

# **Report Card on the Performance of Information Commissions in India, 2021**

## **Key Findings**

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**October 2021**



# Report Card on the Performance of Information Commissions in India<sup>1</sup>

## 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 lakh<sup>2</sup> RTI applications are filed in India.

During the COVID-19 crisis, peoples' right to information has assumed greater significance than ever before. The deadly second wave of the pandemic in India resulted in millions losing their lives. In the absence of reliable information, scores of families ran from pillar to post looking for hospital beds with oxygen and ventilators. Patients were compelled to purchase essential drugs at exorbitant prices in the black market as there was no way to know about the availability of stock of medicines in hospitals.

The pandemic highlighted the urgent need for accurate and easy-to-access information on availability of hospital beds, essential drugs and medical equipment like ventilators in health facilities. It underlined the significance of information dissemination related to relief measures announced by governments and where public money is being spent in the efforts to combat the pandemic.

In the current scenario, information commissions have a vital role to play in safeguarding and facilitating people's fundamental right to information. 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).

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.

In a judgment dated February 15, 2019, the Supreme Court<sup>3</sup> held that information commissions are vital for the smooth working of the transparency law: *"24) .....in the entire scheme provided under the RTI Act, existence of these institutions [ICs] becomes imperative and they are vital for the smooth working of the RTI Act."*

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<sup>2</sup> Peoples' Monitoring of the RTI Regime in India, 2011-2013 by RaaG & CES, 2014

<sup>3</sup> Anjali Bhardwaj and others v. Union of India and others (Writ Petition No. 436 of 2018) [http://judicialreforms.org/wp-content/uploads/2019/02/15968\\_2018\\_Judgement\\_15-Feb-2019.pdf](http://judicialreforms.org/wp-content/uploads/2019/02/15968_2018_Judgement_15-Feb-2019.pdf)

This initiative is part of an effort to undertake ongoing monitoring of the performance of information commissions across the country with the objective of improving the functioning of commissions and strengthening the RTI regime. Sixteen years after the RTI Act was implemented, experience in India, also captured in various national assessments<sup>4</sup>, suggests that the functioning of information commissions is a major bottleneck in the effective implementation of the RTI law. Large backlog of appeals and complaints in many commissions across the country have resulted in inordinate delays in disposal of cases, which render the law ineffective. One of the primary reasons for the backlogs is the failure of central and state governments to take timely action to appoint information commissions to the Central Information Commission and state information commissions, respectively. Performance of information commissions, in terms of exercising their powers to ensure proper implementation of the law, has been a cause of great concern to the RTI community. Commissions have been found to be extremely reluctant to impose penalties on erring officials for violations of the law. Unfortunately, the transparency watchdogs themselves have not had a shining track record in terms of being transparent and accountable to the people of the country.

The need to scrutinize the functioning of information commissions now is perhaps greater than ever before, given the unprecedented crisis gripping the nation due to the COVID 19 pandemic. An assessment of the functioning of the transparency watchdogs revealed that 21 out of 29 commissions in the country did not hold a single hearing during the first three stages of the national lockdown imposed in 2020. While the Central Information Commission and some State commissions used audio and video conferencing to hear and dispose cases, most commissions did not make provision for hearing even urgent matters.

Relief and welfare programmes funded through public money are the sole lifeline of millions who have suddenly lost income-earning opportunities after the lockdown imposed to contain the spread of the disease. If the poor and marginalised affected by the public health emergency are to have any hope of obtaining the benefits of government schemes, they must have access to relevant information. At a time when incentives for secrecy are great, and the scope for discretionary actions wide, the role of information commissions is crucial to ensure that people can obtain information on healthcare facilities, social security programs and delivery of essential goods and services meant for those in distress.

The key findings of the report titled, 'Report Card on the Performance of Information Commissions in India, 2021' prepared by Satark Nagrik Sangathan (SNS) are given below.

## II. Methodology

The report is primarily based on an analysis of information accessed under the RTI Act, from 29 information commissions<sup>5</sup> across India. A total of 156 RTI applications were filed with state

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<sup>4</sup> 'Report Card of Information Commissions in India', SNS & CES, 2020 (<https://snsindia.org/wp-content/uploads/2020/11/Report-Card-2020.pdf>), 'Status of Information Commissions in India during Covid-19 Crisis, May 2020', SNS & CES, 2020 (<https://snsindia.org/wp-content/uploads/2020/05/IC-Covid19.pdf>), 'Report Card of Information Commissions in India', SNS & CES, 2019 (<http://snsindia.org/wp-content/uploads/2019/10/Report-Card-2019-FINAL.pdf>), 'Report Card of Information Commissions in India', SNS & CES, 2018 (<http://snsindia.org/IC2018.pdf>), 'Tilting the Balance of Power - Adjudicating the RTI Act', RaaG, SNS & Rajpal, 2017 (<http://snsindia.org/Adjudicators.pdf>), 'Peoples' Monitoring of the RTI Regime in India', 2011-2013, RaaG & CES, 2014 (<http://x.co/raagces>), 'Safeguarding The Right To Information', RaaG & NCPRI, 2009 (Executive summary at <http://snsindia.org/wp-content/uploads/2018/10/RAAG-study-executive-summary.pdf>)

<sup>5</sup> For the purpose of the study 29 ICs were covered, including the Central Information Commission which have been set up under the RTI Act, 2005

information commissions (SIC) and the Central Information Commission (CIC). The information sought included:

- Number of commissioners serving in each commission for the period August 1, 2020 till June 30, 2021 and their backgrounds;
- The number of appeals and complaints registered, disposed, returned by each IC for the period August 1, 2020 till June 30, 2021;
- 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;
- The quantum of compensation awarded by each IC, for the period August 1, 2020 till June 30, 2021;
- Number of cases in which disciplinary action was recommended by each IC;
- 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 reports of information commissions. The report also draws on findings and discussions of previous national assessments of the RTI regime carried out by Research, Assessment, & Analysis Group (RaaG), Satark Nagrik Sangathan (SNS) and Centre for Equity Studies (CES).

### 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.

Successive assessments of the functioning of information commissions have shown that appointments to commissions are not made in a timely manner, resulting in a large number of vacancies.

In February 2019, the Supreme Court, in its judgment<sup>6</sup> on a PIL regarding non-appointment of information commissioners, ruled that the proper functioning of commissions with adequate number of commissioners is vital for effective implementation of the RTI Act. The Court held that since the law stipulates that information commissions should consist of a Chief and upto ten commissioners 'as may be deemed necessary', the number of commissioners required should be determined on the basis of the workload. In fact, the judgment emphasized that if commissions do not function with adequate number of commissioners, it would negate the very purpose of enacting the RTI law.

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

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<sup>6</sup> Anjali Bhardwaj and others v. Union of India and others (Writ Petition No. 436 of 2018), [http://judicialreforms.org/wp-content/uploads/2019/02/15968\\_2018\\_Judgement\\_15-Feb-2019.pdf](http://judicialreforms.org/wp-content/uploads/2019/02/15968_2018_Judgement_15-Feb-2019.pdf)

during the period under review. This is particularly concerning given the humanitarian crisis induced by the COVID 19 pandemic, which has made people, especially the poor and marginalised, even more dependent on government provision of essential goods and services like healthcare, food and social security. Without access to relevant information citizens are unable to get their rights and entitlements and corruption thrives.

### *1.1 Non-functional information commissions*

Four information commissions were found to be 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 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. For the last **18 months**, people seeking information from public authorities under the jurisdiction of the Jharkhand SIC have had no recourse to the independent appellate mechanism prescribed under the RTI Act, if their right to information is violated.

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 7 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 3 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.** The absence of a chief information commissioner has serious ramifications for the effective functioning of the ICs since the RTI Act envisages a critical role for the Chief, including, superintendence, management and direction of the affairs of the information commission.

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 of 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: After the bifurcation of Andhra Pradesh, and creation of the state of Telangana in 2014, 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.

Central Information Commission: The Central Information Commission was without a Chief for a period of 2 months when the then Chief demitted office on August 26, 2020 after completing his tenure. This was the fifth time in 7 years that the CIC was rendered headless due to the delay in appointing a new chief upon the incumbent demitting office.

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 the 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 2 years.

Kerala: The SIC of Kerala was without a Chief for more than 3 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 4 vacancies in the CIC, the Supreme Court had directed the central government to fill all vacancies within a period of 3 months<sup>7</sup>. 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 6 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 leader of opposition who is also a member of the Selection Committee along with the Prime Minister and Home Minister objected to the process of appointment. He submitted a dissent note<sup>8</sup> highlighting that despite the Supreme Court judgment of February 2019, the search committee failed to make public the short listing criteria and pointed out that it seemed that there was no criteria at all which was adopted to shortlist persons as none was disclosed to even the selection committee. The note further highlighted, that the search committee arbitrarily “sky-dropped” and shortlisted a person who had not even applied for the post of the information commissioner in response to the advertisement published by the government.

In the CIC three posts of commissioners continue to be vacant even though the backlog of appeals/complaints has been steadily increasing and currently stands at nearly 36,800 cases.

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<sup>7</sup> Order dated December 16, 2020 in MA 1979 of 2019

<sup>8</sup> [https://drive.google.com/file/d/1kAkJao5vpwYI-v4v86yppKr-l0Nn\\_0Z/view?usp=sharing](https://drive.google.com/file/d/1kAkJao5vpwYI-v4v86yppKr-l0Nn_0Z/view?usp=sharing)

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! The apex court, in its judgment in February 2019, had observed that given the large pendency in the SIC, it would be appropriate if the commission functioned at full strength.

Karnataka: In its February 2019 judgment, the Supreme court taking cognizance that the commission had a backlog of 33,000 appeals/complaints directed the Government of Karnataka to ensure that the Commission functions at full strength of 11 commissioners. 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<sup>9</sup> of April 2021 citing official records, backlog of only second appeals was more than 30,000 with more than half of them filed between 2015 and 2019 which were yet to be disposed. Despite the huge backlog, 3 posts are lying vacant in the commission.

Odisha: The Odisha SIC is functioning with 5 commissioners despite having a large pendency of nearly 17,500 appeals and complaints.

Rajasthan: The Rajasthan SIC is functioning with 5 commissioners despite a backlog of nearly 18,000 appeals and complaints.

West Bengal: The West Bengal SIC is functioning with 2 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

**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 information commission of Bihar did not provide requisite information** under the RTI Act regarding the number of appeals and complaints dealt with by the ICs, nor could the information be located on its website. The SIC of **Jharkhand** expressed its inability to furnish the requisite information stating that though it had received appeals from information seekers, the decision to accept or reject the appeals is taken by information commissioners and as the commission was defunct during this time-frame, these decisions could not be made. The SICs of **Karnataka** and **Tamil Nadu** also **did not provide requisite information** under the RTI Act regarding the number of appeals and complaints dealt with by the ICs, however details of number of matters disposed could be located on their respective websites.

SIC of Maharashtra registered the highest number of appeals and complaints (41,978) followed by Uttar Pradesh (19,781) and CIC (18,298). The UP SIC disposed the highest number of cases (19,706) closely followed by Maharashtra (19,307) and the CIC at 17,649. The SIC of Nagaland did not dispose a single case during the period under review despite pending appeals/complaints.

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<sup>9</sup> <https://www.deccanherald.com/state/30000-second-appeals-pending-before-information-commission-rti-reply-970350.html>

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

<b>Table 1: Appeals and complaints registered and disposed by ICs between August 1, 2020 &amp; June 30, 2021</b>			
<b>S. No</b>	<b>Information Commission</b>	<b>Appeals &amp; complaints registered</b>	<b>Appeals &amp; complaints disposed by passing orders</b>
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 <sup>①</sup>	5,481	4,262
12.	Punjab	5,884	3,938
13.	Uttarakhand <sup>④</sup>	2,664	2,482
14.	Kerala <sup>③</sup>	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 <sup>②</sup>	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
	<b>Total</b>	<b>1,56,309</b>	<b>1,35,979</b>

Note: Information pertains to <sup>①</sup>Jan-Dec 2020 <sup>②</sup>2020-21 for appeals disposed <sup>③</sup>Jan 2020 to July 2021 <sup>④</sup>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.

<b>Table 2: Backlog of appeals &amp; complaints in information commissions</b>			
<b>S. No.</b>	<b>Information Commission</b>	<b>December 31, 2020</b>	<b>June 30, 2021</b>
1	Maharashtra <sup>②</sup>	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 <sup>①</sup>	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 <sup>③</sup>	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
	<b>ALL INDIA</b>	<b>2,44,676</b>	<b>2,55,602</b>
Note: NA implies not available. <sup>①</sup> As of July 31 and not June 30, 2021 <sup>②</sup> As of May 31 and not June 30, 2021 <sup>③</sup> appeals as of 04-08-2021 and not June 30, 2021			

**Maharashtra** SIC with an alarming backlog of nearly **75,000** had the highest number of appeals/complaints pending as of June 30, 2021. This was followed by the **UP SIC at nearly 50,000** and the **CIC at 36,788**. The SICs of Bihar, Karnataka and Tamil Nadu did not provide the requisite information in response to applications under the RTI Act, nor could this information be located on their respective websites.

### 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 6 years and 8 months to dispose a matter**. 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 5 years and 11 months, in Kerala 4 years and 10 months and in West Bengal 4 years and 7 months.**

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 <sup>①</sup>	4 years & 10 months
4	West Bengal	4 years & 7 months
5	Telangana	4 years & 5 months
6	Maharashtra <sup>②</sup>	3 years & 6 months
7	Himachal Pradesh	2 years & 7 months
8	Rajasthan	2 years & 6 months
9	Chhattisgarh <sup>④</sup>	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 <sup>③</sup>	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 <sup>①</sup> July 31, 2021 <sup>②</sup> May 31, 2021 <sup>③</sup> Appeals as of 04-08-2021 <sup>④</sup> Dec 31, 2020		

The estimated time required for disposal of an appeal/complaint in the **CIC was 1 year & 11 months** and for the **Maharashtra IC it was 3 years & 6 months**. The assessment shows that **13 commissions** would take 1 year or more to dispose a matter, which is considerably higher than the figure from the 2020 assessment wherein it was found that 9 commissions would take more than a year. Unless this concerning trend is arrested, the very purpose of the RTI Act i.e. time-bound access to information, stands to be defeated.

The long delays in disposal of cases can be attributed largely to two factors: vacancies in commissions (discussed above) and tardy rate of disposal by commissioners. While some commissions have fixed annual norms for disposal for themselves (the CIC has set a norm of 3,200 cases per commissioner annually), most information commissions have not adopted any norms regarding the number of cases a commissioner should deal with in a year.

In states like Goa, both factors clearly appear to be at play - the SIC was defunct for one month between August 1 2020 to June 30, 2021 as no appointments of commissioners were made in a timely manner but in the remaining 10 months only 56 cases were disposed (table 1) – an average of less than 6 cases a month!

#### 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. 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 Act requires the commission to give the PIO an opportunity of being heard before imposing penalty (commissions usually issue a show-cause notice asking PIOs to show cause why penalty should not be levied).

The assessment 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.

For the period August 1, 2020 to June 30, 2021, a total of **11,742 show cause notices** were issued to PIOs under the penalty clause of the Act, by the 16 commissions which provided relevant information. The SIC of Gujarat issued the maximum number (6,929) followed by Haryana (2,648) and Andhra Pradesh (1051). The SICs of Kerala, Madhya Pradesh, Odisha, Rajasthan and Uttarakhand stated that they did not maintain this information. The SICs of Chhattisgarh, Maharashtra and Uttar Pradesh referred us to their websites, even though the requisite information was not available there.

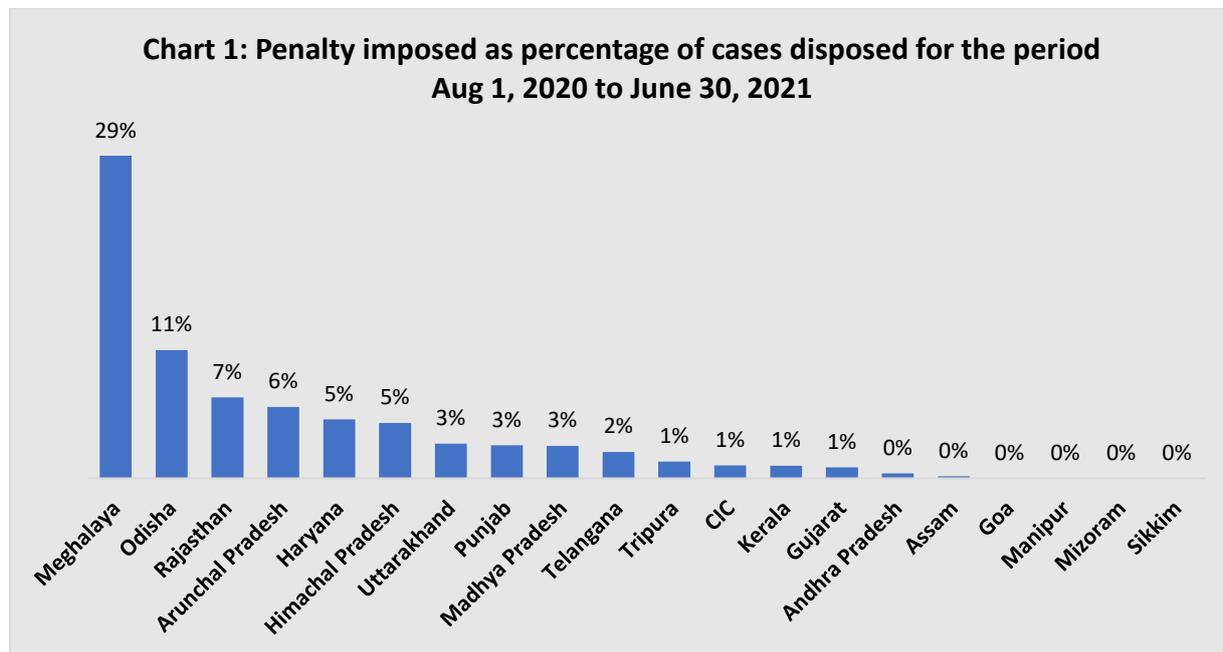
In terms of penalty imposition, of the 21 commissions which provided relevant information, **penalty was imposed in a total of 1,988 cases**. Penalty **amounting to Rs. 2.48 crore** was imposed by the 21 commissions during the period under review.

The commission-wise details are provided in table 4 (next page).

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 <sup>①</sup>	no info	20,12,500
5	Rajasthan	460	20,05,500
6	Uttarakhand <sup>②</sup>	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
	<b>TOTAL</b>	<b>1,988</b>	<b>2,47,91,250</b>
<b>Note: Information pertains to ① Jan- Dec 2020 ② April 2020- Aug 12, 2021</b>			

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)**. Interestingly, while the SIC of Gujarat issued the maximum number of show cause notices (6,929), penalty was imposed in only 80 cases. Despite the CIC providing details of penalty imposition in earlier years, this time only the number of cases and amount of total penalty recovered was provided. On the other points, the CIC claimed that since all decisions on appeals/complaints are put up on their website, *“Once information has been provided in public domain and on the website, the information is no longer held by or under the control of any public authority and hence, is no longer accessible as ‘right to information’”*! The denial, which has been challenged, is a violation of the law as in any case much of this information is collated by commissions for the purpose of their annual reports and appropriate follow-up.

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 **2.9% of the cases disposed by the ICs.**



Note: Uttarakhand data is for April 2020 to July, 2021 and Kerala data is for Jan 2020 to July 2021

A previous assessment<sup>10</sup> of a random sample of orders of information commissions had found that on average **59% orders recorded one or more violations listed in Section 20 of the RTI Act.** If this estimate of 59% is used, penalty would be potentially imposable in 40,860 cases out of the 69,254 cases disposed by the 20 ICs. Penalties were imposed only in 4.9% of the cases where penalties were potentially imposable! The ICs therefore **did not impose penalties in more than 95% of the cases where penalties were imposable.**

Non imposition of penalties in deserving cases by commissions sends a signal to 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

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 “*report on the implementation of the provisions of this Act*” every year which is to be laid before Parliament or the state legislature. Since RTI applications seeking information about the latest annual reports were filed in July 2021, it would be reasonable to expect that annual reports upto 2020-21 would be available.

<sup>10</sup> ‘Tilting the Balance of Power - Adjudicating the RTI Act’, RaaG, SNS & Rajpal, 2017

However, 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 details of the publication of annual reports and the availability of the reports on the websites of the respective ICs. The analysis revealed that despite the statutory obligation, many of the commissions have not published their annual reports. **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 the official websites.**

The SICs of Andhra Pradesh and Telangana have not published their annual report since the constitution of the respective SICs in 2017, following the bifurcation of the erstwhile state of Andhra Pradesh.

The SIC of Odisha has not published its annual reports since 2015-16. The SIC of Odisha stated that the annual report for the period 2019-20 is under preparation.

The SIC of Bihar did not reply to the RTI application seeking details of the latest annual report. Though its website has a link titled 'Annual Reports of the BIC', upon clicking on it, only the graphic of a progress bar shows up as though the reports are being loaded. However, the graphic plays on a loop endlessly!

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.**

Table 6: Availability of annual reports of ICs			
	IC	Year Of Last Publication	Available On Website
1.	Andhra Pradesh	Not published since SIC constituted in 2017	No
2.	Arunachal Pradesh	2020-21	Yes
3.	Assam	2019-20	Yes
4.	Bihar	Not known (link not working)	
5.	Chhattisgarh	2020	Yes
6.	CIC	2019-20	Yes
7.	Goa	2019	Yes
8.	Gujarat	2019-20	Yes
9.	Haryana	2019	Yes
10.	Himachal Pradesh	2017-18	Yes
11.	Jharkhand	2018	yes
12.	Karnataka	2016-17	Yes
13.	Kerala	2017-18	Yes
14.	Madhya Pradesh	2019	Yes
15.	Maharashtra	2017	Yes
16.	Manipur	2018	No
17.	Meghalaya	2018	Yes
18.	Mizoram	2019-20	Yes
19.	Nagaland	2019-20	Yes
20.	Odisha	2015-16	Yes
21.	Punjab	2018	Yes
22.	Rajasthan	2019	Yes
23.	Sikkim	2017-18	No
24.	Tamil Nadu	2018	Yes
25.	Telangana	Not published since SIC constituted in 2017	No
26.	Tripura	2018-19	Yes
27.	Uttar Pradesh	2019-20	Yes
28.	Uttarakhand	2017-18	Yes
29.	West Bengal	2018	Yes