

## Right to Information

### SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the Universal Periodic Review Process-II, the Government of India accepted only one recommendation out of the four on the Right to Information Act and Corruption. The recommendation accepted in revised form was to “ensure a safe working environment for journalists”. The Government did not accept the recommendations that called for strengthening the State's response to complaints of corruption based on increased transparency and accountability; strengthening the judicial system and reforming the law enforcement agencies and reducing the level of crime and corruption; and ensuring that measures limiting freedom of expression on the internet are based on clearly defined criteria in accordance with international human rights standard.

Since 2013, at least 17 journalists were reported murdered in the line of duty (Data from World Press Freedom Index & CPJ). There is no comprehensive law for protecting journalists or whistleblowers who expose corruption and wrong doing in government.

Nevertheless, the twin laws guaranteeing people access to information from governments, are being used by citizens frequently to unearth petty and large scale corruption and mismanagement of public funds. The print and electronic media report extensively on these efforts which are realising the primary objectives of the RTI Act, namely, ensuring greater accountability in the working of public authorities and the containment of corruption.

### NATIONAL LEGAL FRAMEWORK

In 2005, Parliament enacted the Right to Information Act to give effect to the fundamental rights of citizens to seek and receive information from governments, local authorities, public sector enterprises including banks and non-governmental organisations owned controlled or substantially financed by governments. Jammu and Kashmir enacted a similar law guaranteeing access to information to residents from public authorities under that State Government.

Under these rights to information (RTI) laws, all public authorities have designated officers to receive and dispose information requests from citizens including journalists and internal appellate authorities to resolve disputes relating to refusal of or delayed access to information. Information Commissions have been established in the States and at

the Central level as autonomous authorities to resolve information access disputes between citizens and public authorities. The twin RTI laws require public authorities to place a wealth of information about their activities, budgets and spending and decision-making processes proactively in the public domain in addition to processing formal requests for information from the citizenry.

In addition to the RTI laws, since 2011, the Government is implementing the National Data Sharing and Accessibility Policy (Open Data Policy). Various Central and State-level ministries and departments have uploaded several numerical and statistical datasets generated or collected in the course of their work, on a publicly accessible Open Data Portal.

### CHALLENGES

Lack of adequate security for citizens using RTI laws to expose corruption and wrongdoing in government

Lack of transparency of official data regarding attacks on RTI users and journalists

Poor awareness levels about RTI laws amongst the citizenry

Retired bureaucrats appointed in large numbers at the Information Commissions

### ISSUES AND IMPACTS

Since 2013, 23 citizens were reported murdered, 51 assaulted and at least 19 others harassed or threatened for using the RTI laws to expose corruption and malgovernance. The Human Rights Commissions (HRCs) at the national and State levels take cognizance of such instances as attacks on human rights defenders and order inquiries into the incidents. However, the poor quality of investigations, often conducted by the local police in which the attacks occurred hamper progress in these cases. The HRCs close these complaint cases soon after the prosecution of the accused begins causing tardiness in the criminal trials which often result in acquittals.

The Constitutional Courts have ruled in favour of maintaining confidentiality of the contact details of the information requestors or legitimising information seeking by groups of citizens acting in solidarity as preventative measures. Information Commissions have ruled in favour of more and more proactive disclosure of information in order to reduce citizens' need for seeking information under the RTI laws formally.

Since 2014, the National Crime Records Bureau of India has begun collecting statistical information about attacks on citizens seeking information under the RTI laws and professional journalists in the line of duty. However, this data is not being placed in the public domain proactively despite civil society demands for transparency.

Despite an average of 5 - 5.5 million information requests per year being submitted by citizens to various public authorities across the country, less than 1% of the total population takes recourse to the RTI laws for obtaining information from the public authorities. Governments have not made adequate efforts to discharge their statutory obligations to develop programmes for spreading awareness about the procedures for seeking information under the twin RTI laws.

In 2013, the Supreme Court of India directed the governments to make special efforts to select eminent citizens with specialisation in the fields of science, technology, management, social service, journalism and mass communication and law and governance, as required by the twin RTI laws. According to recent studies, 90% of the Information Commissions are headed by retired government servants. More than 60% of the members of the Information Commissions are selected from among retired bureaucrats. As a result, penalties are rarely imposed on errant officers for contraventions of the twin RTI laws and public authorities have taken undue advantage.

## CHALLENGES

Retrograde amendments to laws for combatting corruption and protecting Whistleblowers and lack of progress in anti-corruption legislation required for India's compliance with the UN Convention Against Corruption

Poor rates of registration of citizens' complaints about corruption in government and fewer convictions of accused public servants

## ISSUES AND IMPACTS

Parliament enacted a law in 2014 to protect Whistleblowers, including journalists if they make complaints of corruption or wrongdoing in government to the authorities specified in that law. However, this law does not protect whistleblowing through the media. Although the Supreme Court recognised whistleblowing through the media if internal mechanisms for considering such complaints fail or are inactive, the Government has not inserted enabling provisions in the whistle-blower protection law.

In 2015, instead of implementing this law as adopted by Parliament, the Government introduced amendments to remove immunity for all Whistleblowers from prosecution under the Official Secrets Act. Other amendments are aimed at prohibiting whistleblowing on grounds such as national security, foreign relations, trade secrets and other intellectual property rights, ongoing criminal trial, contempt of courts and even privacy of individuals.

The Lokpal and Lokayuktas Act intended to set up adequately empowered corruption investigation agencies has not been implemented since 2013. Bills to prevent bribery of foreign officials; facilitate complaints of corruption or misbehaviour against members of the High Courts and the Supreme Court lapsed after the general elections to Parliament. They have not been revived by the present Government despite being elected to power in 2014. The amendments proposed to the Prevention of Corruption Act, 1988 to make collusive bribery and bribery indulged in by private entities, punishable have languished in Parliament since 2013.

Transparency International ranked India 76th in the corruption perceptions index in 2015, indicating very low level of public confidence in the ability of anti-corruption mechanisms to deal with complaints of graft and punish the corrupt. According to official figures only 19% of the corruption cases registered with the anti-corruption or the vigilance departments end in conviction after trial.

## RECOMMENDATIONS

**Ensure compulsory registration and investigation of instances of attacks on citizens using RTI and journalists who expose corruption and wrongdoing in government under the supervision of autonomous agencies like HRCs, Information Commissions or Vigilance Commissions until the trial is completed and provide adequate compensation to the victims.**

**Ensure more and more proactive disclosure of information by public authorities and information sought by citizens attacked for using RTI or journalists attacked for exposing corruption under the supervision of Information Commissions.**

**Ensure the mainstreaming of RTI awareness raising efforts as part of its human rights education and legal empowerment programmes with particular focus on vulnerable and marginalized groups such as women, scheduled castes, scheduled tribes, religious minorities, differently-abled persons, migrant workers and LGBTQ communities.**

**Ensure that the Supreme Court's directives for selecting eminent citizens with specialisation in diverse fields as provided by the twin RTI laws are strictly complied with.**

**Withdraw the retrograde amendments to the Whistle-blower Protection Act, insert provisions for whistleblowing through the media and ensure its effective implementation with immediate effect.**

**Ensure the passage of the anti-corruption laws pending in Parliament such as the Prevention of Corruption (Amendment) Bill and the Criminal Laws (Amendment) Bill (Lokpal and Lokayuktas Act) in a time bound manner after widespread public consultation.**

**Revive the lapsed Bills relating to the prevention of bribery of foreign officials; for receiving and inquiring into complaints of corruption and misbehaviour of judges of the High Courts and the Supreme Court; and complaints about the poor or non-delivery of public services by government servants.**

**Ensure adequate funding for infrastructure to investigate and prosecute cases of corruption across the country effectively in order to reduce the levels of corruption.**

## REFERENCES

People's Monitoring of the RTI Regime in India, 2011-2013: Report is available on the website of RAAG at: <http://www.rti-assessment.com/raag--ces--rti-study-2011-13.html> RTI Portal of India is accessible at: <http://rti.gov.in/> ment of India is accessible on the Open Government Platform at: <http://ogpl.gov.in/NDSAP/NDSAP-30Jan2012.pdf> Whistleblowers Protection Act, 2011 is accessible on the DoPT website at: [http://dopt.gov.in/sites/default/files/TheWhistleBlowersProtectionAct2011\\_1.pdf](http://dopt.gov.in/sites/default/files/TheWhistleBlowersProtectionAct2011_1.pdf); Lokpal and Lokayuktas Act, 2013, more information is available on the website of the Department of Personnel and Training (DoPT), Government of India at: <http://dopt.gov.in/lokpal-list>; and the website of the National Campaign for People's Right to Information at: <http://righttoinformation.info/our-campaigns/lokpal/> Attacks on Journalists- figures are accessible on the website of Committee for the Protection of Journalists at: <https://cpj.org/killed/asia/india/>

Mapping Attacks on RTI Users in India is accessible on CHRI's website- Hall of Shame, at: <http://attacksonrtiusers.org/> State of Information Commissions and the Use of RTI Laws in India, Rapid Study 3.0 is accessible on CHRI's website at: <http://humanrightsinitiative.org/publications/rti/ICs-RapidStudy-finalreport-NDelhi-ATIteam-Jun15.pdf> Union of India vs Namit Sharma (2013) 10 SCC 389, judgement of the Supreme Court of India regarding the manner of appointment of Information Commissioners is accessible on its website at: <http://judis.nic.in/supremecourt/imgs1.aspx?filename=40744>

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