
One Decade of the RTI Act

What Has Worked, What Has Not and What Can be Improved

ALOK PRASANNA KUMAR

The Right to Information (RTI) Act, 2005 (hereafter, “the act”) is an excellent example of a grass-roots movement culminating in the promulgation of groundbreaking laws and policies to achieve its ends. Originally envisioned to ensure that entitlements reached intended beneficiaries, the act has been used by citizens across the country to fight for a range of rights and entitlements, fight corruption, carry out research, and usher in a modicum of transparency in the functioning of public authorities. A decade after the law was enacted and the relevant institutions set up, it is now the right time to look back and take stock.

Tilting the Balance of Power: Adjudicating the RTI Act has therefore come out at just the right time. Attempting a full-scale study of the act, it examines the way the provisions of the law have been applied by the information officers of the central and state governments. The book also analyses how the law has been interpreted by the judiciary, and addresses the working of the institutions set up under the act.

This book is a valuable resource for anyone who wishes to use the act or study its working in the first few years. Its six parts run the gamut from judicial interpretation of the law by the Supreme Court and the high courts, to the functioning of the information commissions, and the level of compliance with the law by various government departments among other things. This is not just a work of reference; it is also one of careful analysis and critique, accompanied by action points to improve the laws and institutions. In that sense, it is the first of its kind—a book that incorporates rigorous research about the state of the right to information law and the concerned institutions

BOOK REVIEWS

Tilting the Balance of Power: Adjudicating the RTI Act published jointly by *Research, Assessment and Analysis Group, Satark Nagrik Sangathan and Rajpal and Sons, New Delhi, 2017; pp xvii + 291, ₹400.*

in India with commentary about case-law to outline an agenda for change.

The empirical study of the information commissions presented in this book provides some sobering insights into the way in which the act has been implemented. It is somewhat ironic, but also emblematic of some of the act’s failings, that information about the information commissions themselves is not always easily accessible. Although there is an obligation to publish annual reports, there is no consistency in the way these reports are maintained. This makes the researchers’ task much harder, but working with what is available, the authors of *Tilting the Balance of Power* have unearthed much that needs to be engaged with and discussed by civil society and policymakers. The numbers of appeals filed at state and central information commissions suggest that, while there is growing and widespread acceptance of the act, institutions have not kept up with the changes needed. Although data is not uniformly available across the states, whatever is available suggests that the information commissions are suffering from a severe backlog, though more accurate data is needed to assess exactly the magnitude of the problem. While one could disagree with the methodology used to estimate how long an appeal might take to be heard, the available data itself is fairly alarming and suggests that the system could grind to a halt in some states.

The heart of this book—and its principal focus—is the analysis of judicial interpretation and the judiciary’s approach to the act. In terms of judicial history, the act is relatively new and given the time it takes for cases to move through the system, it will take time to create a definitive set of principles and precedents which will guide the implementation of the act across the country. Nonetheless, some encouraging precedents have been set: In the Shaunak Satya case,¹ the Supreme Court has held that “additional workload” is not a defence in denying information under the act. In *Central Information Commission v State of Manipur*,² the Supreme Court held that the state government could not retrospectively exempt certain institutions from the act, and certainly not information relating to corruption and human rights violations.

The Judiciary and the RTI

However, there is a troublesome dichotomy in the judiciary’s approach to the RTI. On the one hand, the Supreme Court and the high courts have, with a few exceptions, largely been favourable towards the RTI Act, interpreting it more or less as intended. Yet, in their capacity as public authorities under the act (in the context of their administrative functioning), they have not been as open as one would have liked them to be. Even while it is granted certain exemptions under the act, we have seen the judiciary fight tooth and nail against being transparent about crucial functions such as the appointment of judges.³

The Court’s refusal to abide by the norms of the RTI Act could prove to be its undoing. In its ongoing tussle with the union government over judicial appointments, the public is entirely in the dark about the contents of the proposed memorandum of procedure of appointments of judges to the Supreme Court and the high courts and unable to participate meaningfully in the debate. The public is unaware of the exact reasons for the disagreement and whether the judiciary is right in its objections. Without the backing of civil society, the judiciary is coming across as self-serving. Instead of a constitutional debate over separation of powers, the

public is left with a turf war fought through leaks and whispers. One hopes that the judiciary, especially the Supreme Court and the high courts, shed their misgivings over the RTI Act and embrace it as a powerful enabler of their own legitimacy.

Proposals for Reform

The recent draft RTI rules proposed by the Department of Personnel and Training caused some panic initially, as they gave the impression that the government was trying to make the law impossible to implement. While sober analysis has shown these fears to be somewhat exaggerated,⁴ the draft rules nonetheless do not necessarily present a good way forward for the implementation of the law. They are unimaginative and could easily be used to hamper access to information rather than make it easily available.⁵

With that said, if there is cause to criticise this book, it is that the book is reactive and not sufficiently proactive in terms of the improvements it suggests. The RTI Act, rules and other legislative remedies are imperfect in their own way, but it would have been helpful had the book gone a step further to consolidate an outline of

the possible changes that ought to be made to the existing laws. This would have served to seize the initiative to make changes in government and bureaucracy, and perhaps formed the blueprint for an even better legal regime governing the right to information. A set of draft amendments to the RTI Act or a new set of proposed rules should have formed an integral part of the book, driving forward the reform of the act. One hopes that the authors, should they choose to update this volume in a subsequent edition, will consider incorporating something to this effect.

Be that as it may, *Tilting the Balance of Power* is a good start to an important exercise—that of ensuring the successful and focused implementation of the RTI Act. The RTI Act is one step towards the larger goal of ensuring transparent and honest government in India, in accordance with the Constitution. The issues outlined in the book suggest that there is a lot to be done to ensure that the law is implemented properly. That said, perhaps it would be apposite to end this review with a provocative thought—that the right to information in India should be a constitutional right and not just a statutory

one. This is the position in many countries around the world, including South Asian countries like the Maldives, Nepal and Pakistan. No doubt the Supreme Court has recognised the right to be informed as an aspect of freedom of speech in certain limited contexts,⁶ but perhaps, as with the right to education guaranteed under Article 21A, it is time to consider whether a constitutional obligation to proactively reveal all but certain kinds of information to the public should be cast upon the government. As the book points out, the true transformative power of the RTI Act lies in Section 4, under which the government is obliged to proactively release certain kinds of information. If this were to be turned around on its head to make the release of all information by the government mandatory (except a few limited kinds of information) not just on the internet but also in a form accessible to anyone who wishes to see it, we might see the full potential of the right to information being unleashed.

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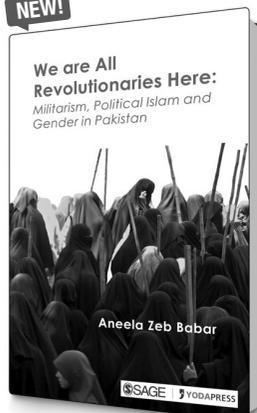
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