

## Probable Amendments to the Indian RTI Act- based on Second Administrative Reforms Commission Recommendations – June 15, 2009

Dear All,

The Government of India (GOI) appears to be working overtime on proposals to amend the Right to Information Act (RTI Act). This is along expected lines. Any government reelected with an improved majority is more than likely to be brazen about its legislative agenda in the initial months. During its infancy the RTI Act has been instrumental in putting a former Minister behind bars and the initiation of departmental action against several senior, middle and junior level officers in many parts of the country apart from unearthing hundreds of instances of corruption and thousands of instances of poor decision-making and mal-governance. What changes may be precipitated by its youth is a worry plaguing many a bureaucrat. The Act is perceived to be too dangerous within bureaucratic circles. GOI appears to be honing its axe to cut down RTI to, what it believes should be, a manageable size.

How do we know this? First we must carefully read the Hon'ble President's address to Parliament delivered on 4<sup>th</sup> June, 2009. While promising that her government would come up with a public data policy to place all non-strategic information in the public domain, the President clearly stated that the RTI Act 'will be amended' [read at para #32 from: <http://presidentofindia.nic.in/sp040609.html>]. This is contrary to the position taken by the Chair of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. Dr. E M S Natchiappan had made it clear publicly on more than one occasion that his committee would recommend against tinkering with the Act in any manner. That committee's report has not seen the light of the day yet. If GOI were not contemplating changes, the Hon'ble President's address would not have mentioned the word 'amend' in the same sentence as the RTI Act. So we the RTI fraternity in India need to wake up to this very real possibility and set the agenda rather than let the policymakers preempt us.

So what will be changed in the RTI Act? There is no official word on the amendments yet but a government document placed in the public domain provides vital clues about GOI's thinking. Readers will remember that the very first report of the Second Administrative Reforms Commission (ARC) focused on strengthening the RTI Act describing it as the 'master key to good governance'. GOI has made public its decisions on all the recommendations made by ARC through the website of the Department of Administrative Reforms and Public Grievances [<http://darpq.nic.in/arpq-website/Right%20to%20Information%20-%20Master%20Key%20to%20Good%20Governance.pdf>]. Given below is a list of possible amendments based on this document (attached).

**File notings:** The ARC had recommended deletion of para 118 from the Manual of Office Procedure commonly used in Central Government offices. Para 118 requires all government officials to keep the notes portion of every file confidential. GOI has rejected this recommendation stating that the said para relates to the confidential character of file notings. This rejection comes as no surprise given the public pronouncement of the Department of Personnel and Training (DoPT) – the administrative ministry for the RTI Act- on its website that file notings do not fall within the purview of the RTI Act. In December 2005, less than 2 months of the Act coming into force, the then Minister responsible for DoPT had replied to an MP's question as follows: "After consideration of the various aspects of the issue, the Government is of the view that substantive file notings on certain aspects relating to social and developmental issues may be disclosed. Modalities in this regard, however, are being worked out in consultation with Ministry of Law and Justice." This reply was in the form of an assurance- so it began to be monitored by the Committee on Assurances of the Rajya Sabha. Later in August 2006, GOI burnt its fingers while trying to amend the Act to permit access to file notings only on socio-economic and developmental matters, minus the names of officers who authored them. Vehement opposition from civil society, the media and MPs of the Left Front forced the government to shelve this proposal. Nevertheless GOI sought from the Assurances Committee 11 extensions for considering the subject of file notings- the latest being in March 2009. CHRI had alerted the RTI fraternity to this danger soon after the last extension was given. Despite several rulings from the Central Information Commission that file notings cannot be excluded from the definition of the term 'information' the DoPT has persisted in its contrarian view. ***GOI's decision on ARC's recommendation makes it clear the RTI Act may be amended to keep some or all 'file notings' and names of their authors out of citizens' reach.***

**Frivolous, vexatious and voluminous information requests:** The ARC had recommended that a new sub-section be added to section 7 of the RTI Act to enable the PIO to refuse within 15 days vexatious and frivolous requests or if voluminous information has been sought. The PIO will be

required to take the prior approval of the appellate authority and keep the relevant Information Commission informed of every such instance of refusal. GOI has accepted most of this recommendation. The requirement of informing the Information Commission has been rejected though. ***GOI may amend the RTI Act to enable a PIO to deny access to information on the ground that an application is frivolous or vexatious.***

The ARC did not suggest any criteria for treating an application as 'frivolous' or 'vexatious'. The so called 'frivolous' and 'vexatious' requests are every public information officer's (PIO) favourite bugbear. PIOs describe a request as vexatious or frivolous if the requestor asks for 'too much' information or 'very old' information (requiring a lot of time to search and locate) or 'embarrassing' information or information in which the applicant has no direct interest. The fact that most such requests are made by serving or former employees of public authorities themselves has been conveniently ignored by both the ARC and GOI. If this amendment goes through public authorities all over the country are likely to use it as an excuse to hide information that will unearth corruption, mismanagement and poor-decision making in order to avoid embarrassment to government. All such requests could potentially be described vexatious and frivolous by unscrupulous PIOs and appellate authorities. Appeals and complaints on this account will increase the existing burden on Information Commissions manifold. In a manner of speaking, the proposed amendment is itself vexatious to the citizen's fundamental right to seek and obtain information from State agencies.

**Expansion of the list of partially excluded organisations:** One of ARC's retrograde recommendations was to add the three defence forces to the list of partially excluded organisations under section 24 of the RTI Act. GOI's response to this recommendation is convoluted to say the least. While GOI states that it has not accepted this recommendation it allows space for the Ministry of Defence to bring a comprehensive proposal for excluding the defence forces from the obligation of being transparent. ***GOI may amend the RTI Act to keep the army, navy and air force out of the purview of the RTI Act.***

This decision reads less like a rejection of the ARC recommendation and more like an invitation to the armed forces to seek exclusion from the RTI Act. A blanket exclusion on bodies or classes of information is anathema to the practice of open, responsible and accountable government. These observations of our Supreme Court made in the 1980s are consigned to the dustbin of history and efforts are on to change the locks on some important doors rendering the 'master key' useless.

**Amending fee payment Rules:** The ARC had recommended that instead of the present system of calculating additional fees on a page by page basis a lumpsum may be collected for a bunch of pages – for example Rs. 5 may be charged for a bunch of 3 pages or so. GOI has accepted this recommendation but this may not require an amendment to the Act as the fee rates are prescribed in the Rules. ***GOI may amend the RTI Rules relating to fees to enable lumpsum payment of fees.*** This appears to be the only positive amendment being contemplated by GOI.

The writing on the wall cannot be any clearer than this. Sooner or later the RTI Act will be amended to incorporate some retrograde measures that will take the sting out of this pathbreaking law. Unless every citizen who has made use of the RTI Act stands up to its defence, few will rush to its rescue. The time has come for all believers in transparency to repay the debt that they owe to RTI- preserve it, protect it and nourish it because we have benefitted from it.

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