

**While we passionately debated the Lokpal Bill, Government of India Introduced Amendments to the Indian RTI Act Quietly Through the Backdoor**

**01 February, 2012**

Dear all,

Even as we tirelessly debated and agitated over the Lokpal Bill and related issues such as grievance redress, whistleblower protection and judicial standards and accountability in 2011, the Government of India very quietly introduced amendments to the *Right to Information Act, 2005*. The Government introduced *The Nuclear Safety Regulatory Authority Bill* (NSRA Bill) in the Lok Sabha in September 2011. This Bill seeks to add a new exemption to Section 8(1) of the RTI Act about nuclear safety matters and recommends the exclusion of an unspecified number of yet-to-be-established nuclear safety agencies from transparency obligations by placing them in Schedule 2 of the RTI Act. Thanks to information received from friends at PRS-India a couple of weeks ago I woke up to the existence of this Bill.

***What is the NSRA Bill all about?***

The Minister of State for Personnel, Public Grievances and Pensions introduced this Bill (attached) in the Lok Sabha in September 2011. The same Minister is responsible for the administration of the RTI Act also.

This Bill is also available at:

[http://164.100.47.5/newcommittee/press\\_release/bill/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/Nuclear%20Safety%2076%20of%202011.pdf](http://164.100.47.5/newcommittee/press_release/bill/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/Nuclear%20Safety%2076%20of%202011.pdf)

The Bill seeks to establish a legal framework for strengthening radiation and nuclear safety in India. According to the statement of objects and reasons attached to the Bill it was drawn up in view of the notorious Fukushima nuclear incident in Japan. The proposed legal framework comprises of a Council of Nuclear Safety (the Council) headed by the Prime Minister, with six ministers from the Central Government, the chair of the Atomic Energy Commission and the Cabinet Secretary serving as members. An unspecified number of experts nominated by the Central Government will also serve on this Council. The Council will be responsible for overseeing and reviewing policies with regard to radiation and nuclear safety matters. The Bill also seeks to establish a Nuclear Safety Regulatory Authority (NSRA) comprising of eminent experts all appointed by the Central Government based on the recommendations of a search committee constituted by the Council. NSRA will be responsible for ensuring that the use of radiation and atomic energy is safe for the health of workers exposed to radiation, members of the public and the environment. The NSRA will have the power to grant or withhold or withdraw consent for certain kinds of nuclear-related activities. Amongst its many functions the NSRA will be responsible for devising and implementing policies and programmes for radiation safety and nuclear safety to ensure that use of atomic energy or radiation in all its applications is safe for, the health of radiation workers and members of public, and the environment. It will also be responsible for ensuring high quality of safety management at all places where nuclear

and radiation related activities are carried out. The NSRA will be tasked with the development and publication of supporting documents for safety in design, siting, construction, commissioning, operation, quality assurance, decommissioning, storage, transportation and other activities related to plants, facilities, nuclear and radioactive wastes, radiation sources and radioactive materials. The NSRA will replace the Atomic Energy Board established under the *Atomic Energy Act, 1962* which has been performing similar functions till date.

**Clause 25 of the Bill seeks to empower the Central Government to exempt any nuclear or radioactive material, facilities, premises and activities from the jurisdiction of the NSRA in the interest of national defence and security.** The Central Government will also be empowered to establish special regulatory bodies for monitoring the safety of such exempted materials, facilities and premises.

***What amendments to the RTI Act have been proposed?***

The NSRA Bill introduces two amendments to the RTI Act. Under Clause 20(2)(c) the NSRA is empowered to ensure transparency by systematic public outreach on matters relating to nuclear safety without disclosing sensitive information and compromising confidentiality of commercially sensitive information of technology holders. Part II of the NSRA Bill which lists out the amendments proposed to various existing laws seeks to add a new exemption under Section 8(1) of the RTI Act exempting the information referred to in Clause 20(2)(c).

Further, any organisation created by the Central Government under Clause 25 for regulating nuclear materials, premises and activities in national defence and security interests will be excluded under Schedule 2 of the RTI Act. Further, Clause 26 prohibits any person from disclosing information relating to the working of organisations created under Clause 25. Clause 40 makes a person disclosing such information liable for punishment- maximum of five years in prison and an unspecified amount of fine.

***What are the implications of these proposed amendments?***

The proposed amendment to Section 8(1) of the RTI Act is superfluous. Section 8(1)(a) of the RTI Act exempts information whose disclosure will prejudicially affect defence, security and scientific interests of the State. So this exemption contains a harm test (albeit weak in nature) but there is no class exemption for matters of defence and security. The NSRA Bill however exempts an entire class of information relating to nuclear safety matters from the purview of the RTI Act under the blanket phrases "sensitive information" and "commercially sensitive information of technology holders". This is entirely undesirable. The existing protection under Section 8(1)(a) is very broad and adequate for the purpose of protecting sensitive information relating to nuclear safety. Further Section 8(1)(d) of the RTI Act also provides very broad and adequate protection for commercially sensitive information of third parties such as technology holders. The phrase "commercial confidence" contained in Section 8(1)(d) is so broad that it covers all such legitimate interests. So there is no real need to introduce a new exemption in the RTI Act through the backdoor. Skeptics may argue that the public interest override contained in Section 8(2) will apply to this exemption as well. It must be

remembered that in *PUCL v Union of India* (AIR 2004 SC1442) the Supreme Court refused to order disclosure of a report of the Atomic Energy Regulatory Board relating to nuclear safety issues even though several paragraphs in the judgement were devoted to the importance of people's right to information. So the new exemption will only add more grounds for refusal of information than create more opportunities for transparency in relation to nuclear safety.

The formulation of the proposed exemption also poses problems. It states that information referred to in Clause 20(2) will be exempt under the RTI Act. In fact Clause 20(2) is also about ensuring transparency about nuclear safety through systematic public outreach. The formulation of the new exemption can be read to prevent almost any information about nuclear safety that the NSRA does not want to give to any person. The exemption provision has not been carefully thought out and worded.

The exclusion of regulatory agencies that have not been established yet is also hugely problematic. Clause 25 does not create any specific regulatory authority per se; it only empowers the Central Government to create such bodies in future to cover areas and entities exempted from the jurisdiction of NSRA. Section 24 of the RTI Act provides for the exclusion of specific organisations that are involved in security and intelligence services. So they must be existing organisations. The regulatory bodies under Clause 25 will become exempt the moment they are established by the Central Government. This is completely in violation of the spirit of transparency and accountability. Nothing will be known to the public about such bodies. Further it is difficult to understand how such organisations can be labelled as intelligence or security organisations. The regulatory bodies simply do not fall within these two categories. **So this is a clear instance of misuse of Section 24 of the RTI Act for protecting bodies that have not even been established.**

Skeptics and nuclear hawks may argue that information about allegations of corruption and human rights violation will still be available under the proviso of Section 24. However a major difficulty is posed by Clause 40 read with Clause 26 which penalises disclosure of information about such bodies to any person. So this provision may be used to prevent disclosure of information to the Central Information Commission. The NSRA legislation being a later law and a special law may render the proviso contained in Section 24 of the RTI Act ineffective.

#### ***What is the current status of the Bill?***

The Bill was referred to the Department-related Standing Committee on Science and Technology, Environment and Forests soon after tabling. The Committee invited comments on the Bill in September itself. The press release issued by the Committee's secretariat is accessible at: <http://164.100.47.5/webcom/MainPage.aspx> Friends at PRS-India say that the Committee has completed its hearings in January 2012 and is working on its report. So the report may be finalised any day before the budget session starts.

#### ***What can we do to prevent negative amendments to the RTI Act?***

There is an urgent need for the entire RTI movement in India to write to the Chairperson and Members of the Parliamentary Standing Committee to reject the amendments proposed to the RTI Act. The list of committee members is given below:

Srno	Member Name	Status	House	Party	State
1	Dr. T. Subbarami Reddy	Chairman	Rajya Sabha	I.N.C.	Andhra Pradesh
2	Dr. Chandan Mitra	Member	Rajya Sabha	Nom.	NOM.
3	Shri Rajiv Pratap Rudy	Member	Rajya Sabha	B.J.P.	BR
4	Shri Jabir Husain	Member	Rajya Sabha	R.J.D.	BR
5	Shri Saman Pathak	Member	Rajya Sabha	C.P.I.(M)	WB
6	Prof. M.S. Swaminathan	Member	Rajya Sabha	Nom.	NOM.
7	Shri Anil H. Lad	Member	Rajya Sabha	I.N.C.	KAR
8	Dr. Barun Mukherji	Member	Rajya Sabha	A.I.F.B.	WB
9	Shri Paul Manoj Pandian	Member	Rajya Sabha	A.I.A.D.M.K.	TN
10	Dr. Rajan Sushant	Member	Lok Sabha	B.J.P.	
11	Shri Pradeep Tamta	Member	Lok Sabha	I.N.C.	
12	Shri Francisco Sardinha	Member	Lok Sabha	I.N.C.	Goa
13	Shri Mansukhbhai D. Vasava	Member	Lok Sabha	B.J.P.	Gujarat
14	Shri Akhilesh Yadav	Member	Lok Sabha	S.P.	Uttar Pradesh
15	Shri Shibu Soren	Member	Lok Sabha	J.M.M.	
16	Prof. Ranjan Prasad Yadav	Member	Lok Sabha	J.D.(U)	
17	Smt. Bijoya Chakravarty	Member	Lok Sabha	B.J.P.	
18	Shri Gajendra Singh Rajukhedi	Member	Lok Sabha	I.N.C.	Madhya Pradesh

19	Shri Jagdish Singh Rana	Member	Lok Sabha	B.S.P.	
20	Shri Ninong Ering	Member	Lok Sabha	I.N.C.	
21	Smt. Kamla Devi Patle	Member	Lok Sabha	B.J.P.	
22	Shri S.S. Ramasubbu	Member	Lok Sabha	I.N.C.	
23	Dr. Anup Kumar Saha	Member	Lok Sabha	C.P.I.(M)	
24 <sup>1</sup>	Shri Kristappa Nimmala	Member	Lok Sabha	T.D.P.	
25	Shri Abdul Rahman	Member	Lok Sabha	D.M.K.	
26	Vacant		Rajya Sabha		-
27	Vacant		Lok Sabha		-
28	Vacant		Lok Sabha		-
29	Vacant		Lok Sabha		-
30	Vacant		Lok Sabha		-
31	Vacant		Lok Sabha		-
<sup>1</sup> Nominated w.e.f. 25/11/2011					

Please use the following para to send an email to the Committee:

***"We the people of India who have been actively using RTI to promote transparency and accountability in government are distressed to learn that the Government of India has proposed amendments to the Right to Information Act, 2005 through The Nuclear Safety Regulatory Authority Bill, 2011. This Bill was tabled in the Lok Sabha in September 2011 and has since been referred to your committee. These amendments are unnecessary in view of the adequate protection for all legitimate interests provided under Section 8(1) of the RTI Act. The exclusion of special nuclear regulatory authorities referred to in Clause 25 even before they***

*are established by the Government is a clear instance of misuse of Section 24 of the RTI Act. Such bodies by their very nature, purpose and functions cannot be categorised as intelligence and security organisations. We urge you to recommend deletion of all clauses that seek to amend the RTI Act.*

## **No Amendments Through the Backdoor : Save Our RTI Act”**

Send your letter/fax/email ([rsc-st@sansad.nic.in](mailto:rsc-st@sansad.nic.in)) addressed to:

*The Chairperson  
Department Related Parliamentary Standing Committee on  
Science, Technology, Environment and Forests  
Rajya Sabha Secretariat,  
Room No. 005, Ground Floor,  
Parliament House Annexe,  
New Delhi-110001.  
Tel.: 011-23034597 Fax: 011-23015585*

## **No Amendments Through the Backdoor : Save Our RTI Act**

Sincerely,  
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