

Preliminary Findings

Report on the Functioning of Andhra Pradesh Information Commission

By

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Introduction

The state and central Information commissions are constituted under the Right To Information (RTI) Act 2005 to facilitate and safeguard the rights accorded to citizens under the Act. Government of Andhra Pradesh(AP) has constituted Andhra Pradesh Information Commission to exercise the powers conferred on and to perform the functions assigned to it under Right to Information Act, 2005.

Andhra Pradesh Information Commission is a quasi-judicial body that decides the Complaints and Second Appeals filed under RTI. The jurisdiction of the Commission extends over all Andhra Pradesh State Public Authorities. Some of the important powers of the Information commission include the power to require public authorities to provide access to information, appoint Public Information Officers (PIOs), publish certain categories of information etc.. Section 19(8)(b) of the RTI Act empowers 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, they are given powers to impose penalties on erring officials, while under Section 20(2), commissions are empowered to recommend disciplinary action to the appropriate government against a PIO for “persistent” violation of one or more provisions of the Act. Effective functioning of information commissions is crucial for proper implementation of the Act and this has been reiterated by the Hon’ble Supreme Court in the judgement W.P.(C) No.-000436 / 2018, *“Anjali Bharadwaj and others VS Union of India and others”* delivered on February 15, 2019 as well.

Back Ground:

After the bifurcation of the state in June 2014, both the states of A.P and Telangana have a common Information Commission functioning till September, 2017 operating from Hyderabad. With the constitution of Telangana information commission in September 2017, AP has left with no information commission.

As per Schedule 10, of the Andhra Pradesh Reorganisation Act, 2014, a separate Information commission was to be constituted for AP but only in late 2018, Andhra Pradesh state information commission (SIC) was constituted, that too under the direction from the apex court. Based on the directions of the Supreme Court, as on today 6 commissioners were appointed - 3 in October 2018, 1 in May 2019 and the last 2 in July 2020. The vacant post of Chief information commissioner has been filled up as recently as July 2020.

Effectively Andhra Pradesh state has functioned without information commission for the large part so far, post state bifurcation. In this context we want to understand the functioning of the

newly formed State Information Commission and as a follow up we plan to do a series of studies to monitor the implementation of the RTI Act in the state of AP.

Objective of the study:

The objective of the current study is to monitor the functioning of Andhra Pradesh Information commission so that it will lead to overall improvement in the performance of the Information commission as a body, commissioners and strengthening the implementation of the act.

We made an attempt to analyse the quality of orders passed by the information commissioners, time taken for the final orders of the second appeal received by the commission, completeness of the order and it's compliance with the RTI act. Additionally, if the PIO is found to have acted against the law, whether they were assessed/ taken to task as per the act.

Methodology:

This report findings are based on the analysis of randomly chosen 769 orders of Andhra Pradesh Information commission for the period of February 2019 to November 2020. We sampled these 769 orders from the SIC orders and made sure that orders by all the information commissioners are covered in the study.

Number of cases and disposed

As of January 2021, Andhra Pradesh Information Commission received 9,786 appeals and 4,186 complaints of them 7,256 & 2,754 are disposed respectively. 3,962 of all the appeals or complaints received are pending at the state information commission. Table 1 shows the number of appeals/ complaints received, disposed and pending along with other details.

Table 1: Number of appeals/ complaints disposed and the Penalty imposed by the commission

S No	Duration	No of Appeals/ Complaints			Penalty Imposed	Awarded to Applicant
		Received	Disposed	Pending		
1	01.10.2017 To May 2019	5,000	422	4,578	₹ 25,000	₹ 15,000
2	June 2019 to May 2020	5,590	5,808	4,507	₹1,98,000	₹ 26,500
3	June 2020 to January 2021	3,351	3,780	3,962	₹ 0	₹ 0

4	Total	13,972	10,010	3,962	₹ 2,23,000	₹ 41,500
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From unconfirmed reports, we got to know that there are about 10,000 cases that are transferred to the AP SIC, which were parked with Telangana SIC before the formation of AP SIC and only 7000 of these cases are accepted by the AP SIC for unspecified reasons. Note that the transferred cases are not included in the total number of pendings cases in table 1.

Preliminary Findings:

1. Time Taken to Dispose an Appeal/ Complaint

On average the State Information Commission took more than 273 days to dispose of an appeal/ complaint registered with the SIC i.e the number of days between the data of appeal/complaint received at the SIC to the date of disposal. Of the 769 orders analysed, the maximum number of days taken by the SIC to dispose of an appeal/ complaint was 866 days and the minimum days is about 15 days.

There are 3962 cases (2530 appeals + 1432 complaints) pending at the SIC as of January, 2021. On average SIC disposed of a little more than 519 cases in the last six months at this rate it will take more than 7 and a half months to dispose of the pending cases and if we include the transferred cases from Telangana SIC it will take more than 21 months.

People approach the SIC as they didn't receive the requested information (or on time), if the SIC itself takes months to dispose of the appeals/ complaints received the objective of transparency law is defeated.

2. Very Few Female Appellants/Complainants:

Of the disposed orders analysed for the study it is found that only 7% of the appellants/complainants are female and the remaining 93% are from male candidates. From these numbers it's evident this transparency legislation is not being used by the female population at all. While the reasons for the same are not clear, it helps to conduct awareness activities and campaigns to encourage women to use the Right to Information Act.

3. Reasons for Appeals/ Complaints:

It is found that 80% of the appeals/ complaints filed before at the information commission are due to the fact that the concerned PIO did not respond to the application at all. 15% of the appeal/ complaints are filed as the PIO furnished partial information. The remaining 5% include cases of misleading/ incorrect information from PIO, erroneous transfer of the application under Section 6 (3) or the PIO refused to furnish the information sought.

Under Section 7(8) of RTI Act, in case of rejecting the application, the Public Information officer shall communicate the following to the applicant

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

In case of non response by PIO in the stipulated time, the application is deemed to be rejected.

But it is evident that this section is being violated by the majority of the PIOs.

4. Information Sought - Voluntary Disclosure of Information:

Information sought in 65% of the applications comes under Proactive Disclosure of information i.e., Section 4(2) of the RTI Act. It mandates every public authority to provide as much information suo moto to the public at regular intervals through various means of communications, including the Internet, so that the public need not resort to the use of RTI Act.

If the information was voluntarily disclosed to the public, the need to apply for information under RTI would not have been there. Thereby saving resources for all the parties involved.

5. Non speaking orders - a concern:

In the orders of 68% of the disposed cases, the SIC did not quote relevant sections and 37% of the orders did not have the details of information sought by the appellant. It deprives all the involved parties of the fundamental right to know the basis of judgement, which plays a crucial role when a judgement goes to legal scrutiny at various levels.

In several cases where information was denied by the commission, it was found that the orders were not adequately reasoned and could be termed to be non-speaking orders. Several such orders merely summarise the contention of the information seeker and the denial by the PIO and conclude by stating that intervention of the Commission was not required, without providing valid reasons under the act.

The Supreme Court, in numerous orders, has cautioned against the tendency of adjudicators to give cryptic, unreasoned orders. In 2012, the SC in Manohar s/o Manikrao Anchule vs. State of Maharashtra (Civil Appeal No. 9095 of 2012), categorically, and in great detail, laid down that judicial, quasi-judicial, and even administrative orders must contain detailed reasoning for their decisions.

The phenomenon of ICs not passing speaking orders is problematic for several reasons, including the public at large, having no way of finding out the rationale for the decisions of ICs. It

is a violation of peoples' right to information and goes against the fundamental principles of transparency. Such non-speaking orders stand very little chance for legal & effective public scrutiny. It also compromises the accountability of the institution of information commissions and the performance of information commissioners. Finally, deficient orders have little value in terms of furthering the cause of transparency outside the scope of the limited order.

6. Penalty Imposition:

In 42% of the analysed orders, the commissions observed that the PIO has violated the act. The information commission should have imposed a penalty as per the Section 20 of the RTI Act on all these cases or at least initiate the process of penalty imposition. However, notices were issued in 28% of the cases only and the penalty was not imposed in 97% of the cases, where the commission has observed violations.

The RTI Act empowers the Information Commissioners to impose penalties of upto Rs. 25,000 on PIOs for violating the provisions of the RTI Act. Section 20 of the RTI Act defines the violations of the law for which PIOs must be penalised.

The penalty acts as a deterrent for those who fail to act as the act requires. It sends the message that the violators can get away without any penalty as no penalty was imposed in the majority of the cases. By not imposing a penalty, in the impossible cases the information commission is not fulfilling its responsibility, this sends the wrong message to the public.

7. More than one hearing:

More than one hearing happened at the SIC in 2% of the disposed appeals/ complaints. This not only delays the process of justice delivery to the appellant but also consumes a significant amount of time and money for all the parties involved in the hearing process. It is important to note that it is the appellant that suffers the most with the amount of travel involved to appear in front the SIC and the associated costs with the same along with Justice delayed is justice denied.

It is important to note that there is no information available on the status of such cases where the commission has issued interim orders earlier. We don't know how many more hearings have happened on such cases or if any hearings have happened at all.

8. Voluntary disclosure of information - State Information Commission's Website:

It is promising that the SIC has been regularly publishing the monthly status reports, which includes the number of appeals/ complaints received, disposed of and pending by the end of the given month. Although the order copies for the disposed cases by all the commissioners, notices

issued by all of them are not available. Only the notices issued by the chief information commissioner are available on the website.

However, the information on the number of non-compliance petitions and the filing process is not available on the information commission's website. We got to know that the commission started recognizing non-compliance petitions as a separate category and they are numbered specially which is commendable.

9. Very few details of the commissioners appointment:

On the information commission's website, very few details pertaining to the appointment of the commissioners are available and this is against the spirit of the institution, whose objective is to foresee the implementation of the transparency legislation. In the unbifurcated state of Andhra Pradesh, appointment details of the commissioners used to be available but the current website doesn't have these details.

Currently the information commission's website has CVs of few commissioners with the CV of chief information commissioner notably missing. The website should have all the documents including the minutes of the high power committee designated for the appointment of the commissioners, CVs of the commissioners and details of all the candidates applied for the post of CVs.

10.No annual reports:

After the bifurcation of the state Andhra Pradesh Information Commission and the formation of State Information Commission, SIC didn't release a single annual report yet.

Under Section 25(1) of the RTI Act, 2005 the State Information Commission at the end of each year shall prepare a report on the implementation of the provisions of this Act. It consists of the consolidated statement on the applications received and disposed of by various departments (including the SIC) under the RTI Act. The report prepared shall be forwarded to the Government which in turn will place it before the Andhra Pradesh State Legislative Assembly.

Conclusion:

It is really disheartening to see the below par performance of the information commissioners in an institution that is responsible for upholding transparency. By not publishing the annual reports, the information commission is abdicating its moral and legal responsibility and accountability towards people, legislature.



SIC should set an example to all public information officers in the state by being quick in disposing the appeals/complaints, follow supreme court guidelines for quasi judicial orders in their orders and being transparent in disclosure of details about the commissioners etc..

However, we see things changing for the better, post appointment of the chief information commission and the publication of monthly reports with the number of appeals/complaints received, cleared, pending etc. is a testimony to this. We hope RTI activists, Civil Society Groups, and the Government use this report to initiate discussions on the functioning of SIC and RTI implementation at large in the state.

About Us:

United Forum for RTI Campaign - Andhra Pradesh

United Forum for RTI Campaign AP is a confederation of around 70 civil society organizations. The forum was started in 2007. Since then the Forum is actively involved in advocacy issues, conducting workshops, training volunteers, organizing RTI awareness campaigns etc.

To learn more about our work read our blog at <http://ufrti.blogspot.com/>

LibTech India

LibTech India is a team of engineers, social workers and social scientists who are interested in improving public service delivery in India. They are inspired by India's Right to Information movement and believe that transparency can go a long way in reducing corruption and improving accountability. They work with several state governments and CSOs to improve transparency and accountability in public service delivery through action research.

To learn more about their work visit their website at <https://libtech.in>

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