

# India: Don't block information

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One would think that a report on the right to information by the Administrative Reforms Commission (ARC), coming out about a year after the Right to Information (RTI) Act was passed, would make recommendations to strengthen the Act.

However, a close look at the report recently submitted to the government reveals that at least three of the recommendations threaten to fundamentally undermine the RTI Act.

The first of these is the recommendation that a public information officer (PIO) should be allowed to refuse a request for information if that is manifestly frivolous or vexatious.

The ARC states that certain instances have been brought to their notice of requests that are mala fide and intimidate, harass and even humiliate officials.

However, the ARC neither gives any specific examples, nor does it go on to explain how the truth can be used for mala fide purposes (what-ever that might mean), or for intimidating, harassing or humiliating an officer.

The ARC lays down no criteria for determining what is manifestly frivolous and/or vexatious, perhaps because these terms are essentially subjective.

For instance, an officer who deals with millions of rupees, might find a dispute over Rs 10 of wages to be frivolous, but to a poor, daily-wage labourer these Rs 10 could represent two kilograms of wheat and the difference between her child living or dying.

The same is true of the term 'vexatious'. Any request questioning the judgment, the efficiency, the impartiality, the commitment or the integrity of a bureaucrat could be considered vexatious.

The right to ask vexatious questions is the essence of the RTI Act, and flows from the fundamental right of the public to question the public servant. If accepted, this recommended clause would lead to most applications being rejected as frivolous or vexatious.

The recommended automatic appeal to the information commission is no solution, for it would just add to the growing backlog of appeals pending before these commissions.

In the absence of penalties, there would be little incentive for PIOs to act responsibly. Besides, even if information commissions decentralise, as recommended by the ARC, the poor and the illiterate would find it difficult to attend hearings or send written submissions to support their applications.

The ARC also recommends that information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

As justification, ARC states that there may be cases where the efforts in compiling information may not be commensurate with the results achieved. Nowhere in the RTI Act is there any obligation on a public authority to compile information, or collect primary information.

The obligation is simply to provide information that is collected, or should have been collected. In fact, Section 7(9) of the RTI Act further clarifies that "An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority".

ARC surprisingly recommends that armed forces should be excluded from the purview of the RTI Act, because most of their functioning is already exempt on security grounds.

However, this is no reason why the rest of their functioning should not be brought under public scrutiny. Security agencies have many employees; they make decisions which impact the lives of people, affect the environment, spend public money, award contracts and make purchases.

Why should citizens be denied access to information about these matters? In fact, the blanket exemptions for all agencies currently listed under Schedule II should be withdrawn.

The exemptions provided in the RTI Act are adequate to safeguard national interest. Perhaps these faulty recommendations might never have been made if the ARC had functioned in a participatory and consultative manner.

Interestingly, the recommendations of the one consultation that the ARC reportedly organised at Bhopal in December 2005 have been totally ignored.

The Bhopal meet recommended that the RTI Act should not be amended, and exemptions do not need rationalisation. Nevertheless, the ARC went ahead and did the contrary.

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**P.S.**

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\* Shekhar Singh is convenor, National Campaign for People's Right to Information.