

## Proposed Amendments to the RTI Act 2005 – June 19, 2009

Dear Friends,

As you are aware, the UPA government is proposing to amend the RTI Act. An article in the Times of India dated 19 June: (<http://timesofindia.indiatimes.com/India/Proposal-to-exempt-file-notings-may-leave-RTI-toothless/sricleshow/4673325.cms>) outlines some of the provisions that could possibly be amended, which correspond with those discussed in our recent notes on the same. We outline them again below:

### **A) Proposed amendments to exempt file notings:**

**File notings exempt:** If the amendment goes through, file notings will be exempt from disclosure under the RTI Act, apart from those dealing with social and development issues. This means that all file notings that do not relate to social and development issues will be exempt from disclosure.

**Granting anonymity to officers:** Regarding those file notings which can be accessed, another proposed amendment will grant anonymity to officers who made them. This means that citizens will no longer have the right to know the names and designation of the officials who gave their opinions or advice on any matter considered by the government, even after the decision is taken.

**No access to decision-making process:** Another amendment will block any information, legal advice or observation relating to a policy or executive decision which is under consideration. This amendment will deprive citizens' access to information regarding any decision-making process before a formal decision is made.

### ***What is wrong with these amendments?***

a) The RTI Act enables citizens to exercise their fundamental right to access information held by public authorities. RTI is subject to exemptions mentioned in Section 8 of the Act which are by and large in conformity with the list of reasonable restrictions mentioned in the Constitution. By severely limiting access to file notings, the Government will impose an unreasonable restriction on the citizens' fundamental right to information. In effect the Government is asking Parliament to violate the caveat provided in Article 13(2) of the Constitution that no law will be passed by Parliament or State legislatures that will take away or abridge fundamental rights in any manner.

b) These amendments will deliver a severe blow to the very objective of the RTI Act namely, "to hold Governments and their instrumentalities accountable to the governed." Accountability is a key attribute of good governance recognized the world over. It is not adequate for the purpose of entrenching accountability to provide access only to the final decisions of a public authority. People have a right to know the details of the decision-making process including the concurring and dissenting opinions expressed by all officers involved. Transparency in the decision-making process ensures that officials record on files only opinions and recommendations that have a basis in law and established norms and legitimate procedures.

c) It is well known that considerable discretionary powers are vested in the hands of the executive to carry on day-to-day administration. Restrictions on access to file notings and the granting of anonymity to the officers who made them will only encourage unscrupulous and corrupt elements in the administration to act with impunity. Transparency on the other hand will ensure that all officers will give their opinions and act in a responsible manner as they will be subject to public scrutiny.

d) The Government claims that the proposed amendments will allow access to file notings on development and social issues. However in the absence of clear definitions of such terms, these amendments will only increase the discretionary power of officers to deny access to file notings on a majority of issues.

### **B) Proposed amendment to restrict access to cabinet documents:**

Currently citizens have a right to access not only decisions of the Council of Ministers after they are made and the matter is complete, but also the reasons behind the decision and the materials that formed the basis for that decision. Access to Cabinet papers is denied under Section 8(1)(i) of the Act only so long as the decision is pending. The proposed amendment restricts access to cabinet documents, taking away the citizens' right to access the material which forms the basis of a decision of the Council of Ministers. People will be deprived of the right to know what

kinds of materials were considered by the officers suggesting a course of action on any matter that requires cabinet approval.

***What is wrong with this amendment?***

The proposed amendment imposes unreasonable restrictions on the citizens' right to access papers relating to the decisions taken by the Council of Ministers. People have a right to know the final decisions of the Council of Ministers and what is contained in the materials that officials have considered when making a decision. High standards of transparency should apply equally at all levels of decision-making from the lowest to the highest tier.

**C) Proposed amendment to restrict access to exam-related information:**

Another proposed amendment restricts access to exam-related information that may adversely affect the objectivity or fairness of recruitment, examination and evaluation processes.

***What is wrong with this amendment?***

The RTI Act does not currently exempt access to information the disclosure of which may adversely affect the objectivity and fairness of examinations, recruitment and promotion processes conducted by a public authority. Secrecy in examination and selection processes allows bad decisions, favouritism and even nepotism to go unchecked, because examiners and assessors are never required to publicly justify their decisions.

**D) Proposed amendment to hike fees:**

This amendment has been suggested to discourage chronic and motivated information seekers. The suggestion is to increase the current fee of Rs. 10 and make citizens pay the actual salary of the officers working on RTI in addition to the costs of photocopying or otherwise accessing the information sought. It appears that this proposal is based on a recommendation by the Administrative Reforms Commission to deal with vexatious and frivolous requests or where voluminous information is sought.

***What is wrong with this amendment?***

a) When access to documents (other than of A-4/A-3 size) or materials is sought, the only costs currently incurred by the requestor are the costs relating to the reproduction of the information or the supply of sample materials. It is clear from the current RTI rules that there is no empowering provision to require requestors to pay costs relating to the wages of officers, search compilation or other related activities. There is also no provision in Section 27(2) of the RTI Act for making rules that will enable a PIO or any other authority to charge the requestor for wages of officers.

b) India is a country in which more than 80% of citizens survives on less than US\$2 per day. Increasing the application fee or making citizens pay for wages of officers working on RTI will only act as a severe disincentive for people who would otherwise have used the Act to access information. The amendment, if passed, will also be exploited by PIOs and other authorities under the Act in order to discourage people from seeking the disclosure of information relating to wrongdoing or instances of corruption. The primary objectives set out in the Preamble of the RTI Act -to create an informed citizenry, contain corruption and enable people to hold government and its instrumentalities accountable - will be defeated if this amendment goes through. The general rule-making power cannot be used to impose unreasonable burdens or create any disincentives for requestors.

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