

Subject: Amending India's RTI Act through the Nuclear Safety Regulatory Authority Bill, 2012-Update

Date: 20/03/2012

Dear all,

Readers will recollect my previous email alerts about the attempts of the Government of India to amend the Right to Information Act, 2005 (RTI Act) through the backdoor. Those of you who missed those email alerts about the Nuclear Safety Regulatory Authority Bill, 2011 (NSRA Bill) and amendments to the RTI Act, you may access them at: http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&catid=34%3Aright-to-information&id=655%3Apossible-amendment-of-rti-act-2005-email-alerts&Itemid=84 . A copy of the NSRA Bill is attached.

The NSRA Bill was forwarded to the Department Related Parliamentary Standing Committee on Science, Technology, Environment and Forests last year. **The Committee submitted its report on 6th March 2012, recommending several changes in the Bill.** The second attachment to this mail contains the full text of the report of the Committee. CHRI made a submission to the Chairperson of the Standing Committee recommending withdrawal of the amendments to the RTI Act because the existing exemptions under Section 8 of that Act are adequate to protect sensitive information relating to nuclear safety and radiation matters. Some RTI users and activists and concerned citizens and organizations also wrote to the Chairperson of the Committee demanding withdrawal of the amendments. However a majority of the Committee members have ignored our pleas.

What does the Committee report say about amendments to the RTI Act?

There is no discussion on the amendments to the RTI Act anywhere in the main report of the Committee. Instead the Committee has given a clean chit to the Bill regarding transparency in the following words:

"10.25 The Committee feels that efficacy and success of a Nuclear Safety Regulatory Authority can be gauged on four core values, i.e., competence, independence, stringency and transparency. The current Bill while by and large seems to meet the three criteria but it lacks somewhat on the count of independence. The Committee finds that there are certain Clauses in the Bill viz. Clause 14(1) (Removal of Chairperson and Members of the Authority), Clause 42 (Directions by the Central Govt. to the Authority) and Clause 48 (Power of Central Govt. to supersede the Authority), which may impinge on functional autonomy of the Authority. The Committee is, therefore, of the view that the Deptt. should explore the possibilities of making the Regulatory Authority more independent and autonomous not only to carry out its functions effectively but also to enjoy credibility among the public and the trust of the people. {Clause 14(1), Clause 42, Clause 48}" [emphasis supplied]

It appears that the Committee has no objections to the amendment of the RTI Act to include a new exemption under Section 8 which is intended to protect sensitive information about

nuclear safety matters and commercially sensitive information of nuclear technology holders. The Committee also has no objections to expanding Schedule 2 of the RTI Act to include as yet non-existent nuclear safety regulatory authorities [to be established under Clause 25(2) of the NSRA Bill] that the Central Government may establish for strategic purposes in future. **So these strategic nuclear safety regulatory agencies will be born vaccinated and insulated from the RTI Act.** While the Bill envisages the establishment of more than one such body, the Central Government told the Committee that only one such extra body will be established for strategic purposes. The Committee recorded its complete satisfaction over this explanation and recommended retention of Clause 25 *in toto*. Neither the majority of the members nor the Central Government representatives seem to have cared much for the curtailment of the transparency regime established by the RTI Act. Despite sending detailed arguments that Section 24 does not permit the exclusion of strategic nuclear safety regulatory bodies and their exclusion through an amendment is both a misuse and a violation of the letter and spirit of the RTI Act, the Committee has expressed satisfaction over the provisions relating to transparency. Nowhere in its report has the Committee found it necessary to justify why Section 8 of the RTI Act needs to be amended. *The promise of transparency and consequently accountability in matters relating to nuclear and radiation safety issues is being fulfilled by hacking away at the RTI Act.*

However a dissenting note from two members of the Committee takes our concerns into consideration (see next para).

Dissenting note from members belonging to the Communist Party of India (Marxist)

While a majority of the members of the Committee approved the curtailment of the RTI Act wholeheartedly, two MPs, both from the CPI(M), voiced real concerns about the inadequate measures relating to transparency. Their views have been incorporated in a dissenting note attached to the report:

“Clause 20(2)(c): There does not seem to be much appreciation of the necessity to maintain maximum degree of openness and transparency in civilian nuclear safety matters. The only mention of transparency is in Section 20(2)(c) which states, “The Authority shall ensure transparency by systematic public outreach on matters relating to nuclear safety without disclosing sensitive information and compromising confidentiality of commercially sensitive information of technology holders.” The principal means by which the Authority is to “ensure transparency and public outreach” could have been briefly spelt out as guidance, upon which operational rules can be framed at a subsequent stage.

To correct the existing situation three distinct activities of the Authority should be prescribed. The first is to upload and maintain at the Authority’s web site all the pertinent documents relating to regulatory decision-making. Besides the NSRA’s safety standards, codes, safety guides, Annual Reports etc., the Minutes of the Authority’s Board and various Advisory Committee Meetings, Safety Evaluation Reports, etc. which detail the decision-making on important safety issues and its rationale should also be made available publicly. In doing so,

precautions have to be taken to ensure that no proprietary information or data relevant to maintaining physical security are publicly revealed.

The second addition necessary in the Bill is a Section to enable the creation of a Local Information Body (LIB) near each major nuclear facility, consisting of members of Panchayats, Gram Sabha representatives and others from the local area. The official representatives of the State, District and the Nuclear Facility Management shall be part of the LIB and shall participate in these meetings. Each LIB shall be headed by a senior representative of the Authority and shall meet regularly at periodic intervals.

The third addition is to have a provision which requires the Regulatory Authority to organize and conduct open Public Hearings at crucial junctures of setting up and operating any nuclear facility which could potentially have major public safety and environmental impact.

*Suitable modifications should be made to **Clause 20** to incorporate the above. ...*

Clause 25(2): In view of the exemptions sought under 25(2) from the RTI Act in the Second Schedule PART II, AMENDMENTS TO THE RIGHT TO INFORMATION ACT, 2005 (22 OF 2005), it is necessary to restrict the scope of Other Regulatory Bodies mentioned in Clause 25(2) to deal with only the strategic sector, which currently is also not under the AERB. The civil nuclear facilities should not be made exempt from the RTI Act. [emphasis supplied]

Thanks to Dr. Anup Kumar Saha, MP and Mr. Saman Pathak, MP, our concerns find mention in the report. However a majority of the members seemed to be completely oblivious of the necessity of increased transparency in relation to all nuclear facilities.

Transparency in relation to nuclear facilities – prior to NSRA Bill becoming law – A Sampler:

- 1) Most readers are aware that several thousands of villagers in Kudankulam Tamil Nadu are protesting against the nuclear facilities being established there. I will not go into a debate over the opposition to the Kudankulam project as I am not nuclear energy expert. However some of the protesters have sought a copy of the Site Evaluation Report and the Reactor Safety Analysis Report under the RTI Act. The Nuclear Power Corporation of India which is implementing the Kudankulam project has rejected the RTI application and First Appeal. The matter is now before the Central Information Commission.
- 2) I sought a copy of the Cabinet Note that was sent to the Union Cabinet for approving the NSRA Bill before it was tabled in Parliament. The purpose was to ascertain whether the views of the Department of Personnel and Training which is the nodal department for the implementation of the RTI Act in the Government of India. The Public Information Officer rejected the request citing the exemption granted to the Cabinet

Note under Section 8(1)(i) of the RTI Act. The First Appellate Authority upheld this decision (copy of decision is attached). Now the matter will go to the Central Information Commission for adjudication.

Given this track record of the Government on transparency in nuclear safety matters, the NSRA Bill will only provide it with enormous discretion to withhold crucial information about nuclear and radiation safety matters that the people have a fundamental right to know.

What do we do next?

The Committee has made several recommendations for change in other provisions contained in the NSRA Bill. Although the recommendations of the Committee are not binding on the Government, the Dept. of Atomic Energy and other concerned departments and ministries will revisit the Bill. **The Committee's report is scheduled to be tabled in both Houses of Parliament tomorrow (21st March 2012).** The Government has not yet announced its plans for consideration of the Committee's recommendations. If any recommendations are accepted, amendments to the Bill will still have to be approved by the Cabinet. So we still have an opportunity to weigh our views upon the Prime Minister, Dr. Manmohan Singh who is the Minister-in-charge of the Department of Atomic Energy and Mr. V Narayanasamy, Minister of State who piloted the NSRA Bill in the Lok Sabha.

You may like to use the following message or adapt it to suit your requirements to urge the Prime Minister and the Minister of State in his office to withdraw amendments to the RTI Act:

"We the people of India who have been actively using RTI to promote transparency and accountability in government are distressed to note that your Government has proposed amendments to the Right to Information Act, 2005 through The Nuclear Safety Regulatory Authority Bill, 2011. These amendments are unnecessary in view of the adequate protection for all legitimate interests provided under Section 8(1) of the RTI Act. The exclusion of special nuclear regulatory authorities referred to in Clause 25 even before they are established by the Government is against the letter and spirit of Section 24 of the RTI Act. We urge you to recommend deletion of all clauses that seek to amend the RTI Act. Greater transparency can ensure greater safety and accountability.

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Pls send your emails/postcards to:

**Dr. Manmohan Singh (manmohan@sansad.nic.in)
Prime Minister of India
South Block
Raisina Hill,
New Delhi- 110 001**

And

Shri V Narayanasamy (mos-pp@nic.in)
Minister of State
Prime Minister's Office
South Block, Raisina Hill
New Delhi- 110 001

Kindly copy your emails to my address as well. Please do not ignore or delay this matter. It is our safety that I am talking about – “yours and mine”

In order to access our previous email alerts on RTI and related issues please click on: http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84 You will find the links at the top of this web page. If you do not wish to receive these email alerts please send an email to this address indicating your refusal.

Thanks

Sincerely,

Venkatesh Nayak

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