

**Improving Implementation of the RTI Act – dodgy response from the Ministry
for Personnel and Training – July 9, 2009**

Dear Friends,

In addition to making the candid statement about amending the Right to Information Act (RTI Act) the Minister for Personnel had something more to say regards its review. Questions raised by two Lok Sabha MPs (Shri Ahir Bhai Vikrambhai and Shri Arjanbhai Maadam) and the answers provided by the Minister on the same day, i.e, July 8, 2009, are reproduced below (scanned copy attached):

Query a) whether any review has been made to assess the working of the RTI Act;

Query b) if so, the details thereof and the outcome thereto;

The Minister's reply to a) and b):- A study has been conducted through an independent organisation to assess the key issues and constraints in implementation of the RTI Act 2005. The study points out that there is inadequate planning by public authorities in regard supply of information; awareness about the Act in rural areas is much less than in urban areas; awareness amongst women is much less than men; the gap in implementation of the Act is because of lack of clear accountability in respect of various functionaries etc. In this regard, the study recommended measures for improving awareness on right to information; improving convenience in filing information requests; improving efficiency of Information Commissions, enhancing accountability of various stakeholders etc.

Query c) whether the general public face undue hardships in getting the information within stipulated time; and

Query d) if so, the mechanism proposed to be developed by the Government in this regard?

The Minister's reply to c) and d):- The Act provides for imposition of penalty on the public information officer in case of delay in supply of information in time. It ensures timely supply of information. The Government has issued various guidelines for different stakeholders which have enabled the information seekers to get information as per provisions of the Act.

Where is the necessity of amending the RTI Act?:

Readers will remember that the Department of Personnel and Training had commissioned PriceWaterhouseCoopers to review the implementation of the RTI Act. It must be pointed out that the findings of the study referred to by the Minister have not been placed in the public domain. All problem areas highlighted by the Minister relate to the implementation of existing provisions. The findings about inadequate planning, lack of accountability of public authorities, poor levels of efficiency in Information Commissions only reiterate what RTI activists and users have been saying since 2006. Inadequate levels of awareness about the RTI Act is a direct result of non-compliance with the obligations under section 26. Awareness is poor in rural areas and amongst women in particular because governments have not even allocated adequate resources for public education in their budgets even though the section 26 says disadvantaged communities must be the focus of the government's public education efforts. Inadequate performance of Information Commissions is due to several reasons. Individuals who are not wedded to the philosophy of open and transparent government are appointed as Commissioners through flawed and secretive processes. People in general and RTI advocates do not have any say in the selection process. Information Commissions are not given adequate staff and resources to function effectively. **Every finding from the government sponsored study points to the poor state of implementation. The RTI Act is not the problem. Absence of political will and commitment to faithfully implement the Act is the main problem. Amending the RTI Act will not solve this problem.**

Dodgy attitude towards improving implementation:

The Minister's response to queries **c)** and **d)** are dodgy to say the least. The query was specific about mechanisms that were being contemplated to end the hardships faced by information requestors. The reply states that penalties will take care of this problem and that guidelines have been issued. The

fact that guidelines have been issued cannot be denied. However the assertion that such guidelines have enabled people to get information as per the provisions of the Act is unjustified in light of the reply given to queries **a)** and **b)**. If guidelines alone were adequate, the government sponsored study should have come up with a more positive picture regards implementation. Nevertheless the findings point to the contrary. The most important demand of RTI users is that penalties are rarely imposed even in the most deserving of cases. Accountability of various stakeholders cannot be achieved by adding more intelligence and security organisations to the list contained in the Second Schedule. **Nor can accountability be enforced solely by the threat of penalties. Along with adequate political will proper planning, resource allocation and regular monitoring mechanisms must be put in place. However some of the useful suggestions of the Second Administrative Reforms Commission (SARC) in this regard have been rejected by the Government.**

“The worth of the Constitution would depend on the worth of the men who work it. Good governance transcending to the level of humane governance is the vision of Constitution of India –policies with country’s interest as paramount and their implementation with honesty and integrity lead to good governance. Public service is a public trust requiring in public men to place nation first and above personal gain”.

(Dr. Rajendra Prasad speaking at the Constituent Assembly session after the Constitution was drafted in 1949)

Replace the term 'Constitution' with 'RTI Act' and Dr. Rajendra Prasad's prophetic words remain as relevant as they were six decades ago.

Given below is a list of important and practical recommendations of SARC rejected by GOI:

Official Secrets Act to stay: The ARC had recommended and rightly so, the repeal of the Official Secrets Act (OSA) and incorporation of some of its anti-espionage provisions in the National Security Act. **GOI has rejected this recommendation on the ground that the offences under the OSA are substantive offences and cannot be placed in what is essentially a preventive detention law.** This argument cannot be flawed but the anti-espionage provisions may be placed in the Indian Penal Code without much difficulty. There is no reason for treating OSA as a treasured heirloom that must be preserved for posterity.

Oath of Secrecy to stay: The ARC had recommended that the oath of secrecy administered to Ministers be replaced with an oath of transparency. **GOI has rejected this recommendation on the ground that Ministers will still be expected to maintain secrets in the RTI era.** So even if Parliament signaled its will to change the underlying paradigm of governance from secrecy to openness by passing the RTI Act GOI wants its Ministers to be sworn to secrecy- the numerous calculated leaks of government information notwithstanding- *praan jaaye par vachan na jaaye*.

Composition of the selection committee for Information Commissions remains unchanged: The ARC had taken note of the monopoly enjoyed by the government on the committee mandated with the selection of members of Information Commissions. It had recommended that the Cabinet Minister on the committee be replaced by the Chief Justice of the Supreme Court at the Central level and the Chief Justice of the respective High Courts at the level of the States. **GOI has rejected this decision stating that the existing arrangements have no infirmity.**

Refusal to end the bureaucratic domination of Information Commissions: A vast majority of Information Commissioners appointed at the Centre and in the States are officers who retired from senior positions in government. Individuals who swore by the OSA were made champions of transparency overnight. Recognising this anomaly, the ARC recommended change in the RTI Rules to ensure that at least 50% of the Commissioners are drawn from fields of expertise outside the bureaucracy. **GOI has rejected this recommendation merely stating that the Act provides for the appointment of eminent persons from different fields of expertise.** Apparently the necessity of giving detailed reasons for a decision of rejection applies only to the domain of PIOs and appellate authorities, and not to GOI as a whole.

Refusal to print suo motu disclosure documents: Recognising the fact that less than 5% people in India are internet literate, the ARC had recommended printing of proactive disclosure documents of public authorities periodically in order to make them easily accessible to people. **GOI has rejected this recommendation on the ground that this would be an expensive affair to be undertaken periodically. Instead public authorities would upload their proactive disclosure documents on the RTI portal set up by GOI.** No mention is made of the fact that the existing disclosures are not

regularly updated on this portal and in any case they are inaccessible to non-english-speaking and internet-illiterate citizens.

Shortchanging records management: Recognising the poor state of management of public records all over India, the ARC had recommended the setting up of a well networked series of public records offices at the Central and state level. It had also recommended setting aside 1% of the budget of flagship programmes of each ministry for this purpose. ***GOI has rejected the 'public records office' idea stating that the Public Records Act and the National Archives would be adequately strengthened for this purpose.*** The fact that the Public Records Act does not cover the States has been conveniently forgotten. ***GOI has rejected the funding idea also on the ground that no separate allocation needs to be made for improving records maintenance, the same could be met under the existing budgetary provisions.*** Behind this rejection there is little realisation of the fact that records management is an area of least concern in several public authorities. The question that begs consideration is how many public authorities take records management seriously to make budgetary provisions for this item of expenditure every year as it is a continuous exercise. The provision about records management found in the RTI Act has only enthused many public authorities to hasten the destruction of records that are past their stipulated lifespan.

Refusal to set up single window system: Based on the strong backing from civil society the ARC had recommended that a single window system manned by Assistant PIOs be set up at the district level for receiving applications from citizens. The obvious purpose was to create convenience for citizens who would otherwise have to go through considerable difficulty identifying the correct PIO. ***GOI has rejected this recommendation stating that complaints would pertain to different areas and time would be lost in distributing them to the relevant offices.*** The possibility of linking up with the State Governments for setting up such facilities has been ignored. The example of Nawanshahr district in Punjab where such a system was functional has been ignored.

Refusal to effectively monitor the implementation of the RTI Act: Recognising that a large number of public authorities function at the regional, state, district and sub-district level the ARC had recommended that a nodal officer be appointed by the relevant Information Commission as a monitoring authority to ensure proper implementation of the RTI Act. ***GOI has rejected this recommendation on the pretext that it may lead to inter-departmental conflict.*** Surely, making the District Collector/Deputy Commissioner's office as a monitoring authority at the district level may not lead to any conflict as they perform a supervisory role on many accounts including the maintenance of law and order. Another good suggestion has been rejected on incredible grounds.

Bureaucrats have not accepted most of the important recommendations that civil society has been advocating for since the inception of the RTI Act.

How then will implementation improve? Amending the RTI Act is not the answer.

Our Slogan: NO AMENDMENTS - LEAVE OUR RTI ACT ALONE.

Thanks,

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p.s. Apologies for cross-posting