

# Sunday Spotlight

**Behind the facade:** Govt's bid to amend RTI Act is part of a pattern to kill all anti-corruption laws

# Amending RTI: sinister plan

**Narendra Modi came to power promising to make government transparent and end corruption. But several instances where the government has amended or sought to amend existing transparency, anti-corruption and election funding laws show that the Modi government is doing just the opposite. The bid to amend the RTI Act to destroy the independence of Information Commissioners and make the law toothless is one such. Public pressure has forced the government to defer it, but it may seek to revive it at the next opportunity. Eternal vigilance, therefore, is the price of liberty.**

## What's the RTI Act

Simply put, the Right to Information Act, 2005, empowers every citizen to demand and obtain information related to governance and all matters of public interest from the government and its agencies or "instrumentalities". Transparency of government functioning is fundamental to democracy and its survival. The RTI Act is one of the most powerful tools to hold government to account and fight corruption. It is every citizen's right to do so.

### PREVIOUS ATTEMPTS TO 'KILL' RTI

#### JULY 2006

■ Just a year after passing the RTI Act 2005, the UPA cabinet cleared an amendment bill to exclude from its purview file notings made by officials in all areas except social and development sector projects. It also wanted to define what "information" meant, and to keep the names of officials under wraps.

■ Though the original RTI Act did not specifically mention file notings, the Central Information Commission (CIC) had in January 2006 said, "file notings are not, as a matter of law, exempt from disclosure". Protests by RTI activists forced the govt to scrap it.

#### OCTOBER 2009

■ UPA II renewed bid to exclude file notings.

■ DoPT told Information Commissioners (IC) that "discussions and consultations that go into the decision-making process are of no relevance to the general public and should be exempted from disclosure under RTI." ICs rejected the govt's stand.

#### AUGUST 2013

■ In June 2013, the CIC held six political parties to be public authorities under the RTI Act

■ Govt resisted it by trying to amend the definition of 'public authority' under RTI Act to exempt political parties from its ambit.

■ Parliamentary Standing Committee also cleared the Bill

■ But Bill lapsed as Lok Sabha was dissolved in first half of 2014

#### APRIL 2017

■ Modi govt made public its draft to amend RTI rules.

■ Proposed amendments allowed for withdrawal of appeals based on a written communication by the appellant and closure of proceedings upon death of the appellant

■ On June 21, 2018, the CIC asserted that it will decide appeals and complaints even after the death of complainant or appellant.

**17,500,000**  
RTI applications filed till 2016-17

**4,800** RTI applications filed every day on average

**428** Attacks on RTI users recorded since 2006

**154** Attacks on RTI users in last four years

**73** RTI users killed

**166** RTI users assaulted

**183** RTI users harassed or threatened

**6** RTI users committed suicide

### VACANT POSTS, PILING BACKLOG

■ Central Information Commission

■ 4 posts of information commissioners lying vacant. Govt invited applications last week after SC push

■ Commission functioning with 7 commissioners, including CIC

■ RTI case pendency: 23,962 appeals and complaints

### KARNATAKA STATE INFORMATION COMMISSION

■ SIC functioning with 9 commissioners (including chief)

■ 2 posts vacant

### PENDENCY:

**32,992** appeals and complaints (October 31, 2017)

Shailesh Gandhi

The RTI Act, 2005, is the greatest citizen empowerment instrument in India. In a very simple way, it gives the poorest citizen the power to get accountability from the most powerful in the land. Since the law supersedes all earlier laws on the issue of providing information from government records, a complex web of legal arguments cannot be given to deny information.

It stipulates that no reasons need be given for seeking information and provides for a penalty on officials who do not respect the citizen's demand for information within 30 days. It is indeed one of the most powerful transparency laws in the world.

This change in the balance of power has annoyed those who wield power. They have not been able to accept this shift in power and are shocked at the prospect of having ordinary citizens expose their corrupt or arbitrary actions. At first, they applauded the law they themselves had passed, perhaps not realising how India's citizens would use it to call them to account. But within eight months of the law being implemented, they did. The UPA government tried to put the RTI genie back into the bottle by amending it. Citizens protested, and the government aborted the attempt. Two more attempts were made and given up in the face of strong resistance.

Recently, the Narendra Modi government decided to launch its attack on RTI with amendments. Citizens realise that the provisions of the act are very good and that any amendment to it by those in power will weaken it. Hence their consistent demand has been that there should be no amendments to the RTI Act.

These proposed amendments are a clever attempt to weaken Information Commissions. The government did not touch most of the provisions of the law but only sought to downgrade the Information Commissioners! This was sought to be done by completely flouting the government's avowed policy of pre-legislative consultation.

There had been no discussion on the amendment bill when suddenly last week, it was listed in the schedule of business for Parliament! Citizen groups opposed this move strongly, and when the actual amendments became known, it was realised that the tenure, salaries and conditions of service -- which have been laid down by the law -- were to be henceforth decided by the central government.

As per the law at present, the salaries of the Central Information Commis-

sioners is equal to that of the Central Election Commissioners and that of the State Information Commissioners is equal to the salary of a Chief Secretary. Their tenures are fixed at five years. Why was the government keen to make these amendments surreptitiously? This was an unfortunate attempt that has shaken citizens' trust in the government.

The statement of objects and reasons states that the Central Election Commissioners are constitutional positions whereas the Information Commissioners are a creation of a statute, hence the Information Commissioners should not be treated at par with election commissioners! A constitutional position is one that has been mentioned in the Constitution, whereas a statutory position is one created by law.

The legal position of both is the same.

The argument given by the government to downgrade and arbitrarily decide the position, salaries and tenure of the Information Commissioners by amending the law is dubious. The only substantial difference between a constitutional position and a statutory position is that the former positions were thought of when the Constitution was written; the latter positions were created by a statute.

The attempt to create a hierarchy between the two is silly and not in consonance with the law. The Information Commissioners and Election Commissioners are both working to ensure the fundamental right of citizens under Article 19 (1)(a).

So, the difference in their origin does not appear to be the real reason for amending the law. There appears to be

a hidden agenda. I will attempt to spell out some probable reasons and implications:

■ There are some orders by the CIC directing the government to disclose certain information -- like the degree certificate of Prime Minister Narendra Modi -- which the government feels are impertinent. Perhaps it wishes to put the commission in its place by assuming control over it. This is too petty a reason to seek to devalue the institution.

■ Devaluing the commissioners will reduce their impact on senior public servants, where hierarchy is supreme. This would reduce the efficacy of the commissions. Besides, removing the status of Information Commissioners and taking control of their salaries and tenures by the central government will allow it to keep them on a leash and affect

their independence.

■ **There may be a more sinister plan:** to get citizens to accept the idea that their Right to Information can be amended. This amendment could be just a test balloon. Further amendments may be slipped in before passing the final bill or amendments may slowly be brought in later. Once the law is amended, the red line citizens have drawn against making any change in the law will have been crossed.

■ Many regulatory bodies and tribunals have been created by statute. Some examples are the green tribunal, minorities commission, child rights commission, human rights commission, lokayuktas, Niti Aayog, SEBI and so on. Perhaps the government is signaling to all of them that if they do not comply with its diktats, their positions will all be downgraded. Even presently, most of these are controlled by the government

of the day by controlling appointments to them. In the Information Commissions, too, most people who are selected have allegiance and loyalty to the government in power. But sometimes they act independently, and this could be a warning to all of them.

Fortunately, citizens started voicing their opposition to the amendments and a government heading into elections has been forced to defer the move. But it may be revived at the next opportunity. Citizens who value their fundamental rights must reach out to elected members of all political parties and convince them to announce that they will not support any amendment to the RTI Act for a decade. They need our votes soon, let us get them to guarantee our fundamental right to information.

(The writer is a former Central Information Commissioner)

## And you thought Modi is fighting corruption...hahaha

### ELECTORAL BONDS

■ Arun Jaitley said these would bring transparency to political funding.

■ In reality, it rolls back transparency at the very foundation of democracy, the electoral process.

■ Scheme allows donors to secretly pump in any amount of money into a political party.

■ Govt. used Money Bill route to stealthily amend multiple laws to enable this.

■ Public will not know how much money corporates are pumping into a political party, but govt. will know who is donating to opposition parties.

■ Companies Act tweaked to permit any company to donate not just a portion of its profits to political parties but also its entire share capital soon after its incorporation. It need not even tell its shareholders.

### FOREIGN FUNDS

■ Govt. stealthily amended laws to exempt the two national parties, BJP and Congress, from investigation into violations of the Foreign Contributions Regulation Act, with retrospective effect from 1976.

■ Public cannot now know what foreign sources have been funding the two parties.

■ The amendments, again hidden in a Money Bill, were passed days before Delhi HC was to order a probe.

■ This while the govt. has used FCRA to crackdown on thousands of NGOs for even minor technical infractions.

### PREVENTION OF CORRUPTION ACT

■ The ignoble crowning glory is the amendments to the Prevention of Corruption Act (PCA) passed last week.

■ Bribe-giving is now an offence. Bribe-giver can be jailed for up to 7 years, unless s/he files a complaint within 7 days.

■ But the bribe-taker (official) cannot even be investigated without govt. sanction. Ostensibly to protect 'honest officials'.

■ Amendment in violation of SC judgements that struck down similar provisions in laws relating to CBI, CVC.

■ Scope of "criminal misconduct" narrowed down to just two offences, namely, a public servant amassing assets disproportionate to known sources of income; and, misappropriation of property entrusted to a banker.

■ Abuse of office or position not an offence. Under this law, there would have been no scams in the UPA-era at all.

### THE GUJARAT MODEL

■ When Modi was Gujarat CM, state had no Lokayukta from 2003-2011. No one to complain to, no one to probe corruption. Thus, there was no corruption in Modi's Gujarat.

■ In 2011, then Governor Kamala Beniwal and the Gujarat HC Chief Justice exercised their right to appoint a Lokayukta.

■ Modi went to SC opposing it. SC upheld the appointment.

■ Retired judge RA Mehta declined the position after Modi govt. declined to cooperate with the office.

■ Modi govt. then amended Lokayukta Act to suit itself.

■ CAG reports on Gujarat were never discussed in the state assembly. The opposition demanded that reports be tabled on the first day of an assembly session. The govt. made it a habit to table it only on the last evening of the session.

# Transparency and accountability: cheating on the deal

Venkatesh Nayak

Three days ago, the Union Ministry of Electronics and Information Technology uploaded two important documents on its website. The first is a report containing the findings of a committee of experts headed by former Supreme Court Justice BN Srikrishna on an elaborate mechanism for protecting the privacy of citizens. The second is a draft Bill that the same committee has proposed for protecting personal data of individuals, which, among other things, seeks an amendment to the Right to Information (RTI) Act. This is the second attempt in less than six months to tinker with a law that has been a game-changer. Millions of citizens have used the RTI Act, 2005, for more than a decade to demand transparency and accountability in the functioning of public authorities.

The Justice Srikrishna Committee's justification for seeking to amend the RTI Act is unconvincing. The draft Personal Data

Protection Bill, 2018, seeks to prohibit the disclosure of information that would identify an individual if it would cause him or her harm. "Harm" as defined by the draft Bill includes "loss of reputation". If this proposed amendment were to be made law, it would become next to impossible to discover the names of public officials who are responsible for corruption, wrongdoing and human rights violations as they could take shelter under the "harm" clause. Strangely, the committee has ignored the practice adopted in advanced countries which exempt information about the performance of official functions and duties by public servants from the requirements of privacy protection, especially those which may reveal wrongdoing. This is a déjà vu moment for all votaries of RTI who successfully resisted the previous UPA government's move to amend the RTI Act in 2006, less than a year after it became law. That proposal also sought to accord anonymity to officials who penned their opinion and advice on files on all matters of governance.

Ironically, the committee report and the draft Bill on data protection are uploaded under the "What's New" section

of the ministry's website. In fact, there is little that is new about it when one looks at the developments over the last four years. Despite coming to power on the electoral plank of truly transparent and corruption-free governance, several measures initiated by the Narendra Modi government can only be described as wretched on that deal with the citizenry. Take the other Bill to amend the RTI Act that is waiting to be tabled in Parliament. The government wants the power to determine both the tenure and the salaries of Information Commissioners (IC) at the central and the state levels at its whim and fancy.

Currently, the law has fixed for ICs a single five-year term and a salary equal to that of the members of the Election Commission of India (ECI). Thanks to the intervention of the ICs, official documents revealing scores of cases of both petty and large-scale corruption have been unearthed by concerned citizens using the RTI Act despite initial refusal by public authorities to release the documents. The amendment proposal seeks to destroy the very legislative scheme of the RTI Act that ensures autonomy for the ICs, thereby reducing their effectiveness in realising

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the legislative vision, namely, the containment of corruption.

The government's justification that statutory authorities like the ICs cannot be equated with the ECI, a constitutional authority, is an eyewash. In June last year, the government made rules to upgrade the salaries of the chairpersons and members of 17 statutory tribunals and adjudicating authorities to the re-

muneration level of the Supreme Court and High Court Judges who are constitutional authorities and on par with the ECI authorities. Clearly, the proposed RTI amendment Bill is a move calculated to prevent ICs from enforcing the regime of transparency on matters that government officials would like to keep secret.

Photocopies of official documents supplied under the RTI Act cost only Rs 2 per page, but the citizenry has been paying a much heavier price for transparency since 2005. More than 70 citizens have been murdered in their "Quest for Transparency," a highlight on the current website of the Prime Minister's Office (PMO). More than 350 others have been brutally assaulted -- some more than once -- or threatened or harassed for seeking information about the manner in which funds were spent for socio-economic development. This is only the tip of the iceberg as many stories of assault and harassment do not get media attention.

Despite this gory phenomenon, which is unparalleled anywhere in the world, the government is pressing Parliament to amend the law enacted in 2014 to protect such whistle-blowers. Their immu-

nity from prosecution under the Official Secrets Act is sought to be taken away. Further, the government is seeking to prevent even the registration and enquiry of whistle-blower complaints if they relate to any of the matters exempted under the RTI Act. Strange are the plans of the establishment in a country whose national motto is satyam eva jayate (truth alone shall triumph).

So, when transparency and accountability mechanisms take such body blows, one is reminded of Marcellus's remark: "Something is rotten in the State of Denmark", that sets the tone for Shakespeare's famous tragedy. As a guard of the fort, Marcellus has no further role to play in the plot, which revolves around the shenanigans of the royal family. But a Horatio-like reply: "Heaven will direct it", would be a disaster for a democracy. Every voter-taxpayer citizen has a role to play. The first step is to question this dismal state of affairs and then to take action for repair. There is no better time than now. "Rage, rage against the dying of the light," as Dylan Thomas would say.

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