed refusal and the applicant can move to the appellate process. Information shall be provided free of charge where a public authority fails to comply with the time limits specified in the law (Section 7(6)).

Is there any fee to be paid for accessing information?

Yes. The RTI Act stipulates that a fee may be charged as application fee and a further fee may be prescribed representing the cost of providing the information. However, the Act stipulates that the fee prescribed as application fee or further fee must be reasonable. The quantum of fee and mode of payment are to be prescribed by the appropriate government or competent authority through rules and therefore, may vary.

The Central government and most of the state governments have prescribed an application fee of Rs.10 and a further fee of Rs. 2 per page of information or Rs. 50 for information on a

CD. Usually, the fee is payable through various modes including cash, Indian Postal Order etc. For online RTI applications filed to the Central government, the fee can be paid through debit/credit card or internet banking.

People living below the poverty line are exempt from paying any fee (application fee and further fee). Further, Section 7(6) of the RTI Act states that if the requisite information is not provided within the stipulated timeframe, it shall be provided free of cost to the information seeker.

In case of violations of the law, is there an appeal process?

The appellate mechanism prescribed under the RTI Act consists of two appeals-

- **First Appeal-** If an applicant does not receive any reply in the requisite time-frame or is aggrieved by the decision of the PIO, (s)he can file a first appeal with the First Appellate Authority (FAA). The FAA is an officer senior in rank to the PIO and is located in the same public authority where the RTI application was originally filed. The first appeal has to be filed within 30 days of the date of response of the PIO. In case of no response, it has to be filed within 30 days from the date of expiry of the stipulated time frame. The First Appellate Authority is ordinarily required to decide each appeal within a period of 30 days, extendable to 45 days with reasons

for delay to be recorded in writing.

- **Second Appeal-** The RTI Act envisages an independent Information Commission to be established at the Central and State level, to be the final appellate authority under the Act. Any person who does not receive a decision of the FAA within the stipulated time frame or is aggrieved by the decision of the FAA, may file a second appeal to the Information Commission. The second appeal is to be filed within 90 days from the date on which the FAA decision should have been made or was actually received. For Central government public authorities, the second appeal will lie with the Central Information Commission while for state government public authorities, the second appeal will lie with the respective State Information Commission. The commissions consist of the chief information commissioner and up to 10 information commissioners, appointed by the President of India at the Central level and by the governor in the states.

The commissions have various powers under the Act, including ordering disclosure of information, requiring public authorities to publish categories of information or make changes to its practices of information maintenance, powers to penalise PIOs for violating the RTI Act, awarding compensation to information seekers for any loss or detriment suffered etc.

The Act does not define any time frame within which the Commission should dispose the second appeal.

One of the most critical parameters for assessing the efficacy of any transparency law is the independence of the appellate mechanism it provides. Security of tenure and high status had been provided for commissioners under the RTI Act of 2005 to enable them to function autonomously and direct even the highest offices to comply with the provisions of the law. However, the passage of the RTI Amendment Act in July 2019, and the concomitant rules promulgated by the central government, have dealt a severe blow to the independence of information commissions. The amendments empower the central government to make rules to decide the tenure and salaries of all commissioners in the country. The RTI rules, prescribed by the central government in October 2019, reduced the tenure of all information commissioners to three years. More significantly, Rule 22 empowers the central government to relax the provisions of the rules in respect of any class or category of persons, effectively allowing the government to fix different tenures for different commissioners.

- In any appeal proceedings, the onus to prove that a denial of a request was justified is on the PIO who denied the request.

What action can be taken against officials who violate the RTI Act?

The Information Commissions have the power to penalise PIOs for violating the RTI Act under Section 20 of the Act. The penalty is to be paid by the PIO and not the public authority. The penalty recovered is not paid to the information seeker.

The RTI Act provides for the following penalties to be imposed on the PIO-

- Penalty of Rs 250 per day up to Rs 25,000 for each day of delay, without any reasonable cause.
- Penalty of up to Rs. 25,000 for, without any reasonable cause, refusing to accept an RTI application, malafidely denying the information request, knowingly giving incorrect/ incomplete/ misleading information or destroying information or obstructing furnishing the information.

The Act specifies that the PIO must be given an opportunity of being heard before a penalty is imposed on him/her. Further, for persistently violating the RTI Act, the Information Commission can recommend disciplinary action against the PIO, under the service rules applicable to him/her.

The imposition of a penalty in cases of violation of the RTI Act is mandatory. Therefore, in disposing each appeal/complaint

in which a violation of the Act is evidenced, the commission should either impose the penalty or record reasons on the mitigating circumstances due to which penalty is not being imposed.

What is proactive disclosure?

Section 4 is perhaps the most significant component of the RTI legislation. Among other things, it states that “It shall be a constant endeavour of every public authority to take steps... to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information”.

Section 4 lists various categories of information which should proactively or suo motu be made available to the public and should not require the filing of any RTI application. It also prescribes the manner in which the information should be proactively provided.

Section 4(1) lists the particulars of information which were to be published within 120 days of the enactment of the RTI Act and subsequently updated every year, by each public authority. The particulars of information to be disclosed proactively by the public authority include-

- information about its functions
- duties of its officers,
- procedure for decision-

making,

- documents held by it,
- norms/rules prescribed for its functioning,
- arrangements for public consultation,
- details about advisory committees,
- directory of officers,
- budget allocated to the authority,
- details of subsidy programs executed and details of beneficiaries,
- salaries of employees,
- facilities available for citizens to access information
- and contact details of the PIOs etc.

Section 4(1)(c) and (d) require public authorities to proactively disclose relevant facts while formulating policies and also provide reasons for their decisions. Under Section 4(3) and 4(4), information has to be disseminated in the local language, taking into consideration, “...the most effective method of communication in that local area and the information should be easily accessible...” Therefore, information has to be made available not only through the internet, but also through notice boards, newspapers, wall paintings etc.

Endnote

1. Joy, Shemin, (2021., October 11). RTI Act completes 16 years as watchdogs paint dismal picture. *Deccan Herald*. Retrieved December 20, 2021, from <https://bit.ly/3mIVRYm>

INFORMATION COMMISSIONS ON THEIR DEATHBEDS?

A Report Card Paints a Dismal Picture

October 16, 2021, marked 16 years since the implementation of the Right to Information Act, 2005 or the RTI Act. To mark the occasion, Satark Nagrik Sangathan (SNS), a citizen's group working to promote transparency and accountability in government functioning, came out with the study 'Report Card on the Performance of Information Commissions in India, 2021.' This report is part of an ongoing series of assessments on various aspects of the implementation of the RTI Act in India. The aim of the exercise is to improve the functioning of information commissions and strengthen the RTI regime in the country.

The report is primarily based on an analysis of information accessed under the RTI Act, from 29 information commissions across India. A total of 156 RTI applications were filed with state information commissions (SIC) and the Central Information Commission (CIC). The information sought included:

The number of commissioners serving in each commission for the period August 1, 2020, till June 30, 2021, and their backgrounds, as well as the number of appeals and complaints registered, disposed

of, returned by each IC for the period August 1, 2020, till June 30, 2021. Details were also sought for the number of appeals and complaints pending before each IC on December 31, 2020, March 31, 2021, and June 30, 2021, the quantum of penalties imposed by each IC, and the amount recovered, for the period August 1, 2020, till June 30, 2021. Finally, enquiries were made on the quantum of compensation awarded by each IC, for the period August 1, 2020, till June 30, 2021, the number of cases in which disciplinary action was recommended by each IC and the latest year for which the Annual Report of the IC has been published.

It is important to note that the report largely covers the duration in which the majority of citizens, especially the marginalised and poor of the country, witnessed the devastating impact of the Covid-19 pandemic. The severe lockdown imposed owing to the health emergency brought to a sudden halt all economic activities and eventually increased the dependency of the poor on government-sponsored welfare schemes. In such a scenario, transparent functioning of relief work and timely access to relevant information became

even more important. Through the assessment of the information commissions during these testing times, the report adds clarity to the functioning of the commissions, their limitations, challenges and the overall status of the RTI Act in the country.

The report details how each RTI application was tracked to assess the manner in which it was dealt with by the ICs, as these bodies are public authorities under the RTI Act. In addition, information has also been sourced from the websites and annual reports of information commissions. The report also draws on findings and discussions that were a part of previous national assessments of the RTI regime, carried out by outfits such as the Research, Assessment, & Analysis Group (RaaG), Satark Nagrik Sangathan (SNS) and Centre for Equity Studies (CES). Some of the edited key findings from the report are given here:

1. Vacancies in information commission:

Under the RTI Act, information commissions consist of a chief information commissioner and up to 10 information commissioners, appointed by the President of India at the central

level and the governor in the states.

The report found that several ICs were non-functional or were functioning at reduced capacity as the posts of commissioners, including that of the chief information commissioner, were vacant during the period under review. This was particularly concerning as the humanitarian crisis induced by the Covid-19 pandemic had made the poor and marginalised people even more dependent on government provisions of essential goods and services like healthcare, food and social security. Without access to relevant information, it is difficult for citizens to exercise their rights and claim their entitlements, leading to corruption.

1.1 Non-functional information commissions:

The report found four information commissions non-functional for varying lengths of time for the period under review as all posts of commissioners were vacant. Three commissions were found to be completely defunct at the time of publication of this report. In the absence of functional commissions, information seekers have no reprieve under the RTI Act, if they are unable to access information as per the provisions of the law.

Jharkhand: The Chief Information Commissioner of the Jharkhand State Information Commission (SIC), demitted office in November

2019. Subsequently the lone information commissioner was also made the acting Chief, although no such explicit provision exists under the RTI Act. However, upon the completion of the tenure of the commissioner on May 8, 2020, the information commission has been without any commissioner, effectively rendering it completely defunct.

Tripura: The information commission of Tripura became defunct on July 13, 2021 when the sole commissioner, who was the Chief, finished his tenure. Since April 2019, this is the third time the commission has become defunct. It was defunct from April 2019 to September 2019, then from April 2020 to July 2020, and now again since July 13, 2021.

Meghalaya: The information commission of Meghalaya became defunct on February 28, 2021 when the only commissioner, who was the Chief, finished his tenure. Since the last seven months, the government has not made a single appointment.

Goa: The information commission of Goa was defunct for over a month when the lone commissioner, who was also officiating as the Chief, finished her tenure on December 31, 2020.

1.2 Commissions functioning without a Chief Information Commissioner:

Currently, in three information commissions in the country all posts of information commissioners, including that of the Chief, are vacant and another three commissions are functioning without a Chief Information Commissioner.

Central Information

Commission: The Central Information Commission (CIC) was without a Chief for a period of two months when the then Chief demitted office on August 26, 2020 after completing his tenure. This was the fifth time in seven years that the CIC was rendered headless due to the delay in appointing a new chief upon the incumbent demitting office.

Manipur: The SIC of Manipur has been functioning without a Chief for 31 months, since February 2019. While one of the commissioners has been given charge as the Chief Commissioner, no such legal provision exists in the law.

Nagaland: The SIC of Nagaland has been functioning without a Chief since January 2020, i.e., a period of 21 months.

Telangana: The state information commission was constituted in 2017. The Chief demitted office in August 2020 and since then an existing commissioner is functioning with the additional charge of the Chief, though there is no such explicit provision in the law.

Uttar Pradesh: The SIC of UP

was headless for a period of one year from February 2020 to February 2021. Through the first lockdown in 2020, when important decisions regarding management of the affairs of the commission were to be taken, a role envisaged for the Chief as per the RTI Act, the commission was without a chief.

Rajasthan: The Chief of the Rajasthan Commission demitted office in December 2018, and the commission was without a Chief till December 2020 i.e., a period of two years.

Kerala: The SIC of Kerala was without a Chief for more than three months when the previous Chief demitted office in November 2020. The new Chief was appointed in March 2021.

1.3 Commissions Functioning at Reduced Capacity:

Under the RTI Act, information commissions consist of a chief information commissioner and up to 10 information commissioners. Several information commissions have been functioning at reduced capacity. The non-appointment of commissioners in the ICs in a timely manner leads to a large build-up of pending appeals and complaints.

Central Information

Commission: In December 2019, when there were four vacancies in the CIC, the Supreme Court had directed the central government to fill

all vacancies within a period of three months. However, the government did not comply and appointed only one new commissioner and elevated an existing commissioner to the post of Chief. By September 2020, the Chief and another commissioner finished their tenure and a total of six posts, including that of the Chief, fell vacant. In November 2020, three new commissioners were appointed and an existing commissioner was made the Chief, bringing the number of vacant posts to three. The backlog of appeals/complaints has been steadily increasing and currently stands at nearly 36,800 cases.

Maharashtra: The SIC of Maharashtra has been functioning with just four information commissioners, including the Chief, for the past several months. Due to the commission functioning at a severely reduced strength, the number of pending appeals/complaints has risen at an alarming rate. While as of March 31, 2019, close to 46,000 appeals and complaints were pending, the backlog as of December 2020 increased to around 63,000 and reached an alarming level of nearly 75,000 by May 2021.

Karnataka: While the SIC has failed to provide the number of pending appeals/complaints in response to applications under the RTI Act, as per a media report of April 2021 citing

official records, backlog of only second appeals was more than 30,000. More than half of them were filed between 2015 and 2019, and they were yet to be disposed. Despite the huge backlog, three posts are lying vacant in the commission.

Odisha: The Odisha SIC is functioning with five commissioners despite having a large pendency of nearly 17,500 appeals and complaints.

Rajasthan: The Rajasthan SIC is functioning with five commissioners despite a backlog of nearly 18,000 appeals and complaints.

West Bengal: The West Bengal SIC is functioning with two commissioners for the last several months, despite a backlog of more than 9,000 appeals and complaints.

2. Number of Appeals & Complaints Dealt with by ICs

It is to be noted that 1,56,309 appeals and complaints were registered between August 1, 2020 and June 30, 2021 by 25 information commissions for whom relevant information was available. During the same time period, 1,35,979 cases were disposed by 27 commissions for whom information could be obtained.

The commission-wise break up of appeals and complaints registered and disposed is given in Table 1:

**Table 1: Appeals and complaints registered and disposed by ICs
between August 1, 2020 & June 30, 2021**

S. No	Information Commission	Appeals & complaints registered	Appeals & complaints disposed by passing orders
1.	Uttar Pradesh	19,781	19,706
2.	Maharashtra	41,978	19,307
3.	CIC	18,298	17,649
4.	Karnataka	info not available	12,070
5.	Tamil Nadu	info not available	9,567
6.	Haryana	8,683	8,596
7.	Gujarat	7,167	8,295
8.	Madhya Pradesh	7,323	8,165
9.	Rajasthan	10,589	6,414
10.	Andhra Pradesh	5,766	4,967
11.	Chhattisgarh ①	5,481	4,262
12.	Punjab	5,884	3,938
13.	Uttarakhand ④	2,664	2,482
14.	Kerala ③	4,303	2,444
15.	Odisha	4,490	2,393
16.	Telangana	6,041	2,310
17.	West Bengal	5,791	1,813
18.	Assam	889	1,138
19.	Himachal Pradesh ②	390	102
20.	Arunachal Pradesh	235	95
21.	Manipur	148	95
22.	Tripura	89	67
23.	Goa	265	56
24.	Sikkim	38	38
25.	Meghalaya	7	7
26.	Mizoram	3	3
27.	Nagaland	6	0
28.	Jharkhand	Not available as SIC defunct	
29.	Bihar	no info	no info
	Total	1,56,309	1,35,979
Note: Information pertains to ① Jan-Dec 2020 ② 2020-21 for appeals disposed ③ Jan 2020 to July 2021 ④ April 2020 to June 2021			

3. Backlogs in Information Commissions

3.1 Pending Appeals and Complaints

The number of appeals and complaints pending on June 30, 2021, in the 26 information commissions, from which data was obtained, stood at 2,55,602. The backlog of appeals/complaints is steadily increasing in commissions. The 2019 assessment had found that as of March 31, 2019, a total of 2,18,347 appeals/complaints were pending in the 26 information commissions from which data was obtained. The commission-wise break-up of the backlog of appeals and complaints is given in Table 2.

3.2 Estimated Time Required for Disposal of an Appeal/Complaint

Using data on the backlog of cases in ICs and their monthly rate of disposal, the time it would take for an appeal/complaint filed with an IC on July 1, 2021 to be disposed was computed (assuming appeals and complaints are disposed in a chronological order). The analysis presented in Table 3 shows that the Odisha SIC would take six years and eight months to dispose a matter.

S. No.	Information Commission	December 31, 2020	June 30, 2021
1	Maharashtra ^②	62,534	74,240
2	Uttar Pradesh	48,444	48,514
3	CIC	38,590	36,788
4	Rajasthan	16,771	17,922
5	Odisha	17,658	17,464
6	Telangana	10,814	11,207
7	Chhattisgarh	10,065	NA
8	West Bengal	8,694	9,097
9	Jharkhand	NA	7,732
10	Kerala ^①	6,835	7,486
11	Madhya Pradesh	6,893	6,577
12	Andhra Pradesh	4,153	5,123
13	Punjab	3,459	4,529
14	Haryana	3,608	4,073
15	Gujarat	3,509	3,021
16	Assam	2,131	472
17	Uttarakhand ^③	NA	469
18	Goa	208	363
19	Himachal Pradesh	197	292
20	Arunachal Pradesh	43	108
21	Manipur	59	103
22	Nagaland	10	12
23	Tripura	1	10
24	Meghalaya	0	0
25	Mizoram	0	0
26	Sikkim	0	0
27	Bihar	NA	NA
28	Karnataka	NA	NA
29	Tamil Nadu	NA	NA
	ALL INDIA	2,44,676	2,55,602

Note: NA implies not available. ^①As of July 31 and not June 30, 2021 ^②As of May 31 and not June 30, 2021 ^③appeals as of 04-08-2021 and not June 30, 2021

A matter filed on July 1, 2021 would be disposed in the year 2028 at the current monthly rate of disposal! In Goa SIC, it would take five years and 11 months, in

Kerala four years and 10 months and in West Bengal 4 years and 7 months.

The report shows that 13

commissions would take one year or more to dispose a matter, which is considerably higher than the figure from the 2020 report wherein it was found that nine commissions would take more than a year.

4. Penalties Imposed by Information Commissions

The RTI Act empowers the ICs to impose penalties of up to Rs. 25,000 on erring PIOs for violations of the RTI Act. The penalty clause is one of the key provisions in terms of giving the law its teeth and acting as a deterrent for PIOs against violating the law. Whenever an appeal or a complaint provides evidence that one or more of the violations listed in the RTI Act has occurred, the commission should initiate penalty proceedings under Section 20.

The report found that ICs imposed penalty in an extremely small fraction of the cases in which penalty was imposable. In fact, commissions appear to be reluctant to even ask the PIOs to give their justification for not complying with the law.

Table 3: Estimated time required for disposal of an appeal/complaint		
	Information Commission	Time before appeal/complaint filed on July 1, 2021 is disposed
1	Odisha	6 years & 8 months
2	Goa	5 years & 11 months
3	Kerala ^①	4 years & 10 months
4	West Bengal	4 years & 7 months
5	Telangana	4 years & 5 months
6	Maharashtra ^②	3 years & 6 months
7	Himachal Pradesh	2 years & 7 months
8	Rajasthan	2 years & 6 months
9	Chhattisgarh ^④	2 years & 4 months
10	Uttar Pradesh	2 years & 3 months
11	CIC	1 year & 11 months
12	Arunachal Pradesh	1 year
13	Punjab	1 year
14	Andhra Pradesh	11 months
15	Manipur	11 months
16	Madhya Pradesh	8 months
17	Haryana	5 months
18	Gujarat	4 months
19	Assam	4 months
20	Uttarakhand ^③	2 months
21	Tripura	1 month
22	Meghalaya	no pendency
23	Mizoram	no pendency
24	Sikkim	no pendency
25	Nagaland	no disposal during the period

Note: Based on appeals/complaints pending as of ^① July 31, 2021 ^② May 31, 2021 ^③ Appeals as of 04-08-2021 ^④ Dec 31, 2020

In terms of penalty imposition, of the 21 commissions which provided relevant information, penalty was imposed in a total of 1,988 cases. Penalty amounting to Rs. 2.48 crore was imposed by the 21 commissions during the period under review.

The commission-wise details are provided in Table 4.

In terms of the quantum of penalty imposed, Haryana was the leader (Rs. 95.86 lakh), followed by Madhya Pradesh (Rs. 57.16 lakh), and Odisha (Rs. 25.98 lakh).

Table 4: Details of penalty imposed by ICs (April 1, 2019 to July 31, 2020)

	Information Commission	No. of cases where penalty imposed	Amount of penalty imposed
1	Haryana	449	95,85,500
2	Madhya Pradesh	235	57,16,000
3	Odisha	272	25,98,750
4	Chhattisgarh ^①	no info	20,12,500
5	Rajasthan	460	20,05,500
6	Uttarakhand ^②	76	8,69,750
7	Punjab	115	7,80,500
8	Gujarat	80	7,17,000
9	Arunachal Pradesh	6	1,75,000
10	Andhra Pradesh	22	1,43,000
11	Telangana	54	1,14,000
12	Kerala	9	45,000
13	Assam	2	10,250
14	Meghalaya	2	10,000
15	Himachal Pradesh	5	8,000
16	Tripura	1	500
17	Goa	0	0
18	Manipur	0	0
19	Mizoram	0	0
20	Nagaland	0	0
21	Sikkim	0	0
22	CIC	200	no info
23	West Bengal	no info	no info
	TOTAL	1,988	2,47,91,250

Note: Information pertains to ^① Jan- Dec 2020 ^② April 2020- Aug 12, 2021

5. Transparency in the Functioning of Information Commissions

Much of the information sought

as part of this assessment should have been available in the annual reports of each commission. Section 25 of the RTI Act obligates each commission to prepare a

official websites.

In terms of availability of annual reports on the website of respective ICs, 7% of ICs have not made their latest annual report available on their website.

“report on the implementation of the provisions of this Act” every year which is to be laid before Parliament or the state legislature. However, the performance of many ICs, in terms of publishing annual reports and putting them in the public domain, was found to be dismal. For instance, 21 out of 29 ICs (72%) have not published their annual report for 2019-20. Only the CIC and SICs of Arunachal Pradesh, Assam, Chhattisgarh, Gujarat, Mizoram, Nagaland and Uttar Pradesh have published their annual report for 2020 and made them available on their

ROADBLOCKS TO ETHICAL GOVERNANCE

Who Will Hold the Public Authorities to Account?

Shambhu Ghatak*

Photo credit: MKSS



The Janata Information System for MGNREGA at Bhilwara, Rajasthan

The Right to Information Act in 2005 is considered to be a bold step towards making the public authorities accountable and transparent to the citizens of India. Under the RTI Act, one can seek information (as permitted by its various provisions) from a public authority by writing an application in a prescribed format along with a fee (no fee required for below poverty line citizens). If one is not satisfied with the information provided by the Public Information Officer (PIO) in the first attempt, the Act outlines a proper process for following up. However, there are provisions in the RTI legislation itself, that requires the public authority to disclose information on its own in the public domain so that the citizens can access

information without even the need to demand for it.¹

The booklet *RTI Act: Authentic Interpretation of the Statute* (first printed in 2016), by Shailesh Gandhi and Pralhad Kachare, says that Section 4 of the RTI Act is the core and guiding framework of the legislation to ascertain good governance.² Section 4(1)(a) of the Act mandates good governance by way of providing information to the public and maintaining records, duly catalogued and indexed to make them accessible easily to the people. In addition, the legislation requires every public authority to computerise its records and upload them so that they can be accessed whenever required. Put simply, the RTI legislation is a mandate for e-governance implementation

in letter and spirit, write Gandhi and Kachare.

Besides that, under Section 4(1) (b) of the RTI legislation, every public authority is required to upload information in the public domain on a proactive basis. The authors add that the means and methods for the dissemination of information, could include the following:

- Notice Board;
- Office Library;
- Kiosk in office premises or through web portal;
- Through Newspapers, leaflets, brochures, booklets;
- Inspection of records in the offices;
- System of issuing of photocopies of documents;
- Printed manuals to be made available;

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- Electronic storage devices;
- Website of the Public Authority, e-books, CD, DVD, Open Source Files, Web Drives;
- Painting data on the walls of buildings as is being done in some places in the case of Mahatma Gandhi National Rural Employment Guarantee Scheme (also termed as Janata Information System by RTI activists in Rajasthan);
- Social Media;
- Drama and Shows;
- Exhibition; and
- Other means of advertising.

We can conclude that there are two sides to the information story. Common citizens appeal for disclosure of information from public authorities through the processes outlined in the Act. But public authorities are also mandated to share relevant information voluntarily. If they take initiatives to share records held by them in a transparent and efficient manner, the need for filing individual RTI applications reduces dramatically, thereby lessening the burden on PIOs and other officers.

Auditing Proactive Disclosures under the RTI Act

The Department of Personnel and Training (DoPT), the policy formulator and watch-dog of the government, had directed all the public authorities in the country, vide its order dated April 15,

2013, to ensure regular audit of mandatory disclosures by a third party.³

A report, 'Transparency Audit: Towards an Open and Accountable Government' (published in 2015), was prepared under the auspices of the Central Information Commission (CIC). It outlined the framework of conducting disclosure audits to verify and authenticate disclosure of information. An evaluation of disclosure by public authorities (although transparency audit pro-forma was sent to 2,092 public authorities in total, just 838 such entities i.e. 40 percent responded till October 31, 2018) through their websites, was done by former Chief Information Commissioner AN Tiwari and former Information Commissioner MM Ansari in 2018. It revealed that certain vital information was not fully displayed on the official websites of various public authorities. The missing information mostly came under the following categories:

- Decision-making process, the delegation of powers, duties, and responsibilities of officials and the system of compensation paid to them;
- Information relating to consultation with public on the proposed major policy decisions, as required, are not available;
- Minutes of meetings of various committees and boards, details of the relevant Acts, rules, instruments, manuals, office

orders, custodians of various categories of documents held by the organisation;

- Policy on transfer and posting of senior officers deployed at important and sensitive places;
- RTI applications and appeals received and their responses, details of Public Information Officers, Appellate Authority, Nodal Officer and other facilities available to citizens for obtaining information;
- Details of domestic and foreign visits undertaken by the senior officials;
- Details of the mechanism to redress grievances of affected persons, mainly employees, clients, and customers;
- Discretionary and Non-discretionary Grants and details of the beneficiaries of subsidy;
- Criteria/ guidelines for allocation and utilisation of Corporate Social Responsibility (CSR) funds by the Public Sector Enterprises;

“ It is only when government-sponsored reports or publicly collected data are placed in the public domain that independent domain experts are able to scrutinise them ”

- Sources and methods of funding political parties or identification of donors; and,
- Details about Public-Private Partnerships and outcomes of such ventures.

It is now widely known that despite RTI being in place, public authorities do not always give out information proactively, and even on requests. Media reports indicate that in the past, even the Comptroller and Auditor General had to take recourse to RTI in order to procure information necessary for effective audits of government finances and decision-making.⁴ The primary reason for this, as pointed out, is because “while Section 18 of the CAG (Duties, Powers and Conditions of services) Act 1971 provides access to the records and accounts and empowers Audit to inspect any offices of accounts under the state or central government, it doesn’t provide any enforcement powers to CAG to ensure compliance by auditee to his request for information within a reasonable time.”⁵

Examples of Violation of Section 4 of the RTI Act

On many occasions, it has been found that various provisions (or sub-sections) under Section 4 of the RTI legislation have been violated. I will discuss here some of the violations by public authorities that have taken place in recent as well as the not so recent past.

Availability of information in local languages

Section 4(4) requires that public authorities consider local languages, among other things, to communicate information. However, more than a handful of public authorities violate this provision. Public sector banks are one of the violators. The dominant language present for customer interface on the website/app of most public sector banks for Internet Banking is English. While an Indian banknote displays its denomination in 15 out of the 22 official languages, there is only one language (or at the most Hindi besides English) in the web interface for Internet Banking.⁶ The language barrier is an obstacle for financial inclusion in a digital economy, which India aspires to be. Even if someone is proficient in a regional language (other than English or Hindi), the language barrier is an obstacle in Internet Banking. There are plenty of websites related to

“ ***If public authorities take initiatives to share records in a transparent manner, the need for filing individual RTI applications reduces dramatically*** ”

various public authorities, where the only language for citizen’s interface or making complaints is English. One such example is the Customer Login (to register cybercrimes) for the National Cyber Crime Reporting Portal (<https://bit.ly/3eidgfU>). The Life Insurance Corporation of India’s (LIC) customer e-service portal’s interface languages are also only English and Hindi (<https://bit.ly/3yPXn9V>).

Public consultation for policy formulation

Section 4(1)(c) and (d) require public authorities to proactively disclose relevant facts while formulating policies and also provide reasons for their decisions.⁷ Section 4(1)(b)(vii) mentions that “the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof” needs to be published by the concerned public authority.

The violations of some of these sub-sections, fully or partially, can be understood in the context of events leading up to the promulgation of the three Farm Ordinances (later introduced as Farm Laws in September last year). Media reports reveal the outcome of queries made by RTI activist Anjali Bhardwaj to the Ministry of Agriculture and Farmers’ Welfare, on details of stakeholder consultations prior to the announcement of the Farm Ordinances. The Union

Agriculture Ministry could not provide any record of pre-legislative consultations.⁸ In one RTI application, she sought details from the Department of Agriculture, Cooperation and Farmers' Welfare (under the Agriculture Ministry), including the website address where the farm reforms bills/ Ordinances had been placed for pre-legislative consultations. In another RTI application, filed before the same department under the Agriculture Ministry, she asked for the dates and names of attendees of consultative meetings, copies of the minutes of the meetings, and lists of the states, experts and farmers' groups consulted before enacting the three farm laws.⁹ None of the information officers were able to provide the details sought by Bhardwaj.

Thus, we see that the central government not just violated Section 4 of the RTI Act, it also did not go for a proper pre-legislative consultation while bringing in the farm laws, as is required under the Pre-Legislative Consultation Policy (PLCP) 2014.

Access to government documents and data

There was a time when the country's statistical system for survey and data collection (primarily the National Sample Survey) was considered one of the best in the world.¹⁰ This doesn't hold true anymore, given the recent spate of events. Although the policies of past

governments were to some extent guided by evidence, particularly for certain pro-poor schemes (the Consumption Expenditure Survey (CES) data was used to estimate the proportion of below-poverty-line population in order to check whether the pro-poor welfare schemes/programmes are making any impact on poverty reduction), there was much to be desired. There have been times when data collection did not take place periodically, as was required. Even when the data was collected and analysed by government-appointed experts and statisticians, their reports were not placed in the public domain, including websites. It is only when government-sponsored reports or publicly collected data are placed in the public domain (websites/ social media), that non-governmental or independent domain experts (including economists and statisticians) are able to scrutinise or question the gaps and serious lacunae.

Let's look at the all-India Household Consumption Expenditure Survey. Although public money was used for conducting the survey, analysing data and preparing report/s, the Centre decided not to release the latest report/s as well as the unit-level data in the public domain. It was only after some of the key results of the leaked CES 2017-18 report got published in the media that citizens woke up to the government's efforts of sweeping the survey results (by

the National Statistical Office, erstwhile National Sample Survey Office) under the carpet.¹¹ Based on the CES done by NSO, income poverty was calculated for the last time in 2011-12.

Embarrassed by the CES media leakage, the 75th round of survey data was deemed unfit for constructing the new income poverty line and measuring the latest income or expenditure-based poverty. Owing to data discrepancies and issues about data quality, the monthly per capita consumer expenditure data pertaining to 2017-18 was not used by the central government.¹² Placing the CES results and data for 2017-18 in the public domain would have allowed independent experts to cross check the government's claim of poor quality data.¹³ One should note here that the CES is not just an invaluable analytical and forecasting tool, it is actually used by the government in rebasing the gross domestic product (GDP) and other macro-economic indicators.¹⁴

Similar to the CES, the Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal Communities of India, was allegedly kept under wraps by the central government back in 2014.¹⁵ Although the tribal community report was commissioned by the former Prime Minister's Office in August 2013, it is alleged that the new government coming to power in 2014 had buried it.¹⁶ The

high-level committee headed by Virginius Xaxa submitted that report to the Prime Minister's Office in May 2014.¹⁷ No action was taken later on the basis of the recommendations made by the Xaxa Committee report.

Availability of data in open/machine-readable format

The Open Government Data (OGD) Platform India – data.gov.in – supports the government's open data initiative.¹⁸ Although the government's open data policy is all about providing proactive access to government owned shareable data, along with its usage information in open/machine-readable format, one is left wanting more. In fact, one finds that websites of various ministries and departments sometimes violate the open data policy in the context of sharing relevant information in the requisite format. There is official acknowledgement that the open

“**Besides conducting third party auditing of proactive disclosure by public authorities, individuals, civil society organisations and private bodies can pursue such exercises on their own**”

data policy is pursued in order “to increase transparency in the functioning of government.” However, one finds that surveys are not conducted by many public authorities on a regular basis, and data (both administrative as well as survey) is not released in the public domain consistently. Even when data is released in the public domain, it may not depict the true picture as it is suppressed or manipulated to avoid public criticism and embarrassment.

Take a look at the administrative data on suicides provided by the National Crime Records Bureau's (NCRB) annual publication *Accidental Deaths and Suicides in India*. There are many studies questioning the NCRB suicide numbers. For instance, compared to a Lancet study (2012) estimates, the NCRB underreported suicide deaths among men by at least 25 percent and women by at least 36 percent in 2010. There were several under-reported suicide deaths among women and men aged 15-29 years, and also among women aged 60 years or older.¹⁹ Although a “Search by Table” option exists on NCRB's website (<https://bit.ly/3yTKhJ4>), to facilitate accessing the ADSI data from 1953 onwards, the data is available only in Portable Document Format (PDF) and not in open/ machine-readable format, such as XLS, XLSX, CSV, and JSON. Thus, it is difficult to readily use the information/ data for visualisation.

The data in the annual reports of various ministries of the central government (such as the Ministry of Rural Development, <https://bit.ly/3momPOM>) is not available separately in open/machine-readable format, such as XLS, XLSX, CSV, and JSON, which could be used by policy researchers and data enthusiasts.

For some central schemes like the MGNREGA, the Management Information System (MIS) data i.e., the administrative data (<https://bit.ly/3snz6qj>) is available for national and sub-national levels from 2013-14 onwards only on the website (as on December 5, 2021). Since 2008, MGNREGA covered the entire country with the exception of districts that had a hundred percent urban population. Yet, the MIS data for MGNREGA (<https://bit.ly/3mszobX>) is not available on the website from 2008 onwards. More importantly, a report on MGNREGA, edited by leading economist Dr. Mihir Shah (2012) had recommended national level studies to verify the authenticity of MIS data. However, the present author knows little about recent national level NSO surveys conducted to separately verify the authenticity of the MIS data.²⁰

Data suppression during the Covid-19 pandemic

Various studies during the Covid-19 pandemic indicate how the official data (<https://www.mygov.in/covid-19/>) suppressed the number of

deaths in the country during the first and second waves.²¹ The official count of Covid-19 deaths is around 4 lakh. However, a study by Abhishek Anand from Harvard University, Justin Sandefur from the US-based think tank Center for Global Development, and India's former chief economic adviser Arvind Subramanian (2021) has provided three different estimates of excess deaths due to the pandemic (during the period from April 2020 to June 2021). The extrapolation of state-level civil registration from seven states indicate 3.4 million excess deaths, whereas the application of international estimates of age-specific infection fatality rates (IFR) to the Indian seroprevalence data has found an excess mortality of about 4 million. Using the Consumer Pyramid Household Survey, a longitudinal panel of more than 800,000 individuals across all states, they estimated nearly 4.9 million excess deaths. According to the World Health Organization, excess mortality or excess deaths is defined as the difference in the total number of deaths in a crisis compared to those expected under normal conditions.²² The Covid-19 excess mortality accounts for both the total number of deaths directly attributed to the virus as well as the indirect impact, such as disruption to essential health services or travel disruptions. Besides Anand, Sandefur, and Subramanian (2021), various media organisations,

independent data journalists, and research analysts came out with their own estimates to show that the official death toll did not reveal the reality. Rather, the government underreported (undercounted) Covid-19 mortality in India and across states/ UTs.²³

The data on deaths of migrant and informal workers, who trudged back to their native places (i.e., places of origin) from various cities and towns after the announcement of the 2020 national lockdown was also not provided by the government, in response to questions by Parliamentarians. For instance, in his reply to a question asked by K Navaskani, Suresh Narayan Dhanorkar and Adoor Prakash, the Minister of State (Independent Charge) for Labour and Employment Santosh Kumar Gangwar said that the government did not maintain any data on the number of migrant workers who lost lives during their return to the hometown.²⁴ On the other hand, the data generated by a group of number crunchers (and later used by CSOs and media commentators), based on media reports, indicate that at least 991 non-Covid deaths had taken place between March 19, 2020 and July 30, 2020.²⁵ Out of 991 deaths, 224 deaths can be attributed to starvation and financial distress, while 209 migrant or informal workers died by accident, as they walked or migrated. It is to be noted that 142 were suicidal deaths due to fear of infection,

loneliness, lack of freedom of movement and inability to go back home, while 96 deaths took place while travelling in shramik trains. The direness of the situation is also underscored by 49 deaths in quarantine centres, 47 deaths owing to exhaustion of walking or standing in queues and 80 for the lack of medical care or attention. Additionally, 12 deaths occurred due to police brutality or state violence.

Conclusion

All the listed examples of Section 4 of the RTI Act violations are just the tip of the iceberg. The real skeletons may tumble out of the cupboard when one starts auditing or assessing the proactive disclosure mechanisms followed by various state-level public bodies and local-level urban and rural bodies/ public authorities. Besides conducting third party auditing of proactive disclosure by public authorities, individuals, civil society organisations and private bodies too can pursue such auditing exercises on their own by following a scientific methodology created by experts. Survey of website users could also be undertaken to evaluate whether the websites are able to communicate to the citizens adequate information (as needed under the RTI Act) in a user-friendly manner.

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COMMON CAUSE EVENTS

Citizen-Police Interaction and Policing in the Pandemic-October 30, 2021

Akhilesh Patil*

The editorial board of the Rajiv Gandhi National University of Law (RGNUL) Student Research Review (RSRR), in partnership with Common Cause, organised a panel discussion on October 30, 2021. Titled 'Citizen-Police Interaction and Policing in the Pandemic,' the discussion highlighted the potential short and long-term effects of the pandemic and public health emergencies on policing organisations and their officers.

Mr N Ramachandran, President and Founder, Indian Police Foundation, Dr Ruchi Sinha, Associate Professor, Tata Institute of Social Sciences and Dr Vipul Mudgal, Director, Common Cause were panellists at the event.

Aditya Vyas, the editor in chief of RSRR and the moderator of the event, discussed how the

police became gatekeepers of not just law and order but of the entire public management during the lockdown. He said that the unique institutional response of the police during the pandemic prompted RSRR to select the issue as the theme for discussion.

Before the panel discussion, Ms Radhika Jha, one of the lead researchers of the SPIR Series, gave a presentation on the ways in which the reports on policing, jointly brought out by Common Cause and Lokniti-CSDS, are designed to be a valuable tool for reforms and advocacy. She also discussed the key findings of SPIR 2020-2021 (Volume II), Policing in the Covid-19 Pandemic.

Mr N Ramachandran, in his address, discussed the efforts of the police during the pandemic through the eyes of the

personnel present in the field.

Dr Sinha emphasised that the police force is not a homogenous organisation, and every policeman or woman has his/her own set of problems. Dr Mudgal highlighted the discriminatory practices of the police, illustrating his argument with the Tablighi Jamaat incident. "Discrimination and prejudices which were inbuilt in the system, came out strongly during the pandemic," he said. He also felt that the presence of other departments, apart from the police, would have made a stark difference in law enforcement. Dr Mudgal added that there was a serious lack of training and legal understanding among the police, which worsened the lockdown situation.

You can watch the event here: <https://youtu.be/YCzQcL8g3bk>



Mr N Ramachandran (left) and Dr Ruchi Sinha were panellists at the discussion on 'Citizen-Police Interaction and Policing in the Pandemic.'

* Akhilesh Patil is Research Executive at Common Cause

NOTICE FOR ANNUAL GENERAL MEETING

To,

All members of COMMON CAUSE SOCIETY

The Annual General Meeting of COMMON CAUSE Society will be held on Saturday, March 05, 2022 at 11.00 am at Common Cause House, 5- Institutional Area, Nelson Mandela Marg, Vasant Kunj, New Delhi 110070, with an option of attending virtually, with meeting id and password to be shared closer to the meeting.

The agenda will be as follows:

1. Consideration of Annual Report and adoption of the Annual Accounts along with the Auditor's Report for the year 2020-21
2. Appointment of Auditors for the year 2021-22
3. Presentation of the activities and programmes of the Society
4. Elections
5. Any other item with the permission of the chair

It may kindly be noted that in accordance with Rule 15 of the Rules & Regulations of the society, if within 15 minutes of the beginning of the meeting, the quorum is not present, the meeting would stand adjourned and be held after half an hour of the original scheduled time, and the members present in the adjourned meeting shall form the quorum of that meeting.

Copies of the Balance Sheet and Income & Expenditure statement will be circulated (or screen shared) during the AGM.

We look forward to your participation in the meeting.

A line in confirmation will be highly appreciated.

Vipul Mudgal
Director
COMMON CAUSE

INDEPENDENT AUDITOR'S REPORT

To,

The Members of the Board
COMMON CAUSE

COMMON CAUSE HOUSE,
5 INSTITUTIONAL AREA,
NELSON MANDELA ROAD,
VASANT KUNJ,
NEW DELHI - 110070

1. This Report is issued in accordance with the terms of our engagement with COMMON CAUSE (the 'Society') having Registration no. 231650659 under the FCRA.
2. We have audited the accompanying financial

statements of the Society which comprise the Balance Sheet as at 31 March 2021, the Income and Expenditure Statement and Receipts and Payment Account for the year ended 31 March 2021, and significant accounting policies and notes to the financial statements prepared

by the management of the Society. The accompanying Annexure have been initialed by us for identification purpose only.

Management's Responsibility for the Financial Statements and Annexure

3. The Management is responsible for preparation and presentation of the Financial Statements and Annexure in accordance with the basis of accounting including preparation and maintenance of all accounting and other relevant supporting records and documents. This responsibility includes the design, implementation and maintenance of internal control relevant to the preparation and presentation of the Financial Statements and Annexure and applying an appropriate basis of preparation; and making estimates that are reasonable in the circumstances.
4. The Management is also responsible for ensuring that the Society complies with the requirements of the Act read with relevant Rules and providing all required information to the Ministry of Home Affairs.

Auditor's Responsibility

5. Pursuant to the requirement as stated in paragraph 2 above, it is our responsibility to provide a reasonable assurance in form of an opinion on these Financial

Statements and Annexure based on our audit.

6. We conducted our audit in accordance with the Standards on Auditing issued by the Institute of Chartered Accountants of India. Those Standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Financial Statements and Annexure are free from material misstatement due to fraud or error.
7. An audit involves performing procedures to obtain audit evidence about the amounts and the disclosures in the Financial Statements and Annexure. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the Financial Statements and Annexure, whether due to fraud or error. In making those risk assessments, the auditor considers internal financial controls relevant to the Society's preparation of the Financial Statements and Annexure, in all material respects, in accordance with the basis of accounting described in notes to the accounts to these Financial Statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Society's internal control. An audit

also includes evaluating the appropriateness of accounting policies used and the reasonableness of the accounting estimates made by the Management of the Society, as well as evaluating the overall presentation of the Financial Statements and Annexure.

8. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion on the Financial Statements and Annexure.

Opinion

9. In our opinion Annexure for the year ended 31st March 2021 are prepared, in all material respects, in accordance with the basis of accounting described in notes to accounts annexed to these Financial Statements.

Basis of accounting and restriction on distribution or use

10. Our work was performed solely to assist you in meeting your responsibilities in relation to submission of accompanying Financial Statements and Annexure with the Ministry of Home Affairs.

For & on behalf of-
S. Sahoo & Co. Chartered
Accountants FRN No. 322952E
CA Subhajt Sahoo, FCA, LLB
Partner
MM No. 057426
Date:
Place: New Delhi
UDIN:

COMMON CAUSE

ANNUAL REPORT FOR THE YEAR 2020-2021

The year 2021 witnessed waves of Covid-19 pandemic devastating lives and livelihoods. An overwhelmed healthcare system all but caved in as the outbreak led to a series of lockdowns. While the better off were able to work remotely and isolate themselves, the poorer people took the harshest blow losing their jobs and exposing themselves to the disease while going out to work, or to look for work, or by migrating long distances. As an organisation not working directly with the people, Common Cause tried to help in whatever way possible. The staff donated several days' wages and the organisation contributed for relief out of its already stretched resources to the Ramakrishna Mission hospitals.

The team also devoted the second volume of the Status of Policing in India Report (SPIR) to studying the impact of the

pandemic on policing. Volume one of the SPIR 2020-21 was on Policing in Conflict-Affected Regions. Two surveys were conducted instead of one as originally planned despite lockdowns and the fear of the disease. This was done when a safe window emerged fortuitously between the two waves of the pandemic. Common Cause team also conducted a third study in a row, a Rapid Study on policing, based on the opinions of the migrant and aid workers about the conduct of the police forces during the pandemic. All reports are in the public domain.

Common Cause Journal, our link with our members, overcame severe logistical challenges this year by mostly publishing digital copies. It continues to cover issues relevant to our members and the wider public in the spirit of championing public causes.

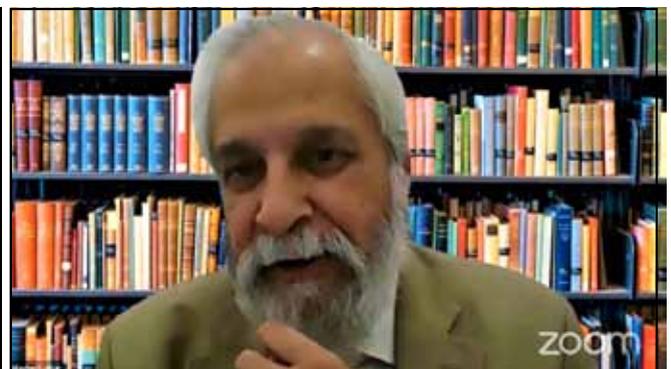
Throughout the year, the two SPIR studies brought out this year were distributed or digitally shared with serving police officers and district judges, DGPs of all states, and all High Court libraries, aside from law colleges and universities.

Advocacy and Research Initiatives

(a) Police Reforms

Status of Policing in India Report (SPIR 2020-21):

Common Cause, and the Lokniti team of the Centre for Study of Developing Societies (CSDS) released the SPIR 2020-21 (Volume I) titled 'Policing in Conflict-Affected Regions' in an online event on April 19, 2021. This was followed by the release of SPIR 2020-21 (Volume II), Policing in the Covid-19 Pandemic, at a virtual event on August 16, 2021. Justices (Retired) Madan B Lokur and



The online launch of SPIR 2020-21 (Volume I) (left); Keynote speaker Justice (Retired) Madan B Lokur



The virtual release event of SPIR 2020-2021 (Volume II)

Deepak Gupta were the keynote speakers at the two events which also held well-attended panel discussions. The participants included senior bureaucrats and lawyers, academics, journalists, retired and serving police officers as well as students. The SPIR volumes also attracted impressive media coverage.

The SPIR studies are brought out to assess the impact of policing on the ground. The reports are designed to be a valuable tool for reforms and advocacy by generating time series data on the citizens' trust and satisfaction with the police and their attitudes, adequacy, and working conditions, among other things. The first Volume of the SPIR 2020-21 studied policing in disturbed areas or regions affected by conflicts, extremism, or insurgency in the presence of the Army and the paramilitary forces as also the armed underground outfits. The second volume covered a range of citizen-police interactions during the lockdown, the handling of the crisis, and the emergence of new challenges for the law

enforcement apparatus. Together, the two SPIR volumes focused on the themes of policing in extraordinary circumstances.

Rapid Study on Policing during the Pandemic:

In the thick of the migrant crisis, Common Cause team conducted a (third) Rapid Study on policing during the pandemic, titled 'Police Response to the Pandemic: A Rapid Survey of Migrant and Aid Workers.' The study was based on telephonic surveys conducted in-house by the Common Cause team with the two different groups. The first group comprised migrant workers who either travelled back to their home towns or villages during the pandemic or had some form of contact with the police during the pandemic. The second group featured aid workers who were providing relief and assistance to the vulnerable communities during the nationwide lockdown. A sample of 100 migrant workers and 114 aid workers from the states of Delhi-NCR, Rajasthan and Gujarat were surveyed in the month of September 2020.

The report can be downloaded from the following link: <https://bit.ly/3D7JqF4>.

(b) India Justice Report 2020

The second edition of India Justice Report (IJR), a data-driven initiative ranking individual Indian states in relation to their capacity to deliver access to justice, was released on January 28, 2021. Common Cause, along with the Commonwealth Human Rights Initiative (CHRI), Centre for Social Justice, DAKSH, Tata Institute of Social Sciences-Prayas, and Vidhi Centre for Legal Policy are the key collaborators in this Tata Trusts initiative. Owing to the ongoing Covid-19 pandemic, the report was launched at an online event in the presence of Dr. Rajiv Kumar, Vice Chairman, NITI Aayog, Justice (Retd.) Madan B Lokur and other dignitaries.

The India Justice Report uses data obtained from government organisations to construct nearly 78 indicators, measuring the structural capacities of Police, Judiciary, Prisons, and Legal aid- the four pillars of the justice system. Its maiden edition, 'India Justice Report 2019' was launched in November 2019. The latest report, IJR 2020, uses the same methodology to rank individual states.

For the forthcoming report in the IJR series, several rounds of discussions have been held, both with the steering group members as well as with the organisations

working on different aspects of the report. For the police pillar, several meetings were held with external experts, such as Prof Arvind Verma, former IPS and Professor, Indiana University. The police group of the IJR team also had a meeting with Mr Nandkumar Sarvade, a former IPS officer to discuss the indicators related to technology and policing.

(c) Webinars, Podcasts, Discussions on Policing and the Rule of Law:

Foundation for Democratic Reforms conference on ‘Indian Democracy at Work’ on February 20, 2021—organised by FDR, a think tank led by Dr Jayprakash Narain, in collaboration with the Bharti Institute of Public Policy, Indian School of Business (ISB), and the Department of Political Science, University of Hyderabad (UoH). It brought together judicial and legal experts, police officers, academicians, civil society organisations, media, and the general public to discuss the state of the rule of law in India,

the way it works, the challenges it faces, and the practical ways to make our institutions deliver better results. Common Cause Director Dr Vipul Mudgal made a presentation on ‘Addressing Challenges of Modern Policing.’

Guru Gobind Singh Indraprastha University and Amity University lectures on police reforms and SPIR on March 17 and 24 on aspects of media, policing and the rule of law:

Common Cause Director Dr Vipul Mudgal was invited to interact with the students and faculty members of the two universities. The Amity lecture was part of the faculty development programme and was attended by the social sciences department faculty members and research scholars on Media, Democracy and the Rule of Law, with a special focus on the post-pandemic scenario. The latest SPIR on Policing in the Covid-19 Pandemic’ was the focus of the two presentations.

‘Media, Governance and Rule of Law’ presentation on April 6, 2021, for Bihar Administrative

Services officials by Common Cause Director Dr Vipul Mudgal organised by the Bihar Institute of Public Administration and Rural Development, Patna, in collaboration with the School of Journalism and Mass Communications, Patna. The webinar was also attended by the probationers of the Bihar Administrative Services.

‘Reporting on Justice Institutions’ Collaborative workshop with 101 reporters, a network of all India free-lance journalists on May 16-17, 2021:

Common Cause Director Dr Vipul Mudgal addressed a session on India Justice Report and the SPIR followed by Q&A. The other partners at the event were DAKSH, CHRI, Vidhi and several leading advocates, journalists and retired police officers.

Conference on ‘State Capacity of Odisha’s Justice System,’ July 24, 2021:

The National Law University, Odisha, in collaboration with the India Justice Report team, organised a conference on ‘State capacity of Odisha’s justice system.’



The Police Dialogue Series, an online discussion on Police Reforms, was part of the IPF Foundation Day Lecture– 2021 (left); Chief Guest, Justice Kurian Joseph

The e-conference was held on July 24, 2021, with a keynote address by Justice S Muralidhar. Dr Vipul Mudgal and Radhika Jha of Common Cause gave a presentation on the state of policing in Odisha, using evidence from the IJR as well as the SPIR series. The event was attended by law students and academics.

IPF Foundation Day Lecture: September 22 & September 23, 2021: Common Cause joined the Indian Police Foundation (IPF) and We Log in organising the IPF Foundation Day Lecture–2021 on September 22 and 23, 2021. The first day of the online event featured the Police Dialogue Series, themed on ‘Generating Public Awareness and a Groundswell of Public Demand for Police Reform.’ Panellists included Mr Prakash Singh, Chairman IPF, Mr Raghu Raman, Member Executive Committee, IPF and Dr Vipul

Mudgal, Director, Common Cause. The session was steered by Ms Faye D’ Souza, senior journalist. The second day of the event, held on September 23, 2021, featured the 7th IPF Foundation Day Lecture by the Chief Guest, Justice Kurian Joseph, former judge of the Supreme Court of India. The event can be watched here: <https://bit.ly/3Du9HOc>

Webinar on Police Reforms: Promoting Effectiveness and Accountability, September 24, 2021: Common Cause participated in the webinar ‘Police Reforms: Promoting Effectiveness and Accountability,’ organised by Synergia Foundation, an independent and strategic think tank, on September 24, 2021. The webinar was held in the backdrop of minimal changes in the nation’s policing framework in more than 150 years. Mr Prakash Singh, Dr

Meeran Borwankar, Dr Vipul Mudgal, and Prof Arvind Verma participated in the discussion.

Panel Discussion on Citizen-Police Interaction and Policing in the Pandemic, October 30, 2021:

The editorial board of the Rajiv Gandhi National University of Law (RGNUL) Student Research Review (RSRR), in partnership with Common Cause, organised a panel discussion on October 30, 2021. Titled ‘Citizen-Police Interaction and Policing in the Pandemic,’ the discussion highlighted the potential short and long-term effects of the pandemic and public health emergencies on policing organisations and their officers. Mr N Ramachandran, President and Founder, IPF, Dr Ruchi Sinha, Associate Professor, Tata Institute of Social Sciences (TISS) and Dr Vipul Mudgal were panellists at the event. Radhika Jha of Common Cause presented the key findings of the SPIR



Dr Vipul Mudgal (left) spoke on ‘Citizen-Police Interaction and Policing in the Pandemic’ and Radhika Jha presented the key findings of the SPIR 2020-2021 (Volume II) at a panel discussion organised by Common Cause and the editorial board of RGNUL

2020-2021 (Volume II).

The Institutional Culture within the Police and the Need for Police Reforms, November 2021:

Common Cause Director Dr Vipul Mudgal featured in a podcast on the institutional culture within the police and the need for police reforms. The hour-long and free-flowing conversation was recorded in November 2021 by DAKSH, a Bangalore-based organisation specialising on access to justice for their podcast series on access to justice.

National Convention of Human Rights Defenders, December 25, 2021:

Common Cause Director Dr Vipul Mudgal was a plenary session speaker at the event organised jointly by the Human Rights Front-India, RTI Revolutionary Group and National Federation of Societies for Fast Justice.

(d) Common Cause Journal

As lockdowns continued intermittently through a large part of 2021, Common Cause Journal had to be brought out mostly in the digital format. The online format of the journal has allowed us to devote more pages to the issues of concern to our public-spirited members which we could not earlier afford in the printed version. The journal still continues to further a public discourse on areas of the rule of law, governance, environment and human development. It also informs our members and well-wishers about the activities, research and advocacy initiatives undertaken by the organisation. All issues of the eponymous Common Cause journal are in the public domain and can be freely downloaded from our website.

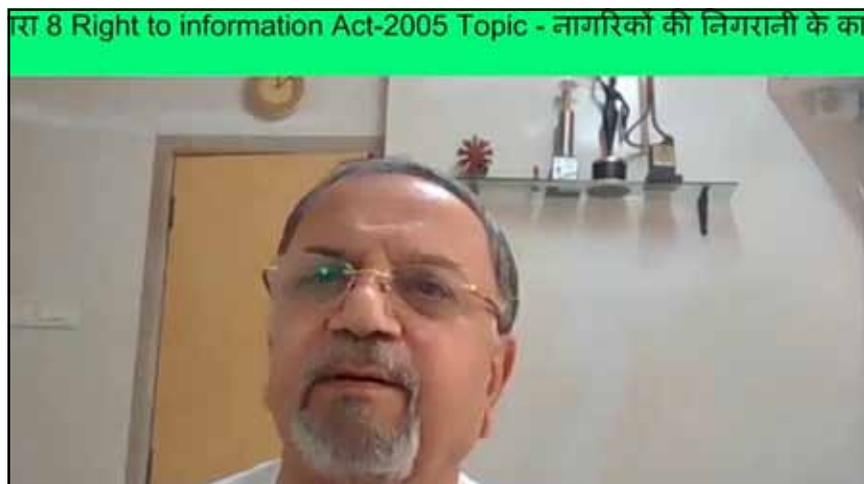
(e) Initiatives on the Right to Education

Making the Right to Education Act a Reality:

Susmita Saha from Common Cause conducted two virtual storytelling sessions in collaboration with civil society coalition RTE Forum for adolescent girls from the Bundelkhand region of UP on January 18, 2021. She also represented Common Cause at several webinars on issues faced by vulnerable children during the pandemic, including those organised by Save the Children and other child rights organisations. Common Cause team continues to remain connected with civil society organisations working on the Right to Education. Earlier, Common Cause had launched its Hindi booklet 'Humara School, Humari Rakhwali,' in July 2018, seeking to arm members of the School Management Committees (SMCs) with statutory information to monitor school functioning, particularly in slums and urban villages. The pandemic related restrictions continue to be in place for elementary education, and are thus preventing us from visiting schools physically and distributing our SMC booklets.

(f) Recent RTI Applications Filed

SPIR 2022: Common Cause has filed an RTI application in December 2021, before the Public Information Officer, Public Works Department, Govt. of NCT of Delhi to seek information on the number of CCTV cameras installed in public places across



Mr Shailesh Gandhi was part of the panel discussion on the legal provisions for people's surveillance and Section 8 (1) (H/I) of the RTI

the Capital. Information has also been sought on various other aspects of CCTV surveillance in Delhi.

We have also filed an RTI application before the National Crime Records Bureau (NCRB) in December 2021 to procure information on the syllabus/course structure of the “CCTV Footage Analysis” training of police personnel and other details.

In addition, Common Cause filed an application with the CPIO, Ministry of Home Affairs and another with the CPIO, Centre for Development of Telematics (C-DOT), seeking details of protocols on data collection through lawful interception and monitoring.

(g) Miscellaneous Representations, Comments or Suggestions

The following representations, comments or suggestions were made during the year by Common Cause to government authorities regarding issues of pressing public concerns:

Comments/Suggestions on the Draft Minerals (Evidence of Mineral Contents) Amendment Rules, 2021: As partners of Mineral Inheritors Rights Association (MIRA), a coalition of diverse civil society groups and networks in India that works in extractive sector governance, Common Cause sent its

comments on February 24, 2021, in reference to notices under the Pre-Legislative Consultation Policy (PLCP) 2014. Comments/suggestions were sought on the draft Mineral (Auction) Second Amendment Rules, 2021 and the draft Minerals (Evidence of Mineral Contents) Amendment Rules, 2021. The crux of our submissions was that the citizens, especially the future generations of the mineral-bearing states, and their interests, among other things, have not been considered in these proposals.

Suggestions and Comments on Digital Courts Vision & Roadmap Phase III of the eCourts Project: On April 23, 2021, Common Cause sent a representation to the e-Committee of the Supreme Court of India, in response to the Digital Courts Vision & Roadmap Phase III of the eCourts Project. We took a strong exception to the project’s lax timelines and

stressed that it requires firm deadlines with accountability, ascertainment of liability and penalty. We emphasised that the 2014 Action Plan for Phase II outlined the project period to be three years with provisioning of additional support for sustenance after this period. However, in August 2015, the budget approval document for Phase II set the timeline for completion at “four years, or until the project is completed, whichever is later.” This is already greater than the duration (two years) envisaged for the second phase completion. It widens the timeline for implementation indefinitely, making it practically impossible to pin accountability. We recommended seeking the assistance of the Indian private sector tech-giants for effective and timely implementation of targets.

Suggestions for Prioritising Access to COVID-19



Prof Arvind Verma was one of the speakers in the webinar, ‘Police Reforms: Promoting Effectiveness and Accountability,’ organised by Synergia Foundation

Vaccines to Persons with Disabilities (PwD): On June 1, 2021, Common Cause sent representations for prioritising vaccine access for PwD to the then Health Minister, Dr Harsh Vardhan, as well as all the states and the Government of NCT of Delhi. We urged the authorities to immediately take all measures to ensure prioritisation of vaccination for PwD, who continue to face exclusion, discrimination, and neglect. Some of our suggestions included giving priority access to vaccinations to PwD, along with personal assistants, family care-givers, and persons working in disability-related services.

Suggestions and Comments on the Proposed Amendments to Consumer Protection (E-Commerce) Rules, 2020: On July 18, 2021, Common Cause, in response to the proposed amendments to the Consumer Protection (E-Commerce) Rules, 2020, sent across a battery of comments and suggestions to the Joint Secretary, Department of Consumer Affairs. It noted, in its representation, that some of the proposed amendments seem to regulate areas that are already regulated by other rules such as the FDI Policy, Competition Act, and data protection regulations. In this context, we underlined that Section 100 of the Consumer Protection Act, 2019, which provides that the provisions of the Act (which would include the Rules made thereunder), should be in addition to, and not

in derogation of, the provisions of any other law in force for the time being.

We also pointed out that the rules impose greater duties and compliance obligations on e-commerce retailers, similar to the compliances seen in the recent Intermediary Guidelines under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The problem with the current rules, as proposed, is that smaller e-commerce retailers/startups will be unnecessarily burdened, as fulfilling such compliances may not be affordable for them, thus forcing them to leave the market. These compliance requirements are also at odds with the Startup India Initiative and with the ease of doing business.

Reminder Letter for Initiation of Action Against Iron Ore Mining Companies: In August, 2021, Common Cause sent a reminder letter for initiation of action against mining companies due to their non-compliance of the legal mandate of Rule-12A of Mineral Concession Rules, 2016 and Mine Development and Production Agreements. Their non-compliance translates as not maintaining such level of production of iron ore so as to ensure minimum dispatch of 80% of the average annual production of two immediately preceding years. This reminder letter is a follow-up to our representation, dated

08.12.2020, on similar issues concerning iron ore mining in Odisha.

Suggestions/Feedback on the Draft Approach Paper for Creating a Digital Address Code for Each Address in the Country: Common Cause sent its submissions on the Draft Approach Paper for creating a Digital Address Code (DAC) for each address in the country on November 20, 2021. Our specific suggestions included drawing up proper definitions of personal and non-personal data under the DAC, following wide consultations with the public as well as experts to define specific use cases for data collected through DAC. The government must also ensure a public consultation to define specific use cases for the use and processing of data collected under the DAC database. This would include a ban on unregulated use of DAC data by both private actors and government bodies. In addition, we suggested that all recommendations must be available in the public domain.

(h) Miscellaneous webinars/ Online Consultations/ Workshops

‘Technology, New Forms of Employment & Future of Work’: February 8-11, 2021

Shambhu Ghatak of Common Cause received a Certificate of Participation for attending the course ‘Technology, New Forms of Employment & Future

of Work,' organised by VV Giri National Labour Institute.

An Introduction to Climate Change: May 17-28, 2021

Shambhu Ghatak and Susmita Saha of Common Cause attended and completed the online course on climate change organised by the Centre for Science and Environment.

Annual National Convention 2021 on Judicial Reforms: July 10-11, 2021

Common Cause Director Dr Vipul Mudgal was a speaker on Electoral Reforms on the second day of the online Convention along with Mr Rajiv Lochan Mehrotra, Former Judge, Allahabad High Court, Mr Shailesh Gandhi, Former Central Information Commissioner, Mr Rahul Singh, Information Commissioner, Madhya Pradesh, and Mr Jagdeep Chhokar, Founder President of ADR. Noted Supreme Court lawyers Mr Dushyant Dave and Mr Prashant Bhushan delivered the inaugural and valedictory addresses at the well-attended all India convention.

Aligarh Muslim University-ADR Discussion on 'Campaign, Digital Media and Mobilization in Indian Elections': July 24, 2021

Common Cause Director Dr Vipul Mudgal was one of the main speakers at the well-attended student event.

66th National RTI Meet

on Legal basis for Mass Surveillance of Citizens 'Nagarikon ki nigarani ke liye kanuni aadhar aur RTI ki dhara 8 (1) (H/J): September 26, 2021

Common Cause team attended the webinar 'Nagarikon ki nigarani ke liye kanuni aadhar aur RTI ki dhara 8 (1) (H/J)' (Legal provisions for people's surveillance and section 8 (1) (H/J) of the RTI). The online event was jointly organised by the RTI Revolutionary Group India, National Federation of Societies for Fast Justice (NFSFFJ), Mission Free Legal Education and National RTI Group. The webinar was chaired by Mr Rahul Singh. Mr Shailesh Gandhi, Mr Apar Gupta, Lawyer and Executive Director, Internet Freedom Foundation, Mr Pravin Patel, Social Activist and Coordinator, NFSFFJ and Dr Vipul Mudgal participated in the panel discussion.

Pensioners in the Path of Legal Battles and the Need to Win 'Universal Pension': December 17, 2021

Swapna Jha of Common Cause was the keynote speaker at the webinar "Pensioners in the path of legal battles and the need to win 'Universal Pension,'" organised by the All India Postal & RMS Pensioners Association. Common Cause had filed three major PILs on pension reforms. The first in the series, was a plea for equal pension for all pensioners, irrespective of the date of retirement. The

second was an appeal for family pension for all dependents of the deceased pensioners while the third asked for the commutation of pension. Jha spoke on the topic, 'Common Cause Petitions and Judgments on Welfare of Pensioners,' discussing the minutiae of the cases and outlining the benefits that accrued to pensioners across India from them.

Publications

'Sedition: A Minotary Frown': February 25, 2021 by Vipul Mudgal in Outlook (<https://bit.ly/30TUDfc>)

'India's Police Forces Turning into Private Armies of Elected Rulers': April 22, 2021 by Vipul Mudgal in *Article 14* (<https://bit.ly/3yZoM9x>)

Book Review, 'Under Cover: My Journey into the Darkness of Hindutva' by Ashish Khetan' September 17, 2021: Book Review by Vipul Mudgal in *Hindustan Times* (<https://bit.ly/3sM1wen>)

'Home Truth of Indian agriculture: Farm Income Declined in India in 7 years' October 5, 2021 by Shambhu Ghatak in *DownToEarth*. (<https://bit.ly/3dWgHZK>)

'Jail, no Bail: Aryan Khan Gets Taste of Reel in Real as Court Reserves Order': October 15, 2021 by Radhika Jha and Bikram Vohra in *News Nine*. (<https://bit.ly/3pWKo2s>)

'Crime as Punishment:

How India's Public Backs Extrajudicial Killings by Police': November 1, 2021
by Radhika Jha in *Article 14*. (<https://bit.ly/3E21kuC>)

Public Interest Litigation

Supreme Court Cases

Petition seeking filling of pending vacancies in the Central Vigilance Commission:

Common Cause filed a petition in November 2021, seeking the timely and transparent filling of long pending vacancies in the Central Vigilance Commission so as to ensure that the Commission can effectively discharge its duties as an 'integrity institution.'

The petition, filed under Article 32 of the Constitution, prays for an appropriate writ, order, or direction to the UOI to take urgent steps to appoint Vigilance Commissioner and Central Vigilance Commissioner, in pursuance of its advertisements issued on 20.07.2020 (15 months ago) and 04.05.2021 (5 months ago) respectively. It also prays for an appropriate writ, to forthwith place all details of the selection process/appointments to be made to the Central Vigilance Commission in the public domain. This has to be done in a manner that it has been directed to follow, with respect to the selection/appointments made to the Central Information Commission, vide judgement of this Hon'ble Court in the Anjali Bhardwaj & Ors v. Union of India & Ors. The matter is yet to be listed.

Petition Challenging Constitutional Validity of Sedition: Common Cause filed a petition in July 2021, challenging the constitutional validity of Sedition under Section 124A of the Indian Penal Code, 1860, as being violative of Articles 14, 19(1)(a), & 21 of the Constitution of India.

In 2016, Common Cause had filed a PIL seeking appropriate directions to make it mandatory, before filing an FIR or making an arrest, to produce a reasoned order from the head of the police force to certify that the "seditious act" either led to the incitement of violence or had the tendency or intention to create public disorder. The court, however, disposed the petition, ordering authorities to rely on Kedar Nath (1962) while dealing with cases of under Section 124A.

In Kedar Nath Singh v State of Bihar, the constitutionality of this Section was tested and upheld, as the Court applied the Doctrine of Presumption of Constitutionality to save it. As per Kedar Nath, the offence of sedition is complete if the activities tend to create public disorder or disturbance of law and order or public peace. Since then, however, the Court in Navtej Singh Johar v. Union of India, and Joseph Shine v. Union of India, has held that the presumption of constitutionality does not apply to pre-constitutional laws as those were brought in by a foreign legislature or body.

Petition to Completely Ban Export of Iron Ore: Common Cause filed a writ petition in April 2021, to completely ban the export of iron ore (whether in the form of pellets or otherwise). Alternatively, it has sought the levy of export duty of 30%, on the export of iron ore in all forms, including pellets (except pellets manufactured and exported by KIOCL, formerly known as Kudremukh Iron Ore Company Limited). The petition also prays to initiate proceedings under Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Section 135(1) of the Customs Act, 1962. In addition, it seeks the levy of appropriate penalty as per law against mining companies exporting iron ore pellets in contravention of the provisions of India's export policy. By exporting iron ore pellets, they have been evading the duty chargeable on the commodity. The petition also prays for a thorough and independent investigation into the role of public officials in allowing the same. Notice was issued on September 24, 2021 directing the respondents to file their response within four weeks from the date of the order. The UOI filed its response on November 11, 2021. There are no further listings.

Petition Challenging the Appointment of Interim Director, CBI: Common Cause filed a PIL on March 2, 2021, challenging the appointment of an Interim/

Acting CBI Director once again. It also sought the appointment of a regular Director, as per procedure established by law. As per the Delhi Special Police Establishment (DSPE) Act, 1946, the appointment of Director, CBI is to be made by the High-Powered Committee comprising the Prime Minister, Chief Justice of India (or any Judge of Supreme Court nominated by the CJI) and Leader of Opposition in the Lok Sabha.

The petition prayed for a direction to the executive to initiate the process of selecting a regular Director forthwith. The petition also sought a direction to the Centre to initiate and complete the process of selection of the CBI director well in advance. The selection process should be completed well before the date on which the vacancy to the post is about to occur.

In 2019, Common Cause had challenged the appointment of M Nageshwar Rao as Interim Director, CBI on similar grounds. On February 19, 2019, while declaring the decision of the case, the Court indicated that if due process is not followed in appointments, it is always open to any incumbency and the said appointments could be questioned in accordance with the law.

After issuing a notice on March 12, 2021, the court expressed its displeasure on April 5, 2021 on the interim appointment and granted adjournment. It directed

the matter to be listed for April 16, 2021. Subsequently, the matter was taken up on April 19, 2021 and the next hearing date fixed on May 13, 2021. Meanwhile, the Appointments Committee of the Cabinet, based on the panel recommended by the High Powered Committee, approved the appointment of Subodh Kumar Jaiswal as the new director of CBI on May 25, 2021. On October 20, 2021, the Court asked the government to continue with the incumbent director till next director was appointed in accordance with the provisions of the law in force. The matter was listed for December 8, 2021 but was not taken up. The next date is likely to be on January 12, 2022.

On November 14, 2021, an Ordinance extending the tenure of the Director CBI by up to five years from a fixed tenure of two years was brought in force.

Availability of Vaccines to Every Citizen: In June 2021, Common Cause filed an Intervention Application in the suo motu matter of Covid-19 management. The Apex Court had taken cognisance on issues related to oxygen shortage, drug supply, and vaccine policy in relation to the Covid-19 pandemic.

The IA sought directions to the Centre to revise the guidelines for implementation of the National Covid Vaccination Program dated June 8, 2021, specifically relating to the allocation of up to 25% of the

vaccines produced in India to private hospitals. Alternatively, the IA prayed for directions to the central government to modify its revised guidelines for implementation of the National Covid Vaccination Program in order to achieve free vaccination expeditiously. The IA also urged all the stakeholders, both public and private, to be transparent in the procurement and allotment of vaccines, as well as ascertain accountability for ensuring transparency. The matter was likely to be taken up on August 25, 2021 but was not listed on the said date and there are no further orders of listing.

Petition Challenging Re-appointment of the Director of Enforcement Directorate:

Common Cause on November 27, 2020 approached the Supreme Court with a prayer seeking to quash the Centre's decision to "retrospectively" amend the tenure of Mr. Sanjay Kumar Mishra as the director of the Enforcement Directorate (ED). It also sought a direction to the central government to appoint a director for the agency "in a transparent manner and strictly in accordance with the law." The bench of Justices L Nageswara Rao and S Ravindra Bhat issued notice on February 15, 2021 and the matter was taken up on April 5, 2021. On that date, the Court, after hearing the parties, directed the matter to be listed on April 16, 2021. On August 12, 2021 after hearing the parties, the Court directed the matter be listed for

August 16, 2021. The matter was heard by the Court again on August, 16, 17 and 18, 2021, when it reserved the judgment after conclusion of hearing. On September 8, 2021, the Court dismissed the petition with the following order:

“The justification given by the Union of India for extension of the tenure of Second Respondent is that important investigations are at a crucial stage in trans-border crimes. The decision to extend the tenure of the Second Respondent is pursuant to the recommendation made by the high-powered committee.

Though we have upheld the power of the Union of India to extend the tenure of Director of Enforcement beyond the period of two years, we should make it clear that extension of tenure granted to officers who have attained the age of superannuation should be done only in rare and exceptional cases. Reasonable period of extension can be granted to facilitate the completion of ongoing investigations only after reasons are recorded by the Committee constituted under Section 25 (a) of the CVC Act. Any extension of tenure granted to persons holding the post of Director of Enforcement after attaining the age of superannuation should be for a short period. We do not intend to interfere with the extension of tenure of the Second Respondent in the instant case

for the reason that his tenure is coming to an end in November, 2021. We make it clear that no further extension shall be granted to the Second Respondent.”

Illegal Mining in Odisha:

This matter was listed thrice in January 2021, where some interlocutory applications filed by interested parties were disposed.

Introduction of Electoral

Bonds Challenged: Common Cause and ADR challenged the introduction of Electoral Bonds, which was done by amending the Finance Act 2017. These bonds have not only made electoral funding of political parties more opaque, but have also legitimised high-level corruption at an unprecedented scale by removing funding limits for big corporates and opening the route of electoral funding for foreign lobbyists. The PIL sought direction from the Supreme Court to strike down the amendments brought in illegally as a ‘Money Bill’ in order to bypass the Rajya Sabha. On October 3, 2017, notice was issued to the Union of India and other respondents and on February 2, 2018, our petition was tagged with the one filed by the Communist Party of India (Marxist), also challenging the electoral bond scheme. On March 14, 2019, the Centre, in its affidavit filed in the SC, claimed that electoral bonds would “promote transparency in funding and donation received by political parties.” The matter was taken up on March 26, 2019

when the Election Commission of India (EC) again red flagged the bonds scheme, conveying that it had expressed concerns about it even in 2017. The EC, in its affidavit, said that the electoral bond project and removal of caps on the extent of corporate funding would have “serious repercussions/impact on the transparency aspect of political finance/ funding of political parties.” Thereafter on April 12, 2019, the SC declined to stay the EB scheme ahead of the 2019 General Elections. It further observed that the question could not be determined on the basis of a short hearing, and that any interim orders of the court must not have the effect of tilting the balance in favour of any political party.

Ahead of the Assembly elections in four states and a Union Territory (UT), an application was filed again in the Supreme Court on March 6, 2021. This was to stop the sale of electoral bonds till their validity, already under examination by the Apex Court, was finally decided.

On March 26, 2021, the SC dismissed the application, saying that it did not find any justification to stay fresh sales of electoral bonds ahead of the Assembly elections in West Bengal, Tamil Nadu, Kerala, Assam and the Union Territory of Puducherry. The Bench, headed by Chief Justice S.A. Bobde, declined to stay their sale, noting that the bonds were allowed to be released in 2018 and 2019

the issue in 2017 and 2019, took a different stand this time. Senior advocate Rakesh Dwivedi, appearing for EC said: “The issue of transparency can be considered at the final argument stage, and there should be no interim stay.” Dwivedi added that the stay on electoral bonds would mean going back to the era of unaccounted cash transfers.

Finance and Accounts (2020-21)

The Audited Annual Accounts of Common Cause for the year ending March 31, 2021 has been received. The Governing Council has been requested to go through the report and accord its approval. Briefly, the non-project expenditure during the year was Rs 114.83 lakh against Rs 96.62

lakh recorded in the previous year. The non-project income during the year was Rs 100.21 lakh compared to Rs 121.50 lakh during 2019-20. Thus, there was a shortfall of Rs 14.62 lakh during the year as against a surplus of Rs 24.88 lakh in the previous year.



Two things form the bedrock of any open society - freedom of expression and rule of law. If you don't have those things, you don't have a free country.

Salman Rushdie





Common Cause is in the vanguard of India's anti-corruption movement and the fight for stronger public institutions since the 1980s. We make democratic interventions through PILs and bold initiatives. Our landmark PILs include those for the cancellation of 2G licenses and captive coal block allocations, against the criminalisation of politics, for Internet freedom and patients' right to die with dignity. Please visit commoncause.in for more information on our mission and objectives. We also run special programmes on police reforms and cleaner elections.

Common Cause runs mainly on donations and contributions from well-wishers. Your support enables us to research and pursue more ideas for a better India.

Now you can donate using our new payment gateway.

You may also deposit directly into our bank account (details are given below) and send us an email at commoncauseindia@gmail.com, providing information such as donor's name, address and PAN number for issuance of the donation receipt.

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Printed & Published by Vipul Mudgal on behalf of Common Cause, 5 Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi 110070, Printed at PRINTWORKS, C-94, Okhla Industrial Area, Phase - 1, New Delhi - 110020
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