

**Submissions to the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions on Removal of the Narcotics Control Bureau from the List of Organizations exempt from the Right to Information Act, 2005**

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The following submissions are being made by the Lawyers Collective, a non government organization that seeks to foster legal reforms in areas of women's rights, protection of civil liberties, equality and non-discrimination, access to medicines, health and drug policy through legal, research and advocacy interventions.

The submissions are based on our experience of using the Right to Information Act, 2005 ("RTI Act") to seek information related to India's policy on illicit drugs, the extent and pattern of crimes involving narcotic drugs and psychotropic substances as well as the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act"). Information inquests to the Narcotics Control Bureau ("NCB"), the agency responsible for co-ordination of anti - narcotic measures were declined, as the NCB is exempt from the purview of RTI Act under the Second Schedule to Section 24(1) of the said Act.

In this context, the Lawyers Collective recommends the removal of the NCB from the list of organizations exempt from the RTI Act for the following reasons:

**1. Role and function of the NCB is not limited to intelligence and security**

The NCB was created under the authority of Section 4 (3) of the NDPS Act, by a Government notification dated 17.3.1986. It is responsible for:

- i. Coordination of actions by various officers, State Governments and other authorities under the NDPS Act, the Customs Act, 1962, the Drugs and Cosmetics Act, 1940 and other relevant laws in relation to the enforcement of the NDPS Act.
- ii. Implementation of India's obligations under various international conventions on narcotic drugs and psychotropic substances.
- iii. Assistance to the concerned authorities in foreign countries and international organizations working in the field of prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances.
- iv. Coordination of actions taken by the Ministry of Health and Family Welfare, the Ministry of Welfare and other concerned Ministries, Departments or Organizations in respect of matters relating to drug use and dependence.

Besides the above, the NCB is entrusted with the enforcement of several procedural and substantive provisions of the NDPS Act, which it does through its ten zonal and regional offices. NCB officers are authorized to make arrests, searches and seizures and prosecute persons accused of narcotics crimes. Thus, the NCB performs functions of coordination, design and

execution of anti-narcotics programmes. Its role extends beyond being an intelligence and security organization established by the Central Government, the purported reason for its inclusion in the Second Schedule to Section 24, RTI Act.

## **2. Citizens have a right to information on narcotics policy and crime**

The NCB's role and functions ought to be subject to public inquiry. Prevention and control of illicit substances is a matter of public interest. Citizens have a right to be informed of the extent and nature of crimes involving narcotic drugs and psychotropic substances, the scale of drug trafficking, use and addiction, the manner of enforcement of the NDPS Act, including provisions for prevention, treatment and rehabilitation of persons addicted to drugs. There is no reason why the NCB should not share such data with the public.

Further, it may be pointed out that the NDPS Act is one of the most stringent legislations in the country. This in itself underscores the need for transparency and oversight in its implementation. Therefore, the NCB should be within the purview of the RTI Act.

## **3. Data related to narcotic drugs and psychotropic substances is shared with international agencies, but denied to Indian citizens**

As the nodal authority for coordinating India's international obligations on narcotic drugs and psychotropic substances, the NCB regularly reports legislative and administrative measures pertaining to illicit drugs to international drug control agencies.<sup>1</sup> These include submission of annual reports to the office of the United Nations Secretary General through the Commission on Narcotic Drugs and the International Narcotics Control Board (INCB), as well as filling annual reports questionnaires circulated by the United Nations Office on Drugs and Crime (UNODC).

Information shared by the NCB with the above mentioned bodies covers policies, statistics, trends in drug seizures and trafficking, case records, laws and regulations relating to narcotic

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<sup>1</sup> Article 18 of the 1961 Single Convention on Narcotics requires that information in the form of an annual report is to be furnished by parties to the Secretary-General. Countries are also required to submit such particulars as the Commission shall determine concerning cases of illicit traffic, including particulars of each case of illicit traffic discovered which may be of importance.

Article 16 of the Convention on Psychotropic Substances, 1971 stipulates that an annual report regarding the working of the Convention in their territories be submitted, including information on important changes, significant developments in the abuse of and the illicit traffic in psychotropic substances. A report is also furnished to the Secretary General in respect of any case of illicit traffic in psychotropic substances or seizure from such illicit traffic.

Article 20 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 requires the Parties to furnish through the Secretary-General, information to the Commission on the working of this Convention.

drugs, psychotropic substances or precursor chemicals, action taken against illicit trafficking, difficulties in enforcing control measures, in accordance with the international drug control treaties. This data becomes public knowledge by virtue of reports and publications of the above mentioned bodies including the yearly Report of the INCB and the World Drug Report published by the UNODC, which are available in print and online.

If information related to narcotic drugs and psychotropic substances is made available to international organizations, it cannot be termed sensitive or a matter of national security. It is odd that the NCB provides information to agencies outside the country but withholds it from Indian citizens.

#### **4. Other agencies dealing with narcotic drugs and psychotropic substances are amenable to RTI, why not NCB?**

The administration of the NDPS Act, 1985 is within the remit of the Department of Revenue, Ministry of Finance. Many other departments of the Central government such as the Central Bureau of Narcotics, Excise, Customs, and Office of the Drug Controller General, Central Drugs Standard Control Organization are responsible for enforcing the NDPS Act. Similarly, at the State level, the State Police, State Excise and State Drugs Control Department are entrusted with anti-narcotics operations. All these agencies are amenable to the RTI Act, notwithstanding the similarity in some of the functions that they perform with those of the NCB. Excluding the NCB from the RTI Act appears irrational and arbitrary.

#### **5. NCB may take recourse to the exemption clause under Section 8 in case of ‘sensitive’ information**

Already, Section 8 (1) of the RTI Act allows public functionaries to withhold information on a wide range of grounds. These include exemption from disclosing information that would adversely affect national sovereignty and integrity, security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.<sup>2</sup> The NCB can refuse information deemed sensitive and against national interest. It can also invoke the grounds of impeding investigation or prosecution of offenders<sup>3</sup> as also endangering informers<sup>4</sup> or for protection of information received in confidence from foreign government.<sup>5</sup> The grounds available in Section 8(1) provide adequate safeguard to intelligence and/or security related information that the NCB is privy to. These are in keeping with Article 19 (1)(a) and 19 (2) of the Constitution of India, which, permit reasonable restrictions on the freedom of speech and expression in the interest of national sovereignty, integrity, and security, friendly relations with

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<sup>2</sup> Section 8(1)(a), RTI Act 2005

<sup>3</sup> Section 8(1)(h), RTI Act 2005

<sup>4</sup> Section 8(1)(g), RTI Act 2005

<sup>5</sup> Section 8(1)(f), RTI Act 2005

foreign states, public order, decency or morality, or preventing contempt of court, defamation or incitement to an offence.

There is no justification to have a blanket exemption for the NCB under the second schedule to Section 24 RTI Act, which as noted above, performs tasks that are beyond the pale of intelligence and security.

## **Conclusion**

In *Peoples Union for Civil Liberties v. Union of India*,<sup>6</sup> the Supreme Court observed that the right of information is a fundamental right as enshrined in Article 19(1) (a) of the Constitution of India. By enacting the RTI Act, Parliament intended to promote a progressive, participatory and meaningful democracy with an informed and empowered citizenry.

Exemption of the NCB from the purview of the RTI Act violates constitutional and legislative principles underpinning the right to information. Besides, it is irrational and arbitrary, as noted above. We urge the Department of Personnel and Training to remove the NCB from the second schedule to Section 24, RTI Act and promote openness and transparency in the country's nodal anti-narcotics agency.

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<sup>6</sup> (2004) 2 SCC 476