



## The Big Picture - CBI, IB, NIA Under RTI?

At a time when the government is mulling changes in the RTI Act, information commissioner Divya Prakash has suggested that investigative, intelligence and security agencies like NIA, CBI, IB, and paramilitary forces should come under the purview of the law, saying there are adequate safeguards in the Act to keep sensitive information outside the public domain. The former IPS officer, who spent most of his time in Intelligence Bureau, says transparency needs to be “all-pervasive” and the RTI Act helps to bring accountability in government departments. Currently, more than 20 investigative agencies are outside the ambit of the RTI Act, subject to exceptions like allegations of corruption and human rights violations. The information commissioner’s remark came up at a time when CBI is going through turmoil with the top brass trading charges against one another.

### Right To Information Act (RTI Act, 2005)

- Information, unless exempted under Section 8(1) and 9 may be provided either in Suo Motu manner so that public have minimum resort to provisions of RTI Act, 2005 and on an application under RTI within the stipulated time frame.

### Extracts of some important sections of the RTI Act, 2005

#### Section 8(1)

- This section provides reasonable restrictions on disclosure of information. Including the information which,
  - prejudicially affects the sovereignty & integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or leads to incitement of an offense;
  - causes a breach of privilege of Parliament or the State Legislature;
  - information received in confidence from foreign Government;
  - information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
  - impedes the process of investigation or apprehension/prosecution of offenders.

#### Section 9

- Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

#### Section 24

- Nothing contained in this Act shall apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organizations to that Government:
- Provided that the information pertaining to the allegations of corruption and human rights

violations shall not be excluded.

## Observations of Delhi High Court

- The source of Right To Information does not emanate from the Right to Information Act.
- But, it emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a series of decisions.
- The Right to Information Act is not the repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19(1) (a).
- The RTI Act is merely an instrument that lays down statutory procedure in the exercise of this right.

## Should we do away with the exemptions under Section 8(1) and 9?

### Debate Against the View

- It would be detrimental to India's security. Intelligence agencies like R&AW and IB deal with sensitive information which if disclosed in public domain can be misused.
- Initially, CBI was not the part of RTI exemption, primarily because it is an investigative agency. However, later it was argued that CBI does deal with sensitive intelligence matter, hence, it should not be brought under RTI. Consequently, in 2012 CBI was also given protection from RTI.
- View of protecting these intelligence agencies under section 24, would be a threat to human rights value, the counter-argument is that the RTI act categorically mentions that even though the agencies are protected, there is a threat. Information relating to an allegation of Corruption and violation of human rights is covered under RTI Act, 2005, and no agency would be excused.

### Debate For the view

- The RTI has two provisions, section 8 and 24 which are an effective veto for transparency. If it is not sectioned 8 then section 24 becomes the hurdle. Section 8 exempts certain categories of information while Section 24 exempts certain categories of organizations from the purview of the transparency law. This is a kind of double veto as much of information sought by an applicant might get hit by either of the two provisions.
- There is another contradiction in the RTI Act. Section 22 says the Act shall override the Official Secrets Act or any other law. But the fact remains that the state has already secured its secret information under double veto (Section 8 and Section 24).
- RTI Act categorically says that it will override the Official Secrets Act, however, it also provides itself with the double veto. Hence, there is a process of masquerading that inhibits the real functioning of RTI.
- Most of the intelligence agencies like IB and RAW do not have a supervising agency, and RTI act is the only piece of legislation that ensures transparency and accountability. However, section 8 and 24 dilute the process.
- Investigation agencies like CBI are mainly engaged with investigative work which cannot be brought under the purview of RTI. However, the administrative work of the agency can be brought under the scrutiny of RTI. Thus blanket protection that is given under section 24 should end.

## Way Forward

- There is a need to rationalize some of the exempted organizations in section 24.
- The confrontational interaction with the government has decreased with respect to accessibility of information because of RTI. So, RTI has to be protected and preserved. However, on the other hand, we should also be cognizant of the fact that the intelligence agencies have to be given leeway in cases concerning national security. Hence, the advice to both the government and the public would be that they ought to maintain the delicate fine line.
- The time has come when we should be asking the most important question that why is there not a parliamentary oversight committee over all these agencies if they are indeed to be kept out of RTI

purview.

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