

What is the issue?:

According to this order which is yet to be uploaded on the Calcutta High Court's website, the petitioner is said to have approached the Calcutta High Court demanding that giving personal contact details such as postal address to a public authority must not be made compulsory for an RTI applicant. The petitioner prayed that merely mentioning a Post Box number for the purpose of contacting the applicant should be enough for the purpose of the *Right to Information Act* (RTI Act). This prayer was made to prevent harassment of RTI users by unscrupulous elements within or outside the public authority which receives the RTI application.

What did the Court Rule?:

A 2-judge bench of the Court, including the acting Chief Justice, ruled that disclosing a Post Box number should be adequate for the purpose of Section 6(2) of the RTI Act which requires an RTI applicant to provide his/her contacts details to the Public Information Officer while seeking information. The Court held that an applicant disclosing a Post Box number should not be compelled to disclose any further contact details. However if a public authority has any difficulty contacting the applicant through the Post Box No., the applicant may be asked to provide other contact details. The Court directed that the contact details of the applicant must not be disclosed on the public authority's website in order to avoid possible harassment.

Analysis of the implications of this judgement:

It is true that numerous RTI users have been attacked physically or harassed mentally for seeking information that vested interests would prefer to keep under wraps. At least 25 murders over the last eight years can be connected to the use of the RTI Act by the victim. The most recent case of alleged murder of an RTI user is from Muzaffarpur, Bihar. Although the murder is said to have occurred in March 2013, investigations are said to have revealed the RTI link only recently.

The requestor's right to privacy

The practice of keeping the identity of RTI users confidential is nothing new. Public authorities in the United Kingdom which disclose information requests received from persons and their replies on their website, take care to erase the name and contact details of the applicant from the documents. A visit to the FOI logs portion of the BBC's website will show how common this practice is. In Mexico, RTI applications may be made by email and responses also may be sent by email through the InfoMex digital system. It must be remembered that both countries have strong data protection laws where ordinarily personal information about any person may not be disclosed without his/her informed consent. The only exceptions to this rule are if the disclosure is required for the purpose of law enforcement or for the purpose of national security-related matters or if a court orders disclosure. The practice of affording such protection is based on the principle of preserving and protecting the autonomy of the individual over his/her personal data held by public and private bodies so that it may not be misused for any purpose including commercial ones.

In Germany this right was first recognised in 1983 as the "right to informational self-determination" in a landmark case where the Constitutional Court ruled that people cannot be 'databased'. The judgement was an outcome of a challenge to the then Census law that sought to create databases by collecting demographic information about people living in Germany. Almost all data protection laws in Europe flow from the principle enunciated in this seminal judgement (summary of the judgement is discussed in the 2nd attachment). It is another matter that the Government of India is trying to database people, and not just citizens, through Aadhaar and the National Population Register despite the myriad objections to this exercise. Although

the right to privacy is a fundamental right, India does not have a data protection law yet. A comprehensive report on the subject authored by a committee headed by Justice A P Shah is lying idle without much public debate.

Impracticalities of the solution directed:

Coming back to the analysis of the judgement itself, with the deepest respect to the wisdom of the Court it must be said that the directions will give rise to major practical difficulties. First, replies sent by Registered Post or Speed Post will not be delivered to the Post Box as a rule. Post Boxes are meant for receiving letters sent by ordinary post only. I checked this up with two post offices in Delhi a short while ago. So the Government of India and other similarly placed public authorities will have to change their practice of sending all replies to an RTI request by Speed Post/Regd. Post which is essentially recorded mail.

Second, Speed Post/Regd. Post deliveries can be tracked online, so the public authority cannot escape by saying, "We mailed it to the applicant but we do not know why the letter did not reach him/her". There is no way of recording whether replies sent by ordinary post are actually delivered to the Post Box. It is not uncommon for public authorities to show the entry of a reply being sent in their outward dak register despite the letter never reaching the addressee for a variety of reasons. So the Post Box solution will only create more problems for the RTI applicant under the garb of protecting his/her identity.

Third, it is very common for RTI applicants to seek large amounts of information in one request. The size of the average PostBox is so small that large envelopes will simply not fit into the slot in each box meant for dropping in letters. At the most an envelope containing about 10 sheets of paper may fit into the box through the slot with some difficulty. Larger sized packets will have to be put in only by opening the box. This means the Box will be opened up by the Postman without the permission of the addressee. Is this a viable proposition? I am not too sure if the Dept. of Posts will feel encouraged to make other arrangements to store large sized packets outside the Post Box for the RTI applicants to come and collect them in person unless a system is created where the customer pays for such services. Creating such a facility in all post offices with PostBox facility will be resource heavy. As CHRI has rented a Post Box for official use in Delhi, I was able to make an assessment of the situation by visiting the spot where the Post Boxes are maintained.

Fourth, the petitioner and the Court seem to have assumed that all post offices will have post box facility so that any person living in any part of the city/town or village will be able to visit the post office to collect his/her letters. There may be thousands of small post offices particularly in villages that do not have such a facility. So the applicant will have to spend extra money to visit the nearest post office that has post box facilities. In Rural India 'near' actually means 'far' for many villages and hamlets. RTI users have been attacked or murdered in villages also and not merely in cities and towns. An easy seeming solution at the surface level shows more problems when examined in depth.

Post Box will not end the culture of impunity

With the greatest respect to the wisdom of the Court, I believe the judgement, though useful, is only a stop gap measure and of limited use. RTI is a deemed fundamental right. If its parent right, namely, the fundamental right to freedom of speech and expression and other equally or more important fundamental rights such as the right to life and liberty, the right to education, the right to health, the right to shelter, the right to food, the right to adequate amounts of potable water, the right to other basic amenities, the right to profess one's religion can all be enjoyed in

the open without having to mask the identity of the rights-bearer, why should the use of RTI be subject to confidentiality? If the State is unable to ensure the safety of a citizen who legitimately exercises his/her fundamental right because it irks someone else, then the foremost responsibility for such a state of affairs lies with the State itself. RTI would then sadly join the list of some other human rights, such as, the right to marry by one's own choice, the right not to be sexually assaulted in whatever manner by whosoever, the right of girl children not to be terminated at the foetal stage just because they do not have the Y chromosome in their genome, which are violated every day with the State not being effective in curbing such violations.

Some other practical solutions

The first and foremost solution is for the corruptors and the corrupted not to indulge in such activities. If this happens there will be no fear in disclosing under the RTI Act, simple information, such as, muster rolls (wage registers), names of housing assistance beneficiaries under the Indira Awaas Yojana or records of the money spent on non-existent roads and buildings which many of the RTI users who were attacked or murdered sought under the RTI Act. "Okay, that sounds like a pipe dream to me too :-D"

Better, still, the State should ensure an atmosphere of real protection for the people by enacting and effectively implementing the whistleblower protection law (which covers ordinary citizens also) and the basket of new legislation and amendments to existing laws aimed at combatting corruption and providing better service delivery that are pending in Parliament. A respectable taxpaying and voting citizen of this country should not be compelled to hide his/her identity to avoid being targetted just because he/she exercised his/her fundamental right. All cases of attacks on RTI users must be investigated forthwith and the guilty brought to book. Certainty of punishment will act as a deterrent for all potential attackers and murderers. Information Commissions and Human Rights Commissions must take on the role of monitoring the progress in every such case. A country cannot reasonably aspire to be a super power without ensuring freedom from fear for its people vis-a-vis its own people.

This judgement needs to be debated further before we start writing letters to the departments overseeing compliance with the RTI Act to incorporate the Calcutta High Court's directions in implementation guidelines.