Alarm bells ringing for RTI

A recent Supreme Court judgment and Prime Minister Manmohan Singh's openly expressed views in favour of privacy have raised concerns that attempts are being made to dilute the spirit of the RTI Act and limit its use. Aruna Roy and Nihal Dey, the RTI movement's leading lights, share their worries with Vidyasubramanium.

Seven years after its enactment, has the RTI Act even partially fulfilled its objectives? Has it been empowering for the common people?

The RTI Act has had, and continues to have, a significant positive impact on democratic governance in India. This is because the Act has been owned by the common people. The prime mover of the Act is the ordinary person.

The Act has, in one stroke, delegitimized the norms of secrecy imposed by a colonial and feudal past with its continued legacy in independent India. Equally significant has been its capacity to empower those who use it by changing power relationships between the ruling classes and citizens. Today it has become the most important means by which ordinary people can fight corruption and the arbitrary use of power. While there are obvious shortcomings in the Act and its implementation—a fundamental transformation from a culture of secrecy to one of complete openness is still a long way off—nevertheless, in its short history, this Act has built the basic architecture of a transparent regime.

What are your views on the Prime Minister's speech at the recent convention of the Central Information Commission?

The RTI Act needs all the support it can get. Yet, it is unfortunate that the Prime Minister repeatedly speaks of irritants when these have been addressed and allayed several times. At a time when its detractors are looking for helpful signals to dilute the Act, we had hoped Dr. Singh would celebrate the Act as an achievement and promise stronger implementation towards building a transparent and accountable democracy.

Dr. Singh raised three specific issues: frivolous and vexatious applications, privacy, and exclusion of public-private partnerships (PPP).

While the Prime Minister did mention in passing that the RTI has strengthened democracy, the focus was on areas of concern. There have been attempts, primarily through amendments to rules, to keep out "frivolous and vexatious" applications. Since neither can be objectively defined, any such amendment will result in huge rejection, affecting mostly the poor and the marginalized. This issue has been repeatedly deliberated. The Department of Personnel and Training dropped the amendment move after its website was flooded by adverse comments.

The National Advisory Committee has rejected the amendments. However, the Prime Minister continues to raise the same issue over and over.

The law has adequate provisions under Section 8 to reject applications that are not legitimate and Dr. Singh does not qualify why the exemption for privacy under section 8(2) is inadequate to protect personal privacy.

Not has the government laid out those cases in which personal privacy has been infringed because of the RTI Act. The Prime Minister referred to Justice A.P. Shah's report on privacy. However, it is our information that this report has recommended that any privacy law should be in harmony with, and subject to, the RTI regime.

As for excluding the PPPs, this is absolutely unacceptable, as more and more essential public services are being outsourced to the private sector. In such cases, they should be held to a higher standard of transparency as the private sector can easily escape the accountability provisions of the public sector. In fact, many ordinary people see the PPP as the play by the government to escape its responsibilities and accountability.

IMPEDDIMENT: Judicial procedures will usher in a judicial mindset. While this may be very important in administering justice in criminal or civil law, it may defeat the quick and effective delivery of information. Right Aruna Roy and Nihal Dey.

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The Supreme Court, in a recent judgment, has mandated two Commissioner Information Commission benches with the additional caveat that one commissioner must be a judge or judicial officer.

There is no doubt that there were many legitimate complaints about the functioning of the Information Commissioners and Commissioners. The appointment process is certainly opaque and non-transparent. To begin with, the government has a 2:1 majority in the selection committee which enables it to push through a nominee of its choice. Second, while the spirit of the Act calls for commissioners across sectors, the majority of commissioners appointed have been bureaucrats. The RTI campaign had suggested that a nominee of the Chief Justice be on the appointment committee along with the Prime Minister and the Leader of the Opposition.

The RTI law does not prescribe a process of appointment. Nor has the government framed rules to address the issue. So, it would have been of great value if the court had rectified the defect by suggesting or mandating a transparent and consultative process. This was a great opportunity before the court. But the solution it has offered only creates more problems. A big problem with the commissions was mounting pendency and delays. This judgment will have the immediate effect of at least doubling this delay. Another problem was the absence of standards and norms and the judgment has failed to address that lacuna.

Our Information is that work has halted in a number of State commissions.

Work has halted in many commissions, including in the Information Commission of Rajasthan, where we live. If the Supreme Court's orders are followed, all commissions may have to stop work. The Central government has filed a review petition, and the State governments are disinclined to begin the process of selecting individuals with judicial backgrounds. Chaos prevails.

If the commissions become courts of sorts, isn't there a danger that the common RTI user will be forced to hire lawyers to argue his case which will defeat the purpose of the Act? Won't the stress on judicial adjudication undermine the process of information delivery which must be quick in order to be effective?

The commission was designed to be citizen-friendly. Judicial procedures will usher in a judicial mindset. While this may be important in administering justice in criminal or civil law, it may defeat the quick and effective delivery of information. The use of information who can hire lawyers will benefit, and the ordinary will be placed at a disadvantage.

Dr. Singh's speech and the court judgment have the privacy concern in common. The running thread in the judgment is that privacy must be protected. It emphasizes the exceptions under section 8 of the Act and says only a judicially-mind type of discretion can decide when "information ought not be disclosed." So, from a situation of not getting enough information are we going towards a situation where information will be routinely denied?

That is certainly a very troubling aspect of this judgment. The emphasis seems to be on the "exceptions." The RTI Act has a clear presumption towards disclosure, and even the exemptions contain a proviso of a public interest override.

Actually only about five per cent of the cases go up in appeal to the commissions. But, the commissions set the tone for compliance. This judgment could pass a message not only to information commissioners, but also to Public Information Officers that a more liberal use of the exemptions under the Act would be permissible.

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