

Muzzling information

The Right to Information (RTI) Act, 2005, has empowered millions of Indians to question governments and hold public functionaries accountable. Of the nearly six million RTI applications filed every year in the country, a large proportion are by the poorest and the most marginalised who seek information about their basic rights and entitlements, like rations, pensions and health facilities. The use of the law has not been limited to accessing information about delivery of basic services, however. The RTI Act has been used extensively by citizens to question the highest offices in the country — from the educational qualifications of the Prime Minister and assets of public servants to human rights violations and false claims made by government functionaries — and seek answers from them.

It is not surprising, therefore, that the RTI law has frequently faced a backlash from powerful vested interests. The latest attack on the legislation is the proposal of the BJP-led National Democratic Alliance government to amend it.

In complete contravention of the pre-legislative consultation policy, the government has drafted a bill to amend the RTI Act. The proposed amendment bill, which was brought in surreptitiously, seeks to destroy the independence of Information Commissions — the final adjudicators under the law.

The RTI Act fixes the tenure of information commissioners at five years, subject to the retirement age of 65 years. Further, Sections 13 and 15 of the law state that the salaries, allowances and other terms of service of the Chief of the Central Information Commission shall be the same as that of the Chief Election Commissioner. Those of the Central Information Commissioners and State Chief Commissioners will be on par with Election Commissioners. The Chief and other Election Commissioners are paid a salary equal to the salary of a judge of the Supreme Court, which is decided by Parliament.

The amendments seek to empower the Central government to decide the tenure, salaries, allowances and other terms of service of all Information Commissioners in the country. The rationale provided for undertaking this step is that treating Information Commissioners on par with functionaries of the Election Commission is incorrect, as the latter is a constitutional body while Information Commissions are statutory bodies.

This contention is inherently flawed. The principle of statutorily securing tenure, and protecting the terms of service by equating it to functionaries of constitutional bodies, is routinely adopted to ensure independent functioning of statutory oversight institutions like the Central Vigilance Commission and the Lokpal. The fixed tenure and high status conferred on Commissioners under the RTI Act is to empower them to carry out their functions autonomously, without fear or favour, and direct even the highest offices to comply with the provisions of the law.

Empowering the Central government to decide the tenure and salaries of Information Commissioners is a clear attempt to undermine their independence and to effectively make Commissions function like regular government departments.

The BJP came to power on the plank of anti-corruption. The last four years, however, have witnessed repeated attempts to undermine the RTI Act.

The selection committee for the appointment of Central Information Commissioners is headed by the Prime Minister. Since May 2014, not a single Commissioner of the Central Information Commission has been appointed without citizens having to approach courts. It was without a chief

for 10 months. The RTI Amendment Bill comes at a time when the Supreme Court has issued notice to the government for failing to fill vacancies in the Commission. Out of a total sanctioned strength of 11 Commissioners, there are currently four vacancies and four more are due to arise in 2018, including that of the chief. Failure to make timely appointments is leading to huge backlogs of appeals and complaints resulting in inordinate delays in the Commission, which render the law meaningless for citizens.

The latest move to furtively subvert the RTI Act exposes the real intent of the BJP government – to not allow public scrutiny of its actions. In the face of overwhelming public and political opposition to the bill, the government has deferred its introduction in Parliament for the moment. But whether the will of the people prevails and the RTI law, which safeguards peoples' fundamental right to information, is immunised this time from legislative challenge remains to be seen.

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