

## DoPT officially confirms again that the RTI Act will be amended August 05, 2009

Dear friends,

Vishal has already posted on Humjanenge a link to the press release issued by the Department of Personnel and Training through the Press Information Bureau about what will be amended in the Right to Information Act and the steps they have taken to improve implementation. I have a few comments on the contents of the press release for your consideration. The text of the press release may be accessed at:

<http://pib.nic.in/release/release.asp?relid=51451>

### **1) Reviewing the Second Schedule:**

In July 2009 the Minister for Personnel had stated in Parliament, in response to a query raised by MPs, that the Second Schedule would be reviewed. Readers will remember that the Government of India has placed 22 intelligence and security organisations on this list. Unlike other public authorities they do not have a general obligation towards transparency except in the context of allegations of human rights violation and corruption. This partial exclusion of notified security and intelligence agencies is provided for under section 24 of the RTI Act. The press release states that the organisations on the list would be reviewed to check whether any should be deleted. The list of organisations is provided below :

<ul style="list-style-type: none"><li>• Intelligence Bureau</li><li>• Directorate of Revenue Intelligence</li><li>• Central Economic Intelligence Bureau</li><li>• Directorate of Enforcement</li><li>• Narcotics Control Bureau</li><li>• Aviation Research Centre</li><li>• Special Frontier Force</li><li>• Border Security Force</li><li>• Central Reserve Police Force</li><li>• Indo-Tibetan Border Police</li><li>• Central Industrial Security Force</li><li>• National Security Guard</li></ul>	<ul style="list-style-type: none"><li>• Special Service Bureau</li><li>• Assam Rifles</li><li>• Sashastra Seema Bal</li><li>• Special Protection Group</li><li>• Defence Research and Development Organisation</li><li>• Border Road Development Organisation</li><li>• Financial Intelligence Unit, India</li><li>• Directorate General Income Tax (Investigation)</li><li>• National Technical Research Organisation</li><li>• National Security Council Secretariat</li></ul>
--	--

It is not clear whether the review exercise will include consideration of requests of public authorities like the defence forces who have sought to be brought under the Second Schedule. **However, the primary question to ask is - whether this review will be done with or without inputs from the people in general.** The Minister for Personnel had assured in Parliament that civil society organisations would be consulted regards amendments to the RTI Act. There is no sign of any public consultation where people's views have been invited. **Civil society organisations and all stakeholders including Information Commissions must be consulted on this issue.**

It must also be pointed out that amending the Second Schedule is not the same as amending any other provision of the RTI Act. Amending the Second schedule can be done

through a gazette notification and then tabling the notification in Parliament. In reality, this is not an amendment of the Act at all. **So this proposal does not actually amount to amending the RTI Act.**

What is more serious is the manner in which section 24 and the Second Schedule has been misused in States like West Bengal, Tamil Nadu and recently Uttar Pradesh. Entire categories of information have been excluded under this section. For example, in 2005 the Government of West Bengal listed topics such as "sanction for prosecution", "verification of antecedents", "preparation of bills and rules" under the Political Branch of the Home Department and "all police reports (except under orders of the Court of Law)" under the Police Branch of the Home Department as being excluded under section 24.

In 2008 the Government of Tamil Nadu excluded the Directorate of Vigilance and Anti-Corruption and the Tamil Nadu State Vigilance Commission stating, "*Of late there has been a tendency on the part of some citizens to ask for a lot of information under the Right to Information Act, 2005. The Government feel [sic] that in vigilance cases giving information at the initial stages, investigation stages and even prosecution stages lead to unnecessary embarrassment and will hamper due process on investigation.*"

More recently the Government of Uttar Pradesh excluded 14 areas completely unrelated to security and intelligence organisations under section 24. Later 9 areas were withdrawn but 5 continue to remain operational, namely, appointment of Governors; appointment of Ministers of various ranks; letters written by the Governor to the President; code of conduct of the ministers and appointment of Judges of High Court. It looks like adequate intelligence about the RTI Act was not available while drafting these notifications. **All these notifications are clearly in violation of the RTI Act. Even though this a matter within the jurisdiction of the States, the DoPT must take a stand against such misuse of the Second Schedule and advise the State Governments to review their respective lists of partially excluded organisations.**

## **2) Adding more topics to the list under section 4(1):**

The press release states that more topics will be added to section 4(1) for ensuring more proactive disclosure by public authorities. This position is a reiteration of what the President of India said in her speech to Parliament in June and what the Minister for Personnel confirmed later in July. Improving proactive disclosure is a welcome move. **However there is no need for amending the RTI Act to do this.**

Sub-clause (xvii) of clause (b) of sub-section (1) of section 4 [4(1)(b) for short] of the RTI Act states as follows:

*"Every Public authority shall*  
X X X X X  
*b) publish within one hundred and twenty days from the enactment of this Act,—*  
X X X X X  
*(xvii) such other information as may be prescribed; and thereafter update these publications every year;"*

This clause was included in the Act in order to allow governments to use the Rules (subordinate legislation) route to increase the number of topics on which proactive disclosure should be made. **When this avenue is available it is difficult to understand why the Act should be amended at all. Opening up the Act for amendment at this stage will be like opening a Pandora's box.**

## **3) Making a provision for setting up benches of Information Commissions:**

The press release states that there is no provision in the RTI Act for setting up benches of the Information Commission to decide upon appeals and complaints. The Act will be amended to enable them to set up benches. Readers will remember some time ago the DoPT had issued an advisory to the Central Information Commission and all State Information Commissions requiring them to decide appeals and complaints in collegium and not in smaller benches as is the current practice. CHRI had critiqued the advisory and members of the RTI fraternity had written to the DoPT to withdraw this circular (click on this link to access the email alert:

[http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/possible\\_amendment\\_of\\_rti\\_act\\_2005\\_email\\_alerts/bending\\_over\\_backwards\\_to\\_%20break\\_rti\\_june\\_29\\_2009.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/possible_amendment_of_rti_act_2005_email_alerts/bending_over_backwards_to_%20break_rti_june_29_2009.pdf)). **Now the DoPT wants to amend the Act to enable Commissions to set up benches. This change in stance regards constitution of benches is welcome.**

However it must be noted that the RTI Act already lays down the basic principle for allowing Commissions to work in smaller benches. Sections 12(7) envisages the setting up of offices of the Central Information Commission in different parts of the country. Surely if offices of the Information Commission can be decentralised they have no choice but to hold hearings in smaller benches. The entire Commission will not be able to meet to decide every case. Similarly section 15(7) envisages setting up of offices of the State Information Commissions in different parts of the respective state. Section 15(7) has been enforced already in places like Maharashtra and Madhya Pradesh. Information Commissioners are not based at the state capital but in some of the divisional headquarters of the State. They are hearing appeals and complaints and issuing orders everyday. **So the Act is not lacking in any manner on the issue of benches. This is a matter to be clarified in the subordinate legislation- namely, the appeals procedure rules.**

There is a parallel available from the higher judiciary. We are all familiar with the single, double, division and constitution benches of the Supreme Court and the High Courts. Article 145(2) of the Indian Constitution states that rules shall be made to provide for the number of judges of the Supreme Court who shall sit for any purpose. Specific rules will be made outlining the powers of a single judge or Division Court. Now here in the Constitution does it say that the Chief Justice shall constitute such benches. The Supreme Court Rules issued in 1966 empower the Chief Justice of India to constitute such benches (click here for the SC Rules: <http://www.supremecourtindia.nic.in/rulespdf.pdf> These Rules were issued with the approval of the President.). The situation is similar in the High Courts.

**If the DoPT wants to clear the air regards setting up of benches of the Central Information Commission, the appropriate thing to do is amend the *Central Information Commission (Appeal Procedure) Rules 2005*. Section 27(2)(e) of the RTI Act contains adequate powers for amending the Rules regards constitution of benches in the Information Commissions around the country. Constituting benches is without a doubt part of the appeals/complaints procedure. There is no need to amend the RTI Act for accomplishing this purpose.**

#### **4) RTI is a flagship programme:**

Please note that the RTI Act has been mentioned on the list of flagship programmes of the Government of India as published on the website of the Press Information Bureau (to access the list click on: [http://pib.nic.in/archieve/flagship/flag\\_faq.asp](http://pib.nic.in/archieve/flagship/flag_faq.asp)) Surely a flagship programme ought to be treated with more care.

#### **What can we do?**

**Please send the following sample email/letter to the Minister Personnel, Pensions and Public Grievances:**

"Dear sir,

The press release issued by your Ministry through the Press Information Bureau on 03 August, 2009 indicates that the *Right to Information Act, 2005* (RTI Act) will be amended in order to make it more effective. We welcome your Ministry's initiative to improve implementation of the RTI Act. We also welcome the sanction of funds to build the capacity of Information Commissions and to promote awareness about the Act amongst people.

However we would like to point out that it is not necessary to amend the RTI Act in order to strengthen its implementation for the following reasons:

- 1) Review of the list of organisations in the Second Schedule:  
This can be accomplished with a gazette notification (subsequently to be tabled in Parliament). It does not require amendment of any provision of the RTI Act.  
We urge you to bring your influence to bear on the State Governments in West Bengal, Tamil Nadu and Uttar Pradesh and such other states to remove all organisations and categories of information that have been brought under the cover of section 24 wherever they do not fit the criteria provided in that section.
- 2) Adding more topics to the list in section 4(1): The power to notify more topics for proactive disclosure in public authorities already exists in sub-clause (xvii) of clause (b) of sub-section (1) of section 4. The list of topics may be added by making the necessary rules for which power is available in subsection (1) of section 27. There is no need to amend the RTI Act for this purpose.
- 3) Constituting smaller benches of Information Commissions:  
This power already exists in the Government of India and the State Governments by virtue of section 12(7) and section 15(7) respectively. This can be accomplished by suitably amending the *Central Information Commission (Appeal Procedure) Rules 2005*. There is no need to amend the RTI Act for this purpose.

We, the citizens of India who are the holders of the fundamental right to information guaranteed by our Constitution, wish to be consulted on all these and other issues related to the implementation of the RTI Act. We urge you to adopt public processes for collecting opinion regards any move to make changes in the RTI Act or in the Rules framed under it.

Thanking you,  
Yours sincerely,

(Name and address of the sender)

**NO AMENDMENTS - LEAVE OUR RTI ACT ALONE "**

Send your email/letter to:

- 1) **Mr. Prithviraj Chavan, Minister of State, Personnel, Public Grievances and Pensions, Government of India.**  
Email: [mos-pp@nic.in](mailto:mos-pp@nic.in) or [chavanprithviraj@sansad.nic.in](mailto:chavanprithviraj@sansad.nic.in)
- 2) **Mr. Rahul Sarin, Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India.**  
Email: [secy\\_mop@nic.in](mailto:secy_mop@nic.in)

Please send us a copy of your email at [venkatesh@humanrightsinitiative.org](mailto:venkatesh@humanrightsinitiative.org). Please circulate this email amongst your networks. Please let us know if you do not wish to receive such emails in future. You can access our previous email alerts at: <http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm>

Thanks

Venkatesh Nayak  
Programme Coordinator  
Access to Information Programme  
Commonwealth Human Rights Initiative  
B-117, 1 Floor, Sarvodaya Enclave  
New Delhi- 110 017  
tel: 91-11- 2686 4678/ 2685 0523  
fax: 91-11- 2686 4688  
website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)  
alternate email: [nayak.venkatesh@gmail.com](mailto:nayak.venkatesh@gmail.com)