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## THE LOSS OF TRANSPARENCY?

**The RTI Act of 2005 made** the government more accountable. But a new set of proposed rules may weaken the law and make it difficult and risky for people to access information

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In 2015, activist Lokesh Batra filed a Right To Information (RTI) application with the Department of Personnel and Training (DoPT) seeking details about the appointment of the next Chief Information Commissioner (CIC). But the DoPT refused to share the information, saying that the process of appointment was still on and the information was part of "cabinet papers," which are exempted from disclosure. "I had in the past too filed RTIs seeking information on the appointment of the CIC and had never been refused before," says Batra. The information was finally given to Batra after he put in an appeal.

Batra's RTI had followed protests and a public interest litigation (PIL) by activists in 2014-15 after the post of Chief Information Commissioner was kept vacant for a long time. "The fact that a government allows the Information Commission to go headless for so long is itself an indication that the government is not very serious about making sure that people are able to access their right to information," says activist Anjali Bhardwaj.

The RTI Act was passed in 2005 and has in the past helped uncover some big scams, such as the Adarsh Housing Scam in Mumbai - where houses meant for war widows and veterans were given to politicians and bureaucrats - irregularities in the 2010 Commonwealth Games and the 2G scam. It has also been used extensively by people as a means to access their basic rights and entitlements. "About six to eight million RTI applications are filed in the country every year," says activist Nikhil Dey.

Bhardwaj agrees. "Our research has shown that the poorest and the most marginalised are the primary users of the RTI," she says. "There is very poor grievance redress mechanism in our country. If someone complains that he or she is not getting ration, pension, or any other basic right and entitlement, nothing happens. In such a situation people have found it useful to file an RTI application."

### A WORRYING CHANGE

But earlier this year the government proposed some changes to the RTI rules, which have caused concern to activists. Once passed, the RTI Rules 2017 will replace the RTI Rules 2012. The proposed rules were put out on the DoPT website for comments from the public.

There are two particularly worrying changes. The first is the provision that proceedings pending before the commission shall abate on the death of the appellant. The second is that the commission may allow an appellant to withdraw an appeal if the matter has not been finally heard or a decision or order not been pronounced by the commission.

Activists feel both these rules make RTI users vulnerable to threats and attacks. "We are using the RTI because there are things we would want to expose. The minute you say you can withdraw, the guy who is affected will be at your throat," says Dey.

### ACTIVISTS UNDER ATTACK

Attacks on RTI users are not rare. In 2015 Guru Prasad Shukla of UP was beaten to death by fellow villagers. He had sought information on development work in his village. Earlier this year activist Suhans Haldankar, who had exposed civic irregularities in Pune, was murdered.

"At least 65 people have lost their lives for seeking information and exposing cor-

**HURDLE PROCEEDINGS PENDING BEFORE THE COMMISSION SHALL ABATE ON THE DEATH OF THE APPELLANT**

ruption since RTI came into force. Many have been attacked," says Dey.

Rolly Shivhare, an activist in Madhya Pradesh says access to information has become more difficult in the state in the last two-three years.

In Delhi, Prakasho, a resident of Jagdamba Camp, filed an RTI application in February this year, after she stopped receiving her widow pension from the women and child development department in October last year. When she received no reply, she filed a first appeal in April. There's been no hearing yet, but after the first appeal was filed, a member of the Satark Nagarik Sangathan (SNS) says, officials of the department came to her house and told her that she should not file RTIs and should just come to the department. They also allegedly videographed the interaction to intimidate her.

Bhardwaj believes that the only way to ensure some safety to applicants is to make the information public in case there is an attack on an applicant or he/she dies. Activist Aruna Roy feels that this needs to be done also because "the intent of the law is that the information being sought is, in any case, public information".

Not just activists, even current serving members of the Central Information Commission are against these proposed rules. M Sridhar Acharyulu, a central information commissioner, in his suggestion to the DoPT on the proposed rules, has said, "If an applicant is killed by a mafia about whom the information was sought, why should it not be disclosed? Will law allow the killing of the applicant, the appeal and the RTI?" He is also of the opinion that the CIC should have been consulted before framing the draft rules.

### INCREASING HURDLES

There are other proposals in the draft rules that make access to information more difficult for common people. For example, the new rules ask for more documents and certificates to be given in support of an appeal. The appeal can be returned if all the documents are not there. "Instead of simplifying the process which was already somewhat cumbersome, they have made the process even more cumbersome," says Bhardwaj.

The pendency of cases at the commission is very high. Appeals often take a long time to be heard. Take the case of Kanso Devi. A resident of Savitri Nagar in Delhi, Devi stopped getting her widow pension from the MCD in August 2014. She first filed a complaint in the department and when she received no response, filed an RTI in May 2015. She is still awaiting a response, say SNS members.

Meanwhile, most people feel, little attempt has been made to introduce positive changes to the RTI rules. Section 4 of

## Decoding RTI trends

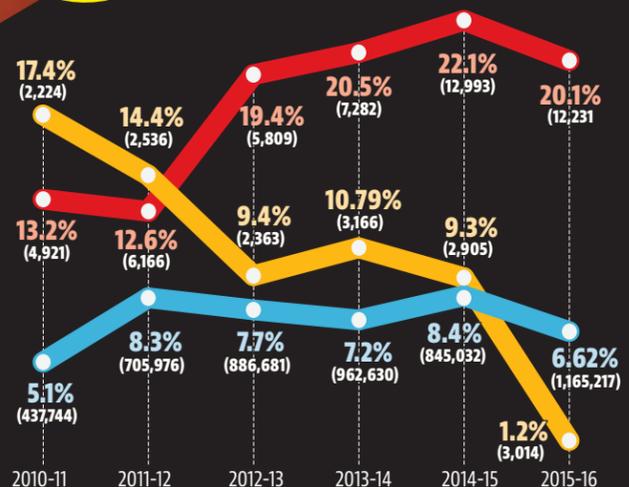
In some central government departments in the last two years, even when the number of RTI applications have gone down, the number of rejections have gone up

**HURDLE THE COMMISSION MAY ALLOW AN APPELLANT TO WITHDRAW AN APPEAL.**

## Percentage of RTI rejection

(in brackets total number of RTIs filed)

- Prime Minister's Office
- President's Secretariat
- Central Government



**45%** is the success rate in terms of accessing information under the RTI Act, according to a 2011-13 study

**67%** of the information being asked for under RTI should have been provided proactively says 2011-13 study

**5%** applicants go for appeal to Information Commissions, says 2011-12 study

SOURCE: CHRI and Research, Assessment and Analysis Group and Satark Nagarik Sangathan studies

ILLUSTRATION: SUDHIR SHETTY

the RTI Act mentions that the government should provide certain kinds of information suo motu. But as Acharyulu writes in his suggestions to the DoPT, "The proposed Rules do not have a single rule that guides the public authorities to comply with this," which he feels will help bring down the number of RTIs.

The one good thing that has been introduced in the proposed rules, feels Bhardwaj is that it addresses the issue of non-compliance of orders of the Commission - a problem which activists say is widespread. But the problems with the draft rules outweigh the positives.

### LOOKING BACK

This is not the first time that changes have been proposed to the RTI Act or its rules. The UPA which had brought in the RTI Act had made at least three subsequent attempts to change it. There were also incidents of threats and attacks on activists under its regime and cases of

delayed response or unsatisfactory information. "When it comes to secrecy, every government would like to disclose as little as possible," says Venkatesh Nayak, programme coordinator of the Access to Information Programme in the Commonwealth Human Rights Initiative (CHRI). "But under the UPA, the good thing was that there was the National Advisory Council, which had a lot of supporters of transparency, advising the government."

Nayak says that in the last two years, in some government department, even when the number of RTIs received has gone down, the number of rejections have gone up. He says that while the Lok Sabha and Rajya Sabha secretariats, external affairs ministry and information technology are prompt in their RTI replies, the home and defence ministries are very slow.

"The UPA, at least in the end, had become a completely open government, there was no fear, you could discuss stuff. Here there is so much fear, people don't talk, they have been told not to talk to the media, to activists," says Dey. "Through

the RTI we were looking to bring in a culture of openness. The worst part of the NDA now is the culture of secrecy, fear, not sharing."

Then there are allegations of frivolous RTIs, says Bhardwaj, under the UPA and now. She gives the example of a tweet by minister of state for home Kiren Rijiju where he mentioned an RTI application asking about zombie attacks.

"Most RTI applications are serious in nature. So for a minister to tweet or write about that one RTI application is a problem," she says.

Meanwhile, an officer in the DoPT has confirmed that they have received suggestions from the public and are considering them. "Once the final draft has been drawn, it will be sent to the minister," he said. He did not give a date by which one may expect the final rules.

Till the final list is announced there is little that one can do except wait, and hope that the new rules are not such that will make access to information even more challenging than it already is.

## "AN RTI ACTIVIST IS ALWAYS VULNERABLE"

Intimidation of activists, or attempts thereof, can take many forms. It can go beyond physical and verbal abuse, to include legal harassment - as activist Nikhil Dey and his companions recently found out. It was 1998. The RTI Act was yet to be passed, but in Rajasthan, the Panchayati Raj had been amended, remembers Dey, and it was said that people could get copies of official records and documents.

Dey, along with Naurti Devi and three others, were seeking information from the sarpanch of Harmara village regarding complaints of irregularities in development work.

The allegations against the sarpanch, a liquor contractor of the village, included payments for toilets, Indira Awaas houses, and labour payments for development works, that had not been made to the beneficiaries. The activists went more than 70 times to meet the sarpanch at his office, but he was not there. Finally, they got orders from the collector and the block development officer (BDO) directing the sarpanch to show the records. They went to hand over the order to the sarpanch at his house. But, the activists say, they were attacked by the sarpanch and



his brothers, who were worried (if they had given the records they were likely to have been caught). They shoved and pushed the activists and threatened them with dire consequences if they persisted. Dey and the others then went and met activist Aruna Roy who was in a nearby village.

Activist Nikhil Dey in Jaipur. Dey and four others were recently sentenced to four months in prison in a 19-year-old case and have appealed against it.

HIMANSHU VYAS/HT PHOTO

They discussed what to do and Roy wrote to the SP, the collector and the chief secretary, informing them about the incident and requesting information. A team from the Public Union for Civil Liberties (PULC) came to record the incident. They did a fact finding and the sarpanch finally gave the papers. But he also filed an FIR against Dey and the others, alleging that they had assaulted him and his family members.

A few months later, final reports were filed in the case and the activists felt the case had been closed. But a few years later the sarpanch got the case reopened in court. The

activists found out when they got summons from court. They weren't too worried since they thought they would be able to put out their side of the story. But the case dragged on. Dey had asked for exemption from personal appearance, but the others continued to appear in court. The court refused to see it as an RTI kind of case. The activists filed an appeal at the Information Commission. But last month the Munsif Magistrate court in Kishangarh convicted the five under sections 323 (voluntarily causing hurt) and 451 (trespass in order to commit an offence punishable with imprisonment) of the Indian Penal Code, and sentenced them to four months imprisonment. The activists have appealed against the conviction. But as Aruna Roy says, "It sends out a warning to other information seekers on what can happen if you ask questions."

Case details told to Poulomi Banerjee by Nikhil Dey

THE BIG STORY