

Report Card on the Performance of Information Commissions in India

Key Findings

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I. Introduction

The Right to Information (RTI) Act, 2005 has been one of the most empowering legislations for the citizens of India. It has been used extensively by people on a range of issues – from holding the government accountable for delivery of basic rights and entitlements to questioning the highest offices of the country. The law has initiated the vital task of redistributing power in a democratic framework. Estimates suggest that every year 40 to 60 lakh² RTI applications are filed in India.

Under the RTI Act, information commissions (ICs) have been set up at the central level (Central Information Commission) and in the states (state information commissions). These commissions are mandated to safeguard and facilitate people's fundamental right to information. Consequently, ICs are widely seen as being critical to the RTI regime.

The commissions have wide-ranging powers including the power to require public authorities to provide access to information, appoint Public Information Officers (PIOs), publish certain categories of information and make changes to practices of information maintenance. The commissions have the power to order an inquiry if there are reasonable grounds for one, and also have the powers of a civil court for enforcing attendance of persons, discovery of documents, receiving evidence or affidavits, issuing summons for examination of witnesses or documents. Section 19(8)(b) of the RTI Act empowers information commissions to *"require the public authority to compensate the complainant for any loss or other detriment suffered"*. Further, under section 19(8) and section 20 of the RTI Act, information commissions are given powers to impose penalties on erring officials, while under Section 20(2), commissions are empowered to recommend disciplinary action against a PIO for "persistent" violation of one or more provisions of the Act.

Unfortunately, the experience in India, also captured in various national assessments on the implementation of the RTI Act³, has been that the functioning of information commissions is a major bottleneck in the effective implementation of the RTI Act.

This initiative is a part of an effort to undertake ongoing monitoring of functioning of information commissions across the country. The focus is on the performance of information commissions in India in terms of the number of appeals and complaints registered and disposed by the ICs, the number of pending appeals and complaints, the estimated waiting time for the disposal of an appeal, availability of annual reports of ICs, frequency of violations penalised by ICs and transparency in the functioning of ICs.

The key findings presented in this paper are part of a forthcoming report by SNS & CES.

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² Peoples' Monitoring of the RTI Regime in India, 2011-2013 by RaaG & CES

³ Safeguarding The Right To Information, RaaG-NCPRI, 2009 (Executive summary at <http://rti-assessment.com/>); Peoples' Monitoring of the RTI Regime in India: 2011-13. RaaG-CES 2014 (<http://x.co/raagces>); & Tilting the Balance of Power - Adjudicating the RTI Act, RaaG-SNS, 2017, (<http://snsindia.org/Adjudicators.pdf>)

II. Methodology

The report is primarily based on an analysis of information accessed under the RTI Act, from 29 information commissions⁴ across India. A total of 169 RTI applications were filed with state information commissions (SIC) and the Central Information Commission (CIC). The information sought included:

- The number of appeals and complaints registered, disposed, returned by each IC for the period January 2016 till October 2017;
- The quantum of penalties imposed by each IC, and the amount recovered, for the period January 2016 till October 2017;
- The quantum of compensation awarded by each IC, for the period January 2016 till October 2017;
- Number of cases in which disciplinary action was recommended by each IC;
- Number of appeals and complaints pending before each IC on 31st December 2016 and 31st October 2017;
- Latest year for which the Annual Report of the IC has been published.

Each of the RTI applications was tracked to assess the manner in which these applications were dealt with by the ICs, as information commissions are also public authorities under the RTI Act.

In addition, information has also been sourced from the websites and annual report of information commissions.

III. Key findings

1. Vacancies in Information Commissions

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 by the governor in the states. In several judgments, various High Courts have held that each information commission must consist of at least the chief and one other information commissioner.

The assessment 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.

1.1 Non-functional information commissions

The Supreme Court of India has, in many judgments, held that the right to information is a fundamental right flowing from Articles 19 & 21 of the Constitution of India. Under the RTI law, information commissions are the final appellate authority and are entrusted with the crucial task of deciding appeals and complaints of persons who have been unable to secure information in accordance with the RTI Act or are aggrieved by violations of the Act. In the absence of a functional information commission, information seekers have no reprieve if they are unable to access information as per the provisions of the law.

⁴ For the purpose of the study 29 ICs were covered, including the Central Information Commission. Jammu and Kashmir was excluded as the national RTI law is not applicable in the state.

Andhra Pradesh and Telangana: After the bifurcation of the state of Andhra Pradesh in 2014, for several months the SIC of Andhra Pradesh continued to function as the information commission for both Telangana and Andhra Pradesh. However, the commission became defunct in May 2017 after the retirement of first the chief information commissioner, followed closely by the retirement of the lone information commissioner. The High Court of Hyderabad had, in August 2017, directed Telangana and Andhra Pradesh to set up the information commissions⁵. The Telangana government constituted the Telangana State Information Commission on 13-09-2017 and two commissioners assumed charge on 25-9-2017⁶. Therefore, Telangana did not have a functioning SIC for a period of more than 3 months. The Andhra Pradesh government issued an order regarding the constitution of the SIC of Andhra Pradesh in August 2017, but till date not a single commissioner has been appointed to the commission⁷. Therefore, the SIC of the state of Andhra Pradesh is yet to become functional. For the last 10 months, people seeking information from public authorities under the jurisdiction of the AP SIC have had no recourse to the independent appellate mechanism prescribed under the RTI Act, if their right to information is violated.

West Bengal: The SIC of West Bengal is currently functioning with just two commissioners. During the time period under review, for a period of nearly 12 months (November 2015 to July 2016 and April 2017 to July 2017), the SIC did not hear any appeals or complaints as there was only one commissioner in the SIC during this time.

Sikkim: During the time period under review, the SIC of Sikkim was defunct for a period of 2 months, from December 2017 to February 2018, when the lone commissioner retired .

1.2 Commissions functioning without a Chief Information Commissioner

Currently, 3 information commissions are functioning without a chief information commissioner. The absence of a chief information commissioner has serious ramifications since the RTI Act envisages a critical role for the Chief, including, superintendence, management and direction of the affairs of the information commission.

Maharashtra: The Chief Information Commissioner of Maharashtra retired in April 2017. One of the information commissioners has taken on the additional charge as chief⁸, although there is no such explicit provision under the RTI Act, 2005. The government is yet to appoint a new Chief.

Nagaland: The SIC of Nagaland has been without a Chief since September 2017

Gujarat: The Gujarat Chief Information Commissioner retired in January 2018 and the position is currently vacant.

1.3 Commissions functioning at reduced capacity

Several information commissions are functioning at a reduced capacity. The non-appointment of commissioners in the IC leads to a large build up of pending appeals and complaints.

Kerala: The SIC of Kerala is functioning with a single commissioner. As of October 31, 2017 nearly 14,000 appeals and complaints were pending with the commission (see section 3.1)

⁵ <https://www.deccanchronicle.com/nation/current-affairs/050118/telangana-10-per-cent-of-rti-pleas-being-disposed.html>

⁶ <http://tsic.gov.in/tsicWebsite/>

⁷ https://www.socialpost.news/telugu/wp-content/uploads/2017/09/APIC-New-Employees-GO-06092017-2017GAD_MS122-1.pdf

⁸ https://sic.maharashtra.gov.in/Site/Downloads/Section_4New/Section-4%20dated.pdf

Odisha: The Odisha SIC is functioning with 3 commissioners despite having a pendency of more than 10,000 appeals and complaints as of October 31, 2017.

Central Information Commission: There are currently four vacancies in the CIC – the first of which arose in December 2016. Of the existing seven commissioners, four commissioners, including the Chief, are set to retire in 2018.

2. Number of appeals & complaints dealt with by ICs

2.1 Appeals and complaints registered and disposed

2,76,405 appeals and complaints were registered and 2,14,809 were disposed between January 1, 2016 and October 31, 2017 by 23 ICs which provided the requisite information. The IC-wise break up of appeals and complaints registered and disposed is given in Table 1. UP registered the highest number of appeals and complaints (83,054) followed by the CIC (47,756) and Karnataka (32,403). Mizoram and Meghalaya registered the lowest number of appeals and complaints, 21 and 63 respectively. In terms of disposal, the CIC disposed the highest number of appeals and complaints (54,219), followed by UP (42,911) and Karnataka (28,648).

Table 1: Appeals and complaints registered and disposed by ICs between January 1, 2016 & October 31, 2017		
Information Commission	Appeals & complaints registered	Appeals & complaints disposed by passing orders
Arunachal Pradesh	468	401
Assam	6,776	4,741
Chhattisgarh ①	4,776	3,156
CIC	47,756	54,219
Goa	572	NA
Gujarat	15,071	18,001
Haryana	16,338	15,065
Himachal Pradesh ②	737	610
Jharkhand	5,000	389
Karnataka	32,403	28,648
Kerala	7,230	3,918
Manipur	432	435
Meghalaya	63	61
Mizoram	21	4
Nagaland ③	88	58
Odisha	7,067	3,596
Punjab	10,337	11,415
Sikkim	98	98
Telangana	29,318	20,257
Tripura ②	212	206
Uttar Pradesh ④	83,054	42,911
Uttarakhand ⑤	6,117	6,271
West Bengal	2,471	349
Total	2,76,405	2,14,809

Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu did not provide information.

Notes: Data pertains to ① Jan-Dec 2016 ② Apr 2016 - Oct 2017 ③ Apr 2015 - Mar 2017 ④ Jan 2016 - July 2017 ⑤ Apr 2016 - Nov 2017

The information commissions of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Rajasthan and Tamil Nadu did not provide information under the RTI Act regarding the number of appeals and complaints dealt with by the ICs. Further, this information was also not available on the websites of these 6 commissions.

The SICs of Andhra Pradesh, Madhya Pradesh, Tamil Nadu and Rajasthan did not respond to the RTI applications. There is no updated information on the website of the AP Information Commission (<http://www.apic.gov.in/>). The website of MP is accessible only intermittently (<http://sic.mp.gov.in/>) and there is no information about the appeals and complaints dealt with by the IC for 2016 or 2017. The website of the Tamil Nadu IC is not accessible (<http://tnsic.gov.in/>). The website of the Rajasthan SIC (ric.rajasthan.gov.in/) has a link for progress report but no data/information shows up upon selecting the year 2016 or 2017.

The information commission of Bihar denied information on the number of appeals and complaints registered, disposed and returned by stating that *“the information is not maintained in the BIC Records in the format in which information has been sought by you”*. It further stated that *“figures relating to the Second Appeals/Complaints registered in BIC are to be (first) reported to state legislature in accordance with Section-25(1) r/w section 25(4) of the RTIA, 2005 in the form of Annual Report of the Commission. The AR of the BIC for the year 2015-16 is under compilation and revelation of the facts and figures contained in the AR for the year 2015-16 prior to its presentation before the State Legislature, through the State Govt., will amount to the breach of the privilege of the State Legislature. In view of the above facts and in light of Section 7(9) of the RTIA, 2005, your request for information is rejected.”* This denial has been challenged in an appeal which is under process. The website of the Bihar SIC (<http://biharonline.gov.in/sic>) is inaccessible.

The SIC of Maharashtra stated that the information sought would be part of the annual report which would be uploaded on its website, once prepared. However, till March 5, 2018 the annual reports for 2016 and 2017 had not been uploaded. The SIC also directed us to the monthly reports available on the website of the SIC. However, the monthly reports provide incomplete information.

2.2 Appeals and complaints returned by ICs

A concerning trend that has recently emerged relates to ICs returning a large number of appeals/complaints without passing any orders. The CIC returned 27,558 appeals/complaints during January 2016 to October 2017. The Gujarat SIC returned 9,854 appeals/complaints during January 2016 to October 2017.

This is extremely problematic as people, especially the marginalised, reach the commissions after a great deal of hardship and a long wait. Commissions need to facilitate and assist people in the process of registering their appeals/complaints, rather than summarily returning them due to a deficiency.

IC	Number of appeals & complaints returned
CIC	27,558
Gujarat	9,854
Assam	1,580
Uttarakhand	1,121

3. Backlogs in Information Commissions

3.1 Pending appeals and complaints

The number of appeals and complaints pending on December 31, 2016 in the 23 information commissions, from which data was obtained, stood at an alarming figure of 1,81,852. The pendency increased to 1,99,186 at the end of October 2017.

The commission-wise break up of the pending appeals and complaints is given in table 3. As of October 31, 2017, the maximum number of appeals/complaints were pending in UP (41,561) followed by Maharashtra (41,178) and Karnataka (32,992). The CIC with 23,944 pending appeals and complaints came in at number four. There were no backlogs in the SICs of Mizoram and Sikkim as of October 31, 2017.

Table 3: Appeals & complaints pending in Information Commissions			
	IC	As on Dec 31, 2016	As on Oct 31, 2017
1	Arunachal Pradesh	15	52
2	Assam	3,193	642
3	Chhattisgarh	5,860	NA
4	CIC	28,502	23,944
5	Goa	821	391
6	Gujarat	5,780	3,941
7	Haryana	1,574	2,668
8	Himachal Pradesh ①	442	491
9	Karnataka	NA	32,992
10	Kerala	12,602	13,964
11	Maharashtra	43,136	41,178
12	Manipur	100	106
13	Meghalaya	2	2
14	Mizoram	1	0
15	Nagaland ②	21	22
16	Odisha	9,170	10,296
17	Punjab	2,832	1,882
18	Sikkim	0	0
19	Telangana	8,266	15,578
20	Tripura	0	6
21	Uttar Pradesh ③	49,597	41,561
22	Uttarakhand ④	1,823	1,275
23	West Bengal	8,115	8,195
	Total	1,81,852	1,99,186
Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Rajasthan and Tamil Nadu did not provide information			
Notes: ①Data as of March 2016, not Dec 2016 ②Data as of March 2017, not Dec 2016 ③Data as of July 2017, not Oct 2017 ④ Data as of March 2017 & Nov. 10,2017			

The huge backlog in the disposal of appeals and complaints by the commissions is one of the most serious problems being faced by the transparency regime in India. The high levels of pendency are often a result of non-appointment of commissioners in the IC (see section 1) and/or the tardy functioning of existing commissioners.

The high levels of pendency in ICs result in applicants having to wait for many months, even years, for their appeals and complaints to be heard.

3.2 Estimated time required for disposal of an appeal/complaint

Using the monthly disposal rate of ICs and the number of appeals/complaints pending, the time it would take for an appeal or complaint filed on November 1, 2017 to be disposed by the IC was computed (assuming appeals and complaints are disposed in a chronological order). The analysis presented in table 4 shows that a matter filed on November 1, 2017 would be disposed in the **West Bengal SIC after 43 years- in the year 2060! In Kerala it would take 6 years and 6 months, while in Odisha more than 5 years!**

The Commission wise information is given in table 4.

Table 4: Estimated time required for disposal of an appeal/complaint filed on November 1, 2017				
	IC	Pending as on Oct 31, 2017	Monthly disposal rate	Time before new appeal/complaint is disposed
1	West Bengal	8,195	16	43 years
2	Kerala	13,964	178	6 years and 6 months
3	Odisha	10,296	163	5 years and 3 months
4	Chhattisgarh ①	5,860	263	1 year and 10 months
5	Uttar Pradesh②	41,561	2,258	1 year and 6 months
6	Telangana	15,578	921	1 year and 5 months
7	Himachal Pradesh	491	32	1 year and 3 months
8	Karnataka	32,992	1,302	1 year and 1 month
9	CIC	23,944	2,465	10 months
10	Nagaland	22	3	8 months
11	Gujarat	3,941	818	5 months
12	Manipur	106	20	5 months
13	Haryana	2,668	685	4 months
14	Punjab	1,882	519	4 months
15	Uttarakhand③	1,275	314	4 months
16	Arunachal Pradesh	52	18	3 months
17	Assam	642	216	3 months
18	Meghalaya	2	3	1 months
19	Tripura	6	11	1 month
20	Mizoram	0	0	0 months
21	Sikkim	0	4	0 months

Data not available for Andhra Pradesh, Bihar, Goa, Jharkhand, Madhya Pradesh, Maharashtra, Rajasthan & Tamil Nadu
Notes: Pending as of ①31-12-2016 ② 31-7-2017 ③ 10-11-2017

CIC misinforming citizens about its pendency?

An extremely concerning finding of the study is that the website of the CIC appears to be providing misleading information about the number of appeals and complaints pending before it. In response to an application filed under the RTI Act, the CIC stated that as of December 31, 2016, the total number of appeals and complaints pending with it were 28,502. However, the CIC website shows that only 364 cases were pending with the commission as on January 1, 2017. **It is inexplicable how overnight the pendency figure reduced from 28,502 to 364!**

The CIC provided inconsistent data in response to RTI applications seeking information on the number of appeals and complaints pending before it. In response to the query on the number of pending cases as of October 31, 2017, in its initial reply the CIC stated that 21,097 appeals and 3,533 complaints were pending. However, in a subsequent reply, the CIC stated that 20,484 appeals and 3,460 complaints were pending as of October 31, 2017. No explanation was given for providing a different set of pendency figures for the same time period.

4. Penalties imposed by Information Commissions

The RTI Act empowers the ICs to impose penalties of upto 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. Despite Section 20 of the RTI Act clearly defining the violations of the law for which PIOs must be penalised, the study found that ICs imposed penalty in only an extremely small fraction of the cases in which penalty was imposable.

The assessment found that for the period January 1, 2016 to October 31, 2017, the 22 commissions which provided relevant information, imposed penalty in 4,194 cases (appeals and complaints). Penalty amounting to Rs. 4.41 crore was imposed by these 22 commissions during the period under review. The quantum of penalties recovered for the same period was Rs. 49.73 lakh. The commission wise details are provided in table 5.

In terms of quantum of penalty imposed, Karnataka was the leader (Rs. 1.69 crore), followed by Haryana (Rs. 95.97 lakh), and Uttarakhand (Rs. 72 lakh). CIC imposed penalty amounting to Rs. 29.36 lakh in the time frame under consideration. The SICs of West Bengal and Mizoram did not impose any penalty for the period under review.

The SICs of Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu & Uttar Pradesh did not provide information on penalties imposed and recovered.

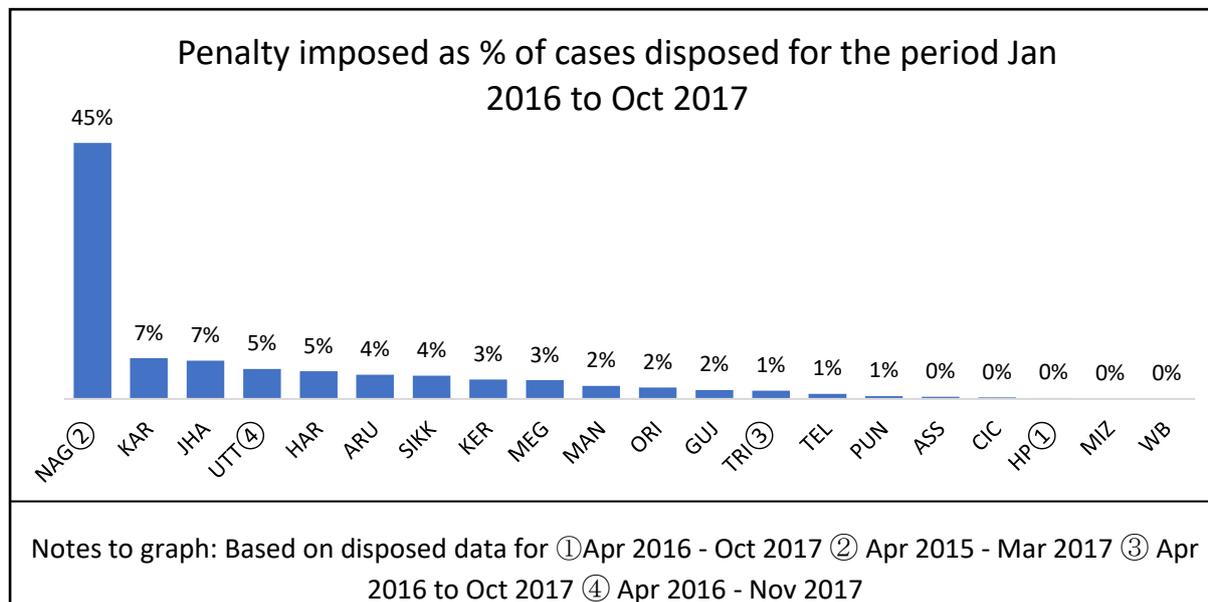
**Table 5: Penalty imposed and recovered
(January 1, 2016 to October 31, 2017)**

	IC	No. of cases where penalty was imposed	Penalty imposed (in Rs.)	Penalty recovered (in Rs.)
1	Arunachal Pradesh	17	4,25,000	4,25,000
2	Assam	17	1,85,000	1,85,000
3	Chhattisgarh ①	NA	1,15,500	NA
4	CIC	146	29,35,750	13,77,752
5	Goa	111	53,500	NA
6	Gujarat	281	13,92,500	6,49,000
7	Haryana	731	95,96,989	NA
8	Himachal Pradesh	1	5,000	NA
9	Jharkhand	26	5,75,000	NA
10	Karnataka	2,044	1,69,17,750	NA
11	Kerala	133	3,68,500	1,62,500
12	Manipur	10	1,39,600	34,750
13	Meghalaya	2	33,750	33,750
14	Mizoram	0	0	0
15	Nagaland ②	26	3,56,500	99,000
16	Odisha	72	16,99,000	3,09,000
17	Punjab	59	10,90,000	NA
18	Sikkim	4	9,000	6,500
19	Telangana	181	10,42,500	2,38,000
20	Tripura ③	3	7,000	7,000
21	Uttarakhand④	330	71,99,750	14,46,000
22	West Bengal	0	0	0
	Total	4,194	4,41,47,589	49,73,252

Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu & Uttar Pradesh did not provide information

Notes: ① For Jan 2016- Dec 2016 ② Number of cases and penalty imposed pertains to Apr 2015 to Mar 2017, penalty recovered pertains to 2016 & 17 ③ For Apr 2016 to Oct 2017 ④ Number of PIOs on whom penalty was imposed

Analysis of the figures for 20 ICs (which provided information on both the number of cases disposed and the number of cases where penalty was imposed) shows that penalty was imposed in just 2.4% of the cases disposed.



A previous assessment⁹ (2017) of a random sample of orders of information commissions had found that an average of 59% orders recorded one or more violations listed in Section 20 of the RTI Act, based on which penalties were imposable. If this estimate of 59% is used, penalty was imposable in 99,558 cases out of the 1,68,742 cases disposed by the 20 ICs between January 1, 2016 and October 31, 2017 (see table 1). Actual penalties were imposed in 4,083 cases- **only in 4.1% of the cases where penalties were imposable! The ICs therefore did not impose penalties in almost 96% of the cases where penalties were imposable.**

Non imposition of penalties in deserving cases by commissions sends a signal to the public authorities that violating the law will not invite any serious consequences. This destroys the basic framework of incentives built into the RTI law and promotes a culture of impunity.

5. Transparency in the functioning of information commissions

5.1 Websites of ICs

For institutions that are vested with the responsibility of ensuring that all public authorities function transparently and adhere to the letter and spirit of the RTI Act, it would perhaps be fair to expect that information commissions lead by example. As part of the assessment, the websites of all information commissions were accessed.

The websites of three state information commissions - Bihar (<http://biharonline.gov.in/sic>), Tamil Nadu (<http://tnsic.gov.in/>) and Arunachal Pradesh (www.arunchalsic.in), were found to be inaccessible and displayed an error message. The website of MP was accessible only intermittently (<http://sic.mp.gov.in/>) and often displayed an error message.

⁹ Tilting the Balance of Power - Adjudicating the RTI Act, RaaG-SNS, 2017,

5.2 Annual Reports of ICs

Much of the information sought as part of this assessment, should in any case have been available in the annual reports of each commission. To ensure periodic monitoring of the functioning of the commissions, section 25 obligates each commission to prepare a “report on the implementation of the provisions of this Act” every year, which is to be laid before Parliament or the state legislature.

The performance of many ICs in terms of publishing annual reports and putting them in the public domain was found to be dismal. Table 6 provides the IC wise availability of the annual reports.

The analysis of the IC websites revealed that many of the commissions had not posted their annual reports on the website of the respective IC. As the information was sought from the commissions in November 2017, it would be reasonable to expect that annual reports upto 2016 would be available. **Yet 18 out of 29 ICs (62%) had not published their annual report for 2016 on their website** (see table 6). **Punjab SIC has not published its annual report after 2012 while Jharkhand, Telangana and Andhra Pradesh have not published annual reports after 2013. While Uttar Pradesh IC stated in response to an RTI application that the annual report for 2016-17 had been published, the same was not available on its website.**

Transparency is key to promoting peoples’ trust in public institutions. By failing to disclose information on their functioning, ICs continue to evade real accountability to the people of the country whom they are supposed to serve. In addition, answerability to the Parliament and state legislatures is also compromised when annual reports are not submitted as required.

IC	Latest year for which report available	Available on website?
Andhra Pradesh	2013	Yes
Arunachal Pradesh	2015	No
Assam	2015-2016	Yes
Bihar	2014-15	No
Chhattisgarh	2016	Yes
CIC	2015-16	Yes
Goa	2014	Yes
Gujarat	2015-16	Yes
Haryana	2016	Yes
Himachal Pradesh	2015-16	Yes
Jharkhand	2013	No
Karnataka	2014-2015	Yes
Kerala	2012-2013	No
Madhya Pradesh	2014	Yes
Maharashtra	2015	Yes
Manipur	2015-16	Yes
Meghalaya	2015	Yes
Mizoram	2016-17	Yes
Nagaland	2016-17	Yes
Orissa	2013-14	Yes
Punjab	2012	Yes
Rajasthan	2015-16	Yes
Sikkim	2016	Yes
Tamil Nadu	-	No
Tripura	2013-14	Yes
Uttar Pradesh	2016-17	No
Uttarakhand	2013-14	Yes
West Bengal	2015	Yes
Telangana	2013	Yes