3 August 2006

NCPRI

Press Release with detailed analysis of amendments

The proposed amendments to the RTI act (annexed), as reportedly approved by the Union Cabinet, seek to exclude **most "file notings"** from the purview of the RTI act (proposed amendment of section 2(i) of the RTI Act).

These amendments also propose to **remove access to the "material** on the basis of which" decisions were taken by the Council of Ministers. This, in effect, takes away the current access to the cabinet note, even after the decision has been taken and the matter is over (amendment to section 8(1)(i) of the RTI Act).

The amendments further propose to **withdraw the current access to the identities** of those who have recorded notings, made inspection, gave recommendations or otherwise tendered advice or opinion, even for those matters where access to notings is allowed, specifically for development and social issues (insertion of sub-clause k under section 8(1)).

It is also proposed to **exempt all information related to "a process of any examination**" conducted by any public authority (insertion of sub-clause l under section 8(1)). By the same insertion, it is also intended to exempt from disclosure all information pertaining to **"assessments or evaluation" made for the purpose of "judging the suitability of any person for appointment or promotion to any post** or **admission to any course** or any other such purpose…."

The amendments further seek to take away **access to all documents and records, not just notings**, which contain any "legal advice, opinion, observation or recommendation…. during the decision making process prior to the executive decision or policy formulation" (insertion of sub-clause m under section 8(1)).

Finally, by insertion of sub-section 6 in section 18 of the RTI Act, the amendments **take away the independence of the Information Commissions** and lay down that the final decision on all complaints to the Information Commissions, after they have been enquired into by the Information Commission, would lie with the state or central government (as appropriate), and that the decision of this government "shall be final".

Despite the fact that section 4(1) (c) of the RTI act lays an unambiguous obligation on the government to, suo moto, " publish all relevant facts while formulating important policies or announcing the decisions which affect public;", the people of India who are the affected parties were not taken into confidence about what has prompted the government to take this drastic and retrograde step just months after the act became operational. What great crisis occurred that needed such a sudden and secret response. Surely there were other less crippling ways of dealing with any legitimate objections that may have been raised.

## PROPSED AMENDMENTS, THEIR IMPLICATIONs AND SIGNIFICANCE

| Proposed Amendment | Implication | Significance |
|---|---|---|
| 1. Exclude "file noting except substantial file notings on plans, schemes, programmes of the Central Government or a State Government …. That relate to development and social issues." ((Section 2(1)(d)). | In effect, if this amendments comes through, then only a vaguely defined category of "substantive file notings" may be made accessible "on plans, schemes, programmes and projects of the Government that relate to development and social issues". It would clearly allow refusal if the file notings were not considered substantive (whatever that means) or were considered to be dealing with matters other than "plans, schemes, programmes and projects", or were not related to "social or development issues". | • This, then, would unquestionably be a very significant weakening of the RTI act. Without access to file notings, there is no real transparency. The public usually knows what decision the government has taken. What the file notings show is the basis on which this decision has been taken. Obviously, decisions of the government cannot be evaluated unless one knows the basis on which they were taken and the options that were considered and rejected. Surely, in a democracy, all decisions of the government (except the sensitive ones which are already protected under section 8) must be able to stand up to public scrutiny.<br><br>• The oft-repeated argument (3(d) and (e) of the Press Statement) that public access to file notings would pressurise officials against expressing their views frankly, is a seriously flawed one. The pressure to give dishonest or wrong advice, or advice that is not in keeping with public interest or the law, comes not from the public but from bureaucratic and political bosses, who already have access to file notings without needing the RTI act. Once file notings are accessible to the public, a civil servant will have only one dilemma, whether to write in a way that pleases his or her bosses, or in a way that is legally correct and in public interest, where these two do not coincide.<br><br>• In fact, disclosure of file notings would help ensure that officers are not pressurised into recording notes that are not in public interest. This would strengthen the hands of the honest and conscientious officers and expose the dishonest and self serving ones.<br><br>• Disclosure of file notings will also ensure that decisions are based on reasonable grounds and are not arbitrary or self-serving. It would deter unscrupulous administrative and/or political bosses from overruling their subordinates and taking decisions that have no basis in law or are against public interest. |

| | | |
|---|---|---|
| | | • If access to file notings is denied, then the public will have no way to authenticate the information regarding the reasons and basis for decisions being taken by the government, no way to get details of the basis and no access to contrary views expressed and the why they were overruled.<br><br>• The exclusion of notings from the purview of the RTI Act would also be contrary to the recommendation of the National Advisory Council, which has clearly taken the position that file notings are an integral part of a file and of the decision making process, and should therefore be as much in the public domain as any other information covered by the RTI law. This exlusion has also been opposed by the Administrative Reforms Commission, in its recent report submitted to the government. |
| 2. Remove access to the "material on the basis of which" decisions were taken by the Council of Ministers. (amendment to section 8(1)(i) of the RTI Act). | This, in effect, takes away the current access to the cabinet note, even after the decision has been taken and the matter is over. This means that the public would never know what material was put up to the cabinet for making decision, whether this was factually correct, whether it was comprehensive and whether the decision was actually taken on the basis of the material put up. | The current debate over the proposed amendments to the RTI act are a good example tyo illustrate the pitfalls of making the material inaccessible to the public. The government has been consistently arguing that what they are doing is actually 'strengthening the act'. The evidence proves beyond doubt that this is not so. However, if the cabinet note prepared by the bureaucrats had also presented the amendments to the cabinet as "a strengthening of the act", many cabinet members might have supported it in this wrong belief. And that is why access to the cabinet note is crucial and its denial would allow decisions to be taken without correct information and advice. |
| 3. Withdraw the current access to the identities of those who have recorded notings, made inspection, gave | This means that, though, for some matters, we might get copies of file notings, we will never get the identities | Without knowing who has made the file notings, there would be no accountability in the government. For, then, the civil servants could continue to give illegal or self-serving advice, secure in the knowledge that their identities are protected.<br>Besides, there is no deterrence to giving sloppy, dishonest or motivated advice or |

| | | |
|---|---|---|
| recommendations or otherwise tendered advice or opinion, even for those matters where access to notings is allowed, specifically for development and social issues (insertion of sub-clause k under section 8(1) | of the people who made these notings or made inspections or tendered advice, etc. | recommendations, or coming up with unjust findings, if identities of the concerned people would be totally protected. |
| 4. Exempt all information related to "a process of any examination" | This would mean that even after exams are over we could not get access to our own corrected examination papers in order to verify that we had been properly evaluated. | Cases of unfair evaluation, or corrupt and incompetent practices, are common in examinations. Why should the people of India not have the right to monitor these.<br>However, the sanctity of the examination process must be protected and access to examination question papers and identities of examiners and examinees could be restricted. |
| 5. Exempt from disclosure all information pertaining to "assessments or evaluation" made for the purpose of "judging the suitability of any person for appointment or promotion to any post or admission to any course or any other such purpose…." | This means that we would never have access to any information about postings, transfers or promotions of officials. We could also not access information needed to assess the fairness of any selection process. | There is no justification for exempting information on personnel related matters. The transfers, postings, disciplinary proceedings, suspensions, and promotions of government servants play a critical role in governance. It is well known that there is a lot of corruption and extraneous influence in such matters in most governments, which is having a very deleterious effect on governance. Honest officers are often victimized by posting them on superfluous jobs or sending them on what are called punishment postings. Corrupt officers are often rewarded with plum postings and postings on crucial positions. It is well known that many ministers have fixed the quantum of bribes for postings and transfer of officers of departments like police, excise, Income Tax etc. In Maharashtra, it was discovered in response to an application under the RTI Act that the postings of most police officers were on the requests and recommendations of M.P.'s and ministers. By far, the most effective way of checking such arbitrariness and extraneous influence in such personnel related matters is by having complete transparency in such matters, so that people can see not just the final decision (which is always said to be on exigencies of service), but also the rationale and the entire decision making process which culminated in the final decision.<br><br>It is often said that such disclosure of information related to personnel matters would |

| | | |
|---|---|---|
| | | inhibit officers from expressing themselves freely and frankly. The truth however is, as pointed out by Justice Bhagwati in S.P. Gupta's case, that no honest officer is likely to be inhibited from frankly expressing himself for fear that what he writes may one day see the light of day. It is only the dishonest officer wanting to write something dishonest who is likely to be deterred by such transparency. In fact such transparency would act as a shield for an honest officer who is less likely to be victimized by a dishonest boss, since the people would at least be able to see what was happening. |
| 6. Seeks to take away access to all documents and records, not just notings, which contain any "legal advice, opinion, observation or recommendation…. during the decision making process prior to the executive decision or policy formulation" (insertion of sub-clause m under section 8(1)). | This, in effect means, that no information can be accessed (not just file notings) as long as the matter is "under process or consideration". | This amendment would put to an end to the access to almost all contemporary information. We would no longer be able to ask about delays or, in any case about any matter which is perpetually under process – as most matters will tend to be, if this amendment comes through. |
| 7. Take away the independence of the Information Commissions and lay down that the final decision on all complaints to the Information Commissions, after they have been enquired into by the Information Commission, would lie with the state or central government (as appropriate), and that the decision of this government "shall be final". | This means that the final decision on all complaints relating to 1. Refusal to accept forms, 2. refusal of information, 3. delay, 4. excessive fee, 5. incomplete, misleading or false information, 6. or any other matter, will be taken by the government and not the information commission. | This will not only finish the independence of the Information Commissions but will also effectively finish the penalty proviusions of the RTI act. |