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ISSUES THAT OFFICIAL CONFRONTS DURING RTI PROCEEDINGS- Arvind¹***ABSTRACT-***

This paper examines the RTI issues that the commission officials regularly face. RTI has a vast history, and with time, people become aware of it but also aware of using it against the departments. In the commission, the information commissioner needs help during the proceedings, like third-party information, not attending the proceedings from time to time, and non-compliance with the order issued by the commission. The commissioner has faced these issues. Some of the cases have been stuck for a year or more than that. The concerned Public information officer provides the information, but if he doesn't, then the first appellant authority of the department becomes the person who gives it. Most of the time FAA doesn't work. No provision in the ACT can penalize FAA. All the obligation goes to the PIO. When the case comes to the commission, both parties get the order from the commission to be present before the court on the date mentioned. Some patients go for years because there is no time bar for the commission as it is for the PIO and FAA. The public information officer has to provide information within 30 days. If not, then the information will be provided cost-free. For FFA, it is 45 days. Whereas for the commission, there is no time limit given. Most of the cases are not in the proper form, which means the appellant uses terms like something, got nothing, got half information. To make it easy, the commission tells them to make the RTI point-wise so they can understand what information the appellant has received and what not. Sometimes appellant uses RTI for the wrong purposes. If the information has been sent to the appellant, they still don't admit it(seen during the proceedings).

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Keywords–RTI, PIO, FAA, transfer of officials, third party information, the time limit for commission, non-compliance of the commission.

INTRODUCTION–

The right to Information(RTI) is a fundamental human right that guarantees citizens the ability to access information held by the government. This right is crucial for promoting transparency and accountability in government actions and empowering citizens to participate fully in the democratic process. The RTI Act ensures that public authorities are obliged to disclose information upon request unless it falls under the exemptions provided in the act. It also establishes an independent oversight mechanism to uphold the right to information. The RTI act is a powerful tool for fighting corruption and promoting good governance and is essential for the functioning of a democratic society.

In addition, the Right to Information also plays a crucial role in promoting the exercise of other fundamental rights, such as the right to education, health, livelihood, and justice. It allows citizens to access information necessary to exercise these rights and hold public authorities accountable for their actions. Furthermore, the RTI act also helps to promote government efficiency and effectiveness by allowing citizens to access information that can help to identify problems and suggest solutions. Overall, the Right to Information is an essential tool for promoting good governance and protecting the rights of citizens in a democratic society. The Right to Information (RTI) helps promote transparency in government actions by allowing citizens to access information held by public authorities. This will enable citizens to understand the decisions being made on their behalf and to hold public officials accountable for those decisions. For example, RTI can be used to access information about the allocation of government resources, such as budget documents and contracts. This allows citizens to see how public funds are spent and identify potential corruption or mismanagement.

Additionally, RTI can be used to access information about government policies and programs. This allows citizens to understand the rationale behind government decisions and to provide feedback on

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those decisions. This helps to promote a more open and participatory decision-making process, making the government more responsive to the needs and concerns of citizens.

Furthermore, RTI can be used to access information necessary to exercise other fundamental rights, such as the right to education, the right to health, the right to livelihood, and the right to justice. It allows citizens to access information necessary to exercise these rights and hold public authorities accountable for their actions.

Overall, the Right to Information is a powerful tool for promoting transparency and accountability in government actions and empowering citizens to participate fully in the democratic process.

The Right to Information (RTI) applies to all "public authorities" as defined by the RTI Act.

In general, this includes:

- Central government departments and agencies
- State government departments and agencies
- Local government bodies, such as municipal corporations and panchayats
- Public sector undertakings and autonomous bodies that are controlled or financed by the government
- Non-government organizations that receive substantial funding from the government
- Any other body that is declared to be a public authority by the government
- In addition, the RTI also applies to "private bodies" that are "owned, controlled or substantially financed" by the government.

It is worth noting that there may be some exceptions for certain types of information held by public authorities. For example, the RTI Act provides exemptions for information that harm national security or compromise personal privacy. The right to Information applies to a wide range of government bodies and organizations, including Central, State, and local government departments and agencies, public sector undertakings and autonomous bodies controlled or financed by the

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government, and Non-Government Organizations receiving substantial funding from the government.

RTI ACT 2005–

The Right to Information Act 2005 (RTI Act) is a law passed by the Indian government that guarantees citizens the right to access information held by public authorities. The Act was passed to promote transparency and accountability in government actions and empower citizens to participate fully in the democratic process. The RTI Act applies to all "public authorities" as defined by the Act, which includes Central and State government departments and agencies, local government bodies, public sector undertakings, autonomous bodies controlled or financed by the government, and non-government organizations that receive substantial funding from the government[1]. Under the RTI Act, citizens have the right to access information held by public authorities, subject to certain exemptions and restrictions. Public authorities must disclose information upon request unless the information falls under one of the exemptions provided in the Act. The Act also establishes an independent oversight mechanism, the Central Information Commission (CIC) and State Information Commission (SIC), at the Centre and State levels, respectively, to ensure that the right to information is upheld. The RTI Act is a powerful tool for fighting corruption and promoting good governance. It has been instrumental in bringing transparency and accountability in government actions and decision-making, encouraging public participation in control, and protecting the rights of citizens.

In addition to the provisions outlined above, the RTI Act includes several other important features.

- Time limit for providing information: The Act requires that public authorities provide the requested information within 30 days of receiving the request.
- Fees: Citizens have to pay a fee to request information under the RTI Act. The price is nominal and is intended to cover the information cost.[2]

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- Proactive Disclosure: The Act also requires public authorities to proactively disclose specific categories of information, such as details of their organization, functions, decision-making processes, budgets, and annual reports, without the need for a particular
- Penalties for non-compliance: The Act provides penalties for public officials who knowingly provide false information or destroy the information to prevent its disclosure.
- Appeal mechanism: The actals provide an appeal mechanism for citizens who are not satisfied with the response to their request or feel that their request has been wrongly denied. Citizens can appeal to the Central Information Commission (CIC) or State Information Commission (SIC) if they are not satisfied with the response of the Public Information Officer (PIO) of the concerned department.

Overall, the RTI Act 2005 is a comprehensive legislation that guarantees citizens the right to access information held by public authorities and creates an effective mechanism for ensuring transparency and accountability in government actions.

ISSUES THAT OFFICIAL CONFRONTS–

During the RTI proceedings, the officials confront many issues regarding the cases. Sometimes the parties themselves need to learn what they want. They use the form of a question while forming the RTI, whose answer cannot be given because the commission provides the info. Not the answers to the questions.

Thousands of cases are pending in the commissions regarding so much information. According to the commissioners of Punjab, so many cases are being filed by the activists. Even there are ones who used to file the claims in line to get the information. According to them, the information they want needs to be more relevant, even though the department shares all the issues regarding the RTI application. Still, after getting the information, they refuse that they have received the information and deny it to make trouble for the officials.

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In Punjab, the commission office is in Chandigarh, and some of the appellants are not satisfied with the information; the commissioner has to ask both parties to visit the office with relevant documents. To visit the office from places far away from Chandigarh is difficult. For example, the officials called to the office from Pathankot or Sri Mukhtar sahib.

“During the COVID-19 times, the department went digital. The appellant and the respondent get the information without visiting the office in person. But it was hard to do so; due to bad network and voice issues, the officials in the commissioner’s office couldn’t understand their concerns, and then, they had to issue another date to them, but the same problem happened again. It was difficult to manage, but now the situation is far better than before,” said Sh. Suresh Arora, Hon’ble CIC.

People are unaware of the terms “Public authority”^[3]and “third-party information.”

The Right to Information (RTI) Act in India applies to all "public authorities" as defined under Section 2(h) of the Act. A public authority refers to any head or body, or institution of self-government established or constituted by or under the Constitution, by any other law made by the Parliament or a State legislature, or by notification issued or order made by the appropriate Government, and includes any body owned, controlled, or substantially financed; non-Government organization substantially financed, directly or indirectly, by funds provided by the appropriate Government; Public authorities include government departments, local bodies such as municipal corporations, public sector undertakings, universities, and autonomous bodies that the government substantially funds.

The Act applies to all levels of government, including Central and State Governments, as well as their respective departments, offices, and organizations. Additionally, it applies to Public sector undertakings, Autonomous bodies, Non-Governmental Organisations(NGOs), and any other body owned, controlled, or substantially financed by the government, even if it is not a legal entity.

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In the case of Thapar Institute of Engineering and Technology Patiala^[4], on the first date of hearing, i.e.,15.02.2021, after going through the documents on record and hearing both the parties in the present case, the Punjab Commission passed the following order:

“After going through the documents on record and submission made by the respective parties, this commission finds that it is an undisputed fact that Thapar Institute of Engineering and Technology has agreed with the Mohini Thapar charitable trust to promote technical education in the state. Under the agreement, a joint charitable trust was created, and 30 lacks each by Mohini charitable trust, and the Pepsu government was subscribed to the institution on 19.09.1955, pepsu government issued a notification under section 4 of the Land of acquisition act to the effect that the land measuring 250 acres was likely to be required for public purposes. The ground was provided by the pepsu government, free of cost, to establish the respondent institution. Thus it is clear that the present institution has been based on the land given by the government, free of charge at the public expense, for the general purpose of imparting education which is an essential service to society.

It has also come forth that the respondent has been provided significant financial assistance by the state government to set off its deficits. The details of the grants received by them during the previous years have been mentioned in the judgment dated 26.06.2018 passed by the CIC annexed along with the present appeal; therefore, the same is not being reproduced elsewhere for being reproduced herein for the sake of brevity.

Thus upon a harmonious and conjoint reading of the facts above and the judgment dated 26.06.18 passed by the CIC, this commission is of the firm opinion that the respondent institute certainly falls within the four walls of the definition of a “ public authority,” which is provided under section 2(h)(i) of the RTI act 2005 as it passes the test of being substantially financed by the appropriate government on two accounts viz. firstly since it has been established on the land given by the government free of cost and secondly it has also been receiving grants from the government from time to time.

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At this junction, it would not be inappropriate to refer to the following decision of the Hon'ble Supreme Court in the case of D.A.V college trust and management society and Ors. V. director of public instructions and ors. They are reported as (2019) 9 SCC 185 wherein while interpreting the meaning of the term 'substantially financed' occurring u/s.2 (h)(i) of the RTI Act, 2005, the Hon'ble Apex Court has held that if an Institution is established on the land given by the State, then it would undoubtedly mean that the Government substantially finances it.

In our view, "substantial" means a large portion. It does not necessarily have to mean a significant amount or more than 50%. No hard-and-fast rule can be laid down in this regard. Substantial financing can be both direct and indirect. For example, if land in a city is given free of cost or at a heavy discount to hospitals, educational institutions, or other bodies, this could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a low price, would mean that it is substantially financed. Because the State's financial contribution comes down during the actual funding, it will not by itself mean that the indirect finance given is not to be considered. The value of the land will have to be evaluated not only on the date of allotment but even when the question arises as to whether the said body or NGO is substantially financed.

NON-ATTENDANCE OF THE PARTIES-

Non-attendance of the parties refers to a situation where one or both parties in a legal case do not appear in court as required. This can happen for various reasons, such as the parties being unable to locate or failing to be present at the scheduled court date. Non-attendance can result in the case being dismissed or delayed, depending on the commission's specific circumstances and rules. It is generally advisable for parties to a legal claim to attend all scheduled court dates, as failure can have serious consequences.

According to section 2 (j), the right to information means the right to information accessible under this act which is held by or under the control of any public authority which includes, Documents,

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records, an inspection of work, information regarding floppies, tapes, or anything stored in a computer or any other device.[5]

In appeal case number 5788/2022. Dated on 17.01.23 in Punjab State Information Commission. The order was passed,

ORDER

1. The RTI application is dated 16.08.2022, vide which the applicant has sought the information as enumerated in his RTI application.
2. The first appeal was filed with the Appellate Authority (from now on FAA), and a second appeal was filed in the Commission on 22.11.2022 under Section 19 of the Right to Information Act, 2005 (from now on RTI Act).
3. 20.01.2023. However, the above-mentioned complaint case was postponed to be heard on 17.01.2023.
4. Today, neither the appellant nor the respondent is present. Even the appellant has yet to inform the Commission about his absence from today's hearing.
5. Since both parties are not present, they can appear before the Commission and state their
6. 22.02.2023 at noon for further proceedings in the commission.

A copy of the order is sent to the parties.

Here the appellant asks for the information from the relevant office, but the respondent parties gave a response. The respondent has to provide the information within 30 days; if not, then all the information will be provided to him without any cost. However the appellant has yet to receive a response from the office PIO, so he appealed to the FAA (first appellant authority). Here the foremost appellant authority gets 45 days. After 45 days, he still needs to receive a response. Here the appellant gets 90 days to file an appeal under the commission. On 22.11.22, under section 19 second appeal was filed.

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Here, in the appeal, the appellant asked for the scale used to measure the land in the village: Zirakpur.

Hereon 17.01.23, both parties were present. The date is given so they can publish their concern at the commissioner's office.

Here the RTI was filed on 16.08.22, and still, after six months, the case has yet to be decided. Even though the information is not even come under section 8. Still, it gets delayed just because the parties are absent, and there needs to be input from the concerned PIOs.

The person who wants the information urgently is still waiting to get it, even after 6-7 months. To get the small information, it takes a lot more than required.

LACK OF PROPER TRAINING OF PUBLIC INFORMATION OFFICERS(PIOs)-

Proper training of public information officers (PIOs) under the Right to Information (RTI) Act can lead to issues with the timely and accurate provision of information to citizens. PIOs, appointed by public authorities to handle RTI requests, are responsible for ensuring that information is provided in a transparent and accessible manner. When RTI is filed for the information, it goes to the concerned department, where the PIO gets to examine it. Most of the department's PIOs are clerks and junior assistants. They provide the information to the concerned party.

There is no qualification mentioned for the PIOs in the act or anywhere else where it is said that the concerned PIO must know it while examining the RTI. During the proceedings, most department PIOs needed to know what information had to be given and what was not. In the end, when they had no idea about the RTI, they used the line, "I am just a clerk or junior assistant; I don't have any vast knowledge regarding this." This happened in most RTIs. Even some PIOs are unaware of the 30 days of deadlock. In one of the cases, the PIO sent the information to the respondent but, after 30 days, asked for the appellant's fees.

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ACCOUNTABILITY OF THE FIRST APPELLANT AUTHORITY–

The first appellate authority (FAA) ensures accountability under the Right to Information (RTI) Act. The FAA is responsible for hearing appeals from citizens dissatisfied with the response to their RTI request from the public information officer (PIO). The FAA is typically a senior official in the public authority, such as a department head or a director.

The first appellant authority comes after the PIO. The foremost appellant authority has to give the information within 45 days of filing the appeal, but in most cases, the FAA does not respond. This is the lag in the RTI act. Accountability of the FAA is not mentioned in the RTI act. The penalty needs to be written in the act for the FAA. Here the FAA does not respond to the appellant's request, and 45 days stretches it. This causes a delay in transferring the information.

In most cases, the PIO and FAA are from the same department. For example, there was a case on 17.01.23 in the office of commissioner Sh. Amrit Partap Singh Sekhon, case number 5798/2022. Amarjit Singh Dhamotia v. PIO: EO, Nager Council, Zirakpur, FAA: EO, Nager Council, Zirakpur.

Here the PIO and FAA are from the same department. But the person responsible for providing the information is the **concerned PIO**.

If the case is in the commission and the information is not being provided to the appellant, FAA will never be penalized but the PIO. Concerned PIO will be punished under section 20 of the RTI act. But a reasonable opportunity will be given to be heard before any penalty is imposed.

But if the commission feels the FAA is responsible for providing the information. The commission makes them as a party in the case. The FAA is asked to appear before the court but most of them don't appear. If the commission puts a penalty on FAA. FAA goes to the high court and the high court gives the order that saves the FAA from that because there is no provision through which the commission can penalize them.

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RELOCATION OF OFFICIALS–

The Right to Information (RTI) Act does not explicitly address the relocation of officials. However, the Act does require public authorities to appoint a general information officer (PIO) in every subordinate office so that citizens can access information quickly. Relocation of officials can impact the ability of citizens to access information. For example, suppose a PIO is relocated to a different office. In that case, it may take time for the new PIO to become familiar with the information and procedures related to RTI requests. Additionally, citizens may need help locating the new PIO or may have to submit their RTI requests to a different office.

To minimize the potential impact of official relocation on citizens' ability to access information, public authorities should ensure that the PIO at the new location is adequately trained and that the procedures for handling RTI requests are communicated to citizens. Public authorities should also consider posting the contact information of the new PIO on their website and other public platforms to make it easy for citizens to find and contact the new PIO.

It is also important to note that officials cannot be transferred or relocated to penalize them for performing their duties under the RTI Act. Such actions can be considered an act of victimization and can be challenged in court.

When a public information officer (PIO) is relocated to a new office, it can take some time for the new PIO to become familiar with the information and procedures related to Right to Information (RTI) requests. This can be due to several reasons, such as:

I am learning about the procedures for handling RTI requests in the new office. Each public authority may have its guidelines for handling RTI requests, and the new PIO may need to learn these procedures before it can effectively handle requests.

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It was getting familiar with the information that the office holds. The new PIO will need to understand what information is stored by the office, where it is held, and how to access it. This can take some time, especially if the office has a lot of information.

They understand the exemptions and exceptions provided under the RTI act. PIOs are responsible for ensuring that exemptions and exceptions provided under the RTI act are applied correctly while providing the information. It may take some time for the new PIO to understand the application of these exemptions and exceptions.

We are establishing relationships with other officials in the office. The new PIO may need to develop relationships with other office officials to handle RTI requests effectively.

This can lead to delays in processing RTI requests and a higher risk of errors or omissions in the information provided. To minimize these impacts, public authorities can train new PIOs and ensure that the procedures for handling RTI requests are communicated to citizens. Public authorities should also consider posting the contact information of the new PIO on their website and other public platforms to make it easy for citizens to find and contact the new PIO but in some of the offices, it takes months to appoint a new PIO after the transfer of the old one.

And coming to the point of appointing the PIO specially in the office other than clerk and junior assistant, it is hard. The government doesn't have enough to appoint a special PIO in every office. The lack of appointments mainly depends upon the govt. and government directly refuses the new appointment because of the lack on revenue.

THIRD-PARTY INFORMATION–

Most of the cases are of third-party information. People need to be made aware- of this third-party information. The appellant used to asked documents related to someone else, which directly comes under third-party information. The Right to Information (RTI) Act allows citizens to access information held by public authorities. However, in some cases, a citizen's request may include

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information from a third party, such as a private individual or organization. In such cases, the public authority must follow a specific procedure for handling third-party information requests.

When a public authority receives an RTI request for information that includes third-party data, it is required to give written notice to the third party and provide them with a copy of the request. The third party then can make representations to the public authority regarding the disclosure of the information. The public authority may disclose the information if it is satisfied that the public interest in disclosure outweighs any potential harm to the third party. It is also important to note that the public authority is not responsible for obtaining the third party's consent before disclosing the information. However, the public administration should redact any personal information irrelevant to the request to protect the third party's privacy. The third party should also not be denied the data if the information is related to the third party's human rights and fundamental rights.

In most of the cases when there quest is send, most of the third party refuses to provide the information to the appellatant.

Many citizens may need to be made aware that the information they are requesting may include information held by a third party and that a different procedure applies to such requests. This can lead to confusion and delays in the processing of RTI requests. To increase awareness among citizens about third-party information, public authorities can take several steps:

- Public authorities can provide information about third-party information on their websites, including information about the procedure for handling such requests.
- Public authorities can also provide training for their general information officers (PIOs) on handling requests for third-party information so that they can effectively assist citizens with such requests.
- Public authorities can also provide information and guidance to citizens on making RTI requests, including information about the procedure for requesting third-party information, to increase the chances of citizens making effective requests.

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- Public authorities can also conduct awareness campaigns to educate citizens about their right to information and the procedure for requesting third-party information.

It's also important to note that public authorities should inform the citizens proactively if the information they are requesting is related to the third party to ensure clarity and timely processing of RTI requests.

“Right to information has to be balanced with the right to privacy,” said SIC Khushwant Singh.

NON-COMPLIANCE OF THE ORDER OF THE COMMISSION–

Non-compliance of an order from the Right to Information (RTI) Commission is a serious issue as it undermines the effectiveness of the RTI Act and the ability of individuals to access information they are entitled to. It can occur when a public authority fails to comply with a decision or direction issued by the RTI Commission. This can include not providing the requested information, not providing it within the time frame specified, or not providing it in the format requested. Non-compliance can also happen if the public authority fails to implement the recommendations made by the commission. This can result in penalties and fines, and in extreme cases, criminal prosecution. Public authorities must take the orders of the RTI Commission seriously and take all necessary steps to comply with them in order to ensure transparency and accountability in government. It's also important to note that non-compliance with an order from the RTI Commission can have a negative impact on the public's trust in government. When a public authority fails to comply with an order, it sends the message that they do not take the RTI Act or the commission's decisions seriously. This can erode public trust in government and make it more difficult for individuals to access the information they need to make informed decisions about their lives and communities. Additionally, non-compliance with the RTI order can lead to the erosion of the principle of transparency and accountability in the functioning of the government. It is important for public authorities to take all necessary steps to ensure compliance with the order of the RTI Commission in order to maintain the public's trust and ensure that the principles of transparency and accountability are upheld.

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CONCLUSION–

In conclusion, the Right to Information (RTI) Act is a powerful tool for citizens to access information held by the government and public authorities in India. It promotes transparency, accountability, and good governance by allowing citizens to exercise their right to know. The act has been instrumental in uncovering corruption, promoting social and political participation, and ensuring that the government is held accountable to its citizens. However, it is important to note that the act's implementation is still a work in progress and there are still challenges in terms of access to information and capacity-building. Overall, the RTI act is an important step towards building a more informed and participatory democracy in India.

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