FILES
Of
The Ministry of Personnel, Public
Grievances, and Pensions
Department of Personnel and
Training
Government of India

Pertaining to the Right to Information Act and Related Matters 2005-2009

File 1
Pages 1 to 392

File 2
Pages 393 to 558

File 1

24012/3(s)/2125-ECH.B

PARLIAMENT OF INDIA RAJYA SABHA SECRETARIAT

1521/2016/17:27

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Parliament House/Annexe, New Delhi-110001.

No. R\$ 6/7/2004-P&L

24 January 2005

of The

Shri A. N. Tiwari,
Secretary to the Government of India,
Ministry of Personnel, Public Grievances and Pensions
North Block,
New Delhi

Subject:

Examination of the Right to Information Bill, 2004 by the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice

O' YET

Sir.

Lok Sabha and pending therein, has been referred to the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, for examination and report In this context, the Committee has decided to hear a presentation by you on the Bill. Accordingly, I am to request you to make it convenient to appear before the Committee at 3.00 P.M. on Tuesday, I" February, 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi for the purpose.

2. In case you make any power point presentation, 50 hard copies thereof may be forwarded to this Secretariat by 27 January, 2005, for circulation to Members of the Committee in advance.

Contd.,2/-

- 3. Further, I am to request you to furnish the following documents (50 copies in English and 25 copies in Hindi) in connection with the examination of the Bill by 31st January, 2005 positively, so as to facilitate expeditious consideration of the Bill by the Committee
 - (i) Background note on the Bill,
 - (ii) Freedom of Information Bill, 2000;
 - (iii) Freedom of Information Act, 2002,
 - (iv) Suggestions made by the National Advisory Council regarding the Freedom of Information Act, 2002;
 - (v) Comparative analysis between the Freedom of Information Bill, 2000, Freedom of Information Act, 2002 and Right to Information Bill, 2004 (as per the suggested proforms enclosed herewith), and
 - (vi) Any other relevant material on the aforesaid subject.

Yours faithfully, Sd/-(SURINDER KUMAR WATTS) DEPUTY SECRETARY Tel: 23034262

Copy to

1) Shiri T. Jacob, Joint Secretary, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi; and

2) Parliament Section, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi.

(VINOY KUMAR PATHAK) COMMITTEE OFFICER Tel. 23035220 (O)

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SUGGESTED PROFORMA

Comparative statement on the Freedom of Information Bill, 2000 (FOI) and the Right to Information Bill, 2004 (RTI).

Clause	Recommendation/	Decision of	Section No. of	Clause No./	Remarks
No./Provision	Observation made by	Government	the FOI Act	Corresponding	
in the FOI	the Committee on Home			provision in RTI	
Bill	Affairs in 78th Report		_	Bill	

MOST IMMEDIATE

No.34012/3(s)/2005-Estt.(B) Government of India

Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training)

New Delhi, the 28th January, 2005

To

The Secretary General,
Rajya Sabha Secretariat,
Parliament House Annexe,
New Delhi,
(By name Shri Surinder Kumur Watts, Deputy Secretary)

Sub:- Examination of the Right to Information Bill, 2004 by the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice.

Su.

1 am directed to refer to your letter No.RS.6/7/2004-P&L dated the 24th January, 2005 on the subject mentioned to forward herewith the following documents, as desired:

(i)	Background Note on the Right to Information Bill, 2004	(50 copies (English) (25 copies (Hindi)
(ii)	Freedom of Information Bill, 2000	(50 copies (English) (25 copies (Hindi)
(iii)	Freedom of Information Act, 2002	(50 copies (English) (25 copies (Hindi)
(iv)	Suggestions made by the National Advisory council regarding the Freedom of Information Act, 2002	50 copies (English)
(v)	Comparative analysis between the Freedom of Information Bill, 2000, Freedom of Information Act, 2002 and Right to Information Bill, 2004 (as per proforma).	(50 copies (English) (25 copies (Hindi)

It has not been possible to provide copies of item (iv) in Hindi as the Tabular Statement, including the suggested Right to Information Act, provided by the National Advisory Council are in English only.

Yours faithfully,

(Rakesh Malhotra)
Under Secretary to the Government of India
Tcl.No.23092313

Encls: As above.

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RIGHT TO INFORMATION BILL. 2004

Background

Access to government records and information is an essential requirement for modern government and developing and maintaining a civil and democratic society. A new era of government transparency has arrived and there is a worldwide trend in democratic countries to have legislation for assuring to the citizens the right of access to information of the public authorities as a part of the effort to promote openness, transparency and accountability in the administration and to ensure greater participation of the people in decision making. Over fifty-five countries have adopted comprehensive laws to facilitate access and many more are in the process of doing so.

- 2. In India, the need to enact a law on right to information was recognized unanimously by the Chief Ministers' Conference on 'Effective and Responsive Government' held on 24th May, 1997 at New Delhi. In its 38th Report relating to Demands of Grants of the Ministry of Personnel, Public Grievances & Pensions, the Parliamentary Standing Committee on Home Affairs recommended that the Government should take measures for enactment of such a legislation. In an oral answer given to a Lok Sabha Starred Question on 30th July, 1997, the then Prime Minister had given an assurance that a Bill on Freedom of Information would be introduced in Parliament during the coming Winter Session. A similar announcement was made by the then Prime Minister, in the course of his speech on the 50th Independence Day. Thus, Right to Information forms an important element of the Programme for effective and responsive administration and Civil Service Reforms initiated by the Government.
- 3. In January, 1997, the Government set up a Working Group on "Right to Information and Transparency" under the Chairmanship of Shri H.D.Shourie. The Working Group was asked to examine the feasibility and need for either full fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive governance and also to examine the framework of rules with reference to the Civil Service (Conduct) Rules and Manual of Office Procedure. The Group submitted its report on May 21, 1997 recommending inter-alia the enactment of

"Freedom of Information Act" by the Parliament and for this purpose, it had provided the "Freedom of Information Bill, 1997". This draft Bill was based, among other things, on a study of the legislation in some other countries and the Right to Information Bill, 1996, prepared by the Press Council of India under the Chairmanship of Justice P.B Sawant, was also taken into consideration by the Working Group.

- 4. Copies of the Report of the Working Group were forwarded to all Ministries of the Government of India as also to all States/Union Territories for their comments. The statutory scheme prepared on the basis of the deliberations in the Working Group was circulated for discussions during the Chief Ministers' Conference held on May 24, 1997 and had received the broad approval of the Conference. The Report of the Working Group, together with responses thereon, was placed before the Committee of Secretaries. The Committee broadly endorsed the Freedom of Information Bill, 1997 recommended by the Working Group subject to certain important modifications.
- Ŝ. The draft Freedom of Information Bill, 1997, given by the Working Group, was accordingly revised with the help of the Legislative Department and placed before the Cabinet for approval to the Bill and its introduction in the 1997 Winter Session of Parliament. When the draft Bill came up for consideration before the then Cabinet on October 20, 1997, it was decided that it may be gone into by a Group of Ministers. The proposal was accordingly placed before the Group of Ministers constituted by 3 successive Governments which considered it in 8 meetings held between October 28, 1997 and February 2, 2000. The Group of Ministers approved the proposal of the Department of Personnel & Training subject to a few changes in the Bill. The draft Freedom of Information Bill, 1997, was further revised accordingly and a proposal was placed before the Cabinet for approval to the Freedom of Information Bill, 2000 and its introduction in Parliament. In its meeting on 13th May, 2000, the Cabinet approved the proposal. The recommendation of the President, under Clause (1) and (3) of Article 117 of the Constitution for the introduction in and consideration by the Lok Sabha of the FOI Bill, 2000, was obtained on 15th May, 2000 and 'The Freedom of Information Bill, 2000' was finally introduced in the Lok Sabha on 25th July, 2000.

- Standing Committee on Home Affairs for examination and the Committee presented its Report to both the Houses of Parliament on 25th July, 2001. The Bill, as reported by the Standing Committee, was considered and passed by the Lok Sabha on 3rd December, 2002 together with certain amendments proposed by the Government. It was subsequently passed by the Rajya Sabha on 16th December, 2002 and on receiving the assent of the President on 6th January, 2003, the 'Freedom of Information Act, 2002' has been published in the Gazette of India on 7th January, 2003 for general information.
- 7. The Act has, however, not been brought into force so far as the basic infrastructure required for its operationalization has not been fully established as yet. Meanwhile, there have been growing apprehensions that the Act, in many respects, falls short of the espirations and expectations of the people. Government has, in fact, received a number of representations urging it to modify some of its provisions so that the information access rights of citizens are fully realized and the legislation truly achieves its objectives.
- 8. Having regard to the above considerations, the National Common Minimum Programme of the United Progressive Alliance Government inter-alia provides that:-

'The Right to Information Act will be made more progressive, participatory and meaningful'.

In pursuance of the above commitment, the National Advisory Council had proposed certain amendments to the 'Freedom of Information Act, 2002' in order to ensure:-

- 1. maximum disclosure and minimum exemptions consistent with Constitutional provisions;
- independent appeal mechanisms;
- 3. penalties for failure to provide information as per the law; and
- 4. effective mechanisms for access to information, and disclosure by authorities.

The amendments proposed by the National Advisory Council have been examined comprehensively and certain provisions suggested by the Council have been modified keeping in view the legislative, constitutional and administrative requirements. Considering that the changes envisaged are extensive, it has also been decided to enact a new legislation on the subject and simultaneously repeal the existing 'Freedom of Information Act, 2002'. In furtherance thereof, 'The Right to Information Bill, 2004' has been introduced by the Government in the Lok Sabha on 23rd December, 2004 after obtaining the approval of the Cabinet as also the recommendations of the President under Article 117(3) of the Constitution.

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REPRINT

AS INTRODUCED IN LOS SABILA

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Bill No. 98 of 2000

THE FREEDOM OF INFORMATION BILL, 2000

BILL

to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto

Be it exacted by Parliament in the Fifty-first Year of the Republic of India es. Inflows -

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PRELIMINARY

1. (1) This Act may be called the Freedom of Information Act, 2000.

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- (2) It extends to the whole of India except the State of Jamme and Hastimir
- (3) It shall come into force on such date as the Control Government may, by non-feeding in the Official Gazette, appoint

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- (ii) the powers and differ of the first and employees and the encedage followed by them in the decreasing penetral;
 - (iii) the norms set by the public or jointy for the discharge of its functions;
- (v) the details of facilities available to citizens for obtaining in...

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- (vi) the name, designation and other particulars of the Public Information Officer.
- (c) publish all independent feets concerning important decisions and policies that affect the public while amnouncing such decisions and policies;
- (d) give reasons for its decisions, whether administrative or quasi-rodulal to those affected by such decisions;
 - (e) before minimized any project, publish or communicate to the public publically or to the persons affected or likely to be affected by the project in particular, the tests available to it or to which it has reasonable access which it its opinion should be known to them in the best interests of maintenance of democratic principles.
 - 5. (1) Every public authority shall for the purposes of this Act, appoint one or more officers as Public Information Officers.

Appointment of Public Information Officers

- (2) Every Fublic Information Officer shall deal with requests for information and shall render reasonable assistance to any person steaking such information.
- 25 (3) The Public Information Officer may seek the assumance of any other office, as he considers necessary for the proper discharge of his dunes.
 - (4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his assistance.
- 6. A person desirous of obtaining information shall make a request in writing or 30 through electronic means, to the concerned Public Information Officer specifying the particulars of the information sought by him:

Request for obtaining information.

Provided that where such request cannot be made in writing the Funite information. Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.

7. (1) On receipt of a request under section 6, the Public Information Cifficer shall, as expeditionally as possible, and in any case within thirty days of the receipt of the request either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9.

Disposation

- Provided that where it is decided to provide the information. Or provident of the deplet for representing the constitution to details of the feet determine by the property the feet provident to details of the feet determine by the property that details of the feet determine by the property from the details of the feet determine by the property from the defendant the feet shall be uncluded for the purpose of calculating the purpose of calculating the purpose of calculating the purpose of calculating the purpose.
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- and the particulars of the appoliate authoroy.
- (d) information shall defend to provided in the letter in which it is supply to the would disproportionally divertible residuals of the public authority of would be to the safety of preservation of the record in question.

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- & (1) Notwithstanding asything herembefore contained, the following a semantic not being information relating many matter referred to in sub-section (2), which were strong disclosure, namely.
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 - of trans of comin social secrets protected by law or informations the desof which would projudically affect the legitimate economic and commercial in be the competitive position of a public authority, or would cause unline gave or ... a any parson; and
 - to information, the disclosure of which may result in the breach or order, a of Participant of the Expension of a State, or guaranteen to the Expension of a second community of the Expension of
- (2) Anni aformation reliang to any excutrence, event or parties with the constitutions is supposed events. The year incited the date in which any ready is sention to stall be innivided to any person making a read of author that he can be a constitution of the constitution.
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(c, remain to information that is contained in published material evaluate to public:

(a) relates to information which would cause unwarranted infession of the privacy of any parame.

10 If a request for access to information is rejected on the ground that it is in retation to information which is exempted from disclosure, then notwithstanding saything contained in this Am, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Am and which can reasonably be severed from any part that contains exempted information.

Severability.

13. Where a public authority intenes to disclose information on a request made by a party when relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public information Officer shall by notice to such third party invite representation against the proposed disclosure, if any, within fifty days from the dute of receipt of such notice.

Third party information

20 Provided that except in the case of treat or commercial scorety protected by take disclosure may be allowed if the purity interest in disclosure nutweighs to importance up, possible harm or interest, in the interest, of more third party.

12. (7) Any paison again vot by a decision of the Public Information Conferency, within their days of receipt of such occusion, profes on appear to such antiportity as may be 25 presembed:

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Provided that some authority may entertain the appeal after the content of the made period of their days to the anti-field may the organization was prevented by sufficient cause from filling the appoint in time

(2) A second appeal agent — the necessor, a neg surveyerion (1) shall at within a raw 30 days of such density, as the compatent authority, as the case may be:

Provided that the Control Government or the State Government or the competent authority, at the case may be, may entertuin the appeal after the capity of the same period of thirty nave of this same field that the appealment was prevented by sufficient course from Many 35 the appeal in time.

- 13. The appeals referred to at sub-modular (1) and (2) sinds be disprised of which thing days of our records of an appeals of which such extension per include the formal be for federal to be recorded in writing.
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(c) any other matter which is required to be, or may be, presented.

20. (1) Every rule made by the Central Government under this Act shall be incl. as soon as may be often it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall theteefter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulinent shall be without projudice to the validity of anything previously done under that rule.

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- (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.
- 21.(1) If any difficulty arises in giving office to the provisions of this Act, the Central Covernment may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expected, for removal of the difficulty:

Power to remove difficulties

Provided that no such order shall be made after the expiry of a period of two years 20 from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made. The little before the Houses of Partiement.

THE SCHEDULE

(See section 16)

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I'AKT A

INTELLICENCE AND SECURITY OPPARTMENTING CATABILISTED BY THE CENTRAL GOVERNMENT

- 1. Intelligence Burezu.
- 2. Research and Analysis Wing of the Cabinet Secretarial.
- 3. Directorate of Revenue Intelligence.
- 30 4. Central Economic Intelligence Bureau.
 - 1. Directorate of Enforcement
 - E. Narcotics Couro, Bureau.

- PART B

INTELLIGENCE AND SECURITY ORGANISATION'S ESTABLISHED BY THE STATE GOVERNMENT

35 Name of the Organisation

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- I At \$\forall \text{ sample if it not possible to give precise details of the expensiture to be necessarily on material resources in terms of computers and other office equipment required for supply of information. However, the requirement of these items is likely to be met by the outpoint programmes for computerization of operation in various agencies and any additions expenditure might be officed by recovery of Ices for supply of information.
- 3. After the proposed Bill becomes an Act, a nodal Cell for finalization of rules and instructions, guiding the States and reporting progress to Government shall have to be set up in the Ministry of Personnel, Public Grievances and Pensions under the Central Government. This Cell shall consist of one Joint Secretary, two Deputy Secretaries, two Senior Analysis and two conventional sections. In addition, the personal staff of the above officers will also be appointed. An estimated recurring expenditure of Ro. 22 lakhs is likely to be incurred on the salaries of the officers and staff in the Cell.
 - 4. The Bill does not involve any other recurring or asso-recurring expenditure.

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असाधारप

EXTRAORDINARY

भाग II - खण्ट 1

PART II - Section 1

प्राधिकार से प्रकृतित

PUBLISHED BY AUTHORITY

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नई दिस्लें, यंगलवार, बनवरी 7, 2003/पाँच 17, 1924

Na. 5)

NEW DELHI, TUESDAY, JANUARY 7, 2003/PAUSA 17, 1924

इस भाग में भित्र पृष्ठ संख्या दी पार्ती है जिससे कि यह अक्षम संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it pury be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhs, the 7th January, 2003/Pousa 17, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 6th January, 2003, and is hereby published for general information.—

THE FREEDOM OF INFORMATION ACT. 2002 No. 5 of 2003

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16th January, 2003.1

An Act to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.

Bt it enacted by Parliament in the Fifty-third Year of the Republic of India at (oil) one -

CHAPTER!

PRIZAIMANY

- 1. (1) This Act may be called the Freedom of Information Act. 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Control Government may, by notification in the Official Gazette, appoint

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- (f) by the Central Government, the Central Government;
- (ii) by the State Government, the State Covernment.
- (iii) by the Union territory, the Central Government;
- (h) "competent authority" means—

Its the Speaker in the case of the House of the People or the Legislative Ascembly and the Chairman in the case of the Council of States in the Legislative Council

- (ii) the Chief Justice of India in the case of the Supreme Court.
- (in) the Chief Justice of the High Court is the case of a High Court,
- (iv) the President or the Governor, as the case may be, in the case of other authorities created by or under the Constitution:
 - (v) the administrator appointed under article 239 of the Constitution;
- (c) "freedom of information" means the right to obtain information from any public authority by means of
 - (i) inspection, taking of extracts and order.
 - (ii) certified copies of any records of such public authority
 - citi) diskettes. Roppies to in any other electronic mode to through print outs where such information is stored in a computer or is any other device.
- (d) "information" means any material in any form relating to the administration, maranions or decisions of a public authority:
- (e) 'prescribed' means prescribed by rules nucle under this. Act by the appropriate terminant over the competent authority, as the case may be:
 - V: "publish authority" missins any authority or body established or constituted -
 - (i) by or under the Constitutions

(ii) by may have made by the appropriate Government.

and includes any other body owned, controlled as substantially financed by the appropriate theorems.

- क्षित्र "Public Information Offices" means the Public Information (Misse appeared under sub-exerting (14 त) क जातर है.
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CHAPTER II

FREE ON OF INFORMATION AND OCUCATIONS OF PUBLIC AUTHORITIES

3. Subject to the provisions of this Act, all citizens shall have freedom of information

Freedom of information

4. Every public authority shall-

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- (a) maintain all its records, in such manner and form as its consistent with its operational requirements duly catalogued and indexed;
- (b) publish at such intervals as may be prescribed by the appropriate Government or competent authority,—
 - (i) the particulars of its organisation, functions and duties;
 - (ii) the powers and duties of its officers and employees and the procedure followed by them in the decision making process:
 - till) the norms set by the public authority for the discharge of its functions;
 - (nv) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions.
 - (v) the details of facilities available to citizens for obtaining information; and
 - (vi) the name, designation and other particulars of the Public Information Officer.
- (e) publish all relevant facts concerning important decisions and policies that affect the public white announcing such decisions and policies:
- (d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions:
- (e) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in particular, the fact available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promintion of democratic principles.
- 5. (1) Every public authority shall for the purposes of this Act, appoint one or more officers as Public Information Officers.

Appointment :
of Public
Information
Officers.

- (2) Every Public Information Officer shall deal with requests for information and shall tender reasonable assistance to any person seeking such information.
- (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.
- (4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his assistance.
- 6. A person desirous of obtaining information shall make a request in writing or through electronic means, to the concerned Public Information Officer specifying the particulars of the information sought by nim.

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing

7. (1) On receipt of a request under section 6, the Public Information Officer shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Duposal of requests.

Request for obtaining

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recorded further that Others it is therefold to provide the information of provide to any further to temperature the cost of providing the information, the shall same an introduced to the best between matter, the request, private the distance of the light determinant to make the form the provided the translation and the recorded to the continuation and the recorded to the recorded to the property of nativalizing to the self-of-thing day redefied to above

- (2) Before taking any decision under sub-section (1), the Public information Livings shall take time consideration the representation made by a third party under section 1).
- :37 Where a request a rejected under sub-section (2), the Public Information Officer shall communicate to the person making request,—
 - (i) the reason: for such rejection;
 - end the period within which an appeal against such rejections have by med, med
 - (iii) the particulars of the appellace authority.
- (4) Intermation shall ordinarily be provided in the form in which it is sometimalized would disproportionately diversitie resources of the public authority or would be destructed to the safety or preservation of the record in question.

CONTRACTOR OF THE PROPERTY OF

- 8. (2) Notwithstanding anything transmitted contained, the following information not being information relating or any matter referred to the xul-xection (2), Utall to make empted from disclosure natively
 - is information, the disclosure of which would projudicially after the sovercients and integrity of high accuracy of the State, strategic accoming to remember integers of highers according of international relations.
 - chi information, the disclosure of which would projudicially after nutric such and order describes and investigation of an offence to which may limit to an incitenses to commit an offence or projudicially affect fair that or adjudication of a pencing
 - internation, the discinsure of which would projudicially affect the committee. Senter State inflations, including information exchanges to confidence between the contral and State (Assertionants of any of their authorities or agencies.)
 - (d) Cabinet papers including records of deliberations of the Council of Pennium.

 Secretaries and rother officers.
 - cel minutes or fedords of auvier metuding legal advice opposite recommendations made to any officer of a public authorise during the sea upon a propess prior to the executive decision or policy formulations.
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 - a) the state of the the state of the state o
- (2) Subject to the provisions of clause order unit schools. If any administration is the provisions of clause order or an administration of the control of the provision of the control of

Provided that where any question arises as to the date from which the said period of twenty-five years has to be computed, the decision of the Central Government shall be final.

9. Without prejudice to the provisions of section 8. a Public Information Officer may reject a request for information also where such request—

Creans for extension (cates)

(a) is too general in nature or it of such a nature that, having regard to the volume of information required to be retrieved or processed would involve unreasonable diversion of the resources of a public authority or would adversely interfere with the functioning of such authority:

Provided that where such request is rejected on the ground that the request is too general, it would be the duty of the Public Information Officer to render help as far as possible to the person making request to reframe his request in such a manner as may facilitate compliance with it:

- (b) relates to information that is required by law, rules, regulations or orders to be published at a particular time and such information is likely to be so published within thirty days of the receipt of such request:
- (c) relates to information that is contained in published material available to public; or
- (d) relates to information which would cause unwarranted invasion of the pravacy of any person.
- 10. (1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that pan of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any pan that contains exempted information.

Srepability

- (2) Where access is granted to a part of the record in accordance with sub-section (1), the person making the request shall be informed.—
 - (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
 - (b) of the provisions of the Act under which the severed part is exempted from disclosure.
- 11. (1) Where a public authority intends to disclose any information or record, or part thereof, on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within twenty-five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof:

Tried party information.

Provided that except in the case of trade or commercial secrets protected by law. disclosure may be allowed if the public interest in disclosure outweight in importance any possible harm or injury to the interests of such third party.

- (2) Where a notice is given by the Public Information Officer under sub-section (7) to a third party in respect of any information of record of part thereof, the third party shall, within twenty days from the date of issuance of notice, he given the enportunity to make representation against the proposed disclosure.
- (3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within sixty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to discluse the information or record or part thereof and give in writing the notice of his decision to the third party.

17. A notice given under sub-action (3) shall include a statement that the third party to whom, the notice is given is earlied to prefer an appeal against the decision under section (2)

Appeals

12. (c) any person aggreered by a decision of the Public Information (If) is entirely within their days of receipt of such decision, prefer an appeal to such authority as now by prescribed.

Provided that more authority may enteriors the appeal after the expiry of the soil period of there days if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

(2) A second appeal against the decision under sub-section (1) shall lie within thirty days of such decision, to the Central Government or the State Government or the competent authority, as the case may be

Provided that the Central Government or the State Government of the competent authority, as the case may be, may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time

- (3) The appeals referred to in sub-sections (1) and (2) shall be disposed of within thirty days of the receipt of such appeals or within such extended period, as the case may be, for reasons to be recorded in writing.
- 14) If the decision of the Public Information Officer against which the appeal is preferred under sub-section (1) or sub-section (2) also relates to information of third party, the appellate authority shall give a reasonable opportunity of being heard to that party.

CHAPTER III

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रुत्रम् द्वाप्ति च्याम्बद्धास्य वः स्याम्बद्धासः (ह 13. No sun, presentation or other regal proceeding shall the grants any person for anything which is in good faith done of intended to be done under this Act or any rule made theretinded.

Ari pi have nverrating 14 The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in futer is in any instrument having effect by virtue of any law other than this Act.

Harrie Pinalectory of Peats 15. No coun shall entertain any sun, application or other proceeding in respect of any or or made under the Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

ALD MALE:

- 16. 17 Nothing contained in this Act shall apply to the intelligence and securiforganisation, specified in the Schedule, being organisations established by the Consu-Government of any information furnished by such organisations to that Government
- Of the Central assemble in may be notification to the Official Gazette, amend to Schedule by tucktoing thereto any other intelligence or accurity organization established by that Government or anothing therefrom any organization already specified thereto any organization already specified thereto any or the publication of same as an antification, such organization shall be deemed to be menually to exceed to be another than the Schedule.
- (*) From matrix, and results under sub-social (2) shall be but belon care thinse in function.
- 14, Nothing contained in this see small apply to such intelligence and security organizations which rain is specified by a nonfection to the Official Cancillation that is fitted Government from time in time.
- 458 Every hardicatous visited attorn sub-section (4) shall be fair noted into batter.

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17. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to make calm by Central Coverances:

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) intervals at which matters referred to in sub-clauses (i) to (vi) of clause (b) of section 4 shall be published:
 - (b) the fee payable under sub-section (1) of section 7;
 - (c) the authority before whom an appeal may be preferred under sub-section (1) of section 12:
 - (d) any other matter which is required to be, or may be, prescribed.
- 18. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Prover to make rules by Sune Government

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the fee payable under sub-section (1) of section 7;
 - (b) the authority before whom an appeal may be preferred under sub-section (1) of section 12;
 - (a) any other matter which is required to be, or may be, prescribed:

Provided that initially the rules shall be made by the Central Government by notification in the Official Gazette.

19. (1) The competent authority may, by notification to the Official Gezette, make tules to carry out the provisions of this Act.

kute making power by competent authority.

- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the fee payable under sub-section (1) of section 7:
 - (b) the authority before whom an appeal may be preferred under sub-section (1) of section 12;
 - (c) any other matter which is required to be, or may be, prescribed.

20. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each flouse of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both flouses agree in making any modification in the rule or both flouses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of

- (2) Every rule made under this Aut my a State Government shall be faid, as soon as may be after it is mouthed, before the State Legislature.
- 21. (1) If any difficulty arises in giving effect to the provisions of this. Act the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

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Provided that no such order shall be made after the expery of a period of two years from the date of the commencement of this Act.

(2) Every under made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

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- ात्राम्याप्रस्थातः स्थापन्या
- Lover of the Analysis Wrig of the Cabinet Scentistiat
- 1. Directorate of Revenue Intelligence.
- 4. Central Economic Intelligence Bureau.
- 5. Directorate of Enforcement
- 6. Narcuties Control Bureau.
- 7. Aviation Research Centre
- 8. Special Frontier Force
- 9. Border Security Force
- 10 Lentral Reserve Pober Force.
- 11. Indo Tibeno Border Police.
- 12. Central Industrial Security Force.
- National Security Guards.
- 14 Assam Rifles.
- !5. Special Service Bureau
- Ic. Special Branch (CID), Andaman and Nicoba:
- 17 The Crim: Branch-C.I.D CB, Dadra and Nagar Haveh
- Directorate of Vigilance including Anti-Corruption Branch, National Capital Territory of Delhi.
- Special Branch, Lakshadweep Police.

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SUGGESTIONS MADE BY THE NATIONAL ADVISORY COUNCIL

FREEDOM OF INFORMATION ACT 2002: PROPOSED AMENDMENTS

3.7

	CT 2002: PROPONED AMENDMENTS
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Original Act	Proposed Amendments
PREAMBLE	PREAMBLE
A Bill to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto	A Bill to operationalise the right to information by setting out the practical regime for people to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability and in relation to matters connected therewith or incidental thereto.
Chapter 1: PRELIMINARY	Chapter 1: PRELIMINARY
I (1) This Act may be called the Freedom of Information Act 2002	(1) This Act may be called the Right to Information Act 2004
(2) It extends to the whole of India except the State of Jammu and Kashmir.	Retain
(3) It shall come into force on such date as the Central Government may, by notification in the Official Governe, appoint	(3) It shall come into force within 120 days of it being enacted.
Section 1(4)	(4) Where State legislation exists dealing with the right to access information, a person will have the right to seek information under the State taw as well as under this Act, if the
Does not exist in the present Act.	information pertains to a subject under the State List in Schedule 7 of the Constitution of India.
Section 1(3)	(5) Objectives of the Act. The objectives of the Act are to-
Does not exist in the present Act	(i) give effect to the Fundamental Right to Information, which will contribute to attengthening democracy, improving governance, increasing public participation, promoting transparency and accountability in Union, State and Local Self Government Institutions. (ii) establish voluntary and mendatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swill, effective, inexpensive and reasonable manner. (iii) promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to: - understand their rights in terms of this Act
2. In This Act, unless the context otherwise requires	in order to exercise their rights in relation to public authorities; understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.
(a) "appropriate Government" means in relation to a public authority established constituted owned submantially instruced by funds provided directly of indirectly or controlled- ii) by the Central Government, the Central Government;	Retain
(ii) by the State Government, The State Government; (iii) by the Union territory. The Central Government;	

(b) "competent authority" means- (i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council; (ii) The Chief Justice of India in the case of the Supreme Coun; (iii) The Chief Justice of the High Coun in the case of a High Count. (iv) The President or the Governor, as the case may be, in case of other authorities created by or under the Constitution; (v) the administrator appointed under article 239 of the Constitution:	Retain
(c) "freedom of information" means the right to obtain information from any public authority by means of.4 (i) inspection, taking of extracts and notes: (ii) Certified copies of any records of such public authority; (iii) Dirketts, floppies or in any other electronic mode or through printouts where such information is stored in a computer or in any other device:	(c) "Chief Information Commissioner" and "Information Commissioner". "State Information Commissioner" means the authorities so appointed under this act (d) "right to information" means the right to access information held by, legally accessible by or under the control of any public authority and includes: (i) Inspection of works, documents, records; (ii) Taking notes and extracts and obtaining certified copies of documents or records; (iii) Taking certified samples of material; (iv) Obtaining information in the form of diskettes, floopies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.
(d) "information" means any material in any form relating to the administration, operations or decisions of a public authority;	(c) "information" means any material in any form, including records, documents, file notings, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any law;
(c) "prescribed" means prescribed by tules made under this Act by the appropriate Government or the competent authority, as the case may be;	Retain, renumber (f).
(1) "public authority" means any authority or body established or constituted. (i) by or under the Constitution: (ii) by any taw made by the appropriate Government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government:	(g) "public authority" means any authority or body established or constituted. (i) by or under the Constitution; (ii) by any law made by the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes panchayati rajinatiutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas notified under schedule 5 and 6 of the Constitution.
(g) "Public Information Officer" means the Public Information Officer appointed under sub-section (I) of section 5;	(h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) and/or (1) of section 5;
(it) any document, manuscript and file; (ii) any microfilm, microficht: and faminity copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or by any other device.	Ream. Renumber (i)

(i) "third party" means a person other than the person making a request for information and includes a public authority.	Rewin Renumber (j)
CHAPTER II	CHAPTER II
FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES	FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES
3. Subject to the provision of this Act, all citizens shall have freedom of information.	3. Subject to the provision of this Act. all persons shall have the right to information.
4 Every public authority shall- (a) maintain all its records, in such manner and form as is consistent with its operational requirements duly entalogued and indexed:	4. Every public authority shall- (a) maintain all its records duly catalogued and indexed, in a manner and form which facilitates the right to information as provided for in this Act, including ensuring that all records, covered by the Act that are appropriate to computerise, are within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that authorised access to such records is facilitated.
(b) publish at such intervals as may be presented by the appropriate Government or competent authority. (i) the particulars of its organisation, functions and duties. (ii) the powers and duties of its officers and employees and the procedure followed by them in the decision making	(b) publish within 6 months of this Act coming into force and thereafter update at teast every 12 months. (i) The particulars of its organisation, functions and duties. (ii) The powers and duties of its officers and
(iii) the norms set by the public authority for the discharge of	(ii) The powers and duties of its officers and employees (iii) Procedures followed during the decision
its functions. (IV) rules, regulations, instructions, manual and other categories of records under its control used by its employees.	making process, including chains of supervision and accountability. (iv) The norms set by the public authority for the
for discharging its functions. (v) the details of facilities available to citizens for obtaining information, and (vi) the name, designation and other particulars of the Public	discharge of its functions. (v) Rulez, regulations, instructions, manual and records held by or under its control used by its employees for discharging its functions.
Information Officer,	(vi) A statement of the estegories of documents that are held by or under the control of the public authority.
	(vii) Particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or in the administration of, the public nuthority.
*	(viii) A statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;
	(ix) A directory of their public servants, from the level of the head of the department or his/her equivalent and helms
	the monthly remuneration received for each position, including the system of compensation as established in regulations.
	(xi) Information concerning the budget assigned to each agency, including all plans, proposed expenditures and reports on disbursement.
	(xii) The design and execution of subsidy programs, including the amounts allocated to them, criteria for access, implementation

authority maintains a library or reading roo that is available for public use, a statement that fact including details of the address and hours of opening of the library or reading room, and (xvi) the name designation and other particulars the Public Information and greatible by the appropriate government or Information Communication from time to time which we promote transparency across public authorities, as appropriate; on the basis that it shall be a constant endravor of put authorities are more at regular intervals through various means and policies that affect the public while announcing such decisions and policies. (c) publish all relevant facts conterning important decisions and policies that affect the public while announcing such decisions and policies. (d) give reasons for its decisions, whether administrative or quasi-indicial to those affected by such decisions; (e) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by such decisions; (e) before initiating any project, publish or communicate to the public by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles. (f) For the purpose of this section, information should disseminated widely and a form and manner which is endompreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information to be continuated through notice but necessible and compreheasible to the public information		
granted, with their recipients specified. (xiv) All information available to the public authority in electronic form or expable of being reduced to electronic form or expable of being reduced to electronic form or expable of resources. (xv) the details of facilities available to estitates obtaining information, including if the public authority maintains a library or reading room, and the available for public set, a statement that face including details of the address and hours of opening of the library or reading room, and (xvi) the name, designation and other particulars the Public Information and practiculars the Public Information and other particulars the Public Information and other particulars the Public Information and practicular the Public Information of Commissioner from time to time which we promote transparency across public authorities, as appropriate; government or Information to provide the public authorities, as appropriate; on the basis that it shall be a constant end-avor of public authorities to take steps to provide as much information to public as mento at regular intervals through various mean, communication to that the public intervals through various mean, communication that the public authorities, as appropriate; (c) publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies that affect the public while announcing such decisions and policies. (d) give reasons for its decisions, whether administrative or quasi-indical to those affected by such decisions. Retain Retain (e) publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies. (e) publish all relevant facts concerning important decisions and policies that influence maintained and project, publish for communicate to the public published to the public public and project, publish for communicate to the public published to its or to which it has reasonable access which in		
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most effective method of communication in that torest are to		keeping in mind cust effectiveness, the local language and the
and a second of security of security in the second start 2		most effective method of communication in that focal area. Such
information should be easily accessible, with the Pu		information should be easily accessible, with the Public
Information Officer, where possible in electronic format, wi		Information Officer, where possible in electronic format, which
shall be available free or at the cost of the medium, or in prin		shall be available free or at the cost of the medium, or in print at
CONT PARE.		cont pare.

(2) Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information. (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his dunies. (4) Any officer whose assistance has been sought under subsection.	Act designate as many officers as Public Information Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one month of this Act coming into force. (a) An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act. He/she shall receive all requests for information, and appeals, both under the state and the central acts, and pass them on to a designated authority for onward transmission to the relevant department/agency. (b) Where applications/appeals are handed over at the sub divisional or sub-district tevel, an additional period of five days would be added to the time of response specified under this act, in order to enable the request/appeal to be communicated to the relevant authority. Retain Retain
section (3), shall render all assistance to the Public Information Officer speking his assistance. 6. A person desires of obtaining information shall make a request in writing or through electronic means, to the	section (3), shall render all assistance to the Public Information Officer seeking his/ner assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act
concerned Public Information Officer specifying the particulars of the information sought by him.	English or in the official language of the arm in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority, (b) other designated Public Information Officers, as specified in 5 (la) specifying the particulars of the information sought by him/her.
Provided that where such request connot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.	Retain
New Section 6 (2) Dues out cause to present Ag.	6 (2) An applicant for access to information shall not be required to give any reason for requesting access to that information or any other personal details except those necessary for contacting the applicant.
New Section 6 (3) Does not exist to the present Act.	6 (3) (1) Where an application is made to a Public Authority for information: (a) which is held by another Public Authority; or (b) the subject matter of which is more closely connected with the functions of enother Public Authority. the first mentioned Public Authority shall transfer the

7. (i) On receipt of a request under section 6, the	application or sect part of it as may be appropriate to that other Public Authority and shall inform the applicant immediately of the transfer. (2) A transfer of an application pursuant to subsection (1) shall be made as soon as producible but not later than 5 days after the date of receipt of the application. 7(1) Subject to section 5, sub-section (1b) above and section 7.
Public Information Officer shall as expeditiously as possible and in any case within thirty days of the receipt of the request either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections B and 9. Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request.	sub-section (3)(a) below, on receipt of a request under section 6, the Public Information Officer shall as expeditiously as possible and in any case within fifteen days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9. Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. 7(2) If a Public Information Officer fails to give the decision on a request for secess to the requester concerned within the period contemplated in section 7(1), the Public Information Officer would, for the purposes of this Act. be regarded as having refused the request.
Provided further that where it is decided to provide the information on payment of any further fee representing the cost of providing the information, he shall send an inturation to the person making the request, giving the details of the fees determined by him, requesting him to deposit the fees and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to above.	7(3) Where it is decided to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving: (a) the details of such fees as determined by him, showing the calculations as per the act, at prescribed rates, requesting him to deposit the fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of lifteen days referred to above; (b) information concerning his/her rights with respect to review the decision as to the amount of fees charged and/or the form of access provided including the contact details of the appellant authority, time limits, process and any relevant forms
New Section 7 (4) Does not exist in the present Act.	7 (4) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability, the public authority will provide assistance to enable excess to the information, including providing assistance with inspection as appropriate.
New Section 7(5) Does not exist in the present Act.	7(3(a) Subject to sub-sections (b) and (c) below, where access to information is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee. (b) Any fees payable by the applicant shall be reasonable, and shall in no case exceed the natural cost of copying the information or in the east of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice. (c) Notwithstanding subsection (a), where a public authority faits to comply with the time family specified in section 7, any access to information to which the applicant is entitled.

_	pursuant to his request shall be provided free of charge.
(2) Before taking any decision under sub-section (1), the Public information Officer shall take into consideration the representation made by a third carn under section 11.	
(1) Where a request is rejected under sub-section (2), the Public Information Officer shall communicate to the person making request. (i) the reasons for such rejection; (ii) the period within which no appeal against such rejections may be preferred: (iii) the particulars of the appealate authority.	Retain. Renumber 7 (7)
(4) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately diven the resources of the public authority or would be detrimental to the safety or preservation of the record in question.	Retain. Renumber 7 (5)
8 (1) Notwithstanding anything berein before	8(1) Notwithstanding anything contained in this Act, there shall
contained, the following information not being information	be no obligation to give any person
relating to any matter referred to in sub-section (2), shall be	(a) information, disclosure of which would
exempted from disclosure, namely:-	prejudicially affect the sovereignty and integrity of
(a) information, the disclosure of which would	India, the security, strategic, scientific or economic
presudically affect the sovereignty and integrity of India,	interests of the State, retation with foreign State or lead to incitement of an offence.
security of the State, strategic seagnific or economic interest	(b) information which has been expressly forbidden to
of tridia or conduct of international relations:	be published by any court of law or tribunal or the
(b) information, the disciouse of which would	disclosure of which may constitute contents of court.
prejudicially affect public safety and order, detection and investigation of an offence or which may tend to an	e) information, the disclosure of which would cause a
incitement to commit an affence or prejudicially affect fair	breach of privilege of Parliament or the State
trial or atfludication of a pending case;	Legislature ; dhalormation including commercial confidence, trade
}	secrets or intellectual property, the disclosure of which
(c) information, the disclosure of which would	would harm the competitive position of a third party.
prejudicially affect the conduct of Centre-State relations, including information exchanged in confidence between the Central and State Governments or any of their authorities or	unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such
alterace:	idlometion;
(d) Cabinet papers including records of deliberation of	(c) information available to a person in his fiductory relationship, unless the Competent Authority is
the Council of Ministers, Secretaries and other officers.	Austied that the larger public interest warrants the
(c) Minutes or records of advice including legal	disclosure of such information;
advice, opinions or recommendations made by any officer of	(f) information received in confidence from foreign
a public authority during the decision making process prior to the executive decision or policy formulation;	Eanestaticus:
(f) Trade or commercial secrets protected by law or	(E) information, the disclosure of which would
information, the disclosure of which would prejudicially	endanger the tife or physical safety of any person or identify the source of information or assistance given
affect the legitimate economic and commercial interests or	in confidence for law enforcement or security purposes
the competitive position of a public authority; or would	;
causa unfair gain or loss to any person; and	(h) information which would impede the process of
(E) Information, the disclosure of which may result in	investigation or apprehension or prosecution of
the breach of privileges of Parliament or the Legislance of a	Official actions (
State or contravention of a faveful order of a court	(i) cabinet papers including records of deliberations of the Council of Ministers, Secretanes and other
1	officers, provided that the decisions of Council of himsers, the reasons thereof, and the natural on the
! :	basis of which the decisions were taken shall be
	mark public after the decision has been taken, and
; ;	the matter is complete, or over, provided further than
	those matters which come under the exemplance
	listed in Section 8 shall not be disclosed
	(j) information which relates to personal information
	the disclosure of which has no relationship to any public activity or interest or which would cause
L	unwarranted invasion of the privacy of the individual

•	
(2) Subject to the provisions of clause (a) of sub-section i, any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty-five years before the date on which any request is made under section 6 shall be provided to any person making a request under that section	uniess the information Office or the apellate authorny, as the case might be, is satisfied that the larger public interest justifies the disclosure of such information. Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person. Notivithstanding anything in the Official Secrets. Act 1921 nor any of the exemptions permissible in accordance with section 8 (1), a public authority may allow access to information, if public interest in disalgence outweights the harm to the protected interests. (2) Subject to the provisions of clause (a) and (i) of subsection 1 of section 8, any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section
	Provided that the matters covered by Sub-Section 8(a) and Sub-Section 8(1) may be disclosed after twenty-five years
Provided that where any question arises as to the date from which the said period of twenty-five years has to be computed, the decision of the Central Government shall be final.	Provided that where any question arises as to the date from which the said period of ten years or twenty-five has to be computed, the decision of the Union Ouvernment shall be final, subject to the usual appeals provided for in this act.
9. Without prejudice to the provisions of section 8. A public information officer may reject a request for information also where such request— (a) is too general in nature or is of such a nature that, having regard to the volume of information required to be retrieved or processed would involve unreasonable diversion of the resources a public authority or would adversely interfere with the functioning of such authority: Provided that where such request is rejected on the ground that the request is too general, it would be the duty of the Public Information Officer to render help as far as possible to the person making request to reframe his request in such a manner as may facilitate compliance with it; (b) relates to information that it required by law, rules, regulations or orders to be published at a particular time and such information is likely to be so published within thirty days of the receipt of such request; or (c) relates to information that is contained in published inaterial available to public:	
(d) relates to information which would cause univarianted	

(1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act access may be given to that pan of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

Relain

- 10(2) Where access is granted to a part of the record in accordance with sub-section (1), the person making the request shall be informed
- (a) Usal only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
- (b) of the provisions of the Act under which the severed part is exempted from disclosure
- 10(3) Where access is granted to a pain of the record in accordance with sub-section (1), the Public Information Officer shall send a notice to the applicant, advising:
 - (a) that only part of the recurd requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
 - (a) The reasons for the decision, including any findings on any material questions of fact, referring to the material on which those findings were based:
 - (b) The name and designation of the person giving the decision, and
 - (c) Details of the fees determined by him/her and requesting the applicant to deposit the fees;
 - (d) Information concerning his/her rights with respect to review of the decision regarding non-disclosure of pent of the information, the amount of fees charged and/or the form of access provided, including the contact details of the appellate body, time limits, process and any relevant forms;
- (11). (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within twenty-five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof:

Provided that except in the case of trade or commercial secrets protected by law, displosure may be allowed if the public interest in disclosure outweights in importance any possible harm or injury to the interests of such pany.

- (2) where a notice is given by the public information officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within twenty days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure
- (3) Notwithstanding soything contained in section 7, the public information officer shall, within sixty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under subsection (2), make a decision as to whether or not us discluse the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) and include a statement that the third party to whom the notice is given is emided in prefer an appeal against the decision under section 12.

11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made tander this Act which relates to, or has been supplied by a third party and his been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of a request give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission, in writing or grally, regarding whether the information should be disclosed which submission shall be taken into account when determining whether to disclose the information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweights in importance any possible harm or injury to the interests of such party.

- (2) where a nation is given by the public information officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within on days from the date of essuance of notice, be given the apportunity to make representation against the proposed disclosure.
- (a) Notwellocateding anything contained in section 7, the public information officer shall, within twenty days after receipt of the request under section 6, if the third panyhas been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

	(4) A antian proper codes and a contract to the contract to th
	(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given
	is entitled to prefer an appeal against the decision under
	section 12(2)
	76.00. (24)
Section (2(1)	12(t): (iXa) The President shall appoint or designate a Chief
	Information Commissioner for all matters pertaining to
A new terrien to be introduced	the tione Such associations and the tiones for the tione Such associations about the such as the tione to the
	the Union Such appointment shall be made on the basis
	of a recommendation made by an Appointing
	Committee presided by the Prime Minuser, with the
	Leader of Opposition in the Lot Sabha and the Chief
	Justice of India as members
	(iXb) The Governor shall appoint or designate a State
	Information Commissioner for all matters pertaining to
	the State Such appointment thall be made on the basis
	of recommendation made by an Appointing Committee
	presided by the Chief Munister, with the Leader of
	Opposition in the Legislative Assembly and the Chief
	Justice of the High Court as members
	(iii) Information Commissioners may be appointed by
	the President or the Governor, as the case may be, in
	consultation with the appropriate Appointing
	Committee and the Chief Information Committioner or
	State Information Commissioners, as the case cay be
	(iii) Every Chief Information Commissioner, State
•	Information Commissioner and Information
	Commissioner shall be a person with wide knowledge
	and experience of administration and governance,
	and/or a person with high public stature.
	(IV) The Chief Information Commissioners and any
	Information Commissioners shall not be members of
	Parliament or members of the Legislative of any State or
	Union Territory and shall not hold any other office of
	profit and shall not be connected with any political party
	or be carrying on any business or eractice any
	profession:
	(v) The requisite budgetary allocations for the
	emoluments and expenses, including office expenses, of
	the Chief Information Commussioner and of other
	Information Commissioners will be provided by the
	Government of India through special budgetary
	provisions made available to the respective states out of
	the Union Government Budget
_	(vi) The Cluef information Commissioner and of other
•	Information Commissioners shall function
	autonomously without being subjected to directions by
	any other authority and would be nuger the
	any other attributely and would be drotte the
	Ministry of Personnel, Administrative Reforms and
	Public Grievances
	(vii) Every portan appointed as a Chief Information
	Commissioner or an Information Commissioner shall
	hold affice for a term of five years from the date on
	which are enters upon the office. Mostic with the date of
	clicible for responsiment
12 (II Any person aggreered by a decision of the	
Public information officer may, within thiny days of receipt	12. (2) (a) Any person who does (aif receive a decision to the
of such decision, prefer an appeal to such authority as may	
be prescribed.	is aggrieved by a decision of the Public information
Provided that such authority may entenain the appeal after	officer may, within thirty days of the expiry of such a
the expens of the said period of thing days if it is satisfied	
that the appellant was prevented by sufficient cause from	to an appellate authority prescribed for the purpose in
filing the appeal in time.	each department and renew in rank to the Public
second the shorest the mitter	Information Officer.
	10
	10

- (2) A second appeal against the decision under sub-section (1) shall be within thirty days of such decision to the Central Covernment or the State Covernment or the competent authority, as the case may be:
- Provided that the Central Government or the State Government or the competent authority, as the case may be, may entertain the appeal after the expiry of the sald period of thiny days if it is satisfied that the appealant was prevented by sufficient cause from filing the appeal in time.
- (5) The appeals referred to in sub-sections (1) and (2) shall be disposed of within thirty days of the receipt of such appeals or within such extended period, as the case may be, for reasons to be recorded in writing.
- (4) If the decision of the public information officer against which the appeal is preferred under sub-section (1) or (2) also relates to information of third party, the appellate suthority shall give a reasonable apportunity of being heard to that third party.

- Provided that such authority may entertain the appeal after the expens of the said period of thirty days if it is satisfied that the appealant was prevented by sufficient cause from filing the appeal in time
- (ii) A second expess against the decision (or tack of it), under sub-section (i), shall be within 90 days from the time by which the decision should have been made or was actually received, with the relevant Chief/State/Information Commissioner:
- Provided that the relevant Chief/State/Information Commissioner may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time
- (iii) Where an appeal is being preferred against an order made by the Public Information. Officer under Section 11 to disclose "third party" information, the appeal by the concerned third party must be made within thirty days of the order.
- (iv) If the decision of the Public Information Officer against which the appeal is preferred relates to information of a third party, the relevant Information Commissioner shall give a reasonable opportunity of being heard to that third party
- (v) In any appeal proceedings, the onus in prove that e denial of a request was justified will be on the public authority that denied the request.
- (vi) Appeals to any appellate authority/Information Commissioner shall be disposed of within thirty days of the receipt of the appeals or within such extended period, not exceeding a total of forty five days from the date of filing of appeal, for reasons to be recorded in writing.
- (vii) The decision of the Information Commissioner shall be binding.
 (viii) In his/her decision, the relevant Information Commissioner has the power ta:
 - (a) require the public authority to take any such steps as may be necessary to bring it into compliance with the Act, including by:
 - (i) providing access to information, including in a particular form;
 - (ii) appointing an enformation officer.
 - (iii) publishing certain information and/or categories of information:
 - (iv) making certain changes to its practices in relation to the keeping, management and destruction of records.
 - on the right to information for its
 - (vil providing him or her with an annual report, in compliance with section 4(b).
 - (a) understy the bright pool to combourse the mileses
 - It impose any of the penalties available under this

	Act.
	(d) reject the application
	(ix) The Information Commissioner shall serve
	notice of his/her eccision, including any rights
	of appeal, on both the complainant and the
	public authority
	(x) A decusion of the Information
	Commissioner may be appealed to the High
	Court to the Common of appealed to the Right
	Court or the Supreme Court, on any point of
	fact and fav.
Section (2(3)	N40)
Section (2(3)	12(3) Powers of the Chief Information Commissioner/State
A and a series of the series of	Information Commissioners/Information
A new section to be introduced	Commissioners
	(1) Subject to this Act, the Chief Information
	Commissioner /State Information
	Commissioners/Information Commissioners shall
	receive and investigate complaints from persons:
	(a) who have been unable to submit a request to a
	Public Information Officer, either because none
	has been appointed as required under the Act or
	because the Public Information Officer has
	refused to accept their application.
	(b) who have been refused access to information
	requested under this Act;
	(c) who have not been given a response or accept
	to information within the time limits required
	ender this Act:
	(d) who have been required to bay an amount
	under the fees provisions that they consider
	ייונבייטושקיב;
	(c) who believe that they have been given
	incomplete, misicading or false information under
	this act;
	(f) in respect of any other matter relating to
	requesting or abtaining access to records under
	this Act
	(2) Where a Chief Information Commutationer/State
	Information Commissioner/Information Commissioner
	of charge of danotes over the bollstite grounds to
	investigate a matter relating to requesting or obtaining
	access to records under this Act, he/she may initiate a
	complains in respect thereof.
	(3) The Chief Information Commissioner/State
•	Information Commissioners/Information
	Commissioners have, in relation to the entrying out of
	the investigation of any complaint under this Act.
	power.
	(a) to surration and enforce the appearance of
	persons and compet them to give oral or
	written evidence on eath and to produce such
	documents and things as the Commissioner
	deems require to the full investigation and
	considerance of the complaint, to the same
	manner and to the same extent as a superior
•	or otherwise, as the relevant information
	count of report (b) to administer on the, (c) to receive and accept such evidence and information, whether on onto or by affine

	(d) to enter any premises occupied by any
	government institution on satisfying eny
	security requirements of the institution
	relating to the premises;
	(c) to converse in private with any person in any
	premises entered parsuant to paragraph (d)
	and otherwise carry out therein such inquires
	within the authority of the Chief Information
	Commissioner under this Act as the
	Commissioner sees fit, and
	(f) to examine or obtain topies of or extracts
	from books or other records found in any
	faculter curered branchi to tour bull (q)
	containing any matter relevant to the
	investigation
	(g) To impose the penalties prescribed under this
	set, after giving due appartunity to the
	concerned official of being beard
	(4) hotwithstanding any other Act of Parliament or any
	privitege under the law of evidence, on Chief
	Provide differ the raw of Exhibiting on Chief
	Information Commissioner /State Information
	Commissioners/Information Commissioners may,
	during the investigation of any complaint under this
	Act, examine any record to which this Act applies that
	is under the control of a government institution, and no
	such record may be withheld from any Commissioner
	an any grounds.
	(5)A() the powers of the Chief Information
	Commissioner would also be enjoyed by the State
	Information Commissioners and other Information
	Commissioners, within their jurisdictions.
	California William Judge Clork.
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Section 12 (4)	1 DVAL Develope
Section 12 (4)	12/4) Penalues
Section 12 (4) New section to be inserted	(1) Subject to sub-section (3), where any Public
	(1) Subject to sub-section (3), where any Public
	(1) Subject to sub-section (1), where any Public Information Officer has, without any reasonable cause,
	(1) Subject to sub-section (1), where any Public Information Officer has without any reasonable cause, failed to supply the Information sought, within the
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		as prescribed in sub-sections (1) and (2) jointly with the Public Information Officer or severally as may be decided by the relevant Information Commissioner. Any fines imposed under sub-sections (1), (2) and (3) shall be recoverable from the salary of the concerned officer, including the Public Information Officer, or if no salary is drawe, as an arrears of land revenue, recoverable within a maximum of six months of the order imposing the fine. The Public Information Officer or any other officer on whom the penalty under sub-sections (1), (2) and (3) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him. Provided that in cases where the officer is proved guifty of deliberate denial of information or misinformation, the punishment imposed shall be a major penalty, i.e., dismissal or removal or reduction in rank
CHAPTER III MISCELLANEOUS		CHAPTER III MISCELLANEOUS
13 No suit prosecution of other legal proceeding shall be against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder. 14. The provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time.	Retain Retain	
being in force or in any instrument having effect by virtue of any law other than this Act		
15. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act. 16 (1) Nothing contained in this Act shall apply to the	Retain	(1) Nothing commined in this Act shall apply to the
intelligence and security organisations, specified in the Schedule being organisations enablished by the Central Government in any information furnished by such organisations to that Government may, by notification in the official Gozette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be decreed to be included in or, as the case may be combited from the Schedule. (3) Every notification issued under sub-section (2) shall be laid before each house of parliament. (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the official gozette, by a state decrement from time to time. (5) Every notification issued under sub-section (4), shall be laid before the state legislature.		intelligence and security organisations, specified in the Schedule being organisations established by the Union Government or any information furnished by such organisations to that Government. Provided that information pertaining to alteged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause. (2) The Union Government may, by notification in the official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be omitted from the Schedule. (3) Every notification issued under sub-section (2) shall be laid before each house of parliament. (4) Nothing commined in this Act shall apply to such intelligence and security organizations which may be specified, by a notification in the official gazette, by a state Government from time to time. Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause.

	shall be laid before the state feerstature.
Semion 16A.	16A Mamioring and Reporting
	1 The Chief Information Commissioners/State Information
New section to be inserted.	Commissioners/Information Commissioners shall, as soon
	as producable after the end of each year, prepare a report on
	the implementation of this Act during that year and cause a
	copy of the report to be laid before the legislatures of the
	concerned state and each House of the Parliament
	2 Each responsible department/ministry shall, in relation to
	the public authorium within their jurisdiction collect and
	provide such information to the Chief/State/ Information
	Commissioners as is required to prepare the report under
	this section, and shall comply with any prescribed
	requirements concerning the furnishing of that information
	and the keeping of records for the purposes of this section.
	The breast shall be a misseure contain a second of the user
	3 Each report shall, at a minimum, state in respect of the year
	to which the report relates
	(a) the number of requests made to each public authority.
	(b) the number of decisions that an applicant was not
	entitled to access to a document pursuant to a request,
	the provisions of this Act under which these decisions
	were made and the number of times each provision wa
	involted;
	(c) the number of appeals seru to the Information
	Commussioners for review, the nature of the
	complaints and the outcome of the appeals:
	(d) particulars of any desciplinary occuon takes against any
	officer in respect of the administration of this Act
	(c) the amount of charges collected by each public
	authority under this Act;
	(f) any facts which indicate an effort by public authorities
	to administer and implement the spirit and intention of
	this Act.
	(E) recommendations for reform, including
	resommendations to respect of particular public
	authorities, for the development, improvement,
	modernization, reform or amendment of this Act or
	other legislation or common law or any other matter
	relevant to operationalising the right to access
	information, as appropriate.
	4. The Union Government Ministry responsible for the
	administration of this Act, as soon as practicable after the
	end of each year, prepare a summary report on the
	implementation of this Act during that year and cause a
	copy of the report to be faid before the concerned state
	legislatures and each floese of the Parliament, drawing on
•	the information provided in the reports of the Chief
	Information Commissioners for each State.
	If it appears to any Chief Information Commissioner that
	the practice of a public authority in relation to the exercise
	of its functions under this Act does not conform with
	provisions or spirit of the Act . Mrs may give to the
	authority a recommendation specifying the steps which
	nught or bights: opinors or he taken for primaring that
	contamity:
rection 16th	160 (1) 172 (invertigent) may, to the extent that financial a
account top	Other resources are available.
New section to be reported	
New section to be inserted.	(5) develop and conduct educational
	programmes to advance the
	understanding of the public, in particula
	of disadvantaged communities, of this
	Notification and of how to exercise the

	rights contemplated in this Act
1	(b) euromatic bopile anthorities to barneibate
1	in the development and conduct of
	programmes referred to in paragraph (a) and to undertake such programmes
	themselves; and
	(c) promote timely and effective
	dissemination of accurate information by
	public authorities about their activities
	(d) train information officers of public
	authorities and/or produce relevant
	training materials for use by authorities
	themselves.
	(2) The Government must, within 18 months of this Act
·	coming into force, compile in each official tanguage a
	guide containing such information, in an easily
	comprehensible form and macher, as may reasonably
i	be required by a person who wishes to exercise any
	right contemplated in this Act.
	(3) The Government must, if necessary, apetate and publish the guide at regular intervals. The guide must, without
	limiting the generality of subsection (2), include a
	description of
	(a) the objects of this Act,
	(b) the postal and street address, phone and
	fax number and, if available, electronic
i	mail address of the Public Information
	Officer of every public authority as
	appointed under sub section (1) of section
	(c) the manner and farm of a control
	(c) the manner and form of a request for excess to a information of a public
	enthority.
	(d) the assistance available from and the
	dates of Public Information Officers of a
	public authority in terms of this Act;
	(e) the assistance available from the
	Information Commissioners in terms of
	this Act;
	(I) all remedies in law available regarding an
ļ	set or fallure to see in respect of a right or
	duty conferred or imposed by this Act,
	including the manner of lodging an appeal with the appellate authorities
	Guel/State/ Information Commissioners
	and a court against a decision by the
	Public Information Officer of a public
	authority.
	(2) the provisions providing for the voluntary
ļ	distinguire of exectorics of records in
	scoordance with section 4;
	(h) the volices regarding fees to be paid in
ļ.	relation to requests for access, and
	6) and culditional regulations or circulars
ı	relevant to obtaining access to information in accordance with this Act.
ļ	(4) The Government must, if necessary, update and
	publish the guide at regular micryals
17 III The Central Government may by notification in	Retain
the Official Gazette, make rules to earry out the provisions	
of this Act	
(2) In particular, and without prejudice to the generality of	Relain
the foreguing cower, such rules may provide for all or any of	
110	16
43	

the following matters, namely	
(a) interest at which matters	Retain
referred to in sub-clauses (i) to (s) of clause (b) of section 4	
shall be published.	
(b) The fee payable under sub-section (1) of section 7;	Retain
	Hetain
	RCDIT
an appeal may be preferred under sub-section (1) of section	
. 12,	
(id) any other matter which is required to be, or may be	Retnin
prescribed.	
18 (1) The State Government city, by notification in	Persia
	respin
the Official Gazzette, make rules to carry out the provisions	
of the Act.	
(2) In particular, and without prejudice to the generality of	Retain
the foregoing power, such rules may provide for all or any of	
the following matters, namely:	
(a) the fee payable under sub-section (1) of section 7	Retain
	Retain
(b) the authority before whom an appeal may be preferred under sub-section (1) of section 12:	1/000
	O annua
(c) any other matter which is required to be, or may be	Retain
prescribed:	
Provided that initially the rules shall be made by the Central	Retain
Government by notification in the official gazette.	
19 (1) The competent authority may, by notification in	Retain
the official gazette make rules to carry out the provisions of	-
this Act.	
(2) In particular, and without prejudice to the generality of	Retain
the foregoing power such rules may provide for all or any of	
the following matters, namely:-	
(a) the fee payable under sub-section (1) of section ?	Retain
(b) the authority before whom an	Retain
	A-MAIII
appeal may be preferred under sub-section (1) of section 12:	16
(c) any other matter which is required to be, or may be,	Retain .
prescribed.	
20. (1) Every nile made by the Central Government	Retain
under this Act shall be laid, as soon as may be after it is	
made, before each house of parliament, while it is in session,	
for a total period of thiny days which may be compased in	
one session or in two or more successive sessions, and if.	
before the expiry of the ression immediately following the	
session or the successive sessions aforestid, both houses	
agree in making any modification in the rule or both houses	
agree that the rule should not be made, the rule shall	
thereafter have effect only in such modified from or be of so	
effect, as the clase may be, so, however, that any such	
modification or annulaters that be without prejudice to the	
validity of anything previously done under that rule.	
(2) Every rule made under this Act by a State Government	
shall be laid, as soon as may be after it is notified, before the	
State Legislature	
21. (1) If any difficulty arises in giving effect to the	Retain
provisions of this Act, the Central Government may, by	
order published in the official gazette, make such provision	
new increasistent with the provisions of this Act as appear to it	
to be needsary or expedient for removal of the difficulty	
Principed that no such order shall be made after the expery of	
is period of two years from the date of commencement of this	
ACI	
(2) Every order made under this section shall as soon as may	Retain
be after it is made, be laid before the houses of carliament	
or over it is titting in 1310 actors (he works) of continuent	

THE SCHEDULE

(See section 16)

Intelligence and Security Organisations Established by the Central Government

- t Intelligence Bureau
- Research and Analysis Wing of the Cabinal Secretarial.
- Directorate of Revenue Intelligence.
- 4 Central Economic Intelligence Bureau.
- 5 Directorate of Enforcement
- Narcotics Control Bureau
- 7. Aviation Research Centre.
- Special Frontier Force
- 9 Border Security Force
- 10. Central Reserve Police Force
- 11. Indo Tiberan Border Police.
- 12. Central Industria! Security Force.
- 13. National Security Guards
- 14. Assam Rifles
- 15. Special Service Bureau.
- 16. Special Branch (CID), Andaman and Nicobar.
- 17. The Crime Branch-CID. CB. Dattra and Nagar Haveli
- 18 Directorate of Vigilance including Anti Corruption Branch, National Capital Territory of Delhi
- 19. Special Branch, Lakshadweep Police.

THE SCHEDULE

(See section 16(1))

Intelligence and Security Organisations Established by the Central Government

- 1 Intelligence Bureau
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- 6 Narcolies Control Rureau.
- 7. Aviation Research Centre.
- Special Frontier Force.
- 9 Border Security Force.
- 10. Central Reserve Police Force.
- 11 Indo Tibetan Border Police
- 12. Central Industrial Security Force.
- 13. National Security Guards
- 14. Assam Rifles.
- 15 Special Service Bureau.
- 16. Special Branch (CID), Andaman and Nicobar.
- 17. The Crime Branch-CID, CB, Dadra and Nagar Haveli.
- Directorate of Vigilance including Anti-Corruption Branch. National Capital Territory of Dellu
- 19. Special Branch, Lakshardweep Police

AS SUĞGESTED BY THE NATIONAL ADVISORY COUNCIL

RIGHT TO INFORMATION ACT

PREAMBLE

A Bill to operationalise the right to information by setting out the practical regime for people to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability and in relation to matters connected therewith or incidental thereto.

Chapter I: PRELIMINARY

- 1. (1) This Act may be called the Right to Information Act 2004
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force within 120 days of it being enacted.
 - (4) Where State legislation exists dealing with the right to access information, a person will have the right to seek information under the State law as well as under this Act, if the information pertains to a subject under the State List in Schedule 7 of the Constitution of India.
 - (5) Objectives of the Act. The objectives of the Act are to -
 - (i) give effect to the Fundamental Right to Information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability in Union, State and Local Self Government Institutions.
 - (ii) establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner.
 - (iii) promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all pursons to:
 - understand their rights in terms of this Act in order to exercise their rights in relation to public authorities;
 - understand the functions and operation of public nuthorities; and
 effectively participating in decision making by public authorities that affects their
 rights.
- 2. In This Act, unless the context otherwise requires:
 - (a) "appropriate Government" means in relation to a public authority established, constituted, owned, substantially financed by funds provided directly of indirectly or controlled-
 - (i) by the Union Government, the Union Covernment:
 - (ii) by the State Government, The State Government,
 - (iii) by the Union territory, The Union Government,
 - (b) "competent authority" means-
 - (i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council:

u6 1

- (ii) The Chief Justice of India in the case of the Supreme Court:
- (iii) The Chief Justice of the High Court in the case of a High Court;
- (iv) The President or the Governor, as the case may be, in case of other authorities created by or under the Constitution:
- (v) the administrator appointed under article 239 of the Constitution;
- (c) "Chief Information Commissioner", "Information Commissioner" and "State Information Commissioner" means the authorities so appointed under this sea
- (d) "right to information" means the right to access information held by, legally necessible by or under the control of any public authority and includes:
 - (i) Inspection of works, documents, records;
 - (ii) Taking notes and extracts and obtaining certified copies of documents or records;
 - (iii) Taking certified samples of material;
 - (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.
- (e) "information" means any material in any form, including records, documents, file notings, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any law;
- (f) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be:
- (g) "public authority" means any authority or body established or constituted,-
 - (i) by or under the Constitution:
 - (ii) by any law made by the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes panchayati raj institutions and other community bodies. like district councils, and village or locality durbars, performing public functions in areas notified under schedule 5 and 6 of the Constitution.
- (h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) and/or (1)(a) of section 5;
- (i) "record" includes-
 - (i) any document, manuscript and file;
 - (ii) any microfilm, microfiche and facsimile copy of a document;
 - fifts any reproduction of image or images embodied to such miserality swhallow anlarged or not); and
 - (iv) any other material produced by a computer or by any other device.
- (j) "third party" means a person other than the person making a request for information and includes a public authority.

CHAPTER II

FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

- 3. Subject to the provision of this Act, all persons shall have the right to information
- 4 Every public authority shall-
 - (a) maintain all its records, duly catalogued and indexed, in a manner and form which facilitates the right to information as provided for in this Act, including ensuring that all records, covered by the Act that are appropriate to computerise, are within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that authorised access to such records is facilitated.

(b) publish within 6 months of this Act coming into force and thereafter update at least every 12 months

- (i) The particulars of its organisation, functions and duties
- (ii) The powers and duties of its officers and employees
- (iii) Procedures followed during the decision making process, including chains of supervision and accountability.
- (iv) The norms set by the public authority for the discharge of its functions.
- (v) Rules, regulations, instructions, manual and records held by or under its control used by its employees for discharging its functions.
- (vi) A statement of the categories of documents that are held by or under the control of the public authority.
- (vii) Particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or in the administration of, the public authority.
- (viii) A statement fixting all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;
- (ix) A directory of their public servants, from the level of the head of the department or his/her equivalent and below;
- (x) The monthly remuneration received for each position, including the system of compensation as established in regulations.
- (xi) Information concerning the budget assigned to each agency, including all plans, proposed expenditures and reports on disbursement.
- (xii) The design and execution of subsidy programs, including the amounts officeated to them, criteria for access, implementation details and beneficiaries
- (xiii) All concessions, permits or authorisations granted, with their recipients specified.

- (xiv) All information available to the public authority in electronic form or capable of being reduced to electronic form which is not exempt under this Act, subject to availability of resources.
- (xv) the details of facilities available to enizens for obtaining information, including if the public authority maintains a library or reading room that is available for public use, a statement of that fact including details of the address and hours of opening of the library or reading room; and
- (xvi) the name, designation and other particulars of the Public Information Officer,
- (xvii) such other information as prescribed by the appropriate government or Information Commissioner from time to time which would promote transparency across public authorities or in specific public authorities, as appropriate;

on the basis that it shall be a constant endeavor of public authorities to take steps to provide as much information to the public suo moto at regular intervals through various means of communication so that the public have minimum resort to the use of this Act to obtain information.

- (c) publish all relevant facts concerning important decisions and policies that affect the public white formulating and announcing such decisions and policies;
- (d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions:
- (e) before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public generally or to the persons affected or likely to be affected by these in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.
- (f) For the purpose of this section, information should be disseminated widely and in a form and manner which is easily accessible and comprehensible to the public. "Disseminated" shall mean appropriately making known to the public the information to be communicated through notice boards, newspapers, public announcements, media broadcasts, the internet or other such means and shall include inspection at all of the bodies offices. All materials shall be disseminated keeping in mind cost effectiveness, the local language and the most effective method of communication in that local area. Such information should be easily accessible, with the Public Information Officer, where possible in electronic format, which shall be available free or at the cost of the medium, or in print at cost price.
- 5. (1) Every public authority shall for the purposes of this Act, designate as many officers as Public Information.

 Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one month of this Act coming into force.
 - (a) An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act. He/she shall receive all requests for information, and appeals, both under the

state and the central acts, and pass them on to a designated authority for onward transmission to the relevant department/agency.

- (b) Where applications/appeals are handed over at the sub divisional or sub-district level. an additional period of five days would be added to the time of response specified under this act, in order to enable the request/appeal to be communicated to the relevant authority
- (2) Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information.
- (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.
- (4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act
- 6. (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to:
 - (a) the Public Information Officer of the relevant public authority;
 - (b) other designated Public Information Officers, as specified in 5 (1a)

specifying the particulars of the information sought by him/her.

Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.

- 6 (2) An applicant for access to information shall not be required to give any reason for requesting access to that information or any other personal details except those necessary for contacting the applicant.
- 6 (3) (1) Where an application is made to a Public Authority for information:
 - (a) which is held by another Public Authority; or
 - (b) the subject matter of which is more closely connected with the functions of another Public Authority,

the first mentioned Public Authority shall transfer the application or such part of it as may be appropriate to that other Public Authority and shall inform the applicant immediately of the transfer.

- (2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than 5 days after the date of receipt of the application
- 7(1) Subject to section 5, sub-section (1b) above and section 7, sub-section (3)(a) below, on receipt of a request under section 6, the Public Information Officer shall as expeditiously as possible and in any case within fifteen days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9 throvided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request:
- 7(2) If a Public Information Officer fails to give the decision on a request for access to the requestor concerned within the period contemplated in section 7(1), the Public Information Officer would, for the purposes of this Act, be regarded as having refused the request.

- 7(3) Where it is decided to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving:
 - (a) the details of such fees as determined by him, showing the calculations as per the act, at prescribed rates, requesting him to deposit the fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of fifteen days referred to above:
 - (b) information concerning his/her rights with respect to review the decision as to the amount of fees charged and/or the form of access provided, including the contact details of the appellate authority, time limits, process and any relevant forms
- 7 (4) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability, the public authority will provide assistance to enable access to the information, including providing assistance with inspection as appropriate.
- 7(5)(a) Subject to sub-sections (b) and (c) below, where access to information is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee.
 - (b) Any feet payable by the applicant shall be reasonable, and shall in no case exceed the actual cost of copying the information of in the case of samples of materials the cest of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle than feet should not be set so high that they undermine the objectives of this Act in practice.
 - (c)Notwithstanding subsection (a), where a public authority fails to comply with the time limits specified in section 7, any access to information to which the applicant is entitled pursuant to his request shall be provided free of charge.
- 7(6) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.
- 7 (7) Where a request is rejected under sub-section (6), the Public Information Officer shall communicate to the person making request,
 - (i) the reasons for such rejection;
 - (ii) the period within which an appeal against such rejections may be preferred;
 - (iii) the particulars of the appellate authority.
- 7(8) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question
- 8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person:
 - (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.

- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c) information, 'the disclosure of which would cause a breach of privilege of Parliament or the State Legislature :
- d)information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign government;
- (g) 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;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over, provided further that those matters which come under the exemptions listed in Section 8 shall not be disclosed.
- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invesion of the privacy of the individual unless the Information Officer or the appliate authority, as the case might be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Purliament or a State Legislature, shall not be denied to any person.

Notwithstanding anything in the Official Secrets Act 1923 nor any of the exemptions permissible in accordance with section 8 (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(2) Subject to the provisions of clause (a) and (i) of sub section I of section 8, any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section

Provided that the matters covered by Sub-Section 8(a) and Sub-Section 8(i) may be disclosed after twenty-five years.

Provided that where any question arises as to the date from which the said period of ten years or twenty-five has to be computed, the decision of the Union Government shall be final, subject to the usual appeals provided for in this act.

- 9. Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve an infiningement of copyright substituting in a person other than the State.
- 10. (1) If o request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.
- 10(2) Where access is granted to a part of the record in accordance with sub-section (1), the Public Information Officer shall send a notice to the applicant, advising:
 - (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
 - (a) The reasons for the decision; including any findings on any material questions of fact, referring to the material on which those findings were based:
 - (b) The name and designation of the person giving the decision; and
 - (c) Details of the fees determined by him/her and requesting the applicant to deposit the fees;
 - (d) Information concerning his/her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fees charged and/or the form of access provided, including the contact details of the appellate body, time limits, process and any relevant forms;
- 11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission, in writing or orally, regarding whether the information should be disclosed, which submission shall be taken into account when determining whether to disclose the information

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweights in importance any possible harm or injury to the interests of such party

(2) where a notice is given by the public information officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure

- (3) Notwithstanding anything contained in section 7, the public information officer shall, within twenty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is children to prefer an appeal against the decision under section 12(2).
- 12(1): (iXa) The President shall appoint or designate a Chief Information Commissioner for all matters pertaining to the Union. Such appointment shall be made on the basis of a recommendation made by an Appointing Committee presided by the Prime Minister, with the Leader of Opposition in the Lok Sabha and the Chief fastice of India as members.
 - (i)(b) The Governor shall appoint or designate a State Information Commissioner for all matters pertaining to the State. Such appointment shall be made on the basis of recommendation made by an Appointing Committee presided by the Chief Minister, with the Leader of Opposition in the Legislative Assembly and the Chief Justice of the High Court as members.
 - (ii) Information Commissioners may be appointed by the President or the Governor, as the case may be, in consultation with the appropriate Appointing Committee and the Chief Information Commissioner or State Information Commissioners, as the case may be.
 - (iii) Every Chief Information Commissioner, State Information Commissioner and Information Commissioner shall be a person with wide knowledge and experience of administration and governance, and/or a person with high public statute.
 - (iv) The Chief Information Commissioners and any Information Commissioners shall not be members of Parliament or members of the Legislative of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be earrying on any business or practice any profession;
 - (v) The requisite budgetary allocations for the emoluments and expenses, including office expenses, of the Chief Information Commissioners and of other Information Commissioners will be provided by the Government of India through special budgetary provisions made available to the respective states out of the Union Government Budget.
 - (vi) The Chief Information Commissioner and of other Information Commissioners shall function autonomously without being subjected to directions by any other authority and would be under the administrative control of the Government of India, Ministry of Personnel, Administrative Reforms and Public Grievances.
 - (vii) Every person appointed as a Chief Information Commissioner or an Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office. He/she will not be eligible for reappointment.
 - 12. (2)(i) Any person who does not receive a decision in the time period specified in Section 7(1) or 7(3)(a) above, or is aggreed by a decision of the Public information officer may, within thirty days of the expiry of such a



period or of receipt of such a decision, prefer an appeal to an appellate authority prescribed for the purpose in each department and senior in each to the Public Information Offices

Provided that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appeal and was prevented by sufficient cause from filing the appeal in time.

(ii) A second appeal against the decision (or lack of it), under sub-section (i), shall lie within 90 days from the time by which the decision should have been made or was actually received, with the relevant ChieOState/Information Commissioner.

Provided that the relevant Chief/State/Information Commissioner may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (iii)Where an appeal is being preferred against an order made by the Public Information Officer under Section 11 to disclose "third party" information, the appeal by the concerned third party must be made within thirty days of the order.
- (iv) If the decision of the Public Information Officer against which the appeal is preferred relates to information of a third party, the relevant information Commissioner shall give a reasonable opportunity of being heard to that third party.
- (v) in any appeal proceedings, the onus to prove that a denial of a request was justified will be on the public authority that denied the request.
- (vi) Appeals to any appellate authority/Information Commissioner shall be disposed of within thirty days of the receipt of the appeals, or within such extended period, not exceeding a total of forty five days from the date of filing of appeal, for reasons to be recorded in writing.
- (vii) The decision of the Information Commissioner shall be binding.
- (viii) In his/her decision, the relevant Information Commissioner has the power to:
 - (a) require the public authority to take any such steps as may be necessary to bring it into compliance with the Act, including by:
 - (i) providing access to information, including in a particular form;
 - (ii) appointing an information officer,
 - (iii) publishing certain information and/or categories of information.
 - (iv) making certain changes to its practices in relation to the keeping, management and destruction of records;
 - (v) enhancing the provision of training on the right to information for its officials,
 - (vi) providing him or her with an annual report, in compliance with section 4(b);
 - (b) require the public body to compensate the complainant for any loss or other detriment suffered:
 - (c) impose any of the penalties available under this Act.
 - (d) reject the application.
- (ix) The Information Commissioner shall serve notice of his/her decision, including any rights of appeal, on both the complainant and the public authority.

- (x) A decision of the Information Commissioner may be appealed to the High Court or the Supreme Court, on any point of fact and law.
- 12(3) Powers of the Chief Information Commissioner/State Information Commissioners/Information Commissioners
 - (1) Subject to this Act, the Chief Information Commissioner /State Information
 Commissioners/Information Commissioners shall receive and investigate complaints from persons:
 - (a) who have been unable to submit a request to a Public Information Officer, either because none has been appointed as required under the Act or because the Public Information Officer has refused to necept their application;
 - (b) who have been refused access to information requested under this Act;
 - (c) who have not been given a response or access to information within the time limits required under this Act:
 - (d) who have been required to pay an amount under the fees provisions that they consider unreasonable;
 - (e) who believe that they have been given incomplete, mixleading or false information under this act;
 - (f) in respect of any other matter relating to requesting or obtaining access to records under this Act
 - (2) Where a Chief Information Commissioner/State Information Commissioner/Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, he/she may initiate a complaint in respect thereof.
 - (3) The Chief Information Commissioner/State Information Commissioners/Information Commissioners have, in relation to the carrying out of the investigation of any complaint under this Act, power.
 - (a) to summon and enforce the appearance of persons and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
 - (b) to administer oaths:
 - (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the relevant information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;
 - (d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;
 - (e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry our therein such inquiries within the authority of the Chief Information Commissioner under this Act as the Commissioner sees fit, and
 - (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.
 - (g) To impose the penalties prescribed under this act, after giving due opportunity to the concerned official of being heard.

- (4) Notivithstanding any other Act of Parliament or any privilege under the law of evidence, an Chief Information Commissioner (State Information Commissioners/Information Commissioners may, during the investigation of any complaint under this Act, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from any Commissioner on any grounds.
- (5)All the powers of the Chief Information Commissioner would also be enjoyed by the State Information Commissioners and other Information Commissioners, within their jurisdictions

12(4) Penalties

- (1) Subject to sub-section (3), where any Public Information Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the relevant Information Commissioner shall, on appeal, impose a penalty of supecs two hundred fifty, which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.
- (2) Subject to sub-section (3), where it is found in appeal that any Public Information Officer has -
 - (i) Refused to receive an application for information;
 - (ii) Mala fide denied a request for information;
 - (iii) Knowingly given incorrect or misteading information,
 - (iv) Knowingly given wrong or incomplete information.
 - (v) Destroyed information subject to a request; or
 - (vi) Obstructed the activities of a Public Information Officer, any Information Commission of the courts; he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand and imprisonment of up to five years, or both
- (3) An officer whose assistance has been sought by the Public Information Officer for the performance of his/her duties under this Act shall be liable for penalty as prescribed in sub-sections (1) and (2) jointly with the Public Information Officer or severally as may be decided by the relevant Information Commissioner.
- (4) Any fines imposed under sub-sections (1), (2) and (3) shall be recoverable from the salary of the concerned offices, including the Public Information Offices, or if no salary is drawn, as an arrears of land revenue, recoverable within a maximum of six months of the order imposing the fine
- (5) The Public Information Officer or any other officer on whom the penalty under sub-sections (1), (2) and (3) is imposed shall also be tiable to appropriate disciplinary action under the service rules applicable to him. Provided that in cases where the officer is proved guilty of deliberate denial of information or misinformation, the punishment imposed shall be a major penalty, i.e., dismissed or removal or reductive in rank.

CHAPTER III MISCELLANEOUS

No suit, prosecution or other legal proceeding shall ite against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder

- The provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act. 1925, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- 15. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.
- (1) Nothing contained in this Act shall apply to the intelligence and security organisations, specified in the Schedule being organisations established by the Union Government or any information furnished by such organisations to that Government.

Provided that information permitting to alleged violations of human rights, to the life and liberty of human beings and to the allegations od corruption will not be excluded under this clause.

- (2) The Union Government may, by notification in the official Gazetic, amend the Schodule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be omitted from the Schedule.
- (3) Every notification issued under sub-section (2) shall be laid before each house of parliament.
- (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the official gazette, by a state Government from time to time. Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause
- (5) Every notification issued under sub section (4), shall be faid before the state legislature...
 16A Monitoring and Reporting
 - (1) The Chief Information Commissioners/State Information Commissioners/Information
 Commissioners shall, as soon as practicable after the end of each year, prepare a report on the
 implementation of this Act during that year and cause a copy of the report to be taid before the
 legislatures of the concerned state and each House of the Parliament.
 - (2) Each responsible department/ministry shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Chief/State/ Information Commissioners as is required to prepare the report under this section, and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.
 - (3) Each report shall, at a minimum, state in respect of the year to which the report relates:
 - (a) the number of requests made to each public authority;
 - (b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times such provision was invoked;
 - (c) the number of appeals sent to the Information Commissioners for review, the nature of the complaints and the outcome of the appeals:

- (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act:
- (e) the amount of charges collected by each public authority under this Act;
- (f) any facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act;
- (g) recommendations for reform, including recommendations in respect of particular public authorities, for the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law or any other matter relevant to operationalising the right to access information, as appropriate.
- (4) The Union Government Ministry responsible for the administration of this Act, as soon as practicable after the end of each year, prepare a summary report on the implementation of this Act during that year and cause a copy of the report to be taid before the concerned state legislatures and each House of the Parliament, drawing on the information provided in the reports of the Chief Information Commissioners for each State.
- (5) If it appears to any Chief Information Commissioner that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with provisions or spirit of the Act, whe may give to the authority a recommendation specifying the steps which ought in his/her opinion to be taken for promoting such conformity.
- 16B(1). The Government must, to the extent that financial and other resources are available:
 - (a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Notification and of how to exercise the rights contemplated in this Act:
 - (b) encourage public authorities to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and
 - (c) promote timely and effective dissemination of accurate information by public authorities about their activities.
 - (d) train information officers of public authorities and/or produce relevant training materials for use by authorities themselves.
 - (2) The Government must, within 18 months of this Act coming into force, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.
 - (3)The Government must, if necessary, update and publish the guide at regular intervals. The guide must, without limiting the generality of subsection (2), include a description of
 - (a) the objects of this Act;
 - (b) the postal and street address, phone and far number and, if available, electronic mail address of the Public Information Officer of every public authority as appointed under sub-section (1) of section 5
 - (c) the manner and form of a request for access to a information of a public authority.

- (d) the assistance available from and the duties of Public Information Officers of a public authority in terms of this Act;
- (e) the assistance available from the Information Commissioners in terms of this Act;
- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging an appeal with the appellate authorities/Chief/State/Information Commissioners and a court against a decision by the Public Information Officer of a public authority;
- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4:
- (h) the notices regarding fees to be paid in relation to requests for access; and
- (i) any additional regulations or circulars relevant to obtaining access to information in accordance with this Act.
- (4) The Government must, if necessary, update and publish the guide at regular intervals.
- 17 (1) The Union Government may by notification in the Official Gazette, make rules to carry out the provisions of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely
 - (a) intervals at which matters referred to in sub-clauses (i) to (vi) of clause (b) of section 4 shall be published.
 - (b) The (expayable under sub-section (1) of section 7:
 - (c) The authority before whom an appeal may be preferred under sub-section (2) of section (2)
 - (d) any other matter which is required to be, or may be, prescribed.
- 18. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the (ee payable under sub-section (1) of section 7:
 - (b) the authority before whom an appeal may be preferred under sub-section (2) of section 12:
 - (c) any other matter which is required to be, or may be prescribed:

Provided that initially the rules shall be made by the Union Government by notification in the official gazette.

- 19. (1) The competent authority may, by notification in the official gazette make rules to carry out the provisions of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely
 - (a) the fee payable under sub-section (1) of section 7:
 - (b) the authority before whom an appeal may be preferred under sub-section (2) of section 12.
 - (c) any other matter which is required to be, or may be, prescribed.

- (1) Every rule inade by the Union Government under this Act shall be laid, as soon as may be after it is made, before each house of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified from or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
 - (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.
- 21 (1) If any difficulty arises in giving effect to the provisions of this Act, the Union Government may, by order publised in the official gazette, make such provision not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:
 - Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.
 - (2) Every order made under this section shall as soon as may be after it is made, be laid before the houses of partiament.

THE SCHEDULE

(See section 16 (1))

Intelligence and Security Organisations Established by the Union Government

- 1. Intelligence Bureau.
- 2 Research and Analysis Wing of the Cabinet Secretariat.
- 3. Directorate of Revenue Intelligence.
- 4. Central Economic Intelligence Bureau.
- 5. Directorate of Enforcement.
- 6. Narcotics Control Bureau.
- 7. Aviation Research Centre.
- Special Frontier Force.
- 9 Border Security Force
- 10. Central Reserve Police Force.
- 11. Indo Tibetan Border Police.
- 12 Central Industrial Security Force.
- 13. National Security Guards.
- 14. Assom Rifles.
- 15. Special Service Bureau.
- 16. Special Branch (CID), Andaman and Nicobar.
- 17. The Crime Branch-CID, CB, Dadro and Nagar Haveli
- 18 Directorate of Vigitance including Anti Corruption Branch, National Copital Territory of Delhi.
- 19. Special Branch, Lakshartweep Police.

PARLIAMENT OF INDIA RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS

SEVENTY-EIGHTH REPORT ON

FREEDOM OF INFORMATION BILL, 2000

(PRESENTED TO RAJYA SABHA ON 25TH JULY, 2001)
(LAID ON THE TABLE OF LOK SABHA ON 25TH JULY, 2001)

RAJYA SABHA SECRETARIAT NEW DELHI JULY, 2001/SR AVANA, 1923 (SAKA)

CONTENTS

- COMPOSITION OF THE COMMITTEE (1999-2000)
- COMPOSITION OF THE COMMITTEE (2001)
- INTRODUCTION
- REPORT
- RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE
- ANNEXURES
 - The Freedom of Information Bill, 2000
- I List of Witnesses who gave Oral Evidence before the Committee
- Il Views/Suggestions of Individuals/Organizations on Freedom of Information Bill, 2000 and Response of inverteen

COMPOSITION OF THE COMMITTEE (1999-2000)

- Shri Pranab Mukherjee Chairman
- _RAJYA SABHA
- Shri Hiphei
- 3. Shri Surender Kumar Singh
 - Shri Sangh Priya Gautam
 - Dr. L. M. Singhvi
- . Shri S. Ramachandran Pillai
- . Old R. M. Sattulian
 - Shri C. M. Ibrahim
- Shri Raj Mohinder Singh
- 0. Shri C. P. Thirunavukkarasu

62

up://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

- 11. Sh-i Drupad Borguhain
- 12, Shi Kuldip Nayyar
- º 13. Dr.(Smt.) Joyasrce Goswami Mahanta
- ¹ 14. Shri Hansraj Bhardwaj
- ¹⁵ 15. Shri Jayanta Bhattacharya

LOK SABIIA

- 16. Shri Manabendra Shah
- 17. Shri Lal Bihari Tiwari
- 18. Shri Vinay Katiyar
- 19. Shri Prakash Mani Tripathi
- 2Û. Shri Anadi Sahu • 2J.
- 22.
- Shri Ram Nagina Mishra
- 23. Shri Vaidya Vishnu Datt
- Smt Jayashree Banerjee 24
- 25. Shri Rajen Gohain
- 26. Shri N. Janardhana Reddy
- 27. Shri Rajkumar Wangcha
- 28. Shri Iqbal Ahamed Saradgi
- Smt. Nisha Chaudhary 19.
- Shri Jitendra Prasada **30**.
- 31. Shri Dahyabhni V. Patel
- 32. Shri M. O. H. Farook
- 33. Shri Samar Choudhury
- 34. Shri Subodh Roy
- **35**. Dr. S. Venugopalachari
- 36. Shri Beni Prasad Verma
- Shri Rughuraj Singh Shakya *37.*
- 38. Shri Arun Kumar
- 19. Shri Suresh Ramrao Jadhav
- 10. Shri P. H. Pandian
- Shri Shriniwas Patil H.
- **‡2**. Dr. Raghuvansh Prasad Singh
- 13. Dr. Jayanta Rongpi
- 14. Shri S. K. Bwiswmuthiary
- * 45. Shri Vijay Goel

Nominated w.e.f. 6th April, 2000.

COMPOSITION OF THE COMMITTEE (2001)

Maj. Gen. (Retd.) B.C. Khanduri

Shri Pranab Mukherjee- Chairman I.

Light a steal

-) Shri Hansraj Bhardwaj
- ١. Shri Hiphei
- 1. Shri Surendra Kumar Singh
- ŝ. Shri Saugh Priya Gautam
- Ś. Dr. L.M. Singhvi
- Shri S. Ramachandran Pillai 7.
- Shri K.M. Saifullah

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- 5. Stu C.M. Ibrahim
- 10. Shri Raj Mohinder Singh
- 11. S. C.P. Thirunavukkarasu
- 12. Shri Drupad Borgohain
- 13. Shri Kuldip Nayyar
- 14. Dr.(Smt.) Joyasree Goswami Mahanta
- 15. Shri Jayanta Bhattacharya

___LOK SABHA

- 16. Shrimati Jayashree Banerjee
- 17. Shri S.K. Bwiswmuthiary
- *18. Shrimati Nisha Chaudhary
- 19. Shri Sumar Chaudhary
- 20. Shri M.O.H. Farook
- 21. Shri Vijay Goel
- 22. Shri Rejen Gohain
- 23. Shri Suresh Ramrao Jadhay
- 24. Shri Viney Kntiyar
- 25. Shri Arun Kumar
- 26. Shri Ram Nagina Mishra
- 27. Shri P.H. Pandian
- 28. Shri Dayabhai Vallabhai Patel
- 29. Shri Shriniwas Patil
- 30. Shri Jitendra Prasada
- 31. Shri Subodh Ray
- Shri N. Janordhana Reddy
- 33. Dr. Jayanta Rongpi
- 34. Shri Anadi Charan Sahu
- Shri Iqbal Ahmed Saradgi
- 36. Shrì Manabendra Shah
- b Censed to be Member w.e.f. 1st March, 2001.
- A Expired on 30th January, 2001.
- Expired on 16th January, 2001.
- 37. Shri Raghuraj Singh Shakya
- 38. Shri Vishnu Datta Sharma
- 19. Dr. Raghuvansh Prasad Singh
- 10. Shri Lal Bihari Tiwari
- 11. Shri Prakash Mani Tripathi
- \$ 42. Dr. S. Venugopal
- 13. Shri Beni Prasad Verma
- Shri Raj Kumar Wangcha
- 45. Shri Harin Pathak
- ¥ 46. Shri E. Ponnuswamy

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Topan Chatterice, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Narendra Kumar, Sahoo, Committee Officer

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- December we / 19th March, 2001 on being nominated to Committee on Human Resource Developmen
- Nominated in e.f. 20th February, 2001.
 - ▼ Nominated w.e.f. 8th March, 2001.

INTRODUCTION

- I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs having authorised by the Committee to submit the Report on its behalf, do hereby present this Seventy-eighth Report of Committee on the Freedom of Information Bill, 2000*.
- In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Chair Rajya Sabha in consultation with the Speaker, Lok Sabha referred ** the Freedom of Information Bill, 2000 (Annexus introduced in the Lok Sabha on July 25, 2000 and pending therein, to the Committee on 14 September 2006 examination and report.
- The Committee considered the Bill in five sittings held on 23 October 2000, 24 January, 8 February, 25 June 10 July 2001.
- 3.1 The Committee heard oral evidence of the Secretary. Ministry of Personnel, Public Grievances and Pensions of Bill in its sitting held on 23 October 2000.
- In its sitting held on 24 January and 8 February 2001, the Committee heard prominent organizations and emergers connected with the issue (Annexure-II) on the various provisions of the Bill.
- 3.3 In its sitting held on 25 June 2001, the Committee took up clause-by-clause consideration of the Bill.
- 3.4 The Committee considered the draft Report in its sitting held on 10 July 2001 and adopted the same. It also declare the evidence tendered before the Committee may be laid on the Table of both the Houses of Parliament.
- In the course of its deliberations, the Committee has made use of the background note on the Bill received fror Ministry of Personnel, Public Grievances and Pensions, similar legislations of various States of India and foreign coun papers received from organizations/experts mentioned in Annexure-I, replies of the Ministry, organizations and expert he queries raised by the Members on the Bill in the meetings, comments of the Ministry (Annexure-III) or suggestions/observations made by organizations/experts connected with the Freedom of Information Bill, 2000.
- 5. For facility of reference and convenience, observations and recommendations of the Committee have been prin bold letters in the body of the Report.
- 5. On behalf of the Committee, I would like to acknowledge with thanks the contributions made experts/organizations who deposed before the Committee and submitted their valuable suggestions on the subject matter he Bill. A special word of thanks is due to Commonwealth Human Rights Initiative who rendered valuable assistanthe Committee and its Secretariat in the course of examination of the Bill.

NEW DELEU;

July 10, 2001.

PRANAB MUKITERJ Chairma

Committee on Home Affairs

REPORT

The Freedom of Information Bill, 2000 seeks to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, ransparency and accountability in administration and in relation to matters connected therewith or incidental thereto.

2. Article 19 of the Constitution ensures to the citizens a wide range of freedoms. The Supreme Court has held he right to know and be informed would make the right to free speech and expression complete. Besides, freedomoustain access to information that has a bearing on the sustenance of life would functionalise the right to life and livelihe

http://rojyasabha.nic.in/book2/reports/home_aft/78threport.htm

Published in the Gazette of India Extraordinary Part-II, Section 2, dated 25th July 2000.

^{**}Rajya Sabha Parliamentary Bulletin Part II, No.38341 dated 15th September, 2000.

- There is a world-wide trend in democratic countries to have a legislation, for assuring to the citizens the rig access to information of the public authorities, as part of the effort to promote openness, transparency and accountability he admi. Aution and to ensure greater participation of the people in decision making.
- 2.2 Legislation on Freedom of Information in democratic countries like the USA has been enacted way back in I Dther countries like Japan. Ireland, the Netherlands. Australia, Canada, France, the United Kingdom, New Zealand South Africa have also enacted similar legislations to enforce a measure of accountability and transparency on the ages of the State.
- 2.3 In India also, at the State level, Tamil Nadu and Goa passed their own Acts on the right to information in 199' Rajasthan, the Bill is awaiting Cabinet approval. The State of Maharashtra also brought forth its 'Maharashtra Rig information Act, 2000' in August 2000. The State of Karnataka has also promulgated the Karnataka Inform Ordinance, 2000, before the Centre came up with a Bill to ensure public access to information.
- At the Central level, on 2 January, 1997, the Government set up a Working Group on Right to Information fransparency under the Chairmanship of Shri H.D. Shourie to examine the feasibility and the need for either a full-fle Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive governance also to examine the framework of rules with reference to the Civil Services (Conduct) Rules and the Manual of C Procedure.
- The Working Group submitted its report on 21 May 1997 with a proposed Bill titled 'The Freedom of Inform 3ill, 1997'. The report of the Working Group was forwarded to all ministries of the Government of India as also vitates/Union Territories for their comments. In the meanwhile, the statutory scheme prepared on the basis of Ieliberations in the Working Group was circulated for discussion during the Chief Ministers' Conference on "Efferm Responsive Government" held on 24 May 1997 at New Delhi. The statutory scheme received the broad approving Conference which recognized the need for enactment of such a law.
- The report of the Working Group along with responses of the Union Ministries and State/Union Terr Jovernments thereon, was placed before the Committee of Secretaries. The Committee broadly endorsed the Freedo nformation Bill, 1997 recommended by the Working Group subject to certain modifications. The draft Freedo nformation Bill, 1997, given by the Working Group, was accordingly revised with the help of the Legislative Depart and placed before the Cabinet for approval. The Cabinet however, decided to refer the Bill to a Group of Minister accordingly, it was placed before the Group of Ministers constituted by three successive Governments which consider n eight meetings held between October 28, 1997 and February 2, 2000. The Group of Ministers approved the Bill su o a few changes. In the light of the changes suggested by the Group of Ministers, the draft Freedom of Information 1997 was further revised and was placed before the Cabinet for approval as the Freedom of Information Bill, 2000. Cabinet, in its meeting held on 13 May 2000, approved the Bill.
- 3.3 After its approval by the Cabinet, the Freedom of Information Bill, 2000 was introduced in the Lok Sabha c July 2000. It was referred to this Committee by the Chairman, Rajya Sabha on 14 September 2000 for examination report.
- Here, it would be pertinent to mention that the Department-related Parliamentary Standing Committee on F Affairs, in its 38th Report on the Demands for Grants (1997-1998) of the Ministry of Personnel, Public Grievances Pensions had observed that Right to Information Act for promotion of open and transparent Government was a sverdue measure and in the view of the Committee was quite consistent with the democratic ideals. Accordingly Committee felt that there should be a full-fledged Right to Information Act, as it would go a long way in firstablishing the culture of accountability. In this backdrop, the Committee recommended as follows:
 - "The Committee emphatically recommends that the refusal of a request must be appealable to an authority we ruling should be final and binding. Further, as the subject 'Right to Information' is not specifically provided yethe Seventh Schedule to the Constitution, the Union through the residuary clause (97) of list I has the rig legislate on the subject. The Committee recommends that the Ministry take up this matter urgently to facilitative early enactment of the 'Right to Information Act'."
- The Statement of Objects and Reasons of the Bill states that in our present democratic frame work, free flo information for the citizens and non-government institutions suffers from several bottlenecks including the existing frame work, lack of infrastructure at the grass root levels and an attitude of secrecy within the civil service as a result of the frame work of rules. The government proposes to deal with all these aspects in a phased manner so that the Free

Information Act becomes a reality consistent with the objective of having a stable, honest, transparent and effigovernment. Moreover, the proposed Bill will enable the citizens to have an access to information on a statutory be with a value further this objective, Clause 3 of the proposed Bill specifies that subject to the provisions of this Act, witizen shall have right to freedom of information. Obligation is east upon every public authority under Clause provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed published at such intervals as may be prescribed by the appropriate Government or the competent authority.

The Secretary, Ministry of Personnel, Public Grievances and Pensions in his deposition before the Committee 23 October 2000, traced the genesis of the Bill and gave a brief outline of its salient features. He stated that the feature of the Bill lay in Clause 3 which guaranteed that all citizens should have freedom of information subject to provisions of this Act. It east an obligation on every public authority to provide information and to make all reconsistent with its operational requirements, duly catalogued and published at such intervals as may be prescribed by appropriate government or the competent authority. He stated that the ambit of the Bill covered the two House Parliament, the State legislatures, the Supreme Court, High Courts and Subordinate Courts including their administrations, constitutional authorities like the Election Commission, Comptroller and Auditor General of India and the Lepublic Service Commission.

- 7. The Committee, in its meeting held on 24 January 2001, heard the representatives of Commonwealth Hi Rights Initiative (CHRI), Dr. Madhav Godbole, former Union Home Secretary, Shri A.G. Noorani, Senior Advocate Prof. Manubhai Shah, Managing Trustee, Consumer Education and Research Society (CERS). On 8 February 20th neard the representatives of the Mazdoor Kisan Shakti Sangathan and Justice P.B. Sawant, Chairman, Press Countindia. In addition to this, the Committee received written suggestions from Shri B.G. Deshmukh, former Ca Secretary.
- 7.1 The suggestions/amendments put forward by the above-mentioned organizations/individuals are summarizablew:
 - (i) The Bill should be rechristened as "Right to Information Bill" instead of "Freedom of Information Bil
 - (ii) The applicability of the Act should not be restricted only to citizens but to non-citizens as well;
 - (iii) The Bill should provide for a specific date from which the Act will come into effect;
 - (iv) The Bill should apply to all including organizations/associations/ parties/trusts/unions/societies prive non-Governmental in addition to Governmental bodies and agencies:
 - (v) The Bill should say that all citizens have the freedom of information instead of saying "shall have" as freedom is already there in the Constitution:
 - (vi) The Bill should provide for the delegation of the authority of the Public Information Officer;
 - (vii) The ultimate responsibility to ensure adherence to the provisions of the Bill should be vested with the of each public authority:
 - (viii) Since the intent of the Bill is to put in place an effective procedure for enforcing the right to inform the procedural issues must be detailed and clearly stated;
 - (ix) The Bill must provide for compulsory and mandatory disclosure of information that relates to he safety, environment and human rights;
 - (x) The Bill should clearly state that where information sought is regarding the life and liberty of a person

³⁸th Report (1997), Committee on Home Affairs, page-9, para-26.

He further stated that Clauses 8 and 9 were the two very important clauses of the Bill. These clauses related to specific categories of information which had been exempted from disclosure. Touching upon the appellate mechanic regard to grant of information, the Secretary stated that if grant of information was refused by the Public Inform Officer, the Bill provided for appeal to such authority as may be prescribed by the Government. The second appear with the Central or State Governments or the competent authority. Referring to the bar on the jurisdiction of court stated that the jurisdiction of subordinate courts to entertain any suit, application or proceedings in respect of an nade under the proposed Act had been barred. However, the writ jurisdiction of the Supreme Court and High Courts still there.

same should be provided within 24 to 48 hours:

- (* There must be a procedure laid down for collection of fees and the Bill must clearly lay down exempto certain groups individuals who for genuine reasons cannot pay the stipulated fees;
- (xii) The Bill should clearly provide that all information that cannot be denied to the Member Parliament/Legislatures should not be denied to the public;
- (xiii) Section 8(1) sub-sections (c), (d) and (e) cover the entire working of the Government. By including in the exemption clause, the working of the Government from the Cabinet Committee to the Secret Committee is not being made available to the people. These provisions bring on par the Cabinet Command the Secretaries Committee and must be done away with. Nothing belonging to the Cabinet must secret forever.
- (xiv) Section 8(2) provides for a period of 25 years for releasing information which is unconsciouably lor should be 15 years;
- (xv) Section 9(b) and (c) should be deleted as they are rather wide and can cause many difficulties as a range of information can be denied saying that they are contained in Annual Reports of Departments the Official Gazette;
- (xvi) Section 10 of the Bill should state that reasons for withholding parts of a document must be given t requester and the copy of the document provided should indicate which portions of the document have withheld. The provisions regarding severability in the Press Council Draft of 1997 should be included;
- (xvii) The period of 50 days for inviting third party representation is too long and will be detrimental to interest of the requestor. It should be either 15 or 30 days;
- (xviii) There should be penalty for giving incorrect, incomplete or misleading information;
- (xix) The Bill should provide for an independent appeals mechanism;
- (xx) A provision for monitoring the implementation of the Bill should be made;
- (xxi) Provisions for providing protection to 'whistleblowers' must be added to provide protection of pe who use information to expose wrong doings and also protection of officials who make avail information in public interest;
- (xxii) Section 15 should be deleted and replaced with a provision to appeal to an appropriate judicial forum;
- (xxiii) Section 16(1) and the Schedule should be reworded to narrow down the blanket exclusion given to e organizations. Excluding certain organizations completely from the purview of this legislation defeat purpose of the law. There is no rationale for exempting the administrative wings of these organizations disclosing relevant information;
- (xxiv) Local bodies at grass root level should be included and defined as competent authorities to implemer Act;
- Provisions for publication of a guide to use the Act and to publicise it must be added so that people aware of the process that needs to be followed in order to access information under the Act and the rece available to them if information is wrongfully denied to them; and
- (xxvi) There must be a specific provision in the Bill which easts a duty on public authorities to predocuments that enable people to know from which authority/office and where information will be available.
- 7.1.1 The views/suggestions of experts/organizations were forwarded to the Ministry of Personnel, Public Grieve and Pensions for its comments thereon. The comments of the Ministry thereon are appended as Annexure-III abulated form.
- 7.2 The Committee is of the considered view that many of the important suggestions of the experts/organization interested in para 7.1 have not been covered in the Bill. The Committee, therefore, recommends that the Govern: should consider these views/suggestions of the experts/organizations and incorporate them in the Bill to make comprehensive.

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- 3.0 The Committee, in its sitting held on 25 June 2001, took up clause-by-clause consideration of the Bill. Thouse 2
- 3.1 Clause 2 deals with the definitions of the terms used in the text of the Bill.
- 3.1.1 It was adopted without any amendments.

Clause 3

- 1.2 Clause 3 provides for freedom of information to all citizens.
- 3.2.1 It was adopted without any amendments.

Clause 4

- 3.3 Clause 4 casts certain obligations on public authorities.
- 3.3.1 The Committee suggested an amendment to the effect that it should be incumbent upon the public authoritionablish list of their publications so that general public could browse them for knowing about the activities and functionablic institutions. This apart, a separate chapter may be added in the annual reports of the Ministries/Departments go letails about the dispersal of information about the concerned Ministry/Department.
- 3.3.2 With regard to sub-section (e) of the clause, the Secretary (Personnel) agreed to the suggestion that the vimaintenance of democratic principles" appearing therein should be replaced by the words "natural justice promotion of democratic principles".
- 3.3.3 Subject to the above, the clause was adopted.

Clause 5

- 3.4 Clause 5 deals with the appointment of Public Information Officers.
- 3.4.1 It was adopted without any amendments.

Clause 6

- 3.5 Clause 6 provides for tendering the request for obtaining information from Public Information Officers.
- 3.5.1 It was adopted without any amendments.

Clause 7

- 3.6 Clause 7 relates to the disposal of requests.
- 3.6.1 The Committee felt that where the information sought for under the Act relates to life and liberty of a person same should be provided within forty-eight hours. The Secretary (Personnel) agreed to the suggestion.
- 3.6.2 Subject to the above, the clause was adopted.

Clause 8

- 3.7 Clause 8 enumerates certain information which shall be exempted from disclusive.
- 3.7.1 It was adopted without any amendments.

Plause 9

- 3.8 Clause 9 lays grounds for refusal to access in certain cases.
- 3.8.1 The Secretary (Personnel) agreed to the suggestion that the word "disproportionate" as mentioned in sub-se a) should be substituted by the word "unreasonable".
- 3.8.2 Subject to this, the clause was adopted.

http://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

69

House 10

- 3.9 juse 10 provides for severability of that part of the record which does not obtain any information the exempted from disclosure.
- 1.9.1 While agreeing to certain amendments in the clause, the Secretary (Personnel) proposed to incorporate follo provision as sub-section (ii) under Clause 10 after renaming the existing clause as sub-section (i):
 - "(ii) Where access is granted to a part of the record in accordance with sub-section (i), the person making the request shall be informed:
 - (a) that it is a part of the record after deleting the record containing information which is exempted disclosure; and
 - (b) the provisions of the Act under which the deleted part is exempt from disclosure".
- 3.9.2 Subject to the above, the clause was adopted.

Clause 11

- 3.10 Clause 11 deals with third party information.
- 3.10.1 The Committee was of the view that the disposal of request for information wherein a third party was invitional be ensured within thirty days instead of fifty days as provided for in the clause.
- 3.10.2 Subject to the above, the clause was adopted.

Clause 12

- 3.11 Clause 12 deals with the appeals which a person can resort to in case he is aggrieved by the decision of a F information Officer.
- 3.11.1 It was adopted without any amendments.

Clause 13

- 3.12 Clause 13 provides for protection of action taken in good faith under this Act.
- 3.12.1 It was adopted without any amendments.

Clause 14

- 5.13 Clause 14 provides that this Act shall have overriding effect over the provisions of Official Secrets Act, 192 every other Act in force.
- 3.14 The Secretary (Personnel) proposed to substitute this provision with a newly drafted provision which res follows:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contain the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument heffect by virtue of any law other than this Act".

- 3.14.1 The Committee agreed to the above substitution.
- 3.14.2 Subject to this, the clause was adopted.

Clouse 15

- 6.15 Clause 15 bars the jurisdiction of courts from entertaining any suit application or other proceeding in respect of order made under this Act.
- 3.15.1 The clause was adopted without any amendments.

Tause 16

3.16 Clause 16 exempts the application of this Act to certain organizations.

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28/06

- 3.16.1 The Committee was of the opinion that anti-insurgency operations and intelligence activities of CRPF, BSI TBP should also be brought under the purview of this clause.
- 3.16.2 Subject to this, the clause was adopted.

Clause 17

- 3.17 Clause 17 provides for the power of the Central Government to make rules under this Act.
- 3.17.1 It was adopted without any amendments.

Clause 18

- 3.18 Clause 18 provides for the power of the State Government to make rules under this Act.
- 3.18.1 It was adopted without any amendments.

Clause 19

- 3.19 Clause 19 provides for the rule making power of the competent authority under this Act.
- 3.19.1 It was adopted without any amendments.

Clause 20

- 3.20 Clause 20 provides for laying of rules framed by the Central and State Governments under this Act befor Parliament and State Legislatures, respectively.
- 3.20.1 The Committee was of the view that the rules made by the Supreme Court and the High Courts should all placed before each House of Parliament. It accordingly, asked the Secretary (Personnel) to look into the feasibilityinging the rules made by the Supreme Court and the High Courts under the ambit of this clause. The Secretary (Personnel) and the representative of the Legislative Department agreed to explore the feasibility.
- 3.20.2 Subject to this, the clause was adopted.

Clause 21

- 3.21 Clause 21 seeks to empower the Central Government to remove the difficulties in giving effect to the provisit his Act.
- 3.21.1 It was adopted without any amendments.

The SchedulePart A

- 3.22 Part A of the schedule enumerates the intelligence and security organizations established by the C Jovernment on which this Act shall not apply.
- 3.22.1 It was adopted subject to the observation of the Committee made in regard to the Clause 16.

Part B

- Part B of the Schedule provides for the enumeration of intelligence and security organizations established to State Government. However, the names of the organizations have not been mentioned therein.
- 3.23.1 The Committee suggested that likewise Central Government, the names of the intelligence and sempanizations of the State Government should also be mentioned therein at the time of piloting the Bill.
- 1.23.2 Subject to this, the Schedule was adopted.

Jause 1, Enacting Formula and Title

Clause 1, Enacting Formula and the Title were adopted with some changes which were of consequential or datature, namely, "2000" and "Fifty-first" to be substituted by "2001" and "Fifty-second", respectively.

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http://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

THIRTY-SEVENTH MEETING

7 : Committee met at 3.00 P.M. on Monday, 23 October 2000, in Committee Room 'A', Ground Floor, Parlie douse Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee—Chairman

RAJYA SABHA

- Shri Surender Kumar Singh
- 3. Shri C.P. Thirunavukkarasu
- 1. Shri Drupad Borgohain
- Shri Kuldip Nayyar
- Shri Hansmi Bhardwaj
- 7. Shri Jayanta Bhattacharya

LOK SABHA

- Shri Manabendra Shah
- Shri Lal Bihari Tiwari
- 10. Shri Prakush Mani Tripathi
- 11. Shri Anadi Sahu
- Maj.Gen.(Retd.) B.C. Khanduri
- 13. Shri Ram Nagina Mishra
- 14. Smt. Jayashree Bancrice
- Shri Jitendra Prasada
- 16. Shri M.O.H. Farook
- Shri Raghuraj Singh Shakya
- 18. Shri Suresh Ramrao Jadhay
- 19. Shri P.H. Pandian
- 20. Dr. Raghuvansh Prasad Singh
- 21. Shri S.K. Bwiswmuthiary

SECRETARIAT

Shri Satish Kumar, Additional Secretary Shri Tapan Chatterjee, Deputy Secretary Shri A.K. Singh, Under Secretary Shri Mahesh C. Tiwari, Committee Officer

WITNESSES

Representatives of the Ministry of Personnel, Public Grievances and Pensions

- 1. Shri B.B. Tandon, Secretary
- 2. Shri Harinder Singh, Joint Secretary
- 3. Smt S. Bandopadhyay, Director
- 2. At the outset the Chairman of the Committee welcomed the Secretary of the Ministry of Personnel, Punevances and Pensions and requested to make presentation on the Freedom of Information Bill, 2000.
- 3.0 The Secretary made a detailed presentation on the Bill audining the history of the Bill and also the Acts in Egard as prevalent in some of the advanced countries. He also submitted that some of the States like Maharas Kamataka, Goa, Rajsthan and Madhya Pradesh had also recently enacted legislations on the subject.
- 3.1 The Members, thereafter, sought clarifications on different provisions of the Bill. The Chairman asket Secretary to furnish detailed information in tabular form regarding various changes of the Bill and the correspond provisions of the Acts of the State Governments and likewise of the Acts of some of the advanced countries.

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- 1.0 The Secretary replied to some of the points raised by the Members and for rest of them, he assured the Commor sending Ministry's written responses.
- 5. A verbatim record of the proceedings was kept.
- The Committee, then, adjourned at 5.15 P.M.

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THIRD MEETING

The Committee met at 11.00 A.M. on Wednesday, 24 January 2001 in Committee Room 'A', Ground F Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee—Chairman

RAJYA SABHA

- Shri Hansraj Bhordwaj
- Shri Sangh Priya Gautam
- 1. Dr. L.M. Singhvi
- Shri S. Ramachandran Pillai
- Shri C.P. Thirunavukkarasu
- Shri Kuldip Nayyar

LOK SABUA

- Smt. Jayashree Banerjee
- 3. Shri S.K. Bwiswmuthiary
- 10. Shri Samar Chaudhary
- 11. Shri M.O.H. Farook
- 12. Shri Vijay Goel
- 13. Shri Suresh Remrao Jadhav
- Shri Ram Nagina Mishra
- Shri Anadi Sahu
- 16. Shri Raghuraj Singh Shakya
- 17. Shri Vishou Datta Sharma
- 18. Dr. Raghuvansh Prasad Singh
- 19. Shri Prakash Mani Tripathi
- 20. Shri Beni Prasad Verma

SECRETARIAT

Shri Satish Kumar, Additional Secretary

Shri Tapan Chatterjee, Deputy Secretary

Shri A.K. Singh, Under Secretary

Shri Mahesh C. Tiwari, Committee Officer

WITNESSES

- 1. Representatives of the Commonwealth Human Rights Initiative(CHRI)
 - Ms. Maja Daruwala, Director,

Ms. Abha S. Joshi, Project Co-ordinator

Shri Bimal Arora, Project Officer

Ms. Deepika Mogilshetty, Project Officer

- Dr. Madhay Godbole
- Shri A.G. Noorani

http://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

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4. Representative of the Consumer Education and Research Society.

Ahmedabad

Prof. Manubhai Shah, Managing Trustee.

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- 3. The Chairman, while welcoming the representatives of CHRI gave a brief background of the Freedon information Bill, 2000. He stated that it had been processed in different stages by Group of Experts. Expert Command also Group of Ministers, and that one such Bill was introduced in 1997.
- 4. A representative of CHRI stated that the Bill was not adequate as it did not provide access to information i way it was required, keeping in view that more than 60 per cent of the population lived below poverty line and wer iterate. An apprehension was expressed that a law of such a pro-bureaucratic nature had the potential of becomin obstacle to giving information rather than ensuring that the Government parted with information. It was stated the general scheme of the Bill was very casual and stressed the need to differentiate and lay down even those provious.
- 5. It was suggested that the Act must lay down in clear terms that the Information Officer had a duty, suo mo provide information and that there should be inclusion of penalties for wrongful withholding of information.
- >. A view was expressed that the differentiation between a citizen and a non-citizen should not be there information if asked for by non-citizen should be provided subject to certain limitations.
- 1. It was also stated that there was a need for a new comprehensive legislation on the likes of the South Africa with 93 clauses, covering private and public interests, monitoring of the Act and so on which was more detailed an extremely simple.
- 3. With regard to the procedures, it was stated that the mechanism should be swift, inexpensive, effortles reasonably workable and the Act be brought into force within a given time frame which may be specifically provid he Act itself.
- A view was also expressed that that private sector must be included in the Bill and the Public Information O nust by definition be the Head of the Department.
- 10. As regards exemption clause, a view was expressed that all information that Parliament can ask for should a nandatorily given to the citizens.

*** Relates to other matters.

11. Thereafter, Members sought clarifications. Some of which were replied and for the remaining the representat assured to submit the written submissions.

(The witnesses then withdrew.)

- 12. In his presentation, Dr. Madhav Godbole was of the view that the title of the Bill should be 'Right to Information Bill' and not 'Freedom of Information Bill' as it was to operationalise the fundamental right enshrined in the Constitu
- 13. He stressed that the phrase 'consistent with public interest' could be interpreted differently in different situations, he suggested that the words 'consistent with public interest' be deleted from the Bill.
- 14. He also stated that some finality to the date from which the Bill would come into effect be given, and suggihat three months from the date of passage of the Bill by Parliament be provided in the Act itself. He also urged upnelusion of private entities in the society in the Bill.
- 15. He suggested that the Clause 4 (d) stated '.....to those affected by those decisions' be broadened and ever should be entitled to access the information.
- 16. He suggested that in Clause 4 (e) the words '..... maintenance of democratic principles' should be substitute words '.... natural justice and promotion of democratic principles'.
- 17. As regards exemptions in Clause 8, he felt that sub-sections (c), (d) and (e) be deleted.
- 18. With regard to Clause 8 (2), he suggested that the 25 years blanker may be reduced to 15 years and a proviso

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- 19. Regarding Clause 12, he suggested that the first appeal should be within the Department and the second app in authority outside the Government which could be the Lokayukta or the Upa-Lokayukta.
- Dr.Godbole also impressed upon the Committee that unless there was a provision for penalty, the Bill could recriously implemented and therefore provision should be made for monitoring the implementation of the Bill.
- As regards Clause 17, it was impressed upon the Members that, the exact fee to be paid for obtaining inform thould be laid down in the Act itself. The word 'stable' in para 5 of the Statement of Objects and Reasons should letted as stability of the Government could in no way be provided by this legislation.
- 12. Thereafter Members sought clarifications on some of the points which were replied to by the witness. Thairman asked the witness to send specific drafts of the amendments to the various clauses suggested by him.

(The witness then withdrew)

(The Committee then adjourned at 1.50 P.M. to reassemble at 3.30 P.M.)

- 23. Shri A.G.Noorani stated that as per his interpretation Section 75 of the Indian Evidence Act, 1872 already inc element of freedom of information and also that the Fundamental Right of Freedom of Speech and Expression seen interpreted to include the right to receive information. Referring to Articles 32 and 226 of the Constitution, he of the view that the jurisdiction of the courts could not be barred realistically.
- 24. The witness was of the view that the Principal Information Officer must be of a senior rank and the Act wou iscless without a Tribunal to monitor it. He also stressed on the need for an independent review and appeals mechan the witness was of the opinion that the Bill should be so framed as to apply to all sections of people and the design of the Public Information Officer should be Commissioner who will submit an Annual Report to the Parliament. He also of the opinion that the Bill should be called the Right to Information Act. He felt that exemptions could be narre lown. He pointed that there was no accountability in the Bill, which should be provided.

(The witness then withdrew)

- 25. Prof. Manubhai Shah was of the view that the caption of the Bill should be "Right to Information" and Freedom of Information" and suggested for inclusion of cooperative societies, companies, industries and large produces in the ambit of the Act.
- 26. He was also of the view that the Act should not be restricted to citizens only but be also extended to foreigne well, excluding alien enemy.
- 27. Regarding exemptions, the witness pointed out that it should be confined to protecting the security of the State and the time period permitted to give information was too long and was not practical. It should be made reasonable.
- 28. The witness also suggested an introduction of the concept of Whistle Blowers to protect the people who exwrong doing in their Department.
- 19. Regarding fee for information, it was suggested that non-receipt of information sought, should ensure refunities alongwith compensation for damages incurred.
- 10. As for remedial measures, the Information Officer should be equipped with administrative and quasi-judituthority to ensure access of information by citizens.
- II. Thereafter, Members sought clarifications which were replied to by the witness.
- 12. A verbatim record of the proceedings was kept.
- 13. The Committee adjourned at 5.40 P.M. to meet again on 29 January 2001.

v FIFTH MEETING

The Committee met at 10.00 A.M. on Thursday, 8 February 2001 in Committee Room 'A', Ground Fl 'arliament House Annexe. New Delhi.

MEMBERS PRESENT Shri Pranab Mukherjee—Chairman

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* AIYA SABHA

- 2. 5 i Hansraj Bhardwaj
- Shri Surendra Kumar Singh
- 1. Shri Sangh Priya Gautam
- Shri S. Ramachandran Pillai
- 5. Shri K.M. Saifullah
- Shri C.M. Ibrahim
- 3. Shri C.P. Thirunavukkarasu
- Shri Drupad Borgohain
- Shri Kuldip Nayyar
- 11. Dr.(Smt.) Joyasrce Goswami Mahanta
- 12. Shri Jayanta Bhattacharya

LOK SABIIA

- 13. Smt. Jayashree Bancrice
- Shri Samar Chaudhary
- 15. Shri M.O.H. Farook
- Shri Vijay Goel
- 17. Shri Suresh Rammo Jadhav
- Shri Ram Nagina Mishra
- 19. Shri P.H. Pandian
- 20. Shrì Dayabhai Vallabhai Patel
- 21. Shri Subodh Ray
- 22. Shri N. Janardhana Reddy
- Shri Anadi Sahu
- 24. Shri Manabendra Shah
- 25. Shri Vishnu Datta Sharma
- 26. Dr. Roghuvansh Prasad Singh
- 17. Shri Lal Bihari Tiwari
- Shrì Beni Prasad Vermo

SECRETARIAT

Shri Satish Kumar, Additional Secretary

Shri Tapan Chatterjee, Deputy Secretary

Shri A.K. Singh, Under Secretary

Shri Mahesh C. Tiwari, Committee Officer

Shri Narendra Kumar, Research Officer

WITNESSES

Representatives of the Mazdoor Kisan Shakti Sangathan

Smt. Kavita Srivastava

Shri Nikhil Dey

Shri Prabhash Joshi

Shri Neelubh Mishm

Smt. Jharna Jhaveri

Shri Anuraj Singh

Representative of Press Council of India

Justice P.B. Sawant, Chairman

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- the outset, the Chairman welcomed the witnesses and requested them to make presentations on the Freedrick information Bill, 2000.
- 3.0 Smt. Kavita Srivastava, first taking the floor introduced her colleagues and gave a brief outline of the Mai Cisan Shakti Sangathan and inter alto stated that its main focus was to empower the peasants and workers in order to hem a life of dignity.

(An audio-visual presentation was then made)

- 3.1. At this point, Shri Nikhil Dey took over and briefed the Committee about what the organization had done the field level with regard to the Right to Information.
- 1.2 At this point, Shri Neelabh Mishra briefly highlighted on the positive response of the civil society on the Rig aformation campaign and then referred to the need for information to trickle down to every member of the society.
- 1. The Chairman and Members at this point raised a number of queries pertaining to provisions in the Bill and in starifications/observations from the witnesses.
- 5. The Chairman thanked the witnesses and conveyed his appreciation for Mazdoor Kisan Shakti Sangathan (Mi or creating awareness in the minds of the people.

(The witnesses then withdrew.)

5.0

- 7. The Chairman then welcomed the next witness Justice P.B. Sawant and requested him to present views/comments on the Bill.
- 3. The witness pointed out the constitutional provision with regard to the Bill, that is, Article 19(1)(a) which spea reedom of speech and expression includes the right to receive information from all primary and authentic source mated that, all the exclusions must be relatable to Article 19(2) and the other Fundamental Rights including Articl Regarding the definition of public authority in Clause (2), he opined that private institutions or organizations should be included.

*** Relates to other matters.

- With regard to Clause 4, sub-clauses (c), (d) and (e) he impressed that getting information should not be after event, but it should be before the event. Referring to Clause 7, regarding disposal of cases, the witness targed that who person's life or liberty was involved, the period during which the information was to be given should not exceed 48 h. The witness also felt that a penalty clause should be included and the legislation should provide for two appeals internal and the second to an independent body.
- The Chairman invited clarifications from the Members.
- 10. A Member desired to know the difference between the two expressions-'the right to know' and 'the right to o nformation'. He also requested the witness to specifically indicate which were the sub-clauses that were too restriction that were too restriction that were too restriction that we have any legal problem would arise if 'prescribed authority' in clause 12 could be indicated to a court'. The witness was also requested to elaborate upon the proposed penalty clause. Some Members also pointed the trend of exploiting information by the press and requested the witness to highlight this issue
- 11. The Chairman also sought clarifications on the points that if restrictions should be in conformity with restrictions imposed in the Constitution, at what stage of Government contracts should information be disclosed?
- The witness, in response to some of the queries raised, stated that the difference between the 1996 Bill and the Bill prepared by the Press Council was that the former Bill suggested appeal straight to the civil court while the suggested one more appellate authority within the system. He also stated that the right to know and the right to onformation meant the same thing. As for a 'prescribed body', the witness insisted that the provision should be ft independent body' for an appeal. Regarding the administrative establishment of judiciary he suggested that the windiciary may not be exempted. Only the judicial side had to be kept out and not the administrative side. With regains 8 of the Bill, the witness was of the opinion that exemptions should be relatable strictly to security of the State.
- 13. The Chairman then requested the witness to send his detailed comments especially regarding restrictions import not be various clauses of the Bill which should be in conformity with the restrictions imposed in the Constitution.

(The witness then withdrew. The Committee adjourned at 1.30 P.M. and re-assembled at 3.30 P.M.)

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Per Relates to other matters.					
15.5	•	•	•		
I 6 .	A verbaum record of the proceeding was kept.				
l 7 .	The Committee adjourned at \$.00 P.M. to meet again on 9th February 2001.				

Relates to other matters.

XXI TWENTY-FIRST MEETING

The Committee met at 3.00 P.M. on Monday, 25 June 2001 in Committee Room 'C', Ground Floor, Parlia - Jouse Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee-Chairman

RAJYA SABHA

- 2. Shri Hansraj Bhardwaj
- 3. Shri Hiphei
- 1. Shri Sangh Priya Gautam
- 5. Shri S. Ramachandran Pillai
- 5. Shri Kuldip Nayyar

LOK SABHA

- 1. Shri Samar Chaudhary
- 3. Shri Vinay Kntiyar
-). Shri Ram Nagina Mishra
- 10. Shri P.H. Pandian
- 11. Shri Subodli Ray
- 12. Shri Anadi Sahu
- 13. Shri Iqbal Ahmed Saradgi
- 14. Shri Manabendra Shah
- 15. Shri Raghuraj Singh Shakya
- 16. Shri Vishnu Datta Sharma
- 17. Dr. Raghuvansh Presed Singh
- 18 Shri Lal Bihari Tiwari
- 19. Shri Raj Kumar Wangcha

SECRETARIAT

Shri Satish Kumar, Additional Secretary

Shri A.K. Singh, Under Secretary

Shri Narendra Kumar, Research Officer

Shri Ashak Kumar Sahoo, Committee Officer

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\ .TNESSES

Representative of Ministry of Personnel. Public Grievances and Pensions

Shri A.K. Agarwal, Secretary

Representative of Legislative Department

Dr. K.N. Chaturvedi, Additional Secretary

Representative of Department of Legal Affairs

Shri Ajay Sinha, Joint Secretary & Legal Adviser

- 2.2 • •
- 2.3 •
- Thereafter, the Chairman while welcoming the representatives of Ministry of Personnel, Public Grievance Pensions, Legislative Department and Department of Legal Affairs, outlined the importance of the Freedom of Inform 3ill, 2000, and traced its genesis. He stated that the Bill was an important milestone in bringing about openness ransparency in the functioning of the Government. He, then, placed the Bill before the Committee for its clause-by-consideration.

Clause 2

- 3.1 Chause 2 deals with the definitions of the terms used in the text of the Bill.
- 3.1.1 It was adopted without any amendments.

Clause 3

- 3.2 Clause 3 provides for freedom of information to all citizens.
- 3.2.1 It was adopted without any amendments.

Clause 4

- 3.3 Clause 4 casts certain obligations on public authorities.
- 3.3.1 The Committee suggested an amendment to the effect that it should be incumbent upon the public authoritionability of their publications so that general public could browse them for knowing about the activities and functionability institutions. This apart, a separate chapter may be added in the annual reports of the Ministries/Departments graphs about the dispersal of information about the concerned Ministry/Department.
- 3.3.2 With regard to sub-section (e) of the clause, the Secretary (Personnel) agreed to the suggestion that the vinaintenance of democratic principles" appearing therein should be replaced by the words "natural justice promotion of democratic principles".
- 3.3.3 Subject to the above, the clause was adopted.

Clause 5

- 3.4 Chause 5 deals with the appointment of Public Information Officers.
- 3.4.1 It was adopted without any amendments.

Clause 6

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- 1.5 Clause 6 provides for tendering the request for obtaining information from Public Information Officers.
- 3.5.1 . was adopted without any amendments.
- *** Relates to other matters.

Clause 7

- 3.6 Clause 7 relates to the disposal of requests.
- 3.6.1 The Committee felt that where the information sought for under the Act relates to life and liberty of a person same should be provided within 48 hours. The Secretary (Personnel) agreed to the suggestion.
- 1.6.2 Subject to the above, the clause was adopted.

Clause 8

- 3.7 Clause 8 enumerates certain information which shall be exempted from disclosure.
- 3.7.1 It was adopted without any amendments.

Clause 9

- 1.8 Clause 9 lays grounds for refusal to access in certain cases.
- 3.8.1 The Secretary (Personnel) agreed to the suggestion that the word "disproportionate" as mentioned in sub-sea) should be substituted by the word "unreasonable".
- 1.8.2 Subject to this, the clause was adopted.

Clause 10

- 3.9 Clause 10 provides for severability of that part of the record which does not obtain any information the exempted from disclosure.
- 3.9.1 While agreeing to certain amendments in the clause, the Secretary (Personnel) proposed to incorporate followsvision as sub-section (ii) under Clause 10 after renaming the existing clause as sub-section (i):
 - "(ii) Where access is granted to a part of the record in accordance with sub-section (i), the person making the request shall be informed:
 - (c) that it is a part of the record after deleting the record containing information which is exempted disclosure; and
 - (d) the provisions of the Act under which the deleted part is exempt from disclosure".
- 3.9.2 Subject to the above, the clause was adopted.

Douse 11

- 3.10 Clause 11 deals with third party information.
- 3.10.1 The Committee was of the view that the disposal of request for information wherein a third party was invaluable ensured within thirty days instead of fifty days as provided for in the clause.
- 3.10.2 Subject to the above, the clause was adopted.

Clause 12

- 3.11 Clause 12 deals with the appeals which a person can resort to in case he is aggrieved by the decision of a I information Officer.
- 1.11.1 It was adopted without any amendments.

Jause 13

http://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

- -6- --

- 3.12 Clause 13 provides for protection of action taken in good faith under this Act.
- 1.12.1 It was adopted without any amendments.

Clause 1.

- 3.13 Clause 14 provides that this Act shall have overriding effect over the provisions of Official Secrets Act, 1921 every other Act in force.
- 3.14 The Secretary (Personnel) proposed to substitute this provision with a newly drafted provision which reacollows:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contain the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument he effect by virtue of any law other than this Act".

- 3.14.1 The Committee agreed to the above substitution.
- 3.14.2 Subject to this, the Clause was adopted.

Clause 15

- 3.15 Clause 15 bars the jurisdiction of courts from entertaining any suit application or other proceeding in respect o order made under this Act.
- 3.15.1 The clause was adopted without any amendments.

Clause 16

- 3.16 Clause 16 exempts the application of this Act to certain organizations.
- 3.16.1 The Committee was of the opinion that anti-insurgency operations and intelligence activities of CRPF, BSI TBP should also be brought under the purview of this claust.
- 3.16.2 Subject to this, the clause was adopted.

Clause 17

- 3.17 Clause 17 provides for the power of the Central Government to make rules under this Act.
- 3.17.1 It was adopted without any amendments.

Clause 18

- 3.18 Clause 18 provides for the power of the State Government to make rules under this Act.
- 3.18.1 It was adopted without any amendments.

Clause 19

- 3.19 Clause 19 provides for the rule making power of the competent authority under this Act.
- 3.19.1 It was adopted without any amendments.

Clause 20

- 3.20 Clause 20 provides for laying of rules framed by the Central and State Governments under this Act befor Parliament and State Legislatures, respectively.
- 1.20.1 The Committee was of the view that the rules made by the Supreme Court and the High Courts should all blaced before each House of Parliament. It accordingly, asked the Secretary (Personnel) to look into the feasibility pringing the rules made by the Supreme Court and the High Courts under the ambit of this clause. The Secretary (Personnel) and the representative of the Legislative Department agreed to explore the feasibility.
- 3.20.2 Subject to this, the clause was adopted.

Clause 21

3.21 Clause 21 seeks to empower the Central Government to remove the difficulties in giving effect to the provision

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his Act

3.21.1 It was adopted without any amendments.

The Sche

- 3.22 Part A of the schedule enumerates the intelligence and security organizations established by the Ce Jovernment on which this Act shall not apply.
- 3.22.1 It was adopted subject to the observation of the Committee made in regard to the Clause 16.

Pı

- 3.23 Part B of the Schedule provides for the enumeration of intelligence and security organizations established by State Government. However, the names of the organizations have not been mentioned therein.
- 3.23.1 The Committee suggested that likewise Central Government, the names of the intelligence and sec organizations of the State Government should also be mentioned therein at the time of piloting the Bill.
- 3.23.2 Subject to this, the Schedule was adopted.

Clause 1. Enacting Formula and Title

- 3.24 Clause 1, Enacting Formula was adopted with some changes which were consequential or drafting nature, nat '2000" and "Fifty-first" to be substituted by "2001" and "Fifty-second", respectively.
- 3.24.1 As regards the Title of the Bill, the Committee decided to reconsider/review it at the time of the adoption c traft Report on the Bill.
- A verbatim record of the proceedings was kept.
- 5. The Committee then adjourned at 5.05 P.M. to meet again at 11.00 A.M. on the next day.

XXV TWENTY-FIFTH MEETING

The Committee met at 11.00 A.M. on Tuesday, 10 July, 2001 in Committee Room 'C', Ground F Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Makherjee-Chairman

RAJYA SABHA

- 2. J Shri Hansraj Bhardwaj
- Shri Surendra Kumar Singh
- Shri S. Ramachandran Pillai
- 5. Shri Drupad Borgohain
- Shri Kuldip Nayyar
- 7. Shri Jayanta Bhattacharya

LOK SABHA

- 3. Shri Arun Kumar
- Shri Ram Nagina Mishra
- 10. Shri P.H. Pandian
- 11. Shri Dahyabhai Vallabhbhai Patel
- 12. Shri Subodh Ray
- 13. Shri Anadi Sahu
- 14. Shri Manabendra Shah
- 15. Shri Vishnu Datta Sharma

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PRELIMINARY

1.(1) This Act may be called the Freedom of Information Act,2000 ŝ Short (2) It extends to the whole of India except the State of Jammu and Kashmir. title. extent (3) It shall come into force on such date as the Central Government may, by and notification in the Official Gazette, appoint. commenceme Definitions 2. In this Act, unless the context otherwise requires, (a) "appropriate Government" means in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled-(i) by the Central Government, the Central Government: (ii) by the State Government, the State Government; (b) "competent authority" means-(i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council; (ii) the Chief Justice of India in the case of the Supreme Court, 1 (iii) the Chief Justice of the High Court in the case of a High Court; (iv) the President or the Governor, as the case may be, in case of other authorities created by or under the Constitution; (c)"freedom of information" means the right to obtain information from any public authority by means ofì (i) inspection, taking of extracts and notes; (ii) certified copied of any records of such public authority; (iii) disketts, floppies or in any other electronic mode or through printouts, where such information is stored in a computer or in any 2 other device: (d)"information" means any material in any form relating to administration, operations or decisions of a public authority: (e) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be; (f) " public authority" means any authority or body established or constituted. 2 by or under the Constitution; (ii) by any law made by the appropriate Government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government; (g) "Public Information Officer" means the Public Information Officer 3 appointed under sub-section (1) of section 5: (h) 'record" includes-(i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile cupy of a document; (iii) any reproduction of image or images embodied in such 3 microfilm (whether enlarged or not); and (iv) any other material produced by a computer or by any other device; (i) "third party" means a person other than the person making a request for information and includes a public authority.

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FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES Freedom 3. Subject to the provisions of this Act, all citizens shall have freedom of information. ۵ſ Information 4. Every public authority shall-Obligations (a) maintain all its records, in such manner and form as in consistent with its 45 on public operational requirements duly catalogued and indexed; authorities. (a) publish at such intervals as may be prescribed by the appropriate Government or competent authority. (1) the particulars of its organisation, functions and duties; (ii) the powers and duties of its officers and employees and the procedure 5 followed by them in the decision making process; (iii) the norms set by the public authority for the discharge of its functions; (iv) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions; (v) the details of facilities available to citizens for obtaining information; 10 (vi) the name, designation and other particulars of the Public Information (b) publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies; (c) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions; 15 (d) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in narticular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of maintenance of democratic principles. Appointm of Public, 5. (1) Every pubic authority shall for the purposes of this Act, appoint one or 20 informatic more officers as Public Information Officers. officers. (2) Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information. (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties. (4) Any officer whose assistance has been sought under sub-section render all assistance to the Public Information Officer seeking his assistance. 25 A person desirous of obtaining information shall make a request in writing Request fc or through electronic means, to the concerned Public Information Officer obtaining specifying the particulars of the information sought by him; informatic Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing. 30 7. (1) On receipt of a request under section 6, the Public Information Officer shall. as expeditiously as possible, and in any case within thirty days of the receipt of Disposal the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections οſ requests. 8 and 9.

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Grounds for refusal

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9. Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information also where such request-

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in certa.
cases.

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(a) is too general in nature or is of such a nature that, having regard to the volume of information required to be retrieved or processed would involve disproportionate diversion of the resources of a public authority or would adversely interfere with the functioning of such authority:

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Provided that where such request is rejected on the ground that the request is too general, it would be the duty of the Public Information Officer to render help as far as possible to the person making request to reframe his request in such a manner as may facilitate compliance with it;

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(b) relates to information that is required by law, rules, regulations or orders to be published at a particular time and such information is likely to be so published within thirty days of the receipt of such request; or

(c) relates to information that is co9ntained in published material available to public;

(d) relates to information which would cause unwarranted invasion of the privacy of any person.

10. If a request for access to information is rejected on the ground that is is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

Severabilin

11. Where a public authority intends to disclose information on a request made by a party which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall by notice to such third party invite representation against the proposed disclosure, if any, within fifty days from the date of receipt of such notice:

Third party information

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

any possible harm or injury to the interests of such third party.

12. (1) any person aggrieved by a decision of the Public Information Officer may, within thirty days of receipt of such decision, prefer an appeal to such authority as may

Appeals.

be prescribed:

Provided that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause

from filing the appeal in time.

(2) A second appeal against the decision under sub-section (1) shall lie within thirty days of such decision, to the Central Government or the State Government or the

competent authority, as the case may be:

Provided that the Central Government or the state Government or the competent authority, as the case may be, may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appealant was prevented by sufficient cause from filing the appeal in time

(3) The appeals referred to in sub-section (1) and (2) shall be disposed of within thirty days of the receipt of such appeals or within such extended period, as the case may be, for reasons to be recorded in writing.

(4) If the decision of the Public Information Officer against which the appeal is preferred under sub-section (1) or (2) also relates to information of third party, the appellate authority shall give a reasonable opportunity of being heard to that third party.

http://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm

CHAPTER III MISCELLANEOUS

45 13. No. suit, prosecution or other legal proceeding shall lie against any person for Protection anything which is in good faith done or intended to be done or intended to be done action take under this Act or any rule made there under. in good faith. 14. The Provisions of Official Secrets Act, 1923 and every other Act in force shall 19 of 1923 cease to be operative to the extent to which they are inconsistent with the provisions of this Act Act to hav overriding cffect 15. No court shall entertain any suit, application or other proceeding in respect of Bar of jurisdiction any order made under this Act and no such order shall be called in question otherwise of courts. than by -way of an appeal under this Act. 16. (1) Nothing contained in this Act. (a) shall apply to the intelligence and security organisations, specified in the Act not to 5 Schedule being organisations established by the Central or a State apply to Government or any information furnished by such organisations to the nianao respective Governments; organisations. (b) shall until Part B of the Schedule is amended under sub-section (2), apply to the intelligence and security organisations by whatever name called discharging their functions as such under the State governments. (2) The Central Government may, by notification in the Official Gazette, amend 10 the Schedule by including therein any other intelligence or security organisation established by the Central or a State Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule. (3) Every notification issued under sub-section (2), shall be laid before each House of Parliament. 15 17. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to (2) In particular, and without prejudice to the generality of the foregoing power, make by such rules may provide for all or any of the following matters, namely:-Central (a) intervals at which matters referred to in sub-clauses (i) to (vi) of Government clause (b) of section 4 shall be published: 20 (b) the fee payable under sub-section (1) of section 7; (c) the authority before whom an appeal may be preferred under subsection (1) of section 12: (d) any other matter which is required to be, or may be, prescribed 18. (1) The State Government may, by notification in the Official Gazette, make rules to earry out the provisions of this Act. 25 (2) In particular, and without prejudice to the generality of the foregoing power, Power to such rules may provide for all or any of the following matters, namely:make by (a) the fee payable under sub-section (1) of section 7; State (b) the authority before whom an appeal may be preferred under sub-Government section (1) of section 12; ittp://rajyasabha.nic.in/book2/reports/home_aff/78threport.htm 28/061

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	(c) any other matter which is required to be, or may be, prescribed: Provided that initially the rules shall be made by the Central Government by notification in the Official Gazette.	. 30
Rule mai power compe author	(b) the authority before whom an appeal may be preferred under sub- section (1) of section 12;	35
		40
	(c) any other matter which is required to be, or may be, prescribed.	
10	20. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.	Laying of Rules.
15	21. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act. (2) Every order made under this section shall, as soon as may be after it is made, be taid before the House of Parliament.	Power to remove difficulties.
20	THE SCHEDULE (See section 16) PART A	
25	INTELLIGENCE AND SECURITY ORGANISATIONS ESTABSISHED BY THE CENTRAL GOVERNMENT	
	1. Intelligence Burcau.	

Research and Analysis Wing of the Cabined Secretariat.
 Directorate of Revenue Intelligence.
 Central Economic Intelligence Bureau.

5. Directorate of Enforcement.

6. Narcotics Control Bureau.

PART B

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INTELLIGENCE AND SECURITY ORGANISATIONS ESTABLISHED BY THE STATE GOVERNMENT

Name of the Organisation State

Name of the

- 1.
 - 2.
 - 3.

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STATEMENT OF OBJECTS AND REASONS

The need to enact a law on right to information was recognized unanimously by the Chief Ministers Conferer 'Effective and Responsive government" held on 24th May, 1997 at New Delhi. In its 38th Report relating to Deman Grants of the Ministry of Personnel, Public Grievances and Pension, the Parliamentary Standing Committee on Affairs recommended that the Government should take measures for enactment of such a legislation.

- 2. In order to make the Government more transparent and accountable to the public, the Government of appointed a Working Group on Right to Information and Promotion of Open and Transparent Government und Chairmanship of Shri H.D. Shourie. The Working Group was asked to examine the feasibility and need for eithe ledged Right to Information Act or its introduction in a phased manner to meet the needs of open and respace represents and also to examine the frame work of rules with reference to the Civil Service (Conduct) Rules and man Office Procedure. The said working Group submitted its report in May, 1997 along with a draft Freedom of Information the Government. The Working Group also recommended suitable amendments to the Civil Service (Conduct) Rules and the Manual of Departmental Security instructions with a view to bring them in harmony with the proposed
- 3. The draft Bill submitted by the Working Group was subsequently deliberated by the Group of Min constituted by the Central Government to ensure that free flow of information was available to the public, while, interesting the national interest, sovereignty and integrity of India, and friendly relations with foreign states.
- 4. The proposed Bill is in accord with both article 19 of the Constitution as well as article 19 of the Uni Declaration of Human Rights.
- 5. In our present democratic frame work, free flow of information for the citizens and non-Government instit suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root leve in attitude of secrecy within the Civil Service as a result of the old framework of rules. The Government proposes that these aspects in a phased manner so that the Freedom of Information Act became a reality consistent with all these aspects in a phased manner so that the Freedom of Information Act became a reality consistent with placetive of having a stable, honest, transparent and efficient Government.
- 6. The proposed Bill will enable the citizens to have an access to information on a statutory basis. With a viurther this objective, clause 3 of the proposed Bill specifies that subject to the provisions of this Act, every citizenave right to freedom of information. Obligation is east upon every public authority under clause 4 to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published a ntervals as may be prescribed by the appropriate Government or the competent authority.
 - 7. The Bill seeks to achieve the above objects.

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28/Dr

New Delhi: The 15th May 2000.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

(Copy of letter No. 34011/1(s)/97-EstL(B) dated 15th May, 2000 from Mrs. Vasundhara Raje, Minister of Sta Personnel, Public Grievances and Pension to the Secretary-General, Lok Sabha)

The President, having been informed, of the subject matter of 7 The freedom of Information Bill, 2 recommends the introduction and consideration of the said Bill in the Lok Sabha under Article 117(1) and (3) c Constitution.

FINANCIAL MEMORANDUM

- 1. Sub-clause 1 of clause 5 of the Bill provides for appointment of one or more officers as Public Inform Officers to deal with requests for information. It is expected that the various agencies would be appointing some of existing officers as the Public Information Officers for the purpose of this Act or redesignating the publicity or inform officers as Public Information Officers. Only in a few cases, it might be necessary to create additional posts fo surpose. Thus, the manpower requirement in this regard arising from the legislation is expected to be met from with existing sanctioned strength of the various agencies at the Central and State level, all within the existing budget.
- 2. At this stage, it is not possible to give precise details of the expenditure to be incurred on material resourcements of computers and other office equipment required for supply of information. However, the requirement of tems is likely to be met by the ongoing programmes for computerization of operations in various agencies are additional expenditure might be offset by recovery of fees for supply of information.
- 3. After the proposed Bill becomes an Act, a nodal Cell for finalization of rules and instructions, guiding the ind reporting progress to Government shall have to be set up in the Ministry of Personnel, Public Grievances and Per under the Central Government. This Cell shall consist of one Joint Secretary, two Deputy Secretaries, two Sanalysts and two conventional sections. In addition, the personal staff of the above officers will also be appointed estimated recurring expenditure of Rs. 28 lakks is likely to be incurred on the salaries of the officers and staff in the C
 - 4. The Bill does not involve any other recurring or non-recurring expenditure.

MENIORANDUM REGARDING DELEGATED LEGISLATION

Clause 16(2) of the Bill empowers the Central Government, by notification in the Official Gazette, to americhedule for including any other intelligence or security organisation established by the central or State government there from any organisation already specified therein.

Clause 17 of the Bill empowers the central Government to make rules to carry out the provisions of the Act clause (2) of that clause enumerates the matters with respect to which rules may be made under this clause.

These matters relate to, *inter alia*, the intervals at which particulars of organisation, functions and duties officers, details of facilities available to citizens for obtaining information in such organisation; fee payable to obtaining information from an organisation; the authority to be prescribed before whom an appeal may be prescribed to recision of Public Information Officer and any other matter which is required to be prescribed.

Clause 18 of the Bill empowers the State Government to make rules to carry out the provisions of the Act natters in respect of which such rules may be made are specified therein. These matters relate to, inter alia, it sayable to obtain information from any organisation; the authority to be prescribed before whom an appeal m referred against the decision of the Public Information Officer and any other matter which is required to be prescribed.

Clause 19 of the Bill empowers the competent authority to make rules to carry out the provisions of the Act.

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natters relate to, inter also the see payable for obtaining the information from the Public Information Officer regards. In; the authority to be prescribed before whom an appeal may be prescribed against the decision of the Information Officer and any other matter which is required to be prescribed.

Clause 21 of the Bill empowers the Central Government by order to remove certain difficulties which may a o it to be necessary or expendient. Further, such order shall not be made under this clause after the expiry of a peri wo years from the commencement of this Act. Every such order shall be laid before both Houses of Parliament.

The matters in respect of which rules may be made are matters of administrative details and procedure and, it practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal charact

LOK SABIIA

A BILL

o provide for freedom to every citizen to secure access to information under the control of public authorities, cons with public interest, in order to promote openness, transparency and accountability in administration and in relatinatters connected therewith or incidental thereto.

Smt. Vasundhara Raje, Minister of State in the Ministry of Personnel, Public Grievances and Pensions)

ANNEXURE II

(See page (v) para 3.2 of the Report)

LIST OF WITNESSES WHO GAVE ORAL EVIDENCE BEFORE THE COMMITTEE

- 1. Ms. Maja Daruwala, Director, Commonweath Human Rights Initiative, New Delhi
- 2. Dr. Madhav Godbole, former Home Secretary, Government of India
- 3. Shri A.G. Noorani, Senior Advocate
- 4. Prof. Manubhai Shah, Managing Trustee, Consumer Education and Research Centre, Ahmedabad
- 5. Representatives of Mazdoor Kisan Shakti Sangathan, Rajasthan
- 6. Justice P.B. Sawant, Chairman, Press Council of India, New Delhi

ANNEXURE-III

(See page 7, para 7.1.1 of the Report)

VIEWS/SUGGESTIONS OF INDIVIDUALS/ORGANISATIONS ON FREEDOM OF INFORMATION BILL, 2000 AND RESPONSE OF GOVERNMENT THEREON

PART 1: COMMENTS AND SUGGESTIONS ON THE BILL

Title of the Bill

Name Comments/Suggestions Response of Government Organisation/ individual Commonwealth The Bill should be titled "Right The 'right to know' has been judicially recognised as a facet of the Ոստոո to Information Bill. The object Rights Initiative Bill should be to fundamental right to free speech and of the

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operationalise the Constitutional Right to Freedom of Information implicit in the Fundamental Right to Freedom of Speech and Expression and Right to Life and Liberty and Right to Equality enshrined in the Constitution. The Preamble and the Title as they are currently worded seem to indicate that the freedom of information is being provided by this Bill, while in reality this is a fundamental right recognised under the Constitution.

Shri Madhay Godbole Shri A.G.

Noorani

The Bill should be utled "Right to Information Bill".

The Right to Information is a part of the Right to Freedom of Speech and Expression, the Right to Freedom of Speech and Expression includes the right to information. The Act should be called Right to Information Act.

Consumer Education and Research Centre

The Bill should be titled "Right to Information Bill*.

Mazdone Kisan Shakti Sanghathan

The Bill should be titled "Right to Information Bill*.

PREAMBLE OF THE BILL

Name oſ Organisation/ Individual Commonwealth Human Rights InItiative

Comments/ Suggestions

The Preamble should be reworded to clarify that the law is casting a duty upon the state and laying down systems to give information to the people in order to give effect the fundamental right to information. The right information under the Bill should be available not just to Citizens but to all persons.

Shri Madhay Godbole

The words "consistent with public interest" appearing in the Preumble of the Bill should be deleted as it

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of the Constitution. The purpose in enacting the Freedom of Information Act is primarily to provide a statutory framework for that right and it is felt that the expression 'Freedom of information' more fully reflects the spirit and intent in the proposed legislation (para 3.10 - Shourie Working Group Report). consideration of the above, it is felt that captioning the Bill as Right to Information Bill' may not appear to be consistent in keeping with the judicial pronouncements. Incidentally, similar legislation enacted by various countries, have been given more or less the same title some of which are given as under:-(1) Australia -

expression enshrined in Article 19(1)

- 'Freedom of Information Act, 1982'.
- Ircland -'Freedom of Information Act 1997'.
- (3) USA 'Freedom ٥ſ Information Act, 1966'.
- (4) UK 'Freedom of Information Act. 2000'.
- (5) Canada -'Access to Information Act, 1985'.
- (6) New Zealand 'Official Information Act, 1982'.
- (7)The Netherlands 'Government Information (Public Access) Act, 1991.

Response of Government

Many of the countries, like USA, The Netherlands and UK, have considered it fit to confer the Right to Information not only to their citizens but to persons residing in CONUTLA permanently temporarily as also to those persons who are in that country on a short stay, visit etc. The Canadian Act initially allowed only Canadian citizens and permanent residents to access to Government information. By an order of 1989, the Right to Access has been

leaves scripe for debate on what is public interest and whose public interest is it.

Consumer
Education and
Research Centre

The Preamble to the Bill must clearly state that this Right to Information is a recognition of the Fundamental Rights under Article 21 as it is an integral part of the Right to Life, Right to Equality and Right to Freedom of Speech and Expression. The Right to Information under the Bill should be available to all persons and should not be limited only to citizens.

extended to include all individuals who are present in Canada but who are not Canadian citizens or permanent residents, and all corporations that are present in Canada. There may not, therefore, be any objection to the access to information being given to all citizens as also all persons who are present in India.

There are various judicial pronouncements on what constitutes 'public interest'. As such, the phrase 'consistent with public interest' is not likely to present any operational difficulties.

CLAUSE 1: DATE OF BILL BECOMING EFFECTIVE

Commonwealth
Human Rights
Initiative

Rights down a time period within which the law will come into force. The clause may be reworded as follows. "It shall come into force on such date as the Central Government may notify, which date shall not be later than six months from the date of the passage of the law. Provided that the Act shall automatically come into force at the expiry of the said six months."

Name of Organisation/ Individual Shri Madhay Godbole

Comments/Suggestions

The Bill should provide for a specific date, a period of three months from the date of passage of the Bill, from which the act will come into effect. This will provide some kind of finality to the date from which the Bill will come into effect.

For an Act to become fully operational, necessary that the r institutions/machinery for operationalisa redressal of grievances, etc. is in posit Depending upon the scope of Act, s countries have given effect to some provis of their Act immediately on its notifica with the other provisions to follow at var intervals and a definite date being fixed for the provisions

Response of Government

to take effect. For instance, the UK prescribes a S year time period on the ex of which all the provisions in the Act w become effective in case these have not brought into force already. proposed FOI Act is not only to cover Central Government establishm- ents but State Governments and other bodies as we would be more appropriate to pro flexibility in regard to the date of effect so sufficient time is available to set up the it structure for the Act to become operation Considering that the กปลร operationalisation have yet to be drafted. various authorities under the Act are to notified as also training and positioning of manpower, it is quite reasonable to pro that the law will come into force on such as the Central Government may notify.

CLAUSE 2: DEFINITIONS

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Claus (a),(b) and (f)
Commonwealth
Human Rights
Initiative

Sections 2(a) and (b) - Definition of "Appropriate Government" and "Competent Authority" do not take into account any aspect of local bodies. The definitions must include Municipal and local bodies.

Sections (c), (d) and (f) - The definitions are restricted to public bodies, this should be amended to include semi-governmental bodies, private bodies and all organisations that are engaged in the carrying on activities that affect the public or large sections of the public.

Clause 2(a),(b) and (f)
Name of
Organisation/
Individual
Mazdoor Kisan
Shakti
Sanghathan

Comments/Suggestions

Section 2(a) and (f) defines 'Public authority' this definition must be expanded to include in addition to what has already been stated (ii) the Administrative Offices of the Courts: (iii) a company, corporation, trust, firm, society, cooperative society, or associations whether owned or controlled by the Government or by private individuals and institutions (iv) any other person information from whom is required for the exercise or protection of any right'.

in the alternative, the definition of "Public Λυthorin* could amended to include a body owned. controlled or substantially financed funds provided directly or indirectly Ъy the appropriate Government. This would bring into the purview of the Bill all bodies that receive, directly or indirectly, any public funds, so as to make them accountable to public scrutiny going in further.

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Clauses 2(a) and (b) - The Municipal and local bodies, set up directly or indirectly by the Central /State Government, are already covered by the definition of 'appropriate Government' and 'competent authority' as given in these sections. Further, in Clause 2(f) of the Bill, 'public authority' has inter-alia been defined to include עתב other body. controlled OT substantially financed by funds provided directly or indirectly by the appropriate Government. The Act covers the administrative offices of the High Courts and Supreme Court of India.

Response of Government

As for the extension of the proposed legislation to private sector, it needs to recognised that the basic purposes of the Freedom of Information legislation are to promote openness, transparency accountability in Government and to facilitate a fuller and more meaningful participation of the people in the governance. This cannot be said to apply wholly to private businesses which are not required to primarily subserve public interest as it is commonly understood. Any attempt to bring the private sector under the proposed legislation is apt to be regarded as an excessive intrusion into the freedom and management of private sector not to mention Ibat there bluaw Ьe implementation difficulties 100 in expanding the scope of FOI Bill to private bodies. There is also the danger that it may

hecome a tool for competitive strategy with deleterious consequences for the industry which are too obvious to require elaboration. The information relating to operations of private firms which impinges public interest such as

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Clau 1 (c), (d) and (h)

Name of Organisation/ Individual Commonwealth Human Rights

Initiative

Comments/Suggestions

Sections (c), (d) - The definitions are restricted to obtaining information from public bodies, this should be amended to include semi-governmental bodies, private bodies and all organisations that are engaged in the carrying on activities that affect the public or large sections of the public.

Mazdoor Kisan Slinkti Sanghathan

Section 2(e) the definition of freedom of information' should be amended to include taking samples of materials and goods offered for sale.

Section 2(h) the definition of 'record' should be amended to include materials and samples of goods.

Shri A.G. Noorani

Section 2(d) defines "information" and 2(h) "record", the word "information " should be amended to include a record.

Shri B.G. Deshmukh

Section 2(d) information should include conduct of public servants specifically, apart from administration, and should also include documents relating to information.

CLAUSE 3: FREEDOM OF INFORMATION

Name of Organisation/ Individual Commonwealth Human Rights Initiative

Comments/Suggestions

Section 3 should be amended, since Right to Information is a fundamental right guaranteed under the Constitution and is not a right provided by the Freedom of Information Bill. The Bill seeks to

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Response of Government

health. safety. environment standards, etc., would in any case be accessible under the provisions of the laws framed by the concerned regulatory authority and there nced not be apprehensions of the public interest being allowed to suffer. It is noteworthy that none of the advanced democracies such as USA, Australia and Canada, has thought it fit to widen its laws to this extent to cover the private SCCLOT.

The 'samples of materials and goods offered for sale' do not constitute 'information' or record' and therefore cannot be brought within the ambit of Clauses 2(e) and 2(h).

Clause 2(d) defines 'information' to mean 'any material in any form' and unquestionably includes a 'record' also. Information pertaining to the 'conduct of public servants', not covered by the exemptions contained in clauses 8 and 9, would be open to access under the proposed Act and it was not considered necessary to make a specific provision therefore.

Response of Government

The right to information has already received judicial recognition as a part of the fundamental Right to Free Speech and Expression and the purpose in enacting the Freedom

in Section 4(b) that is to be mandaturity disclosed to the public

-The description of the subjects on which the public authority holds records and the categories of records held on the subject

-Details of notifications, orders directions passed by that public authority or are applicable to that public authority.

-The description of the services available to the members of the public from the public authority and how to gain access to such services.

In Section 4, the definition of the word "Publish" needs to be added, mere publication in the Official Gazette will not be enough since this document is not easily available to the common person, thereby defeating the very purpose of the provision. The term "Publish" should be defined such that the material is easily accessible to the common person and should mean publication through mass communication channels such as radio, television, newspapers and other such means.

Shri B.G. Deshmukh

Section 4(b) - it should be specifically stated that the mandatory and voluntary disclosures in this section should be published annually.

Shri Madhay Godbole

Section 4(d) states that every public authority shall, "give reasons for its decisions whether administrative or quasi a judicial to those affected by those decisions". This section needs to be amended by adding the words "and others, as widely as possible" after the words "to those affected by those decisions".

Section 4(e) should be amended to include the words "and" after the words "public generally" and once again after the words "persons affected" Further, the words "maintenance of democratic principles" should be substituted by the words "natural justice and promotion of democratic principles".

provisions for mandatory disclosure such information.

The 'Official Gazette' is a public docur and easily available to the common n The number of public authority for all organisations proposed to be covered u the Act would be very large and it we not be feasible to publicise all the recauthorities through SUCH television, newspapers, etc. Nevertha mass communication themselves give due publicity to impor decisions and policies framed by the pu authorities that affect the public and t does not seem to be any need for making statutory provision.

The Bill already contains a provisior publishing the organisational informatic such intervals as may be prescribed by appropriate Government or compauthority.

Since all the projects may not be of int to the general public, it would no desirable to make a provision for information to be communicated to public at large. However, there may be objection to the words "maintenane democratic principles" being substit by the words "natural justice promotion of democratic principles".

Provision for upgrading of information I already been made in clause 4(b) of the

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Consumer Education and P arch Centre

The Bill must provide for mandatory apprading of information by the authorities required to provide this information to the public. This upgrading should be done within a specified time limit and systems must be computerised. The Bill should provide for pro-active disclosure of information by public authorities especially information regarding life, safety, health and environment.

Provision for making pro-active disck of information are already contains section 4 (e) of the Bill. This incl. information relating to life, safety, be and environment.

Shri A.G. Noorani

The current provision for suo motto disclosures are not sufficient. There should be an obligation on the Government to publicise certain kinds of information such as sanction of projects. awarding of tenders, giving major licenses.

The existing provision for suo 1 disclosures are considered adequate fo purpose of attaining the objectives of Act.

Mazdoor Kisan Shakti Sanghathan

Section 4 of the Bill explicitly places duties on public authorities to maintain records and to give reasons for their decisions. However, it is recommended that the positive duty of public authorities to inform the public, even if information is not sought, should be expanded under this Section, to include all information required by citizens to protect their rights and to conforce ומשתבונמים and accountable governance. The list of suo moto disclosures should be illustrative and not exhaustive in nature.

Clause 4(e) of the Bill already cas positive duty on the public authoritie pro-active disclosure information available with them wi view to enable the citizens to protect rights. The list of suo-moto disclosure been made comprehensive so that t may not be any variations in interpretation and application.

The Bill is silent on the matter of publication of information. Publication यो। कार्यार्थ be understandable and communicable. The Bill should provide that publication should be "by electronic or Print Media or by beating of drums or any other suitable method" and should be in vernacular languages. Where information is concerning the life and liberty of a person, Section 4 should incorporate the guidelines set down by the Supreme Court in D.K Basu v State of West Bengal.

It is implied that any publication information under the proposed Act w be capable of being understood communicable. The media, as also language, to be used for publishing information, would vary in indiv. situntions and this has been left to discretion of the concerned authority.

The guidelines laid down by the Sup-Court in D.K. Basu's case shall be taken into consideration while drafting rules under the proposed Act.

CLAUSE 5: APPOINTMENT OF PUBLIC INFORMATION OFFICERS

Individual

Name of Organisations Comments Suggestions

Response of Government

Commonwealth Human Initiative

Section 5 should mention the level in the Rights administrative ludder at which the Public information Officer would be appointed. Further, the law must clearly state that the responsibility of providing information under the Bill should be with each and every

Receping in view the functions, the of assigned to deal with requests for inform has appropriately been designated as 'Pi Information Officer' and no change therefore called for. After the Bill is ena it is proposed to issue instructions to

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officer of the Public Authority. The Bill should also provide for the delegation of the authority of the Public Information Officer. The following clause could be added to Section 5 and be numbered as Section 5(5).

Section 5(5)

- a) For the purpose of this Act each public authority must designate such number of personnel of the public authority as Deputy Information Officers as are necessary to render the public authority as accessible as possible to the people.
- b) The Public Information Officer of each public authority shall have direction and control over Deputy Information Officer of that public authority.
- c) The Public Information Officer of a public authority may delegate a power or duty conferred or imposed on that Public Information Officer to any Deputy Information Officer of that public authority. Any power or duty delegated herein must be

various public authorities to ensure that officer to be designated as Public Informa Officer' for the purpose should not be be the rank of Deputy Secretary/Director to Government of India. Since the designa of officers of this level shall be different individual organizations depending on t size, it is not possible to define this It precisely in the Act.

Clause 5(1) of the Bill already provides 1 every public authority shall appoint one more officers as Public Information Office It would, however, not be desirable to vest responsibility of providing information w each and every officer of the public author multiple authorities would difficulties for the requester in identify the authority to be approached for obtain information. Further, section 5 (3) of the I already provides that the Public Informat Officer may seek the assistance of any of officer as he considers necessary for proper discharge of his duties. In this conte there is no need for appointing Depi Information Officer not to mention that such

exercised or performed subject to such conditions as the person who made the delegation considers it necessary.

- d) Any delegation made herein
 - i) Must be in writing
- ii) does not prohibit the person who made the delegation from exercising the power concerned or from doing the duty concerned himself; and
- iii) may at any time be withdrawn or amended in writing by that person.
- f) Any right or privilege acquired or any liability or obligation incurred as a result of a decision in terms of a delegation as set out herein is not affected by a subsequent withdrawal or amendment of that decision.

Shri A.G. Nooraui

The designation of "Public Information Officer" is wrong since there are already 'Press Information Officers' and 'Information Officers' in the Government. The officer appointed must be called "Commissioner for Information". This

hierarchy could lead to dilution of author and responsibility. Incidentally, it may stated that the foreign legislations t generally do not contain any provision the authority designated to deal with reque for information, to delegate his authority any other officer in the organisation.

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99

Commissioner for Information must present un annual report to the Parliament and to the respective State Assemblies on the working of the Law.

Muzdoor Shakti Sanghathan

Kisan In Section 5, which provides for the appointment of Public Information Officers in every public authority, is needs to be added that the ultimate responsibility to ensure adherence to the provisions of the Bill vests with the head of each public authority, and they are vicariously liable in the event of any violation by their subordinates.

Though the head of the public authorit enjoined to ensure adherence to provisions of the proposed legislation, would not be appropriate to hold responsible for any acts and omissions on part of his subordinates.

CLAUSE 6: REQUEST FOR OBTAINING INFORMATION

of Comments/Suggestions

Name Organisati-on/ Individual

Commonwe-alth Human Initiative

Section 6 should be reworded to make the Rights procedure simpler and clearer. Since the intent of the Bill is to put in place an effective procedure for enforcing the Right to Information, the procedural issues must de detailed and clearly stated. The Bill should provide for acknowledgement of a request for information made to a Public Information Officer.

Mazdoor Kisan Shakti Sanghathan

The Bill should provide for a set format for applying for disclosure of information. All possible assistance must be provided to people who apply for information. There should be a provision for recording all applications made for information. An acknowledgement must be given for a request for information. The right of inspection of information must be provided.

Response of Government

The procedural tssues, including acknowledgement for a request for disclosure information, would be dealt with in the rules be framed under the proposed Act.

A request for access to information can be me by a person through a simple application and format has been prescribed for the purpose order to avoid any inconvenience to the public.

The proviso to clause 6 of the Bill already la down that the Public Information Officer sh render all reasonable assistance to the pers making the request.

The right of inspection of information b already been provided in clause 2 (c) (i) of t Bill.

CLAUSE 7: DISPOSAL OF REQUESTS

Commonwe-alth Numan Rights Initiative

urgent information and for waiver of tees in certain cases must be included and the section rewarded to accommodate these requests.

The law must clearly state the fee that can be charged (which should not be excessive and unreasonable) and must also contain

100

In Section 7, a provision for requests for It would be difficult for the Public Informatic Officer to determine whether the group/individu cannot, for genuine reasons, pay the prescribed fe or for that matter the information is being sought public interest etc. Moreover, it would also I difficult to follow a consistent and unifor approach in handling requests for waiver of fee Hence, no provision has been made in the Bill for exemption from payment of fees. However, the

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who are unable to pay the same or in cases where information is sought in public interest or for protection of life and liberty.

provision for waiver of fees in cases where may not be any objection to make a provisio demand for information is made from people, the bill that the fees charged shall not unreasonable.

The Section must contain a provision for deemed refusal in cases where there is no response to the request within the stipulated time limit.

The law must clearly state that where information sought is regarding the life and liberty of a person, the same must be provided within 24 hours. People request information because they need to fulfil a specific need; they must not be made to wait for 30 days in such instances.

The provision for 'deemed refusal' has been included in the Bill on consideration that it might prove to counter productive.

There may not be any objection v provision being made in the Bill that wh the information suggest for under the relates to life and/or liberty of a person, same shall be provided within 48 hour. an exception to the general rule.

Consumer Education Research Centre

The time specified for response to requests is very and long, 30 days is too long to wait for information. People request information because it is needed and is relevant to a person at a given point in time. Certain type of information which affects life and liberty of persons should be provided within 24 or 48 hours.

The response times to FOI access requi have been prescribed as 30 days Canada, 20 working days by New Zealt 30 days by Australia, 20 working days USA, 28 days by Ireland and 20 work days by UK. In this context, the respotime of 30 days provided in the Indian I Bill is not considered to be long.

Shri A.G. Noorani

There must be a provision which states that if information is not provided within 30days it is deemed to have been refused.

Mnzdour Kisan Shakti Sanghathan

The proviso clause to Section 7 (I) must be deleted, because it leaves loopholes to enable public authorities to delay supply of information. There is no reason why the cost of providing information cannot be realistically assessed at the time the application seeking information is initially made.

On receipt of an application, the Pul Information Officer is first to ascent whether the document sought for exists all or not. This search would naturally to some time and at this stage it is possible to work out the labour required retrieval

Name of Organisation/ Individual

Comments/ Suggestions

This is This is also related to the fees chargeable for supplying information, which has been left under Section 18(2)(a) to the Rules The Bill itself should lay down that the fee that can be charged cannot be higher than the actual cost of reproducing the document containing the information, and Response of Government

and copying of the documents. it would not therefore, be possible to make a therefore, be possible to make a realistic assessment of the cost of providing information at the time the request therefore is made. In fact, all similar legislations contain a provision

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should not include the costs of actually creating the document. After all, the creation of the document containing the information was any way the duty of the public authority, independent of the application for the copy of the information.

Information that is necessary, urgent and is required for the protection of the life and liberty of persons should be provided within a much shorter period of time - e.g.: the Gon Act says within 48 hours.

If information is not provided within a stipulated time period, it must be deemed to be a refusul and appeal must be allowed even though there has been no express rejection of the request.

Shri B.G. Deshmukh Section 7(1) it must be stated that the information asked for shall be provided either in English, Hindi or in language of the state,

placing a certain time at the disposal of the authority to enable him to determine and communicate the cost involved to the requester.

The proposed Act does not envisage the creation of new records for the purpose of providing the information sought for. The information shall be provided on the basis of the existing records and the labour/cost involved in creating these records would not be taken into consideration while computing the [œ5 providing the access.

It is implied that access to information shall be given in the particular official language in which the record already exists under the control of the Government institution.

CLAUSE 8: EXEMPTION FROM DISCLOSURE OF INFORMATION

Name of
Organisation/
Individual
Commonwealth
Human Rights
Initiative

Comments/Suggestions

Sections 8 and 9 of the Bill set out the exemptions from disclosure and the grounds for refusal of access to information. While some oΓ these are necessary reasonable. wide gaigasa exemptions can defeat the very purpose of the legislation. Since the object of the legislation is to give effect to the fundamental Right to Information under the Constitution of India. restrictions in this right should be limited to the restriction set out in the Constitution of India. The exemptions BCCCSS to information laid down in the Bill go far beyond the limits prescribed by the Constitution of India and

Response of Government

Under Article 19 (2), the State is competent to impose reasonable restrictions on the exercise of the right under Article 19 in the interest sovereignly of integrity of the country, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. In the present day context security of the State is viewed not only from the point of defence security but from the point of economic security as well. Care has, therefore, to be taken to protect commercial and trade secrets because in an era of

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take in factors which are extraneous to the reasonable restrictions envisaged by the Constitution of India.

The right to information should be restricted only by "imposing reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, deceney or morality, or in relation to contempt of court, defamation or incitement of an offence", as set out in the Constitution of India.

Name of
Organisation/
Individual
Consumer
Education and
Research Centre

Comments/ Suggestions

Section 8 and 9 contain omnibus clauses under which information can be refused to the public, these clauses need to be amended to make the exemptions more narrow and well defined. The Bill must clearly provide that all information that cannot be denied to the members of the parliament/legislature should not be denied to the public.

Clause 8(1)(a)

JUSTICE P.B. Sawant Section 8(1)(a) ".... Strategic scientific or economic interest of India or conduct of International Relations".

Unless the above mentioned words are relatable to the security of the State or friendly relations with foreign states, respectively, as mentioned in Article 19(2) of the Constitution of India will be violative of 19(1)(a).

globalisation and competition, the Government has to protect the legiumate economic commercial interests and the competitive position of the public authority. Clause 8 of the Bill, which provides exceptions to grant of information, has been drafted in such a manner that the exemption are concise, well defined. have а clarity expression and are consistent with Article 19 of the Constitution. Most of these exemptions have already been provided in the similar Acts legislated by some of the advanced democracies and in fact, the exemptions in some of these legislations for outnumber the exemptions in the Indian FOI Bill.

Response of Government

The general principle adopted in drafting the Bill has been that whatever information could be made available the to Parliament/State Legislatures should be available freely to the general public. The Bill, therefore, does not make any distinction between the general public and the members of Parliament/State Legislatures and, subject to the exemptions in the clause 8, all information that cannot be denied to MPs/MLAs shall be made

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accessible to the public also.

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Clause 8(1)(n)
Name of
Organisation/
Individual
Shri Madhav
Godbole

Comments/ Suggestions

Section 8(1) seeks to deny large amounts of crucial and important information to the people. It is necessary in this context to note that under the Rules of Transaction of Business formulated Government of India certain matter have to be necessarily put up to the Cubinet for a decision. To deny access to all such matters after decision is taken cannot be justified. Deliberations of Cabinet Secretaries should not be put on par with deliberations of Cabinet Cabinet Committees. The notings on the file made by Government officials should be made known to the public after decisions are taken on concerned files. Pros and cons of decisions or cases are viewed in the Cabinet note and people outside ought to know the basis on which the Cabinet made certain decisions.

In Sections 8(1)(a) the words "or conduct of international relations", must be deleted, the term "international relations" is very wide and ambiguous.

Response of Government

It would be pertinent to mention that information which would prejudicially affect the conduct of international relations has been exempted from disclosure in the legislations enacted by Australia, New Zealand, Ireland, The Netherlands, USA, France and Canada. The provision in the Indian FO! Bill making a similar exemptions, is therefore not an exception.

The deliberations of the Committee of Secretaries have been included in the list of exemptions since these often from an inextricable part of the Cabinet decision making process.

Clause 8 contd....

Clause 8(1) (c), (d), (e) and (g)

Name of

Comments/ Suggestions

Organisation/ Individual Shri Madhay Godbole

Section 8(1) sub-sections (c), (d) and (e) cover the entire working of the Government. By including these in the exemption clause, the working of the Government from the Cabinet Committee to the Secretaries Committee is not being made available to the people. These provisions bring on par the Cabinet Committee and the Secretaries Committee and must be done away with, nothing belonging to the Cabinet must be a secret forever.

JUSTICE P.B. Sawant Section 8(1)(e) will be violative of Article 19(1)(a) since it does not appear to be covered by Article 19 (2) or any other provision of the Constitution.

Section 8(1) (e) - if the provisionmeans that the minutes or records of advise etc mentioned therein will not be covered by any of the exceptions mentioned in Article 19(2) or any other Constitutional Provision. It will also be contrary to the substance of the law laid down in S.P Gupta's case.

Mazdoor Kisan Shakti Sanghathan

The Supreme Court has interpreted that the Right to Information flows from Article 19 of the Constitution of India. Therefore any restrictions on this right has to be justifiable only on the exceptions set out in Article 19(2) of the Constitution. The Bill cnvisages several exemptions lo providing information, which go beyond the reasonable restrictions envisaged in Constitution. the hence these exceptions are unconstitutional. Therefore the list of exceptions in the proposed Bill must be cut short.

Response of Government

According to the UK Government white paper presented Parliament in 1997 in connection with the legislation of the FOI Act. the internal discussions and advice is exempted from disclosure in Australia, New Zealand, Ireland, Netherlands, the USA, France and Canada. All these countries, while recognising that the public has a Right to Know the decisions of the Government, have considered it fit exclude the deliberative processes from disclosure. In India also, the Government is keen to encourage free and expression of views on the part of various officers. A conscious view has therefore been taken that the deliberative process in coming to a decision should not be made available 10 the public. Accordingly, the FOI Bill, 2000 exempts minutes or records of advice including legal advice, opinions 10 recommendations made by an officer of a public authority during decision making process prior to executive decision or policy formulation.

The list of exemptions set out in clause 8 (1) of the Bill has been kept to the barest minimum and the Ministry of Law, Justice & C.A has been consulted from time to time so as to ensure that these exemptions do not violate the Constitutional provisions or the judicial pronouncements

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106

Clause 8 contd.

Name of Organisation/ Individual

Comments/Suggestions

Response of Government

It is recommended that information that is available to the members of Parliament and/ or members of the State Legislative Assembly/Council should not be denied to any person.

Section 8(1)(d) while advise to Cabinet and deliberations of the Cabinet prior to arriving at the decision may be exempt. Cabinet records should not be exempt.

Section 8(1)(e) should be deleted because in order to hold public authorities accountable, it is not enough to know what decision was ultimately taken but also to know the content of the advise and recommendations made by various authorities in reaching the decision.

Shri A.G. Noorani

The Bill states that information that prejudicially affects Centre-State relationships need not be given. The language is too wide, and anything can be termed prejudicial.

Section 8(1)(g) the word "information the disclosure of which may result in breach of privilege" should be substituted with the words " information the disclosure of which will violate the law of Parliamentary Privilege".

The existing provisions of clause 8 (1)(g) are considered appropriate as per the standards of drafting and require no change.

Clause 8(2) and Proviso to Section 8(2):

Name ٥ſ Comments/ Suggestions

Organisation/ Individual

Shri

A.G. Noorani

Proviso to Section 8(2) - the proviso gives finality to the order of the Central Government regarding disclosing archived records, this clause is highly restrictive in nature. Further the clause is only applicable to "any occurrence, event or matter which has taken place, occurred or happened 25 years before the date on which the request is made". The proviso excludes "Records" and "Information" as defined in the Bill itself, making access to archived records impossible.

Shri Madhay Godbole

Section 8(2) the period of 25 years proposed for releasing information under Section this 15 unconsciously long. It is suggested that 25 years be substituted with 15 years. The Government should set up a Records Commission which will consist of eminent public ficures £nd Government representatives and will continuously monitor and review the release of records for public information. It is further suggested that the following proviso he added to Section 8(2):

"Provided that all such papers and records will be reviewed by the competent nuthorities every five years with a view to release all information which reasonably be made available to people."

Clause 8(2) and Proviso to Section 3(2):

Name Comments/ Suggestions

Organisation/ Individual

Shrì Madhay Godbale

Proviso to Section 8(2) - the words "tiventy five years" may be substituted by "fifteen years". It may also be added that the decision

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Response of Government

Clause 8 (2) provides that any 'information' relating io occurrence, event of maner which has taken place 25 years earlier. shall be provided to any person making a request. The expression 'unformation' has been defined in clause 2(d) to mean any material in ΩЛУ form relating the administration, operations decisions of a public authority. 'Records' are the manifestation of a material in a particular form and would therefore be covered within the existing definition and there need not be any apprehensions that it would not be possible to access archived records.

None of the legislations enacted by the advanced democracies contain a provision for providing access at any time to information which is exampted from disclosure under the provisions of the respective Acts. The provision in the Indian FOI Bill for providing access to the exempted information 25 years after the record was created or the date of occurrence of the event, is a step ahead of the other legislations. A period of 25 years is considered necessary in the interest of the security of the individuals, country, etc. and lowering this to 15 years may not be appropriate keeping in view the risks involved.

Response of Government

The setting up of a 'Records Commission', to monitor and review the release of the records for public information, is not the

108

of the Records Commission will be final unless the Minister in-charge over rules the decision of the Commission for reasons which shall be recorded in writing. scope of the proposed Act and no provisions need therefore be made in the Bill

CLAUSE 9: GROUNDS FOR REFUSAL OF ACCESS IN CERTAIN CASES

Clause 9(a)
Sliri A.G.
Noorani

Section 9(a), the words "is too general in nature" are too vague and give scope to officers of the Government to evade giving information. Further, the words "would involve disproportionate diversion of the resources of a public authority" are used, the word "disproportionate" is rather subjective, a better word to use would be "unreasonable".

Clause 9(a) is neither vague nor gives any scope to the officers to evade requests. In fact, similar provisions exist in almost all the foreign legislations for dealing with vexatious requests. However, there is no objection to the word 'disproportionate' being replaced by 'unreasonable'.

Mazdoor Kisan Shakti Sanghathan word "disproportionate" is rather subjective, a better word to use would be "unreasonable".

Section 9(a) should be deleted because it gives public authorities wide unfettered powers to reject applications for information. The spirit of the section would be served if it is clearly stated that an application cannot be made under the Bill for the creation (or aggregation) of new information that is not already required to be created (or generated) under existing laws and rules.

The intent of the proposed Act is to allow access to information which already exists and the Bill, therefore, does not envisage the creation of 'records' for the purpose. Clause 9(a) of the Bill is, however, not related to this aspect and consequently no modifications are required to be made to this clause.

Clause 9(b) and (c)

Commonwealth Human Rights Initiative Section 9 (b) and (c) should be deleted as they are rather wide and can cause many difficulties as a wide range of information can be denied saying that they are contained in annual reports of departments or in the official gazette. Publication in

The Government publications, including Official Gazettes, manuals, annual reports etc. are available to the common man through various retail outlets and these can be procured by any person desirous of referring to the record. As such, the public

Clause 9(b) and (c)

Name of Organisation/ Individual Comments/ Suggestions

Government parlance means publication in the Official Gazette. It is not reasonable to expect a person with minimal or no literacy

Response of Government

authorities would be justified in denying information to the requester where such information is already available in published material.

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skills to search for documents in the Official Gazette or reports which are unavailable to the common person. Therefore, refusing to grant access on the ground that the information is already published or will be shortly published is not a valid or justified reason, unless the material is published in a manner that is easily accessible to the common person.

Under Section 9, if some kinds of information can be routinely put in a publication, the law should clearly put the onus on the public authorities to publish and make available the information in sufficient quantities within a specified period of time and if necessary to price them reasonably so that they may be within the reach of the common person.

Shri Madhav Godhole Section 9(d) relates to information which would cause unwarranted invasion of the privacy of any person, this Section needs to be qualified with the same kind of proviso as in Section 11, namely, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of privacy of any person.

CLAUSE 10: SEVERABILITY

Name of Organisation/ Individual Commonwealth Buman Rights Initiative

Comments/ Suggestions

The provision on severability is an excellent one, however, the Bill must provide for appeals against a decision to severe some parts of the document.

Some Government organizations already gnignird publications containing information about their activities, statistics available with them, etc. which are of interest to the common man. In case any person or group of persons or any institution has suggestions to make for bringing out any new publications, or for modifying the contents of the existing publications, they are free to approach the concerned organization. A statutory provision in the FOI Bill, for bringing out such publications, is obviously not desimble.

Some of the advanced democracies have already enacted legislations to protect the privacy of individuals. In India, there is no 'Privacy Act' to afford such protection and the possibility of 'harm' being caused to an individual by release of personal information cannot be ruled out. A conscious approach has, therefore, been adopted by not allowing such disclosures under any circumstances.

Response of Government

The Australian Act provides that in cases where the 'exempt' information is being severed from the 'non-exempt' information and access is being given only to the latter, the applicant must be informed

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Mazdoor Kisan Shakti Sanghuthan

Section 10 of the Bill should that reasons withholding parts of a document must be given to the requestor. and the copy of the document provided should indicate which portions of the document has been withheld. The provisions regarding severability in the Press Council Draft of 1997 should be included.

of the fact of deletion, the grounds for deletion and also the provisions of the Act under which the matter deleted is exempt. Therefore, there unny not be any objection to incorporating the following provision as sub-clause (ii) under clause 10 after renaming the existing clause as sub-clause (i)

- "(ii) Where access is granted to a part of the record in accordance with sub-section (i), the person making the request shall be informed.
- (a) That it is a part of the record after deleting the record containing information which is exempted from disclosure,"
- (b) the provision of the Act under which the deleted part is exempt from disclosure".

A decision to severe a part of the record would be deemed to be a 'part' refusal of the request for which on appeal can be made under Clause 12(1). The existing provisions of this clause are considered 'adequate' for the purpose of filing such an appeal.

CLAUSE 11: THIRD PARTY INFORMATION

Name of Organisation/ Individual Commonwealth Human Rights Initiative

Comments/Suggestions

Section 11 is a standard provision that is universally accepted however a period of 50 days for inviting third party representation is too long and will be detrimental to the interest of the requestor. The should provide maximum 15 days to issue notice and 15 days to reply.

Shri Madhay Godbole

Section 11, the words "fifty days" should be replaced by the words "thirty days" as a period of "thirty days" should be quite adequate for

a third party to respond.

Mazdoor

Section 11 "third party" clause is

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Response of Government

The Third Party intervention is universally accepted and almost all the foreign Acts contain such a provision.

The Canadian Act specifies a total time-period of 60 days in which to take decisions on requests that relate to Third Party Information in this context, the period of 50 days stipulated in the Bill for giving notice to the Third Party and obtaining representation thereon, is not considered as too long.

Kisan Shakti Sangh aan

redundant and is likely to create a major loophole to enable delays. Once the Bill is operational, the third party may be presumed to know that the information is legally subject to disclosure, so it cannot legally have the information treated as confidential. The corresponding Section 12(4) should also be deleted.

CLAUSE 12: APPEALS

Name of Organisation/ Individual Commonwealth Human Rights Initiative

Comments/Suggestions

Section 12 containing the provision for internal appeals are the weakest part of the Bill. The Bill does not provide for an independent forum for appeal, which is the hallmark of FOI legislations world over and ensures its effectiveness. An appeal process within the Government cannot ensure fairness decisions. recommended that either a commission for freedom of information or an independent tribunal having powers of the civil court be set up to hear appeals decisions from of the authorities.

Shri Madhav Godbole

It may be advisable to lay down general principles for appointment of appellate authorities. lt recommended that the first appeal be to the next higher officer in the department itself, the second appeal should be to the Lok Ayukta (in states that have established Lok Ayuktas) or to the Board of Revenue or Divisional Commissioners. In the case of Government of India, while the first appeal may be within the department itself and the second appeal may be to such authority as may be prescribed by each department under the rules.

Consumer Education and Research Centre

The appeal mechanism should be independent through a formal non-governmental institution like a commissioner or an ombudsman. The present mechanism is, unsuitable,

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Response of Government

The question of providing an independent appeal mechanism was examined carefully in the context of the recommendation made in the Shouric Working Group Report that such powers may be vested with the forums set up under the Consumer Protection Act, 1986. However. it was noted that the deficiencies in the working of Consumer Forums as well as the Courts in the form of massive arrears and chronic shortages of man power. etc. would appear to undermine the effectiveness of either of these forums as appellate forums under the proposed Act even from the point of view of cost, speed oſ disposal convenience to the public. On the other hand, departmental appeals would be far more economical and cost effective for the appellants, especially for most of the information at the district level, as they would not entail expenses such as lawyer's fees, court fees, etc. For a person dissatisfied with the outcome of his appeal, the writ jurisdiction of the High Court would still be available. In view of this, and also considering that the proposed legislation was a new kind of legislation requiring a break with the present

unworkable and hence not acceptable. There should be a District Information Commissioner who is independent of the Public Authority, if a person is unable to get information he should approach the District Information Officer and appeals form decisions of this officer can lie with the State Information Officer.

administrative culture, the Bill provides for a two-tier appellate remedy of a purely departmental character at different levels to be determined by the appropriate Government or the competent authority, as the case may be.

Name of Organisation/ Individual Shri A.G.

Noorani

Comments/ Suggestions

Response of Government

The Bill must provide for an independent tribunal to adjudicate matter concerning freedom of information. A retired Judge of a High Court should be appointed to head this body, the appointment for the Centre should be made in consultation with the Chief Justice of India and for the State should be made in consultation with the Chief Justice of the respective State High Court.

Mazdoor Kisan Shakti Sanghathan Section 12 does not provide for appeal to an independent body outside the Government. There is no objection to one appeal within the Government, but in the event there is no redress, there must be a provision for appeal to an independent person or institution outside the. Government like an ombudsman.

The legislation should provide for one internal appeal and a second external appeal but this appeal should be to an independent body like the Lok Pal to be constituted under the proposed Lok Pal Bill.

In light of the argument presented with respect to Section 11, Section 12(4) should also be deleted.

Shri B.G. Deshmukh In Section 12(2) the second appeal should lie to the an independent statutory authority like the Vigilence Commission, Lok Pal or the Lok Ayukta and not to the Central or State Government as provided under the Act.

In Section 12(3) the outer limit for the "extended period" should be provided the authority must not be ullowed to indefinitely postpone dealing with appeals and giving decisions.

Since the Third Party intervention is universally accepted and almost all the foreign Acts contain such a provision, deletion of clause 12 (4) would not be appropriate

CLAUSE 13: PROTECTION OF ACTION DONE IN GOOD FAITIL

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Comments/Suggestions

Response of Government

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Human Rights
Initiative

Section 13 is a very dangerous provision and gives protection to public servants for not having complied with the provisions of the Act, the provision reflects a very protective attitude towards public servants and defeats the very of purpose the legislation especially in the absence of provisions for accountability and penalties for public authorities. This provision would meaningful only if it covers disclosures made bу public authorities in public interest even if the information is barred from disclosure in terms of the Act. It is recommended that this provision be substituted by a provision for protection to whistleblowers.

"No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act."

Shri B.G. Deshmukh In order to avoid abuse of this provision by public servants there must be a burden on the public servant to show good reason for grant of protection.

The protection of action taken by a person in good faith under the FOI Act is universally accepted. Various legislations, notably those FOI enacted by Canada, Australia, New Zcaland. Ireland, etc., contain specific provisions for giving such protection. There is, therefore, no need to substitute the provision. It would also not be appropriate to put burden on the public servant to show good reason for grant of protection, especially when none of the foreign legislations mentioned above contain such a provision, as any such provision is bound to be counter productive.

CLAUSE 14: ACT TO HAVE AN OVER RIDING EFFECT

Name of
Organisation/
Individual
Commonwealth
Human
Rights
Initiative

Comments/Suggestions

Section 14 of the Bill should be reworded to make the import clearer. The Bill overrides any Act in force and specifically the Official Secrets Act, to the extent that they are inconsistent with the provisions of the Bill. No doubt that while in some cases this would expand the area of information made available, but the language of the provision has the potential to curb or restrict any pre-existing right and procedure for providing access to information in an expeditious and

Response of Government

Clause 14 of the Freedom of Information (FOI) Bill, 2000 gives over riding effect to the proposed Act as it lays down that the Official Secrets Act (OSA). 1923, and every other Act in force, shall cease to be operative to the extent to which they are inconsistent with the provisions of this Act." The Shourie Working Group had also recommended in Para 3.20 of its report that the proposed Act might be frustrated

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115

progressive manner in relation to the Bill. For example, the Goa Act provides that information has to be provided within 48 hours in cases of urgent requests related to information affecting life and liberty. This important and useful provision may be read to be "inconsistent" with the provisions of the Bill in its present form and consequently may be overridden.

Shri Madhav Godhole In the first line of this Section after the words "every other Act" the words "rules and manuals" may be added. So that all rules and manuals which are inconsistent with the Act may cease to be operative.

Consumer
Education
and Research
Centre

There must be a clear repeal of the Official Secrets Act of 1923.

Shrl A.G. Noorani

The Official Secrets Act should be amended, as it is an obsolete legislation which is based on the UK 1909, Act σf this Λα unconstitutional dues to the strides we have made since then. There should be no doubt that the Official Secrets Act will be overridden by the Freedom of Information Low. necessary amendments need to be made to the Official Secrets Act

by other legislation unless there is a non-obstante clause. After the receipt of the report of the Working Group, the Ministry of Home Affairs examined the Official Secrets Act, 1923 and concluded that there is no inherent contradiction between this Act and the proposed FOI Act casts an obligation on the part of the to provide public authority information which is exempted under clause 8 and 9, the OSA, 1923 basically deals with prosecution of any person communicating official secrets to another person. Thus the ambit and scope of OSA Act, 1923 is different from the FOI Act but to the extent that there is any contradiction, the FOI Act, will prevail. After the Bill becomes an Act, the concerned Ministries will have to review the existing Acts, rules, manuals and instructions which come in conflict with the proposed Act. The Departmental Security Instructions will also be amended. suitably wherever necessary.

CLAUSE 15: BAR OF JURISDICTION OF COURTS

Name of Organisation/ Individual Commonwealth Human Rights Initiative

Comments/ Suggestions

Section 15 should be deleted and replaced with a provision to append to an appropriate judicial forum. In the absence of an alternative remedy this section is untenable and ultra vires the Constitution.

Shri Madhav Godbole The justification for this provision is not clear, further it is likely to be struck down by the Courts. There is no reason why a common citizen should be forced to take recourse to writ remedy, which is

Response of Government

The Working Group under Shri H.D. Shourie had considered the appellate remedy in case the departmental appeal does not succeed. The Group examined the feasibility of providing for appeal to the Courts having jurisdiction over the concerned public authority but felt that this might not prove to be an effective appellate remedy considering the state of arrears in the Courts and the pendency of litigation. Therefore, the Working Group recommended that an

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116

Consumer
Education and
Research Centre

Shri A.G. Noorani expensive It is recommended that this Section be deleted.

Section excludes This the jurisdiction of the Courts and is a violation of the fundamental rights of the citizens, unless an effective efficacious separate. independent remedy is provided. provide Omission to independent appellate body is a major flaw in the Bill. Section 15 bars the jurisdiction of the Courts, no restriction will be judged "reasonable" by the Courts unless an alternative remedy is provided by way of an independent quasijudicial appellate authority to decide contested cases.

appeal in such cases may be preferred to Consumer Protection under the Consumer Protection Act 1986. When this recommendation was examined, it was felt that the state of arrears under consumer Courts was also a discouraging factor in accepting the recommendation made by the Working Group. It was, therefore, felt that the jurisdiction of lower courts may not result in quick disposal of appeals and the jurisdiction of Supreme Court and the High Courts under Article 32 and 226 would be sufficient to decide such cases.

CLAUSE 16: ACT NOT TO APPLY TO CERTAIN ORGANISATIONS

Name of
Organisation/
Individual
Commonwealth
Human Rights
Initiative

Comments/ Suggestions

Section 16 (1) and the Schedule should be reworded to narrow down the blanket exclusion given to entire organisations, excluding certain organisations completely from the purview of this legislation defeats the purpose of the law. There is no rationale for exempting the administrative wings of these organisation moni disclosing relevant Further. information. the provision gives wide powers to the Central Government to add to the list of these exempt organisation. The power given the Government completely arbitrary without any guidelines whatsoever for exercise of the same.

Section 16 (2) should be deleted.

Response of Government

With the advent of information age and its connected technologies, it is becoming increasingly easier to link bna acitamiolai o emit laubivibai au obscure references into a pattern which would give a clue to an integrated intelligence picture. Access to certain types and categories of administrative information pertaining intelligence security and to organizations. though seemingly insignificant, could at times cause grave damage to national security or embarrassment to the Government in its functioning or prejudice the national, interests. The purpose for which the various intelligence and security organizations have been established. therefore. C:1515 obligation on the Covernment to provide greatest information security not only to their operational wings but to the organizations as a whole. With this in view, provision has been made in the Bill for keeping the intelligence and security organisations established by the Central or a State Government from outside the purview of the

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117

Mazdo vr Kisan Shakti Sanghathan

Section 16, should be deleted as it provides blanket exemptions to intelligence and security organisations to hide behind a veil of secrecy. Public scrutiny of purchases and personnel policies of such organisations, for instance, would only advance the causes of probity and justice, without in any conceivable way undermining the security and integrity of the state.

proposed Act. The provision for making additions or deletions of such organisations given in the Schedule to the Bill is necessary in the context of such organisations being established or closed down in future.

It would not be out of context to mention that in the Australian Act, besides the Australian Secret Intelligence Service and Australian Security Intelligence Organisation, 11 other organizations, such as the Auditor General, Australian National Railways Commission, Housing Loans Insurance Corporation etc. have been totally exempted from the operation of the Act.

CLAU 119: RULE MAKING POWER BY COMPETENT AUTHORITY

Name of Organisation/ Individual Shri Madhav Godbole

Comments/Suggestions

This Section lays down that certain matter such as fees to be charged for getting copies of documents are to be prescribed by the Rules. This is unacceptable, but it must be laid down in the Act itself that the fees payable shall not exceed the actual cost incurred in preparation of photocopy, etc.

Response of Government

It is necessary to provide in the Act itself that fees payable shall not exceed the actual cost incurred in retrieval of the record preparation of photocopies, etc. This suggestions shall, however, be taken into consideration while drafting rules under the proposed Act.

PART 2: OTHER IMPORTANT ISSUES THAT ARE NOT COVERED BY THE BILL

APPLICABILITY OF 1. THE ACT: The applicability of the Act should not be restricted to only citizens, information should be available to all PERSONS under the Act. The Supreme Court has recognized that Right to Know is an integral part of Right to Life and Liberty and Right to Equality. Since the Right to Life and Liberty and Right to Equality are available to all persons and not restricted to only citizens, the Right to information should be available to all persons.

Some of the advanced democracies such as Australia, New Zealand, the U.K. etc. have already considered it fit to make available the information not only to their citizens but to other persons as well, such as persons residing in that country, bodies doing business in that country etc. The Canadian Act, under which information was initially available only to its citizens and permanent residents, was amended in 1989 to include all persons who are living in Canada. Therefore, there may not be any objection to grant access to information not only to Indian citizens but to all individuals who are present in India but are not Indian citizens.

2.

PART 2: OTHER IMPORTANT ISSUES THAT ARE NOT COVERED BY THE BILL

AMBIT OF THE BILL. The Bill should apply to the private sector, co-operatives, political parties, non-government organisations, trusts, trade unions, societies and all other organisations and associations. Private companies and individuals that do work or have business that affects public interest should come within the purview of the law. People have the right to know about information that affects their interest, in terms of their health, safety, environment and life in general.

It needs to be recognized that the basic purposes of t Freedom of Information legislation are to prome openness. transparency and accountability Government and to facilitate a fuller and me meaningful participation of the people in t governance. This cannot be said to apply wholly private businesses which are not required to primar subserve public interest as it is commonly understoo Any attempt to bring the private sector under t proposed legislation is apt to be regarded as excessive intrusion into the freedom and manageme of private sector. There is also the danger that it m become a tool for competitive strategy with deleterio consequences for the industry which are too obvious require claboration. The information relating operations of private firms which impinges pub interest such as health, safety, environment standart etc. would in any case be accessible under t provisions of the Act from the concerned regulato authority and there need not be undue apprehension of the public interest being allowed to suffer. It noteworthy that none of the advanced democraci such as USA, Australia and Canada has thought it to widen its laws to this extent.

INFORMATION IN PUBLIC INTEREST: the Bill must provide for compulsory and mandatory disclosure of information by public and private bodies of information that relates

The information relating to operations of public bodi and private firms, which impinges public interest su as health, safety, environment standards, etc., would accessible under the laws framed by the concern regulatory authority. Hence, no provisions therefe have been made in the FOI Bill.

It would be difficult for the Public Information Office

to determine whether the group/individual cannot f

genuine reasons, pay the prescribed fees. Moreover,

would be difficult to follow a consistent and unifor

EXEMPTION FROM PAYMENT OF FEES: The Bill must clearly lay down exemptions to certain groups individuals who for genuine reasons cannot pay the fees stipulated. There must be a procedure laid down for collection of fees and when fees will be collected - at the application stage or when the information is actually provided.

approach in handling requests for waiver of fee Hence, no provision has been made in the Bill i exemption from payment of fees.

The procedure for recovery of fees is proposed to I haid down in the rules to be framed under the FOI Ac

PENALTY CLAUSES: The absence of penalty clauses is fatal which renders all its provisions toothless. There has to be penalty for giving incorrect, incomplete, or misleading information and a higher penalty of giving wrong information and for repeatedly giving wrong information. Penalties must include the right to award

After the "Freedom of Information Bill" introduced I the Central Government becomes an Act, the CC (Conduct) Rules, in all India Services, State Service Local Bodies etc. are proposed to be amende requiring a Government servant to give informatic which is asked for by an institution or an individuander the Acts. Any officer who deliberate withholds information or deliberately gives false

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120

exemplary or punitive damages. Further there has to be a right to initiate disciplinary action against the authority that has refused information. The following Section may be incorporated in the Bill:

 A person who wrongfully denies access to information, or with intent to deny a right of access to information in terms of this Act

a)destroys, damages or alters a record; b)conceals a record;

c) falsifies a record or makes a false record commits an offence and is liable on conviction to a fine of Rs 50,000 or to imprisonment for a period not exceeding two years.

Any Public Authority that does not comply with the provisions of this Act, (including but not limited to the obligations set out in Section 4 of the Act), the Public Information Officer of such Public Authority shall be subject to disciplinary action, unless there are valid reasons on record that show that valid circumstances exist which prohibited the Public Authority from complying with the provisions of this Act.

INDEPENDENT APPEAL MECHANISM: the Bill does not provide for an independent appeals mechanism which is the hallmark of Freedom of Information Legislation the world over.

Yame of Organisat-ion/ Individual

6.

Comments/Suggestions

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information, shall be liable to action under the releving disciplinary rules and it is considered that departmental penalty would be sufficient in states. Penalties which can be imposed Government servants under the Central Civil Serving (Classification, Control and Appeal) Rules, 1965 (1) censure, (2) withholding of promotion, recovery from pay of any pecuniary loss caused to Government, (4) reduction to a lower state in the till scale of pay, (5) withholding of increments of pay, reduction in rank, pay, grade or service, and compulsory retirement/removal/dismissal froservice. The actual punishment will depend on gravity of the offence committed by the official.

The question of providing an independent appmechanism was examined enrefully in the context the recommendation made in the Shourie Worki Group Report that such powers may be vested with t forms set up under the Consumer Protection A 1986. However, it was noted that the deficiencies the working of Consumer forums as well as the Cou in the form of massive areas and chronic shortages man power, etc. would appear to undermine t effectiveness of either of these forums as appelli forums under the proposed Act even from the point view of cost, speed of disposal and convenience to t public. On the other hand, departmental appear would be far more economical and cost effective i the appellants, especially for most of the informatiat the district level, as they would not entail.

Response of Government

Expenses such as lawyer's fees, court fees, etc. F a person dispatisfied with the outcome of his apper the writ jurisdiction of the High Court would still I available. In view of this, and also considering th

121

the proposed legislation was a new kind legislation requiring a break with the pres administrative culture, the Bill provides for a truiter appellate remedy of a purely department character at different levels to be determined by appropriate Government or the competent authorias the case may be.

Incidentally, the Acts legislated by Ireland, USA, Japan and Australia too contain a provis for departmental appeals.

7.

INDEPENDENT MONITORING AUTHORITY: There has to be some kind of a provision for monitoring the implementation of the Bill. There should be councils set up for monitoring the implementation of the Bill at district, state and central level, or an annual report should be presented to Parliament or State Legislature setting out inter alia details on how many requests for information were received, how many were responded to, how many were rejected and time taken for response.

The suggestion to set up National Council/St Council to review the operation of the FOI Act t report its findings to the Parliament/St Legislature was carefully examined in the context the provisions made in the draft Bill proposed by Shourie Working Group. It was felt that objectives envisaged in relation to National Cour and State Councils can best be performed by instrumentalities of the respective Governments there is no need to make a provision in the Act its for setting up such Councils since there is no but the Central Government or the State Government constitute these Councils at a later stage, unexecutive instructions, if considered necessary in light of experience gained with passage of time.

Name of Organisat-ion/ Individual

9.

Comments/ Suggestions

Response of Government

INCLUSION OF LOCAL BODIES IN IMPLEMENTATION OF ACT: Local bodies at grass root level should be included and defined as competent authorities to implement the Act.

The proposed Act would be applicable to all lo bodies covered by the definition of 'put authority' as given in clause 2 (f) of the Bill.

PROTECTION TO WHISTLE-BLOWERS: Provisions for providing protection to "Whistleblowers" must be added. The Bill should contain provisions for protection of persons who use information to expose wrong doing and also protection of officers of Government who make available information in public interest. No law on the Right to Information would be complete without protection to "Whistleblowers".

The scope of the present Bill is limited to provid information subject to the specified exemptions a exclusion. The manner in which the requester us the information, and consequences arising therefor is the personal limitity of the user and he can class protection as per the law of the land. Protection 'whistleblowers' is not the scope of the Bill a hence no provisions need be made therefore. As immunity to Government servants who may available information in public interest, suffice say that the Japanese law provides that a person we violates the Access to Information Law a discloses secrets shall be sentenced to a maximal.

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122

of 1 year of imprisonment with hard tabour, ϵ maximum fine of 300,000 yea.

Name Organisat-lon/ Individual 10. Comments/Suggestions

GUIDE TO USE THE LEGISLATION: Provisions for publication of a guide to use the Act and to publicise it must be added. legislations, Unlike other notifying this legislation in the Official. Gazette would not serve the purpose of the legislation. The law itself must east a duty on the public authorities to publicise the law using mass communication channels. Further the law must east an obligation the appropriate ОD Governments to publish a guide to use the Act, so that people are aware of the process that needs to be followed in order to access information under the Act and the recourse available to them if information is wrongfully denied to

Response of Government

The suggestion to publish a guide on how to use the A has been noted. However, this is an ancillary matter a need not form a part of the Bill.

11.

CODE OF INSTRUCTIONS: Code of instructions for providing information should be made available. There must be a specific provision in the Bill, which Nece casts a duty on public authorities to Bill. prepare documents, which enable people to know from which authority, office and where information will be available.

a specific provision in the Bill, which Necessary provisions already exist in clause 4(b) of 1 casts a duty on public authorities to Bill.

Nominated w.e.f. 15th March, 2000 vice Shri Akhilesh Das.

them.

Nominated med. 28th February, 2000.

Renominated w.c.f. 5th May 2000.

Nominated w.e.f. 29th May, 2000.

Ceased to be Member w.e.f. 7th November, 2000 on being appointed as a Minister.

COMPARATIVE STATEMENT ON THE FREEDOM OF INFORMATION BILL, 2000 (FOI) AND THE RIGHT TO INFORMATION BILL, 2004 (RTI) [See purn 7 of the 78th Report of the Standing Committee]

SI.No.	Recommendation/Observation made by the	Decision of Govt. in	Section	Decision of	Clause
	Committee on Home Affairs in 78th Report	2002	No.of	Govt. in 2004	No./
			the		Provision
			FOI		in the RTI
			Act		Bilt
(1)	(2)	(3)	(4)	(5)	(6)
(i)	The Bill should be rechristened as "Right to	The issue was	-	Accepted	Title and
	Information Bill" instead of "Freedom of Information	discussed in the sitting) .	Cl.1(1).
	Bill".	of the Committee on			
		25 th June, 2001			
J ,		wherein it was decided			\ \ \ \ \
		to retain the title of Bill			\sim
		as 'Freedom of			2
	•	Information Bill'.		ļ	
		Accordingly, the			
}		Committee did not			
		recommend any change			
		while adopting the title			
1		of the Bill.			
(ii)	The applicability of the Act should not be restricted	Not accepted by the	-	•	-
¦	only to citizens but to non-citizens as well;	Standing Committee			
		itself in its sitting on			
[25 th June, 2001.			
		[Para 12 of the		·	
		verbatim record]			

(ìii)	The Bill should provide for a specific date from which the Act will come into effect;	Not accepted.		Accepted.	1(3)
(ìv)	The Bill should apply to all including organizations/associations/parties/trusts/unions/societies private or non-Governmental in addition to Governmental bodies and agencies;	. •	-	Not accepted.	•
(v)	The Bill should say that all citizens have the freedom of information instead of saying "shall have" as this freedom is already there in the Constitution;	Not accepted.	3	Not accepted.	3
(vi)	The Bill should provide for the delegation of the authority of the Public Information Officer;	Not accepted.		Not accepted.	<u>-</u>
(vii)	The ultimate responsibility to ensure adherence to the provisions of the Bill should be vested with the head of each public authority;	Not accepted.	•	Not accepted.	
(viii)	Since the intent of the Bill is to put in place an effective procedure for enforcing the right to information, the procedural issues must be detailed and clearly stated;	The procedures shall be laid down in the rules framed under the Act and supplementary executive instructions as are necessary.		The procedures shall be inid down in the Rules framed under the Act and supplementary	

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				executive instructions as are necessary.	
(ix)	The Bill must provide for compulsory and mandatory disclosure of information that relates to health, safety, environment and human rights;	Not-accepted. Information relating to operations of public bodies and private firms which impinges public interest such as health, safety, environment standards, etc. would be accessible under the laws framed by the concerned regulatory authority.		Not-accepted. Information relating to operations of public bodies and private firms which impinges public interest such as health, safety, environment standards, etc. would be accessible under the laws framed by the concerned regulatory authority.	
(x)	The Bill should clearly state that where information sought is regarding the life and liberty of a person, the same should be provided within 24 to 48 hours;	Accepted.	7(i)	Accepted.	Proviso to Cl.7(1).
(xi)	There must be a procedure laid down for collection of fees and the bill must clearly lay down exemptions to		17(2)(b) 18(2)(a)		24(2) 25(2)

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	certain groups/individuals who for genuine reasons cannot pay the stipulated fees;	laid down in the Rules. No exemption from payment of fee.	19(2)(a)	fee to be laid down in the Rules. No exemption from payment of fee.	
(xil)	The Bill should clearly provide that all information that cannot be denied to the Members of Parliament/Legislatures should not be denied to the public;	Bill did not make any	-	Accepted.	8(2)
(xiii)	Section 8(1) sub-sections (c), (d) and (e) cover the entire working of the Government. By including these in the exemption clause, the working of the Government from the Cabinet Committee to the Secretaries Committee is not being made available to the people. These provisions brings on par the Cabinet Committee and the Secretaries Committee and must be done away with; nothing belonging to the Cabinet must be a secret forever;	Not accepted.	•	Accepted.	Proviso to 8(1)(i)
(xiv)	Section 8(2) provides for a period of 25 years for releasing information which is unconsciouably long. It should be 15 years;	Not accepted.	8(2)	Accepted. The period has been reduced to 10 years.	8(4)

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(xv)	Section 9(b) and (c) should be deleted as they are rather wide and can cause many difficulties as a wide range of information can be denied saying that they are contained in Annual Reports of Departments or in the Official Gazette;	·	-	Accepted.	-
(xvi)	Section 10 of the Bill should state that reasons for withholding parts of a document must be given to the requestor and the copy of the document provided should indicate which portions of the document has been withheld. The provisions regarding severability in the Press Council Draft of 1997 should be included;	•	10(2 X b)	Accepted.	10(2)(ს)
(xvii)	The period of 50 days for inviting third party representation is too long and will be detrimental to the interest of the requestor. It should be either 15 or 30 days;	-	11(3)	Accepted.	11(3)
(xviii)	There should be penalty for giving incorrect, incomplete or misleading information;	Not necessary. Failure to furnish information or willfully withholding or furnishing incorrect information would amount to violation of Conduct Rules thereby making the Government servant liable to disciplinary action under the	-	Accepted.	

(xix)	The Bill should provide for an independent appeals mechanism;	relevant disciplinary rules. Not accepted.		Accepted.	15
(xx)	A provision for monitoring the implementation of the Bill should be made;	Not accepted.		Accepted.	22
(xxi)	Provisions for providing protection to 'whistleblowers' must be added to provide protection of persons who use information to expose wrong doings and also protection of officials who make available information in public interest;	Not within the scope of the FOI Bill.	-	Accepted.	Government of India has issued a Resolution on 21" April, 2004 designating the Central Vigilance Commission as the agency for affording protection to complains ats/witness es.
(xxii)	Section 15 should be deleted and replaced with a provision to appeal to an appropriate judicial forum;	Not accepted.	•	Not accepted.	

(xxili)	Section 16(1) and the Schedule should be reworded to narrow down the blanket exclusion given to entire organizations. Excluding certain organizations completely from the purview of this legislation defeats the purpose of the law. There is no rationale for exempting the administrative wings of these organization from disclosing relevant information;	·	-	Accepted.	Proviso to Clause 21(1).
(xxiv)	Local bodies at grass root level shold be included and defined as competent authorities to implement the Act;	Not accepted.	•	Not accepted.	•
(xxv)	Provisions for publication of a guide to use the Act and to publicise it must be added so that people are aware of the process that needs to be followed in order to access information under the Act and the recourse available to them if information is wrongfully denied to them; and			Accepted.	Sub- clauses (2) to (4) of Clause 23.
(xxví)	There must be a specific provision in the Bill which casts a duty on public authorities to prepare documents that enable people to know from which authority/office and where information will be available.	-	-	Accepted.	23(3)

COMPARATIVE STATEMENT ON THE FREEDOM OF INFORMATION BILL, 2000(FOI) AND THE RIGHT TO INFORMATION BILL, 2004(RTI) (See para 8 of the 78th Report of the Standing Committee)

{	S.No.		Recommendation/observation	Decision of Government	Section	Clause No./	Remarks
Ì		No./	made by the Committee on		No. of the	correspond	
		Pravision	Home Affairs in 781 Report		FOI Act	ing	
		in the				provision in	
		FOI BIII				RTI Bill	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Ī	1.	4	(a) A provision should be made	(a) Not accepted.	No		Provisions
- }			whereby it would be incumbent	Sub-clause (b)(i) of clause	provision		analogous to
			upon the public authorities to	4 of the FOI Bill from	was made.		Section
		ł	publish list of their publications	Section 4(b) (i) of the FOI			4(b)(i) of the
1			so that the general public could	Act, 2002] provides that			FOI Act,
			browse them for knowing about	every public authority			2002, have
	Į		the activities and functions of	shall publish the			been made in
			public institutions.	particulars of Its		•	Clause
1				organization, functions			4(1)(b)(i) of
				and duties. As the			the RTI Bill.
	ľ			activities of any			
				organization are reflected			<u> </u>
	ĺ	ı	ſ	in its Annual Report, it	ĺ		
	ſ			was felt that there was no			
				need to incorporate a			
ł				separate provision in the		i	
				Act so as to make it			
				incumbent on the public			
				authorities to publish a list			
L				of their publications.			

		1				_ ,
		(b) A separate chapter may be added in the annual reports of the Ministrics/Departments giving details about the dispersal of information about the concerned Ministry/Department.	Executive instructions shall be issued to Ministries/Departments after the Act comes into			
2.	4	In sub-section (c), the words "maintenance of democratic principles" be substituted by the words "natural justice and promotion of democratic principles".	Accepted.	4(e)	4(1)(c)	-
3.	7	Where the information sought for under the Act relates to life and liberty of a person, the same should be provided within forty-eight hours.	Accepted.	7(1)	7(1)	•
4.	9	The word "disproportionate" in sub-section (a) should be substituted by the word "unreasonable".	Accepted.	9(a)	There is no provision.	
5.	10	Where access is granted to a part of the record after deleting the record containing the information exempted from	Accepted.	10(2)	10(2)	

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		disclosure, the person should be informed that it is a part of the record as also the provisions of the Act under which the deleted part is exempted from disclosure.				
6.	11	interests of a third-party are	Also, the clause has been redrafted to indicate the time allotted to each of the	1)	11(3)	-
7.		The clause, which gives the Act an overriding effect over other laws, may be re-drafted as follows: "The provisions of this Act shalf have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act".	Accepted.	14	19	-

8.	. 16	3	The anti-insurgency operations and intelligence activities of CRPF, BSF and ITBP should also be brought under the purview of this clause.		The Schedule (Section 16)	The Schedule (Section 21)	-
9.	(T	lie hedule)	The names of the intelligence and security organizations of the State Governments should also be mentioned in Part B of the Schedule at the time of piloting the Bill.	In spite of vigorous follow-up action, many of the State Governments did	16(4)		No provision has been made since the RTI Act would not apply to authorities under the State Governments.

11.

136	10.	20	The rules made by the Supreme Court and the High Courts, to carry out the provisions of the	The matter was examined in consultation with the	There is no provision.	There is no provision.	-
	10.	20	Court and the High Courts, to	The matter was examined in consultation with the Ministry of Law & Justice	no		

			judiciary, the rules made by the competent authority under legislature and judiciary should not be placed before each House of Parliament.	•		
I, Enac Form and	ıulı	In Clause I, Enacting formula and Title, the figure "2000" and the word "Fifty-first" be substituted by "2001" and "Fifty-second" respectively.		l. Enacting formula and Title.	l, Enacting formula and Title	Further consequential changes have been made to the cnacting formula and Title.

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JOINT SECRETARY PARLIAMENT OF INDIA

No.RS.6/7/2004-P&L

185/0/35(E)105

January 31, 2005

Shri R.L. Meena Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Shastri Bhawan, New Delhi

Subject:

Right to Information Bill, 2004

Sir,

The Department-related Parliamentary Standing Committee on Personnel, PG, Law and Justice would meet at 3.00 p.m. on Tuesday, 1" February, 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe to consider the captioned Bill and also to hear the presentation by the Secretary, Ministry of Personnel, PG and Pensions which is the administrative Ministry for the Bill. In this context, the Committee has desired that you may be requested to remain present in its said meeting so that you could respond to the legal issues involved in the Bill.

I am, accordingly, requesting you to make it convenient to be present in the meeting of the Committee at the aforementioned time, date and venue.

A copy of the Bill is enclosed.

Yours sincerely.

Encl: as mentioned

Copy forwarded for information and necessary action to Shri T. Jacob. Joint Secretary, Ministry of Personnel, PG and Pensions, North

Block, New Dellu

(O) Ruga Souho Sucrolanal, Parliamont House Annexe, New Delhi-116 001 India Phone . 91-11-23034530, 23010718 (D), Fax : 91-11-23012007 Websilo : http://psitiamentolindia.nic.in E-mail : tapan@snicsin.in

(R) : S.III/86. (Type-IV), Sadiq Nagar, New Delhi-110049. INDIA Phone . 91-11-25259328

No.RS.6/7/2004-P&L

January 31, 2005

Shri T.K. Vishwanathan,
Secretary to the Government of India
Legislative Department
Ministry of Law and Justice
Shastri Bhawan
New Delhi

Subject :

Right to Information Bill, 2004

Sír.

3/2/8/16

The Department-related Parliamentary Standing Committee on Personnel, PG, Law and Justice would meet at 3.00 p.m. on Tuesday, 1st February, 2005 in Committee Room 'A', Ground Floor, Parliament House Annexe to consider the captioned Bill and also to hear the presentation by the Secretary, Ministry of Personnel, PG and Pensions which is the administrative Ministry for the Bill. In this context, the Committee has desired that you may be requested to remain present in its said meeting so that you could respond to the legislative issues involved in the Bill.

I am, accordingly, requesting you to make it convenient to be present in the meeting of the Committee at the aforementioned time, date and venue.

A copy of the Bill is enclosed.

Encl : as mentioned

Yours sincerely,

Copy forwarded for information and necessary action to :

Shri Z.S. Negi, Additional Scoretary, Legislative Department, Ministry of Law and Justice, Shastri Dhawan, New Delhi

Shri T Jacob, Joint Secretary, Ministry of Personnel, PG and Pensions, North Block, New Delhi

VINTER!

(O) Rajya Sapha Secretariat, Parliament House Annoxa, New Dethi-110 001. India Phono: 91-11-23034530-23010718 (D), Fax 91-11-23032007 Website inter/parliamentolindia.nic.in E-mill tapan Georgadinic.in

(A, S.(1/86, (Type-IV), Sadio Nagar, Now Dulhi-110045 (NDIA Phono: 91-11-26250328

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Signed on the state of the stat

MOST IMMEDIATE

No.34012/3(s)/2005-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel & Training)

New Delhi, the 8th February. 2005

To

The Secretary General,
Rajya Sabha Secretariat,
Parliament House Annexe,
New Delhi
(By name Shri Surinder Kumar Watts, Deputy Secretary)

Sub:- Examination of the Right to Information Bill, 2004 by the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice.

Sìr.

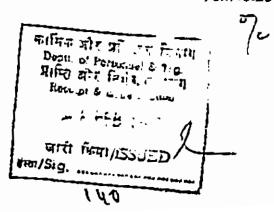
I am directed to invite a reference to the proceedings of the Department-related Standing Committee on Personnel, Public Grievances, Law & Justice in the context of a presentation made by Secretary(Personnel) on 1st February, 2005 on the subject mentioned above and to forward herewith 50 copies (English) of the Comparative Statement indicating the provisions of 'Freedom of Information Act, 2002/Right to Information Bill, 2004 of the National Advisory Council/Right to Information Bill, 2004 as introduced by the Government in the Lok Sabha on 23rd December, 2004'. Hindi version of the Statement will follow.

Yours faithfully,

(Rakesh Malhotra)

Under Secretary to the Government of India Tel.No.23092313

Encls: As above.



COMPARATIVE TABLE OF THE PROVISIONS IN THE FREEDOM OF INFORMATION ACT 2002 / NAC's RIGHT TO INFORMATION BILL, 2004 / RIGHT TO INFORMATION BILL, 2004 AS INTRODUCED IN LOK SABHA

S.No.			
	FREEDOM OF INFORMATION ACT, 1001	NAC'S RIGHT TO INFORMATION DILL, 2004	RIGHT TO INFORMATION BILL, 2004 AS INTRODUCED IN LOK SABIIA
	PREAMBLE	PREAMBLE	PREAMBI E
	An Act to provide for freedom to every citizen to secure excess to information under the centrel of public nathwittes, sinsistent with public interest in order to promote openness, transparency and accountability to artministration and in relation to matters connected therewith or incidental thereto.	A Bill to operationalise the right to information by setting out the practical regime for people to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability and in relation to matters connected therewith or incidental thereto.	A Bill to provide for setting out the practical regime of right to information for people to secure necess to information under the control of public authorities, in order to promote transparency and occumulability in the working of every public authority, the constitution of a Central Information Commission, and for matters connected therewith or incidental thereto
	(Tople'): PRELIMINARY	Chapter I. FRELIMINARY	CHAPTER I: PRELIMINARY
	h. (1) This Act may be called the Freedom of Information Act. 2002	1. (1) This Act may be eatled the Right to Information Act 2004	1. (1) This Act may be called the Right to Information Act, 2004.
1	1. (2) It extends us the whote of India except the State of January and Kashmir.	1. (2) It extends to the whole of India except the State of Jammu and Kashmir.	1. (2) It extends to the whole of lader except the State of Jammu and Kashmir.
T.	(3) It shall come into force on such date as the Central Clove where may, by notification in the Ufficial Clarette, appoint	1. (3) It shall come into force within 120 days of it being enacted	1. (3) It shall come into force on the one hundred and twentieth day of its ensement.
, -	Thes not exist in the present Act.	1. (4) Where State legislation exists dealing with the right to necess information, a person will have the right to necess information under the State law as well as under this Act, if the information pertains to a subject under the State List in Schedule 7 of the Constitution of India.	
3.	Dires not exist in the present Act	1 (5) Objectives of the Act: The objectives of the Act are to . (i) give effect to the Fundamental Right to Information, which will contribute to	

10	(d) "information" means any material in any form relating to the administration, operations or devisions of a public authority:	(e) "information" means any material in any form, including records, documents, file notings, cremos, emails, opinions, advices, press releases, circulars, orders, togbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any faw;	including records, documents, memos, emails ophnions, advects, press releases circulars, reders logbooks, ecutracts, reports, papers, samples models, data material held in any electronic form
iI.	(e) "prescribed" means prescribed by rules made outles this Act by the appropriate Covernment of the competent authority, as the case may be;	(f) "prescribed" means prescribed by rules made under dis Act by the appropriate Government or the competent authority, as the case may be,	
T2	(f) "public suthority" means any authority or body established or constituted. (i) by two water the Constitution, (ii) by any law made by the appropriate Government and includes any other body owned, controlled or substantially flustreed by funds provided directly or indirectly by the appropriate Government:	(g) "public authority" means any authority or body established or constituted, (i) by or under the Constitution; (ii) by any law made by the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes punchayati raj institutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas colified under achedule 5 and 6 of the Constitution.	(i) by or under the Constitution; (ii) by any other that made by Partitation;
11	(g) "Public Information Officer" means the Public Information (Ifficer appointed under sub-section (l) of section 3;	(h) "Public Information Officer" means the Peblic Information Officer appointed under sub-section (1) and/or (1)(a) of section 5:	(h) Public Information Officer uncans the Public Information Officer appointed under sub-section (1), and Includes an Assistant Public Information Officer designated as such under sub-section (2), of section 5;

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		strengthening democracy, Improving governance, lumerasing public participation, promoting transparency and accountability in Union, State and Local Self Government Institutions. (ii) establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public architers in a swift, offective, inexpensive and reasonable manner.	
		(iii) promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons	
		onderstand their rights in terms of this Act in order to exercise their arights in relation to public authorities:	
		understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.	
6	2 In the Act, unless the context otherwise requires: (a) "appropriate Government" means in relation to a public ambority established, constituted, countd, substantially financed by funds provided directly or indirectly in accounted. (b) by the Central Government, the Central Government.	(n) 'appropriate Government' means in relation to a public authority established constituted owned, substantially financed by funds provided directly or indirectly or controlled-	2. In this Act, unless the curriest otherwise requires. (c) "Government", in relation to p public mathemas exablished, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or p Union tentors, administration, means the Central Covernment.
	(ii) by the State Government, the State this eminion. (iii) by the Union territory, the Central Government.	(ii) by the State Government, the State Government; (iii) by the Union Territory, the Union Government;	

7	(h) "competent authority" means- (i) the Speaker in the case of the House of the Peuple or the Legislative Assembly and the Chairman is the case of the Council of States or the Legislative Council (ii) The Chief Justice of India in the case of the Supreme Count; (iii) The Chief Justice of the High Court in the	the Legislative Assembly and the Chalman in the case of the Council of States or the Legislative Council. (ii) The Chief Justice of India in the case of the Supreme Count, (iii) The Chief Justice of the High Court in the case of a Itigh Court:	(i) the Speaker in the case of the House of the Feople or the Legislative Assembly of a Union territory and the Chairman is the case of the Chuncil of States. (ii) the Chief Justice of India in the case of the Supreme Count
	case of a High Court; (iv.) The President or the Governor, as the care may be, in case of other authorities created by or under the Constitution. (v) the administrator appointed under article 239 of the Constitution.	(iv) The President or the Governor, as the case may be, in case of other authorities created by or under the Constitution; (v) the administrator appointed under article 239 of the Constitution;	Ocitic (iv) the President in the case of when
- 	(c) "freedom of information" means the right to obtain information from any public authority by means of - (i) inspection, laking of extracts and notes; (ii) certifical copies of any records of such public nulticity; (iii) diskens, thy pies or in any other electronic mode or through printious where such information is stored in a computer or in any other device;	(d) "right to information" means the right to necess information held by, legally accessible by or under the control of any public authority and includes: (i) Inspection of works, documents, records; (ii) Taking notes and extracts and obtaining certified copies of documents or records; (iii) Taking certified samples of material, (iv) Obtaining information in the form of diskettes, fleppies, tapes, video consettes or in any other electronic mode or through printages where such information is stored in a computer or in any other device.	(i) Tright to information means the tight to information accessible under this Act which is held by or inder the control of any public authority and includes the right to- (i) inspection of work, documents, tecords: (ii) taking notes, extracts, or certified copies of documents or records: (iii) taking certified samples of material: (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electrons much or through printains where such information is stored in a computer or is any other device;
 5	Dues not exist in the present Act.	(c) "Chief Information Commissioner", "Information Commissioner" and "State Information Commissioner" means the authorities so appointed under this Am.	(8) "Commission" means the Central information Commission constituted under acction (2). (e) "Information Commissioner" and "Depay Information Commissioners" mean the Information Commissioner and the Depay Information Commissioners approximated under sub- section (1) of section 12.

14.	(h) "recard" includes- (i) any document manuscript and file, (ii) any microfiles, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embedded in such microfilm (whether enlarged er not); and (iv) may other material produced by a computer or by any other device	(i) "record" Includes- (i) any document, manuscript and file, (ii) any microfilm, interofiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or by any other device.	(i) "record" includes (i) any document, manascript and file. (ii) any microfilm, alterative and fazzimile cupy of a document. (iii) any reproduction of mage or inages embodied in sach microfilm whether enlarged manth, and (iv) any other material produced in computer at any other device:
15.	person making a request for information and includes a public sutherity.	(i) "third party" means a person other than the person making a request for information and feedudes a public authority	making a regrest for information and includes a public authority.
 	CHAPTERII	CHAPTER II	CHAPTER II
	FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES	FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES	RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES
16	1 Subject to the provision of this Act, all citizens that have freedom of information	3. Subject to the provision of this Act, all persons shall have the right to information.	3 Subject to the crovisions of this Act, all entiress shall have the right to information.
177	4 Every public authority shall- (a) maintain all its records, in such manner and form as is consistent with its operational exputements duly catalogued and indexed;	Every public authority shalf- (a) maintain all its records, duly catalogued and indexed, in a manner and form which facilitates the right to information as provided for in this Act, including ensuring that all records, covered by the Act that are appropriate to computerise, are within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that authorised access to such accords is facilitated.	4 (1) Every public authority shall— (a) maintain all its records duly entalogued and indexed in a manner and the form which facilitates the right to information order this Act and easure that all records that are appropriate to be computerised are within a reasonable time and subject to availability of resources, computerised and connected through a retwork all over the country on different systems so that access to such records its facilitated:
- 0 Ř	(b) publish it such intervals as may be prescribed by the appropriate (lovernment or competent published). (c) the particulars of its organization, functions and duries: (in the powers and duties of its officers and employees and the procedure followed to them in	(b) publish within 6 months of this Act coming into force and thereafter update at least every 12 menths. The particulars of its organization, functions and duties. (ii) The powers and duties of its officers and employees	(b) publish before the commencement of this Act,- (ithe particulars of to organization, functions and dates: (ii) the powers and dates of its officers and employees; (iii) the procedure followed in the

the decision making process;	(80)	Procedures followed during the	decision making process, menuding channels of
(iii) the norms set by the public authority for the	(141)	decision making process, limiteding	intervation and reconstripition
discharge of its functions.		chains of supervision and	(in the
(iv) rules, regularions, instructions, manuals and		accountability.	discharge of the functions;
other entremies of eccords under its control used	(iv)	The norms set by the public authority	(v kht rules, regulations, instructions.
hy its employees for discharging its functions;	(,,,	for the discharge of its functions	nianualis and ecords, held by it or ender its
(v) the details of recibiles available to chizens for	(V)	Ruics, regulations, instructions, manual	control or used by its employees fin
obaining information; and	14,	and records held by or under its control	discharging its functions:
(vi) the name designation and other particulars of		used by its employees for discharging	(vi) a statement of the calegories of
the Public Information Officer,		its functions.	documents that are held by it or under its
	(vi)	A statement of the categories of	control:
	(11,	documents that are held by or under the	(-iikle particulars of ony exergenten)
1		control of the public authority.	that exists for consultation with pr
	(vli)	Particulars of any arrangement that	representation by, the members of the public in
}	• •	exics for consultation with, or	relation to the formulation of its pulley or
		representation by, members of the	implementationthereof:
,		public in relation to the formulation of	(vii))) statement of the boards.
i i		policy in, or in the administration of,	councils, committees and other bodies
·		the public authority.	consisting of two or more persons constituted
	(viii)	A statement listing all boards, ecuncils,	as its part or for the purpose of its advise, and
		committees and other bodies	at to "genia wiceruft of there permit
		executioned by two or more persons,	councils, commisces and other bodies are open
		that sie part of, at that have been	to the public, or the minutes of such meetings
		established for the purpose of advising.	are accessible for public,
}		the public authority, and whose	(ix)s directory of its officers and
		meetings are open to the public, or the	curbjo2cer:
		minutes of whose meetings are	(x)the couthly remuneration received
		evaltable for public Inspection.	by each of its officers and employees, including
	(ix)	A directory of their public servants,	the system of compensation as provided in its
		from the level of the head of the	regulations
		department or his/her equivalent and	(xi) the sudget allocated to each of its
	4. 8	below,	agency, indicating the particulars of all plans.
	(x)	The monthly remuneration received for	proposed expenditures and reports on
		each position, including the system of	disbursanients male.
		compensation as established in	To notification of control addition
	(ir)	regulations; Information concerning the budger	subsidy programmes, including the amounts allocated and the details of beneficiaries of
	(30)	essigned to each agency, facturing all	
		uprus' Lioboted exbeugimiet and	such programmes; (xlii)paniculars of concessions,
		reports on disbursement,	permits or authorizations granted by (t.;
	(xli)	The design and execution of subsidy	(xiv)d:tails in respect of the
	(24)	Fire design steal execution of addition	(via bermitz an restrict of and

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		including if the public authority instituting if the public authority instituting if the public authority is available for public authority of that fact including details of the address and hours of opening of the fibrary or reading room; and (avi) the name, designation and other publication of the Public information Officer; (avii) such other information as prescribed by the appropriate government or Information Commissioner from time to time which would promote transparency across public authorities of in specific public authorities of in specific public authorities of the public six mode at regular intervals through authorities to take steps to provide as much information to the public six mode at regular intervals through authorities to take steps to formation so that the public have minimum resort to the use of this Act to obtain	information available to be held by it, reduced in an electronic form. (xy)the particulars of listifies available to citizens for obtaining information including the working hours of a library in reading room, if maintained for public use; (xvi) the names, designations and other particulars of the Public Information Officers; (xvi)isuali other information as may be presented; d thereafter update these publications within such creats in each year as may be presembed; at the each year as may be presembed; li shall be a constant endeavour of every public creats in each year as may be presembed; differents of clause (b) of sub-section (1) to provide alternation mo more to the public as regarding the total through various means of communications so the public have minimum resort to the deep of this to obtain information.
<u> </u>	(c) publish all relevant foots concerning important decisions and politics that affect the public while amountaing such decisions and politics:	decisions and policies that affect the public while impo	publish all relevant facts while formulating portant policies or announcing the decisions which et public;

			1 48 11
2 0.	(d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions.	(d) give reasons for its decisions, whether administrative or quasi-judicial to those effected by such decisions;	(d) provide regions for its administrative or quisi- judicial decisions to affected persons.
71	(e) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in patientar, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural instice and promotion of democratic principles.	(c) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.	(e) before initiating any project, or immulating any policy, seleme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interest of natural justice and promotion of densecratic principles.
<u> </u>	Does and exist in the present Act	(f) For the purpose of this section, information should be disseminated widely and in a form and manner which is easily accessible and comprehensible to the public. "Disseminated" shall mean appropriately making known to the public the information to be communicated through notice boards, newspapers, public announcements, media broadcasts, the internet or other such means and shall include impection of all of the bodies offices. All materials shall be disseminated kneping in mind cost effectiveness, the local language and the most effective method of communication in that local area. Such information should be eatily accessible, with the Public information Officer, where possible in electronic forms, which shall be available free or at the cost of the medium, or in print at cost price.	(1) For the purpose of sub-section (1) every information shall be disseminated widely and in such form and manner which is easily accessible and comprehensible to the public. (4) All materials shall be disseminated taking into consideration the cost effectiveness. Inval tanguage and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electrotic format with the Public Information Officer, available free in at such cost of the medium or in paint cost price as may be prescribed. Explanation.—For the purposes of sub-sections (3) and (4), "disterninated" means making theorie or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means including inspection of offices of any public authority

2)	5. (1) Even public authority shall for the preposes of this Act appoint one or more officers as Public Information Officers	5.(1) Every public authority shall for the purposes of this Act, designate as many officers as Public information Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one month of this Act	5. (1) Every public authority shall within one hundred days of the enactment of this Act, designate as many officers as Public Information (Mixers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.
		coming into force. (a) An officer at each sub-divisional feed or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this Act coming into force, for the purposes of this Act. Itelahe shall receive all requests for Information, and appeals, both under	(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district fevel as an Assistant. Public information Officer to receive the applications for information as appeals tunder this Act for forwarding the same furthwith to it or to the Government:
		the State and the Central Acts, and pass them on to a designated authority for omyard transmission to the relevant department/agency (b) Where applications/appeals are handed over at the sub divisional or sub-district level, an additional period of five days would be added to the time of response specified under this Act, in order to enable the request/appeal to be cummunicated to the relevant authority.	Provided that where on application for information of appeal is given to an Assistant Fuldic Information Officer, a period of five days shall be called an computing the period for response appearing under sub-section (1) of section 7.
74	(2) Every Public Information Officer shall deal with responses for information and shall render reasonable assistance to any person seeking such information	(2) Every Public Information Officer shall deal with requests for information and shall sender seasonable assistance to any person seeking such information.	(3) Every Public Information Officer stuff deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.
25	(3) The Public Information Officer may seek the assistance of an other officer as he considers necessary for the proper discharge of his duties.	(1) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.	(4) The Public Information Officer may seek the assistance of any other officer as he as she considers it necessary for the proper discharge of his or her duties.
16	(4) Any officer whose essistance has been sought under sub-rection (3), shall render all assistance to the Public Information Officer seeking his assistance.	(4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his/ker assistance and be treated as a Public Information	(5) Any officer whose dissistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her existance and for the purposes of any emitracention of the

	T	Officer for the purposes of the penalty provisions in this Act.	provisions of this Act such other officer shall be treated as a Public Information Officer
77	6 A person desirous of obtaining information shall make a request in writing or dinugh electronic means, to the concerned Public Information Officer specifying the particulars of the information's sught by him:	6 (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority, (b) other designated Public Information Officers, as specified in 5 (1a) apecifying the particulars of the information sought by him/her.	6. (1) A person who desires to attain any information under this Act shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accumpanying such fee as may be prescribed to a the Public information Officer of the concerned public authority; (b) the Assistant Public Information Officers.
	1		specifying the particulars of the information strught by him or has:
78.	Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable essistance to the person making the request orally to reduce it in writing	Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.	Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing
20	Ores not exist in present Act	6 (2) An applicant for access to information shall not be required to give any reason for requesting access to that information or any other personal details except those necessary for contacting the applicant.	6(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details execut these that may be necessary for contacting from.
10	Thes not exist in the present Act	6 (3) (1) Where an application is made to a Public Authority for information: (a) which is held by another Public Authority; or (b) the subject matter of which is more closely connected with the functions of another Public Authority, the first mentioned Public Authority shall transfer the application or such part of it as may be appropriate to that other Public	6(3) Where an application is made to a public authority requesting for an information. (i) which is field by another public authority, or (ii) the subject number of which is more chisely connected with the functions of another public authority. the public authority, to which such application is
	<u> </u>	Authority and shall inform the applicant immediately of the transfer.	made, shall transfer the application to such spatication is may be appropriate to that other positic and such and inform the applicant consedictely, about such transfer.

		(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than 5 days after the date of receipt of the application.	
31	7 (1) On receipt of a request under section 6, the Public Information Officer shall, as expeditionally as exactible, and in any case within thirty days of the receipt of the request either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reas and specified in sections 8 and 9: Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight bours of the receipt of the request:	7(1) Subject to section 5, sub section (1b) above and section 7, sub-section (3)(a) below, on receipt of a request under section 6, the Public Information Officer shall as expeditiously as possible and in any case within fifteen days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9. Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request: (2) If a Public Information Officer fails to give the decision on a request for access to the requestar concerned within the period contemptated in section 7(1), the Public Information Officer would, for the purposes of this Act, be regarded as having refused the request.	7 (1) Subject to the proviso to sub-textum (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request section 6 shall, as expeditionally as possible and in any case within thinh days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9. Provided that where the information stught for cencerns the life or liberty of a person the same shall be provided within forty-eight factors of the receipt of the request. (2) If the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1)—the Public Information Officer shall be deemed to have refused the request.
32.	Principled further that where it is decided to provide the information on payment of any further (se representing the cost of providing the information, be shall send an intimation to the person making the request giving the details of the frest determined by him, requesting him to deposit the frest and the period intervening between the despoteth of the fall intimation and payment of frest shall be excluded for the purpose of enfounting the period of thirty days referred to allow	7(3) Where it is decided to provide the information on payment of any further fre representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving: (a) the details of such fees as determined by him, showing the calculations as per the Act, at prescribed rates, requesting him to deposit the fees, and the period intervening between the despatch of the solid infimation and payment of free shall be excluded for the purpose of calculating the period of fifteen days referred to above; (b) information concerning his/ter rights with respect to review the decision as to the amount of fees charged and/or the form of access	7(3) Where a decision is taken to provide the information on payment of any further tee representing the cost of providing the information, the Public Information Officer shall tend an information to the person making the request, giving. (a) the details of further fees representing the cost of providing the information as determined by think together with the calculations made to arrive at the straight in accordance with fee prescribed under subsection (1), requesting then to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees that he excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

		provided, including the contact details of the appellace suthority, three limits, process and any referrant forms.	(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time furnit, process and any other forms.
317	Does not exist in the present Act	7 (4) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability, the public authority will provide assistance to enable access to the information, including providing assistance with inspection as appropriate	7(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided a sensorily disabled, the public authority shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the important.
14	Does not exist in the present Act.	7(5)(a) Subject to sub-sections (b) and (c) below, where access to information is to be given in the form of printed copies, or explicit in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee. (b) Any fees payable by the applicant shall be reasonable, and shall in no case exceed the actual west of expyring the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum findly taking account of the general principle dust fees should not be set so high that they undermine the objectives of this Act in practice (c) Notwithstanding subsection (a), where a public nuthority fails to comply with the time limits specified in section 7, any access to information to which the applicant is entitled pursuant to his request shall be provided free of charge.	7(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6) pay such fee as may be prescribed (6) Notwithstanding unthing contained in sub-section (5), the person making request for the information thall be provided the information free of clarge where a public authority fails to comply with the time limits specified in sub-section (1).
33	7 (2) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section (1).	7 (6) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation inside by a third party under section (1).	7(7) Before taking any occision under sub-section (1), the Public Information Officer shalt take not consideration the representation made by a third party under section [1].

10	7 (3) Where a request is rejected under sub-section (2). the Oable Information Officer shall communicate to the person making request, (i) the ceasers for such rejection. (ii) the period within which no appeal against such rejections may be preferred; (iii) the period of the appealate authority.	7 (7) Where a request it rejected under sub-section (2), the Public Information Officer shall communicate to the person making request, (i) the reasons for such rejection; (ii) the period within which an appeal against such rejections may be preferred; (iii) the particulars of the appellate authority.	7(8) Where a request test been electrical to be rejected under sub-section (2), the Public Information Officer shall communicate to the person stacking the requestability the reasons for such rejection. (ii) the period within which an appeal against such rejection may be preferred and (iii) the particulars of the appellete authority
17	7(4) Information shall ordinarily be provided in the form in which it is sought unless it would	7 (8) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately	7(9) An information shall ordinarily be provided in the form in which it is sought unless it would
1	disproportionately divert the resources of the	divert the resources of the public authority or would be	digroportionalely divers the restources of the public
1	public authority is would be defined to the	devimental to the safety or preservation of the record in	subority or would be detrimental to the solely or
1	rates) or preservation of the record in question	question.	preservation of the record in question.
15		8(1) Notwithstanding anything contained in this Act.	B. (1) Notwithstanting anything contained in this Act.
	before contained the following information not	there shall be no obligation to give any person.	except as otherwise provided herein, the following
1	being information relating to any matter referred to	(a) information, disclosure of which would	information that be exempted from disclusive.
1	in sub-section (2), shall be exempted from	projudicially affect the sovereignty and integrity	namely:
)	disclosure rune v	of India, the security, strategic, scientific or	
1		economic interests of the State, relation with	(a) information the disclusive of which would,-
1	(a) information the disclosure of which would	foreign State or lead to Incliement of an offence;	
	prejudicially offect the sovereignty and integrity of	(b) information which has been expressly	(i) prejudicially affect the savereigns
1	India security of the State, strategic scientific or	forbidden to be published by any court of law or	und integrity of India security.
1	economic interest of India or carduct of	tribunal or the disclosure of which may	strategic, scients for all community
1	International relations:	constitute contempt of court;	interest of the State, relation with
ł	(b) information the disclosure of which would	(c) information, the disclosure of which would	foreign State; or
1	prejudicially affect public safety and order,	cause a treach of privilege of Parliament or the	(ii) lead to as incitement to continu
1	detection and investigation of an offence or which	State Legislature;	offence:
1	may lend to an incitement to commit an uffence or	(d)Information including commercial	NA I-Compating to A. London and A.
	projudicially affect fair trial or adjudication of a pending case.	confidence, trade secrets or intellectual property, the disclosure of which would harm the	(b) information, which has been expressly
	i ferming (24.		forbidden to be disclosed by any court of law
1	(c) information, the dischasure of which	competitive position of a third party, unless the Competent Authority is satisfied that larger	or tribunal or the disclosure of which nust
1	would prejectionly affect the conduct of Conve-	public interest warrents the disclosure of such	(c) information, the disclosure of which may
	State relations including information exchanged in	information :	result in a breach of privileges of Parliament
	confidence between the Central and State	(e) information available to a person in his	or the Legislature of a State;
1	(lovernments or any of their authorities or	fiduciary relationship, unless the Competent	(d) information including commercial
	Sencies.	Authority is satisfied that the larger public	confidence, trade society or intellectual
	(d) (where papers including records of	interest warming the disclosure of sach	property, the disclosure of which would turn
	deliberations of the Council of Ministers,	information;	the competitive position of a third party.

Secretaries and other officers.

- (e) ententes or records of advice including legal advice, opinions or recommendations made by any officer o. a public authority during the decision making process prior to the executive decision or entire formulation:
- (f) tinde or confineral secrets protected by face or information, the disclosure of which would prejudicially affect the legitimate economic and confineral interests or the competitive position of a public authority, or would cause unfait gain or loss to pay person, and
- (g) information, the disclosure of which may result in the breach of privileges of Parliament or the Legislature of a State, or contravention of a lawful order of a court

(1) information received in confidence from

- (g) information, the disclosure of which would enderger the life or physical safety of any person or identify the source of information of assistance given in confidence for law enforcement or security purposes;

 (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) entines papers including records of deliberations of the Council of Ministers, Secretaries and other officers, provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over, provided further that thuse matters which come under the exemptions listed in Section 8 shall not be discussed.
- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invation of the privacy of the individual enless the information Officer or the appellate authority, as the case might be, is satisfied that the larger public interest justifies the disclosure of such information

Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

Netwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with section 8 (1), a public authority may allow access to information. If public interest in disclosure ontweight the harm to the protected interests.

Provided that such information may be disclosed if the Public Information Officer is satisfied that a larger public interest warrents the disclosure of such information.

(c) information available to a person in his fiduciary relationship.

Provided that such information may be disclosed, if the Public Information Officer is satisfied that a targer public interest warrants the disclosure of such information.

- (f) information received in confidence from a foreign government;
- (g) information the disclosure of which would condanger the life or physical safety of easy person or cause to identify the source of information or excistance given in confidence of law enforcement or security purposes:
- (h) information, the disclosure of which would impede the process of investigation of apprehension of prosecution of offeaters.
- (f) the Cabinit papers, including records of deliberations of the Council of Ministers, Societaries and other officers:

Provided that the decisions of the Council of Ministers, the removes thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken and the matter is complete, or over

Provided (without their those matters which come under the exemptions listed in this section shall not be disclused;

 information which relates to personal information, the disclosure of which has no relationship to any public autivity or interest.

			or which would cause unwarranted invariant of the privacy of the individual Provided that such information may be disclused if the Public Information (Hilliam or the appellate authority, as the case may be, in satisfied that the larger public information justifies the disclosure of such information (2) An information which example be desired to
			Parliament or Legislature of a State, as the case may be, shall not be deried to any person. (3) A public authority may, notwothstrading the exemptions specified in sub-section (1), allow specified in formation if public interest in disclosure of the information outweight the barm to the public authority.
30	8(?) Subject to the provisions of clause to) of sub- section. It may information relating to any necurrence event or matter which has taken place, necurred in happened twenty-five years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:	Subject to the provisions of clause (a) and (i) of sub-rection 1 of section 8, any information relating to any decenteries, event or matter which has taken place, occurred or inspected ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section Provided that the matters covered by sub-Section 8(a) and sub-Section 8(l) may be disclosed after twenty-five years.	8(4) Subject to the provisions of clauses (a) and (i) of sub-section (1), may information relating to any occurrence, event or matter which has taken place of occurred ten years before the date on which any request is made under section 6. shall be provided to the person making the request under that section
10	Provided that where any question arises as to the date from which the said period of (wenty-five years has to be computed, the decision of the Central Government shall be final	Provided that where any question arises as to the date from which the sold period of ten years or twenty-five has to be computed, the decision of the Union Government shall be final, subject to the usual appeals provided for in this Act.	Provided that where any question arises to the date from which the said period of ten years has in be computed, the decision of the Central Government shall be final.
4i 	9. Without orejudice to the provisions of section 8, a public information officer may reject a request for a formation also where such request- (a) is too general to nature or is of such a nature	9. Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve as infringement of copyright subsisting in a person other than the State.	9. Without prejudice to the provisions of section 8. a Public Information Officer may reject a request for information where such a request for providing secrets would involve an infragentant of copyright salvisting in a person other than he State.

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-	that having regard to the solume of information			
Į.	required to be retrieved or processed would		}	
	involve uniquenchic diversion of the resources of	1 <u>k</u>		J
	a public nutburity or would advertely interfere with the functioning of such authority:			
	with the impropring of such analogy.			
!	Provided that where such request is rejected on the]		
	ground that the request is too general, it would be			
	the duty of the Public Information Officer to]	
	render help as for as possible to the person making)		
ł	request to reframe his request in such a material as			J
	may facilitate compliance with 0;	<u> </u>		
	(b) relates to information that is required by law,			
1	rules regulations or orders to be published at a			
	particular time and such information is likely to be			ľ
	so published within thirty days of the receips of	}		ļ
	such request:			1
1			•	9
	(c) relates to information that is contained in			
	published material available to public; or			
!				
	(d) relates to information which would cause			ı
L	unwanantal invasion of the privacy of any person.			1
42.	10. (1) If a request for access to information	10. (1) If a request for access to information is	10. (1) Where a request for access to intensition is	ı
	Is rejected on the ground that It is in relation to	rejected on the ground that it is in relation to information	rejected on the ground that it is in relation to	ı
ļ	information which is exempted from disclosure.	which is exempted from disclosure, then notwithstanding	Information which is exempt from disclosure, then,	ı
İ	then notwithstanding anything contained in this	anything contained in this Act, access may be given to	notivithstanding anything contained in this Act access	ı
ł	Act, recers may be given to that part of the record	that part of the record which does not contain any	may be provided to that part of the record verich does	ı
1	which does not contain any information that is	information that is exempted from disclosure under this	nal contain any information which is execut from	ı
	exempted from directorure under dits Act and	Art and which can reasonably be severed from any part	disclosure under this Act and which can reasonably be	ı
	which can reasonably be severed from any part	that contains exempted information.	severed from any part that contains except	ı
	that contains exempted information.		information.	
13	ID(2) Where access is granted to a part of the	10(2) Where access is granted to a part of the record in	10(2) Where nevers is granted to a part of the record	
	record to accordance with sub-section (1), the	accordance with sub-section (1), the Public	under sub-section (1), the Public Information Officer	
	person making the request shall be informed,	information Officer shull send a notice to the	shall give a notice to the applicant, infortaing.	
	(a) they only part of the record requested.	applicant, mivising:		
	after reverance of the record containing	(a) that unly part of the record requested, after	(a) that only part of the record required after	
	infortunion which is exempted from disclosure, is	severance of the record containing information	severance of the record crintaining	
L	Leing (Irandur), and	which is exempted from disclosure, is being	information which is exempt from disclusive.	

ecision, including any crust question at fact, crist on which these
an of the person giving determined by him or fee which the applicant and espect to review at the
n-disclosure of pail of count of fee charged or covided, including the cellate authority, time other forms.
intends to discluse any intends to as has been treated as the Public Information from the receipt of the such that party of the such that party of the such that party intends record, or part thereof, make a submission in active the information upmission of the third hile taking a decision of the truse of trade or y law, disclosure may
nterest in disclusive usible haven or injury to used by the Public section (1) to a third
r n: 13

(3) Notwithstanding anything contained in section 7, the Public bilicenstion Officer shall, within

Information Officer under sub-section (1) to a party in tespect of any information or record or part

	sixty days effer reveipt of the request under section of the third party has been given an opportunity to make representation under sub-section (2), make a decision of to whether or not to disclose the information or record or part thereof and give in writing the natice of his decision to the third party. (4) A notice given under sub-section (3) shall include a statement that the third party to whom the native is given is callified to prefer un appeal against the decision under section 12.	third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure. (3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within twenty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under subsection (2), make a decision on to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party. (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal against the decision under section (22).	thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure. (3) Netwithstanding anything contained in section 7, the Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), natice a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party. (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is callifed to prefer an appeal tasker section 15 against the decision.	
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	-		CHAPTER III:	•
<u> </u>	<u> </u>		THE CENTRAL INFORMATION COMMISSION	~
	Dues and exist in the pretent Act	12(1). (i)(a) The President shall appoint or designate a Chief Information Commissioner for all matters pertaining to the Union. Such appointment shall be made on the basis of a recommendation made by an Appointing Committee presided by the	12. (1) The Central Government shall, by notification in the Official Gazete, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act	
		Prime Minister, with the Leader of Opposition in the Lek Sobha and the Chief funice of India as members. (i)(b) The Governor shall appoint or designate a	(2) The Commission shall consust of - (a) the Information Commissioner, and	
		State information Commissioner for all matters pertaining to the State. Such appointment shall be made on the trasis of recommendation made by an Appointing Committee presided by the	(b such number of Deputs Information Commissioners not exceeding ten as may be declined necessary:	
		Chief Minister, with the Lender of Opposition la the Legislative Assembly and the Chief Justice of the High Court as members. (ii) Information Commissioners may be appointed by the President or the Governor, as	(3) The Information Commissioner and the Deputy Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-	

appropriate Appointing Committee and the Chief Information Commissioner or State Information Commissioners, as the case may be.

- (lii) Every Chief Information Commissioner, State information Commissioner and information Commissioner shall be a person with wide trowledge and experience of administration and governance, and/or a person with high public STATUTE.
- (iv) The Chief Information Commissioners and any Information Commissioners shall not be members of Parliament or members of the Legislative of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be carrying on any business or practice eny profession:
- (v) The recollite budgetary allocations for the emoluments and expenses, including office expenses, of the Chief Information Commissioner and of other information Commissioners will be provided by the Government of India through special budgetary provisions made available to the respective States out of the Union Government Budget.
- (vi) The Chief Information Commissioner and other Information Commissioners shall function autonomously without being subjected to directions by any other authority and would be under the administrative control of the Government of India, Ministry of Personnel, Administrative Reforms and Public Orlevances.

Chairmenton of the committee.

- (if) the Leader of Opposition in the Last Sibba: nad
- (iii) the Chief Justice of India

Explanation. - In the purposes of removal all doubts. it is hereby deduced that where the Leader of Opposition in the House of the People are not been recognised as such the Leader of the angle larger group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

- (4) The general superintendence, direction and management of the effairs of the Commission shall vest in the Information Commissioner who shall be assisted by the Docty Information Cummissioners and may exercise all sich conces and the all such acts and things which may be exercised or dure by the Commission automorphy without being subjected to directions by any other authority under this Act.
- The Information Commissioner and the Directy Information Commissioners shall be persons of eminence in public tife with wide knowledge and experience of administration and government
- (6) The Information Commissioner or a Denuity Information Commissioner shall not be a cromber of Parliament or Menter of the Legislature of any State or Union territory, as the case may be, or said any other office of prof: or connected with any position) party of curving in any business of transling any profession.
- (7) The headquartes of the Commission shall be as Delhi and the Conmission may, with the previous approval of the Ceeral Government, establish officer at other places in Inca

			(8) Every Deputy Information Commissioner shall perform his functives within such area as may be specified by the Cental Government
46	Dues sol evest in the present Act.	12 (vii) Every person appointed as a Chief Information Commissioner or an Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office. He/she will not be eligible for reappointment.	13 (1) The Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till the offices the age of sixty-five years, whenever is carlier, and shall not be eligible for reappointment
			Provided that the Central Government may extend the term of five years by one more year of recommended by the Commutee referred to an subsection (3) of Section 17 Provided further that no information Commissioner shall hold office as such after he has attained the age of siny-five years
			(2) Every Deputy Information Commissioner shall bold office for a term of four years from the clate on which he enters upon his office of till he claims the age of sixty-five years. Whehever is carlied:
			Provided that every Deputy Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the Information Commissioner in the number specified in sub-section (3) of section (2)
		•	Provided further this where the Deputy Information Commissioner is appointed as the Information Commissioner, his term of office shall not be more than five years to aggregate as the Deputy Information Commissioner and the Information Commissioner.
			(3) The information Commissioner or a Deputy Information Commissioner, shall before the orders upon his office make and subscribe before the President or some other person appointed by him in that behalf, no onth or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Information Commissioner of a Deputy Information Commissioner may, of any time, in writing under his hand addressed to the President. resign from his office. Provided that the information Commissioner or a Deput Information Commissioner may be removed in the minner specified under section 14. (5) The Information Commissioner or a Deputy Information Commissioner shall on coassion of his office, not be eligible for . (a) any diplomatic assignment assignment as administrator of a Union termina or tuck other assignment or appointment which is required by law to be mude by the President by warrant under his hand and scal: (b) Author employment to any ullice of profit under the Government of India or the Covernment of a State. (6) The salaries and allowances payable to and other terms and conditions of service of -(a) the Information Commissioner, that I to the same as that of a Secretary to the Onvernment of India: (b) the Deputy Intermediate Provided that II the Information Commissioner or a Deputy Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or would pension) in respect of any overvious service under the Coverament of India or under the Covernment of a State his salary in respect of the service as the Information Commissioner on a Deputy Information Commissioner shall be reduced by the

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			amount of that pention including any purtion of
			pension which was commuted and pension equivalent
			of other forms of retrement benefits excluding pension
j	}	ſ	equivalent of retirement amounts.
- 1			1 ,
- 1)	Provided further that if the Information
1	J		Commissioner or a Deputy Information Commissioner.
			at the time of his appointment is, in receipt of
			retirement benefits in respect of any previous service
- {		J	rendered in a Corporation established by or under any
			Certral Act or State Act or a Gingminent company
	1		oweed or controlled by the Central Covernment or the
			State Government, his salary in respect of the service
			as the Information Commissioner or the Deputy
			Information Commissions shall be restuced by the
- 1	İ		
1			amount of pension equivalent to the retirement
	J		benefits:
1			l
			Provided also that the salaries allowances and the
	}		other conditions of service of the Information
			Commissioner and the Deputy Information
		•	Commissioners shall not be varied to their
1	}	}	disadvantage after their appointment.
			(7) The Central Government shall provide the
	j		Information Commissioner and the Deputy Information
ſ		}	Commissioners with such officers and employees as
			may be necessary for the efficient performance of their
1	}		functions under this Act, and the suturies and
Į.			allowances payable to and the other terms and
1			conditions of service of the officers and natur
	Ì		employees appointed for the purpose of this Act shall
			be such as may be prescribed.
]_			
1 47	Dues not exist in the present Act.	Does not exist in the Bill.	14. (1) Subject to the provisions of sub-section (1), the
1			Information Commissioner or any Deputy Information
			Commissioner shall be removed from his office only
J	}		by order of the President on the givent of president
			misbehaviour or incapacity after the Supreme Citart.
			un a reference made to it by the President, has an
			inquiry, reported that the Information Commissioner or
' -	<u> </u>		indead transfer distance information Commissioner (A

any Deputy Information Commissioner, as the case may he, ought on such ground be removed.
(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Information Commissioner or Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.
(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Information Commissioner or any Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may
be (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude, or (c) engages during his term of office in any paid
employment outside the duties of his office, or (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as an Information Commissioner or a Deputy
Information Commissioner. (4) If the Information Commissioner or any Deputy Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or
emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

48	Does not exist in the present Act.	12(3) Powers of the Chief Information	
		Commissioner/State Information	1 1
		Commissioners/Information Commissioners	a complaint from any person
		(1) Subject to this Act, the Chief Information	
		Commissioner /State Information	(a) who has been unable to submit a request to a
		Commissioners/Information Commissioners	Public Information Officer, either by reason
		shall receive and investigate complaints from	that no such officer has been appointed
		persons:	under this Act, or because the Assistant
		(a) who have been unable to submit a	Public Information Officer has refused to
		request to a Public Information Officer,	accept his or her application for forwarding
		either because none has been appointed as	the same to the public authority or the
Ì		required under the Act or because the	Government:
		Public Information Officer has refused to	(b) who has been refused access to any
		accept their application;	information requested under this Act;
		(b) who have been refused access to	(c) who has not been given a response to a
		information requested under this Act;	request for information or access to
		(c) who have not been given a response	information within the time limits specified
		or access to information within the time	under this Act;
		limits required under this Act;	(d) who has been required to pay an amount of
		(d) who have been required to pay an	fee which he or she considers unreasonable:
		amount under the fees provisions that they	(e) who believes that he or she has been given
j		consider unreasonable,	incomplete, misleading or false information
		(e) who believe that they have been given	under this Act: and
		incomplete, misleading or false	
		information under this Act;	(f) in respect of any other matter relating to
		(f) in respect of any other matter relating	requesting or obtaining access to records
		to requesting or obtaining access to	under this Act.
		records under this Act.	
ļ		(2) Where a Chief Information	(2) Where the Commission is satisfied that there are
Ì		Commissioner/State Information	reasonable grounds to inquire into the matter, it may
		Commissioner/Information Commissioner is	initiate an inquiry in respect thereof
		satisfied that there are reasonable grounds to	
		investigate a matter relating to requesting or	(3) The Commission shall, while inquiring into any
		obtaining access to records under this Act.	matter under this section, have the same powers as are
		he/she may initiate a complaint in respect	vested in a civil court while trying a suit under the
		thereof.	Code of Civil Procedure, 1908, in respect of the
		(3) The Chief Information Commissioner/State	following matters, namely:-
		Information Commissioners/Information	
	•	Commissioners have, in relation to the carrying	(a) summoning and enforcing the attendance of
		out of the investigation of any complaint under	persons and compel them to give oral or
		this Act, power:	written evidence on oath and to produce the

(a)	to summon and enforce the appearance
	of persons and compel them to give
	oral or written evidence on oath and to
	produce such documents and things as
	the Commissioner deems requisite to
	the full investigation and consideration
	of the complaint, in the same manner
	and to the same extent as a superior
	court of record;
(b)	to administer oaths;
(0)	to receive and accept such evidence

- (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the relevant Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;
- (d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;
- (e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Chief Information Commissioner under this Act as the Commissioner sees fit; and
- (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation
- (g) To impose the penalties prescribed under this Act, after giving due opportunity to the concerned official of heing heard
- (4) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, an Chief Information Commissioner /State Information Commissioners/Information

documents or things.

- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office.
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.
- (4) Notwithstanding any thing consistent contained in any other Act of Parliament, the Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

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1		Commissioners may, during the investigation of	
ŀ		any complaint under this Act, examine any	
		record to which this Act applies that is under the	
		control of a government institution, and no such	
ĺ		record may be withheld from any Commissioner	
ļ		on any grounds.	
		(5) All the powers of the Chief Information	
		Commissioner would also be enjoyed by the State	
		Information Commissioners and other	
1		Information Commissioners, within their	
		jurisdictions.	
49.	12. (1) Any person aggrieved by a decision	12. (2) (i) Any person who does not receive a decision in	16. (1) Any person who, does not receive a decision
	of the Public Information Officer may, within	the time period specified in Section 7(1) or	within the time specified in sub-section (1) or clause
Ì	thirty days of receipt of such decision, prefer an	7(3)(a) above, or is aggrieved by a decision of the	(a) of sub-section (3) of section 7, or is aggreed by a
	appeal to such authority as may be prescribed:	Public Information Officer may, within thirty	decision of the Public Information Officer, may within
1	Provided that such authority may entertain the	days of the expiry of such a period or of receipt of	thirty days from the expiry of such period or from the
,	appeal after the expiry of the said period of thirty	such a decision, prefer an appeal to an appellate	receipt of such a decision prefer an appeal to such
	days if it is satisfied that the appellant was	authority prescribed for the purpose in each	officer who is senior in rank to the Public Information
	prevented by sufficient cause from filing the	department and senior in rank to the Public	Officer in each public authority:
	appeal in time	Information Officer.	
	(2) A second appeal against the decision under	Provided that such authority may entertain the	Provided that such officer may admit the appeal
	sub-section (1) shall lie within thirty days of such	appeal after the expiry of the said period of thirty	after the expiry of the period of thirty days if he or she
	decision, to the Central Government or the State	days if it is satisfied that the appellant was	is satisfied that the appellant was prevented by
	Government or the competent authority, as the	prevented by sufficient cause from filing the	sufficient cause from filing the appeal in time
	case may be	appeal in time.	Samotene oddoe from thing the appear in time
	Provided that the Central Government or the State	(ii) A second appeal against the decision (or lack	
	Government or the competent authority, as the	of it), under sub section (i), shall lie within 90	(2) A second appeal against the decision under sub-
	case may be, may entertain the appeal after the	days from the time by which the decision should	section (1) shall lie within nmety days from the date
	expiry of the said period of thirty days if it is	have been made or was actually received, with	on which the decision should have been made or was
	satisfied that the appellant was prevented by	the relevant Chief/State/Information	
	sadshed that the appenant was prevented by		actually received, with the Commission:
	sufficient cause from filing the appeal in time	Commissioner;	
	(3) The appeals is ferred to in sub-sections (1) and	Provided that the relevant	Provided that the Commission may admit the
	(2) shall be disposed of within thirty days of the	Chief/State/Information Commissioner may	appeal after the expiry of the period of ninety days if
	receipt of such appeals or within such extended	entertain an appeal after the expiry of the said	if is satisfied that the appellant was prevented by
	period, as the case may be, for reasons to be	period of ninety days if it is satisfied that the	sufficient cause from filing the appeal in time.
	recorded in writing.	appellant was prevented by sufficient cause from	
	(4) If the decision of the Public Information	filing the appeal in time.	(3) Where an appeal is preferred against an order made
	Officer against which the appeal is preferred under	(iii)Whore an appeal is being preferred	by the Public Information Officer under section 11 to
	sub-section (1) or (2) also relates to information of	against an order made by the Public	disclose third party information, the appeal by the
	third party, the appellate authority shall give a	Information Officer under Section II to	concerned third party shall be made within thirty days
	reasonable opportunity of being heard to that third	disclose "third party" information, the appeal	from the date of the order.

party	by the concerned third party must be made	
1	within thirty days of the order.	(4) If the decision of the Public Information Officer
	(iv)If the decision of the Public Information	against which an appeal is preferred relates to
	Officer against which the appeal is preferred	information of a third party, the Commission shall
	relates to information of a third party, the	give a reasonable opportunity of being heard to that
	relevant Information Commissioner shall	third party.
	give a reasonable opportunity of being heard	
	to that third party.	(5) In any appeal proceedings, the orns to prove that a
	(v) In any appeal proceedings, the onus to	denial of a request was justified shall be on the public
	prove that a denial of a request was justified	authority which denied the request.
	will be on the public authority that denied the	stationly without defined the recipiest.
	request.	
	(vi) Appeals to any appellate	(6) An appeal under sub-section (1) or sub-section (2)
	authority/Information Commissioner shall be	shall be disposed of within thirty days of the receipt of
	disposed of within thirty days of the receipt	the appeal or within such extended period not
]	of the appeals, or within such extended	exceeding a total of forty-five days from the date of
	period, not exceeding a total of forty five	filing thereof, as the case may be. for reasons to be
	days from the date of filing of appeal, for	recorded in writing.
	reasons to be recorded in writing.	recorded in writing.
	(vii) The decision of the Information	(2) The desiring of the Commission shall be highling
		(7) The decision of the Commission shall be binding
	Commissioner shall be binding.	(8) In its decision the Commission bands on a comme
	(viii) In his/her decision, the relevant	(8) In its decision, the Commission has the power to
	Information Commissioner has the power to:	(a) manifes the multiple system to take a contract
	(a) require the multiple authority to take any	(a) require the public authority to take any such
	(a) require the public authority to take any	steps as may be necessary to secure
	such steps as may be necessary to bring it	compliance with the provisions of this Act.
	into compliance with the Act, including by;	including —
}	(i) providing access to information,	415
	including in a particular form,	(i) by providing access to information.
ĺ	(ii)appointing an Information Officer;	if so requested, in a particular
	(iii)publishing certain information and/or	form:
	categories of information;	(ii) by appointing a Public
	(iv)making certain changes to its practices	Information Officer;
	in relation to the keeping.	(iii) by publishing certain
	management and destruction of	information or categories of
	records;	information;
	(v)enhancing the provision of training on	(iv) by making necessary changes to
	the right to information for its	its practices in relation to the
	officials;	maintenance, management and
	(vi)providing him or her with an annual	destruction of records:
	report, in compliance with section 4(b);	(v) by enhancing the provision of

	(b) require the public body to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties available under this Act; (d) reject the application. (ix) The Information Commissioner shall serve notice of his/her decision, including any rights of appeal, on both the complainant and the public authority. (x) A decision of the Information Commissioner may be appealed to the High Court or the Supreme Court, on any point of fact and law.	training on the right to information for its officials: (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4. (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act, (d) reject the application (9) The Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority. (10) The Commission shall decide the appeal in accordance with such procedure as may be prescribed (11) An appeal against the decision of the Commission shall lie in the High Court on any point of fact and law.
50. Does not exist in the presen	12(4) Penalties (1) Subject to sub-section (3), where any Public Information Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the relevant Information Commissioner shall, on appeal, impose a penalty of rupees two hundred and fifty, which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard. (2) Subject to sub-section (3), where it is found in appeal that any Public Information Officer has— (i) Refused to receive an application for information; (ii) Mala fide denied a request for	17. (1) Notwithstanding anything contained in section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class. (2) Any Public Information Officer who is in défault under sub-section (1) shall be tiable on conviction to fine which may extend to rupces twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

information:

- (iii) Knowingly given incorrect or misleading information.
- (iv) Knowingly given wrong or incomplete information,
- (v) Destroyed information subject to a request, or
- (vi) Obstructed the activities of a Public Information Officer, any Information Commissioner or the courts:

he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupces two thousand and imprisonment of up to five years, or both.

- (3) An officer whose assistance has been sought by the Public Information Officer for the performance of his/her duties under this Act shall be liable for penalty as prescribed in subsections (1) and (2) jointly with the Public Information Officer or severally as may be decided by the relevant Information Commissioner.
- (4) Any fines imposed under sub-sections (1), (2) and (3) shall be recoverable from the salary of the concerned officer, including the Public Information Officer, or if no salary is drawn, as an arrears of land revenue, recoverable within a maximum of six months of the order imposing the fine.
- (5) The Public Information Officer or any other officer on whom the penalty under sub-sections (1), (2) and (3) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him. Provided that in cases where the officer is proved guilty of deliberate denial of information or misinformation, the punishment imposed shall be a major penalty, i.e., dismissal or removal or reduction in rank.

	CHAPTER III: MISCELLANEOUS	CHAPTER III: MISCELLANEOUS	CHAPTER IV: MISCELLANEOUS
51.	13 No suit prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder	13 No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.	18. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder
52	14. The provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act. 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	14. The provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	19. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act. 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
53.	15 No court shall entertain any suit, application of other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act	No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.	20. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act
	apply to the intelligence and security organisations, specified in the Schedule, being organisations, specified in the Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government. (2) The Central Government may, by notification in the Official Guzette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and or the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule (3) Every notification issued under sub-section (2) shall be laid before each House of Parliament. (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the Official	16. (1) Nothing contained in this Act shall apply to the intelligence and security organisations, specified in the Schedule being organisations established by the Union Government or any information furnished by such organisations to that Government. Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause. (2) The Union Government may, by notification in the official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be omitted from the	21. (1) 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 organisations to that Government: Provided that the information pertaining to the allegations of corruption shall not be excluded under this sub-section. (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organization shall be deemed to be included in or, as the case may be, omitted from the Schedule. (3) Every notification issued under sub-section (2) shall

	Gazette, by a State Government from time to time. (5) Every notification issued under sub-section (4) shall be laid before the State Legislature.	Schedule (3) Every notification issued under sub-section (2) shall be laid before each house of parliament. (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the official gazette, by a state Government from time to time. Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause. (5) Every notification issued under sub section (4), shall be laid before the State Legislature.	be laid before each House of Parliament.
55.	Does not exist in the present Act.	 The Chief Information Commissioners/State Information Commissioners Information Commissioners shall, as soon as practicable after the end of each year, prepare a report on the implementation of this Act during that year and cause a copy of the report to be laid before the legislatures of the concerned State and each House of the Parliament. Each responsible department/ministry shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Chief/State/ Information Commissioners as is required to prepare the report under this section, and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section. Each report shall, at a minimum, state in respect of the year to which the report relates: (a) the number of requests made to each public authority; (b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked; (c) the number of appeals sent to the Information 	22. (1) The Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Central Government (2) Each Ministry of Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section. (3) Each report shall state in respect of the year to which the report relates. (a) the number of requests made to each public authority: (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked; (c) the number of appeals referred to the

		Commissioners for review, the nature of the complaints and the outcome of the appeals: (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act; (e) the amount of charges collected by each public authorities to administer and implement the spirit and intention of this Act; (f) any facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act; (g) recommendations for reform, including recommendations in respect of particular public authorities. For the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law or any other matter relevant to operationalising the right to access information of this Act during that year and cause a copy of the report to be laid before the end of each year, prepare a summary report on the implementation of this Act during that year and cause a copy of the report to be laid before the Parliament, drawing on the information Commissioners for each State. 5. If it appears to any Chief Information Commissioner that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with provisions or spirit of the Act, s/be may give to the authority a recommendation specifying the steps which ought in his/her opinion to be taken for promoting such cenformity	
56	Does not exist in the present Act.	16B (1) The Government must, to the extent that financial and other resources are available: (a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Notification 23. (1) The Central Government may, to the extent of availability of financial and other resources. (a) develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights	

- and of how to exercise the rights contemplated in this Act:
- (b) encourage public authorities to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities.
- (d) train information officers of public authorities and/or produce relevant training materials for use by authorities themselves.
- (2) The Government must, within 18 months of this Act coming into force, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.
- (3) The Government must, if necessary, update and publish the guide at regular intervals. The guide must, without limiting the generality of subsection (2), include a description of-
 - (a) the objects of this Act,
 - (b) the postal and street address, phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority as appointed under sub section (1) of section 5
 - (c) the manner and form of a request for access to a information of a public authority;
 - (d) the assistance available from and the duties of Public Information-Officers of a public authority in terms of this Act;

- contemplated under this Act:
- (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and
- (d) train Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves
- (2) The Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.
- (3) The Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include-
 - (a) the objects of this Act;
 - (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority—appointed under subsection (1) of section 5;
 - (c) the manner and the form in which request for access to an information shall be made to a public authority;
- (d) the assistance available from and the duties of the Public Information Officers of a public authority under this Act;
- (e) the assistance available from the Commission:
- (f) all remedies in law available regarding an act



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		(e) the assistance available from the	or failure to act in respect of a right or duty	
		Information Commissioners in	conferred or imposed by this Act including the	
ŀ		terms of this Act;	manner of filing an appeal to the	
		(f) all remedies in law available	Commission;	
		regarding an act or failure to act in	(g) the provisions providing for the voluntary	
1		respect of a right or duty conferred	disclosure of categories of records in	-
		or imposed by this Act, including	accordance with section 4:	
		the manner of lodging an appeal	(h) the notices regarding fees to be paid in	
		with the appellate authorities/	relation to requests for access to an	
į		Chief/State/ Information	information: and	
		Commissioners and a court against	(i) any additional regulations of circulars made or	
		a decision by the Public	issued in relation to obtaining access to an	
Ì		Information Officer of a public	information in accordance with this Act.	
ļ		authority;	(4) The Government must, if necessary, update and	
		(g) the provisions providing for the	publish the guidelines at regular intervals.	
		voluntary disclosure of categories		
1		of records in accordance with		_
		section 4;	·	5
1		(h) the notices regarding fees to be		ş
		paid in relation to requests for		3
}		access; and		
		(i) any additional regulations or		i
		circulars relevant to obtaining		
		access to information in		
1		accordance with this Act.		
		(4) The Government must, if necessary, update and		
		publish the guide at regular intervals.		
57	17 (1) The Central Government may by	17. (1) The Union Government may by notification	24 (1) The Central Government may, by notification in	
	notification in the Official Gazette, make rules to	in the Official Gazette, make rules to carry out the	the Official Gazette, make rules to carry out the	
	carry out the provisions of this Act.	provisions of this Act.	provisions of this Act.	
	(2) In particular, and without prejudice to the	(2) In particular, and without prejudice to the generality	(2) In particular, and without prejudice to the	
	generality of the foregoing power, such rules may	of the foregoing power, such rules may provide for all or	generality of the foregoing power, such rules may	
	provide for all or any of the following matters.	any of the following matters, namely:-	provide for all or any of the following matters.	
	namely:-		namely:-	
		(a) intervals at which matters referred to in sub-clauses		
	(a) intervals at which matters referred to in sub-	(i) to (vi) of clause (b) of section 4 shall be published;	(a) intervals at which matters referred to in sub-	
	clauses (i) to (vi) of clause (b) of section 4 shall be	(b) The fee payable under sub-section (1) of section 7;	clauses (i) to (xvii) of clause (b) of sub-section (1)	
	published;	(c) the authority before whom an appeal may be	of section 4 shall be published:	
	(b) The free payable under sub-section (1) of	preferred under sub-section (1) of section 12;	(b) the cost of the medium or print cost price of the	
	section 7:	(d) any other matter which is required to be, or may be,	materials to be disseminated under sub-section (4)	

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	(c) the authority before whom an appeal may be preferred under sub-section (1) of section 12; (d) any other matter which is required to be, or may be, prescribed		of section 4: (c) the fee payable under sub-section (1) of section 6; (d) the fee payable under sub-sections (1) and (5) of section 7: (e) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section(7) of section 13; (f) the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16, and (g) any other matter which is required to be, or may be, prescribed.
58	18 (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the loregoing power, such rules may provide for all or any of the following matters, namely: (a) the fee payable under sub-section (1) of section 7; (b) the authority before whom an appeal may be preferred under sub-section (1) of section 12; (c) any other matter which is required to be, or may be, presoribed: Provided that initially the rules shall be made by the Central Government by notification in the Official Gazette	in the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality	

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50	19. (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the previsions of this Act (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: (a) the fee payable under sub-section (1) of section 7: (b) the authority before whom an appeal may be preterred under sub-section (1) of section 12: (c) any other matter which is required to be, or may be, prescribed.	in the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: (a) the fee payable under sub-section (1) of section 7: (b) the authority before whom an appeal may be preferred under sub-section (1) of section 12: (c) any other matter which is required to be, or may	the Official Gazette, make rules to carry out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters.
60.	20. (f) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be: so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	20. (1) Every rule made by the Union Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.	26. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule
61.	20(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.	20(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.	

		necessary or expedient for removal of the		removal of the difficulty:	
		difficulty.	Provided that no such order shall be made after the expiry		
		Provided that no such order shall be made after the	of a period of two years from the date of the	Provided that no such order shall be made after the	
		expiry of a period of two years from the date of the	commencement of this Act.	expiry of a period of two years from the date of the	
		commencement of this Act.	(2) Every order made under this section shall, as soon as	commencement of this Act.	
		(2) Every order made under this section shall, as	may be after it is made, be laid before each Houses of		
		soon as may be after it is made, be laid before each	Parliament.	(2) Every order made under this section shall, as soon	
		Houses of Parliament.		as may be after it is made, be faid before each House of	
			1	Parliament.	
	63.	Docs not exist in the present Act.	Does not exist in the Bill.	28. The Freedom of Information Act, 2002 is hereby	
		*		repealed.	
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			,		

(1) If any difficulty arises in giving effect to the

provisions of this Act, the Union Government may, by

order publised in the Official Gazette, make such

provisions not inconsistent with the provisions of this Act

as appear to it to be necessary or expedient for removal of

27. (1) If any difficulty arises in giving effect to the

provisions of this Act, the Central Government may, by

order published in the Official Gazette, make such

provisions not inconsistent with the provisions of this

Act as appear to it to be necessary or expedient for

(1) If any difficulty arises in giving effect | 21.

to the provisions of this Act, the Central Government may, by order publised in the Official

Gazette, make such provisions not inconsistent

with the provisions of this Act as appear to it to be

64.	Does not exist in the present Act.	Does not exist in the Bill.	THE FIRST SCHEDULE [See sub-section (3) of section 13]
		•	Form of oath or affirmation to be made by the Information Commissioner or the Deputy Information Commissioner
			"I

65	THE SCHEDULE	THE SCHEDULE	THE SECOND SCREDULE	
	(See section 16)	(See section 16 (1))	(See section 21)	
	INTELLIGENCE AND SECURITY	INTELLIGENCE AND SECURITY ORGANISATIONS	INTELLIGENCE AND SECURITY	
	ORGANISATIONS ESTABLISHED BY THE	ESTABLISHED BY THE CENTRAL GOVERNMENT.	ORGANISATIONS ESTABLISHED BY THE	
	CENTRAL GOVERNMENT.		CENTRAL GOVERNMENT	
	1 Research and Analysis Wing of the Cabinet	1. Intelligence Bureau.	1 Intelligence Bureau	
ļ	Secretariat.	2. Research and Analysis Wing of the Cabinet	2. Research and Analysis Wing of the Cabinet	
[2 Directorate of Revenue Intelligence.	Secretariat.	Secretariat.	
	3. Central Economic Intelligence Bureau.	3 Directorate of Revenue Intelligence	3. Directorate of Revenue Intelligence	
	4. Directorate of Enforcement.	4 Central Economic Intelligence Bureau	4. Central Economic Intelligence Bureau.	
ļ	5 Narcotics Control Bureau.	5 Directorate of Enforcement.	5. Directorate of Enforcement	
	6. Aviation Research Centre.	6. Narcoties Control Bureau.	6 Narcotics Control Bureau.	
ļ	7 Special Frontier Force.	7. Aviation Research Centre.	7. Aviation Research Centre	
ĺ	8. Border Security Force.	8. Special Frontier Force.	8. Special Frontier Force.	
	9. Central Reserve Police Force.	9. Border Security Force.	9. Border Security Force	
	10. Indo Tibetan Border Police	10. Central Reserve Police Force	10. Central Reserve Police Force.	
ĺ	11. Central Industrial Security Force.	11 Indo Tibetan Border Police.	11. Indo Tibetan Border Police	
	12 National Security Guards.	Central Industrial Security Force.	12. Central Industrial Security Force	
	Assam Rifles.	13. National Security Guards.	13. National Security Guards	
	14. Special Service Bureau.	14. Assam Rifles	14 Assam Rifles.	
İ	15. Special Branch (CID), Andaman and Nicobar.	15. Special Service Bureau.	15. Special Service Bureau.	
	16. The Crime Branch-CID CB. Dadra and	Special Branch (CID), Andaman and Nicobar.	16. Special Branch (CID), Andaman and Nicobai	
1	Nagar Ḥaveli	17. The Crime Branch-CID, - CB, Dadra and Nagar	17. The Crime Branch-CID CB. Dadra and Nagar	
ļ	17. Directorate of Vigilance including Anti	Haveli.	Haveli.	
	Corruption Branch, National Capital Territory	18. Directorate of Vigilance including Anti Corruption	18. Special Branch, Lakshadweep Police.	
- 1	of Delhi.	Branch, National Capital Territory of Delhi.		
	19. Special Branch, Lakshadweep Police.	19. Special Branch, Lakshadweep Police.		

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No. R.S. 6.7 2004-1581.

Dated the 12th Lebruary, 2005

OFFICE MEMORANDUM

Sur - Department Related Parliamentary Standing Committee on Personnel Public Grievances, Law and Justice - examination of the Right to Information Bill. 2004.

The underagned is directed to forward herewith a copy each of the Memoranda $\infty_0 = 0.65 \, \text{y}$ subnamed by the experts/organisations on various provisions of the Right to $\frac{1}{1000} \, \text{matter} \, \text{coll} \, \text{fill} \, \, 2004 \, \text{which is currently under examination by the Committee.}$

This is the sound Public Grievances and Pension as therefore according to the device control of the Grievance in English & 25 in finish on the theoretic control of the Committee A specimen proformal for sending this information is enclosed.

 $\tau_{\rm the}$ Committee will take up clause-by-clause consideration on the 16^{40} Lebruary. $\tau_{\rm the}$

Received hoday

(SURINDER KUMAR WATTS)
DEPUTY SECRETARY

Tel. (23034262(C))

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E-mail: Matter Cat. 1 32

and the control of line in the language and Penarota and Secretary to the Government of India)

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1997 - 1998 anded for information and necessary action to Ship 1 Jacob, John See en Abustar of Personnel, Public Grievances and Pensions, North Block, New Delb

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(SURINDER KUMAR WATTS) DEPUTY SECRETARY

Part-1: COMMENTS AND SUGGESTIONS ON THE BILL

- 	<u>organization/aidividual</u>	Comments/Suggestions Response of Goyt.	
	THE BILL	LISSUES THAT ARE NOT COVERED BY	
<u> 11. 70.</u>	Nanc of organization/individual	Comments/Suggestions Response of Govt.	

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Detailed Analysis of the Indian Right to Information Bill 2004 &

Recommendations For Amendments

In a government, where all the agents of the public must be responsible for their conduct there can be but few secrets. The people, have a right to know every public act, everything that is done in a public way, by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

Justice K.K. Malhew, Supreme Court of India.



Submitted by the

Commonwealth Human Rights Initiative February 2005

For more information, please contact:

Mrs Maga Chiruwala, Director OR.

Movemente in Isayak and Metalaina and agreement Co Cooldy Nove Right to Information Programme

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SUMMARY OF RECOMMENDATIONS - CLAUSE BY CLAUSE

At this stage, CHRI has not made any recommendations about whether the RTI Bill can and/or should cover both State and Central public authorities. CHRI may submit an additional note on this topic shortly

RTI Bill	Summary Recommendation	Detailed analysis
s.2(c)	Amend the definition of "Government" to ensure that it is consistent with the definition of "public authority in s.2(g)	
s.2(k)	Amend the definition of "third parties" to EXCLUDE public authorities	Para 28
s.2(g), s 2(j), s.3	Broaden the right to information to allow access to information held by private bodies— ideally wherever access is needed "for the exercise or protection of any right", but at least "where the functions of the body are of a public nature; where the body provides services under a contract with a public authority, where the body is owned, controlled or receives aid directly or indirectly from the Government; or where the body's office bearers are appointed by the Government"	Para 4
5 3	Broaden the right to information beyond "citizens" only – ideally allow access by all people, but at least by permanent residents of India and/or anyone who is currently living in India	Para 1-3
٤ 4	Include an additional provision requiring the suo moto publication of all contracts entered into by public authorities	Para 25
s 4(1)(h)	Amond ss.(xvi) to require the publication of the names and contact details of all appellate authorities under s.16(1) and the Information Commission	Para 18
s 7(5)	Amend to clarify that any fees which are imposed must be reasonable and shall not exceed the actual cost of copying the information	Para 30
s.7(7A)	Insert a new clause allowing fees to be waived if their imposition would cause financial hardship or if it is in the public interest	Para 31
s.7(8)	Amend so that the rejection notice required to be sent contains the same information required under s.10(2) in respect of partial rejections	Para 32
s Brigar	Amend ss.(i) to require that disclosure would "cause serious harm" not just 'prejudicially affect" the relevant interests	
s 8(1)(d)	Amend to require that disclosure would "cause serious harm"	
s 8(1)(f)	Delete this section, because this type of information is already protected by s.8(1)(a)(i)	
s 8(1)(i)	Delete this section as all sensitive information should already be protected by the remaining exemptions. Alternatively, tighten the provision to protect only against harm that could be caused by "premature disclosure of Cabinet documents".	Para 13
5.8(3)	Amend this section to require that a public authority "must" not "may" allow access to information if in the public interest	Para 16
5.8(4)	Remove the words "subject to the provisions of clauses (a) and (i) of sub-section (1)" and remove the proviso that all decisions of the Government are final	Para 14
5 13(2)	Amond to start counting the time for making third party representations from the date the notice is "sent" not the date of receipt of the notice by the third party	Para 28
S 12(4)	Tighten the wording to clarify that the information Commission is autonomous & independent but that Deputy Information Commissioners are subject to legal directions from the Information Commissioner	Рата 20
\$ 12(5)	Haborate upon the criteria for the Information Commissioner and his/her Deputies to resure at a minimum that they are committed to transparency and accountability in	

,		
<u> </u>	Government, are not tainted in any way by allegations of corruption or criminality, are respected by civil society and have the expertise to do the job	
s 12(7)	Amend to ensure that the Information Commission's autonomy is not impeded, by replacing the words "with the previous approval of the Central Government" with "at his/her discretion if his/her budget permits"	Para 21
s 12(8)	Amend to ensure that the Information Commission's autonomy is not impeded by replacing the words "as may be specified by the Central Government" with "as may be specified by the Information Commissioner"	Para 21
s 15(1)	Clarify that the Information Commissioner can hear appeals where an applicant has received no response to an appeal under s 16(1)	Para 22
< 15(2)	Amend to permit the Information Commissioner to initiate his/her own investigations in relation to any matter, whether or not he/she has received a specific complaint, eg. persistent cases of departmental non-compliance	Para 23
-	Insert a heading prior to s 16 titled "Appeals"	
rs 16(1)	Amend to require appeals to be sent to the Head of the Public Authority, who can then delegate this power as appropriate. This body should be called the "Appellate Authority"	Paras 17- 18
	Insert an additional clause clarifying that where the appellate authority does not make an order in time, that will be considered a deemed refusal which can be appealed to the Information Commission	Para 22
s 16(4)	Amend to make explicitly subject to s 16(6)	Para 28
s 16(10)	To ensure the Information Commission's autonomy is not impeded, amend to clarify that the Commission will be responsible for prescribing its own rules of procedure	Para 21
s.17	Make it an offence punishable by a personal fine of at least Rs 2000 or imprisonment to male fide deny a request for information, knowingly give incorrect, misleading or incomplete information; destroy information subject to a request; obstruct the activities of a Public Information Officer, any Information Commission or the courts; or refuse to accept an application for information	Para 6(a)
5 17	Make it an offence to fail to supply information sought in time, without reasonable cause, with a personal penalty of Rs 250 payable for each day's delay	Para 6(b)
s 17	Require that where a penalty is imposed an officer shall also be liable to appropriate disciplinary action under the service rules applicable to him	Para 7
s 17	Require that where an official or authority fails to comply with a notice of any appeals body, the appeals body may certify in writing to a count that the official or authority has failed to comply with that notice, following which the court may inquire into the matter and deal with the officer or authority as if they had committed a contempt of court	Para 8
s 17	Include departmental penalties of a minimum of Rs 10,000 for persistent non-compliance with the law	Para 9
: - s 17	Reiterate that the appellate authority and Information Commission are empowered to impose all penalties available under the law	Para 10
s.20	Delete on the basis that it is both unconstitutional an inconsistent with the right to appear to the Fligh Court offered by \$16/41).	Para 24
(21/1)	Delete the blanket exemption for intelligence and security agencies. At the least require the release of information from these organisations where the information pertains to allegations of human rights violations.	
. 5.111(2)	Remove the power to add agencies to the list in the Schedule. At the least, include criteria to guide the use of the power in s.11(2) to prescribe additional agencies	Para 12
s 22(2)(f)	Delete this provision – see the recommendation in relation to s 16(10) above	



DETAILED ANALYSIS OF THE RTI BILL 2004

Extend the coverage and scope of the law

Do not restrict the law to "Citizens"

- The RTI Bill currently permits only citizens to utilize the law to access information. This is a flawed approach in practice. This could have major implications as many of the poorest of the poor in India may not have the necessary documentation to PROVE their citizenship. This requirement could easily be abused by resistant bureaucrais to refuse to accept applications. Furthermore, in a country which has such a large population of long-term refugees and permanent residents none of whom have citizenship papers this requirement will work to deny the right to information to key sections of the community.
- 2 Good international practice supports the extension of the Act to allow all persons access to information under the law whether citizens residents or non-citizens (such as asylum seekers). This approach has been followed in a number of jurisdictions, including the United States and Sweden, the two countries with the oldest access laws. This change may require the inclusion in s.2 of a definition of "person".
- 3 Alternatively, if the Government considers this formulation too broad, consideration could be given to following the example of Canada which allows access to information to citizens AND "permanent residents" (s.4(1), Access to Information Act 1982) or New Zealand which allows requests to be made by citizens, permanent residents or any "person who is in New Zealand" (s.12(1)(c), Official Information Act 1982). This latter formulation is particularly useful because it removes the need for proof of residence documents from applicants, while still limiting access only to people in India

Allow access to information held by "private bodies"

- Section 2(j) and s.3 should be amended to extend the scope of the Bill to cover information held by private bodies, at least where the information is necessary for the exercise or protection of a right. Private bodies are increasingly exerting significant influence on public policy. Furthermore, as noted above. India has witnessed increasing outsourcing of important government functions and is likely to continue to see further privatisation of important services as part of its economic development strategy. In this context, it is unacceptable that these bodies, which have such a huge effect on the rights of the public, should be exempted from public scrutiny simply because of their private status.
 - South Africals. 50 Information held by or under the control of a private body where access to that information is necessary for the exercise or protection of any right. [NB, if this formulation is too broad, consideration could be given to limiting the application of the law to private bodies over a certain size (determine according to turnover or employee numbers)
 - India (FOI Act 2002) s.2(f) Any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government
 - Jamaicu's 5(3) Bodies which provide services of a public nature which are essential to the welfare of society can be covered by the Act by Order.
 - Maharashra s 2(6) Any body which receives any aid directly or indirectly by the Government and shall include the bodies whose composition and administration are predominantly controlled by the Government or the functions of such body are of public nature or interest or on which office hearter are appointed by the Government.
 - United Kingdom's 5(1). Bodies which appear to exercise functions of a public nature, or are
 providing any service whose provision is a function of an authority under a contract made with that
 public authority can be covered, by Order of the Secretary of State



Strengthen the penalties provisions

Include personal penalties for a broader range of offences.

- The Bill is seriously weakened by the fact that only a very limited offences and penalties provision was included in the draft tabled in Parliament. Specifically identifying a comprehensive list of offences and then including appropriate sanctions is essential to ensuring timely disclosure in jurisdictions where the bureaucracy is unused to hurrying at the request of public.
- 6. There are two types of offences which should be included:
 - (a) Offences which penalise officers who deliberately attempt to circumvent, ignore or undermine the law. These offences are common in almost all access laws around the world. Bureaucrats should not be permitted to willfully flout the law.

Where it is found in appeal that any Public Information Officer has -

- (i) Mala fide denied a request for information;
- (ii) Knowingly given incorrect or misleading information,
- (III) Knowingly given wrong or incomplete information,
- (iv) Destroyed information subject to a request,
- (v) Obstructed the activities of a Public Information Officer, any Information Commission or the courts, or
- (vi) Refused to accept an application for information without reasonable cause, commits an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand imprisonment of up to two years or both
- (b) Offences which penalise officers for poor performance of their duties.

 Where any Public Information Officer has, without any reasonable cause, failed to supply the

unformation sought, within the period specified under section X, the appellate authority.

Information Commissioner and/or the courts shall impose a penalty of rupees two hundred fifty which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.

- 7. In addition to personal penalties, the Bill should also require that where a penalty is imposed on any officer under the Bill, "the officer shall also be liable to appropriate disciplinary action under the service rules applicable to him"
- In the same way as the UK law penalises non-compliant officers, the Bill should also require that where an official 'fails to comply with a notice of any appeals body, the appeals body may certify in writing to a court that the official has failed to comply with that notice, following which the court may inquire into the malter and deal with the authority as if it had committed a contempt of court."

Include departmental penalties for persistent non-compliance

In order to ensure that public authorities properly implement the law, they too should be liable for sanction for non-compliance. Thus, an additional provision should be included in the Bill to penalise public authorities for persistent non-compliance with the law. A fine could be imposed for example, where a public authority fails to implement the suo moto disclosure provisions in a timely manner, does not appoint PIOs or appellate authorities, consistently fails to process applications promptly and is found on appeal to consistently misapply the provisions of the law to withhold information. The minimum fine should be sufficiently large to act as a deterrent

Empower the Appellate Authorities and the Information Commission to impose penalties

10. The Bill currently only empowers the information Commissioner to authorise a Government official to file a complaint against a PIO for persistent non-compliance. This is an unnecessarily cumbersome process and effectively makes the information Commissioner a toothless tiger, as it cannot sanction defaulting officers itself. To ensure that penalties are able to be quickly and effectively used to punish and deter bac behaviour both the Appellate Authority under s.16(1) and the Information Commission should be given the power to sanction non-compliant officers.



Remove all blanket exemptions and tighten the remaining provisions

Remove the blanket exemption for intelligence and security agencies

- The complete exemption for certain security and intelligence agencies from the scope of the Bill via section 21 undermines the purported commitment made to maximum disclosure and minimum exemptions in principle. In practice, it is unnecessary to fully exempt these bodies because any genuinely sensitive information they hold will be protected by the exemptions in section 8(1)(a)(i) (which protects against disclosures which may prejudicially affect the sovereignty and integrity of India or security), section 8(1)(g) (which protects against disclosure which would endanger a person's safety or identify an informant) and section 8(1)(h) (which protects against disclosures which would impede an investigation or apprehension or prosecution of offenders)
- 12 Section 21 should be deleted in its entirety. If this position is not accepted however, then at the very least the recommendation of the NAC should be accepted so information pertaining to allegations of human rights violations should not be excluded under s.21. Additionally, s.21(2) should be amended to include criteria to guide the use of power to prescribe additional bodies which are excluded from the law. Otherwise, this provision could be abused to exempt an ever-growing number of bodies.

Remove the blanket exemption Cabinet documents

13. Section 8(1)(i) should be deleted because best practice maintains that it is improper to provide exemptions for entire classes of information. While *some* information in *some* Cabinet papers may be sensitive – and on that basis, will be covered by one of the other exemption provisions in the Act – it is not the case that *all* Cabinet papers are *always* sensitive. Furthermore, because there is no guidance in the Act as to what constitutes a "Cabinet paper" for the purpose of this clause, the provision could easily be abused; the Government could simply send politically sensitive documents to Cabinet to deliberately protect them against disclosure.

Ensure the release of ALL information after a suitable passage of time

- 14. Section 8(4) purports to operate as a blanket *disclosure* provision. It is common in right to information laws to include such a clause. The intent of such provisions is to ensure the compulsory declassification/release of all government documents whether or not they were at one time considered sensitive on the basis that after a certain period of time has passed, all occuments are accepted as no longer being sufficiently sensitive to warrant non-disclosure. Throughout the world, different time periods are used; it is positive that the current Bill purports to release information after 10 years. However, the intent of the provision is undermined by the fact that \$.8(4) still attempts to apply some of the exemption provisions even after the passage of 10 years! The provision should be amended to read:
 - Any information relating to any occurrence, event or matter which has taken place or
 occurred ten years before the date on which any request is made under section 6, shall be
 provided to the person making the request under that section
- 15 It is illogical and inappropriate that the decision of the Government as to the computation of the lapsed period under s 8(4) is final and unappealable. In accordance with s.15, all other decisions which affect non-disclosure are able to be appealed. Decisions under s.8(4) should be no different.

Eighten the public interest override.

The trace very positive that 0.863, allows for the disclosure of information in the public interest notwithstanding that it is covered by an exemption. However, to ensure that this power is not used discretionarily but instead is a required practice, the clause should be amended to read. "A public authority SPALL notwithstanding the exemptions specified in sub-section (1), allow access to information if public interest in disclosure of the information outweighs the harm to the public authority."



Clarify and strengthen the appeals process

Make the Head of the Public Authority responsible for first appeals

- 17 Section 16(1) requires appeals against rejection notices to be sent to "the officer immediately superior to the PIO in the concerned Public Authority" for consideration, before being sent to the Information Commissioner. This provision is very basic and needs to be elaborated upon to ensure that there is sufficient clarity to enable effective implementation. Currently it is not clear how the public will identify who the appellate authority is because the hierarchy in public authorities often differs so that it will not always be easy to know who is superior to a PIO.
- 18 It would be more appropriate therefore if the appellate authority were simply stated to be, in all cases, the Head of the Public Authority and provisions were included to allow the Head to delegate this authority as necessary. Requesters could then simply address their appeal to the Head of the Public Authority, and the Public Authority upon receipt of the appeal could then forward it to the specific officer responsible for handling appeals. This would also ensure that a sufficiently senior person was responsible for dealing with appeals. Section 4(1)(b) should also be amended to require the suo moto disclosure of the names and contact details of appellate authorities as well as PIOs

Include more detailed qualification criteria for the Information Commissioner and Deputies

19 In addition to the requirements stated at s.12(5) and (6), the following criteria should be included in the law to ensure that Commissioners are all committed to transparency and accountability in government and have proper expertise to fill this role.

The person appointed as the Information Commissioner or a Deputy Information Commissioner shall -

- (a) he publicly regarded as a person of integrity and good repute who can make impartial judgments.
- (b) have a demonstrated commitment to good governance, transparency and accountability;
- (c) not have any criminal conviction or criminal charge pending and not have been a bankrupt;
- (d) have knowledge of the workings of Government.
- (e) be otherwise competent and capable of performing the duties of his or her office

Ensure appropriate autonomy for the Information Commission

- 20. It is positive that s.12(4) attempts to ensure that the Information Commissioner operates autonomously. However, the wording of the provision is ambiguous, because while it states that the Information Commissioner will be autonomous, it is not entirely clear whether the Deputy Information Commissioners are actually autonomous themselves and therefore are not subject to directions from the information Commission. This is not appropriate. The Information Commission should be designed so that the information Commission is autonomous from Government interference and is headed by the Information Commissioner, who is supported by Deputies who are subject to his/her direction. In the absence of this, Deputies could make inconsistent decisions and adopt varying processes for handling appeals, which could confuse the public. Section 12(4) should read.
 - (4) The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who may exercise all such powers and do all such acts and things under this law autonomously, without being subjected to directions by any other authority under this Act. The Commission shall have budgetary, operational and decision-making autonomy and be completely independent of the interference or direction of any other person or authority, other than the Courts.
 - (4A) The information Commissioner will be supported by the Deputy Information who will be under instrumentendence, direction and management, but will not be subject to directions by any other authority under this Act
- 21 i o ensure that the Information Commission can indeed operate autonomously from Government, the following clauses should be amended



- Section 12(7): The Information Commissioner should be empowered to set up other offices at his/her discretion if his/her budget permits, and not "subject to previous approval of the Central Government"
- Section 12(8) Deputy Information Commissioners shall perform their functions within such areas as may be specified by the Information Commissioner and not "as may be specified by the Central Government". This recognises clearly that the Information Commissioner is responsible for autonomously implementing his/her mandate, with the support of Deputies
- Section 16(10). Amend to clarify that the Information Commission will be responsible for
 prescribing its own rules of procedure. Otherwise the Commission's autonomy may be diluted
 via regulation at some later stage

Clarify that the Information Commission can hear appeals even where no order has been made 22. Noting the difficulty that has been encountered in some states in India where second appeal bodies have refused to hear cases where no order has been made by the first appeal body, s.15(1) and ss.16(1) and (2) should be amended to clarify that:

- Where the first appeal body under s.16(1) does not make an order within time, that will be deemed to be a decision of the appeal body for the purpose of second appeals; and
- The Information Commission can deal with appeals even where no order has been made by the first appeal body.

Empower the Information Commission to initiate its own investigations into non-compliance

23. Section 15(2) currently refers to the power of the Information Commission to initiate investigations even in the absence of a specific complaint by an aggrieved applicant. An additional provision should therefore be included replicating s.30(3) of the Canadian Access to Information Act 1982, which gives the Information Commission the power to initiate its own investigations. In practice, this provision is used to allow the Commission to investigate patterns of non-compliance, either across government or within a department and produce reports and recommendations for general improvements rather than in response to specific individual complaints. This is a very useful power and will be particularly useful in India in terms of enabling the Information Commission to take public authorities to task for persistent non-compliance with the law.

Remove the bar for appeals to the Courts

Section 20 of the Bill, which attempts to bar the jurisdiction of the Courts, needs to be deleted. The Supreme Court has held on numerous occasions that the right to information is a constitutionally entrenched fundamental right. Decisions made by bureaucrats in relation to a constitutional right must be amenable to challenge in a court of law. Such appeals fall within the original jurisdiction of the High Court and the Supreme Court under Articles 32, 139 and 226 of the Constitution. Additionally, section 16(11) of the Bill now expressly allows appeals from the Information Commissioner to the High Court

Extend the suo moto disclosure provisions

Require regular publication of all government contracts

25 It is very positive that s.4 requires suo moto disclosure by the bodies covered by the Act inowever, the list of topics which public bodies are required to proactively disclose should be extended to also require the publication of all contracts which public authorities enter into. This would serve immediately to reduce corruption in government rendering while also assisting the public to better stay apprised of what work is being undertaken in their area. The Delhi Government has already started proactively disclosing this kind of information on the internet Accordingly, a new clause could be inserted as s.4(1)(e):

Upon signing, public authorities must publish all contracts entered into, detailing at a minimum for each contract

- (i) The public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and/or terms of reference
- (ii) The amount.
- (iii) The name of the provider, contractor or individual to whom the contract has been granted, and
- (iv) The periods within which the contract must be completed
- 26 As noted in paragraph 17 above, s.4(1)(b) should also be amended to require the suo moto disclosure of the names and contact details of all appellate authorities under s 16(1)

Clarify the request and response process

Clarify the third party provisions

- 27 Section 2(k) defines a third party to include a public authority. However, this is inappropriate considering that public authorities are currently defined only to cover government bodies. One government body should not be considered a third party in respect of another government body. They both comprise part of the second party to any application namely "the Government". As such, s.2(k) should be amended to remove the reference to public authorities.
- 28 To ensure that public authorities and third parties themselves cannot use the third party provisions to delay processing applications
 - Section 11(2) should be amended to require that third parties are allowed 10 days from the
 relevant notice is "sen!" by the public authority. Otherwise, both public authorities and third
 parties could delay decisions by arguing that notices were never received by the third party.
 Notably, the Rules under the Act could specify that notices are required to be sent by
 registered post, to ensure that third parties are properly served with notices;
 - Section 16(4) should be explicitly made subject to the time limits for disposing of appeals which are set out in s.16(6)

Tighten the fee provisions

- 29 Best practice requires that no fees should be imposed for accessing information, particularly government information, as costs should already be covered by public taxes. At the very least, no application fee should be levied because the initial work required to locate information and determine its sensitivity to disclosure is a routine and expected task of government. Section 6(1) should be amended accordingly.
- 30. If any fees are imposed, the law should specifically require that rates are set with a view to easuring that the costs imposed for access are not so high as to deter potential applicants. At the most, fees should be limited only to cost recovery, with no additional margin for profit, and a maximum limit should be imposed. Charges should only cover reproduction costs, not search or collation/compilation time. The following clause should be included in the Bill to address this problem with the current draft.
 - Any fees payable by the applicant shall be reasonable, shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice.
- Provision should be made to allow the waver of fees levied under the Bill where that is in the public interest, such as where a large group of people would beniefit from release/dissemination of the information or where the objectives of the law would otherwise be undermined (for example, because poor neople would be otherwise excluded from accessing important information). Such provisions are regularly included in access laws in recognition of the fact that



fees may prove a practical obstacle to access in some cases (see s.29(5) of the Australian Freedom of Information Act for example).

- (1) Upon receiving a notice under section X, an applicant may request the Public Information Officer to reduce and/or waive any fee imposed for access to information
- (2) Without limiting the matters the Public Information Officer may take into account in determining whether or not to reduce or not to impose the charge, the Public Information Officer must take into account.
 - (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant or to a person on whose behalf the application was made, and
 - (h) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public

Make rejection notices consistent

32 The Bill permits information to either be entirely or partially withheld. In each case, a written notice must be sent to the requester advising of the decision. However, currently the two provisions are not consistent – s.7(8) which applies in cases where an application is completely rejected requires a less helpful notice to be sent to the requester than s.10(2) which applies where an application is only partially rejected. Section 7(8) should be amended to require the same information to be provided to a requester as under s.10(2). Notably, this is also more appropriate in practice because it will enable bureaucrats to use the same format for all rejection notices (whether full or partial). This will assist with making administration of the law simpler.

Miller in the will

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(P.P.G, L & J), Diary No. 94

Sub: Right To Information.

Dear Shri E.M. Sudarsana Natchiappan,

As you are aware, the Right To Information bill has been tabled before the Parliament on December 23, 2004. It has now gone to the standing committee on Personnel. Public Grievances. Law & Justice of which you are an important member. I am sending this plea to you, since you have the eminence and conviction to move India towards a true participatory democracy by giving its Citizens the means to enforce their fundamental rights.

India has had a reasonable functional democracy for over five decades. However, an egalitarian, fair and honest governance structure has not evolved inspite of a democratic process being in place. Conceptually, a democratic system, should ensure good governance and accountability. On this count a lot of countries have certainly delivered better. In India, an egalitarian and fair ethos has not evolved,- the truth may actually be that there has been a decline on these counts. Civil Society did not enforce its rights for the common good. Most power structures,- in Government or outside,- become instruments to service the needs of particular sections. In this situation organisations,- whether Governmental, Private or of the NGO sector,have usually become vehicles for serving the interests of narrow sections. This leads to a predominance of 'public interest' action by the State as well as private organisations, being directed more to the benefit of the advantaged sections.

What then is the way out of this? The hope lies in using and reinforcing the majesty of the individual Citizen. If individual Citizens are empowered to ensure greater accountability and transparency in governance, it can bring about a major change. There has been no vehicle available for individual citizens to impact the governance structure. The Right To Information has shown promise of empowering Citizens to get accountability and act as an enforcer of good governance. . . Since Citizens operate as individuals, they do not have to make the compromises required in maintaining groups. Citizens, without any organisation, reinforce the principle of the Individual Citizen being at the centre of Democracy. Whenever, there are major issues which expose lack of governance in terms of proper public policy, or corruption, Citizens will come together on a particular issue. The strength of this Common good will build a stronger and more ethical Civil Society.

However, the Right To Information Bill tabled in the Parliament suffers from some fatal flaws. If these are not corrected, it will be a momentous opportunity missed by us and this Act will be one more instance of a great moment in History being missed because of a few drafting mistakes. I have been using the Right To Information Act fairly extensively in Maharashtra, and have tried to offer ten suggestions in the bill, which could help to transform India into a Nation which responds to its Citizen's aspirations. I am sure you will back these with your extremely effective efforts by persuading members of the Standing Committee and other Members of Parliament to make these changes. If you need any clarifications, I would be very glad to provide them.

.sharlesh gandhi Mumbai 9820027305

Mera Bharat Mahaan... Nahı Haı, Per Yeh Dosh Mera Hai.

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Amendments necessary for the Right To Information Act

The Right To Information Bill submitted in Parliament to substitute the earlier Freedom Of Information Act is as bad as the earlier Act. Given the fact that this can be an instrument to bring about true participatory democracy and give back the rights to Citizens to bring better transparency in Governance and reflect their aspirations, it is necessary to make a few changes in the Act, which are crucial to ensuring that the Nation does not miss this chance of bringing true Swaraj.

With this hope, I am sending this for your consideration, so that you give the Citizens a Right which can bring true Swaraj to India. It is essential that we give adequate importance to this task.

The following gives 10 points where corrections are required as per my perception. They would have to be read with the draft of the bill presented in Parliament on December 23.

1. Preamble : of the Act

Is very weak and wishy-washy, and does not even recognize that the Right To Information flows out of the fundamental right enshrined in the Constitution. At the very least, the Maharashtra RTI preamble can be copied which recognizes the majesty of the Right.

I quote the MRTI preamble:

"Am Act to make provisions for effectively securing and enforcing the right to information in the State of Maharashtra and for matters connected therewith or incidental thereto

WHEREAS the right to information has been recognized by the Supreme Court as a part of the fundamental right guaranteed to the citizens under Article 19 (1) of the Constitution of India;

and can pave the way for transparency, openness and accountability in governance of the affairs of the State and ensure effective participation of the people in a democratic society;"

or the one proposed by the NAC should be adopted.

Reason: The preamble is the spirit of the Act, and a strong preamble would convey the right message, whenever divergent opinions emerge, or when matters go to Courts.

2. Doubt:

Section 2 (5): of the Act says

- (v) the administrator appointed under article 239 of the Constitution; Does the word administrator appointed under Article 239, cover all administrative heads? Otherwise, there can be a serious loophole. In MRTI a Competent Authority and Public Authority are very well defined. Section 2 (3) of MRTI:
- (3) " Competent Authority " means, -
- (i) the Head of every Administrative Department of the State Government;
- (ii) the Administrative Heads of the public and other authorities in the State ;

Section 2 (6):

(6) " public authority " means any authority or body established or constituted by any Central or State law and includes any other body owned and controlled by the Government or which receives any aid directly or indirectly from the

Government and shall include the bodies whose composition administration are predominantly controlled by the Government or the functions of such body are of public nature or interest or on which office bearers are appointed by the Government.

Explanation -> For the purposes of this clause the expression "aid" shall include Government aid in the form of Government land at concessional rates or any other monetory concessions like exemption from tax, etc., by Government as specified by Government, from time to time;

Reason: If administrator appointed under article 239 does not mean all administrative heads, the Act will not be applicable.

3. Addition Required.

(c) "Government", in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government, State Government or a Union territory administration, means the Central Government;

Reasons: It is essential to make the Right To Information applicable to all State Governments as well. There is no issue of transgressing the rights of the States, since the Right To Information flows from the Fundamental Right of Citizens flowing out of Section 19 (1) of the Constitution. The Right To Information Act only codifies the fundamental right of Citizens. It cannot be contended that codifying a method to empower Citizens to enforce their fundamental right is violative of the Rights of States.

4. Addition required: in 3 (j) (i):

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes

(i) inspection of work, documents, records; or getting xerox copies of these Reason: If Xerox copies are not mentioned, authorities can insist that either Citizens must go and transcribe from the records, or insist on giving certified copies

(in BMC the cost of certified copies have been fixed earlier and varies from Rs.50 to Rs.75 per page; - it has been a battle to agree them to give Xerox copies at Rs. 0.50 per page. This has been possible only because it is the Act)

5. Correction

Section 7 (8) Where a request has been (deemed[3] to be) rejected under subsection 7 (1), the Public Information Officer shall communicate to the person making the request, --, .

The words 'deemed to be' must be deleted. If the PIO has not supplied information, - which is 'deemed rejection' - he is unlikely to communicate anything to the requisitioner of the information.

It appears to be a typographical error.

6. Addition of Words Appellate Authority or Information Commissioner, or deletion of the words Public information Officer.

8 (d) information, including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party:

Provided that such information may be disclosed, if the Fublic Information Officer, Appellate Authority or Information Commissioner is satisfied that a larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship:

Provided that such information may be disclosed, if the Public Information Officer, Appellate Authority or Information Commissioner is satisfied that a

Officer, Appellate Authority or Information Commissioner is satisfied that a larger public interest warrants the disclosure of such information

8 (I) Provided that such information may be disclosed, if the Public Information Officer or the appellate authority, or Information Commissioner as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Reason: As worded, the only Public Information Officer in Section 8 (d) & (e), has the authority to decide whether larger public interest warrants the disclosure of such information.

In 8 (I), only the PIO and the Appellate authority can decide if larger public interest warrants disclosure. Since specific designations are mentioned, it would mean that only they are authorized to take these decisions. In Maharashtra, we are facing a problem where a position of this nature is being taken by the Lokayukta.

7. Entire Clause to deleted or substituted

11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out weights in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

Reasons: This clause must be deleted, because it will be one single most powerful weapon to deny information. In most cases a third party, - public or private, - is involved and it will be to the mutual advantage of the PIO and such third party to claim that the information is confidential for the third party.

Instead a clause such as this can be acceptable:

11 (1) Where a Public Authority intends to disclose any information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, the Competent Authority may invite the third party to make submissions to make submissions of how its intellectual property or legitimate trade secret may be hurt by the disclosure. However, if the Competent Authority is satisfied that the larger Public interest warrants disclosure, it may do so.

- 8. Section 16 (3) & (4) should both be deleted Section 16 (3) Where an appeal is preferred against an order 'made by the Public Information Officer under section II to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order. SHOULD BE DELETED.
- &(4) If the decision of the Public Information Officer against which an appeal is preferred relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to that third party. 'Should Be Deleted.

Reasons: The reasons are a logical outcome of the reasons given in number 5 above. If the third party clause 11(1), (2) is to be removed, these clauses also must be removed.

- 9. Penalty clause must be mandatory on a per day basis and should be leviable by the first appellate authority and by the information Commissioner.
- 17. (1) Notwithstanding anything contained in the provisions of section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class.
- (2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

Reasons: Clause 17 makes a joke of the entire RTI, and must be changed. Penalty for not giving information or rejecting an application for information, or providing wrong or misleading without reasonable cause must be attract penalty personally on the Public Information Officer on a per day basis of Rs. 250 per day. Without the penalty clause which is enforceable and mandatory, RTI will be one more waste of people's money and efforts and a complete nullification of the aspirations of Citizens for

empowerment to enforce the rule of law. Suggested wording for Section 17:

- 17 (1) Any Public information Officer who has without reasonable cause, not performed his duty of providing information by:
 - (i) Not replying within the period mandated under Section 7 of the Act.
 - (ii) Rejecting an application without sufficient cause covered under the exclusions provided in the Act, or provided false or misleading information,

Shall be penalized by the Authority while disposing the first appeal as per Section 16 (1). If the Authority who disposes the first appeal has failed to impose the penalty, the Authority deciding the second appeal under Section 16 (2) shall impose the penalty.

(2) The penalty referred to under Section 17 (1) or (2) shall be Rs. 250 per day of the delay, until he supplies the correct information to the applicant. For calculating the penalty to be imposed on the Public Information Officer, the time from which he was supposed to supply the information under Section 7 (1) read with Section 6(2) shall be excluded, as also the days between

informing the Applicant of the fees to be payable to the day on which the applicant pays the requisite fees. This will be recovered from the salary of the Public Information Officer or as or if no salary is drawn, as an arrears of land revenue.

- (3)(1) If the Information commissioner feels that a Public Information Commissioner is persistently recalcitrant in doing his duty under the Act, he may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class.
- (11) Any Public Information Officer who is in default under sub-section (i) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

10. Addition of words:

(11) the fee payable under sub-section (1) of section 6; which shall not exceed Rs. 20

(iii) the fee payable under sub-section (1) of section 7; which shall not exceed Rs. 30.

Reasons: It is absolutely necessary to limit the fees for the application. The officials responsible for levying the fees are often known to have made complete misuse of the slightest chance of discretion to make the fees so exorbitant as to be unaffordable to most Citizens. Actually, the information belongs to the Citizens, and hence should be available free if it is not provided Suo Moto, as it indeed should be.

shailesh gandhi Mumbai 9820027305 shailesh2@vsnl.com

/atts

From: "MKSS Rajasthan" <mkssrajasthan@gmail.com>

To: <watts@sansad.nic.in>

Cc; <arunaroy@gmail.com>; <nikhildey@gmail.com>: "jean dreze" <dreze@econdse.org>

Sent: Friday, February 11, 2005 5:27 PM

Attach: Memoranda for Shri Surinder Kumar Watts - Aruna Roy, Nikhil Dey, Jean Dreze.doc, Shanti

Bhushan Opinion-100.jpg

Subject: Written Submission Before the Parliamentary Committee on RTI Bill 2004

COMMENTS ON THE RIGHT TO INFORMATION BILL OF 2004 WRITTEN SUBMISSION BEFORE THE PARLIAMENTARY COMMITTEE

From Aruna Roy. Nikhil Dey, Jean Dreze

The Right to Information Bill of 2004 (RTI Bill) is based on the recommendations made to the government by the National Advisory Council (NAC) However, the bill, as it currently exists, departs in many significant ways from the draft recommended by the NAC. Some of the most important differences are highlighted below

- 1. The first major departure from the NAC draft Act is the fact that the RTI Bill has been restricted to authorities and bodies under the Central government alone. This is the result of the restrictive effect of the definition of Public Authority read with the definition of Government contained in Section 2 of the bill. This has apparently been prompted by concerns regarding the simultaneous existence of the State Right To Information Acts along with the Central Act and some doubt about whether the Central Act can legislate for authorities under the States. Apart from the fact that the FOI Act of 2002 was applicable to all public authorities whether they were under the Central or State Governments or even local authorities, enclosed is a clear and authoritative legal opinion of the Former Law Minister, Mr. Shanti Bhushan which points out how and why the Central Act can apply to all Public Authorities and how the Central and State Acts can coexist by providing in the Central Act that the rights created under the Central Act would be in addition and not in derogation to the rights created by the State Acts. Therefore, it is imperative that the RTI Bill be amended so as to cover the Central and State Governments as also the local bodies
- 2. The second major difference between the NAC draft and the RTI Bill is the Penalty provision contained in Section 17 of the RTI Bill. There is no reason why the Information Commissioners should not be able to levy a monetary penalty against the Information officers for unexplained failure to provide correct and complete information requested within the period mandated by the Act Section 17 of the Bill could be amended thus

"17. Penalties

2/12/2005

- (* Subject to sub-section (3), where any Public Information Officer, or any other officer who holds or is responsible for holding the information, as the case may be, has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the Information Commissioner shall, on appeal, impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer or the other officer, as the case may be, a reasonable opportunity of being heard
- (2) Where it is found in appeal that any Public Information Officer has -
- (i) Refused to receive an application for information;
- (ii) Mala fide denied a request for information,
- (iii) Knowingly given incorrect or misleading information,
- (iv) Knowingly given wrong or incomplete information,
- (v) Destroyed information subject to a request; or
- (vi) Obstructed the activities of a Public Information Officer, any Information Commission or the courts; he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand, and imprisonment of up to five years, or both.
- (3) Where the Commission comes to the prima facie conclusion that an offence under subsection (2) has been committed, the Commission shall through an officer of the Commission file charges against the offending Officer in a court of competent jurisdiction.
- 3 The third crucial issue is that of reasonable fees. It is essential that the RTI Bill should make clear, as did the NAC draft, that the fees provided must be reasonable and must not exceed the actual cost of providing the information.
- 4. In addition the Bill placed in Parliament does not include the following important NAC recommendations mentioned below which also need to be considered by the Government:
- a. The NAC draft had a proviso for intelligence and security agencies otherwise exempted from the Act, being required to provide information on allegations of corruption and human rights violations. The RTI Bill 2004 has removed the obligation of these agencies to provide information in relation to human rights violations.
- b. The NAC draft gave all "persons" the right to information, this has been replaced by restricting the right to "citizens" alone.
- c. The NAC draft gave citizens the right to access all documents after a 25 year period even those covered by the exemption clauses. The RTI Bill 2004 has deleted this provision

The above amendments in the Bill are absolutely essential if the Bill is to protect the fundamental rights of the people under Article 19(1)(a) of the Constitution and ensure transparency in the functioning of the government which is the stated object of the Bill

2/12/2005



COMMENTS ON THE RIGHT TO INFORMATION BILL OF 2004 WRITTEN SUBMISSION BEFORE THE PARLIAMENTARY COMMITTEE

Aruna Roy Nikhil Dey Jean Dreze

The Right to Information Bill of 2004 (RTI Bill) is based on the recommendations made to the government by the National Advisory Council (NAC). However, the bill, as it currently exists, departs in many significant ways from the draft recommended by the NAC. Some of the most important differences are highlighted below.

- The first major departure from the NAC draft Act is the fact that the RTI Bill has been restricted to authorities and bodies under the Central government alone. This is the result of the restrictive effect of the definition of Public Authority read with the definition of Government contained in Section 2 of the bill. This has apparently been prompted by concerns regarding the simultaneous existence of the State Right To Information Acts along with the Central Act and some doubt about whether the Central Act can legislate for authorities under the States. Apart from the fact that the FOI Act of 2002 was applicable to all public authorities whether they were under the Central or State Governments or even local authorities, enclosed is a clear and authoritative legal opinion of the Former Law Minister. Mr. Shanti Bhushan which points out how and why the Central Act can apply to all Public Authorities and how the Central and State Acts can coexist by providing in the Central Act that the rights created under the Central Act would be in addition and not in derogation to the rights created by the State Acts. Therefore, it is imperative that the RTI Bill be amended so as to cover the Central and State Governments as also the local bodies.
- 2. The second major difference between the NAC draft and the RTI Bill is the Penalty provision contained in Section 17 of the RTI Bill. There is no reason why the Information Commissioners should not be able to levy a monetary penalty against the Information officers for unexplained failure to provide correct and complete information requested within the period mandated by the Act. Section 17 of the Bill could be amended thus:

"17. Penalties

- (1) Subject to sub-section (3), where any Public Information Officer, or any other officer who holds or is responsible for holding the information, as the case may be, has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the Information Commissioner shall, on appeal, impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer or the other officer, as the case may be, a reasonable opportunity of being heard
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- (v) Destroyed information subject to a request; or
- (vi) Obstructed the activities of a Public Information Officer, any Information Commission or the courts;

he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand, and imprisonment of up to five years, or both.

(3) Where the Commission comes to the prime face conclusion that an offence under subsection (2) has been committed, the Commission shall through an officer of the Commission file charges against the offending Officer in a court of competent jurisdiction.

SHANTI BRUSHAN Senior advocate

Rei: B-16, Sector 14, Norda Ph. V1-4512811, 4512652 Mobile 98110-30310 OH: C-67 Sector 14, Noida Ph. 91-4512523, 4512695

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OPINION REGARDING THE CONSTITUTIONAL POSITION OF THE CENTRAL RIGHT TO INFORMATION ACT

The Central Right to Information Bill introduced in Parliament seeks to restrict the right only to offices and authorities under the Central Government. I am informed that this has been done on account of some confusion about whether the Central Act can legislate for the offices and authorities under the State Governments and Local Authorities and it so what would be the Status of the Right of Information Acts already existing in several states. The National Campaign for People's Right to Information has sought my opinion of the correct legal position on these issues. My opinion is as follows:

Though the Supreme Court has repeatedly declared that the Citizens have a fundamental night (part of Article 1911) (a) of the Constitution) to be informed on all aspects of povernment functioning, there is no specific legislative entry in the State List, Union List or the Concurrent List dealing with the right to information. Therefore legislation or the right to information can be enacted by Parliament under the residuary entry 97 of the Union List, Such a legislation can certainly be for the entire country including offices and authorities under the States or local bodies. However this does not mean that the State legislations on this which have already been enacted would become void or unconstitutional. In my opinion each State has the incidental power to provide for the right to information on all subjects which are in the State list or the concurrent list, since they have legislative competence on those subjects. This would be particularly so since this right has already been declared to be a fundamental right by the Supreme Court.

However the Constitution provides that when there is State legislation as well as Central legislation on a subject, the Central legislation overrides the State Legislation to the extent that there is a conflict between them. Thus if the Central legislation is more liberal regarding access to information than any State law, it would override the State law. However it would be open for the Central Legislation to provide that the rights conferred by it would be in addition to add not in decognition to the rights conferred by the State legislations on the subject. That would allow people to seek information on State subjects under the State law as well if that is more liberal than the Central Law on access to information.

Thus, in my view, it would be perfectly legal and justified for the Central Law to be

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applicable to all public authorities in India, whether they are under the Centre, States or Local bodies. It would also be legal and justified for the Central Law to provide that the right provided by the Central Act would be in addition to and not derogation of the right provided by any State law. In that case both the Central and State Acts could subsist and complement each other.

watts

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Cc:

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"Jean Dreze" <dreze@econdse.org>

Sent:

Friday, February 11, 2005 8:40 PM

Attach:

NCPRI note for the Parliament.doc, shekharsingh.vcf

Subject:

NCPRI Submission

Attention Mr Pathak

I am enclosing our written submission.

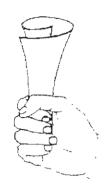
Shekhar Singh

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2/12/2005

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सूचना के जन अधिकार का राष्ट्रीय अभियान

NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

C 17A Munirka, New Delhi 110 067, India Telefax: +91 (0)11 26178048, Phone 26168759, email. ncpri.india@gmail.com

NCPRI SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE RIGHT TO INFORMATION BILL 2004

February 11, 2005

Any good right to information (RTI) law typically has: a) maximum disclosure and minimum exemptions; b) independent appeal mechanisms; c) penalties for failure to provide information, and d) wide and easy accessibility to the public. The draft RTI Act recommended by the National Advisory Council to the Government of India had made an attempt to ensure that all these four aspects were adequately covered.

- 1. In terms of <u>maximum disclosure and minimum exemptions</u>, the following issues need consideration.
 - i. Intelligence and Security Agencies

Though the NAC draft allowed blanket exclusion of all security and intelligence agencies, something that we do not support, it at least had some exceptions. It stated that "information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause" (section 16). The RTI Bill 2004 has removed the obligation of these agencies to provide information in relation to human rights violations and threats to the life and liberty of persons, though it has retained this proviso in cases of corruption. Surely the violation of human rights and the threat to life and liberty is no less worrisome than corruption, and requires no less public scrutiny.

If the primary purpose of this Act, as stated in the Statement on Objects and Reasons, is to make the Government accountable, then it seems strange that there is a feeling in the Government that security and intelligence agencies should be exempt vis-à-vis human rights issues. Recent events in Manipur and elsewhere have highlighted this as a major demand of the people. Moreover, there are enough exemptions in Section 8 to ensure that no security issues would be compromised.

Working Committee. Ajit Bhattacliarjea, Anjali Bhardwaj, Aruna Roy, Arvind Kejriwal, Bharat Dogra, Harsh Mander, Maja Daruwala, Nikhil Dey, Prabhash Joshi, Prakash Kardaley, Prashant Bhushan, Shailesh Gandhi, Suman Sahai, Vishaish Uppal. Shekhar Singh (Convenor)



NCPRI Submission to the Parliamentary Standing Committee

Therefore the proviso to Sub section 1 of Section 11 may be amended to read as follows:

Provided, that information of a third party can only be withheld if it falls within one of the exclusionary clauses of Section 8. Provided further that such information must be disclosed if the Public Interest in disclosure outweighs in importance any possible harm or injury to the interests of such third Party.

2. In terms of <u>independent appeal mechanisms</u>, the following issues need consideration.

i. Information Commission

The RTI Bill 2004 envisages an Information Commission comprising an Information Commissioner of the status of a secretary to the Government of India, and Deputy Information Commissioners at the level of additional or joint secretaries (13(6)). However, the Information Commission is not only the appellate authorities for the executive, judiciary and the legislature but would also be responsible to oversee the implementation of the RTI law. In order to effectively perform these roles, the Information Commissioner (and the Deputy Information Commissioners) must be of an appropriate stature. It is, therefore, suggested that the Commission comprise of a Chief Information Commissioner and Information Commissioners, at the level of the Chief Election Commissioner and Election Commissioners.

ii. Deputy Information Commissioners

The RTl Bill 2004 limits the Deputy Information Commissioners to 10 in number only (12(2)b). This is not enough to cover the country. The NAC had envisaged covering all States and the Center. It was thought that there should be at least one Information Commissioner for each State. In any case, it would be impractical for people from alleover the country, especially poor people to travel all the way to Delhi or to the limited regional offices to pursue their appeals. There should be an Information Commissioners at State and, where required, even at the sub-state level to provide effective oversight.

3. In terms of penalties, the following issues need consideration.

i. The Process of Imposition of Penalties

The NAC draft envisaged that the Information Commissioner's would also be competent to impose penalties on officials who violated the provisions of the RTI Act. However, the RTI Bill 2004 has drastically altered and weakened the penalty clause by laying down that the Commission "may authorize any officer of the Central Government to file a complaint before a Judicial Magistrate of First Class" (17(1)). In other words, the Commission and the

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NCPRI Submission to the Parliamentary Standing Committee

4. In terms of easy accessibility, the following issues need consideration.

i. Reasonable Fees

In the NAC draft, Section 7 (5) (b) read as "Any fees payable by the applicant shall be reasonable, and shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice." Unfortunately, this clause has been dropped in the RTI Bill of 2004, thereby opening the doors to governments prescribing exorbitant and prohibitive fees that would deter the common person. Even in Delhi, initially the application fees for getting a commercial document was fixed at Rs. 500 per application. When residents of poor resettlement colonies wanted copies of contracts to ensure that the work contracted for their area was actually being carried out, they found it impossible to raise the fees.

The importance of having a reasonable fees that is not more than the cost price is highlighted by another example from Delhi where the application fee for an RTI application is Rs 25 with an additional photocopying charge of Rs 5 per page. Effectively, it would cost a BPL or Antodayya ration card holder Rs 30 to access one page of information regarding whether ration was drawn in their name. This is the equivalent of 15 kgs of wheat! Surely, this is not 'reasonable' fees.

ii. Person vs. Citizen

The NAC draft gave all "persons" the right to information. However, the RTI Bill of 2004 restricts the right to information to "citizens" alone. Apart from the fact that this is not fair, as fundamental rights are available to all, citizen's and non-citizen's and the right to information is a fundamental right, it also puts the onus on the applicant to first prove that he or she is a citizen. A very large proportion of the people of India do not have proof of citizenship and this requirement, if it persists, would not only severely restrict the access of many people to this right, but it would also become another way of harassing the common person. In fact, in a recent case in the Delhi High Court, filed by the ration shop owners who did not want to give information under the Delhi Right to Information Act, they argued that information could not be given to the applicant because the applicant was not an Indian citizen but an NGO!.

By creating this distinction, the government may in fact be merely adding to its problems. Surely any information shared with a citizen will be in the public domain. Moreover, there is nothing to stop the non-citizen from accessing this information via an Indian citizen. Therefore, it would appear that this distinction between persons and citizens adds additional burdens on



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Parliament House/Annexe, New Delhi-110001.

No.RS.6/7/2004-P&L

Dated the 15th February, 2005

OFFICE MEMORANDUM

SUBJECT:- Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice - examination of the Right to Information Bill, 2004.

76.V 33(E)

The undersigned is directed to forward herewith a copy each of the Memoranda Nos 6 to 11 submitted by the experts/organisations on various provisions of the Right to Information Bill, 2004 which, is currently under examination by the Committee

Dir(EIL)

The Ministry of Personnel, Public Grievances and Pensions are, therefore, requested to farnish the views/comments (50 copies in English & 25 in Hindi) on the above-referred Memoranda to this Secretariat, latest by 24th February, 2005 for consideration by the Committee. A specimen proforma for sending this information is enclosed

USCREM

3. The Committee will take up clause-by-clause consideration on the $\Gamma^{\rm t}$ March, 2005.

(SURINDER KUMAR WA ITS) DEPUTY SECRETARY

Tel. :23034262(O)

E-mail: watts/a sansad.nic.in

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The Ministry of Personnel, Public Grievances and Pensions, (Shing), N. Liwari, Secretary to the Government of India)

North Block, New Delhi

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watts

From:

"prakash kardaley" <pmk1504@yahoo.co.in>

To:

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Sent:

Saturday, February 12, 2005 5:11 PM Submission by Prakash Kardaley.doc

Attach: Subject:

prakash kardaley's submission

prakash kardaley's submission attached

to stay in touch with the right to information movement in india, pl visit http://in groups yahoo.com/group/HumJanenge to subscribe mail to:
HumJanenge-subscribe@yahoogroups.co.in

Yahoo! India Matrimony: Find your life partner online.

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To

The Hon Chairman and Hon Members, Parliamentary Committee on Personnel, Public Grievances, Law and Justice

Sub: My submission on the Right to Information Bill tabled in the Parliament

My salutations,

I am a journalist for the past 35 years, working with The Indian Express, presently as its Senior Editor (Express Initiatives). I have been deeply involved both in my professional as my individual capacity in the promotion of the Right to Movement in Maharashtra for the past three years and have associated myself with torch-bearers of the movement like Shri Annaji Hazare and Mrs Aruna Roy.

I have been involved as a constituent of the movement in the efforts to have the unnotified and toothless Freedom of Information (FoI) Act of the Government of India replaced by an effective and people friendly legislation. I am glad that the National Advisory Council (NAC) considered the Maharashtra Right to Information Act, 2002, as the model draft for preparing its proposals for an overhaul of the FoI Act. I am also glad that the DoPT retained most of the NAC proposals in its draft. It is also generally encouraging that the Department of Law retained many of the provisions while preparing the present Bill before the Parliament, but deleted, in its wisdom, some of the vital provisions, which, if allowed to be cleared would make the Act a mere ornamental additional to the statute book with no empowerment granted to the citizens in their endeavour to seek transparency and accountability in governance.

I list below some the serious deficiencies in the Bill and urge the honourable members to remove these in the interest of a true democracy and the ongoing efforts for administrative reforms.

I. A powerless Information Commission:

I need not tell this august assembly of seasoned Parliamentarians and jurists that without an independent appellate mechanism a law on people's right to know would be totally effective, given the mindset of the bureaucracy, conditioned by two centuries of the regime of excessive secrecy. The National Advisory Council, therefore, recommended setting up of a high-power Information Commission with a mandate to penalise the defaulter.

One finds in the Bill this highly progressive provision grossly diluted. Not only has the provision empowering the Commission to impose penalty has been removed, but the As against this, the Bill before the Parliament merely recommends:

- 17. (1) Notwithstanding anything contained in the provisions of section 20. where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class.
- (2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

(emphasis added)

The law on right to know is being enforced by all democracies in the world and most have now provided for an independent appellate mechanism with adequate powers and the mandata. You will, I am absolutely confident, will agree that it would be a mockery of the principle of transparency if India, the world's greatest democracy, has such a retrograde provision in its own law.

Ironically, a penalty clause is not new to India. Several states in their local laws have provided for imposition of penalty on defaulting Public Information Officers by the appellate mechanism itself.

Maharashtra Right to Information Act, 2002, which was considered a model by the NAC while formulating its recommendations provides that the Appellate authority can impose fine of Rs. 250 /- per day for delay and up to Rs. 2000 /- on a Public Information Officer for knowingly giving incorrect/misleading info/wrong/incomplete information. Apart from this, the defaulting PIO is also subject to disciplinary proceedings.

The provision reads:

12. Penalty

- (1) Where any Public Information Officer has without any reasonable cause, failed to supply the information sought, within the period specified under sub-section (2) of section 6, the appellate authority may, in appeal impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.
- (2) Where it is found in appeal that any Public Information Officer has knowingly given,

Against this background, the recommendation of the NAC is the most fair and just and needs to be restored.

III. (Unreasonable protection to a so-called 'third party':

The Bill provides that a 'third party' be consulted before disclosing information if that has been passed on to the government by that (so-called) third party and which the (so-called) third party considers it to be 'confidential'

The relevant provision in the Bill reads:

Quote

11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out weights in importance any possible harm or injury to the interests of such third party.

- (2) Where a notice is served by the Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.
- (3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision.

(emphasis added)

Unquote

Definition of the 'third party' has been given as:

while dealing with the government and its public bodies against the people themselves?

Certain matters by their very nature may not be made public in the larger public interest. These are adequately incorporated in the exemption clause. Can i claim privacy privilege over and above these reasonable exemptions?

I do not see any justification in making the Public Information Officers consult any so-called 'third party' on whether or not any exemption clause applies to the information concerning them. The Public Information Officer, who is a responsible and senior functionary of the government, is ab initio competent to decide this without any such consultation. If the Bill presumes that he is not competent, he is then not competent to be the people's trustee as well, and must be asked to quit.

Going by our experience of the use of the state laws on transparency, we find that over 90 per cent of the information legitimately sought in public interest deals with one or the other 'so-called' third party.

if the 'third party' status and the right to privacy while dealing with the people through their government is granted to me, good bye to transparency, the government does not function in a void. It deals with people and if everyone of those claim the third party privilege, let us pack up the transparency law.

By retailing this provision in the Bill, we will be creating a piece of legislation that is destined to remain merely in the statute book and never function as the true empowerment of the common man in an open democracy.

If such a provision exists, unfortunately in our conditions: A) The PIO will not communicate precisely – that is precisely asking for which exemption clause the 'third party' thinks applies in his/her case, In all probability it will be a general question not referring to Section 8, "B) the Third party will use this to delay information, even by manipulation (who will ascertain exactly when the 'third party' has recd the PIO's communication, C) multiplicity of third party in a simple requisition will aggravate the delay further and make the decision more complicated, D) the PIO – a middle level Indian bureaucrat will invariably err on the safer side – reject the requisition and let the requisitioner take the pains of explaining his position to the AA or the IC.

I call upon the honourable members to visualise the pangs a common user of the Act. if it comes in force with this provision, is going to suffer while eliciting information. I am sure you will appreciate our anxiety.

Written Submission before the Parliamentary Compittee on the Right To Information Bill of 7894, by Angela Rungad on behalf of the Right to Information Movement in Meghalaya

Since 2001, there has been a subing and ever growing people's movement for a Right to Information Act in the state of hoghalays. After these many years of struggle we are yet to see our state government processing this demand of the people. The government even resisted notifying the Freedom of Information Act in the state. This movement along with similar movements for people's right to information across the country has been part of deliberations for amending of the FOI and was hopeful after the Right to Information Bill of 2004 (RTI Bill) based on the recommendations made to the government by the National Advisory Council (NAC) was placed before parliament. However, the bill in the present form with the many significant dilutions and omissions disappointed all of us, but we continue to hold out hope that modifications can still be made to strengthen the RTI bill such that it is powerful and useful in both letter and spirit.

We fully endorse and support the submissions placed by the NCPRI and activists such as Aruna Roy, Jean Droze and Nikhil Dey before you, and would also like to further religiate on two points in the context of India's "North East".

We feel that the RTI Bill cannot be restricted to authorities and bodies under the Central government alone. As mentioned earlier there has been a consistent and robust movement in the state of Meghalaya, yet our experience has shown that State governments will not legislate for such an important act as this even after immense public pressure. In the context of "North East" India where the democratic systems are pushed to the mergins and easily abused, the people may never realize their fundamental right to know. Many states virtually have no opposition to raise people's concerns and push for their demands and entrenched interests will ensure that governance is carried out in utmost secrecy with minimum public and social auditing, accountability and transparency.

Hence the definition of Public Authority should be amended to include the state governments and local authorities such as those that fall under the definition of Traditional Institutions. In our practical day to day living our struggles involve to a greater extent machineries of the state government including village local authorities receiving public funds. Hence the RTI bill should ensure that states and local bodies are covered. Otherwise, like in Magnalaya, many states will fail to enact an RTI Act or will ensure that people's right to information is made inaffective by weak Acts.

Moreover, our experience in Meghalaya has shown that where there is an almost trop-existent opposition, democracy is time and again subverted, where laws are amended, many times against public unterest, through ordinances. There is every possibility that when people begin to effectively use their right to know in a manner that may pose as a challenge to vested interests, the law may be amended to prote it these vested interests rather than to enhance people's rights

1. 1.

We feel that the RTI bill of 2004 should cover the states, and that should a state act exist or come into existence later, people should have a right to choose the act under which they wish to seek for information.

Blanker exemptions from the RTI act for intelligence and security agencies and any others in the interest of the country's sovereignty and integrity is unacceptable. Moreover, exemptions in the latest bill with regard to intelligence and security agencies being required to provide information on allegations of human rights violations will most greatly affect the states of the "North East". The assumption underlying the removal of Human Rights Violation from the purview of the act is worrying. It assumes that the Indian Security apparatus in defence of sovereignty of this democratic country will invariably abuse Human Rights. A democratic polity should condemn such abuses and not shield the perpetrators.

In the heavily militarized environment of the "North Fast", where intelligence and security agencies impinge on the life of the people on an everyday basis, giving a blunket exemption is a cause for concern. We have the example of Maripur, where if an Act was in existence which empowered the citizans to seek information about the Manorama Case, the situation would not have come to such a head. The feelings of resemment in the region regarding abuse of people's right run deep and is a reality. Moreover, counter insurgency apparatus creates parallel economies and 'secret state' which remain outside the purview of democratic control and accountability. In the supposedly 'disturbed' areas of the North east', vested interests can always use this blanker exemption to claim immunity from information seckers, making even the provision in the existing bill meaningless.

A compromise for this outright denial for the right to know in situations that supposedly directed national integrity should be a willingness to declassify such secretive information after a certain period of time so that people will always have access to the truth. Removal of this clause that was part of the NAC draft needs to be reconsidered.

A move from the pan of the government to enable people to have some semblance of control over their lives and situations by allowing them the right to know irrespective of the situation will help ease fesentments and feelings of alternation.

Angela Rangad

On behalf of the Right to Information Movement in Meghalaya



Memorandum No 2

watts

From:

"J S WAD" <mjsw@vsnl.net>

To:

<watts@sansad.nic.in>

Sent:

Monday, February 14, 2005 4:53 PM

Subject:

Right to information bill 2004

Shri. Pathak.

With reference to your letter dated 8.2.2005 my comment on the Right to Information bill 2004 is as follows.

Section 17 of the Act may be deleted. Instead the provisions of Section 16(8) (c) should themselves provide for the fine for the delayed and false or misleading information furnished by the Public Information. The said provision should also make it clear that the fine imposed would be addition to the disciplinary action that may be taken against the officer.

Regards,

Justice P. B. Sawant

16

Commit se Section (P.F.S. L.E. J)

Esternish (P.F.S. L.E. J)

Diary No. 7333

Memarond Lm No 9

watts

From:

"Rakhi Sehgal" <rakhi.sehgal@gmail.com>

To:

<watts@sansad.nic.in>

Cc:

"MKSS GMAIL" <mkssrajasthan@gmail.com>; "shekhar singh" <shekharsingh@gmail.com>

Sent:

Sunday, February 13, 2005 7:27 AM

Attach:

Prashant Bhushan Opinion page1.jpg; Prashant Bhushan Opinion page2.jpg

Subject:

Attn: Mr. Pathak - 4

Dear Mr. Pathak:

Mr Prashant Bhushan's opinion is attached, to be inserted on page 29 of the package.

Thank you, Rakhi

Rakhi Sehgal Secretary, NCPRI

Mobile: (011) 2056 2973

Email: rakhi.sehgal@gmail.com

National Campaign for People's Right to Information (NCPRI)

CI7A Munirka New Delhi - 110 067 Telefax: 2616 8759

Email: nepri.mdia@gmail.com

Website. http://www.righttomformationinfo

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fknida - 201/30] Naida- 101/30 Supreme Court

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Opinion on the communication from the Central government to the State governments asking theo to repeal their State Right to Information Acts

After the enactment of the Freedom of Information Actiny Perfament, and Contral government has written to the state governments asking them to repeat too. State Acts in view of the Central legislation. This has been done even before the Central Act has been notified to bring it into effect. It has presumably been done on the basis that the Central Activity of the Attentage Central that a Right to Information Act can only be enacted order the residuary or tex of the Union list, on which only Parliament has legislative competence.

The correct legal position, in my opinion, on this is as follows: --

Though there is no specific entry in the seventh schedule dealing with Right to Information, it would be open to any legislative body to provide for access to information on any subject on which it has legislative competence. This is implicit in as legislative competence on that subject. Thus, if the State can exact legislation on law and order, it can also provide in that legislation for Right to Information on all matters covered by that legislation. This Right to Information can be provided by the State legislation either by an appropriate clause in each piece of legislation, or even by a separate quantiment orathe. Fight to information. The State legislation can however give this right only an respect of the subjects on which it has legislative competence, which means subjects covered by the State list or the concurrent list.

On the other hand, Parliament can make use of the residuary entry to chact a comprehensive law on Right to information, if therefore, there is also a Central legislation on right to information, it will override the State legislation to the electrical legislation on right to information, it will override the State legislation in the Central legislation. Thus not instance if the State Act provides for access to official notings and the Central Act says that information on official noting, may be restricted and someone scale information to regardine notings on a subject relating to education which is a subject in the constitution that, in my opinion, this would not be a case where there's a conflict between the Central Act and the State Act unless the Central act repressly probabits the relative of miformation on official notings. If the Central act meter, say characterisation in ordination the State Act says that there shall be such a right to information the State Act can shall be used to access that information in areas covered as the State List.

2/14/2005

or the Concurrent list. If however, the Centain Vet says that the release of an organism regarding politigs will be positivated, the valuation feet an approximate from a constant conflict between the valuation Act in the Star Net. Similarly if the Star Act are askalor a penalty against an official veho willfully refer examplement which has of head to give, and the Central Act is alom on this again to State Act can be used to an consultance in penalty since there is no conflict. There are in fact any ways on the Central act of a Cambridge Communication and procedure. Cambridge where there are central as work is State togethere where there are central as work is State togethereous in such cases the State togethereous are applied in those States provided there is no conflict.

Thus, the enactment of the Central legislation (after it has been notified and not come and force), would only mean that the Lentral Act with exempts the State (a.s. if there is esplited between the two. However the State act will continue to apply to a converge by the State list as well as areas govered by the concurrent list, provided there is not confined with the Central legislation. There is not no necession for the repeat of the State Right to Information Acts even after the Central Las been against

However all of the above is writious president to the postgon that Right to Information is a fundamental right of chicens under Arm. In 1950 the Constitution at declarately the Supreme Court in cases, including the information regarding election candidates. Thus Jegally, each citizen has a right to seek information on all subjects from all governments, provided the disclosure of such information does not prejudice public interest in any way. In fact various exclosions in the Control Act and the State Acts can be challenged of this basis.

The State governments can therefore respond to the directive of the central government on the lands of the above legal position.

PRASPANT MHUSHANI

Landraut Bluehan

214

Committee Section
(P.P.B. L & J)
Da. 2. 15.2.65
Diary No. 2 24

Manuncial on No 10

watts

From:

"ramesh wasudeo" <rameshw@rediffmail.com>

To:

<watts@sansad.nic.in>

Sent:

Saturday, February 12, 2005 1:30 PM

Subject: suggestion central right to info rmation bill

Dear sir.

Future experiances are hardly predictable. I would therefore like to suggest as follows;

Provision may be made for effective removal of defficulties in functioning of the proposed Central Right To Information Act in terms of its aims and objectives, upon recommendation of NAC and / or Chief Commissioner of Information, through Government Resolution passed by the Union Cabinet, without having to go through lengthy parliamentary procedure for amendment process. Such provision may be applicable for a period of three years.

Dr Ramesh Wasudeo.

member (1) Maharashtra State Right to Information Council.

- (2) Maharashtra Chief minister's Monitoting Committee for MRTI.
- (3) Maharshtra Chief Secretary's Monitoring Committee for MRTI.

Member State anti corruption comittee.

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2/14/2005

Gommittee Section (P.P.G. L & J) Date (シュックシュ Diery No... ネラモ...

watts

From:

"pecuc bbsr" <pecuc@hotmail.com>

To:

<watts@sansad.nic.in>

Sent:

Monday, February 14, 2005 1:59 PM

Attach:

FOI- Rule Recommendation 30th Aug.doc

Subject:

Right to information bill recommendations

Dear Sir

Greetings from PECUC and Jana Adhikar Abhijan.

Pl.find herewith the recommendations for RTI Bill.

Regards

Ranjan Mohanty

Secretary, pecuc

& Convenor, Jana Adhikar Abhijan [a network of NGos, lawers, CBOs, accadimics etc.]

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Web: www.pecuc.org

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G /

Response to the Notification of the Draft Rules of FOI Act 2002 made on the website of the Ministry of Personnel, Public Grievances and Pension, Government of India inviting views/suggestions on the same by 31st August 2004 from the members of the public.

A consultation on 'Draft Rules under Freedom of Information Act-2002' was held on 29th August 2004 at Bhubaneswar, Orissa with participation of different civil society groups and networks, convened by Jana Adhikar Abhijan, unanimously arrived at the following views/suggestions on the above cited Draft Rules. It was decided to communicate the views/suggestions, so arrived at to the Ministry of Personnel, Public Grievances and Pension, Government of India for necessary action. It is further decided to build public opinion on the issue through massive campaign.

ON THE MANNER OF NOTIFICATION

1) No publicity through Newspapers and Television:

We welcome the very decision of the Government of India to invite though belatedly the views/suggestions of the members of public on the Draft Rules for Freedom of Information Act 2002, through the Notification made on the website of the Ministry of Personnel, Public Grievances and Pension. However, except a few enthusiasts of the Right to Information movement, no member of the public is yet aware of the said notification, because except through the medium of internet, it has not been advertised through in any newspaper, radio or television. Thus due to the extremely limited publicity given to the notification, its very purpose, that is, enabling the wider public to know and react to, has been defeated.

So we demand, the Ministry should publicize the Notification of the draft Rules again in all national and regional dailies, radio and television channels in different regional/local langues with Hind & English along with Internet to enable the common people across the country to be apprised about it and submit their views/suggestions thereon to the Government.

2) Short Time-gap given before the deadline for submission of public response:

The concerned Ministry, which took more than 18 months to bring out the one-page notification of the said draft rules, presumably on 14th August, without letting the wider public know about it, has allowed less than 18 days preceding the deadline i.e. 31st August 2004 for the members of public to submit their views/suggestions. It is not possible in view of this extremely limited time space for various interested individuals and civil society groups to hold consultations among them on such an important matter and formulate their views/suggestions arising there from for forwarding the same to the Ministry

So we demand, at least a time-gap of 3 months from the date of notification should be allowed for the feedback by the members of the public to the notification.

3) Notification of Draft Rules running opposite to the alternative Draft-law vis-a-vis the FOI Act 2004 accepted in principle by the 14 Aug. meeting of National Advisory Council.

The National Advisory Council of the UPA Government in its 2nd meeting held on 14th August 2004 chaired by Mrs. Sonial Gandhi had accepted in principle the alternative draft law entitled Rght to Information Act 2004 vis-à-vis the flaws-ridden FOI Act 2002 as proposed by its two members Mrs. Aruna Roy and Mr. Jean Dreze. But strangely enough, the Ministry of Personnel on the same day published the notification of draft rules, which don't reflect in any manner, and rather run counter to the commitment of the UPA Government as given under the Common Minimum Programme, "The Right to Information Act will be made more progressive, participatory and meaningful." This episode not only speaks of the lack of policy-level coordination between the Ministry of Personnel and the official think-tank of the present Government i.e. NAC, but also casts serious doubt on the very intention of the Government to carry out the CMP's mandate to bring about appropriate changes in the flawed FOI Act to make it more people-friendly.

So we demand, the Draft Rules be reframed in keeping with the alternative draft law entitled Right to Information Act 2004, as submitted by Mrs.Aruna Roy and Mr.Jean Dreze and accepted in principle by the 14 August meeting of NAC.

4) Consideration to be given to the suggestions for amendment to FOI Act proposed by organizations like NCPRI and CHRI

Civil society organizations like the National Campaign for People's Right to Information and Commonwealth Human Rights Initiative have been working on the subject over years and have submitted earlier their elaborate analyses and amendment of the Freedom of Information Act 2002 to the Government at various stages. The concerns of these expert bodies should be given due consideration by the Government for effecting changes in the Draft Rules in particular and for amendment of FOI Act 2002 in general.

ON THE PROVISIONS OF DRAFT RULES NOTIFIED

The provision of initial Deposit of Rs.50/- unwarranted under the Act 2002
The Section 6 of the FOI Act 2002 (Request for Obtaining Information), does not provide for any monetary deposit to be made along with the application seeking information; it simply says, "A person desirous of obtaining information shall make a request in writing or through electronic means, to the concerned Públic Information Officer specifying the particulars of the information sought by him:" The Section 4(1) of Draft Rules in our view have overstepped this clear provision mandating no application fees, by adding the need for a deposit of Rs.50/- to be made along with the application for information.

Now a practical problem would arise if the initial deposit of Rs.50/- as prescribed by the Dra Rules is made along with the Application. Suppose the PIO 'rejects the rquests for any of the reasons specified in Sections 8 and 9' of the FOI Act 2002, what would happen to the amound deposited? Shall the requestor forfeit it? Shall it be refunded to him? If so how and in how man days? The Draft Rules are absolutely silent about all these questions.

So we demand, for the Draft Rules to be brought into consonance with the letter and spiri of Section 6 of the FOI Act, for avoiding unnecessary administrative problems a aforementioned, and also for making the application process easy and free in people's interest, the Section 4(1) of the Draft Rules providing for an initial deposit of Rs.50/- to accompany the application should be scrapped altogether.

6) Principle of one-time payment by cash against the delivery of information along with the provision for issue of receipt by the PIO for both application submitted and payment made, to be followed.

Section 4 of the Draft Rules provides for 3-stage payment, first the deposit of Rs.50/- by a DD or Cheque to accompany the application, second the reproduction cost of the document at the rate of Rs.5/- per page by cash, and third towards the charge of floppy or disk, used if any, at the rate of Rs.50/- per piece by cash. Such a provision for multi-payment regime against a single request for information is not only inconvenient for the common people, but also cumbersome for the administration to handle. Again, the applicants seeking information, most of whom being not conversant with bank transactions should not be required to pay through DD or Cheque mandatory. The Draft Rules should provide for all payments to be made by cash in addition to DD or Cheque, if an applicant likes to pay through the latter. Moreover, the Draft Rules don't provide for a receipt of either the application seeking information or of the payment made by the applicant, as a result of which both the applicants and PIOs shall be placed in unnecessary difficulties.

So we demand, the Section 4 of the Draft Rules should provide for one-time payment in place of multi-stage payment, and that too by cash in addition to DD or Cheque towards the cost of production or reproduction of the information requested. The applicant shall make the one-time payment only when the information sought is made available to him. The said Draft Rules should provide for a compulsory issue of acknowledgement receipt by the PIO against both the citizen's application for information submitted to him and all monetary payment made to him.

7) Payment against the information supplied should not exceed the market rate production or reproduction cost of the material bearing information.

The rates of fees that the Section 4(1) of Draft Rules have suggested on all three counts are too exorbitant to ensure the fulfillment of the preambular promise of the FOI Act 2002. . 'to provide for freedom to every citizen to secure access to information under the control of public authorities'. The overwhelming majority of country's people poor and marginalized as they are, can't afford say, Rs.50/- just as a deposit fee to accompany the application seeking information, even when there be no guarantee that the information sought for would be at all available to him Similarly, he can't afford Rs.5/- towards the reproduction cost per page, whereas it is only 50 to

75 paise almost everywhere. Again, he can't afford Rs.50/- towards extra fee for a floppy or a disk, when its market rate is only Rs.12 to 15/-. Again, as a matter of fact, the market rate of say, photocopying or of a floppy/disk varies from place to place in the country. Moreover, some public authorities like a Corporation or a Society or a Trust may decide to supply the requested information at a subsidized cost in the public interest. Thus a statutory fixation of a uniform reproduction fee like Rs.5/- per page as proposed under the Draft Rules shall stand on the way of the public getting information at a cheaper rate.

So we demand, the Draft Rules in stead of specifying the amount to be charged on a head should be decided only the principle of minimum market rate on production or reproduction charges to be collected by the public authorities all over the country, and leave the matter to decide the specific amount thereof to the public authorities themselves.

8) Of the two appellate authorities, one should be outside the public authority
The FOI Act in its Section 12 (Appeals) provides for the aggrieved citizen, if he so desire, to go

for the first appeal against the decision of the PIO before an authority to be prescribed by the Rules. If still displeased with the result of this appeal, he can choose to lodge a second appeal against the decision of the first before the Central Government, State Government or Competent Authority as the case may be. It is just a common knowledge that the Secretary of a Ministry or of a Department, standing as he does at the apex of the bureaucratic echelon represents the Government for all legal and other purposes. The Act had declared him as the second and ultimate Appellate authority. Now strangely enough, the Draft Rules declare the same heads as the First Appellate Authority too. In plain terms, both the Act and Rules together compel one to appeal before the same authority whose decision he seeks to challenge. It is a classic case of legal absurdity par excellence? Such a provision of lumping two authorities under one head is simply unworkable. How could such an absurd provision make its way into the Draft Rules - out of gross oversight or otherwise- is a matter to be seriously enquired into by all concerned. Whatsoever be the reason, all appeals to be made by the aggrieved petitioner citizens under such a provision shall be rendered into fruitless and even farcical exercises, and the defaulting PIO shall never get penalized. As is well known, in course of the country-wide debate over the FOI Act 2002 a consensus had emerged among the RTI activists that the ultimate authority of appeal should be an outside body having adequate standing and power like the Vigilance Commission or Lokpal/Lokaykta as suggested by CHRI or a retired Judge acting as a Chief Information Commissioner as suggested by Mrs. Aruna Roy and her group.

So we demand, the provision of the Section 5 of the Draft Rules designating the first appellate authority to be the same as the second appellate authority provided for by the FOI Act under Section 12 (2) into one head should be abandoned. And keeping the general provision of the two-stage appeal of the Act in tact, the second and ultimate authority should be constituted outside the concerned public authority, preferably such as the existing Vigilance Commission or Lokpal/Lokayukta or a retired High court judge acting as the Chief Information Commissioner.

ADDITIONAL PROVISIONS TO BE MADE

9) Penalty provision for the defaulting PIOs to be added

Neither the FOI Act nor the Draft Rules has made any provision for penalising the PIOs whose allegedly undue decision or failure to provide the requested information within the deadline as per the provisions of the Act has aggrieved the citizen petitioner. As a result the Act and the Rules proposed there under render the whole legislation a toothless one. Under such legislation, the PIOs shall not feel impelled to deliver the requested information timely and appropriately, except where their vested interests induce them to do so. A consensus had emerged in course of the countrywide debate around right to information that the FOI Act should specify the penalty against a PIO found guilty of violation of the provisions of Act, in the shape of monetary fine for every day's delay beyond the stipulated deadline along with disciplinary action against him at departmental level.

So we demand, an additional provision of penalty against the defaulting PIOs should be added to the Draft Rules specifying say, Rs.250/- per a day's delay beyond the stipulated deadline as suggested by Mrs. Aruna Roy's alternative draft-law and disciplinary action like suspension and dismissal at the departmental level.

10) Reform of Civil Service Rules and Manual of Office Procedure:

The Objects and Reasons of FOI Act 2002 mention inter alia that a Working Group on Right to Information and Promotion of Open Governance constituted by the Government under the chairmanship of Shri H.D.Shourie had in their Report of 1997 recommended suitable amendments to the Civil Service (Conduct) Rules and the Manual of Office Procedure to bring them in harmony with the Freedom of Information legislation. Though the FOI Act 2002 has already been enacted and going to be enforced shortly, the promised amendments have not been effected yet. As is welknown, these existing instruments are heavily biased in favour of maintaining official secrecy and provide a slow, prolonged and uncertain manner of proceedings against the defaulting public servants. Though the Section 14 of FOI Act 2002 speaks of its overriding power over any other law or instrument created under any law, it is not clear what if not these very instruments sought to be overridden by the Act, shall guide the departmental proceedings against the PIOs violating the provisions of the FIO Act 2002, in absence of the suitable amendment to these instruments. With the existing service-related instruments continuing, it is absolutely certain that no defaulting PIO shall ever be punished and that too in a time-bound manner.

So we demand, the Draft Rules should have an additional provision to provide for amendment to all laws and instruments on service matters and office procedure so as to bring them in harmony with the FIO Act 2002 and especially to ensure that the defaulting PIOs are proceeded and disciplinary action taken against them in a time-bound manner.

11) Right to Information from Political Parties and MLAs/MPs/Ministers

As such there is no law at present under which a citizen is entitled to get information from Political Parties, MLAs/MPs and Ministers on demand. But the National Commission to Review the Working of the Constitution –2002 had recommended that they should remain transparent to the public in respect of their inner-party democracy and also income and expenditure.

As per the definition of public authority as provided under Section 2 (f) of FOI Act 2002, the aforementioned persons and organisations should be considered as such and liable to disclose the information held by them relating to the public interest to citizens as per the provisions of the Act.

So we demand, the political parties, MLAs/MPs/Ministers and such other public representatives should be mentioned under the category of public authorities under the Section 2(1) of FOI Act 2002.

12) Ultimate Appeal to the Court to be allowed:

The Section 15 of FOI Act 2002 (bar of jurisdiction of Courts) says that no appeal can be made to Courts against final decision of the appellate authorities as defined by the Act and Draft Rules. Such a provision seems to be unconstitutional, since the Constitution designates the High Courts as the seat of first appeal against the acts of omission or commission by any of the legislative and executive agencies of the State and then the Supreme Court as that of the last appeal for the said purpose.

So we demand, the Draft Rules of FOI Act-should remove the bar of jurisdiction to Courts as mentioned under Section 15 of the Act and reversely provide for High Courts and Supreme Court to act as the courts of further appeal against the decisions of the appellate authorities defined by the Act.

The Exemption grounds to be limited on the basis a public interest override

The FOI Act in its Section 8 (Exemptions from disclosures of Information) and in Section 9
(Grounds for refusal to access in certain cases) provides for a wide range of subjects and grounds, which can be stretched by way of a subjective interpretation by the concerned PIO to justify his denial of any and every information to an applicant. Again, the Section 16 of the Act (Act not to apply to certain organisations) excludes 19 nos. of Intelligence and Security Organisations listed under a Schedule from the purview of public access to information. But it is a known fact that the various agencies as would come under Sections 8 and 9 and the Scheduled Organisations as referred under Section 16 of the Act, though of critical importance to the integrity and security of the country are nevertheless not free from financial corruption and arbitrariness in policy making and implementation.

So we demand, the Draft Rules should provide that the exemption clauses as mentioned under Sections 8, 9 and 16 should be qualified with a strong public interest override, in the sense that the citizens shall have access to information about the exempted agencies, policies and personnel etc., so far the information relates to corruption and issues of public interest.

228

14) Oath of Secrecy to be abolished:

The Oath of Secrecy as it appears in the 3rd Schedule of the Constitution and binding on the Ministers at Center or in States at the time of assumption of the office, runs counter to the Objects and Reasons of the FOI Act 2002, which inter alia aims at promoting 'openness, transparency and accountability in administration'. There is no other democracy in the world, where the Constitution itself compels the country's people's representatives to swear in the name of God, 'not to communicate or reveal directly or indirectly to any person or persons any matter, which shall be brought under my consideration or shall be known to me as a Minister ... except as may be required for the due discharge of my duties as such Minister .' The NCRWC-2002 had also recommended the abolition of Oath of Secrecy and its replacement by an Oath of Transparency.

So we demand, the Objects and Reasons of the FOI Act 2002 should be so reworded as to incorporate the need for abolishing the Oath of Secrecy from the 3rd Schedule of the Constitution.

On behalf of the Participants of the Consultation

Ranjan Mohanty JANA ADHIKAR ABHIJAN

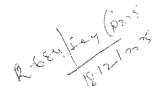
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Chitta Behera, Social Activist Chairperson of the Consultation



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Parliament House/Annexe, New Delhi-110001.

No.RS.67-2004-P&L

Dated the 17th Lebruary, 2005

OFFICE MEMORANDUM

SUBJECTS Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice - examination of the Right to Information Bill, 2004.

The undersigned is directed to forward herewith a copy each of the Memoranda > 12 + 14 submitted by the experts/organisations on various provisions of the Right to (45 min, as a 1991) 2002 which, is currently under examination by the Committee

the vimistry of Personnel. Public Grievances and Pensions are, therefore, requested to turnish the views/comments (50 copies in English & 25 in Hinde) on the above-referred Alemoranda to this Secretariat, latest by $24^{\rm th}$ February, 2005 for consideration by the Committee. A specimen proforma for sending this information is

The Committee will take up clause-by-clause consideration on the 1st March. 2005

(SURINDER KUMAR WATTS) DEPUTY SECRETARY

Tel.:23034262(O)

E-mail: watts a sansad.nic.m

the Hintory of Personnel, Public Grievances and Pensions. ish, 3.8 Invan. Secretary to the Government of India) South Block New Delhi.

Universal Dones U/s 128 TP Act 1882 through Declaratory Will Trues

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Estd. 13 April 1993



National Amnesty & Redemption Organisation International Trust®(NARO)

राष्ट्रीय मानवाधिकार एवं पुनरुद्धार संगठन अंतर्राष्ट्रीय ट्रस्ट

(Non Political, Interdepended, Non Government Organisation)

NARO-2005	(Recommendation)
-----------	------------------

11th February 2005

Ref. No.....

Date.....

Shri Surendra Kumar Vatts Dv. Secretary Rajaya Sabha Secretariat 007, Ground Floor, Parliament Annexe, New Delhi-110 001

Ref: Your advertisement to seek proposals and recommendations on the Bill 2004 "Rights to Information" from The Permanent Committee of Personnel, Public Grievance, Law and Justice relation.

Sub: Recommendations from National Amnesty & Redemption Organisation International Trust (NARO).

Sir,

With your due regard. I would like to draw your kind attention about above referred subject, and enclosing herewith copy of recommendations suggested by the Constitutional Assembly of National Amnesty & Redemption Organisation International Trust in the interest of nation and as well as the nationals.

You are therefore, requested to find same and send acknowledgement to this office. NARO shall feel pleasure to serve you always and thanking you.

For NARO International Trust

M-Railel. (Mrs. Mari Rajpal) Secretary

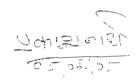
Encl: As above.

P.O. Box NO. 2613, Karol Bagh, New Delhi - 110 005

E-mail naro_hq@yahoo.com & narobullettin2003@yahoo.com En. 011 30967082 Elfax : 18018462418 Web Site www.geocities.com / harc_ha

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RCOMMENDATIONS

These recommendations are a part of letter No. NARO-05 (Parliament) presented in Rajya Sabha, New Delhi-110 001, Dated 8 January 2005 suggested by National Amnesty & Redemption Organisation International Trust (NARO), Post Office Box No. 2613, Karol Bagh, New Delhi-110 005. These recommendations are based on resolution, passed by Constitutional Assembly of National Amnesty & Redemption Organisation International Trust (NARO) in majority on 26 September 2004 in a meeting held was at A-12/A, Nanda Road, (First Floor) Adarsh Nagar, Delhi-110 033 accordingly. In brief, National Amnesty & Redemption Organisation International Trust (non government organisation), would like to submit these recommendations before Chairman and Members of Department-related Parliamentary Standing Committee in Parliament under proper surveillance of The President of India Government, and suggesting with due regard as hereunder:

That in present scenario, after freedom of India, the British Law and Orders still alive. No change in mentality of Government depended about non-government nationals due to Society Registration Act-1860, Civil Procedure of Code 1860, Indian Penal Code-1860, Police Manual-1861, Official Secrete Act-1923, Revenue Act, Hindu Law, Muslim Personal Law, Trust Act etc., etc. These are main cause of Slave Driving and victimization of the nationals in every part of the States in India by government depended, contempting in the courts and nobody is responsible for this act of the 'Devil of Inferno' due to lack of official responsibility individually in the Constitution of India. No deference in Past and Present India after freedom / independence. It was wrong at the very beginning before 1947, from the starting Regulating Act-1773.

Above mentioned Law and Procedure are repeating the stories of past history in every part of India same as British period on the name of independent India. Every national of the states has been affected by "Mental Infirmity Gene" and feel fear to open mouth against tyranny and atrocities. Otherwise he will be treated just like Sardar Bhagat Singh, Chandra Shekhar Azad or Bismil once again. Even freedom fighters are too helpless same as monkeys of Gandhi Ji with other aided NGOs, because they are also taking pearls like swine's from the government, in exchange of inactive behavior. It is also an important thing that these 'entire' acts are being treated as Presidential orders in Central Government and in the States these are using as Governor Orders in accordance article 77 and 166, to commit crime in government departments under shelter of politicians. Thus the nationals are being restrained and depriving to perform their fundamental duties as provided in article 19 & 51-A of Indian Constitution, and within Section 43 of Cr.P.C., because there is no soul in education, judicature and journalism. These machineries converting to the generation in unfortunate & unlucky nationals to rise crowed of unemployed and innocent criminals under the mask of missionaries. These acts are against the sense of duty and fundamental duties as fix in article 51-A the Constitution of India

, , , , _ _

Every national should be energetic and assiduous person, so that he make respect is atmosphere to increase value of the India in the world as a expert national root in is impossible without co-operation and reformation of educational institutions, so not re of judicature and journalism with present structure of Law and Orders in public in error and interest of the nation. To avail this great eminent and brillnant light of the god Shiva enable to every national, British slave driving Law and practice are making obstructions due to lack of official responsibilities in the Constitution in the system of present Democratic India.

British slave driving Law and practice making responsible only to the President in the nation, contempting in the courts and to the governor in the states for every legal or illegal work, although these activities are being perform in government or non-government by criminal minded officer and high-ups with co-operation greedy and selfish social workers (evils). When in addition government depended should be responsible personally for the crimes and anti-nationals activities departmentally, on the same track of article 75 (3) of Indian Constitution. It will raise value of the government in the nation and throughout the world.

That present Indian Penal Code of 1860 was made by British Government to control only those person's, who was emotionally and incidentally got involve in unlawful activities. There are so many sections of present I.P.C. giving illegal shelter to the Government and Public Servants only to spread terror of Government depended in the public communities on the name of Democracy. Though the Government bodies should be responsible legally to maintain Law and Orders in Public good always, but there are no effective sections in present LP.C. to make responsible by punishment, due to lack of official responsibility tyranny is raising day per day in every part of the states in India, and politicians are making fool to the nationals on the name of representative of the public. These sections are against the duties of Government and Public Servants: Section 116, 120-B, 137, 155, 166, 168, 169, 171-E, 176, 179, 182, 187, 190, 197, 201, 208, 211, 214, 217, 218, 219, 223, 225-A, 288, 294-A, 334, 355, 356, 357, 370, 376-B, 376-C, 376-D, 377, 418, 420, 424, 427, 466, 477-A, 484, 491, and 502 of present I.P.C. should be declare strictly cognizable offence if committed by Government and Public Servants or politicians, and should be considered by Session Court only in the concerned District without reservation.

That presently above mentioned sections are making responsible to only non-government nationals / offenders, and inactive against government depended concerns, it is absurd and against the Articles 14, 19 and 21 of the Indian Constitution. These slaughterhouses of British Law and Practice were the biggest workshop of Human Rights violation, every nationalist were converting in these workshop to give a new shape of criminals before 1947, Same practice is being used in current sovereign Democratic India after 1947. These are against the principle of fundamental rights of the non-government nationals.

Jiime under the mask of legal practitioners:

It is also an important fact that mostly advocates are taking participation in the crimes on the name of legal practice. It is also a absurd thing that more them 85% advocates never maintain record of the cases in which they are giving legal assistance or legal aid, and neither they give proper receipts of the fee against these services to conceal income like a light finger. How much they are paying to the clerks, munshi and how they are taking on the name of Judges and Magistrate (AS discovered by Hon'ble Chief Justice of Delhi High Court, and in the matter of warrant case against Hon'ble Chief Justice of India and Hon'ble President of India from the Court of Megnani Nagar of Gujrat State in January 2004), These act are much abominable, which are committing in every part of India (like progeny of British Emperor) with criminal intention to victimize the aggrieved clients, and putting them between the horns of Dilemmas knowingly.

In judicature these white collar criminals take advantage selection on the seat of Judge and sanitize to whole Judicature by supporting British Slave Driving Law and Practice in present sovereign independent India.

How much British slave driving law and practice are responsible, who's are putting to the nationals in the horns of Dilemma in present sovereign democratic India, it can be seen in every court from Supreme Court of India to lower court easily. After preparing the case by expert Councils the Writ Petition submitted through the window of C.R. in Supreme Court, High Court and in the Session Courts of the States. After proper and strict examination of the Writ Petitions & S.L.Ps. by expert staff of registrars case enlisted for hearing in concern court for the justice. Till this stage prescribed court fee, counseling fee, clerk fee, documentation fee and many other huge expenses born by the petitioner, but many Writ Petitions and S.L.Ps. without proper hearing does dismissed and rejected daily on the gost of plaintiffs in concern courts by said Me Targa. Same procedure with deformed condition can be seen it emery dourt dampus. Who are responsible for these latal Auman Tigats violations which are being committing in + % | part of the states in India under the mask of Public Bertings on



For speedy justice, Fast track Courts are working in the interest of Justice, but they re helpless in the refers of Jahira Sharkh (Best Bakery Case), Case of Sharka — ya Jayendra Sarswati, Matter of CEC of Bazi Dot flow — ., etc., due to political pressure and behavior of adv. How, so these courts are working result less and on the rume in justice nationals are swinging between the horns of Dilemmas, due to lack of official responsibilities in the Constitution of India in public good and in the interest of the nationals as should be fixed in democracy.

Every definer in every department of the Giveniment effecter by "Mental Infirmity Gene", they always a regious for the safety of their entity nobody is ready to take pain for the perpetual reformation on the track of Swami Shradhanand Ji, Netaji Subhash Chandra Bose and Paja Ram Mohan Roy to provide fundamental powers and enemities enable to the nationals, In this regard, "Leftire Universal Donor D.K. Gupta Ji working with a glober of age of world family "Group of United National." That nationals can participate and perform their duties after formation 'Public Assemblies' area wise in the interest of community and the nation in accordance section 43 of Dr.P.C., and article 51-A of the Indian Constitution without reservation.

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Formation of Public Assemblies was cognitable objected in Eritish Period, but now we are nationals of the independent India, nationals have rights to form 'Public Assemblies' in every part of India to avail fundamental rights and to perform their fundamental duties for the redemption their human life of the community without reservation in perpetuity.

Recommendation for Legal Treatment: Due to illiteracy about law and court procedure, every plaintiff and defendants compel to lurking in the crowed victims in the Indian Courts. The Court never issued or supplies Order slips to the concern parties after hearing of the Cases. Cunning and clever advocates hunted them easily. It is double jeopardy and against the principle of Justice, but National Law Commission, National Human Rights Commission, other responsible departments never suggest recommend to the regulatory authorities Parliament. These kinds of irregularities are based on Regulating Act of 1773 and thirst/thinking of WORLD Emperors/SUPER POWER main cause of Human Rights violation in Court campus of India and as well as in other countries, supporting by greedy and cold minded professional practices only maintaining for their applaud.

Those above mentioned amendments are essential to root-up British slave driving practice & Law, to prevent Human Rights of the nationals within the epitome and instrumental charter "Insurance of Human Rights-0006" of NARO International Trust. So that every nationals of the nation in every part of the states can avail advantages of the fundamental rights, and can perform their fundamental duties as provided in article 51-A the Constitution of India and in accordance International law.

In view of above-mentioned suggestions, the constitutional assembly of National Amnesty & Redemption Organisation International Trust strongly recommends to root-up these British slave driving law and practice to establish real Democracy in every part of India without



reservation in the interest of the nationals through the instrumental and epitome Charter Insurance of Human Rights-0006 of NARO. Whenever you like to call us for the discussion in detail across the Parliamentary Committee, with pre-intimation under leadership of Universal Donor D.K. Gupta Ji and founder of National Amnesty & Periamption Organisation International Trust (NARO), we are available your compliant and soon reply, and thanking you.

Let and on behalf of National Amnesty & Redemption Organisation International Trus: (NARO)

(Mrs. Mari Rajpal) (A.K. Sharma) (P.D. Patel) (V.V. Bhonsle)(Y.C. Muliq) (T. K. Gupta)
Secretary Secretary General President Convener VicePresident Vain Director
Phone: 011-30967082

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Committee Section (P.P.C.) L & J.) _ Detell / 2 / 05 _ ...
Diary No. 2.6.7...

From:

Vipul R. Desai,

Jaltarang SBI Society, Vejalpur Road, Jivrajpark. AHMEDBAD - 380 051 PH.NO. (079) 26816015

9898439666

FAX NO. 23013917

February 16, 2005

To,

Surinderkumar Vots, Dy-Secretary, Rajya Sabha Sachivalaya, 007, Ground Floor, Sansad Bhavan, Annexy, NEW DELHI — 100 001

Sub.: Suggestions on proposed bill on freedom of information- 2004.

Ref.: Your advertisement in Sandesh daily dated, 12/02/2005.

Respected Sir,

I have read your advertisement under reference seeking suggestions in respect of proposed Bill on Freedom of Information – 2004. As a citizen having legal background I would like to offer my suggestions. However before I do this I would like to introduce my self briefly as under:

Name : VIPUL RAVINDRA DESAI.

2. Age : 43 Years.

3. Education Qualifications : B.Com, LLB,

PG Diploma in Industrial Relation &

Personnel Management

4. Present Job : Presently serving as Asst.Manager (P&A) with

GUJARAT STATE Flagship Panchratna

Company, GUJARAT MINERAL DEVELOPMENT

CORPORATION LTD, (GMDC)

My suggestion is as under:

I have carefully studied the provisions of Freedom of Information Act- 2002. The act has been enacted with a view to create transparency sense of responsibility and openness in the process of administration. It is truly an excellent act required to be passed under article 19 of the constitution of India. When the Government has initiated the process of amendment in the existing Freedom of Information Act – 2002 by moving a proposed bill I suggest to include the provisions of judicial review

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which is not included in the existing Freedom of Information Act — 2002. Or the contrary section 15 of the chapter 3 of the existing Act put bar on jurisdiction of court. Sir, with all due respect I do believe that the process of juridical review has been declared as the basic structure of our constitution of India and as decided by the Hon'ble apex court in Keshvanand Bharti Vs State of Kerala the parliament can not pass legislation restricting or over ruling the basic structure of the constitution of India. (AIR 1973 — 1461). I would like to cite one very relevant and recent pronouncement of the Hon'ble Supreme Court in Kihota Hollohon V/s Zachilhu (AIR 1993— SC/412) in which the Hon'ble Court has clearly stated that the process of judicial review is undoubtedly the basic structure of the constitution of India which can not be prohibited under any law of the parliament. I would like to add that by this judgement the power vested in the speaker for deciding about the disqualification of members on the ground of defection were made subject to judicial review.

In view of the above stated established legal position I suggest to introduce the provision of juridical review in the freedom of information act — 2004 when the information sought is not given and also the appellate authority has declined the information sought by a citizen. I would also suggest that the existing provision putting bar on court proceeding should also be omitted in the new act.

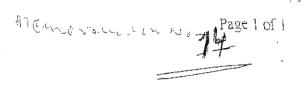
I would be happy to remain present before the committee if invited.

Thanking you,

Yours faithfully cent

(VIPUL R. DESAI)

Committee Section (P.P.G, L 원 J) Date 17 .. 3 .. Diary No. 262.



watts

From:

<doxa@sancharnet.in>

Ta:

<watts@sansad.nic.in>

Sent: Subject: Tuesday, February 15, 2005 1.29 PM

Right to Information

Dear Sir.

My request to you is to incorporate the following clauses in the Bill.

"The information processing systems that process information of the citizens should ensure:

- 1. Free access to public information by the citizen.
- 2. Permanence of public data
- Security of the State and citizens.

To guarantee the free access of citizens to public information, it is indespensable that the encoding of data is not fied to a single

provider The use of standard and open formats gives a guarantee of this free access, if necessary through the creation of compatible free software.

To guarantee the permanence of public data, it is necessary that the usability and maintenance of the software does not depend on the goodwill of the suppliers, or on the monopoly conditions imposed by them. For this reason the State needs systems the development of which can be guaranteed due to the availability of the source code.

To guarantee national security or the security of the State, it is indispensable to be able to rely on systems without elements which allow control from a distance or the undesired transmission of information to third parties. Systems with source code freely accessible to the public are required to allow their inspection by the State itself, by the citizens, and by a large number of independent experts throughout the world. Our proposal brings further security, since the knowledge of the source code will eliminate the growing number of programs with *spy code*."

Thanking you, CK Raju, Asst Prof in IT, MES College of Engineering, Kuttippuram Kerala 679573

2/15/2005

PARLIAMENT OF INDIA RAJYA SABHA SECRETARIAT

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Website: http://parliamentofindia.nic.in

E-mail:

Parliament House/Annexe, New Delhi-110001.

Dated the 18th February, 2005

340/e/TS(E)/85

OFFICE MEMORANDUM

SUBJECT:- Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice – examination of the Right to Information Bill, 2004.

The undersigned is directed to forward herewith a copy each of the Memoranda Xos 15 & To submitted by the experts/organisations on various provisions of the Right to Information ball 2004 which, is currently under examination by the Committee

- The Ministry of Personnel, Public Grievances and Pensions are, therefore, requested to furnish the views/comments (50 copies in English & 25 in Hindi) on the above-referred Memoranda to this Secretariat, latest by 24th Lebruary, 2005 for consideration by the Committee. A specimen proforma for sending this information is enclosed
- The Committee will take up clause-by-clause consideration on the $1^{\rm st}$ March 2005

Divery

(H.C. SETHI)

UNDER SECRETARY Tel.: 23034055(O)

22451210(R)

E-mail: hsethi a sansad.nic.in

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The Almstry of Personnet, Public Grievances and Pensions, Ushar VX. Lowari, Secretary to the Government of India) word, Block, New Delhi

Contd ..2 -

Copy forwarded for information and necessary action to Shri T. Jacob, Joint Secretary, Ministry of Personnel Public Grievances and Pensions, North Block, New Delhi

(H.C. SETHI) UNDER SECRETARY

watts

From:

"Rajesh Vishnudas Darak" <rdarak@rediffmail.com>

To:

<watts@sansad.nic.in>

Sent:

Thursday, February 17, 2005 8:50 PM

Subject:

My Submission

```
>February 12, 2005
>
>To
>The Hon Chairman and Hon Members,
>Parliamentary Committee on Personnel, Public Grievances, Law and Justice
>Sub: My submission on the Right to Information Bill tabled in the
>Parliament
>My salutations,
>I have been involved as a constituent of the movement in the efforts
>to have the un-notified and toothless Freedom of Information (FoI)
>Act of the Government of India replaced by an effective and people
>friendly legislation. I am glad that the National Advisory Council
>(NAC) considered the Maharashtra Right to Information Act, 2002, as
>the model draft for preparing its proposals for an overhaul of the
>Fol Act. I am also glad that the DoPT retained most of the NAC
>proposals in its draft. It is also generally encouraging that the
>Department of Law retained many of the provisions while preparing the
>present Bill before the Parliament, but deleted, in its wisdom, some
>of the vital provisions, which, if allowed to be cleared would make
>the Act a mere ornamental additional to the statute book with no
>empowerment granted to the citizens in their endeavour to seek
>transparency and accountability in governance.
>
>I list below some the serious deficiencies in the Bill and urge the
 >honourable members to remove these in the interest of a true
 >democracy and the ongoing efforts for administrative reforms.
 >
 >I.
      A powerless Information Commission.
 >1 need not tell this august assembly of seasoned Parliamentarians and
 >jurists that without an independent appellate mechanism a law on
 >people's right to know would be totally effective, given the mindset
 >of the bureaucracy, conditioned by two centuries of the regime of
 >excessive secrecy. The National Advisory Council, therefore,
 >recommended setting up of a high-power Information Commission with a
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2/18/2005

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>mandate to penalise the defaulter.

>One finds in the Bill this highly progressive provision grossly >diluted. Not only has the provision empowering the Commission to >impose penalty has been removed, but the august commission has >stripped of the simple power even to initiate criminal proceedings >against a Public Information Officer found to have given false and >fabricated information to a requisitioner

>Clause 12 (4) of the NAC recommendation reads

>12(4) Penalties

- Subject to sub-section (3), where any Public Information >Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), >the relevant Information Commissioner shall, on appeal, impose a >penalty of rupees two hundred and fifty, which amount must be >increased by regulation at least once every five years, for each >day's delay in furnishing the information, after giving such Public >Information Officer a reasonable opportunity of being heard
- Subject to sub-section (3), where it is found in appeal that >any Public Information Officer has -
- Refused to receive an application for information; \geq (i)
- Mala fide denied a request for information; >(ii)
- Knowingly given incorrect or misleading information, >(iii)
- \geq (iv) Knowingly given wrong or incomplete information,
- Destroyed information subject to a request, or $\geq (v)$
- Obstructed the activities of a Public Information Officer. >(vi)
- any Information Commissioner or the courts:
- >Fle/she would have committed an offence and will be liable upon summary
- >conviction to a fine of not less than rupees two thousand and >imprisonment of up to five years, or both.
- An officer whose assistance has been sought by the Public >Information Officer for the performance of his/her duties under this >Act shall be liable for penalty as prescribed in sub-sections (1) and
- >(2) jointly with the Public Information Officer or severally as may
- >be decided by the relevant Information Commissioner.
- Any fines imposed under sub-sections (1), (2) and (3) shall >be recoverable from the salary of the concerned officer, including >the Public Information Officer, or if no salary is drawn, as an recoverable within a maximum of six months >of the order imposing the fine.
- The Public Information Officer or any other officer on whom the penalty under sub-sections (1), (2) and (3) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him Provided that in cases where the officer is proved eguilty of deliberate denial of information or misinformation, the >punishment imposed shall be a major penalty, i.e., dismissal or >removal or reduction in rank.
- (emphasis added)

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>As against this, the Bill before the Parliament merely recommends:
>
>17. (1) Notwithstanding anything contained in the provisions of
>section 20, where the Commission at the time of deciding any appeal
>is of the opinion that the Public Information Officer has
>persistently failed to provide information without any reasonable
>cause within the period specified under sub-section (1) of section 7,
>the Commission may authorise any officer of the Central Government to
>file a complaint against such Public Information Officer before a
>Judicial Magistrate of First Class.
>(2) Any Public Information Officer who is in default under sub-
>section (1) shall be liable on conviction to fine which may extend to
>rupees twenty-five thousand or a term of imprisonment which may
>extend to five years, or with both
>(emphasis added)
>The law on right to know is being enforced by all democracies in the
>world and most have now provided for an independent appellate
>mechanism with adequate powers and the mandata. You will, I am
>absolutely confident, will agree that it would be a mockery of the
>principle of transparency if India, the world's greatest democracy.
>has such a retrograde provision in its own law.
>Ironically, a penalty clause is not new to India. Several states in
 >their local laws have provided for imposition of penalty on
 >defaulting Public Information Officers by the appellate mechanism
>itself.
 >
 >Maharashtra Right to Information Act, 2002, which was considered a
 >model by the NAC while formulating its recommendations provides that
 >the Appellate authority can impose fine of Rs. 250 /- per day for
 >delay and up to Rs. 2000 /- on a Public Information Officer for
 >knowingly giving incorrect/misleading info/wrong/incomplete
 information. Apart from this, the defaulting PIO is also subject to
 >disciplinary proceedings.
 >The provision reads:
 >12. Penalty
 (1) Where any Public Information Officer has without any reasonable
 >cause, failed to supply the information sought, within the period
 >specified under sub-section (2) of section 6, the appellate authority
 >may, in appeal impose a penalty of rupees two hundred fifty, for each
 >day's delay in furnishing the information, after giving such Public
 >Information Officer a reasonable opportunity of being heard.
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>(2) Where it is found in appeal that any Public Information Officer
>has knowingly given.
>(a) incorrect or misleading information, or (b) wrong or incomplete
>information;
>the appellate authority may impose a penalty not exceeding rupees two
>thousand, on such Public Information Officer as it thinks appropriate
>after giving such officer a reasonable opportunity of being heard...
>(4) The penalty under sub-sections (1) and (2) as imposed by the
>appellate authority, shall be recoverable from the salary of the
>Public Information Officer concerned, or if no salary is drawn, as an
>arrears of land revenue
\geq(6)
       The Public Information Officer on whom the penalty under sub-
>sections (1) and (2) is imposed shall also be liable to appropriate
>disciplinary action under the service rules applicable to him.
>(emphasis added)
>Goa RT1 Act provides in its Section 8:
>Discretionary imposition by disciplinary authorities of Rs 100/- per
>day fine on the defaulting PIO for delay;
>Delhi RTl Act provides in its Section 9 read with Rule 6:
>Disciplinary action under service rules and fine of Rs.50/ - per day
>for delay but not exceeding Rs.500, which is treated as personal
 -liability and fine of Rs.1000 for false information.
>Karnataka RTI Act provides in its Section 9:
 Fine up to Rs 2000/- and disciplinary action for delay without
 >reasonable cause or supplying wrong information;
>Madhya Pradesh RTI Act provide in its Section 8
 Penalty up to Rs 2000/- by the appeliate authority on concerned head
 rof public body or on the designated officer for failure to supply
  information within 30 days
 Rajustnan PT: Act provider in its Section 10:
 Disciplinary action and penalties as prescribed under the service
 >rules
 The NAC has merely fine-tuned the accepted principle of the appellate
 >mechanism imposing penalty on a defaulting Public Information Officer
 and has suggested the most outstanding and citizen-friendly
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>provision This needs to be restored in toto.
>I quote here the argument of Adv Ajit Joy, a transparency protagonist:
>
>" The NAC and DoPT draft envisaged a daily penalty of Rs. 250 for
>delay in providing the information, this has been deleted. In the
>Bill, the Information Commission has no power to fine, so also has
>its power to imprison been taken away. Imprisonment can now be
>awarded as punishment only through the additional intervention of two
>other agencies- the Central Government and a Judicial Magistrate.
>Further, a minor provision like starting a compulsory departmental
>proceeding against a delinquent officer under the Act has also been
>deleted. In one stroke the majesty and benign import of the Act has
>been totally denigrated. Power to fine is a common power with public
>officials like Sub-Inspectors of Police, Customs Inspectors, Sales
>Tax and Excise officials, what to say about regulatory authorities
>and quasi-judicial bodies. This power has been denied to the
>Information Commissioner. Power to imprison has been conferred on
>officials like the Sub-Divisional Magistrates, Divisional Forest
>Officers, Labour Commissioners, and bodies like the SEBI, Consumer
>Courts and several Tribunals. There is therefore no justification in
>depriving such a high-powered body like the Information Commissioner
> from imposing prison sentences. If there are serious objections to
>the awarding of prison sentences then that alone could have been
>separated. But removing even the powers to fine is simply
>unjustifiable and makes the Bill much inferior to penal provisions
>incorporated in several state RTI's. Power to fine is the basic
>minimum for an Act to stand and must be restored immediately."
>(emphasis added)
>
 =
            Provision to levy unreasonably high cost of
 >information
 >For the common man to seek information under the Act, it is
 >imperative that both the requisition fee as well as the cost of
 >information should be affordable and reasonable.
 >The cost of information, in any case, should not exceed the actual
 >tangible cost.
 >The NAC, therefore, made the recommendation:
 >7(5) (a) Subject to sub-sections (b) and (c) below, where access to
 >information is to be given in the form of printed copies, or copies
 >in some other form, such as on tape, disk, film or other material,
 >the applicant shall pay the prescribed fee
 >(b) Any fees payable by the applicant shall be reasonable, and shall
 >in no case exceed the actual cost of copying the information or in
 >the case of samples of materials the cost of obtaining the sample,
```

>and shall be set via regulations at a maximum limit taking account of >the general principle that fees should not be set so high that they >undermine the objectives of this Act in practice. >(emphasis added) >The highly justified provision in 7(5) b of the NAC draft, however, >is glaringly missing in the Bill before the Parliament >It merely says: >7 (3) Where a decision is taken to provide the information on >payment of any further fee representing the cost of providing the >information, the Public Information Officer shall send an intimation >to the person making the request, giving > (a) the details of further fees representing the cost of providing >the information as determined by him, together with the calculations >made to arrive at the amount in accordance with fee prescribed under >sub-section (1), requesting him to deposit that fees, and the period intervening between the dispatch of the said infimation and payment >of fees shall be excluded for the 'purpose of calculating the period >of thirty days referred to in that sub-section; But makes no explicit mention that the vital recommendation of the >NAC (Trepeat) > 'Any fees payable by the applicant shall be reasonable, and shall in >no case exceed the actual cost of copying the information or in the >case of samples of materials the cost of obtaining the sample, and >shall be set via regulations at a maximum limit taking account of the >general principle that fees should not be set so high that they >undermine the objectives of this Act in practice " >The NAC recommendation, I am confident, you will agree, needs to be >incorporated in toto. This is one more vital area where the central Bill tends to be regressive and has not taken a note of progressive provisions in >various state laws in force in the country: >Maharashtra Right to Information Act provides ≥6 (2) Provided further that, where it is decided to provide the zinformation on payment of any additional fees than the fees Prescribed representing the cost of providing the necessary einformation, the Public Information Officer shall send an intimation to the applicant giving the details of the additional fees determined

by him, requesting him to depose the additional fees, and the period intervening the dispatch of the said intimation and payment of such

radditional fees, if any, shall be excluded for the purpose of realculating the period of fifteen working days or the additional period of fifteen days as the case may be, referred to in this sub-

>section

2 1977 908

```
>Provided also that, the fees prescribed or the additional fees
>payable, as the case may be, shall not exceed the actual cost of
>supplying the information.
>Section 14 of the Goa RTI Act lays down that the fee will cover only
>the actual photocopy expenses.
>The state RTI Acts of Rajasthan, Karnataka and Delhi also restrict
>the cost of information to the cost of photocopying, though the rates
>prescribed therein are rather on the higher side than the actual cost
>of photocopying in the market.
>Rajasthan pegs it at Rs 2/- per page while Delhi and Karnataka at Rs
>5/- per page
>Against this background, the recommendation of the NAC is the most
>fair and just and needs to be restored.
>
> \Pi I
           Unreasonable pretection to a so-called `third party':
>The Bill provides that a 'third party' be consulted before disclosing
>information if that has been passed on to the government by that (so-
>called) third party and which the (so-called) third party considers
>it to be `confidential'
>The relevant provision in the Bill reads:
>Quote
>11. (1) Where a public authority intends to disclose any information
>or record, or part thereof on a request made under this Act, which.
>relates to or has been supplied by a third party and has been treated
>as confidential by that third party, the Public Information Officer
>shall, within five days from the receipt of the request, give a
>written notice to such third party of the request and of the fact
>that the public authority intends to disclose the information or
>record, or part thereof, and invite the third party to make a
>submission in writing or orally, regarding whether the information
 >should be disclosed, and such submission of the third party shall be
 >kept in view while taking a decision about disclosure of information:
>Provided that except in the case of trade or commercial secrets
 >protected by law, disclosure may be allowed if the public interest in
 >disclosure out weights in importance any possible harm or injury to
 >the interests of such third party.
 (2) Where a notice is served by the Public Information Officer under
 >sub-section (1) to a third party in respect of any information or
 >record or part thereof, the third party shall, within ten days from
 >the date of receipt of such notice, be given the opportunity to make
 >representation against the proposed disclosure.
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4 6 F

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>(3) Notwithstanding anything contained in section 7, the Public
>Information Officer shall, within forty days after receipt of the
>request under section 6, if the third party has been given an
>opportunity to make representation under sub-section (2), make a
>decision as to whether or not to disclose the information or record
or part thereof and give in writing the notice of his decision to the
>third party
     (4) A notice given under sub-section (3) shall include a
>statement that the third party to whom the notice is given is
>entitled to prefer an appeal under section 15 against the decision.
>(emphasis added)
>Unquote
>Definition of the 'third party' has been given as:
>2 (k) "third party" means a person other than the person making a
>request for information and includes a public authority
>(emphasis added)
>1 emphatically say that this is a highly anti-democratic provision
>which goes directly against the very tenet of transparency in
>governance.
>I emphatically submit that adequate provision has been provided in
>the exemption clause in the Bill, especially
>8 (j) information which relates to personal information, the
>disclosure of which
                        has no relationship to any public activity or
>interest or which would cause unwarranted invasion of the privacy of
>the individual:
and that there is absolutely no need to insert an independent clause,
>which will only result in enormous delay in disclosure of information
 and even denial of information in most genuine cases.
>I note with dismay that thus highly unjustified provision, a legacy
of the un-notified Freedom of Information Act, was allowed to be
>retained by the NAC if the recommendation on the new Act, which I
>understand, was by oversign; and not intentional.
>At the same time. I draw the kind attention of the honourable members
>of the Standing Committee that no state law in force in the country
has any such draconian protection to a so-called 'third party'
May I ask, how does one define third party with respect to the
 transparency law in a dedicoracy
 -How can there be a separation between the government and the people?
 If they are NOT TWO separate enrities in an open democracy but ONE
 >ENTITY, how can then a person dealing with the government claim the
 >status of being a THIRD party?
```

>When I deal with the governmen! (apply for some permission, attempt

>to clinch a contract, make a suggestion/recommendation or whatever) l >am dealing with the people through functionaries acting on their >behalf

>The government functionaries are people's trustees. No one can claim >the right to deal only with the trustees and insist that their >interaction with the functionaries should not be disclosed to the >general members of the trust. In a democracy every citizen is a >constituent of the government and hence we have the fundamental right >to know how the government functionaries are acting on behalf every >citizen. On this principle stands the edifice of the law to know. So >can a person claim privacy privilege while dealing with the >government and its public bodies against the people themselves?

>Certain matters by their very nature may not be made public in the >larger public interest. These are adequately incorporated in the >exemption clause Can i claim privacy privilege over and above these >reasonable exemptions?

>I do not see any justification in making the Public Information
>Officers consult any so-called 'third party' on whether or not any
>exemption clause applies to the information concerning them. The
>Public Information Officer, who is a responsible and senior
>functionary of the government, is ab initio competent to decide this
>without any such consultation. If the Bill presumes that he is not
>competent, he is then not competent to be the people's trustee as
>well, and must be asked to quit.

>Going by our experience of the use of the state laws on transparency, >we find that over 90 per cent of the information legitimately sought >in public interest deals with one or the other `so-called' third >party.

>if the 'third party' status and the right to privacy while dealing
>with the people through their government is granted to me, good bye
>to transparency, the government does not function in a void. It deals
>with people and if everyone of those claim the third party
>privilege, let us pack up the transparency law.
>By retailing this provision in the Bill, we will be creating a piece

>of legislation that is destined to remain merely in the statute book >and never function as the true empowerment of the common man in an >open democracy.

>If such a provision exists, unfortunately in our conditions: A) The >PIO will not communicate precisely – that is precisely asking for >which exemption clause the 'third party' thinks applies in his/her -case. In all probability it will be a general question not referring >to Section 8, B) the Third party will use this to delay information, >even by manipulation (who will ascertain exactly when the 'third >party' has recd the PIO's communication, C) multiplicity of third >party in a simple requisition will aggravate the delay further and >make the decision more complicated, D) the PIO – a middle level >Indian bureaucrat will invariably err on the safer side – reject the

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>requisition and let the requisitioner take the pains of explaining
>his position to the AA or the IC
21 call upon the honourable members to visualise the pangs a common
>user of the Act, if it comes in force with this provision, is going
>to suffer while eliciting information. I am sure you will appreciate

∠our anxiety.

>
_;>
>IV.
            Justisdiction
The Bill provides that it will be applicable only to the central
>government offices, agencies and its public bodies, whereas the NAC
proposed that it be simultaneously applied even to the state
>government offices, agencies and their respective public bodies.
>The NAC had further recommended that:
>quote
(4) Where State legislation exists dealing with the right to access
>information, a person will have the right to seek information under
the State law as well as under this Act, if the information pertains
>to a subject under the State List in Schedule 7 of the Constitution
>of India
>(emphasis added)
>unquote
>The NAC therefore has sought to
>A) extend, by using the centre's over-riding powers, the benefit of
>the law on the right to know to states where, for various reasons,
Esuch a law does not exist and perhaps not likely to exist with local
≥initiative:
 B) give a fair choice in the people in states where the local law is
in force, either to use their respective state law or the central law
in the matters concerning the state government, its agencies and its
>public bodies
el do not see why sucre a people-friendly and Constitutional provision
 that been deleted in the Bill before the Parliament. The
 recommendation of the 1847, needs to be restored in total
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- V Deputy Information Commissioners:

The Bill provides that there shall be ten deputy information commissioners not exceeding ten as may be deemed necessary (by the



2/18/2001

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>government)
>I submit that this is inadequate in a country of the sub-continental
>size where the Act will be used by thousands of common citizens with
>meagre means.
>I further submit that there should be a clear provision that there
>SHALL be 10 deputy information commissioners (under any
>circumstances) and that the Rules should explicitly specify the
>cities in which these 10 deputy information commissioners will be
>based.
>The provision in the Bill reads:
>12. (1) The Central Government shall, by notification in the Official
>Gazette, constitute a body to be known as the Central Information
>Commission to exercise the powers conferred on, and to perform the
>functions assigned to, it under this Act.
>(2) The Commission shall consist of-
>(a) the Information Commissioner; and
       such number of Deputy Information Commissioners not exceeding
>ten as may be deemed necessary.
>(emphasis added)
>Raiesh Darak
>RTI advocacy activist
 >8, Varsha, North South Road No.5
 >Vile Parle (West),
 >Mumbai 400 056
 >Tel: 022-26140957
 >Cell: 98206 83005
 >Email: rdarak@rediffmail.com
 >
 >
 >
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>determined to promote the law of right to information in india

The same of the sa

2/18/2005

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>Yahoo! Groups Links
>
<*> To visit your group on the web, go to:
> http://in.groups yahoo.com/group/HumJanenge/
>
<*> To unsubscribe from this group, send an email to.
> HumJanenge-unsubscribe@yahoogroupsco.in
>
><*> Your use of Yahoo! Groups is subject to:
> http://in.docs.yahoo.com/info/terms/
>
```

Rajesh Darak

Mera Bharat Mahaan Nahi Hai. Per Yeb Dosh Mera Hai

← Lufthansa

218/2966

watts

From: "Engicons India" <anilbalial@vsnl.com>

To: "Surinder Kurnar Watts" <watts@sansad.nic.in>

Sent: Tuesday, February 15, 2005 12:44 PM

February 12, 2005

From

H. R. Ballal
M.Sc
Laxmi Narayan Baug,
Flat # 3, Bal Govind Das Road
Mahim (W),
Mumbai 400 016

To

The Secretary
Common Cause
5 Institutional Area
Nelson Mandela Road
Vasant Kunj
New Delhi – 110 070

Subject

Points regarding right to information advertisment

released today in TOI

Dear Sir.

1- 15

Times of India today has published that Standing Committee Rajya Sabha Secretariat seeks information from public regarding the above point to Shri Surinder Kumar Watts, Dy. Secretary Rajya Sabha Secretariat – 007 Ground Floor, Parliament House Annexe, New Delhi 110 001

I am giving below a few points sent to them through email regarding the right to information to be addressed to government. Since I live in Bombay I would request you to consider taking up the below the mentioned points with the authorities within 15 days

- 1) All public sector companies both in center and states to reporten their financial status every year as done by the private sector. As an attachment separate information on dealings in land should also be mentioned.
- 2) On Central budget reporting to be done as done for public sector companies with full informational details on costs incurred on
 - General administration excluding security costs
 - Security costs for Centre and States separately
 - Total liability of Central & State Govts separately.
 - d. Estimated costs by Planning Commission for the year
- 3) Defence Costs broken down to capital and administration costs and also

2/17/2005

purchases separately

- 4) Scientific Institutions, Centre and States what are being implemented during the year with emphasis on innovation.
- 5) Agricultural full information on output as well as cost of FCI
- 6) Health care cost incurred on health care both for center and state
- 7) List of achievements during the year for center and states (not banana but banaya)

We would request you to take this up with the government within 15 days as mentioned in the advertisement. The above statement is being sent by me today to Mr. Shri Surinder Kumar Watts through email: watts@sansad.nic.in

Thanking you.

H. R. Ballal

2 (2000)



PARLIAMENT OF INDIA RAJYA SABHA SECRETARIAT

R-633 12/200

Telegram: "PARISHAD"

Fax: (91 11) 23014948/23015585/23013917 PHA (91 11) 23792940/23011207/23793376 PH

Telephone:

Website: http://parliamentofindia.nic.in

E-mail:

Parliament House/Annexe. New Delhi-110001.

NO.RS.6/7/2004-P&L

Dated the 12th February, 2005

Shri A.N. Liwara

acceptant to the Government of India,

Stanson of Personnel, Public Grievances and Pensions,

North Block.

New Delhy

Subject: Confirmation of recorded oral evidence.

are precapage forward herewith a copy of the recorded oral exidence rendered by you state of the Augusty 2005 before the Department Related Parliamentary Standing Committee on 1 source, Phone of nevances, Law and Justice regarding the Right to Information Bill, 2004. som the regions that the same may kindly be confirmed and returned to this Secretariat, at the curliest

Fam to add that corrections or alterations if any, in the verbatim record should confine to ab lious maccuracies and should not effect any material change in the substance. The corrections sample be made in your own handwriting and only in the enclosed copy of the evidence

thate case to request you kindly to supply the information promised by you during the 35 (ESH B.49) course of the inecting for consideration of the Committee

> You are no doubt, aware that the evidence tendered before a Parhamentary Committee is confidential and I and therefore to request you to treat it as such, till the Report on the subject is presented to Parliament

Yours faultfutly

(SURINDER KUMAR WATES) DEPUTY SECRETARY

> Tel:23034262(O) 23035220 (Section)

Il-mail wait a sawad me ti:

The Department related-Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice met at 3 p.m. on 1.2.2005 in Committee Room 'A', Parliament House Annexe, New Delhi.

(CHAIRMAN: SHRI E.M. SUDARSANA NATCHIAPPAN)

CHAIRMAN: Before we call the witnesses for making their presentation on the Right to Information Bill, I would like to put on record one thing. It is a very important Bill. From 1997 onwards, a lot of discussion took place on this Bill. There was the Chief Ministers' Conference where this issue was discussed. Finally, this Bill was passed in 2002. There was some discussion whether the Parliament has got the right to make these types of institutions so that our citizens could get information through these institutions. We have come to know that, at that time also, the opinion of the Attorney General was sought. He was of the opinion that under Schedule 7, Part 1, item No. 97, the Parliament has got the right to go into it. Now, according to the preliminary study, a lot of provisions of this law are being watered down. I would like to know from the hon. Members whether we should seek the opinion of the present Attorney General in this regard. If the Committee feels that we should call the Attorney General, we can summon him to depose before the Committee. The point is whether we have got the right to have a legislation which is binding on the State Governments also. Now I leave it to the Members. What is your view?

SHRI HARIN PATHAK: We can summon him. It is a sensitive issue. CHAIRMAN. Okay, we will call nim.

Secondly, in the last sitting, we had asked the Ministry to present the report of the Justice Sharrof Committee on Arbitration. At that time, the hon Members felt that when this particular legislation was being discussed here, then why the Government was having some other Committee to go into it. Therefore, we had directed the Law Secretary to present the report before 30th January, 2005. Accordingly, they have submitted this report. We feel that there is need for some more discussion within the Secretariat on this issue. We also want that they should come forward with what is the position of the Government in this regard. We want to give them some time. In the meantime, we will go on with other Bills. I just wanted to inform you and bring it on record. Now we can call the witnesses. (Followed by 1B)

RG/3.10/1B

2000年1月1日 1000年1000年100日

LIST OF WITNESSES

Shri A.N. Tiwari, Secretary
Ministry of Personnel, Public Grievances and Pensions
Shri T.K. Viswanathan, Secretary
Legislative Department, Ministry of Law and Justice
Shri R.L. Meena, Secretary
Department of Legal Affairs, Ministry of Law and Justice

CHAIRMAN: Good Afternoon to all of you. This Committee is presently considering this very important Bill which is attracting the attention of the entire population of India, more especially, the fourth pillar of democracy, that is, the media. This Bill is attracting a lot of attention of all intellectuals not only in India but also throughout the world. We wanted to go into the legal aspects of this Bill also in connection with certain provisions. That is why we requested the Legislative Department as well as the Department of Legal Affairs to participate in this discussion.

First of all we would like to know the reason for repealing of the Act of 2002 and coming forward with a new Bill. On the face of it we find that a lot of main provisions have been watered down, and the recommendations of the previous Committee of Home Affairs, which submitted its Report No.78 on Freedom of Information Bill, 2000, have also, in certain parts, not implemented. We would like to have

clarifications on these two points also when the Secretary, Ministry of Personnel, Public Grievances and Pensions, make his presentation. After his presentation, the other two Secretaries, Shri R.L. Meena and Shri T.K. Viswanathan, can make their presentation on the legal points. After this, the hon. Members will raise certain queries and clarifications. You may reply to them immediately or you can also give your views in writing and send them to the Committee.

Whatever discussions take place here have to be kept confidential till the Report is placed before Parliament. Now, Shri A.N. Tiwari to make his presentation.

SHRI V. RADHAKRISHNAN: Madam, before the Secretary starts his presentation, with your permission, I would like to say something.

As you are all aware, Parliament had passed the Freedom of Information.

Act 2002, and it was formally notified in the Gazette. Normally, the practice is that when a legislation is passed and some amendments are required, an Amendment Bill is brought. Here is a new case altogether than you are claiming yourself of having brought a new statute, but the objective of both appears to be the same. Now it is also a fact that we are going to repeal the Act, of 2002. This was passed after scrutiny by the Standing Committee and after an elaborate discussion and debate in both the Houses of Parliament. I would like to know what is the reason behind bringing a new legislation instead of making some changes in the already existing law. Basically, we find that there is only a change in nomenclature. Another thing, is, that we did not have penal provisions in the earlier Act. But here you are bringing in penal provisions. But this could have been included by way of an amendment.

(Continued by 1C)

1C/3.20/KS

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SHRI V. RADHAKRISHNAN (CONTD.): What is the purpose? What is the thinking in the Government? Why this amendment is being brought forward? This means all the labour put in by the 13th Lok Sabha has gone waste. You must give us convincing reasons for coming forward with such an unusual procedure. It is really very unusual. You are repealing an Act that was passed by Parliament. Of course, no law is an end in itself. No law can be there for perpetuity. Any law must change according to the changes taking place in the society. I could understand if you wanted to change the nomenclature of the Bill. Now, here, more or less all the provisions are the same. Of course, some cosmetic changes have been made, for example, about penalising.

My friend, we are poor people. We are not experts in such matters. We presume that you are great experts and you have the specialised knowledge about these things. We are representatives of poor people. We are innocent people. Please give us convincing reasons why you have brought this new legislation.

CHAIRMAN: Let me tell you he is not so innocent and so poor.

SHRI HARIN PATHAK: I humbly endorse the views expressed by Shri Radhakrishnan. I am also surprised at the fact that when there was this earlier enactment, which had been gazetted and published, this new amendment has been brought and that too, without any major changes. Let me put it on record that there is no major change. This is unprecedented that a Bill is passed, it is assented to by the hon. President, it is published in the Gazette and a new Bill is brought. The Committee would like to know the major changes that you have brought What was the reason for repealing the earlier Act?



SHRIMATI KIRAN MAHESHWARI: Yes, we just want to know why the earlier law has not been amended and why a fresh Bill is being brought forward.

SHRI A. N. TIWARI: Sir, I express my thanks to you for having given to me and my colleagues this opportunity to be present here and to give our position about this Right to Information Bill which has been introduced in Parliament.

As you are aware, Sir, this Bill seeks to replace the Freedom of Information Act of 2002. That Act was devised largely to give to the people of India the right to access information held by Government, both the Central Government and the State Governments, except that information which was held by Government in its proprietary right. The citizens of India have the right to access that information regardless of the fact whether it is the State Government or the Central Government. So, that Act of 2002 had an all-India applicability. It, in effect, meant that it superseded the Acts which the State Governments might have planned or promulgated. As you know, eight State Governments in this country have already had their Right to Information Acts, which preceded both this Bill and the Act of 2002. After that, the CMP passed a resolution which was communicated to the Department of Personnel through the Prime Minister's Office which said that there shall be an attempt made to make the Right to Information 圈 more progressive, participatory and meaningful. In pursuance of that, we started working on the measures which needed to be amended so as to make the Bill more progressive. The Department held the view that a few amendments could be carried out in the existing Act and it could be brought before the Parliament. At time, we received from the National Advisory Council 35 amendments including the one about the nomenclature of the Act. When we examined the range of these amendments, it turned out that we would have to carry out a very large number of amendments in the existing Act -- both cosmetic and substantive. Therefore, in consultation with our colleagues in the Department of Law and Legal Affairs, we decided that perhaps a better alternative would be to bring in a new Bill which will incorporate all those amendments, rather than to amend it comprehensively. That was the sole reason. There was no complex thinking that went behind it. It was decided that perhaps a new Bill will meet the requirement better than a comprehensively amendment of the existing Act. That was all to it. I say with all humility and transparency that there was no complex thinking that went behind taking this decision of brining a new bill rather than amending the existing Act.

SHRI HARIN PATHAK: Could you tell us the major changes that you have proposed here?

SHRI V. RADHAKRISHNAN: You see, the Act passed by the House was not given effect to. How did you know that the amendments would be required? Once an Act is gazetted and published, it becomes operative. But it has not been notified by the Government because there is a clause in the original Act that it will become operative from the date on which the Government notifies it. That was not done. And that is what I cannot understand.

CHAIRMAN: Mr. Secretary, First you make your presentation and after that, you can clarify these points. (Followed by 1D)

TDB/1D/3.30

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SHRI A.N. TIWARI: Sir, the Right to Information Bill. 2004 which we have brought before you, has incorporated the amendments which were suggested to us -- copies of which have already been submitted to you -- by the National Advisory Council. A majority of them were incorporated in the Bill; some of them could not be incorporated, as I said earlier, because they were not of much significance.



Sir, the title of the Bill has been changed from 'Freedom of Information Act' to 'Right to Information Act'. The reason behind that was that it was believed that the word 'right' will position it very correctly within the ambit of fundamental right of speech and expression. Therefore, the Right to Information Bill was thought to be a better alternative to the 'Freedom of Information Act'. The Bill provides for a very definitive day for its commencement, i.e., 120 days from its enactment. It was not so in the case of the previous Act. It excludes the State Government bodies and applies only to public authorities under the Central Government, Constitutional bodies and bodies established by Parliament. It is a debatable Constitutional point whether the Central Government has the authority to enact a legislation which will have effect over the State subjects. Therefore, this point was also very extensively debated that the State Governments should have the authority to enact their own laws whereas the Right to Information Act enacted by the Central Government would apply only in respect of subjects administered by the Central Government.

Sir, the Bill provides that each Department and Ministry will have a Public Information Officer who will be in place within days of the enactment of the Act. So, there is a definitiveness as to when the action will be taken to create the required infrastructure for the implementation of this Act. The Bill provides for transfer of a request by a public authority to another public authority wherein the matter/information is held by the latter. As per the Bill, the exemptions provided are not absolute and withholding of information must be balanced against disclosure in the public interest. All the exemptions are conditional exemptions. All exemptions are weighed against disclosure in public interest. Information is to be released even if harm is shown to the public authority, if the public benefit in knowing the information £ .

outweighs the harm that may be caused by disclosure. The Bill, envisages creation of an independent non-judicial machinery. This is a major difference. It says that there shall be a non-judicial machinery, i.e., the Central Information Commission comprising of an Information Commissioner and Deputy Information Commissioners to decide second appeals. There is a new right to information hierarchy which has been created under this Bill. The legal framework of exercise of powers by the Commission are defined in the Bill.

SHRI V. RADHAKRISHNAN: The Bill provides for an Information Commissioner. The Prime Minister, the Leader of Opposition in the Lok Sabha and the Chief Justice of India will form a Committee, and the President would appoint the Information Commissioner in consultation with that Committee.

SHRI A.N. TIWARI: The first appeal would lie to the departmental officer senior to the PIO. The second appeal is to be made to the Commission. There is even a provision for imposition of penalty up to Rs.25,000/- or an imprisonment up to five years or both may be imposed on a Public Information Officer or anybody who is withholding the information, if convicted for persistent failure to provide information without any reasonable cause within the specified time period. As per the Bill, exemption of specified intelligence/security agencies is not appointe; agencies shall have the obligation to provide information in matters relating to corruption. In all integrity matters, security related exemptions are not absolute.

Sir, as far as monitoring and reporting is concerned, the Bill makes a provision to produce statistics to assess the implementation of the Act so that improvements could be effected, wherever requirement is perceived. The Central Information Commission is to monitor the implementation of the Act and prepare an Annual Report to be laid

. . . . }



programmes for development of 'information' regime, and this will be followed by the repeal of the Freedom of Information Act, 2002. So, these are the main clauses of the Bill which I have paraphrased before the Committee. The number of amendments suggested to the Freedom of Information Act, 2002 was quite elaborate. It was becoming very difficult for us to incorporate so many amendments in the Freedom of Information Act, 2002. Because of those amendments, framing of the new Bill became essential. That is why a decision was taken to repeal the previous Act and bring in a new Bill.

SHRI V. RADHAKRISHNAN: I have a doubt in my mind. The first appeal will be made to the immediate superior officer in the very office. You are not specifying him in the Bill. Only in the second appeal, the appeal would go to the Commissioner. The first appeal will go to the officer above him in the same office.

SHRI A.N. TIWARI: There is one point about which the hon. Chairman made a mention, and that was about the legislative competence. This matter has generated quite an elaborate debate at the moment. As I submitted, the Freedom of Information Act, 2002 really provided a single common Act for the entire country. It was silent as to what would happen, after that Act came into being to the State Acts which were already in place. Our presumption, perhaps is, it will supersede those Acts and they will become redundant. We were not quite sure how this process shall be taken forward. But, assuming for a moment that, that Act was an all-India Act and other State Acts did not have currency in the presence of that Act, some doubts were raised in certain quarters whether the Central Act could be used for accessing information held by the State Governments. So, there were two options before us. One was...

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SHRI V. RADHAKRISHNAN: There are some States which have got the Freedom of Information Act on their statute books. For example, Karnataka has got one such Act. In case of a dispute between the Central Act and a State Act, I think, the Central Act will prevail. What is your stand on that?

SHRI A.N. TIWARI: The Central Act, as it was passed by Parliament, did not mention that it would supersede the State Acts. It just said that the Central Act would be there. Now, there was a question of competency about our enacting a Central legislation to provide for accessing information held by the State Governments by their citizens. There were two viewpoints. One was, we allow the Central Act and the State Acts to remain present concurrently and leave the option to the citizens to decide how to access information held by the State Governments, they can do it either through the Central Act or through the State Acts. The information held by the Central Government would be accessed through the Central Act. There was dual option in respect of the information held by the State Governments. This was contested by some legal experts and it was said, perhaps, this position would not be defensible in law. So, in order to prevent any further litigation on this point, we introduced this provision in the Bill that the Central information shall be accessed only through the Central Act and the State information by the State Acts. That is the position, at the moment. If there are any further queries, I would be very glad to clarify them. (Followed by 1e)

kgg/1e/3.40/PPG/1.2.05

SHRI RAM NATH KOVIND: Mr. Secretary, my hon, colleague, Shri Radhakrishnan asked you to give a convincing reply, but even after your reply, we are not satisfied yet. When we go through the Gazette of India, this Freedom of Information Act was notified after its page 1



7th January, 2003 it is said, "It shall come into force as and when the Central Government notifies it in the Official Gazette for bringing this Act into force." We are not yet convinced.

SHRI HARIN PATHAK: I am sorry to say this about the fault of the Department. It is a pity that both Ministries, Ministry of Law and Ministry of Personnel, could not be competent enough to bring forward a comprehensive Bill in the Parliament. In a span of just six months, the new Bill has been set into motion. I have nothing to say except that I feel sorry. It is not fair in democracy. Efficiency has taken a beating. That is all. I am not personally satisfied with the reasons given.

SHRI V. RADHAKRISHNAN: When this Bill was taken up in the House, we discussed the amendments. I have a question with regard to exemptions. Exceptions are also enumerated in that. A change in situation may effect a change in exceptions also. Today it may be an exception, and in future, it may not be so. It is evident that you are bound to give the information that is sought. Because of exceptions, you may give today and you may not give it in future. Even the 'exceptions' may be changed. The question is, who is the competent person to decide on the question of exceptions? Otherwise, it becomes meaningless.

DR. P.C. ALEXANDER: I just have to make a comment in favour of officers. We should not think that officers have come up with the suggestions on their own. Left to themselves, they were happy that it was introduced in the Parliament, was discussed and was passed and became a law. But for certain other reasons, which I don't have to mention, they have been asked to bring about a new Bill. They are not in a position to tell us what we seek. We are asking them to explain something for which they are really not responsible. I am telling this to Mr. Radhakrishnan, that we have to take a different look at this matter.

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Now I have a question to the Secretaries present here. You have not taken all the recommendations of the National Advisory Council into account. They made 34 recommendations. You have simply refused some and modified some. Then, you have differed on certain matters. You have accepted totally whatever they have said on some. Then, you have been asked to bring forward a new Bill. I want to ask the regal experts who are here, supposing this Committee comes to a concrusion that instead of bringing in a new Bill some provisions should be modified, what would you say? If the Committee asks you to take into account some of the things which you have placed before us, and the recommendations of the National Advisory Council, and some which have been changed by the Cabinet Committee concerned, what would be the best way of doing it from your point of view?

Suppose we come to a decision on some provisions of the Act. without accepting the new legislation, how will the Government look at that? We may say that such and such amendments are not necessary and we ask you to consider that, and we even say that we would consider it at a later stage, what would be the format of making those amendments? How will the Government look at that?

SHRI A.N. TIWARI: Sir, this matter has already received the approval of the Cabinet. Now it is before the Standing Committee. And your views will certainly be taken into account. We will again go back to the Cabinet.

SHRI V. RADHAKRISHNAN: In the Common Minimum Programme, the right to information is an item. So, they wanted to bring this Bill adding 'right' to this law.

DR. P.C. ALEXANDER: My submission is, it is a matter which should be discussed amongst ourselves. We should arrive at a conclusion. You may agree with the new subgestions or we may not.



CHAIRMAN: The Secretary also says that there is a suspicion in the minds of media as also in the public, that with a change in Government, or, maybe, there is a change of mindset in six months. They say, "Here is a National Advisory Council which has recommended on certain things to strengthen the law which is prevailing now but it was not implemented. That means, the bureaucracy is dragging its feet to see that this law should not be there. It is a harassment of the democracy." That is the mind of certain sections of the media. This is the main reason why hon. Members have raised certain doubts. It is not for blaming the bureaucracy, nor is it a comment on the political mileage.

(Contd. by 1f)

KLS/1F-3.50/PPG/1.2.2005

CHAIRMAN (CONTD): This particular subject was discussed from 1997 onwards throughout India. It was discussed in the Chief Ministers' Conference. There was a consensus and on that basis this Bill was drafted. Then it has gone to different Committees, Group of Ministers, Group of Secretaries, etc. Finally, a law was made in 2002. That was about to be implemented. It was not implemented for one year. Then there was a change of Government. After that Advisory Council suggested 34 amendments. This is the feeling of the public and also of the media. That is why we are asking these questions. It is not either to blame this side or that side. If you have any explanation, please give it to us.

श्री शैलेन्द्र कुमार : चेयरमैन साहब, अभी जैसा माननीय सदस्यों, श्री अलेक्जेन्डर जी, श्री पाटक जी व श्री राधाकृष्णन जी ने इस बिल के बारे में चिन्ता व्यक्त की कि 7 जनवरी, 2003 को जब यह पारित हो गया था, तब फिर क्यों एक वर्ष तक यह यूं ही पड़ा रहा। एक सरकार गई तो दूसरी सरकार आने का इंतज़ार था, इसकी सफाई के तौर पर यह कहा गया। इसका क्या कारण था? हम ब्यूरोक्रेसी के ऊपर इल्ज़ाम नहीं लगाते, लेकिन फिर भी

एक वर्ष तक राके रखना कितना जींचत था। इस पर राष्ट्रीय सलाहकार सिर्मित ने 34 सुझाव भी भेज दिए, फिर भी यह एक वर्ष तक रुका रहा। इस पर कार्मिक विभाग ने कुछ न कुछ टिप्पणी तो अवश्य की होगी। मेरे खुयाल से इससे सम्बन्धित फाइल को मंगवाया जाए क्योंकि विलम्ब बहुत अधिक हुआ है। इस प्रकार से जो भी तथ्य इसके पीछे हैं, वे सामने आ जाएंगे। यही सुझाव अपनी ओर से मैं जानकारी के तौर पर देना चाहूंगा। श्रीमती किरण माहेश्वरी: हम यही तो आपसे पूछना चाहेंगे कि क्या आप संतुष्ट हैं या इस बात से सहमत हैं कि नया बिल आना चाहिए।

CHAIRMAN: We would also like to know from the Law Secretary whether the opinion of Attorney-General was taken in this regard. It was discussed in the previous report which was about the powers of the Central Government because right to information is a fundamental right. There is a residuary power given. All these things were itemised in Schedule Seven and in other Schedules Eleven and Twelve. Then all the powers will come under the Central List, that is, the Union List. Therefore, that was already discussed in item 97 of List I. Government of India has got the right which is not specifically mentioned in any of the items. When that is the thing, it is only that you are giving power for the citizens which were already available in the Constitution of India. But now this power is going to be given in a different version by a statutory support. That is the only reason why we are making it a law. It is not the end of it. You have the writ jurisdiction of the court where the Government can be asked and the Government's decisions can be told to the citizens when there are any sort of writs. They have got the right to information from the Government or any Government agency or Government funded agency. That is the comment made by the Supreme Court of India. Therefore, we are enacting a law, which gives more power to the citizens. We are having only single citizenship We do not have any dual citizenship like America. As has been into a mentioned by the hon. Member, if there is a contradiction by the hon.



State law and the Central law, then the Central law would prevail. In 1997, Chief Ministers decided that they are ready for this law. This is history. Therefore, why are you creating a doubt that this enactment will go against the States' interests and there will be litigation and things like that. We do not find that reason. We would like to know whether you are supported by the Attorney General or not.

SHRI V. RADHAKRISHNAN: This is a fundamental right in the Central list. Some States, for example Karnataka, have passed a statute regarding right to information. Some States have already passed legislation. What is the status of those statutes? How States can enact on a subject pertaining to Union List? If it is in the Concurrent List, States can legislate on this topic. You please consider that aspect. So far, this is in the Union List. Only Parliament can legislate on it. If it is included in the Concurrent List, both State Governments and the Union Government can legislate. Here how the States can legislate on a subject which is in the Union List? What is the legal status of the State statutes which they have already passed. I do not question the intelligence of the people from the States. They are fully advised about the legal opinion. We do not say that they are not competent people. But the point is the State Assemblies have passed such statutes and there is a confusion.

SHRI T.K. VISWANATHAN: Sir, it is a very complicated matter. We are treating information as norm and we relate it to one of the entries which are there in the three lists. All things are itemised, public order, police, etc. You have public order, police, etc. You cannot segregate information separately. We cannot say that you can legislate on this and you cannot legislate on this. It is very risky. It will raise the question of Centre-State relations. This is one area where we are not clear. It cannot be said under this pretext that information is my subject, so I will

legislate on information. This will lead to a very complex situation. That is what we foresee when we are trying to draft this legislation. This is something on which we will be guided by the Committee. Nobody is clear on this area. We cannot say that State legislations are null and void. The States legislate on matters, which are in the State List, and the Central Government legislates on the subjects, which are in the Central List. We have to keep in view the Centre-State relations. This is where we have to be conscious. We are before the Committee. We will go by the Committee's recommendations. (Contd by 1G)

SSS/1G/4.00/PPG/1.2.05

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SHRI T. K. VISWANATHAN (CONTD.): We have no problem in extending it to the States also.

CHAIRMAN: As you have said, you are specifying certain exemptions. For example, you have exempted CBI or Intelligence. Information could not be called for. At the same time, law and order problem, a local subject, can be called for by anybody. Even the media is calling and the court is allowing it. That cannot be the reason. The reason is whether the citizen has got a right to know about the working of the Government. That is the main reason on the basis of which we have enacted the law. What is the transparency? What is the thing you have made in the aims and objectives in the Bill? But you started telling in the first part of the Statement of Objects and Reasons, "In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information." But nething has been followed. You have clubbed with Objects and Regional rest



the advice has not been properly taken. If you have got any legal doubt, the Attorney General was telling that the State cannot be interfered or this Bill 2002 is not giving anything out of it. It is only supporting the Fundamental Rights of the citizen to know the day-to-day affairs of the Government decision. They want to have a transparency in democratic system.

SHRI A. N. TIWARI: In fairness let me submit that Attorney General's advice was: this act will have an over-riding effect on the State laws. 2002 Act will have transparency. That is one advice of the Attorney General. Attorney General had no legal adviser. They said that both the laws will co-exist and the citizens will have the option to have laws through a Central legislation or a State Legislation. That is the only point, which needs light on at this moment. Law Secretary says, since we are enacting the law, it cannot extend to State subject. So, if today, we take a decision that, yes, whatever law we pass today will have transparency all over the country, then we have the Attorney General's view. The matter at the moment before us is, these laws and the State laws co-exist. Therefore, a decision was taken that they can co-exist. That is the position we have taken at this moment. I cannot say that yes, the position he has taken is quite truly correct. The only provision which he has said is that this is the power which extends to the Central laws, the Concurrent List and the State List. That is the position at the moment. I am quite certain that the moment this Act comes into force when it is made applicable with the State Government, there is bound to be enormous amount of administrative problems in making the applicable. A man can ask for some information through the State law and another man can ask some information through the Central Law. The infrastructure is there for collecting this information. There is no convergence between them. Apart from that, if we just look at the (:

administrative problem from a totally legal form we find that enormous amount of litigation would be generated if we take up this decision.

DR. P. C. ALEXANDER: If the Secretary is able to do, let him do with the material available this type of comparative Statement which they have made. They have made a Statement for specific issues mentioned there. The Committee and I would like to have a comparative statement about the financial powers, the decision of the Cabinet on them and what is expected by the Cabinet and what is incorporated in the 2004 Bill. In the same say, what are the things which differentiate between the new Bill and the old Bill. Then we should make a decision among ourselves which we can support and we can come to a conclusion that only 10 or 7 or 6 of these changes are needed. We can take a view on this. These things can be brought out by an amendment.

CHAIRMAN: Already they have given a comparative statement.

DR. P. C. ALEXANDER: That is not sufficient.

CHAIRMAN: You have to make it in 2002 Act. Another thing is the Advisory Committee's recommendations and the third is, the present Bill. If you make it clause-by-clause it would be better.

DR. P. C. ALEXANDER: If that is done, it is for the Standing Committee to take a view about the changes.

CHAIRMAN: We started taking public evidence from 14th onwards. We are sitting on the 14th and 15th for evidence. Before that we can get it. During the evidence we can seek clarifications. Mr. Meena, what is your opinion? What is the actual opinion of the previous Attorney-General and the present Attorney General?

SHRI R. L. MEENA: Sir, right from the beginning, the view of the Department of Legal Affairs has been that as regards public records pending with the Central Government or Central Government



undertakings or agencies, Parliament, no doubt, has a jurisdiction. As regards records maintained by the State Government, Parliament does not have any jurisdiction. As regards records maintained by the State Government Parliament does not have any jurisdiction even form 1997. That has been the view of the Department of Legal Affairs. This was again agitated. Then we ultimately sought opinion of Mr. Soli Sorabjee. Then he said it could be covered. That was the view. We recorded this. Our opinion was sent to the Department of Personnel. Even now we hold that as regards the records maintained by the State Government, Central Government does not have any jurisdiction.

CHAIRMAN: On what basis are you making this opinion? Have you got any statutory support or Constitutional support?

SHRI R. L. MEENA: Basis is very simple. There are certain entries up to 1996. Specific entries are given. So, for the thing which is not covered by either the Concurrent List or State List or Union List, we resort to residuary powers. According to me, when we maintain record for administration, this information is part of that subject. That is our view. If that is so, then 1997 is not attractive. That is the view that we have taken.

(FOLLOWED BY 1H)

NBR/1H/4.10.

CHAIRMAN: In the academic interest, I would like to know from you a point. You know there is the Water Act. You have enacted this in Parliament. And, you are also very well aware that 'Water' is a State Subject. So, under what powers have you enacted this legislation? Under this, certain Committees were also constituted, certain powers were given to those Committees, you also want to impose tax on certain industries/polluting units, etc. And, it is governed by the Government of India.

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SHRI R.L. MEENA: Sir, so far as my information goes, Water Cess Act has been enacted in pursuance of a resolution passed by the States.

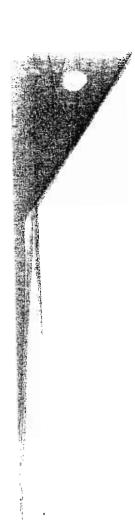
CHAIRMAN: I am not talking about the Water Cess Act. I am talking about the Water Act.

SHRI R.L. MEENA: Even that we have acquired jurisdiction because of certain provisions of Constitution...

CHAIRMAN: Then, have any suggestions been made in the Chief Ministers' Conference. Or, have you called for the views of any experts? We have indicated in the note that since 1997 onwards, at every stage, you are asked to get the information from all the States. We would like to know from you as to how many States have said, 'we will look into it and...

SHRI T.K. VISWANATHAN: Sir, jurisdiction is something which the States cannot confer. We have to read the Constitution because the States cannot confer jurisdiction and I don't think that may be relevant. That is what I feel.

CHAIRMAN: You are enacting a number of laws. You have legislated many laws as model laws. You are making the States obligatory; and, when they need they can make legislation. Even in the proposed Bill, you are giving delegated legislation. They can never, at any particular time, have examined whether they can exclude or include. When you look at the Concurrent List or the State List, you are allowing them to change their position. You have never said that citizens right to information cannot be taken away from the State Governments. We do not have the Federal Government like USA. We are a unitary form of Government. At the same time, the entire jurisdiction comes under the Central Government when it is a subject of residuary and you are surpling that the Right to information cannot be covered under taken as the



Seventh Schedule. Kindly support it with any provisions of the Constitution or decisions of the apex court or High Courts. Without that how do you justify your argument?

For example -- it may be out of context -- the nationalised banks want to compete with the market and in that process, the banks wish to lend money to Tsunami victims in re-establishing or reopening of their businesses or to buy boats, nets, etc. In such a situation, how can the State Government say, 'you do not have the authority or power to do that.' Nobody can say that. It is a commercial need. If the nationalised banks wish to give money to Tsunami victims by way of loans, how can you say, 'no.' If you ask the State Governments, the State Governments object to all legislation enacted by the Union.

SHRI T.K. VISWANATHAN: Sir, I am reading Entry 97 of the Seventh Schedule. It says, "Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists. And if you come to the State List, Entry 12 of the State List says, "Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance." Under this, they have enacted the Right to Information Act. Entry 97 is not very broad. And it is not something which is left where all the other fields have been occupied. You cannot use this to encroach upon the other things covered by an Entry of the State List. Entry 97 cannot operate like this. This is what we feel.

CHAIRMAN: The point is not about the mention in the List alone. When the nation is growing, new subjects are coming in. Is there any reference in the Constitution about the electronic data? So, we have to grow up with the evolution. Many new things are coming up. When such things come before us, then the Central Government or the Union

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Government will have the right to legislate. We want to be very frank. We would like to know as to what made the Department of Legal Affairs to be afraid of touching this particular aspect when you are enforcing the Fundamental Rights. It is the fundamental right of any citizen to know the information as to how the Government is working, how the executive is working, how the taxpayers' money is being spent, or, whether it is with regard to Panchayati Raj or any body to that matter.

SHRI T.K. VISWANATHAN: It is not merely a platonic declaration of the right to information. The Supreme Court has interpreted the Constitution many times. The problem comes in when you try to operationalise the right by providing for a regime to enforce those rights. It is not merely a declaration. We are thinking of following it up. When we had enacted earlier, at that time, we did not have the wherewithal, especially the machinery. It makes us reluctant. I would also like to say that under the previous Act there was no machinery or punishment to enforce. In the proposed legislation, both enforcement as well as machinery is available. At the same time, in the earlier Act, there was no punishment. So, there was no friction. But, in the proposed legislation, there is a scope for friction as per the proposed provisions. The result to, the relations between the Central and the State Governments get intested So, what I wish to say is that when we concretise this, then we will have problem and it is where we have to strike.

CHAIRMAN: I am sorry that this enactment or any advice given by anybody or the Advisory Committee or even the earlier Committee, does not mean that you have to do it. We are proposing to enact a mode! law which will be applicable for the entire country. And, the Unio! Government has got specific institutions created and it gives power which can be followed by the State Governments. If the State



Governments have so much secrecy on a piece of information which ought to be revealed for the citizens of this country and if it does not want to reveal, what do you do? I am afraid we are not convinced with your submissions that we are interfering into the subjects of the State.

SHRI RAM NATH KOVIND: You are now changing your stand.

CHAIRMAN: We are implementing the Fundamental Rights.

SHRI RAM NATH KOVIND: So, the Central Government has a right to legislate upon the State Governments.

SHRI V. RADHAKRISHNAN: Sir, the simple question is: Right to Information is a Fundamental Right and the Union Government alone is the competent authority to enforce the Fundamental Rights. How could It come within the purview of the State Governments?

CHAIRMAN: We have to protect the interests of the Constitution.

SHRI V. RADHAKRISHNAN: Right to Information is a Fundamental Right and it is for the Union or the Parliament to legislate, not the States. At the same time, it can be a Central Act. The Central Government can make laws and the States will have to follow suit. For that, a Commissioner has to be appointed in the State. The Governor has to appoint him in consultation with the Chief Minister as has been done at the Centre.

(FOLLOWED BY "1J")

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CHAIRMAN: Let us come to the conclusion. According to the Law Secretary and the Secretary, Legal Affairs, in Attorney General's view we have got the power under item No. 97. Secondly, even then the Law Department feels that we should not encroach upon the State powers.

SHRI A.N. TIWARI: Sir, there are two legal opinions before us. In Attorney General's opinion either this Act could have all-India consideration or the Central Act can confine itself only to the Centre.

The point is whether we can concurrently have two Acts -- the Central Act and the State Act. There is no light on this point.

DR. P.C. ALEXANDER: Why are you concerned about that? I think we need not raise this issue. We should try to confine ourselves to find a solution. We should go by the advice. If you get into it, you will get into more controversies.

CHAIRMAN: Okay. Kindly give us the notes on the points that are under your domain. And, if necessary, we will call you again. Kindly join us for a cup of tea.

(The witnesses then withdrew and the Committee adjourned)

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No.RS.6/7/2004-P&L

Dated the 21st February, 2005

OFFICE MEMORANDUM

SUBJECT: Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice – examination of the Right to Information Bill, 2004.

The andersigned is directed to forward herewith a copy of the Memorandum No.17 aubmitted by the Common Cause. New Delhi on various provisions of the Right to Information Bill. 2004, which is currently under examination by the Committee.

- Inc Ministry of Personnel, Public Grievances and Pensions are requested to arrange the suggestions contained therein clause-wise, in a tabulated form and furnish their comments (50 copies in English & 25 in Hindi) to this Secretariat, latest by 26th February, 2005 for consideration by the Committee. A specimen proforma for sending this information has already been sent.
- The Committee will take up clause-by-clause consideration on the 1st March. 2005

(SURINDER KUMAR WATTS)
DEPUTY SECRETARY

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The Community of Personnel Public Cities ances and Pensions. (Shirt V.N. Fiscari, Secretary to the Government of India) North Block, New Delhi.

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February 16, 2005.

TO

Shri Surinder Kumar Watts, Deputy Secretary, Rajya Sabha Secretariat, 007, Ground Floor, Parliament House Annexe, New Delhi - 110001.

Subject: SUGGESTIONS ON THE RIGHT TO INFORMATION BILL, 2004.

Dear Sir,

I invite reference to the notice published by the Rajya Sabha Secretariat in the Times of India on 12th February, 2005 inviting views of the people on the Right to Information Bill, 2004 which was introduced in the Lok Sabha on the 23rd December, 2004 and which has been referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. It is obviously of paramount importance that the people should always be aware of the privilege they have of securing information from any concerned office of the Central Government on matters which are not subject to any secrecy under the law and which are of importance from the public viewpoint.

I give below certain specific points on which, inter alia, information should be made available when any person seeks it from the Government Office:

- (1) All public sector companies both in Centre and States to report on their financial status every year as done by the private sector. As an attachment separate information on dealings in land should also be mentioned.
- (2) On Central budget reporting to be done as done for public sector companies with full informationl details on costs incurred on
 - (a) General administration excluding security costs;
 - (b) Security costs for Centre and States separately;

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- (c) Total liability of Central & State Governments separately; and
- (d) Estimated costs by the Planning Commission for the year.
- (3) Defence costs broken down to capital and administration costs and also purchases separately.
- (4) Scientific Institutions, Centre and States what are being implemented during the year with emphasis on innovation.
- (5) Agricultural full information on output as well as cost of FCI
- (6) Health care, cost incurred on health care both for Centre and States.
- (7) List of achievements during the year for Centre and States.

Yours faithfully.

(H. D. Shourie)

Director

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Dated the 25th Lebruary, 2005

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Secretary to the Government of India,

Ministry (* Personnel, Public Grievances and Pensions,

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No Holls

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Examination of the Right to Information Bill, 2004 by the Department Related Parliamentary Standing Committee on

Personnel, Public Grievances, Law and Justice.

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trained in Leisonner Public Grievances. Law and Justice will meet at 4.00 P.M. on

stacsons the 1st March, 2005 in Room No.63. First Floor, Parliament House to take up

clause because consideration of the above Bill

therefore to request you to kindly make it convenient to attend the meeting

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Your faithfully

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(SURINDER KUMAR WATTS)
DEPUTY SECRETARY

Tel:23034262(O) 23363713(R)

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NO.KS.67 2004-P&L

Dated the 25th Lebruary 2005

OFFICE MEMORANDUM

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St.B.H.C.L.: Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice – examination of the Englis to Information Bill, 2004.

JS(E)

: includersigned is directed to forward herewith a copy each of the Memorandum No. Domesupplements to Memoranda Nos.2 and 7 submitted by Commonwealth Human French instance and the National Campaigan for People's right to Information.

DAVCEDI

The Ministry of Personnel, Public Grievances and Pensions are, requested to at 100% the suggestions contained therein clause-wise, in a tabulated form, and furnish them a ministry to copies in English & 25 in Hindi) to this Secretariat, latest by 28th across 120% to consideration by the Committee. A specimen proforma for sending the ministry in the arready been sent.

The Committee will take up clause-by-clause consideration on the Γ^{ν} March.

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(SURINDER KUMÁR WATTS) DEPUTY SECRETARY

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Disclosure: Beyond Right-to-Information

lmagine if we could assess the performance of local governments every quarter. Imagine if we could compare Bangalore's education performance with Mumbai's, Hyderabad's healthcare delivery with Chennai's. Imagine if the media could cover city performance the same way that they cover Infosys and Wipro, and the kind of healthy competition this could unleash.

If this has to happen, we have go beyond Right-to-Information, to Disclosure.

Today, "Right to information (RTI)" about government activity is the talk-of-the-town. Legislation has been passed in many states, and is in fact being considered at the national level. This will dramatically change the secrecy with which governments work, and allow citizens access to a variety of details that we could not get before. The Right-io-Information wave will have enormous significance in checking government excess, and exposing corruption. Successes will not be immediate, but eventual. Each such example would be an individual incident: a fodder scam in one place, or a college fee scandal in another, each being pried open with the crowbar of RTI law.

However, we need to think about how RTI could be used to ensure more systemic solutions, where the performance of our government institutions are discussed in a regular, predictable manner. This is what good "disclosure" is about, this is how institutions can be governed properly. Good governance will arise not out of individual exposes of scams, but out of institutionalised disclosure practices that are constantly being improved.

Understanding the evolution of financial statements and disclosure in the private sector can help us see the similarity between the evolution of "Right to Information" issues in the private sector and the current debates on the topic in our public institutions:

- The form of private enterprise that we are now familiar with the "company" only began in the 17th century, interestingly enough with the launch of the East India Company:
 - Between 1600 and 1617 the company sponsored 113 voyages, each supplied with hewly subscribed capital and treated as a separate venture.
 - At the end of each voyage; assets as well as earnings were subject to divisions among the shareholders.
- One of the first attempts to deny stockholders access to the records of their company occurred during 1633. After a decline in the fortunes of the East India Company, some stockholders moved for the appointment of a committee of inspectors. The Governor (Chairman) refused to put the motion to the meeting and the governing committee decided that no-one should be permitted to read or copy, or to 'ravel and dive' into the accounts without its consent.
- A Select Committee published its First Report during 1844, including the recommendation that "the accounts of every such Company be open to the inspection of the shareholders: and that the annual balance-sheet, together with the reports of the auditors thereon, be registered."

- In the United States, progress on corporate disclosure followed the standards set in England, until the early 1900s. As late as the 1920s many corporations still kept sales figures secret, some did not depreciate assets, failed to treat non-operating income consistently, did not separate retained earnings from paid-in capital and did not disclose asset write-ups.
- It was after the Great Depression of 1929 that substantial changes were brought in. President Roosevelt championed full disclosure as the preferable remedy to the malaise of American financial markets; he made the famous statement, "Sunlight is said to be the best of disinfectants."
- A seminal document in the universalisation of accounting principles was Paton and Littleton's "An Introduction to Corporate Accounting Standards" (1940), the most coherent statement of principles to emerge from this period. This document set the tone for much of the subsequent evolution of corporate financial disclosure practices in the ensuing decades.

Over the past fifty years, these practices of disclosure have been strengthened, each time because of some new scandal that erupted. For example, with the recent Enron and Anderson scandals, there has been a new law called Sarbanes-Oxley Act, which requires CEOs of companies to take personal liability for the disclosures being made. Hence, disclosure practices are not a static set of tools, but constantly evolving. The fundamental principles behind the creation of these standards have been the guiding lights of all material and legislation: creating a level-playing field for all stakeholders by providing regular, detailed, and standardised information about the state of an institution.

We can now see the comparison of what has happened in the private sector to our governments: the Right-to-Information laws are only the first step. We have a choice, either to continue to use this tool to extract information on a case-by-case basis, or to take the learnings of the private sector that evolved over 300-odd years, and telescope the timeline to focus on DISCLOSURE from our government institutions. What disclosure does is give "information" three important characteristics:

- 1. Timeliness: The information being provided relates to the immediate present, not something that happened three or five years ago. Hence, people are interested, and the information is not like reading yesterday's newspaper
- 2. Predictability: a shareholder of a company KNOWS that she can expect information every quarter. This knowledge that information will come allows all concerned to expect, and analyse the data. Today, information from government comes out unpredictably, in selective bunches, so that there is no context for the average citizen. As a result, the information disappears into a black hole.
- 3. Standardisation: the information is packaged in a manner that is understandable.

When information has these 2 characteristics, it unleashes the creative forces of all concerned with that particular institution. For a private company, it could be a research analyst, or a shareholder or a rating agency or a lender. For a government, it will be a citizen or an elected representative or an administrator or an NGO.

In government today, we do have audited statements prepared either by the Comptroller and Auditor General (CAG), or state-level accounting departments, but these are weighed

down by a few constraints. for one, they fail the timeliness test and are invariably delayed by several months, sometimes even years. For example, the CAG's audited report for the Union Government is currently available only for 2002-03. And the Union Government's auditing is far superior to that of smaller entities: less than half the state audits for 2002-03 are available. Most significantly, given the focus of this column, city audits are commonly delayed by several years. This lacuna is compounded by the fact that public engagement with government finances is restricted to the budget announcement, which is really an instrument of promise rather than performance. Finally, disclosure is more than audited statements; it includes performance metrics, and critically, a vibrant space for periodic structured discussions.

Disclosure is different from RTI: yes, they belong to the same family of getting information, but the methods and processes are very different. Unless we recognise this difference, we will not extract the benefits that disclosure practices can offer. Unless a framework is created within which information becomes intelligible, unless a mechanism of "layering" is developed where we can sequentially ask more and more detailed questions of government, the true power of information will not be captured. We need to have both, the rhythm of regular disclosure documents that present the performance of our government institutions to various stakeholders as a matter of course, as well as the scalpel of right-to-information to cut open specific issues that require greater analysis.

The writer is Campaign Coordinator of Janaagraha, a citizens' platform for participatory democracy. He can be reached at ramesh@janaagraha.org

TOWARDS A DISCLOSURE LAW: The need for Disclosure

Ramesh Ramanathan

Background

One of the few common characteristics of almost all non-government institutions anywhere in the world (both in the for-profit and the not-for-profit sectors) is the set of FINANCIAL STATEMENTS that are produced either on annual or quarterly basis. These statements are the Balance Sheet the Revenue & Expenditure Statement, and often but not always, the Cash Flow Statement. Together, these 3 financial statements form the core of the entire edifice of institutional performance appraisal and corporate disclosure

The financial statements are the launch pad for any detailed understanding of an institution. Along with the explanatory notes, management discussion and other material disclosures, these documents have become so commonplace that entire segments of the financial markets have evolved to interpret and make decisions based on this information financial analysts, money managers, chartered accountants, rating agencies, as well as the average shareholder or potential investor.

Large public-limited companies that have a distributed shareholder base are judged by their quarterly performance, and their share price reflects the response of the financial markets to these announcements. The financial statements offer a window into the functioning of the organisation, and are the diagnostic tools to allow all stakeholders to delve deeper into the details behind the performance. These could be complex issues of revenue mix due to the introduction of new products, or poor control over costs due to weak inventory management, or inadequate reporting systems that cause a one-time write-off.

Such standards of reporting are not restricted to large publicly traded companies. To a lesser degree, but within the boundaries of generally accepted reporting norms, most firms today have adopted the practice of standardised performance reporting. Even firms that are in the non-profit sector conduct quarterly board meetings where financial statements are distributed, discussed and approved. Information provided in these quarterly statements form the centrepiece of measuring the performance of the institution over the preceding quarter.

At the core of these disclosure documents are the financial statements. One of

the reasons for the ubiquitous presence of these instruments is their standardised format: almost universally, the same approach is adopted for the generation and presentation of these statements. There could be differences across countries in tax treatment and accounting charges etc., but the overall framework of these 3 documents (Balance Sheet, Income Statement and Cash Flow Statement) are quite well standardised.

These practices are well understood and followed in India as well. At the end of every quarter – generally June 30th, September 30th, December 31st and March 31st – tens of thousands of institutions prepare their quarterly financial statements, call in their auditors to approve the statements, send out notices to their Board of Directors, and hold meetings to appraise and discuss the performance of the just-concluded three months

Not surprisingly, failure to adhere to the standards prescribed for full disclosure results in possible civil and criminal action in a court of law, and possible appearances before regulatory institutions like SEBI etc

Financial Statements = Good Corporate Governance

This is not to say that the system is foolproof, rather that it is constantly evolving, attempting to provide the broadest and most flexible implementation toolkit, without being too prescriptive.

Corporate Governance itself is an area that is getting more complex over the past few decades, never more rapidly than in the recent few years, with the cases of egregious deviations from accepted standards, as in the latest Enron case. This goes to prove that the creation of standardised financial statements is not a guaranteed safety ticket to proper institutional conduct, rather that it provides a springboard from which stakeholders can hopefully procure sufficient early warning signals about the true state of an institution. If the ripple effects are felt quickly, and corrective action is taken, then the threshold of full disclosure can be raised, making it more difficult for mistakes to be repeated.

Performance of our Governments

In India, we have a few thousand governments, each of which is elected by an appropriate cluster of citizenry: the Union Government, the 25 State Governments, several hundred urban local governments, and the multitude of Panchayati Raj Institutions in rural India (all legitimate local governments, under the 73rd amendments, although most of them are fledgling institutions).

- Each government is an institution that raises resources and spends them on a variety of activities, many obligatory and some discretionary.
- Each government is an institution that has many stakeholders, the primary ones being the citizens.
- Each government has a management that is formed of administrative professionals and elected representatives
- Each government makes promises of performance every year. Invariably, because no standard performance yardsticks are applied, these promises are anecdotal, sporadic, and can rarely be strung together into any coherent measurement framework.

The Right to Information campaign:

- The past few years have seen the acceleration of the "Right to Information" campaign, with several states having passed legislation to allow citizens and other stakeholders access to government information.
- The campaign for and passage of right to Information legislation has far-reaching implications. While the scope of information access is possibly vast, including important facts about how decisions were made, and priorities established, one important component of Right to Information is access to the regular activities of our governments.
- Within this limited context, Right-to-Information legislation can be seen as the first phase of a sequential process. The questions that immediately arise are similar to those that have evolved over the past two centuries with private enterprise; how can this information be disseminated in a structured, regular and standardised manner. This is critical because government institutions produce copious quantities of information. Unless a framework is created within which this information becomes intelligible, unless a mechanism of "layering" is developed where we can sequentially ask more and more detailed questions of government, the true power of this information will not be captured

Here, as we enter the second generation – admittedly, many states are still yet to pass the first phase of legislation – we can look to the learnings of the private sector, and use the tools that have evolved in terms of full disclosure, at least for the regular operations of the institutions concerned.

Over the recent past, many governments are beginning to adopt the approach of business, professionalisation, public-private partnerships, citizen charters etc. While these are positive developments, they are clearly insufficient since they still do not provide enough standardised information about performance that allows different stakeholders to engage in active debates with government. It may therefore be the right time to apply the language of business to government.



While there are benefits to adopting such an approach, there is also the need for caution, for the following reasons:

- A government institution is much more complex than a private, commercial enterprise. It
 engages in activities that are social, commercial and fiduciary in nature, in a blend that is never seen in a commercial organisation. This complexity cannot be understood fully in the limited frame of reference of the private sector.
- Proponents of using the language of business risk being seen in an ideological context rather than a just making a utilitarian argument. Such a view would be unfortunate, since it switches attention away from the core issue which is performance measurement of government, to issues about the role of government, class struggles and so on. The potential of the language of business must be carefully presented to various stakeholders, and a rainbow coalition must be created to thwart criticism.
- The value of the business approach must be demonstrated to be fulfilling only a limited, functional need. This acts as the basis for much deeper debates between various interest groups, citizens and government. The instruments of business are merely to set the stage for the larger discussions, and supplement these conversations, rather than substitute them.

Clearly, it is time to ask some critical questions about how our governments manage our money. The common functional thread that runs through all the 3 points raised above is one of resource management; how well do we actually spend our money; how do we make our decisions about where to raise and spend our money; and finally, how do we raise and spend our money directly at the local level so that citizens feel greater ownership. It is time we created the platform for Disclosure from our Governments.

Meeting International standards for Government Reporting:

The pressure to create better standards for accounting, financial management and disclosure is being felt by governments all around the world.

- One example is the formation of the Governmental Accounting Standards Board (GASB). GASB was organized in 1984 by the Financial Accounting Foundation (FAF) to establish standards of financial accounting and reporting for state and local governmental entities. GASB's website has this to say about accounting standards:
- "Accounting and financial reporting standards are essential to the efficient and effective functioning of our democratic system of government:
- Financial reporting plays a major role in fulfilling government's duty to be publicly accountable.
- Financial reporting by state and local governments is used to assess that accountability and to make economic, social, and political decisions." Private sector institutions are being asked to adopt internationally accepted standards to allow for standardised interpretation of their performance (Generally Accepted Accounting Principles or GAAP).
- Similarly, global best practices for government financial disclosure are also being created A brief description of the GASB Statement 34 below illustrates the level of detail that is now being demanded of government institutions:
- This Statement establishes new financial reporting requirements for state and local governments throughout the United States. When implemented, it will create new information and will restructure much of the information that governments have presented in the past. We developed these new requirements to make annual reports more comprehensive and easier to understand and use
- Annual reports currently provide information about funds. Annual reports should allow users to assess a government's accountability by assisting them in determining compliance with finance-related laws, rules, and regulations. For this reason and others, this Statement requires governments to continue to present financial statements that provide information about funds.



- Snowing budgetary compliance is an important component of government's
 accountability. Many citizens—regardless of their profession—participate in the process
 of establishing the original annual operating budgets of state and local governments.
 These government-wide financial statements will help users.
- Assess the finances of the government in its entirety, including the year's operating results
- P Determine whether the government's overall financial position improved or deteriorated
- Evaluate whether the government's current-year revenues were sufficient to pay for current-year services
- See the cost of providing services to its citizenry
- See how the government finances its programs—through user fees and other program revenues versus general tax revenues
- Understand the extent to which the government has invested in capital assets, including roads, bridges, and other infrastructure assets
- Make better comparisons between governments.
- This Statement establishes financial reporting standards for state and local governments, including states, cities, towns, villages, and special-purpose governments such as school districts and public utilities. It establishes that the basic financial statements and required supplementary information (RSI) for general purpose governments should consist of:
- Management's discussion and analysis (MD&A). MD&A should introduce the basic financial statements and provide an analytical overview of the government's financial activities. Although it is RSI, governments are required to present MD&A before the basic financial statements.
- Basic financial statements. The basic financial statements should include:
- Government-wide financial statements, consisting of a statement of net assets and a statement of activities. Prepared using the economic resources measurement focus and the accrual basis of accounting, these statements should report all of the assets, liabilities, revenues, expenses, and gains and losses of the government.
- Fund financial statements consist of a series of statements that focus on information about the government's major governmental and enterprise funds. Governmental fund financial statements (including financial data for the general fund and special revenue, capital projects, debt service, and permanent funds) should be prepared using the current financial resources measurement focus and the modified accrual basis of accounting. Proprietary fund financial statements (including financial data for enterprise and internal service funds) and fiduciary fund financial statements (including financial data for fiduciary funds and similar component units) should be prepared using the economic resources measurement focus and the accrual basis of accounting.
- Notes to the financial statements consist of notes that provide in formation that is essential to a user's understanding of the basic financial statements
- Required supplementary information (RSI). In addition to MD&A, this Statement requires budgetary comparison schedules to be presented as RSI along with other types of data as required by previous GASB pronouncements. This Statement also requires RSI for governments that use the modified approach for reporting infrastructure assets



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Supplementary Submission to Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice

on the Indian Right to Information Bill 2004

"Knowledge will forever govern ignorance, and a people who mean to be their own governors. must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both."

- James Madison, Fourth US President



Submitted by the

Commonwealth Human Rights Initiative 21 February 2005

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CLAUSE BY CLAUSE ANALYSIS

Section 2

s.2(c) "Include 'State Government' within the definition of 'Government"

The definition of Government omits the state and local governments unlike the definition provided in the Freedom of Information Act 2002, the present Bill therefore does no apply to public authorities funded or controlled by State governments. This omission had serious implications as it leaves a bulk of information, which citizens have a fundamental right to access, out of the purview of the proposed law. It is recommended that the proposed law be passed under Entry 12 pertaining to 'public records' in List III of Schedule 7 of the Constitution. As a law passed on a subject under the Concurrent List this will automatically apply to all states including those 19 states that do not have their own access to information laws at present.

s 2(c) & Amend the definition of "Government" to ensure that it is consistent with the definition of "public authority in s.2(g)

The definition of Government in s.2(c) appears to inadvertently have incorporated a definition of "public authority" which is slightly different to that in s.2(g). The additional clause in s.2(c) which states that a public authority includes a body "substantially financed by funds provided directly or indirectly or controlled by the Central Government..." should be moved to sit with s.2(g) to avoid confusion.

s.2(d) Reinsen the term "file notings" from the NAC draft RTI Bill into the definition of "information"

The original recommendations of the National Advisory Council included the term "file notings" in the definition of "information" but this term has been excluded from the Bill. This is cause for concern — is there a reason why the bureaucracy felt it necessary to specifically exclude this term? Does this indicate an intention on the part of officials that they do not intend to disclose file notings? If so, this is inappropriate. File notings constitute part of the file — whether the official intended for them to be public or not, they cannot be excised simply because they might be embarrassing or frank. Unless they are covered by an exemption, they must be released.

s.2(k) Amend the definition of "third parties" to EXCLUDE public authorities

4. Section 2(k) defines a third party to include a public authority. However, this is inappropriate considering that public authorities are currently defined only to cover government bodies. One government body should not be considered a third party in respect of another government body. They both comprise part of the second party to any application — namely "the Government". As such, s.2(k) should be amended to remove the reference to public authorities.

s.2(g).
s.2(j), s.3

Broaden the right to information to allow access to information held by private bodies – ideally wherever access is needed "for the exercise or protection of any right", but at least "where the functions of the body are of a public nature, where the body provides services under a contract with a public authority; where the body is owned, controlled or receives and directly or indirectly from the Government, or where the body's office bearers are appointed by the Government"

5. Section 2(j) and s.3 should be amended to extend the scope of the Bill to cover information held by private bodies, at least where the information is necessary for the exercise or protection of a

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- right. Depending on the formulation chosen (see paragraph 6 below), this may also require an additional definition for 'private bodies' to be inserted in s.2.
- 6 Private bodies are increasingly exerting significant influence on public policy. Furthermore, as noted above, India has witnessed increasing outsourcing of important government functions and is likely to continue to see further privatisation of important services as part of its economic development strategy. In this context, it is unacceptable that these bodies, which have such a huge effect on the rights of the public, should be exempted from public scrutiny simply because of their private status.
 - South Africa s.50: Information held by or under the control of a private body where access to that
 information is necessary for the exercise or protection of any right. [NB: if this formulation is too
 broad, consideration could be given to limiting the application of the law to private bodies over a
 certain size (determine according to turnover or employee numbers)
 - India (FOI Act 2002) s.2(f) Any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government.
 - Jamaica s 5(3): Bodies which provide services of a public nature which are essential to the welfare of society car. be covered by the Act by Order.
 - Maharashra s.2(6). Any body which receives any aid directly or indirectly by the Government and shall include the bodies whose composition and administration are predominantly controlled by the Government or the functions of such body are of public nature or interest or on which office bearers are appointed by the Government
 - United Kingdom s.5(1): Bodies which appear to exercise functions of a public nature, or are
 providing any service whose provision is a function of an authority under a contract made with that
 public authority can be covered, by Order of the Secretary of State

Section 3

s.3	Broaden the right to information beyond "citizens" only - ideally allow access by all
	people, but at least by permanent residents of India and/or arryone who is currently
	living in India

- 7. The RTI Bill currently permits only citizens to utilize the law to access information. This is a flawed approach in practice. This could have major implications as many of the poorest of the poor in India may not have the necessary documentation to PROVE their citizenship. This requirement could easily be abused by resistant bureaucrats to refuse to accept applications. Furthermore, in a country which has such a large population of long-term refugees and permanent residents none of whom have citizenship papers this requirement will work to deny the right to information to key sections of the community.
- 8 Good international practice supports the extension of the Act to allow all persons access to information under the law, whether citizens, residents or non-citizens (such as asylum seekers). This approach has been followed in a number of jurisdictions, including the United States and Sweden, the two countries with the oldest access laws. This change may require the inclusion in s 2 of a definition of "person"
- Alternatively, if the Government considers this formulation too broad, consideration could be given to following the example of Canada which allows access to information to citizens AND "permanent residents" (s.4(1), Access to Information Act 1982) or New Zealand which allows requests to be made by citizens, permanent residents or any "person who is in New Zealand" (s.12(1)(c), Official Information Act 1982). This latter formulation is particularly useful because it



removes the need for proof of residence documents from applicants, while still limiting access only to people in India

Section 4

s.4	Include an additional provision requiring the suo moto publication of all contracts
	entered into by public authorities

10 It is very positive that s.4 requires suo moto disclosure by the bodies covered by the Act. However, the list of topics which public bodies are required to proactively disclose should be extended to also require the publication of all contracts which public authorities enter into This would serve immediately to reduce corruption in government tendering while also assisting the public to better stay apprised of what work is being undertaken in their area. The Delhi Government has already started proactively disclosing this kind of information on the internet. Accordingly, a new clause could be inserted as s.4(1)(e):

Upon signing, public authorities must publish all contracts entered into, detailing at a minimum for each contract:

- (i) The public works, goods acquired or rented, and the contracted service, including any sketches, scopes of service and/or terms of reference,
- (II) The amount;
- (iii) The name of the provider, contractor or individual to whom the contract has been granted, and
- (iv) The periods within which the contract must be completed

s.4(1)(b)	Amend ss.(xvi) to require the publication of the names and contact details of all
	appellate authorities under s.16(1) and the Information Commission

Section 6

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s.6(1)	Delete the reference to fees being payable for applications for information	ļ

41. Best practice requires that no fees should be imposed for accessing information, particularly government information, as costs should already be covered by public taxes. At the very least, no application fee should be levied because the initial work required to locate information and determine its sensitivity to disclosure is a routine and expected task of government. Section 6(1) should be amended accordingly.

Section 7

s.7(5)	Amend to clarify that any fees which are imposed must be reasonable and shall not
,	exceed the actual cost of copying the information

12 If any fees are imposed, the law should specifically require that rates are set with a view to ensuring that the costs imposed for access are not so high as to deter potential applicants. At the most, fees should be limited only to cost recovery with no additional margin for profit, and a maximum limit should be imposed. Charges should only cover reproduction costs, not search or collation/compilation time. Section 6(2) of the Maharastra Right to Information Act 2002 includes such a provision, stating specifically than any fees "shall not exceed the actual cost of supplying

c (1)

the information". The following clause should be included in the Bill to address this problem with the current draft:

"Any fees payable by the applicant shall be reasonable, shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice"

s.7(7A) Insert a new clause allowing fees to be waived if their imposition would cause financial hardship or if it is in the public interest

- 13. Provision should be made to allow the waiver of fees levied under the Bill where that is in the public interest, such as where a large group of people would benefit from release/dissemination of the information or where the objectives of the law would otherwise be undermined (for example, because poor people would be otherwise excluded from accessing important information). Such provisions are regularly included in access laws in recognition of the fact that fees may prove a practical obstacle to access in some cases (see s.29(5) of the Australian Freedom of Information Act for example).
 - (1) Upon receiving a notice under section X, an applicant may request the Public Information Officer to reduce and/or waive any fee imposed for access to information
 - (2) Without limiting the matters the Public Information Officer may take into account in determining whether or not to reduce or not to impose the charge, the Public Information Officer must take into account:
 - (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made, and
 - (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.
- s.7(8) Amend so that the rejection notice required to be sent contains the same information required under s.10(2) in respect of partial rejections
- 14. The Bill permits information to either be entirely or partially withheld. In each case, a written notice must be sent to the requester advising of the decision. However, currently the two provisions are not consistent s.7(8) which applies in cases where an application is completely rejected requires a less helpful notice to be sent to the requester than s.10(2) which applies where an application is only partially rejected. Section 7(8) should be amended to require the same information to be provided to a requester as under s.10(2). Notably, this is also more appropriate in practice because it will enable bureaucrats to use the same format for all rejection notices (whether full or partial). This will assist with making administration of the law simpler.

Section &

s.8(1)(a) Amend ss.(i) to require that disclosure would 'cause serious harm" not just "prejudicially affect" the relevant interests

The key principle underlying any exemption is that its purpose must be to genuinely protect and promote the public interest. All exemptions should therefore be concerned with whether disclosure would actually cause or be likely to cause harm. In this context, the form of the harm test in s 8(1)(a) — "prejudicially affect" — should be reviewed because it is arguably too ambiguous and too low a test. Consideration should be given to requiring instead that the disclosure would "cause serious harm". This test is less open to abuse.

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s 8(1)(d)	Amend to require that disclosure would "cause serious harm" and/or to specifically
!	permit disclosure if it would reveal a breach of the law or a public safety, health or
,	environmental risk

- 16. The discussion in paragraph 15 above applies equally if not more so to s.8(1)(d). While a lower test of harm may be preferred for such sensitive information as information related to national security and international relations, there is no need why a similarly low test should be applicable to commercial information. Currently, it is only required that disclosure might "harm" commercial interests. Consideration should be given to requiring instead that the disclosure would "cause serious harm"
- 17. Additionally, consideration should be given to including a proviso that information will be released if disclosure "would reveal evidence of a substantial contravention of, or failure to comply with the law or an imminent or serious public safety, public health or environmental risk." This type of information might well harm commercial interests but it is still inarguable in the public interest to require release in such cases nonetheless

s.8(1)(f) Delete this section, because this type of information is already protected by s.8(1)(a)(i)

18 Section 8(1)(f) should be deleted because it duplicates the protection provided by s 8(1)(a) in relation to information related to international relations, but is not as well-drafted because it contains no harm test. The key issue for any exemption should be whether harm will be caused by disclosure, whereas, s. 8(1)(f) focuses instead only on the confidential nature of the information. Just because information was given to the Indian Government in confidence however, does not mean that it should necessarily remain confidential. At the time it was communicated it may have been sensitive, but at the time it is requested it may be harmless. Why should disclosure be prevented in such cases? As long as the more general protection in s.8(1)(a) is retained (which guards against disclosures that would cause harm to international relations), the relevant interests will be protected. This also reduces the chances that the provision will be abused by corrupt officials who may connive with foreign officials in confidence but then seek to hide their activities using this clause. What if the confidential information that was passed on relates to a corrupt deal undertaken by a previous administration? Is it really legitimate that it be withheld? What harm will it cause the nation – in fact, will it not be of benefit in exposing corrupt dealings and making government more accountable?

Tighten the wording of this section to protect only genuinely sensitive information by: Deleting the words "including records of deliberations of the Council of Ministers, Secretaries or other officers" Amending the remaining words to read "papers submitted to Cabinet, where disclosure would seriously frustrate the success of a policy, by premature disclosure of that policy" Amending the proviso to require that all papers submitted to Cabinet will be suo moto disclosed after a decision has been made, unless they are covered by some other exemption

Section 8(1)(i) is inappropriate because hest practice maintains that it is improper to provide exemptions for entire classes of information. While some information in some Cabinet papers may be sensitive – and on that basis will be covered by one of the other exemption provisions in the Act – it is not the case that all Cabinet papers are always sensitive. Furthermore, because there is no guidance in the Act as to what constitutes a "Cabinet paper" for the purpose of this clause, the provision could easily be abused; the Government could simply send politically sensitive documents to Cabinet to deliberately protect them against disclosure. Likewise,



individual departments could stamp documents as "Cabinet papers" even if they are never seen by Cabinet but only used for preparation purposes, and on that basis the documents could still be exempted.

- 20 Although the proviso in s 8(1)(i) paragraph 2 has been arguably designed to permit the disclosure of some level of Cabinet information, the current wording does not necessarily require that actual "Cabinet papers" are disclosed, but only that decisions are published along with "material on the basis of which the decisions were taken". Again though, this formulation would still allow preparatory Cabinet papers which were not used in the decision-making process to be withheld.
- 21. International best practice does not support such a strict approach to protecting Cabinet information. The appropriate protection for Cabinet documents should be directed at whether premature disclosure would undermine the policy process. Thus, an exemption should only be available to protect information submitted to Cabinet where disclosure would "seriously frustrate the success of a policy, by premature disclosure of that policy" (and of course, if it otherwise contained sensitive information covered by another exemption). In recognition of the fact that Cabinet papers are largely time sensitive, it is worth noting that in Wales. Cabinet proactively discloses all minutes, papers and agendas of its meetings within 6 weeks unless there are overriding reasons not to. In Israel, Cabinet decisions are automatically made public on the Prime Minister's Office website.
- 22. Notably, while Cabinet papers may well be sensitive, it is completely inappropriate to extend the same level of protection to lower level decision-making such as that of "Secretaries and other officers". This is an unjustifiably broad protection which could very easily be abused by officials of all ranks to keep documents secret. This clause in s.8(1)(i) should be deleted
- s.8(3) Amend this section to require that a public authority "shall" not "may" allow access to information if in the public interest
- 23. It is very positive that s.8(3) allows for the disclosure of information in the public interest notwithstanding that it is covered by an exemption. However, to ensure that this power is not used discretionarily but instead, is a required practice, the clause should be amended to read: "A public authority <u>SHALL</u>, notwithstanding the exemptions specified in sub-section (1), allow access to information if public interest in disclosure of the information outweighs the harm to the public authority".
- s.8(4) Remove the words "subject to the provisions of clauses (a) and (i) of sub-section (1)" and remove the proviso that all decisions of the Government are final
- 24. Section 8(4) purports to operate as a blanket disclosure provision. It is common in right to information laws to include such a clause. The intent of such provisions is to ensure the compulsory declassification/release of all government documents whether or not they were at one time considered sensitive on the basis that after a certain period of time has passed, all documents are accepted as no longer being sufficiently sensitive to warrant non-disclosure. Throughout the world, different time periods are used; it is positive that the current Bill purports to release information after 10 years.
- 25. The intent of the provision is undermined by the fact that s.8(4) still attempts to apply some of the exemption provisions even after the passage of 10 years! In particularly, it is notable that s.8(i) which protects Cabinet papers is still supposed to apply. As noted in paragraphs 19-22 above, this exemption is anyway too broad, such that it is doubly problematic if it continues to apply even after 10 years. Conversely, in Ireland, although some Cabinet documents are exempt under the regime, the exemption, for cabinet records (apart from records of cabinet discussions).



- expires 10 years after the decision is made, at which point the records become available.
 The provision should be amended to read.
 - "Any information relating to any occurrence, event or matter which has taken place or occurred ten years before the date on which any request is made under section 6, shall be provided to the person making the request under that section."
- 26 It is illogical and inappropriate that the decision of the Government as to the computation of the lapsed period under s.8(4) is final and unappealable. In accordance with s.15, all other decisions which affect non-disclosure are able to be appealed. Decisions under s.8(4) should be no different.

Section 11

s 11(2)	To ensure that third party rights cannot be used to delay processing of applications,
	amend to start counting the time for making third party representations from the date
	the notice is "sent" not the date of receipt of the notice by the third party

27. Section 11(2) should be amended to require that third parties are allowed 10 days from the relevant notice is "sent" by the public authority. Otherwise, both public authorities and third parties could delay decisions by arguing that notices were never received by the third party. Notably, the Rules under the Act could specify that notices are required to be sent by registered post, to ensure that third parties are properly served with notices;

Section 12

	s.12(4)	Tighten the wording to clarify that the Information Commission is autonomous &	-
Ì		independent but that Deputy Information Commissioners are subject to legal directions	İ
l		from the Information Commissioner	

- 28. It is positive that s.12(4) attempts to ensure that the information Commissioner operates autonomously. However, the wording of the provision is ambiguous, because while it states that the Information Commissioner will be autonomous, it is not entirely clear whether the Deputy Information Commissioners are actually autonomous themselves and therefore are not subject to directions from the Information Commission. This is not appropriate
- 29. The Information Commission should be designed so that the Information Commission is completely autonomous from Government interference and is headed by the Information Commissioner, who is supported by Deputies who are subject to his/her direction Otherwise, Deputies could make inconsistent decisions and adopt varying processes for handling appeals, which could confuse the public. Section 12(4) should read
 - "(4) The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who may exercise all such powers and do all such acts and things under this law autonomously without being subjected to directions by any other authority under this Act. The Commission shall have budgetary, operational and decision-making autonomy and be completely independent of the interference or direction of any other person or authority other than the Courts.
 - (4A) The Information Commissioner will be supported by the Deputy Information Commissioners who will be under his superintendence, direction and management, but will not be subject to directions by any other authority under this Act."



- s.12(5A) Insert a requirement that the selection of the Information Commissioner and his/her Deputies should be chosen via a process which involves public consultations, including by way of requesting nominations from the public and publishing the reasons forwarded by the bureaucracy in support of nominees.
- 36. It is essential that the people chosen to be the Information Commissioner and Deputies are carefully selected Ideally, a process should be chosen which includes some element of public participation. For example, when a list is being drawn up by the bureaucracy of possible candidates for the positions, it should be required that the relevant department also call for nominations from the public. Any list which is put together by the bureaucracy should also be published at least 2 weeks prior to consideration by the selection committee mentioned in s.12(3) and the public should be permitted to make submissions to the selection committee on this list. Notably, at a minimum, the list prepared by the bureaucracy should also include a detailed explanation of the reasons for the candidate being nominated, in accordance with agreed criteria (see paragraph 31 below on this point).
- Elaborate upon the criteria for the Information Commissioner and his/her Deputies to ensure at a minimum that they are committed to transparency and accountability in Government, are not tainted in any way by allegations of corruption or criminality, are respected by civil society and have the expertise to do the job
- 31. In addition to the requirements stated at s.12(5) and (6), the following criteria should be included in the law to ensure that Commissioners are all committed to transparency and accountability in government and have proper expertise to fill this role.

'The person appointed as the Information Commissioner or a Deputy Information Commissioner shall -

- (a) be publicly regarded as a person of integrity and good repute who can make impartial judgments,
- (b) have a demonstrated commitment to good governance, transparency and accountability;
- (c) not have any criminal conviction or criminal charge pending and not have been a bankrupt;
- (d) have knowledge of the workings of Government,
- (e) be otherwise competent and capable of performing the duties of his or her office '
- Amend to ensure that the Information Commission's autonomy is not impeded, by replacing the words "with the previous approval of the Central Government" with "at his/her discretion if his/her budget permits"
- 32. At present, although the Government has indicated an intention to make the Information Commissioner an independent body, the Bill nonetheless already contains certain restrictions on the Information Commissioner's powers. For example, currently, the Bill only permits the Information Commissioner to set up other offices with the Government's prior permission, This is not appropriate. As long as the Information Commissioner has sufficient funds to set up and maintain an office, he/she should be able to determine when and where that office should be established. This is an operational decision which should lie with the Information Commissioner.
- s 12(8) Amend to ensure that the Information Commission's autonomy is not impeded by replacing the words "as may be specified by the Central Government" with "as may be specified by the Information Commissioner"
- 33 As noted in paragraph 28 above, it is essential that the Information Commissioner and his/her Deputies are completely autonomous from Government. In contrast, s 12(8) completely undermines the authority of the Information Commissioner by requiring that Deputy Information



Commissioners perform within such areas 'as may be specified by the Central Government'. This is completely unjustifiable. How can the Information Commissioner run his/her office effectively, if his/her Deputies take their orders from someone else? In practice, this clause will cause serious confusion and severely restrict the Information Commissioner's ability to implement his/her mandate properly. The Information Commissioner should be able to control his/her staff. In this context, it is notable that in the UK, the Information Commissioner (under Part 1 of Schedule 5 of the Data Protection Act) specifically has the power to determine the salary and conditions of service of his/her staff.

s.12(8A) Insert a new provision which indicates that the Information Commissioner will have the power to employ his/her own cadre of staff

34. For the Information Commissioners to be truly independent, it is key that he/she is able to employ his/her staff and define their job descriptions, etc. As some other Commissions in India have shown, it can undermine the effectiveness of a Commission if staff are only engaged by seconding public servants. Many may not have the specific skills needed to do the relevant job and/or the necessary commitment. Additionally, in a position where it is of crucial importance that staff are impartial and not biased towards the bureaucracy, it is essential for the Information Commissioner to have the power to employ staff who are not members of the public service, if they have relevant skills.

Section 13

s.13(6)	Amend to require	that the	Information	Commissioner	C 22 C	hic/hor	Danutian	050	A
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	higher rank								
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35 At the moment, the Information Commissioner is only ranked at a level which is 23 [check] in order of government seniority. This could severely limit the influence of the Information Commissioner within the bureaucracy and could encourage some more senior bureaucrats to disregard his/her directions. Conversely, in Canada, the Information Commissioner is paid at the same level as a Federal Court judge and has all the powers exercisable by a Deputy Head of Department.

Section 15

s.15(1)	Clarify that the Information Commissioner can hear appeals where an appli	cant l	has
	received no response to an appeal under s.16(1)	-	•

Although s 15(1) already includes a catch all provision at sub-clause (f) which is designed to allow the Information Commissioner to effectively hear any case he/she needs to, for the sake of clarity, consideration should specifically be given either to including a new provision or amending sub-clause (c) to make it clear that the Information Commissioner can hear appeals where an appellate authority has not given a complaint a response within the time limits prescribed in the law. This will avoid the problems that have been witnessed in Karnataka and Maharashtra where the second appellate bodies have sometimes refused to hear complaints or the basis that no "order" or "decision" has been made by the first appellate body.

s 15(2) Amend to permit the Information Commissioner to initiate his/her own investigations in relation to any matter, whether or not he/she has received a specific complaint, eg.

persistent cases of departmental non-compliance

37 Section 15(2) currently refers to the power of the Information Commission to initiate inquiries. However, this clause does not properly empower the Information Commission to initiate investigations even in the absence of a specific complaint by an aggrieved applicant. An additional provision should therefore be included replicating s.30(3) of the Canadian Access to information Act 1982, which gives the Information Commission the power to initiate its own investigations. In practice, this provision is used to allow a Commission to investigate patterns of non-compliance, either across government or within a department and produce reports and recommendations for general improvements rather than in response to specific individual complaints. This is a very useful power and will be particularly useful in India in terms of enabling the Information Commission to take public authorities to task for persistent non-compliance with the law.

Section 16

	Insert a heading prior to s 16 titled "Appeals"
s 16(1)	Amend to require appeals to be sent to the Head of the Public Authority, who can then delegate this power as appropriate This body should be called the "Appellate Authority"
	Insert an additional clause clarifying that where the appellate authority does not make an order in time, that will be considered a deemed refusal which can be appealed to the Information Commission

- 38 Section 16(1) requires appeals against rejection notices to be sent to "the officer immediately superior to the PIO in the concerned Public Authority" for consideration, before being sent to the Information Commissioner. This provision is very basic and needs to be elaborated upon to ensure that there is sufficient clarity to enable effective implementation. Currently it is not clear how the public will identify who the appellate authority is because, the hierarchy in public authorities often differs so that it will not always be easy to know who is superior to a PIO.
- 39. It would be more appropriate therefore if the appellate authority were simply stated to be, in all cases, the Head of the Public Authority and provisions were included to allow the Head to delegate this authority as necessary. Requesters could then simply address their appeal to the Head of the Public Authority, and the Public Authority upon receipt of the appeal could then forward it to the specific officer responsible for handling appeals. This would also ensure that a sufficiently senior person was responsible for dealing with appeals. Section 4(1)(b) should also be amended to require the suo moto disclosure of the names and contact details of appellate authorities as well as PIOs.

s.16(1),	Amend to clarify that:
s 16(2)	 Where the first appeal body under s 16(1) does not make an order within time, that will be deemed to be a decision of the appeal body for the purpose of second appeals and
	The Information Commission can deal with appeals even where no order has been made by the first appeal body (see paragraph 36 above for details)

To ensure that third party rights cannot be used to delay processing of applications, amend s.16(4) to make it explicitly subject to s 16(6) which sets out time limits for

processing appeals (see paragraph 27 above for details)	
s 16(10)	To ensure the Information Commission's autonomy is not impeded, amend to clarify that the Commission will be responsible for prescribing its own rules of procedure (see

Section 17

	s.17	Make it an offence punishable by a personal fine of at least Rs 2000 or imprisonment
ļ		to: mala fide deny a request for information; knowingly give incorrect, misleading or
		incomplete information; destroy information subject to a request obstruct the activities
ļ		of a Public Information Officer, any Information Commission or the courts; or refuse to
		accept an application for information

- 40 It is absolutely essential that, at a very minimum, provisions are inserted into the Bill which permit the punishment of officers who deliberately attempt to circumvent, ignore or undermine the law. Bureaucrats should not be permitted to willfully flout the law. These offences are very common throughout the world. For example, see s.77 of the UK Freedom of Information Act 2000; or s.67 of the Canadian Access to Information Act 1983 or s.34 of th Jamaican Access to Information Act 2002.
- 41 Notably, the majority of international Acts which contain penalty provisions permit the imposition not only of a fine but for summary imprisonment. Two issues should be noted in this respect
 - (i) Fines need to be sufficiently large to act as a serious disincentive to bad behaviour. Corruption – the scourge that access taws assist to tackle – can result in huge windfalls for bureaucrats. The threat of fines and imprisonment can be an important deterrent, but must be large enough to balance out the gains from corrupt practices. For this reason, a minimum fine should be included, but not maximum. If an official destroyed a record which showed that she/he misappropriated 10 lakh of public funds, then the appeal body should be able to impose a fine commensurate to that harm.
 - (ii) Although imprisonment may seem a very harsh penalty for a public servant, the wording of the provision proposed below contains a reasonable amount of discretion for the appeal body imposing the penalty. A prison term does NOT need to always be awarded, but in very serious cases, the option should be available to the appeal body. Notably, the possibility of a prison term is already raised by s 17(1) of the Bill. One interesting case study to note is that of the State of Texas in the US, where prison terms can be imposed for non-compliance with the law and to strengthen these penal provisions, in 2003 the Attorney General decided to actually dedicate a special prosecutor entirely to prosecuting violations of the Texas Public Information Act.
- 42. There has been some concern raised by the Standing Committee that it is not appropriate for the Information Commission to be able to impose either fines or terms of imprisonment. However, research from other Indian activists points to the fact that the power to fine has been given in India to people like. Customs Inspectors, and sales tax and excise officials, while the power to imprison has been conferred on Divisional Forest Officers and Labour Commissioners. The Information Commissioner has too important a role to play within Government, not to have his/her powers extended to impose such penalties. If there is a legal issue with giving the Information Commissioner this power, then consideration should be given to constituting him/her as a tribunal if needs be, or seconding a judicial officer to support the Information Commissioner as necessary.



- 43 Based on provisions in other laws throughout the world, it is recommended that the following clause could be inserted:
 - (1) Where it is found in appeal that any Public Information Officer or appellate authority has -
 - (i) Mala fide denied or refused to accept a request for information.
 - (ii) Knowingly given incorrect or misleading information,
 - (iii) Knowingly given wrong or incomplete information.
 - (iv) Destroyed information subject to a request,
 - (v) Obstructed the activities of a Public Information Officer, any appellate authority [see s. 16(1)1, Information Commission or the courts, or
 - commits an offence and the Information Commissioner shall impose a fine upon summary conviction of not less than rupees two thousand or imprisonment of up to two years or both.
 - (2) Where an potential offence under sub-section (1) is identified by the appellate authority under s.16(1), he/sne shall immediately refer the decision as to whether a penalty shall be imposed to the Information Commissioner.
- s 17 Make it an offence to fail to supply information sought in time, without reasonable cause, with a personal penalty of Rs 250 payable for each day's delay
- 44 Penalties should also be available to penalise officers for poor performance of their duties. Most notably in this respect, the Bill should include penalties for unreasonable delay in processing requests. This is a common type of provision in India already. For example, s.12 of the Maharashtra Act, s.8 of the Goa Act, s.9 of the Delhi Act read with Rule 6 of the Delhi Rules, s.9 of the Karnataka Act and s.8 of the Madhya Pradesh Act all permit the imposition of penalties for delay. Accordingly, it is recommended that the following provision be inserted into the Bill:

"Where any Public Information Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section X, the appellate authority. Information Commissioner and/or the courts shall impose a penalty of rupees two hundred fifty, which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard."

- s.17 Make it an offence to refuse to accept an application, attracting personal penalties by way of a minimum fine
- 45. The Bill should also include a penalty by way of fine for unreasonable rejection of applications. This would ensure, particularly in the early days of implementation, that there is a strong imperative for officials to learn about the law and apply it properly. They should not simply be able to plead ignorance and rely on that ignorance to block applicants from requesting information.
- s.17 Require that where a penalty is imposed an officer shall also be liable to appropriate disciplinary action under the service rules applicable to him
- 46. In addition to the possibility of fines and/or imprisonment, the Bill should also require that where a penalty is imposed on any officer under the Bill, "the officer shall also be liable to appropriate disciplinary action under the service rules applicable to him". This possibility of imposing additional disciplinary sanctions is permitted under a number of Indian right to information laws – see for example, si9 of the Delhi Actiread with Rule 6 of the Delhi Rules, s.9 of the Karnataka Acti and \$ 10 of the Rajasthan Act - and should be replicated at the national level
- s.17 Require that where an official or authority fails to comply with a notice of any appeals body, the appeals body may certify in writing to a court that the official or authority has failed to comply with that notice, following which the court may inquire into the matter



- 47. To strengthen the powers of the Information Commissioner, it is important that an additional sanction is available to penalise officials who fail to comply with the orders of the Information Commissioner. Without such a provision the Information Commissioner may have difficulty implementing his/her mandate in practice because officials could simply attempt to ignore his/her rulings. In England, to deal with this issue, s.54 of the UK Freedom of Information Act 2000 requires that where an official "fails to comply with a notice of any appeals body, the appeals body may certify in writing to a court that the official has failed to comply with that notice, following which the court may inquire into the matter and deal with the authority as if it had committed a contempt of court." In Ireland, the Irish Freedom of Information Act 1997 makes it an offence to fail or refuse to comply with a requirement of the Commissioner concerning production of documents or attendance of a person before the Commissioner in connection with an appeal, punishable with a fine or imprisonment for up to 6 months or both
- s.17 Include departmental penalties of a minimum of Rs 10,000? 1 lakh? for persistent non-compliance with the law
- 48 In order to ensure that public authorities properly implement the law, they too should be liable for sanction for non-compliance. This would ensure that heads of department take a strong lead in bedding down the law and ensuring that staff across their authority undertake their duties properly. An additional provision should be included in the Bill to penalise public authorities for persistent non-compliance with the law. A fine could be imposed for example, where a public authority fails to implement the suo moto disclosure provisions in a timely manner, does not appoint PIO3 or appellate authorities, consistently fails to process applications promptly and/or is found on appeal to consistently misapply the provisions of the law to withhold information. The minimum fine should be sufficiently large to act as a deterrent.
- s.17 Reiterate that the appellate authority and Information Commission are empowered to impose all penalties available under the law
- 49. The Bill currently only empowers the Information Commissioner to authorise a Government official to file a complaint against a PIO for persistent non-compliance. This is an unnecessarily cumbersome process and effectively makes the Information Commissioner a toothless tiger, as it cannot sanction defaulting officers itself. To ensure that penalties are able to be quickly and effectively used to punish and deter bad behaviour, the Appellate Authority under s.16(1) and at least the Information Commission need to be given the power to sanction non-compliant officers.

Section 18

s.18 Amend to require that the Act "overrides" all other laws

50. A good right to information law should specifically state that it *overrides* all other inconsistent legislation. A right to information law should be comprehensive, both in the right it extends and the restrictions it recognises. The list of exemptions should therefore be considered inclusive and other laws should not be permitted to extend them. While it is positive that s. 18 currently at least states that it will have effect notwithstanding other laws officials could still legitimately harbour concerns about which laws apply if other laws restricting the right are kept on the law books. It is thus important to make it explicit that the Right to Information Bill is of paramount importance.



Section 20

s 20	Delete on the basis that it is both unconstitutional an inconsistent with the right to	,
	¹ appeal to the High Couπ offered by s.16(11)	

Section 20 of the Bill, which attempts to bar the jurisdiction of the Courts, needs to be deleted. The Supreme Court has held on numerous occasions that the right to information is a constitutionally entrenched fundamental right. Decisions made by bureaucrats in relation to a constitutional right must be amenable to challenge in a court of law. Such appeals fall within the original jurisdiction of the High Court and the Supreme Court under Articles 32, 139 and 226 of the Constitution. In any case, section 16(11) of the Bill now expressly allows appeals from the Information Commissioner to the High Court so that this clause makes little sense.

Section 21

s.21(1)	Delete the blanket exemption for intelligence and security agencies. At the least,
i i	require the release of information from these organisations where the information
	pertains to allegations of human rights violations

- 52. The complete exemption for certain security and intelligence agencies from the scope of the Bill via section 21 undermines the purported commitment made to maximum disclosure and minimum exemptions, in principle. Notably, security agencies can have an incredibly significant impact on the public's rights such that they require extra public oversight rather than less! How can the public in practice ensure that the exempted agencies are undertaking their activities a professional manner if they cannot access basic information about their activities. It is not suggested that tactical information is released during times of war but at the same time, if an allegation of misconduct or criminal behaviour is made against an intelligence of security agency or its staff, the public should have a right to access information in that regard.
- information they hold will be protected by the exemptions in section 8(1)(a)(i) (which protects against disclosures which may prejudicially affect the sovereignty and integrity of India or security), section 8(1)(g) (which protects against disclosure which would endanger a person's safety or identify an informant) and section 8(1)(h) (which protects against disclosures which would impede an investigation or apprehension or prosecution of offenders). In any case, s.10 of the Bill, which allows for exempt information to be severed from a document, should protect sensitive information sufficiently. If a document contains sensitive information, that information can be excised and the remainder of the document released.
- 54. This approach also does not accord with international best practice. For example, most Acts simply include an exemption for disclosures which would harm national security see for example, s.33(1) of the Australian Act, s.6(a) of the New Zealand Act, ss.24(1)(a) and (b) of the Irish Act or s.15(1) of the Canadian Act.
- 55 Section 21 should be deleted in its entirety. If this position is not accepted however then at the very least the recommendation of the NAC should be accepted so information pertaining to allegations of human mehts violations should not be excluded under a 21

s.21(2)	In the event that s.21 is retained, remove the power to add agencies to the list in the	İ
	Schedule At the least, include criteria to guide the use of the power in s.21(2) to	
	prescribe additional agencies	

While CHRI strongly urges the Government to delete s.21 in accordance with international best practice in the event that the provision is retained, then the list of agencies which are given a blanket exemption from scrutiny must be assuredly kept to a minimum, ideally, it should not be possible to add to the list in the Schedule. However, if this recommendation is not adopted, then at the very least, some clear criteria should be set down for what intelligence and security agencies can be added to the Schedule. This begs the question — what was the original criteria used to select the agencies which are currently on the list?

Section 22

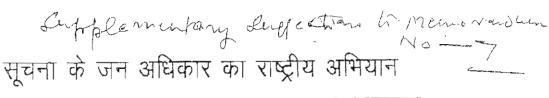
s.22(1)	Amend to require that the Information Commissioner submits his reports to Parliament
s.22(4)	for consideration by the Parliamentary Standing Committee

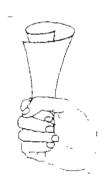
- 57. To ensure that the Information Commissioners reports have proper weight and are given serious consideration by decision-makers, it is important that s.22(1) and (4) are amended to require that the Information Commissioner submits his reports to Parliament rather than to the Central Government Otherwise, under the current formulation, the Government could simply sit on the report and parliamentarians would not have an opportunity to assess how effectively the law is being implemented. Section 49 of the UK Freedom of Information Act 2000 and s.38 of the Canadian Access to Information Act 1983 specifically requires that the Information Commissioner submits his/her report to Parliament within 3 months from the end of the financial year. Section 40 of the Canadian Act clarifies that this requires the Information Commissioner to give the report to the Speaker of each Flouse for tabling in Parliament.
- 58 Consideration should also be given to specifically requiring that the Report of the Intormation Commissioner be sent to a Parliamentary Committee for consideration and review. The Committee could then call on the Government to take action on key issues as necessary. This is the practice in Canada, where Information Commissioner reports are sent to a Parliamentary Committee "designated or established to review the administration of the Act".

Section 24

s.24(2)(f) Amend to explicitly recognise that any Rules which are made relating to the Information Commission must first be approved by the Information Commission.

- 59. If the Information Commissioner is to have complete autonomy in reality, then he/she must be given the power to develop his/her own procedures and processes for handling appeals. However, the Bill currently gives the Government sole power to make rules for the Information Commission. In practice, this power could be used to undermine the work of the Commissioner.
- 60 In accordance with best practice, the Information Commissioner should be given the power to lay down his/her own procedures/processes. For example, s.37(7) of the Irish Freedom of Information Act 1997 provides that the pracedure for conducting an appeal "shall be such as the Commissioner considers appropriate in all the circumstances of the case and, without prejudice to the foregoing, shall be as informal as is consistent with the due performance of the functions of the Commissioner". In Canada, s.34 of the Access to Information Act 1983 provides that the Information Commissioner may determine the procedure to be followed in the performance of any duty or function of the Commissioner under this Act.





NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

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SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLC GRIEVANCES, LAW AND JUSTICE

Enclosed are some documents for your consideration:

- 1. Tabulated comparison between the NAC Draft and the RTI Bill, 2004
- 2. Letters to Mrs. Sonia Gandhi and Shri Manmohan Singh
- 3. Legal Opinions by Adv. Shanti Bhushan, Prashant Bhushan and Ajit Joy
- 4. Newspaper Articles on the Right to Information

Sh Rane Bit Well!

TABULATED COMPARISON BETWEEN NAC DRAFT 2004 & RTI BILL, 2004

A Comparison between

NAC Draft 2004 submitted to the Government on August 16, 2004

and

the RTI Bill 2004 as tabled in the Parliament on December 23, 2004

2004 December 23, 2004	n
2004	
PREAMBLE PREAMBLE	
A Bill to operationalise the right to information by setting Retained with amendments:	
out the practical regime for people to secure access to	
information under the control of public authorities, consistent BILL	
with public interest, in order to promote openness,	
transparency and accountability and in relation to matters connected therewith or incidental thereto to provide for setting out the practical regime of to information for people to secure access t	rmation o working entral
Chapter I: PRELIMINARY Chapter I: PRELIMINARY	
(1) This Act may be called the Right to Information Act Retained.	
2004	
(2) It extends to the whole of India except the State of Retained. Jammu and Kashmir.	
(3) It shall come into force within 120 days of it being enacted (3) It shall come into force on the one hundred an twentieth day of its enactment	ıd
(4) Where State legislation exists dealing with the right to access information, a person will have the right to seek information under the State law as well as under this Act, if the information pertains to a subject under the State List in Schedule 7 of the Constitution of India.	
Schedule 7 of the Constitution of mais.	
(5) Objectives of the Act: The objectives of the Act are to - Deleted	
(i) give effect to the Fundamental Right to	
Information, which will contribute to	
strengthening democracy, improving	
governance, increasing public participation,	
promoting transparency and accountability in	
Union, State and Local Self Government	
institutions. (ii) establish voluntary and mandatory	
mechanisms or procedures to give effect to	
right to information in a manner which	
enables persons to obtain access to records of	
public authorities in a swift effective,	
inexpensive and reasonable manner	
(iii) promote transparency, accountability and	
effective governance of all public authorities	
by, including but not limited to, empowering and educating all persons to:	
- understand their rights in terms of this	
Act in order to exercise their rights in	
relation to public authorities;	

understand the functions and operation of public authorities, and effectively participating in decision making by public authorities that affects their rights. 2. In This Act, unless the context otherwise requires: (a) "appropriate Government" means in relation to a public authority established, constituted, owned, substantially financed by funds provided directly of indirectly or controlled- (i) by the Central Government, the Central Government, (ii) by the State Government, The State Government; (iii) by the Union territory. The Central Government: (b) "competent authority" means- (i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council. (ii) The Chief Justice of India in the case of the Supreme	Deleted. Instead added: (a) "Commission" means the Central Information Commission constituted under section 12: Amended: (b) "competent authority" means (i) the Speaker in the case of the House of the People of the Legislative Assembly of a Union Territor; and the Chairman in the case of the Council of States; (ii) the Chief Justice of India in the case of the Supreme
Court; (iii) The Chief Justice of the High Court in the case of a High Court; (iv) The President or the Governor, as the case may be, in case of other authorities created by or under the Constitution: (v) the administrator appointed under article 239 of the Constitution;	 (ii) the Chief Justice of India in the case of the Supreme Court; (iii) the Chief Justice of the High Court of Delhi in the case of a High Court of Delhi; (iv) the President in the case of other authorities created by or under the Constitution; (v) the administrator appointed under article 239 of the Constitution;
(c) "Chief Information Commissioner" and "Information Commissioner", "State Information Commissioner" means the authorities so appointed under this act (d) "right to information" means the right to access information held by, legally accessible by or under the control of any public authority and includes (i) Inspection of works, documents, records; (ii) Taking notes and extracts and obtaining certified copies of documents or records; (iii) Taking certified samples of material; (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printonts where such information is stored in a computer or in any other device.	Amended, point (c) is retained but as (e) below. (c) "Government", in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or a Union territory administration, means the Central Government,
 (d) "right to information" means the right to access information held by, legally accessible by or under the control of any public authority and includes: (iv) Inspection of works, documents, records; (v) Taking notes and extracts and obtaining certified copies of documents or records, (vi) Taking certified samples of material; (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. 	(d) is deleted here but included below as point (j)
(e) "information" means any material in any form, including records, documents, file notings, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts,	(e) is retained but as (d) with minor changes. (d) "information" means any material in any form, including records, documents, file-notings, memos, emails,

reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any law,	opinions, advices. press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any other law for the time being in force; (e) added: (e) "Information Commissioner" and "Deputy Information Commissioners" mean the Information Commissioner and the Deputy Information Commissioners appointed under sub-section (3) of section 12;
(f) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent	Retained as (f)
authority, as the case may be, (g) "public authority" means any authority or body established or constituted,- (i) by or under the Constitution; (ii) by any law made by the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes panchayati raj institutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas notified under schedule 5 and 6 of the Constitution.	Retained but with amendments: (g) "public authority" means any authority or body established or constituted, (i) by or under the Constitution; (ii) by any law made by Parliament; [Lieleted in (ii): "the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes panchayati raj institutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas notified under schedule 5 and 6 of the Constitution."] (iii) added: (iii) by notification issued or order made by the Government, and includes any other body owned or controlled by the Government:
(h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) and/or (1)(a) of section 5;	Retained but with amendments: (h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1), and, includes an Assistant Information Officer designated as such under sub-section (2), of section 5;
(i) "record" includes- (i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not): and (iv) any other material produced by a computer or by any other device.	Retained.
(j) "third party" means a person other than the person making a request for information and includes a public authority.	(j) added here [was point (d) in last draft] and (i) retained as (k)
CHAPTER II FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES	CHAPTER II RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES
3. Subject to the provision of this Act, all persons shall have the right to information.	Retained with citizens as the criteria instead of 'persons'.

4.		public authority shall-	Retained with minor changes
		intain all its records, duly catalogued and	
		d, in a manner and form which facilitates the	
	_	o information as provided for in this Act,	
		ng ensuring that all records, covered by the	
	Act tha	at are appropriate to computerise, are within a	
	reasona	able time and subject to availability of	
	resourc	ces, computerised and connected through a	
	networ	k all over the country on different systems so	
	that aut	thorised access to such records is facilitated.	
			,
		olish within 6 months of this Act coming into	Retained with minor changes:
		and thereafter update at least every 12	(b) publish before the commencement of this Act,
	months	· ·	rest retained with minor changes
	(i)	The particulars of its organisation,	
	/**>	functions and duties.	
	(ii)	 The powers and duties of its officers and employees 	
	(iii)	Procedures followed during the decision	
		making process, including chains of	
		supervision and accountability.	
	(iv)	The norms set by the public authority for	
		the discharge of its functions.	
	(v)	Rules, regulations, instructions, manual	
		and records held by or under its control	
		used by its employees for discharging its	
		functions.	•
	(vi)	A statement of the categories of documents	
	, ,	that are held by or under the control of the	
		public authority.	
	(vii)	Particulars of any arrangement that exists	
	,	for consultation with, or representation by,	
		members of the public in relation to the	•
		formulation of policy in, or in the	
		administration of, the public authority.	
	(iiiv)	A statement listing all boards, councils,	
	()	committees and other bodies constituted by	
		two or more persons, that are part of, or	
		that have been established for the purpose	
		of advising, the public authority, and	
		whose meetings are open to the public, or)
		the minutes of whose meetings are	
		available for public inspection;	
	(ix)	A directory of their public servants, from	
	(IA)	the level of the head of the department or	
		his/her equivalent and below;	
	(x)	The monthly remuneration received for	
	(x)		
		each position, including the system of	
	/ *** *	compensation as established in regulations:	
	(XI)	Information concorning the budget	
		assigned to each agency, including all	
		plans, proposed expenditures and reports	
	/	on disbursement,	
	(xii)	The design and execution of subsidy	
		programs, including the amounts allocated	
		to them, criteria for access, implementation	
		details and beneficiaries	
	(xiii)	All concessions, permits or authorisations	
		granted, with their recipients specified	
	(xiy)	All information available to the public	

authority in electronic form or capable of being reduced to electronic form which is not exempt under this Act, subject to availability of resources. (xy) the details of facilities available to citizens for obtaining information, including if the public authority maintains a library or reading room that is available for public use, a statement of that fact including details of the address and hours of opening of the library or reading room; and (ivx) the name, designation and other particulars of the Public Information Officer; (iivx) such other information as prescribed by the appropriate government or Information Commissioner from time to time which would promote transparency across public authorities or in specific public authorities, as appropriate; on the basis that it shall be a constant endeavor of public authorities to take steps to provide as much information to the public suo moto at regular intervals through various means of communication so that the public have minimum resort to the use of this Act to obtain information. (c) publish all relevant facts concerning important decisions Retained with minor changes and policies that affect the public while announcing such decisions and policies; (d) give reasons for its decisions, whether administrative or Retained with minor changes quasi-judicial to those affected by such decisions; (e) before initiating any project, publish or communicate to Retained with minor changes the public generally or to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles. (f) For the purpose of this section, information should be Retained, renumbered 4. (2). (2) It shall be a constant endeavour of every public disseminated widely and in a form and manner which is easily accessible and comprehensible to the public. authority to take steps in accordance with the requirements "Disseminated" shall mean appropriately making known to of clause (b) of sub-section (1) to provide as much the public the information to be communicated through information suo moto to the public at regular intervals notice boards, newspapers, public announcements, media through various means of communications so that the public have minimum resort to the use of this Act to broadcasts, the internet or other such means and shall include inspection at all of the bodies offices. All materials shall be obtain information disseminated keeping in mind cost effectiveness, the local (3) For the purpose of sub-section (1), every information language and the most effective method of communication in shall be disseminated widely and in such form and manner which is easily accessible and comprehensible to the that local area. Such information should be easily accessible, with the Public Information Officer, where possible in electronic format, which shall be available free or at the cost (4) All materials shall be disseminated taking into of the medium, or in print at cost price. consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Public Information Officer, available fee or at such cost of the medium or in print cost price may be prescribed Explanation For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media

S. (1) Every public authority shall for the purposes of fins Act, designates are many officers as Public Information Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one- month of fails Act corning into force. (a) An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act. Height shall receive all requests for information, and appeals, both under the state and the central acts, and pass them on to a designated authority for onward transmission to the relevant department/agency. (b) Where applications/appeals are handed over at the sub-divisional or sub-district level, an additional period of five days would be added to the term of responses specified under this act, in order to enable the request/appeal to be communicated to the relevant authority. (2) Every Public Information Officer shall deal with requests for information and shall render all assistance to any person seeking such information Officer may seek the assistance of any other officer as he considers necessary for the purpose of the pension of the relevant make a request in writing or through electronic means in English or in the Officer of the rolevant public information Officer of the rolevant public information Officer of the rolevant public information Officer of the rolevant public information Officer of the rolevant public information Officer of the rolevant public authority; (b) other designated Public information officer of the provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request or live and reduce it in writing. Provided that where such request cannot be made in writing the Public Information officer shall render all reasonable assistance to t		broadcasts, the internet or any other means, including inspection of offices of any public authority.
for information and shall render reasonable assistance to any person seeking such information. (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties. (4) Any officer whose assistance has been sought under subsection (3), shall render all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act 6. (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority; (b) other designated Public Information Officers, as specified in 5 (1a) specifying the particulars of the information sought by him/her. Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it myriting. 6 (2) Ar. applicant for access to information shall not be required to give any reason for requesting access to that	Act, designate as many officers as Public Information Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one month of this Act coming into force. (a) An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act. He/she shall receive all requests for information, and appeals, both under the state and the central acts, and pass them on to a designated authority for onward transmission to the relevant department/agency. (b) Where applications/appeals are handed over at the sub divisional or sub-district level, an additional period of five days would be added to the time of response specified under this act, in order to enable the request/appeal to be communicated to	5. (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Public Information Officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act. (2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of this Act, at each sub divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or to the Government: Provided that where an application for information or appeal is given to an Assistant Public-Information Officer, a period of five days shall be added in computing the period for response specified under sub-section (1) of
(3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties. (4) Any officer whose assistance has been sought under subsection (3), shall render-all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act 6. (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority; (b) other designated Public Information Officers, as specified in 5 (1a) specifying the particulars of the information sought by him/her. Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it m writing. 6 (2) Ar. applicant for access to information shall not be required to give any reason for requesting access to that	for information and shall render reasonable assistance to any	Retained as (3) with minor changes
section (3), shall render-all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act 6. (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority; (b) other designated Public Information Officers, as specified in 5 (1a) specifying the particulars of the information sought by him/her. Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing. 6 (2) Ar. applicant for access to information shall not be required to give any reason for requesting access to that	(3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper	Retained as (4) with minor changes
make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority; (b) other designated Public Information Officers, as specified in 5 (1a) specifying the particulars of the information sought by him/her. Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it m writing. Retained with minor changes Retained with minor changes	section (3), shall render all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes	Retained as (5) with minor changes
the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing. 6 (2) Ar. applicant for access to information shall not be required to give any reason for requesting access to that	make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to: (a) the Public Information Officer of the relevant public authority; (b) other designated Public Information Officers, as specified in 5 (la) specifying the particulars of the information sought	Retained with minor changes
required to give any reason for requesting access to that	the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it	Retained with minor changes
necessary for contacting the applicant	required to give any reason for requesting access to that information or any other personal details except those	Retained with minor changes

6 (3) (1) Where an application is made to a Public Authority for information:	Retained with minor changes
(a) which is held by another Public Authority; Or (b) the subject matter of which is more closely	
connected with the functions of another Public Authority,	
the first mentioned Public Authority shall transfer the application or such part of it as may be appropriate to that other Public Authority and shall inform the applicant immediately of the	
transfer.	
(2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than 5 days after the date of receipt of the application	
7(1) Subject to section 5, sub section (1b) above and section	Retained with minor changes
7, sub-section (3)(a) below, on receipt of a request under section 6, the Public Information Officer shall as expeditiously as possible and in any case within fifteen	
days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the	
reasons specified in sections 8 and 9.	
Provided that where the information sought for concerns the life and liberty of a person, the same	·
should be provided within forty-eight hours of the	
receipt of the request;	
7(2) If a Public Information Officer fails to give the decision on a request for access to the requestor concerned	
within the period contemplated in section 7(1), the	
Public Information Officer would, for the purposes of	
this Act, be regarded as having refused the request.	
	Retained with minor changes
7(3) Where it is decided to provide the information on	Retained with minor changes.
payment of any further fee representing the cost of	· ·
providing the information, the Public Information Officer shall send an intimation to the person making	
the request, giving:	
(a) the details of such fees as determined by him,	
showing the calculations as per the act, at prescribed rates, requesting him to deposit the fees,	(a) the details of such fees as determined by him,
and the period intervening between the dispatch of	showing the calculations as per the Act, at prescribed
the said intimation and payment of fees shall be	rates, requesting him to deposit the fees, and the
excluded for the purpose of calculating the period	period intervening between the dispatch of the said
of fifteen days referred to above; (b) information concerning his/her rights with respect to	intimation and payment of fees shall be excluded for the purpose of calculating the period of fifteen thirty
review the decision as to the amount of fees	days reterred to above;
charged and/or the form of access provided,	
meluding the contact details of the appellate	
authority, time limits, process and any relevant forms.	
7 (4) Where access to a record or a part thereof is to be given	Retained with minor changes.
under this Act and the person to whom access is to be given has a sensory disability, the public authority will	
provide assistance to enable access to the information,	
	£7 \ •••

including providing assistance with inspection as appropriate.	
7(5)(a) Subject to sub-sections (b) and (c) below, where access to information is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee. (b) Any fees payable by the applicant shall be	Retained with minor changes and renumbered as 7 (5) & (6).
reasonable, and shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice. (c) Notwithstanding subsection (a), where a public authority fails to comply with the time limits specified in section 7, any access to information to which the	
applicant is entitled pursuant to his request shall be provided free of charge.	
7 (6) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.	Retained as 7 (7) with minor changes.
7 (7) Where a request is rejected under sub-section (2), the Public Information Officer shall communicate to the person making request, (i) the reasons for such rejection; (ii) the period within which an appeal against such rejections may be preferred; (iii) the particulars of the appellate authority.	Retained as 7 (8) with minor changes.
7 (8) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.	Retained as 7 (9) with minor changes.
8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person: (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; c) information, 'the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; d)information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information; (e) information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that the larger public interest	Retained with minor changes.

warrants the disclosure of such information:

- (f) information received in confidence from foreign government;
- (g) 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;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders:
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over; provided further that those matters which come under the exemptions listed in Section 8 shall not be disclosed.
- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Information Officer or the apellate authority, as the case might be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

Notwithstanding anything in the Official Secrets Act 1923 nor any of the exemptions permissible in accordance with section 8 (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Retained as 8 (2) with changes:

Information, which cannot be denied to the Parliament or Legislature of a State, as the case may be, shall not be denied to any person.

Retained as 8 (3) with changes:

A public authority may, notwithstanding the exemptions specified in sub-section (1), allow access to information, if public interest in disclosure of the information outweighs the harm to public authority.

(2) Subject to the provisions of clause (a) and (i) of sub section 1 of section 8, any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section. Provided that the matters covered by Sub-Section	Retained as 8 (4) with ininor changes.
8(a) and Sub-Section 8(i) may be disclosed after twenty-five years	Deleted:
	Provided that the matters covered by Sub-Section 8(a) and Sub-Section 8(i) may be disclosed after twenty five years.
Provided that where any question arises as to the date from which the said period of ten years or twenty-five has to be computed, the decision of the Union Government shall be final, subject to the usual appeals provided for in this act.	Retained with minor changes.
9. Without prejudice to the provisions of section 8, a Public Information Officer 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.	Retained
10. (1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.	Retained with minor changes.
10(2) Where access is granted to a part of the record in accordance with sub-section (1), the Public Information Officer shall send a notice to the applicant, advising: (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and	Retained with minor changes.
(a) The reasons for the decision; including any findings on any material questions of fact, referring to the material on which those findings were based;	
(b) The name and designation of the person giving the decision; and	
(c) Details of the fees determined by him/her and requesting the applicant to deposit the fees,	
(d) Information concerning his/her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fees charged and/or the form of access provided, including the contact details of the appellate body, time limits, process and any relevant forms;	
11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request	Retained with minor changes.

made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission, in writing or orally, regarding whether the information should be disclosed, which submission shall be taken into account when determining whether to disclose the information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweights in importance any possible harm or injury to the interests of such party.

(2) where a notice is given by the public information officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure

(3) Notwithstanding anything contained in section 7, the public information officer shall, within twenty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal against the decision under section 12(2).

Retained with minor changes.

Retained with minor changes.

Retained with minor changes.

12(1): (i)(a) The President shall appoint or designate a Chief Information Commissioner for all matters pertaining to the Union. Such appointment shall be made on the basis of a recommendation made by an Appointing Committee presided by the Prime Minister, with the Leader of Opposition in the Lok Sabha and the Chief Justice of India as members.

(i)(b) The Governor shall appoint or designate a

CHAPTER III – CENTRAL INFORMATION COMMISSION

Changed and put into a new chapter III- Central Information Commission. Refer to Annexure A, Sections 14 - 18.

Section 12 of NAC draft has been included below as Section 16

- State Information Commissioner for all matters pertaining to the State. Such appointment shall be made on the basis of recommendation made by an Appointing Committee presided by the Chief Minister, with the Leader of Opposition in the Legislative Assembly and the Chief Justice of the High Court as members.
- (ii) Information Commissioners may be appointed by the President or the Governor, as the case may be, in consultation with the appropriate Appointing Committee and the Chief Information Commissioner or State Information Commissioners, as the case may be.
- (iii) Every Chief Information Commissioner, State Information Commissioner and Information Commissioner shall be a person with wide knowledge and experience of administration and governance, and/or a person with high public stature.
- (iv) The Chief Information Commissioners and any Information Commissioners shall not be members of Parliament or members of the Legislative of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be carrying on any business or practice any profession;
- (v) The requisite budgetary allocations for the emoluments and expenses, including office expenses, of the Chief Information Commissioner and of other Information Commissioners will be provided by the Government of India through special budgetary provisions made available to the respective states out of the Union Government Budget
- (vi) The Chief Information Commissioner and of other Information Commissioners shall function autonomously without being subjected to directions by any other authority and would be under the administrative control of the Government of India, Ministry of Personnel, Administrative Reforms and Public Grievances.
- (vii) Every person appointed as a Chief Information Commissioner or an Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office He/she will not be eligible for reappointment.

Retained with minor changes as Section 16

12. (2) (i) Any person who does not receive a decision in the time period specified in Section 7(1) or 7(3)(a) above, or is aggrieved by a decision of the Public information officer may, within thirty days of the expiry of such a period or of receipt of such a decision, prefer an appeal to an appellate authority prescribed for the purpose in each department and senior in rank to the Public Information Officer.

Provided that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(ii) A second appeal against the decision (or lack of it), under sub-section (i), shall lie within 90 days from the time by which the decision should have been made or was actually received, with the relevant Chief/State/Information Commissioner;

Provided that the relevant Chief/State/Information Commissioner may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (iii)Where an appeal is being preferred against an order made by the Public Information Officer under Section 11 to disclose "third party" information, the appeal by the concerned third party must be made within thirty days of the order.

- (iv)If the decision of the Public Information Officer against which the appeal is preferred relates to information of a third party, the relevant Information Commissioner shall give a reasonable opportunity of being heard to that third party.
- (v) In any appeal proceedings, the onus to prove that a denial of a request was justified will be on the public authority that denied the request.
- (vi) Appeals to any appellate authority/information Commissioner shall be disposed of within thirty days of the receipt of the appeals, or within such extended period, not exceeding a total of forty five days from the date of filing of appeal, for reasons to be recorded in writing. (vii) The decision of the Information Commissioner shall be binding.
- (viii) In his/her decision, the relevant Information Commissioner has the power
- (a) require the public authority to take any such steps as may be necessary to bring it into compliance with the Act, including by:
 - (i) providing access to information, including in a particular form;
 - (ii) appointing an information officer;
 - (iii) publishing certain information and/or categories of information;
 - (iv) making certain changes to its practices in relation to the keeping, management and destruction of records:
 - (v) enhancing the provision of training on the right to information for its officials;

324

- 12(3) Powers of the Chief Information
 Commissioner/State Information
 Commissioners/Information Commissioners
 (1) Subject to this Act, the Chief Information
 Commissioner /State Information
 Commissioners/Information Commissioners shall receive and investigate complaints from persons:
 - (a) who have been unable to submit a request to a Public Information Officer, either because none has been appointed as required under the Act or because the Public Information Officer has refused to accept their application,
 - (b) who have been refused access to information requested under this Act;
 - (c) who have not been given a response or access to information within the time limits required under this Act;
 - (d) who have been required to pay an amount under the fees provisions that they consider unreasonable;
 - (e) who believe that they have been given incomplete, misleading or false information under this act:
 - (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.
 - (2) Where a Chief Information Commissioner/State Information Commissioner/Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, he/she may initiate a complaint in respect thereof.
 (3) The Chief Information Commissioner/State Information Commissioners/Information Commissioners have, in relation to the carrying out of the investigation of any complaint under this Act, power:
 - (a) to summon and enforce the appearance of persons and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
 - (b) to administer oaths;
 - (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the relevant Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law.
 - (d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;
 - (e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out

- Retained in new chapter III Central Information Commission, as Section 15 with changes.
- 15. (1) Subject to the provisions of this Act, it shall be the duty of the Commission to receive and inquire into a complaint from any person:
- (a) who has been unable to submit a request to a Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the appropriate Government;
- (b) who have been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believe that he or she has been given incomplete, misleading or false information under this Act; and .
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.
- (2) Where the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.
- (3) The Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:
- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office,
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed
- (4) Notwithstanding anything consistent contained in any other Act of Parliament, the Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may

- therein such inquiries within the authority of the Chief Information Commissioner under this Act as the Commissioner sees fit; and
- (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.
- (g) To impose the penalties prescribed under this act, after giving due opportunity to the concerned official of being heard.
- (4) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, an Chief Information Commissioner /State Information Commissioners/Information Commissioners may, during the investigation of any complaint under this Act, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from any Commissioner on any grounds.

 (5) All the powers of the Chief Information Commissioner would also be enjoyed by the State Information Commissioners and other Information

be withheld from any it on any grounds.

12(4) Penalties

(1) Subject to sub-section (3), where any Public Information Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the relevant Information Commissioner shall, on appeal, impose a penalty of rupees two hundred and fifty, which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.

Commissioners, within their jurisdictions.

- (2) Subject to sub-section (3), where it is found in appeal that any Public Information Officer has
 - (i) Refused to receive an application for information;
 - (ii) Mala fide denied a request for information:
 - (iii) Knowingly given incorrect or misleading information,
 - (iv) Knowingly given wrong or incomplete information,
 - (v) Destroyed information subject to a request, or
 - (vi) Obstructed the activities of a Public Information Officer, any Information Commissioner or the courts,

He/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand and imprisonment of up to five years, or both.

(3) An officer whose assistance has been sought by the Public Information Officer for the performance of his/her duties under this Act shall be liable for penalty as prescribed in sub-sections (1) and (2) jointly with the Public Information Officer or Drastically curtailed and included as Section 17:

- 17. (1) Notwithstanding anything contained in the provisions of section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorize any officer of the Central Government to file a comblaint against such Rubiic Information Officer pofore a Judgicial Magnification First Class.
- (2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

Rest Deleted!

16.,

severally as may be decided by the relevant	
Information Commissioner.	
(4) Any fines imposed under sub-sections (1), (2) and	
(3) shall be recoverable from the salary of the	
concerned officer, including the Public Information	
Officer, or if no salary is drawn, as an arrears of	
land revenue, recoverable within a maximum of six	
months of the order imposing the fine.	
(5) The Public Information Officer or any other officer	
on whom the penalty under sub-sections (1), (2) and	
(3) is imposed shall also be liable to appropriate	•
disciplinary action under the service rules	
applicable to him. Provided that in cases where the	
officer is proved guilty of deliberate denial of	
information or misinformation, the punishment	
imposed shall be a major penalty, i.e., dismissal or	
removal or reduction in rank	
CHAPTER III MISCELLANEOUS	CHAPTER IV
	MISSCELLANEOUS
13. No suit, prosecution or other legal proceeding shall	Retained as 18.
lie against any person for anything which is in good faith	A COMMINGE US 10.
done or intended to be done under this Act or any rule made	
thereunder.	
14. The provisions of this Act shall have effect not	Retained as 19.
withstanding anything inconsistent therewith contained in the	
Official Secrets Act, 1923, and any other law for the time	-
being in force or in any instrument having effect by virtue of	
any law other than this Act.	
15. No court shall entertain any suit, application or	Retained as 20.
other proceeding in respect of any order made under this Act	
and no such order shall be called in question otherwise than	
by way of an appeal under this Act.	
16. (1) Nothing contained in this Act shall apply to the	Retained as 21 with changes.
intelligence and security organisations, specified in	Added since December 14 draft:
the Schedule being organisations established by the	Provided that the information pertaining to the allegations
Union Government or any information furnished by	
such organisations to that Government.	of corruption shall not be excluded under this sub-section.
Provided that information pertaining to	
alleged violations of human rights, to the life and	But security and intelligence agencies continue to be
liberty of human beings and to the allegations of	exempted for human rights violations and violations of life
corruption will not be excluded under this clause.	and liberty of human beings.
(2) The Union Government may, by notification in	
the official Gazette, amend the Schedule by	
including therein any other intelligence or security	
organisation established by that government or	
omitting therefrom any organisation already	
specified therein and on the publication of such	
notification such organisation shall be deemed to	
be included in or, as the case may be omitted from	
the Schedule	
(3) Every notification issued under sub-section (2)	
shall be laid before each house of parliament.	
(4) Nothing contained in this Act shall apply to such	
intelligence and security organisations which may	
be specified, by a notification in the official gazette,	
by a state Government from time to time. Provided	
that information pertaining to alleged violations of	
human rights, to the life and liberty of human	
Grant in the mostly of martial	

	beings and to the allegations of corruption will not	
	be excluded under this clause	
	(5) Every notification issued under sub section (4), shall be laid before the state legislature	(4) & (5) deleted.
14/	A Monitoring and Reporting	Retained as Section 22 with some changes
101	The Chief Information Commissioners/State Information	Retained as Section 22 with some shanges
1.	Commissioners/Information Commissioners shall, as	
	soon as practicable after the end of each year, prepare a	
	report on the implementation of this Act during that year	
	and cause a copy of the report to be laid before the	
	legislatures of the concerned state and each House of the	
	Parliament.	
2	Each responsible department/ministry shall, in relation to	
	the public authorities within their jurisdiction, collect	
	and provide such information to the Chief/State/	
	Information Commissioners as is required to prepare the report under this section, and shall comply with any	
	prescribed requirements concerning the furnishing of	
	that information and the keeping of records for the	
	purposes of this section.	
3.	Each report shall, at a minimum, state in respect of the	
	year to which the report relates;	
	(a) the number of requests made to each public	
	authority;	
	(b) the number of decisions that an applicant was not	
	entitled to access to a document pursuant to a	
	request, the provisions of this Act under which these decisions were made and the number of times	
	each provision was invoked;	
	(c) the number of appeals sent to the Information	
	Commissioners for review, the nature of the	
	complaints and the outcome of the appeals,.	
	(d) particulars of any disciplinary action taken against	
	any officer in respect of the administration of this	
	Act;	
	(e) the amount of charges collected by each public	
	authority under this Act;	
	(f) any facts which indicate an effort by public	
	authorities to administer and implement the soirit and intention of this Act;	
	(g) recommendations for reform, including	
	recommendations in respect of particular public	
	authorities, for the development, improvement,	
	modernisation, reform or amendment of this Act or	
	other legislation or common law or any other matter	
	relevant to operationalising the right to access	
	information, as appropriate.]
4.	The Union Government Ministry responsible for the	
	administration of this Act, as soon as practicable after	
	the end of each year, prepare a summary report on the	•
	implementation of this Act during that year and cause a copy of the report to be laid before the concerned state	
	legislatures and each House of the Parliament, drawing	
	on the information provided in the reports of the Chief	
	Information Commissioners for each State	
5.	If it appears to any Chief Information Commissioner that	
	the practice of a public authority in relation to the	
	exercise of its functions under this Act does not conform	

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exercise of its functions under this Act does not conform with provisions or spirit of the Act, s/he may give to the authority a recommendation specifying the steps which

ought in his/her opinion to be taken for promoting such conformity

- 16B (1) The Government must, to the extent that financial and other resources are available:
 - (a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Notification and of how to exercise the rights contemplated in this Act;
 - (b) encourage public authorities to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and
 - (c) promote timely and effective dissemination of accurate information by public authorities about their activities.
 - (d) train information officers of public authorities and/or produce relevantraining materials for use by authorities themselves.
 - (2) The Government must, within 18 months of this Act coming into force, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.
 - (3) The Government must, if necessary, update and publish the guide at regular intervals The guide must, without limiting the generality of subsection (2), include a description of-
 - (a) the objects of this Act;
 - (b) the postal and street address, phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority as appointed under sub section (1) of section 5
 - (c) the manner and form of a request for access to a information of a public authority;
 - (d) the assistance available from and the duties of Public Information Officers of a public authority in terms of this Act:
 - (e) the assistance available from the Information Commissioners in terms of this Act,
 - (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging an appeal with the appellate authorities/ Chief/State/ Information Commissioners and a court against a decision by the Public Information

Retained as 23 with some changes.

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may, by notification in the official gazette make rules to carry out the provisions of this Act.	26. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive
Government by notification in the official gazette 19. (1) The competent authority	27 & 28 retained as a single section, 26, with changes.
prescribed: Provided that initially the rules shall be made by the Central	Deleted.
under sub-section (1) of section 12: (c) any other matter which is required to be, or may be	Retained as (iv) with minor changes. Retained as (v) with minor changes.
(a) the fee payable under sub-section (1) of section 7:(b) the authority before whom an appeal may be preferred	Retained as (iii) Retained as (iv) with minor changes.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-	Retained. (i) & (ii) added: (i) intervals at which matters referred to in sub-clauses (i) to (iv) of clause (b) of sub-section (1) of section 4 shall be published: (ii) the fee payable under sub-section (1) of section 6;
18. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act.	Retained as 25 with some changes. References to State Government deleted.
(d) any other matter which is required to be, or may be, prescribed.	Retained as (g) with some changes.
(c) The authority before whom an appeal may be preferred under sub-section (1) of section 12;	Retained as (e) with some changes. (f) added: the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16; and
(b) The fee payable under sub-section (1) of section 7;	Retained with some changes. b) the fee payable under sub-section (1) of section 6; c) the fee payable under sub-section (1) of section 7; d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (7) of section 13;
(a) intervals at which matters referred to in sub-clauses (i) to (vi) of clause (b) of section 4 shall be published.	Retained with some changes.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely	Retained.
17. (1) The Central Government may by notification in the Official Gazette, make rules to carry out the provisions of this Act.	Rétained as 24 with some changes
information in accordance with this Act. (4) The Government must, if necessary, update and publish the guide at regular intervals.	
records in accordance with section 4; (h) the notices regarding fees to be paid in relation to requests for access; and (i) any additional regulations or circulars relevant to obtaining access to	
Officer of a public authority; (g) the provisions providing for the voluntary disclosure of categories of	

	sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified from or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
(2) In particular, and without prejudice to the generality of	
the foregoing power such rules may provide for all or any of	
the following matters, namely:-	
(a) the fee payable under sub-section (1) of section 7:	
(b) the authority before whom an appeal may be preferred	
under sub-section (1) of section 12;	
(c) any other matter which is required to be, or may be,	,
prescribed.	
20. (1) Every rule made by the Central Government	Collapsed into 26 above with changes.
under this Act shall be laid, as soon as may be after it is	
made, before each house of parliament, while it is in session,	
for a total period of thirty days which may be comprised in	
one session or in two or more successive sessions, and if,	
before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses	
agree in making any modification in the rule or both houses	
agree that the rule should not be made, the rule shall	
thereafter have effect only in such modified from or be of no	
effect, as the case may be, so, however, that any such	
modification or annulment shall be without prejudice to the	
validity of anything previously done under that rule.	
(2) Every rule made under this Act by a State Government	
shall be laid, as soon as may be after it is notified, before the	
State Legislature.	
21. (1) If any difficulty arises in giving effect to the	Retained as 27 with some changes.
provisions of this Act, the Central Government may, by	
order published in the official gazette, make such provision	
not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:	
Provided that no such order shall be made after the expiry of	Retained as 27 with some changes.
a period of two years from the date of commencement of this	Netained as 27 with some changes.
Act.	
(2) Every order made under this section shall as soon as may	Retained as 27 with some changes. #
be after it is made, be laid before the houses of parliament.	0 7
	28 Added:
	The Freedom of Information Act, 2002 is hereby repealed.

THE SCHEDULE

(See section 16 (1))

Intelligence and Security Organisations Established by the Central Government

- 1. Intelligence Bureau.
- Research and Analysis Wing of the Cabinet Secretariat.
- 3. Directorate of Revenue Intelligence.
- 4. Central Economic Intelligence Bureau.
- 5. Directorate of Enforcement.
- 6. Narcotics Control Bureau.
- 7. Aviation Research Centre.
- 8. Special Frontier Force
- 9. Border Security Force.
- 10. Central Reserve Police Force.
- 11. Indo Tibetan Border Police.
- 12. Central Industrial Security Force.
- 13. National Security Guards.
- 14. Assam Rifles.
- 15. Special Service Bureau.
- 16. Special Branch (CID), Andaman and Nicobar.17. The Crime Branch-CID, CB, Dadra and Nagar Haveli.
- 18. Directorate of Vigilance including Anti Corruption Branch, National Capital Territory of Delhi.
- 19. Special Branch, Lakshadweep Police.

Retained with one change See below

Deleted:

18. Directorate of Vigilance including Anti Corruption Branch, National Capital Territory of Delhi.

19 retained as 18:

18. Special Branch, Lakshadweep Police.

LETTERS

Smit. Some coundly Alterpressor Nanotal Advisory Council

Der Sna Gandhi

We were disturbed to see the text of the Right to Information (RTI) Bill being introduced by the Government of India in Parliament today. Whereas the freedom of Information Act 2002, for all us finds, was applicable to the States, Union Territories and the Central Covernment, this new KII Bill appears to be intended to be restricted to only the Central Covernment and the Union Territories. It has thereby, in one stroke taken away the powers given by the earlier Act to information with state governments. distinct authorities and local bodies. This denies the very information that people actually need to hold public authorities accountable.

This retrograde step is all the more shocking because of the discussions, we laid with the Printe-Minister and with you fin most of which concerned senior government officials were present), it was not electry indicated that the government proposed to exclude the states and thereby roll back even the small amount of access that had been provided by the earlier Act. We do not know whether, as Chairperson of the NAC, the sharement mokeyou into tall confidence about the possible implications of the Bill being restricted to the Central Covernment.

Clearly force is no constitutional or legal barrier against making the new fell applicable to states, as it seeks to replace a law (the procedom of information Act 2002) that is useff applicable to states, and has been duly massed by both houses of Parliament and given assent by the President of India. As you may recall, the NAC recommendations sought to remove the weaknesses of the earlier law to stead, that have has been further weaknesses of the earlier law to stead, that have has been further weaknesses of the earlier law to stead, that have has been further makened. Thus is a violation of the assurance given in the CIMP that "The Right to Information Act will be made more progressive, paracipatory and meaningful".

The new Bill formulated has also changed the NAC recommendations regarding penalties, tendering them ineffective. The penalty clause is perhaps one of the mass critical provisions for implementation of the R P aw

We request you, as Chairperson of the NAC and President of the Congress Party, to ensure that the Government immediately corrects these and office anomalies in the Bill We would also request that the process of amending and finalising this Bill is done publicly and in a transparent manner. It is only fitting that a right to information law is formulated in a manner that is in keeping with the spirit of the proposed law.

We are drawing your attention to this emetal matter because it is control to the implementation of the Common Minimum Programme, and to the effectiveness of the NAC in monitoring it. These last minimum changes, it retained are bound to undernine the confidence of the people in the commitment of the government to transparency and accomplaints.

Trous - Star Chair

g postanta & Saxona — Aruna Roy — 46an Deeze — A.K. Sinva Kumar

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278 SFS Flats Haus Khas DDA Flats Haus Khas New Delhi Fax: 011 26168759

24 December 2004

Dear Shri Manmohan Singh ji,

I am writing to you regarding the Right to Information Bill that the government tabled in Parliament yesterday. You might recollect that you had very kindly given us time on two occasions to discuss our concerns about the proposed bill. Unfortunately, the Bill, as it is now introduced, is actually worse than the existing Freedom of Information Act that it seeks to improve upon. It is especially disheartening to note that the new Bill takes away the access given by the earlier Act to information with state governments and with district and local governments. As you will appreciate, this is perhaps the information most affecting the lives of the common people of India, and thereby the most sought after.

I am given to understand that this exclusion was done at the behest of the Law Ministry of the Government of India. I am sure you will agree that when there is already a Freedom of Information law that is applicable to all state governments, duly passed by both houses of Parliament and given assent by the President of India, there could be no legal or constitutional reason to exclude the states from the new proposed law.

As amendments to the existing Freedom of Information law were initially proposed by the National Advisory Council and, as a member of that Council, I was one of those who pushed for these amendments, I am convinced that this basic anomaly can still be corrected. I would be very grateful if you could personally look into the matter and review the basis on which this and other recommendations of the NAC were rejected. I also enclose a copy of the letter sent by four members of the NAC to the NAC Chairperson, Smt. Sonia Gandhi, expressing our disappointment and bewilderment with the Bill.

We would be very happy to meet with you and explain our point of view, should you feel this is necessary

With kind regards,

Yours sincerely,

Aruna Roy

Shri Manmohan Singh Prime Minister of India New Delhi

LEGAL OPINIONS

26 37.

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OPINION REGARDING THE CONSTITUTIONAL POSITION OF THE CENTRAL RIGHT TO INFORMATION ACT

The Central Right to Information Bill introduced in Parliament seeks to restrict the right only to offices and authorities under the Central Government. I am informed that this has been done on account of some confusion about whether the Central Act can legislate for the offices and authorities under the State Governments and Local Authorities and if so what would be the Status of the Right of Information Acts already existing in several States. The National Campaign for People's Right to Information has sought my opinion of the correct legal position on these issues. My opinion is as follows:

Though the Supreme Court has repeatedly declared that the Citizens have a fundamental right (part of Article 19(1)(a) of the Constitution) to be informed on all aspects of government functioning, there is no specific legislative entry in the State List, Union List or the Concurrent List dealing with the right to information. Therefore legislation or the right to information can be enacted by Parliament under the residuary entry 97 of the Union List. Such a legislation can certainly be for the entire country including offices and authorities under the States of local bodies. However this does not mean that the State legislations on this which have already been enacted would become void or unconstitutional. In my opinion each State has the incidental power to provide for the right to information on all subjects which are in the State list or the concurrent list, since they have legislative competence on those subjects. This would be particularly so since this right has already been declared to be a fundamental right by the Supreme Court.

However the Constitution provides that when there is State legislation as well as Central legislation on a subject, the Central legislation overrides the State Legislation to the extent that there is a conflict between them. Thus if the Central legislation is more liberal regarding access to information than any State law, it would override the State law. However it would be open for the Central Legislation to provide that the rights conferred by it would be in addition to and not in derogation to the rights conferred by the State legislations on the subject. That would allow people to seek information on State subjects under the State law as well if that is more liberal than the Central Law on access to information.

Thus, in my view, it would be perfectly legal and justified for the Central Law to be applicable to all public authorities in India, whether they are under the Centre, States or Local bodies. It would also be legal and justified for the Central Law to provide that the right provided by the Central Act would be in addition to and not derogation of the right provided by any State law. In that case both the Central and State roots could subsist and complement each other

(SHANTI BHUSHAN)

8/1/05

PRASHANT BHUSHAN ADVOCATE

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Opinion on the communication from the Central government to the State governments asking them to repeal their State Right to Information Acts.

After the enactment of the Freedom of Information Act by Parliament, the Central government has written to the state governments asking them to repeal their State Acts in view of the Central legislation. This has been done even before the Central Act has been notified to bring it into effect. It has presumably been done on the basis that the Central Act will override the State Acts, or parliags on the earlier opinion of the Anomaly Control that a Right to Information Act can only be enacted under the residuary entry of the Union list, on which only Parliament has legislative competence.

The correct legal position, in my opinion, on this is as follows: --

Though there is no specific entry in the seventh schedule dealing with Right to Information, it would be open to any legislative body to provide for access to information on any subject on which it has legislative competence. This is implicit in its legislative competence on that subject. Thus, if the State can exact legislation on law and order, it can also provide in that legislation for Right to Information on all matters covered by that legislation. This Right to Information can be provided by the State legislation either by an appropriate clause in each piece of legislation, or even by a separate enactment on the Right to Information. The State legislation can however give this right only in respect of these subjects on which it has legislative competence, which means subjects covered by the State list of the concurrent list.

On the other hand, Parliament can make use of the residuary entry to enact a comprehensive law on Right to Information. If therefore, there is also a Central legislation on right to information, it will override the State legislation to the extent that there is a conflict between the State legislation and the Central legislation. Thus, for instance, if the State Act provides for access to official notings and the Central Act says that information on official notings may be restricted, and someone seeks information regarding notings on a subject relating to education which is a subject in the concurrent list, in my opinion, this would not be a case where there's a conflict between the Central Act and the State Act, unless the Central act expressly prohibits the release of information on official notings - If-the Central act merely says that information on bothogs may be restricted, and the State Act says that there shall be such a right to information, the State Act can still be used to access that information in areas covered by the State List

- Ajit Jos 5" January, 2005 <u>attentus rum aim</u>

- The Right to Information Bill, 2004 (Bill) that was tabled in Parliament on 23rd Dec 2004 was a version modified by the Law Ministry. Before sending it to the Law Ministry, the Department of Personnel (DoPT) had made minor changes to the draft Bill sent to it by the National Advisory Council (NAC). The Parliament had earlier passed the Freedom of Information Act 2002 (FOI) which was yet to come into force, when the newly elected UPA government decided to reintroduce a more empowering Act, much more effective with stringent penalty provisions. But unfortunately, the Bill that has been tabled falls far short of these objectives and is in fact inferior to the FOI 2002 with regard to its reach and extent (being restricted to the Central Government and its agencies). In this regard a letter of desperation on the changes that purportedly would defeat the purpose of the Act, addressed by 4 members of the NAC to Mrs. Sonia Gandhi, the Chairperson is relevant. Apart from the development at the center to come out with an Act on Right to Information, at least 8 States have already promulgated their own versions of Right to Information Act (State RTI's)
- The main changes bought about by the Law Ministry are thata The Bill is to be operational only with regard to the Central Government and its agencies as against the earlier versions of its blanket applicability and clarification that, where a State Legislation also exits guaranteeing the Right to Information, a person will have the right to seek information under either of the Acts. This was subject to the logical rider that the State Law could be used only for subjects falling under the State List of Schedule 7 of the Constitution. Thus Sec 1(4) of the NAC and DoPT drafts is absent in the Bill. Consequently, "Government" defined in the Bill includes just the Central Government and Union Tetritories (Sec 2 (c)) as opposed to the "State Governments" too that were included in definitions of "appropriate Government" in the earlier versions including the FOI 2002.
- b. Major dilutions have been made in the Penalty provision, reducing completely the urgency and diligence with which public authorities would have acted upon the Act owing to the strangent penalties that would have earlier been attracted for non-compliance, complacency or non-cooperation
- c. From every "persons" right to seek information, it has been changed to a "citizens" right. The change here was first made by the DoPT and was retained by the Law Ministry.
- d. Finally, though mostly of symbolic or at most of interpretative importance, the august "Objectives" of the proposed Act that unusual to normal drafting practice found itself in the body of the Act has been deleted in the Bill.
- 3.4 I shall now proceed to examine, What in my opinion, were the likely legal concerns or compulsions of the Law Ministry that could have led to the watering down of the provisions of the otherwise boldly drafted Bill approved both by the NAC and the DoPT?
- Restricted Application: Article 245 of the Constitution is the fountain source of legislative power. It provides subject to the provisions of this Constitution, Padiament may make laws for the whole or any part of the territory of India, and the legislature of a State may make Laws for the whole or any part of the State. The legislative field between the Parliament and the Legislature of any State is divided by Article 246 of the Constitution Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in Seventh Schedule, called the 'Union List' Subject to the said power of the Parliament, the Legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the 'Concurrent List' Subject to the above said two, the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the 'State List' Under Article 248 the exclusive power of Padiament to make laws extends to any matter not enumerated in the Concurrent List or State List. This is what



is called the residuary power vesting in Parliament.\(^1\) Article 254, comes into effect when there is an inconsistency between laws made by Parliament and state Legislatures

- Right to Information is a topic that does not fall within the entries of any of the three lists. However, the States have a right to legislate owing to the fact that that the Act covers its Departments, and its officers who are the creatures of its legislative powers under various provisions of List II and List III. The Center too has a right to legislate here on the same grounds as far as its departments and officers are concerned. The center has an additional ground to legislate as the Right to Information does not expressly fall within any of the Lists, and therefore, would fall under the centers residuary power under Art 248 read with Entry 97 of List I. But need the extent of the Central Legislation have been curtailed in its operation to exclude the States like the Law Ministry has done? The answer I submit is in the regative. Could the two laws on the same subject have simultaneously coexisted? The answer to this, I submit is in the affirmative.
- The Supreme Court in *Hoechst Pharmaceuticals Ltd.* and Ors. V. State of Bihar (1983) 4 SCC 45, laud down the test that when the legislative competence of Parliament to enact a law is questioned, all that one has to ask is whether it relates to any of the Entries in List II and if it does not, no further question need to be asked and Parliaments legislative competence must be upheld.² Just because states have come out with their own RTI's it does not bar the center from enacting legislation for the whole country on RTI. The Constitution and judicial authorities do not preclude the simultaneous existence and use of the two legislations. The question of repugnancy between one and the other law does not arise because the powers to frame the Acts have been drawn from different sources, the center from the residuary power and the sates from the overall power over departments in its charge. Further, they cover different areas and together offer options for persons to choose in order to enforce their Right to Information.
- The Constitutional Bench of the Supreme Court, in *State of West Bengal V. Kesoram Industries* (2004) has from the *Hoechst* case drawn the following principles governing the field.
 - (1) The various entries in the three Lists are not 'power' of legislation but 'fields' of legislation.
 - (2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and 2 law made by State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the states law will be ultra vires and shall have to give way to the Union Law
 - (3) The entries in a List being merely topics of fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expression employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeration of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.
 - (4) Where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The Court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the Legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.
 - (5) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While

State of West Bengal V Kesoram Industries (2004)

² Also see Goodricke Group Ltd v. State of West Bengal. 1995 (supp) SCC 707. Naga People's Movement for Human Rights v Union of India (1998) 2 SCC 109. State of West Bengal V. Kesoram Industries (2004)

reaching the three Lists, List I has priority over Lists III and II, and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.

- Given the federal structure of our nation, the spirit is to give effect to legislations made both by the Union Government and the State Governments. As long as there is no conflict both would exist simultaneously. This is what was envisaged in the drafts approved by the NAC and DoPT too "where a State Legislation also exits guaranteeing the Right to Information, a person will have the right to seek information under either of the Acts." A harmonious existence is envisaged and is possible. Then what was it that weighed upon the Law Ministry to restrict the application of the Bill? Is it that the Ministry thought that since both legislations cover the same field therefore there is no point in extending the Union legislation to the state Government!
- 9. The question that should have been probed by the Law Ministry were- one, does the center have the power to legislate on the Right to Information? The answer to this is yes under the residuary clause. Two, can this central legislation cover the state governments? Certainly, and innumerable central legislations cover the states too. Three, on the face of it does it seem that there is a conflict between the two legislations? No, on the other hand, they can harmoniously exists side by side giving citizens of states where both exist the option to select either to access information. There are several areas on which both the center and state have legislated governing the same field for instance in matters telating to Labour, electricity etc.³
- 10. To check if there is conflict between two set of legislations, the Supreme Court has in the **Kesoram case** laid down the following test-

One – Is it still possible to effect reconciliation between to Entries so as to avoid conflict and overlapping? Two – In which Entry the impugned legislation fails by finding out the pith and substance of the legislation? Three – Having determined the field of legislation wherein the impugned legislation fails by applying doctrine of pith and substance, can an incidental trenching upon another field of legislation be Ignored?

Applying this test too no conflict is visible between the State Act and the proposed Central Act. Therefore, there can be no logical justification to Law Ministry restricting the application of the Act. The effect to such restriction is that citizens of states with no state law on RTI or a weak law are deprived of their Fundamental Right to Information.

- If a state Law and Central Law are repugnant then, Article 254 of the Constitution comes into play. The *Karunanidhi Case*⁴ has laid down the test for repugnancy. It is farfetched to think of repugnancy here because none of the conditions laid down in the *Karunanidhi case*, enumerated below, is being fulfilled in the instant case;
- "1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field.
- 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
- 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.
- 4. That where there is no inconsistency but a statutes occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."
- 12. Penalty Provision: Major changes have been made in the penalty provision. The NAC and DoPT draft envisaged a daily penalty of Rs. 250 for delay in providing the information, this has been deleted. In the Bill, the Information Commission has no power to fine, so also has its power to imprison been taken away Imprisonment can now be awarded as punishment only through the additional intervention of two other agencies- the Central Government and a Judicial Magistrate. Further a numor provision like starting a computsory departmental proceeding against a delinquent officer under the Act has also been deleted. In one stroke the majesty and benign import of the Act has been totally denigrated. Power to tine is a common power with public officials like Sub-Inspectors of Police, Customs Inspectors, Sales Tax and Excise officials, what to say about

³ Se Engineering Kamgar Union v. Electro Steels Castings ltd. SC (2004) and M.P. Vidhyut Karamchan Sangh v. M.P. Electricity Board, SC (2004)

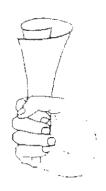
⁴ M. Karunanidhi v Union of India AJR 1979 SC 898

regulatory authorities and quasi-judicial bodies. This power has been denied to the Information Commissioner. Power to imprison has been conferred on officials like the Sub-Divisional Alagistrates, Divisional Forest Officers, Labour Commissioners, and bodies like the SEBI, Consumer Courts and several Tribunals. There is therefore no justification in depriving such a high powered body like the Information Commissioner from imposing prison sentences. The whole exercise in tampering with the penal provision cannot but be mischief played by the bureaucracy to sabotage an Act making them accountable. If there are serious objections to the awarding of prison sentences then that alone could have been separated. But removing even the powers to fine is simply unjustifiable and makes the Bill much inferior to penal provisions incorporated in several state RTI's. Power to fine is the basic minimum for an Act to stand and must be restored immediately.

- Citizens or Persons In the Constitutional scheme, some of the more urgent and private rights like Art 14 Equality, Art 20 on conviction, Art 21 Right to Life and Personal Liberty, Art. 22 on Arrest and Detention and Art. 23 Freedom of Religion are granted to all "persons". Some otherFundamental Rights like Art.15 Against Discrimination, Art 16. on Equal Opportunity and Art.19 on Freedoms are available only to "citizens". Right to Information is derived from the Right to freedom of speech and expression under Article 19 (1) (a) which is a right available only to citizens. Thus the NAC draft that modified by the DoPT to include only citizens who can seek information under the Act as against persons is it is submitted based on sound law 5
- 14. <u>Objects</u>: "Objects" are normally read by the Minister while introducing the Act in the Parliament. In the NAC and DoPT approved versions, the objects formed a part of the Act. Which however was deleted in the Bill. There is no harm in the objects lawing continued in the Bill. In fact in case of interpretation, the intent of the legislature can be inferred from the Act itself without going in for the legislative history.

⁵ See Hans Muller v. Supdt Presidency Jail Calcutta AIR1955 SC 367

ARTICLES IN THE PRESS



सूचना के जन अधिकार का राष्ट्रीय अभियान

NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION



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PRESS STATEMENT

24 December, 2004

The National Campaign for People's Right to Information (NCPRI) is deeply disappointed with the Right to Information (RTI) Bill introduced by the Government in Parliament yesterday. The new RTI Bill is substantially worse than the Freedom of Information Act of 2002 that it seeks to replace, and a total violation of the assurance given in the Common Minimum Programme of the UPA Government that "The Right to Information Act will be made more progressive, participatory and meaningful".

Among other things, the new Bill seeks to restrict the right to information to only information available with the Central Government and Union Territories. This is despite the fact that it seeks to improve upon, and repeal, the Freedom of Information Act 2002 that was applicable to both the Central and state governments. In fact, this Bill seeks to take away the access that the earlier law gave to state, district and local level information that is most relevant to the common people of India.

The new Bill has also made the penalty clause, perhaps the most critical clause in an RTI law, totally ineffective. Whereas in the recommendations made by the National Advisory Council (NAC), the penalties were imposable by the designated Information Commissioners, in the new bill the Information Commissioner "may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class". And, this also only when the concerned officer has "persistently failed to provide information without any reasonable cause within the period specified..." (section 17).

Therefore, not only have the already overloaded courts to be approached for the imposition of penalty but also only if there is persistent delay. And the Central Government has first to be persuaded to file a complaint against its own officers

The Act, by deleting other relevant portions of the NAC recommendations, has also created the absurd situation where you can be penalised for (persistent) delay but not for destroying the information sought, or for giving false or misleading information, or even for refusing to accept the request for information!

It also seeks to restrict access to information only to "citizens", thereby requiring that every person who applies for information first prove that he or she is a citizen of India: a tall order indeed for a majority of Indians. It also excludes all intelligence and security organizations, ignoring the recommendation of the NAC that information pertaining to violations of human rights or involving the life and liberty of a person should not be so exempt.

Though it also has some features that are an improvement from the last Act, like the provision of an independent appeal mechanism, all this is more than negated by making the penalty clause ineffective. Experience from states where there is an RTI law shows that where there are no penalties or weak penalties, the defaulting officers ignore the appellate authorities.

By introducing such a weak and flawed bill in Parliament, the government has not only gone back on its assurances in the CMP but has also belied the hopes and aspirations of millions of people around the country who have been engaged for over a decade in a mass struggle for the right to information. In fact, in 1996 the NCPRI had formulated a draft national law for the right to information, in collaboration with the Press Council of India. This had subsequently been forwarded



to the Government However, it was only in 2002, after various government committees had diluted the original draft, that the last government had passed the very weak Freedom of Information Act

Soon after the UPA Government came to power earlier this year, the NCPRI sent to the National Advisory Council an exhaustive list of recommended amendments to the Freedom of Information Act 2002. The NAC accepted most of these suggested recommendations and forwarded them, with its own endorsement, to the Government of India on 16 August, 2004. Smt. Sonia Gandhi, Chairperson of the NAC, while forwarding the NAC recommendations to the Prime Minister, had stressed the four fundamental principles of an effective RTI Act. of minimum exclusions, deterrent penalties, independent appeal mechanisms, and wide and easy accessibility to the public.

Subsequently, representatives of the NCPRI had two meetings with the Prime Minister and one with the Chairperson of the NAC, to discuss the status of the proposed amendments to the Freedom of Information law, and a large number of people from around the country also wrote to the Prime Minister, requesting him to urgently amend the Freedom of Information Act along the lines suggested by the NAC, and without dilution. It is unfortunate that all these efforts by movements and individuals from across the country have not been able to persuade the government to come out with an RTI Act that is "progressive, participatory and meaningful".

The NCPRI pledges to continue its fight for getting a strong and effective RTI Act that is applicable to all levels across the country. It also welcomes the letter written by some members of the NAC to the Chairperson of the NAC (copy enclosed) expressing their anguish over the new Bill.

Aruna Roy

Shekhar Singh On behalf of the NCPRI



THE 溶熱的流源 HINDU Taesday, Feb to., 2005

Open Page

RTI Bill: old wine with a new label?

ON JANUARY 1, 2005, the U.K. Freedom of Information Act finally came into force. Britons now have a lot to cheer, though it took them more than two decades to get the Act and another five years before it got operationalised.

In contrast, the new year began on a damp note for Freedom of Information advocates in India, when the Manmohan Singh government tabled in Parliament a diluted version of the draft Right To Information (RTI) Bill submitted by civil society to the National Advisory Council (NAC) The RTI Bill 2004, if passed by Parliament, would replace the old Freedom of Information Act 2002 that has been gathering dust in the Personnel Ministry for more than two years.

While heetic lobbying is under way and civil rights groups have conveyed their strong reservations to the NAC which initially decided to stand by the amendments proposed, it is evident that bureaucracy's penchant for secrecy and political wavering on the issue would remain a major stumbling block for an open regime.

Transparency and accountability are the key to good governance and one way to bring this about is by allowing people access to government held information as enshrined in Article 19 of the Universal Declaration of Human Rights and also recognised in our Constitution.

But the way recommendations of the National Campaign on People's Right to Information (NCPRI) and civil society groups have been weakened reflects bureaucrats' scepticism over access laws. Not surprisingly they have taken recourse to either dilatory or diluting tactics or a combination of both. A cursory look at the RTI Bill reveals that what was basically aimed at was to draft a law that allows for limited information by a limited number of people for a limited number of people.

Narrow in geographical reach

For example, it is narrow in its geographical reach. It is applicable only to the Central government and the Union Territories and leaves many public bodies from the ambit of the law given the fact that only nine States in the country have access laws. The NAC draft included provisions to make the security and intelligence agencies reveal information concerning human rights violations which are quite rampant in the insurgency prone States of the Northeast and Jarmani and Kashmir and naxal-infested ateas of the country. The deletion of this clause from the RTI Bill would only allow these agencies to commit most heinous acts with impunity.

While the NAC draft gave all 'persons' access to information, it was changed to 'citizens' alone. Sweden, the first country in the world to have drafted a law in this regard more than two centuries ago, allowed foreign journalists to access documents from the Prime Minister's Office. The RTI Bill allowing for information disclosure not more than ten years old seeks to hide more skeletons than what it aims to reveal, for access to records more than 30 years old world have allowed journalists to peek into the Handerson Report on the Smo-Indian war that has never been made public. In contrast, the U.S. has revealed information more than 30 years old without any hitch.

If the above provisions were not enough to dilute the NAC draft, the RTI Bill allowing the government to intimate the relevant fee to the applicant would leave room for arbitrariness. If an official wants to deny information, then one of the ways is to charge an exorbitant fee. Countries like India where millions live below the poverty line cannot afford to have such an ambiguous clause. In countries with well-crafted laws such as Australia and Canada the fee could be reduced or waived while in South Africa it could be waived by notice in gazette by the Minister South Africa has drafted one of the best laws in the world allowing citizens to file information request even from private bodies.

Despite loopholes and the apparent culture of secrecy that we inherited from our colonial masters, nothing can stop a good Act from being enacted if there is political will It took years for India to pass a Central Act on FOI. The then government showed its flawed commitment, first by passing a poorly crafted FOI law and later by keeping it in abeyance.

The United Progressive Alliance appeared to be different. It showed its sincerity by agreeing to replace the old FOI Act with a new Bill and also consenting to all the amendments suggested by the NCPRI. But what actually transpired before it was tabled in Parliament leaves room for speculation and doubts about the UPA's commitment of providing a transparent and accountable government.

But these hurdles do not stand the test of time as committed leadership both in the Executive and the Legislature can make a fundamental difference to the final law despite the usual bureaucratic hottlenecks

The fare of this law now hangs precanously. Are we going to pass a law that is worse than the old FOI Act as interpreted in some quarters? Or are we advocating a law that appears to be old wine with a new label since even the RTI Bill does not seem to give citizens broader access rights? - ADITI DATTA

36





------ Monday, January 31, 2005

Right to Information Bill - Secret doings

A right to information Bill with sufficient teeth will help not only the people but also the government BY TRILOCHAN SASTRY

The Right to Information (RTI) Bill is currently in draft form and the Cabinet is in the process of examining it before tabling it in Parliament. Two key provisions need to be included — penalty for not providing information or for not doing so in time, and extension of the Bill to the whole country and to all states

The amendments for the provisions were removed before being sent to the Cabinet. Currently the Bill does not have any penalty clause for not providing information to the citizen. The Bill also seeks to restrict its application to the Centre and remove the states from its purview. It is not known, how this happened, but then all Bills are drafted by the bureaucracy. It is not surprising if there is an effort to remove penalty clauses. The bureaucracy perhaps has legitimate apprehensions but they can be addressed.

The amendments are supported by the people of this country, various eminent citizens and several leading politicians from different political parties. There is also a network of several hundred NGOs, people's organisations, citizens' fortims that support this. Recent surveys show that over 95 per cent of people support the right to information. They also show that people in the villages have the same views on this subject. The judiciary has also strongly supported the right to information of the ordinary citizen declaring it a fundamental right under Article 19(1)(a) of the Constitution. Several publication bureaucrats and police officers — both serving and retired — have also supported this initiative.

The people's support is based on a growing awareness that unless they know what is going on, their day-to-day life will not improve. For instance, people in urban areas have realised that provision of basic amenines like water, electricity, roads and sewerage, can improve only if they know how decisions are made and how money is spent. In rural areas, people are interested in how various government programmes like Food for Work, DRDA, DPAP, seed and fertiliser subsidy and infrastructure projects are done. Millions depend on these programmes for their livelihood which are unfortunately not implemented properly. With the spread of awareness, people have realised that corruption can only take place under the cover of secrecy. In short, the massive people's support is because they want a better life and they see RTI as a powerful means for ensuring that

Media interest

The media interest in this is also growing rapidly. There is more exposure of non-performance by the Government and of corruption in high places. The media is also closely in touch with NGOs and people's movements to gather and publish information. TV, newspapers — both

English and Indian languages — and news magazines are now giving extensive coverage to these issues.

A suitable RTI Bill will not only help the people, but also the Government. For instance, it can ensure better implementation of various Government schemes like Food for Work and drought relief schemes. Implementation will help restore the faith of people in the political establishment

The consequences of diluting the Bill are enormous People's faith in the political establishment and in the bureaucracy is at an all time low. Non-performance by the Government has led to violent, revolutionary movements all over the country. There is now a corndor for the Naxalite movement from Nepal to Kanyakumari. Such movements cannot survive without people's support and this support comes from total disenchantment with the so called Constitutional forms of dialogue and protest. To many the Government seems deaf. At another level, there is a continuous spate of killings of politicians and policemen followed by reprisals and killing of Naxalites. The day might not be far off when IAS officers also become targets.

The real issue therefore is to restore the legitimacy of the political and bureaucratic system. This can only be done by being responsive to the people and by delivering on promises. The RTI Bill is perhaps the most powerful tool at present to ensure this. In one stroke, it allows for peaceful participation in governance, ensures that people's legitimate concerns are addressed and that the government performs and removes the incentive for violence

Major fear

The major fear within the bureaucracy is that they will be punished for no fault of theirs. This fear is unwarranted since people are not interested in punishment for its own sake but only in ensuring that their work gets done. People are not in favour of a witch-hunt against anybody. There is also fear that a lot of information might simply not be available. That is merely a problem of transition from an old regime to the new one and can easily be sorted out

The onus is clearly on the political leaders to avoid another long drawn out battle between the people and the hureaucracy Mahatma Gandhi once said, "Secrees is a sin" We also adopted "satyameva jayate" from the Mundaka Upanishad and put it on our nation's emblem. Other nations claiming far less in the ethical or spiritual domain have put these two precepts into practice. If we also adopt a proper RTI Bill, we will take our nation, and more importantly our people, decisively forward.

37 - T U 6



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RIGHT TO INFORMATION

A Bill and a half

SOWMYA KERBART SIVAKUMAR

The Right to Information Bill, tabled in Parliament in December 2004, is a toothless version of the original draft prepared by the National Advisory Council.

BY SPECIAL ARRANGEMENT

THE Right to Information Bill, as tabled in Parliament on December 23, 2004, is a mutilated and toothless version of its original and hold draft prepared by the National Advisory Council (NAC) and submitted to the government in August last year. The journey from the NAC to Parliament lasted four months.

Right to information', by its very construction, suggests that 'someone' on the other end is hiding information. The vested interests run deep, far and wide, up and down the hierarchy. Since information ultimately dictates power, and everyone is fighting for a share in the pie, the stakes are high. Any fight for transparency and accountability is expected to trigger a strong and united resistance from those who bask in the shadows.

The need for a national law on right to information was mooted by the National Campaign for People's Right to Information (NCPRI), formed in 1996 by a group of citizens of repute and expenence. The draft prepared by the NCPRI along with the Press Council of India after wide consultations found its way to Parliament four years later during the National Democratic Alliance (NDA) regime, watered down beyond recognition as the Freedom of Information Bill. This was passed in 2002 but the Act was not notified, so it never came into force. Given this precedent, and the fact that nothing has really changed in the bureaucratic-political framework, what is happening today can only be termed as predictable.

However, one might say in all farmess that this time around, the story has a slightly different script. On August 16, 2004, the NAC under Sonia Gandhi's chairpersonship submitted to the government 36 amendments to the Freedom of Information (FoI) Act, 2002. The four fundamental principles these amendments rested on were: the principle of maximum disclosure and minimum exemptions consistent with constitutional provisions; the principle of deterrent penalties, for failure to provide information as per the law; the principle of independent appeal; and, the principle of wide and easy accessibility.

Hectic parleys and negonations both within the government and without ensued. It was finally decided that the Act should be repealed, not amended, and an entirely fresh Bill be brought to Parliament.

Around the first week of December, a new Right to Information Bill was drawn up by the Department of Personnel and Training (DoPT). A careful reading of this draft reveals that it largely put together the suggestions of the NAC, and to this extent, came as a pleasant surprise to many: it retained in spirit the basic tenets of a strong right to information law. Its major drawback was that it gave blanket exemption to intelligence and security agencies in the case of information pertaining to "alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption".

The DoPT draft's next sojourn was at the Law Department, after which it came to the Union Cabinet for approval. Highly placed sources say that no changes were made to the Bill in the Cabinet. Yet, the Bill that was tabled in Parliament on December 23, 2004 was shockingly different from the DoPT version. No one had a wind of the changes until the draft came to Parliament. Every change made goes against each one of the four principles outlined earlier

Some of the key dilutions are

Minimum disclosures, maximum exemptions: The new Bill removes all references to State governments or local bodies from the Act. "Government" is defined in the Bill to include only the governments at the Centre and the Union Territories. In the earlier versions the "State governments" were in the definition of "appropriate Government". The definition of "pubhe authority" has also been changed, leaving out "panchayati raj institutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas notified under Schedule 5 and 6 of the Constitution".

"The Act in its present form will apply only to authorities and offices under the control of the Central government," says Supreme Court lawyer Prashant Bhushan. This defears the very purpose of having a right to information legislation because information that really matters to the people is available with State governments and local bodies like panchayats. Take, for instance, the Public Distribution System. Under this Bill, a poor villager in Orissa can get information as to how much wheat or tice the Centre has allotted to the State of Orissa, but cannot access the records of the ration dealer in his village. He cannot get information on the number of Below Poverty Line (BPL) cards in his panchayat or the quantity of grain sanctioned under relief works in his area. "Micro information on roads, electricity, water, buildings, schools, hospitals, employment schemes; any development work implemented by the States or local bodies, in one sweeping stroke, is now out of reach - what is available instead are rather useless aggregates, which cannot be used to fight corruption at the grassroot level," say NCPRJ activists Nikhil Dey and Arvind Kejewal.

38 2 4 T

in another related change that opens up a Pandora's box. Section 1(4) in the NAC and DoPT drafts, which allows a person the right to seek information under either the Central Act or a State Act, has been deleted

The only positive change between the DoPT draft and the Bill is with respect to exemptions enjoyed by security and intelligence agencies. While the NAC draft had specified that such agencies would still have to give information relating to allegations of human rights violations or issues involving the life and liberty of a person, or allegations of corruption, the DoPT draft had given a blanket exemption. The Bill has brought back the exception to exemption as far as it concerns "allegations of corruption", but keeps information on other violations specified outside the Act's purview.

Penalties, no longer a credible threat. It is well-known that a strong penalty clause is critical to the efficacy of a right to information law on the ground. The experience of various States stand concrete evidence to this. In the tabled Bill the charges defined, the mechanism of imposing penalties and the actual penalty itself have been altered - in effect, rendering the law totally ineffective. Both the NAC and DoPT drafts distinguished between the change of delay in giving information and charges such as giving wrong information and refusing or destroying information. The penalties too were defined accordingly

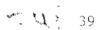
Moreover, the Information Commissioner had direct powers to impose penalties on Public Information Officers who are found to be in the wrong. In the new version, the distinction between charges has been blurted and instead lumped into a single charge of "persistently failing to provide information without any reasonable cause within the period specified". This is too vague and open to interpretation. Secondly, the Information Commissioner has no power to impose penalties; instead he can only authorise a Central government officer to file a complaint in the court. What 'deterrent' effect this two-step process ending in courts will have on a callous, corrupt officer, needs no explanation

Independence of appeal diluted: As opposed to a Chief Information Commissioner and State Information Commissioners for each State who, under the NAC draft, will be appellate authorities and oversee the implementation of the law, the DoPT draft speaks of an Information Commissioner (I.C.) and Deputy Information Commissioners (DICs) constituting a Central Information Commission. The DICs, in the tabled Bill, have been further restricted to 10. Their independence and accessibility, in the event of their being stationed in Delhi, is debatable. Lowering the statute of the I.C. and DICs (to a rank equivalent to Secretary and Joint/Additional Secretary, Government of India) may also undermine their efficacy.

Inaccessibility: The NAC draft stresses the charging of reasonable fees for obtaining information, and sets the cost of copying information or obtaining samples of material as the upper limit. The idea is that costs should not be a barrier to accessing information. Although this has been retained in the DoPT draft, the Bill disregards this principle and gives the Central government powers to prescribe fees at any level. Such loopholes can be easily exploited, as the Delhi Right to Information Act has demonstrated. Secondly, the DoPT draft and the Bill restrict the right to information to "citizens", as opposed to "persons" in the NAC version. For one, a poor person may find it difficult to prove his citizenship. Secondly, this leaves out other classes of residents (for instance, refugees) who may rightfully demand information.

Says Anna Roy, who has been in the forefront of the right to information campaign: "Here is a law, the demand for which has emerged from the grassroots, and is an extremely powerful tool in concretely combating corruption and the arbitrary use of power This issue is larger than the NAC or the government. It is crucial to the future of our democracy. For this robenefit everyone of us, we should share the responsibility to ensure that this tool is sharp and effective." At this crucial stage, when the Bill is yet to be passed, a widespread, well-informed public debate and sustained mass pressure could ensure just that.

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A Promise Belied

There are no real arguments against enacting a strong central right to information law. It appears to have the support of most people on all sides of the political spectrum. It is acknowledged as being essential for fighting corruption and the arbitrary exercise of power. And, yet, it faces one stumbling block after another. The most recent shock has been the dilution embodied in the contents of the Right to Information (RTI) Bill 2004, tabled in parliament on the last day of the winter session.

The promise in the Common Minimum Programme (CMP) to make the RTI law "more progressive, participatory and meaningful" seemed to offer a historic opportunity to break the stranglehold of secrecy over our administrative and governance framework. The National Advisory Council had recommended 36 amendments to the existing but un-notified Freedom of Information Act (FOIA) 2002. Although these were not the best of proposals, incorporating them would have made India's RTI law a strong and robust tool for facilitating participatory democratic practice. But the bureaucracy apparently had other plans. It first sat on the proposed amendments. When given a political ultimatum, a view was reportedly advanced that the amendments were too many, and a new bill should be formulated to replace the old one. When this was not accepted as justification for further delay, diluting the provisions of the bill became the focus. It is worth examining some of the changes that have been made in the draft.

First, by restricting the provisions of the new law to the central government and its agencies, the government has removed most public authorities and matters of relevance to ordinary citizens from the ambit of the law. This view runs completely counter to the FOIA, which did not mention state laws at all, but covered all public authorities in the country using the residuary clause 97 of the union list. The independent view was that the central act would cover all public authorities, but this would not impinge on the legislative competence of the states to pass right to information laws on state subjects, as long as they were not repugnant to the central act. In any case, there seems to be no legal justification for leaving most of the government offices outside the purview of the central act.

Second, the experience of states with RTI laws already in place has shown that penalty provisions are critical to making the law effective. The absence of penalties in the FOIA led to its being labelled a 'toothless act', but the penalty provisions in the new RTI bill leave much to be desired. The NAC proposals had vested the information commissioner with powers to impose fines of Rs 250 for every day of delay in providing information, fines from Rs 2,000 upwards and a possible jail term for refusing to provide information, providing wrong information, or destroying information with mala fide intent. The RTI Bill 2004 has retained a maximum fine clause, with a limit of Rs 25,000, and a maximum jail term of five years. However, this has been rendered completely ineffective by the ingenious inclusion of a procedure, wherein the information commissioner cannot directly impose penalties, but 'may authorise' an officer of the government to file charges in a court of law. The charges themselves have been severely whittled down by replacing the whole section detailing dereliction of duty with a vague and ineffective definition of a 'charge' of having, "... persistently failed to provide information without any reasonable cause...". It is not surprising that proposals on the penalties shaped much of the resistance to the bill in bureaucratic circles.

Three, similar dilutions have taken place in the provisions to open all files after 25 years, to provide information on queries related to human rights violations even from exempted intelligence and security agencies and on not making citizenship a qualifying factor to procure information since the Supreme Court has ruled that the right to information is part of the fundamental rights of the people under Article 19(1)a.

The bureaucracy has weakened critical clauses of the bill at the very last stage of drafting the law, without following norms of transparency or consultation. Public objections to the draft bill have been referred to a group of ministers. As an article in this issue by the economist Amit Bhaduri has argued, a national employment guarantee programme and the right to information go hand in hand. What is cause for concern is that both the draft bills considerably dilute promises made in the CMP. Does this mean that the UPA government is not serious about the pledges it made in the early days in office?

Central RTI law: some shine, still shackled

The Right to Information Bill tabled in Parliament raises expectations to new levels by proposing a dedicated Information Commission for enforcement. Except, the commission is crippled at conception, with no direct penalizing powers. **Prakash Kardaley comments**.

22 January 2005 - The Central Right to Information Act as tabled before the Parliament is flawed. The penalty clause as proposed by the Sonia Gandhi chaired National Advisory Council (NAC) has been mercilessly diluted. The provision to keep the cost of information at a reasonable and affordable level has been removed. While the NAC recommended that the central law should apply to offices and public bodies of state governments, the union law department intends applying it only to the central government offices and public bodies. Last year, the NAC had to sent its draft of amendments to remedy the original central Freedom of Information Act, 2002. Still the bill is superior to most of the prevailing state laws in the country. It is, therefore, very essential for right to information

Still, the bill is superior to most of the prevailing state laws in the country. It is, therefore, very essential for right to information activists all over the country to forge a common front and have the flaws in the new bill removed and to see that this bill when converted into an Act applies to the entire country including state governments.

The most outstanding provision of the central RTI bill is the provision for the appointment of an Information Commission. For the first time in the country, we see the possibility of a high-level commission at the level of the Secretary to the Government of India dedicated to its implementation. The bill envisages an Information Commissioner and up to 10 deputy commissioners appointed by the President of India on the recommendation of a panel comprising the Prime Minister, the Leader of the Opposition in Lok Sabha and the Chief Justice of India. The appointments would be made from among "persons of eminence in public life with wide knowledge and experience of administration and governance."

The decision of the proposed Commission will be binding, it will enjoy the powers of civil court while deciding a second appeal in (a) summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things, (b) requiring the discovery and inspection of documents, (c) receiving evidence on affidavit, (d) requisitioning any public record or copies thereof from any court or office and (e) issuing summons for examination of witnesses or documents.

In its mandate, the Commission will have the powers to order the public authority to act in accordance with the provisions of the Act which include

- · providing access to information in the form in which it is sought
- designating a Public Information Officer if not designated already
- publishing general information of public utility without expecting citizens to unnecessarily invoke their right to know for such routine information
- · presenting a annual report listing what information has thus been published
- evolving a well-defined practice in relation to the maintenance, management and destruction of records and
- promoting training of officials on the right to information

The bill tabled before Parliament also empowers the Commission to require the public authority to compensate a complainant for "any loss or other detriment suffered" and to impose "any of the penalties provided under this Act" Ironically though, no penalty has been prescribed. This is where the entire scheme unravels.

All the Commission "may" do is authorise any officer of the Central Government to file a complaint against a Public Information Officer (PIO) before a Judicial Magistrate of First Class if the Commission is of the opinion that the PIO "has persistently failed to provide information without any reasonable cause within the period specified". If the prosecution leads to conviction, the defaulting PIO will be liable to pay a fine up to Rs 25,000 or undergo imprisonment for a term up to five years, or both. The NAC wanted the Information Commission to have powers to directly impose a penalty on a defaulting officer at a rate of Rs 250 for each day; sidelay and award a fine of not less than Rs 2000 and imprisonment of up to five years, or both, by a summary conviction. This, if the Commission found the designated or deemed PIO to have i) refused to receive an application for intermation; (ii) mala fide denied a request tor information; (iii) knowingly given incorrect or misleading information, (iv) knowingly given wrong or incomplete information, (v) destroyed information subject to a request, or (vi) obstructed the activities of another PIO, the Commission itself or the courts.

But bureaucrats in the union law department have in their wisdom removed the provision authorising direct penalties. Instead, for a PIO found to have been prima facile guilty of defying the Act, they preferred that the information Commission merely authorize another government officer to initiate the PIO's trial in a criminal court. At best, this is deliberately roundabout. Further, in knocking off a vital penalty measure, the bureaucrats have shown their contempt for the wise advice of a council presided over by the president of the ruling Congress party and comprising as members [spersons of eminence in public life with wide knowledge and experience of administration and governance" (to borrow words from the Bill itself). Despite this major handicap manipulated into the Bill, the central Bill still has several features which distinguish it from the state RTI laws (Over half a dozen states in India have passed their own RTI laws.)

The provision for an information Commissioner should in itself encourage of citizens and champions of transparency and RTI in India because of the comparative status of prevailing state laws. One of the prime concerns in the states has been the need for a powerful independent appellate mechanism, particularly to make the position of the second appellate authority much stronger. This was prompted by the frustrations experienced by citizens in Delhi, Maharashtra and Karnataka in getting quick

and certain justice from their respective second or final appellate authorities. In Maharashtra, the second appeal goes to the state's anti-corruption watchdog body, the Lokayukta. Yet, this arrangement has somehow not worked.

An Information Commissioner being dedicated to the right to information law and having powers to ensure compliance of orders will certainly be *much more* effective than the apex appellate authorities in the prevailing state laws who are barely effective. This is also borne out by encouraging reports about the performance of Information Commissioners in countries like Canada and South Africa. The UK's Commission has done a commendable job streamlining management of records and promoting the nation's Freedom of Information law before it became enforceable there from January 1 this year. The new RTI bill's listing of public authority obligations in maintaining its records duly catalogued and indexed is impressively elaborate. This has no parallel in any of the state laws. While promoting the right to know through requisitioned disclosures, we also have to lay equal stress on this 'duty to publish' suo motu by the public authority and therefore this section is almost as vital for an effective RTI Act as a provision on penalty.

That the new bill makes advances over state laws Isn_1 t surprising. After all, the better among all existing state Acts, that of Maharashtra, was considered as a model when the exercise for the first draft for a fresh central law was undertaken by the National Campaign for People's Right to Information (NCPRI). NCPRI activists did meticulous homework. The NAC's recommendations were then derived from the NCPRI's draft. The experiences of hundreds of RTI users in Maharashtra, Delhi and Karnataka was thus taken into consideration in the attempt to improve the central law.

The section on exemptions from disclosure of information is reasonably trim, though one wishes it was trimmer. But it surely is a vast improvement over the exemptions listed in its predecessor, the unnotified Freedom of Information Act. The bill does exempt certain intelligence and security organizations - a hangover from the previous Act. The compromise was made at the very stage when the National Advisory Council formulated the draft recommendations.

Yet even here, there have more exemptions than the NAC was willing to tolerate. The NAC desired that the Act be made to apply to get information on matters pertaining to violations of human rights, the life and liberty of human beings and allegations of corruption. The bureaucrats have conceded allowing RTI only for one item — the allegations of corruption — and exempted the other situations.

Unduly generous protection to so-called third party information also has remained. The third party information has been cursorily defined as one that "relates to, or has been supplied by a third party and has been treated as confidential by that third party". Transparency activism has always generated concerns over confidentality of information, and section 8 of the bill does offer adequate protection to genuine third party interests.

Still, bureaucrats have added an independent provision and a nebulous definition of third party information to the new bill. This is unwarranted and bound to seriously jeopardize a requester; s sincere attempt in seeking public interest information. Again, the inserted provision was there in the outgoing Freedom of Information Act and has snaked into its successor

But the risk of old craft creeping back into the new was a risk the NAC took. It must be noted that the NAC made its recommendations rather guardedly as *amendments* to the flawed Freedom of Information Act, rather than asking for a fresh bill altogether. The NAC feared perhaps that the latter approach would lead to abnormal delays. Irksome provisions from the unnotified predecessor coming into the new bill were therefore inevitable compromises. The bureaucracy offered to pilot a fresh bill but gleefully consolidated as many shortcomings in the old Act as it could.

Now it is our turn to perform. Citizens must forge a common front and make sure that all deficiencies in the bill are removed while it is examined by the Cabinet's Group of Ministers and the Standing Committee of the Parliament. Falling that, the opportunity to change exists even when the bill comes up for discussion on the floor of the House. We need a uniform law on the right to know to prevail in the entire country and that must be the better than the best from among the existing state laws.

I am not competent to comment on the legality of the central law extending to state governments and their public bodies, but as a lay person, I feel that the National Advisory Council had made a reasonably sound recommendation that the central legislation should apply to the state matters as well and where a state law already existed, people in that state be given the choice by harnessing any of the two pieces of legislation. But if it turns out a reformed central Act does come out but remains applicable only to central government bodies, citizens of every state will have to start demanding that their state governments bring in identical statutes, even by scrapping the existing (and poorer) state laws wherever they exist

Prakash Karoaley

22 Jan 2005

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http://indiatogether.org/2005/jan/rti-central05.htm

42

THE EXAMPLE HINDU Tuesday, Jan 04, 2005

Vanish - Leader Page Articles

Information: an inviolable right

By Nirmala Lakshman

Despite the fact that there are serious attempts to muzzle the right to information by the ruling elite and powerful vested interests through the tabling of an ineffective Bill, the tide of civil resistance cannot be stemmed for long.

"The key to misdom is this — constant and frequent questioning ... for by doubting we are led to question and by questioning we arrive at the truth." — Peter Abelard (medieval dialectician, theologian, philosopher.)

IT IS a measure of the imperfection of a democracy when access to information in the public sphere is curtailed or restricted in any way. The right to information lies at the very foundation of civil liberties and underscores the fact that an elected government and its actions are open to questioning and accountable to the people who put them in power.

Accountability in a democracy means, among other things, that every citizen must have a right to answers. It presupposes a transparency in the public functioning of those who hold the reins of power whether it is at the village and township level, or at the State and national level. Transparency and accountability in governance have a direct impact on issues of survival in the poorest communities including their right to food, shelter, health, environment and livelihood. In India the right to information evolved over a decade, primarily out of a remarkable grassroots mobilisation in Rajasthan where the Mazdoor Kisan Shakti Sangathan (MKSS) succeeded through struggle and agitation, in accessing and using information to put an end to local corruption and exploitation.

When the Government tabled the Right to Information Bill 2004 in Parliament on December 23, it was expected to be a progressive piece of legislation that would effectively empower the ordinary citizen and ensure maximum transparency in governance at all levels. The National Advisory Council (NAC, which is headed by Sonia Gandhi and whose duty is to monitor the implementation of the UPA Government's Common Minimum Programme) had recommended 36 amendments (proposed by the National Campaign for People's Right to Information) to the Freedom of Information Act 2002 including changing its name to the Right to Information Act, which would emphasise the fundamental nature of the right.

The Bill, however, has diluted many of the recommendations. For example, although the NAC's draft was applicable to both the Central and State Governments and covers the entire country, the new Bill excludes State Governments, district authorities and local bodies from its purview and restricts its scope only to the Central Government and Union Territories. Additionally, it makes the penalty clause for those who refuse to give information extremely ineffective by suggesting that the complaint must be filed before a First Class Judicial Magistrate and this too only when the officer concerned has "persistently failed to provide information without any reasonable cause within the period specified..." The National Campaign for People's Right to Information (NCPRI) has expressed its "deep disappointment" with the Bill, which is more retrograde than the Freedom of Information (FOI) Acr 2002 that it seeks to replace

In the FOI Act, blanket exemptions were given to security and intelligence organisations; appeals were possible only within the government if someone violated the law, and further there were no prescribed penalties for offenders. The NAC proposed the principle of minimal exclusions, which says that access to information must be possible even from sensitive government agencies "if they have a bearing on the life and liberty of people, and to allegations relating to corruption or violation of human rights." Other crucial amendments proposed were the provision for independent appeal and the appointment of information commissioners at various levels, specific penalties for violations, the destruction of evidence, etc. There were also amendments relating to the rationalisation of the fee structure, which would not make the cost of obtaining information prohibitive to the ordinary crizen.

The Right to Information Bill 2004 in its present form is actually much worse than the 2002 Act. While the NCPRI members are determined to continue to fight for a more effective law that will be applicable at all levels and in all parts of the country, the backtracking of those in government who appeared to be committed to a strong Right to Information Bill has stunned and dismayed many. Expressing her anguish in a letter to the Prime Minister on behalf of the NCPRI, Aruna Roy, MKSS activist and National Advisory Council member who had pushed for many of the

amendments, says: "It is specially disheartening to note that the new Bill takes away the access given by the earlier Act to information with State Governments and with district and local governments ... this is perhaps the information most affecting the lives of the common people of India, and thereby the most sought after."

The fact that eight States already have then own RTI laws and citizens' groups have been increasingly active in the use of these laws in States such as Delhi, Maharashtra and Karnataka, does in no way preclude the need for a strong law on information that will make participatory democracy a real process across the country. Partivartan, an NGO in Delhi, has used the State law with considerable success in its efforts to rid the PDS of corruption. Arvind Kejriwal of Partivartan recalls the case of Nanu, a daily wage labourer who was put to great hardship for three months by various government departments to replace a lost ration card, but when he applied the State law through Parivartan, he got his card in three days. Mr. Kejriwal says that a comprehensive Central law in conjunction with State laws is necessary as there are many lacunae in State RTI Acts. In Maharashtra, the use of the RTI spearheaded by social activist Anna Hazare has proved that ordinary citizens can successfully challenge the administration.

Aruna Roy points out that the right to information touches all levels of governance. "If even one per cent of the country uses it, it can shape democracy in the country. Central debates like corruption in public office, corruption in political parties and the corrupt deals of national governments will all be set against the context of real facts," she says. For instance, the actual working out of system or a project can be made transparent and "one can challenge the conditionalities of a licence," she points out and "there need not be any more disasters like Bhopal or Enron even." Also, any institution that raises and uses public money should come under this law, suggests Ms. Roy. Along with a comprehensive RTI there should be a push for a Lok Pal Bill and a Whistleblower's Act that would protect those who used the RTI against intimidation and violence.

MKSS activist and NCPRI member Nikhil Dey emphasises that a strong right to information law would also actually allow all policy contradictions that are papered over to emerge for public scritiny. "There is so much control over modes of communication by those who are in power; information allows you to sift through the facts and see what kinds of measures have had what kinds of effect ... and to at least remove blatant corruption." The problem of access to information from private parties involved with big contracts such as in housing development and other infrastructure projects would also be addressed by a comprehensive RTI Act, as at some level of project clearance government agencies would have been involved. If the required details are not with the government, that again could be a violation of the RTI.

The success of the MKSS' right to information campaign in the area of minimum wages and other rural developmental work in Rajasthan demonstrated that information has to move into the realm of activism if governments are to be made accountable to their people. In the implementation of the Employment Guarantee Act (EGA) for instance, the noted economist and National Advisory Council member, Jean Dreze, says the RTI is very crucial and is complementary to the EGA while creating public vigilance and activism. According to him, an effective RTI law will enhance people's direct involvement in the democratic process and place them less at the mercy of the system.

An effective RTI Act will force a culture of transparency, which is mandatory for good governance according to N.C. Saxena, former Secretary, Planning Commission, and NAC member. His formulation in one of the earliest RTI drafts, which said that any information that is available to members of legislatures and Parliament should be made available to the public, is a crucial cornerstone in the building of the RTI law. Transparency and public monitoring of governments' policies are essential to fight endemic corruption and ensure effective delivery mechanisms. This will be possible only when a vigorous and sound RTI is in place and the rule of law is enforced, suggests Dr. Saxena. He stressed the need for large-scale mobilisation to use the RTI law so that elected representatives become accountable to the public.

The mobilisation that became a movement in Rajasthan and empowered numerous poor communities through years of struggle, public hearings and protests holds up a mirror for other grassroots groups in the country as it reflects a major shift in the paradigm of development and politics in the country. Despite the fact that there are serious artempts to muzzle the right to information by the ruling elite and powerful vested interests through the tabling of an ineffective Bill, the tide of civil resistance cannot be stemmed for long. The collective power of a people's experience in participatory democracy has vastly strengthened the right to information campaign. It now needs to be recognised as an inviolable and fundamental right.

44

The Hindu Saturday, Dec 25, 2004 National

Information Bill flaved' By Our Special Correspondent

NEW DELHI, DEC. 24 Expressing disappointment over the Right to Information (RTI) Bill introduced in Parliament yesterday, the National Campaign for People's Right to Information (NCPRI) has accused the UPA Government of going back on its assurances in the Common Minimum Programme (CMP) by bringing such a "weak and flawed" Bill.

Pledging to continue its fight for getting a strong and effective RTI Act that is applicable to all levels across the country, some of the NCPRI members have sought the intervention of the UPA chairperson and Congress president, Sonia Gandhi, to ensure that the Government corrects "anomalies" in the Bill

"We would also request that the process of amending and finalising the Bill is done publicly and transparently. It is only fitting that a right to information law is formulated in a manner that is in keeping with the spirit of the proposed law," the NCPRI members, Aruna Roy, N.C. Saxena, Jean Dreze and A.K. Shiva Kumar, said in their letter to Ms. Gandhi.

They pointed out that the new RTI Bill "appears to be intended to be restricted to only to the Central Government and the Union Territories." At one stroke, it has taken away the access given by the earlier Act to information with State Governments, district authorities and local bodies. This denied the very information that people actually needed to hold public authorities accountable, they said

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The letter said the new Bill formulated had also changed the National Advisory Council's recommendations on penalties, rendering them ineffective. The penalty clause was perhaps one of the most critical provisions for implementation of the RTI law.

In a statement, it recalled that soon after the UPA Government took over, the NCPRI had had sent to the Advisory Council an exhaustive list of recommended amendments to the Freedom of Information Act 2002. The NAC accepted most of the recommendations and forwarded them to the Government in August. Ms. Gandhi had at that time stressed the four fundamental principles of an effective RTI Act: minimum exclusions, deterrent penalties, independent appeal mechanisms, and wide and easy accessibility to the public. It regretted that the Government had not been able to come out with an RTI Act that was "progressive, participatory and meaningful."

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Right to Information: Slow Progress

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Information in the present technology-empowered world defies easy definition. There may be a surfeit of it available; on the other hand, the absence of 'useful' information or its concentration in the state's hands implies that citizens remain as unempowered as before. Even in countries in the developed world that spearheaded the citizen's right to secure information, there have been instances, notably in the US following the terrorist attacks of September 2001, where such rights and liberties have been curbed. In India, the movement gained ground only in the last decade, and has been one led largely by grass roots activists and NGOs. Their awareness raising efforts through forums such as 'jan sunwai' in Rajasthan ensured some degree of accountability on the part of local level authorities. The milestones in the movement to make information a right and accessible to the ordinary citizen have been slow but progress has been gradual. Since 1996 nine states have implemented laws guaranteeing the right to information, albeit with varying degrees of circumscription.

The UPA government's CMP does laudably promise to make the Right to Information Act 'more progressive, participatory and meaningful'; progress on this front, however, has been hesitant. Last August, the National Advisory Council (NAC) submitted its proposals for a revised Right to Information Act. The 36 amendments it incorporated sought to make the proposed act a substantially improved version of its earlier lacunae-ridden avatars — the existing state legislations and the 2002 Freedom of Information Bill that remained unnotified despite receiving presidential assent. The amendments proposed sought to bring under the act's purview even intelligence and security agencies, so far insulated from the public's right to know, especially with regard to complaints of human rights violation or corruption. It proposed the appointment of independent information commissioners to monitor the act and also harsher laws for non-compliant officials — fines and penalties that go up to a five-year imprisonment. In all, the proposals sought to substantially boost citizen empowerment.

Not surprisingly, the proposal met with opposition. The bureaucracy has stalled the proposals for some time on the ground that any implementation of the RTI Act would set in place its own entrenched bureaucracy. Under the proposal, public information officers have to be appointed in every department, there will have to be state information commissioners and a chief information commissioner nominated by the president. But the proposal's advocates in the NAC argue that the numbers will not add up to many; moreover, costs would be more than made up once leakages within the system are adequately stemmed. At the same time, the bureaucracy, chiefly the central personnel ministry on whose web site the draft legislation has been posted since last August, spent little effort in initiating wider awareness on the matter.

That the local RTI acts have been effective in some states to a degree is due to persistent efforts of groups such as the Mazdoor Kisan Shakti Sangathana (MKSS) in Rajasthan, Parivartan (Delhi) and the National Campaign for People's Right to Information (NCPRI). The Rajasthan RTI legislation helped villagers monitor development relief programmes; in Delhi, in a Parivartan-led campaign, the Act has helped expose corruption in the public distribution system. A stronger central law on the right to information would ensure stricter monitoring of many of the government's recent promises, such as the proposed employment guarantee plan. The widespread interest the legislation has evinced implies that the RTI is seen as efficacious not merely for a prolonged campaign by established organisations, it could also serve as a powerful tool for ordinary citizens to solve their individual problems

in spite of the slow progress accorded to the RTI legislation, empowerment and awareness campaigns have made substantial gains in recent years. Within the government, there has been call for a reform of the civil services; women's rights received a fillip with the recent proposed changes to property rights, and activists have been pressing for a variety of empowering legislations to ensure protection to whistle-blowers and greater accountability at gram sabha levels. The above steps, if taken in tandem with an effective law assuring right to information, will ensure greater participation and also bring about truly citizen-focused governance.



Power Shift: Information Law Will Empower Citizen Against State Times of India, Wednesday, December 15, 2004 Bharat Dogra

To say that change in India happens incrementally would be an exaggeration. The draft Right to Information (RTI) Act, prepared by the National Advisory Council (NAC), did not figure in the Parliament agenda despite NAC charperson Sonia Gandhi expressing her written support in a letter to the prime minister. The bureaucracy seems to be stonewalling the RTI Act, which, in effect, is a set of proposed amendments to the Freedom of Information Act, 2002. It is almost tragic to see potentially pathbreaking ideas being nipped in the bud by familiar vested interests.

The Freedom of Information Act was not notified, hence it did not come into effect. However, it fundamentally fails to empower the citizen against the state. For an RTI legislation to be effective, it should meer at least three conditions. Providing for an independent appeal mechanism when information is refused by a competent authority, slapping a penalty for supplying false information or adopting delaying tactics; and ensuring minimum exemptions from the law, so that the canard of 'public interest' is not cited to avoid providing information. The Freedom of Information Act lacks these aspects.

The RTI has too many dimensions for any single piece of legislation to seem complete. However, the draft approved by the NAC comes closer to satisfying the requirements of effective legislation than anything that has been accepted so far in India. If this is passed without any substantial changes, it could rapidly gain acceptance as model legislation for other countries contemplating RTI laws. Not surprisingly, sections of the bureaucracy have been working overtime to scuttle the NAC draft. The new law would oblige the bureaucracy to provide information within 15 days. Officials have been trotting out the argument that a major apparatus is required to implement the envisaged Act, whereas, in fact, no more than a handful of officers are needed in each state for the task. The leakages saved would more than compensate for the expenses of running such an office.

The bureaucracy dreads both penalty provisions as well as an independent system of appeal. The last decade has seen a great deal of activity over RTI. RTI legislation has been enacted in as many as nine states — Rajasthan, Maharashtra, Karnataka, Tamil Nadu, Goa, Delhi, Madhya Pradesh, Assam and Jammu and Kashmir. In states such as Tamil Nadu, very weak laws were enacted which remained largely on paper. Elsewhere, citizens have been able to use the RTI in a relevant and effective manner. In some states, RTI is in operation at the panchayat level or in some government departments

India's grassroots experience in invoking RTI to strengthen democratic institutions and improve governance has attracted global attention. The work of Mazdoor Kisan Shakui Sangathia (MKSS) in the villages of Rajasthian has been particularly inspiring in this context. Villagers use RTI to obtain official records like bills, vouchers and muster rolls from the panchayat or block office. They compare the records with development work at the actual site, or with the experience of workers employed (according to records) at the rural employment or drought relief works. This parti-cipatory exercise enables villagers to gauge the extent to which development relief funds have been diverted. This is followed by a public hearing, or jan sunwai, in which all the records and on-site reports are placed before villagers, officials, mediapersons and a panel of respected persons.

RTI law not only exposes corruption, but also encourages people to actively participate in development processes. The strengthening of grassroots democracy is perhaps a more significant contribution of the law than the reduction of financial irregularities. It is encouraging that such efforts are spreading to new areas, as is evident from recent reports from Nokha (district Bikanes, Rajasthan) and Bhatavan (district Hardoi, Uttar Pradesh) areas. In Janawad panchayat, Kumbalgarh block, Rajsamand district, MKSS held one of its public hearings in 2001. It came to light that out of works of Rs 1.20 crore, Rs 70 lakh were ghost works. A government committee corroborated this fact. In Bhim block in Rajsamand district, payments amounting to Rs 30 lakh were made to a fraudulent company, which existed in the form of a bank account of a block-level employee's wife. This was exposed at a public hearing. The campaign enables people to overcome caste and class barriers, and come together.

In the urban context, efforts by Parivartan and Satark Nagrik Sangathan in Delhi have been encouraging. Instead of making several complaints, a citizen can submit an application under the new RTI legislation of Delhi, seeking information on the action taken on previous complaints, the officials who handled the file(s) in question and the action to be taken against them for not acting upon a genuine complaint. The results of the RTI law were startling. Complaints not attended to for years were redressed within days. In some cases, the applicants received thinly veiled threats from officials. Several organisations have incorporated RTI in their work in the slums and resertlement colonies of Delhi. The law has been widely used in Delhi and Rajasthan to expose corruption in the public distribution system. All these impatives will get a shot in the arm if a model national legislation conics into existence. An effective RTI should be seen as a pterequisite of a mature, genuine democracy.

Editorial - Right to information is key to good governance Times of India, Tuesday December 14, 2004

Who is afraid of the Right to Information Act? Despite sustained campaigns by civil society organisations including a few political parties, the Act is not on Parliament's winter session menu. Indications are that sections of the bureaucracy are blocking attempts to give teeth to the Act. The reasons are simple. A progressive Right to Information Act will force babus to shed their cloak of secrecy and make them accountable to the public The amendments suggested by the National Advisory Council seek to incorporate provisions in the Act that will ensure maximum disclosures and minimum exemptions consistent with constitutional provisions, independent appeal mechanisms against officials guilty of blocking information, and penalties for doing so. The unnotified Freedom of Information Act, which was passed by Parliament in 2002, does not have provisions to enforce the Act in letter and spirit It has been pointed out that the Act in its present form does not compare favourably with those enacted by various states. Even though the Central law will not supersede the state or panchayat Right to Information Acts, it is important that Parliament enacts a progressive legislation that will make governance a transparent affair The experience in states like Maharashtra is that the Act can go a long way in making the system open to public scrutiny. The cost involved in setting up infrastructure for proper implementation of the Act - which in any case is not much - will be more than compensated when systemic 'leaks' are fixed

Progressive legislations have played an important role in the evolution of the modern Indian state Political campaigns as well as legislative and administrative initiatives have contributed in equal measure to nation-building since 1947. In the euphoria of Independence, we forgot to address the contradiction of continuing with a bureaucracy that was tailored to implement the Empire's agenda. Democratisation of the political process should have ideally transformed the character of the state. But that has not been the case. Laws like the Official Secrets Act, 1923, have made instruments of state a law unto themselves. The result is that we are a democracy that functions within a legal and administrative framework that is essentially autocratic. Such a self-defeating system is an enemy of open society. It tends to work against any measure - be it opening up the economy or enforcing social security initiatives like the public distribution system - that tends to upset the applecant. It is ironical that we gloat over India's information technology prowess but refuse to insist on measures that will make access to information regarding public affairs a right of the citizen

Times of India, December 11, 2004

Information as Power

Why do we need a right to information law at the Centre?

It is required for the Central government and its bureaucracy to be transparent. At present, it has got no obligation to be transparent at all. People have a right to know details about Central projects such as river interlinking and Enron. Even within the tenets of economic reforms, we must have transparency in governance as a central principle. What is given now is a favour not as a right. The draft Central law prepared by the NAC says information when demanded should be provided within 15 days. The Lok Sabha electoral verdict in May was one for pro-poor policies, of which the right to information law forms an integral part. For the poor, the right to information is the right to life.

How is this Act an improvement on the legislation of the previous government?

The NAC has suggested amendments to the Freedom of Information Act, 2002, which was not notified. We said it should be called Right to Information Act (RTI) The amendments have been suggested on the basis of existing laws in Maharashtra, Karnataka, Delhi and Rajasthan, where they have been put to use and tested. The changes should ensure four things: Maximum disclosure and minimum exemptions consistent with constitutional provisions, independent appeal mechanisms; penalties for failure to provide information as per the law; and effective mechanisms for access to information. None of these aspects exists in the unnotified law.

By maximum disclosure and minimum exemption, we have applied the principle that what cannot be denied to MPs cannot be denied to the people. In the case of appeals, we need to have mechanisms within the system and outside it. We have suggested a Central information commissioner and one commissioner in each state, requiring an office of just five or six people in each location. Penalties are important for failure to deliver. In the NAC draft, penalties are financial and criminal, including two years' imprisonment if wrong information is provided deliberately. Blanket exemptions to the law will not apply where the life and liberty of individuals are threatened and in cases of proven corruption. By wide and easy accessibility, we mean that information, or the means to seek it, should be put up on posters in public places.

What has the experience of the states been?

The RTI legislation has been enacted in nine states — Rajasthan, Maharashtra, Karnataka, Tamil Nadu, Goa, Delhi, Madh-ya Pradesh, Assam and Jammu and Kashmir. Maharashtra perhaps has the most progressive legislation. For instance, in terms of penalties, Maharashtra slaps a fine of Rs 250 a day for delay in providing information and Rs 2,000 for wrong information. At least four functionaries have been penaltied. But in Rajasthan, there is no independent appeal mechanism. Penalties are decided on the basis of civil service conduct rules, rather than the state RTI law. The present Central draft is, in fact, weaker than the Maharashtra, Karnataka and Delhi laws. But what is important is that a Central law will not supersede state and panchayat laws. The people can make their own choices on invoking their right under state, panchayat or Central legislations.

Can national security and public interest be used to deny information?

The RTI, if passed in the form of our draft, will overrule the Official Secrets Act. If information is denied using the bogey of national security or public interest, it can be challenged in court. A panchayat official in Rajasthan tried to deny information citing public interest, but we challenged him successfully.

How does one proceed against private parties?

The government, as the custodian of public interest, is obliged to proceed against private parties when petitioned by the people. However, it is important to define 'public purpose' in as broad terms as possible. Unfortunately, successive drafts of the RTI Act, in preparation since 1996, do not make private bodies sufficiently accountable

Why does the draft law not figure on the Parliament agenda?

I flow't know. The hureaucracy, more than politicians, has been blocking the law. This is despite NAC chairperson Soma Gandhi expressing her support in writing for the amended draft. The Department of Personnel and Training (DOPT) looked at it for many years. The standing committee sat on it. Finally, everything was cleared. But the DOPT Secretary has problems with penalty provisions, and questioned the necessity for what he called a huge bureaucracy. We pointed out that information officers could hold additional responsibility and that one Central information commissioner and one commissioner in each state would not severely tax government resources. Besides, the savings in terms of prevented mis-appropriations would be many times the administrative costs.

Opening up the files

Business Standard / New Delhi December 10, 2004

Governments the world over have a simple SOP, what you don't know can't hurt us. So they guard information with great tenacity. And the worse governance gets, the more tenacious they become.

Indeed, it is arguable that governance has got worse in India precisely because governments are under no legal and constitutional obligation to come clean about their myriad acts of incompetence and venality, usually both.

But, thanks to the persistent and strenuous efforts of a few committed individuals, most notably the Mazdoor Kisan Shakti Sangathan (MKSS), this might be about to change.

Aruna Roy, who heads the MKSS and who is a member of the National Advisory Council (NAC), has persuaded Sonia Gandhi that the UPA government must introduce during the current session of Parliament the new Bill that is proposed on the right to information.

This pressure has developed because the bureaucracy has been delving into its usual bag of tricks for delaying things. The law ministry had given the opinion that, with so many amendments being proposed to the 2002 Bill, it would be "advisable" to have a new Bill altogether. This was such a transparent ploy to delay things that the government has been told to do whatever it needs to do, and bring the Bill in this session. It will be interesting to see how things go from here, because the bureaucracy is unlikely to give up so easily.

So far nine states have passed laws on the right to information, and eight have notified them. Assam has not Interestingly, most of these states had Congress governments, which suggests

Sonia Gandhi used her usual powers of persuasion

The surprise is Tamil Nadu. The DMK government passed the Act but made sure, via exemptions and process requirements, that the law would not really result in information being divulged.

In contrast, the Maharashtra law (to take one example) has allowed citizens and civil rights groups to extract all manner of information and put the government on notice. In Delhi state, too, the law has been used to good effect, and those in charge of governance have had to pull up their socks.

The central Bill has tried to ensure similar results. If the Bill becomes law, citizens will demand and obtain all sorts of information, except where national security or privacy is involved

If the government is indeed forced to quickly provide information, this will result in genuine empowerment of the citizen. The Bill also provides for a Chief Information Commissioner who will implement the law

Two things could still cause delays. One, the Bill could get referred to a select committee, where it goes into cold storage; two, an ersatz issue could be raised about which list of the Constitution it fits into. The answer to that is simple. Entry 97, which is meant for things that don't fit in the three master lists



The Indian Express, December 9, 2004 More Teeth to your Right to Know

RTI Proposed Act security agencies have to disclose rights violations, corruption details

RITE SALLN

NEW DELHI, DECEMBER 8: The long wait for a Central right to information law—hanging fire despite the President's assent—may just have been worth it. For, the new Act that is set to replace the old one in Parliament this session has radical proposals to ensure unprecedented transparency in sections of the government.

Under these, intelligence and security agencies, so far kept insulated from the public's right to know, will have to disclose information related to complaints of human-rights violations or corruption. There will be an independent Information Commissioner to enforce the law and harsher penalties for officials who do not comply—extending to a five-year prison term

These sweeping changes to the Freedom of Information Act, 2002, come after the National Advisory Council, headed by Soma Gandhi, sent a list of 36 amendments to Prime Minister Manmohan Singh in August.

Officials in the Department of Personnel and Training (DoPT) say they are working overtime to get the Cabinet's clearance by mid-December so that the new Act can be tabled in Parliament this session itself. Says DoPT Secretary A N Tewari, "We have assured the Prime Minister that the new Act will be an expanded version of the existing Act and that we are in favour of real openness and transparency. All the important amendments will come through."

The list of amendments, which DoPT officials say have now been cleared by the Law Ministry, include:

- Like the earlier law, while information on 19 intelligence and security organisations (such as Intelligence Bureau, R&AW, DRI, BSF, CRPF, NSG, Assam Rifles) will not come under the purview, information pertaining to violations of human rights and allegations of corruption (by these organisations) will not be excluded.
- The President, at the Centre, and the Governor in the States will appoint a Chief Information Commissioner to monitor the Act who will function "autonomously without being subjected to directions of any other authority." The Commissioners will be appointed for a penod of five years

- * The Cluef Information Commissioner and the State Information Commissioner will publish an annual report on the implementation of the Act. The annual reports will be tabled before Parliament/State legislatures.
- A stringent new section on penalties has been added. Varying penalties of fines (Upto Rs 5,000) and even imprisonment (of upto five years) have been listed as punishment for mala fide refusing information; destroying information or knowingly giving wrong information to an applicant.

While the Common Minimum Programme (CMP) had assured a stronger disclosure law, what helped was the fact that two members of the NAC are also the lead campaigners of the National Campaign for People's Right to Information (NCPRI). A delegation of the NCPRI twice met the Prime Minister Manmohan Singh, and during the last meeting on December 5, he gave them an assurance that the amended Bill would be tabled in the current session

NAC member Aruna Roy, who attended both the meetings, says information on what was happening to the 36 amendments seemed to be getting lost in a big black hole. "We got an impression that the bureaucracy was resisting amendments like the one on punitive clauses and the appointment of independent commissioners," she told The Indian Express.

"We are now hoping for the breakthrough, as the Prime Minister assured, in this session of Parliament Otherwise, we will get into an agitational mode."

Significantly, DoPT officals say there has been a rethink also about the earlier proposal for the central Right to Information Act taking precedence over similar Acts implemented by State Governments. It is being proposed that now, the applicant be given the choice to either make a request under provisions of the Central Act or the State Act.

In all, eight State Governments have earlier implemented their own Right to Information laws.

Coming soon: A Chief Information Commissioner?

Eroposeo changes in the new tax:

- President will appoint a Chief Information Commissioner and Governors State Information Commissioners to implement the Act They will be autonomous functionaries with 5-year term.
- Intelligence and Security agencies will have to provide information if it pertains to human rights violations, life and liberty of human beings and allegations of corruption.
- Govt bodies have to publish details of staff payment, budget
- Instead of 25 years (in old Act), information on event which occurred 10 years before date of request should be provided.

51

हा क्या, क्या मिला

सरकार में पारदर्शिता और जवाबदेही के इरादे से पेश किया जाना वाला सूचना अधिकार विधेयक 2004 जम्मीदों और आवश्यकताओं को पूरा करने में अक्षम, उसे और असरदार बनाना जरूरी



हल्के हुए अधिकार

नवा विधेवक राजग संस्कार के सूचना स्वतंत्रता अधिनिवम, 2002 में भी बदनर है जिसके बदले यह लावा जा रहा है, हालाँकि माशा न्यूनवम कार्यक्रम् इस "प्रगतिणील, महभागो और मार्थक" बनाने का बादा करता है.

शीमित दापगः सूचना स्पतंत्रना कांनुन तो । केंद्र के साथ राज्य गुरुकारों पर भी लागू होने के लिए था लेकिन नवा विधेयक माम केंद्रीय विभागी वक ही मीमित है.

भृतीज्ञाः सुचना स्वेतंत्रता कामून क तहत आध्य शौर जिला प्रणासन में जो मुचना मिल सकती थीं, उभने अब इनकार कर दिया गया है

बंद का फमजोर प्रावसाय: कुछ राज्यों क कानन में गुवना से इनकार या देरी घर हुँह का विशेश है, बर्जिक गए केंद्रीय विशेषक में यह प्रावधान है कि भूतना आंधुक्त किनी अधिकारी हारा गूचना मुहैया कराने पर "वरातार नाकामी" के बाद ही शिकावर्त किसी महिन्दुर को बुएई कर सकता है.

सनीजां: बंट के प्रायधान के जिला कानून का उर नहीं होगा, इसने मागने के निवटारे में देंगी होगी ओर असलती के इपर बोझ वटगा.

शंकर अय्यर और मुस्ती कृष्णन

नरना जी यह भी नेक स्मार्टी से ही बनती हैं सभी - मामनों के लिए। '' इस भूमिका जी शब्दशः - विधान नहीं है, इसके लिए अदालत का दुरवाजा लोग नेक ही चाहते हैं

'' लार्तजनिक अधिकारियों के अधिकार क्षेत्र की - उम्पेतं। के अनुरूप नहीं है, बल्कि यह असल में - अधिकार-अधिनियम- को ज्यादा प्रगतिशील. मूजनाओ तक लोगों की पहंच स्रक्षित करने के 2002 के सूचन ज्वतंत्रता अधिनियम से भी सहभागी और सार्थक गाया जाएगा '' उद्देश्य से सूचना के अभिकार की क्यावहारिक हल्ला है जिसके बदसे यह लाया जा रहा है. कार्यशैली में जनाबदेही और पारदर्शिता को केंद्र सन्कार और केंद्र शासित क्षेत्रों तक सीमित प्रधाननंत्री मनमोहन सिंह को 16 उगस्त 2004

गटन और इससे नवंधित या संयोगवश जुड़े स्वीजन कर लिया जाए तो यूपीए सरकार इरादे खटखटाना ही एकमात्र सस्ता है. यही नहीं, इसमें -- जॉर्ज बर्नार्ड शॉ के पर्यक्षे में सर्वाधिक अंक पाने की हकदार नामस्कता प्रमाण पत्र की एक नई शर्त जोड़ दी होगी, दर्भाग्य से इसदे ही काफ़ी नहीं होते. गई है, हैरानी की बात यह है कि दूसरे मुद्दों के -हरी भूमिका पर गौर क्रीकिए, संसद <u>बेशक, ऐस में प्राप्तन सुधारने के लिए</u> नेक सिपरीत इस मामले में राजनैतिक इस्छा का में पैश 'सुनना का अधिकार इरादे ही कार्क: 🖰 तो आज देश में दूय और अभाव भी नहीं है। है, कार्जिर यूपीए सस्कार की विशेषक 2004' के मकसद के बारे शहर की उदियां १३ रही होतीं. सचाई तो यह है गीता माना काने बाला साझा न्यूनतम कार्यक्रम 🎙 में इस भूमिका मे शिखा है, कि मृत्रमा का अधिकार विभेयक ग सिर्फ (सीएमपी) आरवस्त कला है कि ''सूचना का

प्राय रेने केंद्रीय सचना आयोग के करता है, इसमें संबंधित अधिकारी द्वारा सचना महैया कराने से मना करने पर दंड का कोई

कांग्रेस अध्यक्ष, जो राष्ट्रीय सलाहकार परिवद रुणवरुण वनाने. हर सार्वजनिक पद की ार विधेयक गुनान के नागरिक अधिकार को (एनएसी) की भी अध्यद हैं, सौनिया गांधी ने

को लिखे अपने पत्र में इस मसले पर गंभीरता दिखाने का आग्रह किया था उन्होंने इस कान्न को सरावत बनाने के लिए चार आहम सत्रों की चर्चा की थी-अधिकाधिक खलापन, संवैधानिक तकाजों से जुड़े न्यूननम अपवर्द, अपील की स्वतंत्र व्यवस्था, सुचन। मुहेया कराने में कोताही पर दंड का प्रावधान, और सचना प्रवाह के लिए कारगर व्यवस्था, इसके अलावा, एनएसी ने सूचना स्वतंत्रता अधिनियम (एकओसाइए) 2002 में 36 संशोधनों की सिफारिश की थी. छोटे-पोर्ट संशोधनों को छोड़ दें तो सचना अधिकार विधेयक सोनिया के निराण चार मौलिक सन्नों पर भी जरा नहीं उतरता.

सचना के अधिकार को लेकर सक्रिय कार्यकर्ताओं की विंताओं को समझने के लिए इसटे और काम के फर्क को जानना जरूरी है. एक संशोधन के मताविक, आगर किसी राज्य में सचना के अधिकार के साथ कोई और कानन है, वहां किसी व्यक्ति की राज्य के कानून के साथ-साथ केंद्रीय कानून के तहत भी सूचना हासिल करने का अधिकार होगा, लेकिन विधेयक सिर्फ केंद्र सरकार के बारे में भचना का अधिकार देता है जिसमें 10 केंद्रीय संगजनों को (सचना स्वतंत्रता अधिनियम की तरह ही) अपवाद यनाता है और राज्य सरकारों की भवना तक पहंच की इजाजत नहीं देता है.

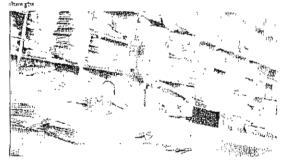
इसका वाजिय तर्क अभी स्पन्ट नहीं किया गया है. ज्ञायद यूपीए के कुछ सहयोगी सत्रपों ने असुविधाजनक कार्न का निरोध किया है. आखिर, ऐसे विधेवक का भला विहार या पश्चिम यंगाल के शासक क्यों स्वागत करेंगे. मुचना का अधिवनर चुंकि मौलिक नहीं यत्कि अविशिष्टिय अधिकार है, इसलिए युपीए सरकार इसके तहन गर्जों को न लाने की सावधानी यग्त सकती थी. हालांकि राजग सरकार इन पनडों मे ण्डे कौर सचना स्वतंत्रता अधिनियम 2002 बना चुकी थी बहरहाल, तजह बाहे जो हो, राज्य सरकारों और स्थानीय निकायों को इसकी परिधि से बाहर करना पश्चनामी कदम है केरल और ओडीसा जैसे राज्यों ने केंद्रीय कानून की संभावना से अपने विधेयकों को रोक रखा था ये राज्य भी अपने कानून वना सकते हैं लेकिन बिहार, झारखंड, उत्तर प्रदेश और हरियाणा जैसे राज्यों का बसा होगा? क्या पर्पाए सरवगर वाकई यह यकीन काली है कि इसके स्वाधानिक असर से राज्यों में स्वतंत्र कानून बनेंगे, जो उत्तक्रम ही बढ़ाएंगे ?

इर सेमिनार-सन्मेलन में तमाम मंत्री और अफसरशाह यह कहा। नहीं भूलते कि असती सधार तो राज्य सन्कामें की ओर से आएमा, जो नीतियों और कार्यक्रपों पर वाकई अमल करती हैं दरअसल, गरीबी दूर करने की 36,000 करोड़ ह को 200 केंद्रीय योजनाओं पर ब्याबहारिक अमल तो राज्य संस्कारें ही करती हैं पारदर्शिता और जनाबदेही सिर्फ अन्हें प्रशासन के लिए ही अहम

परवीन अमानुल्लाह : िन्ही

"मामले को अंजाम तक ले जाऊंगी"

उन्हार प्रमाण की पत्ना तत वंशाया परवात पालक अधिक में दिल्ली क्यार कार्यों के बारे में आवकारी हासिल करने के सिए जुनाई 2014 में दिल्ली क्यार दुएएम अधिकारी की पत्नी ४४ वर्षीया परवीन ने टिफेन कॉलोनी में ४४ निर्माण तिगम (दिगनि) को आवेदन दिया था उन्होंने पाया कि 26 सहको ना काम अर्था तक शर नहीं हुआ है उसने भी बदतर यह कि कार्य प्रयति पर दिकाने के लिए सदसे "कार कर दी" गर्द मी लिहाजा, उन्होंने 50 ताख है, के काम के टेके और जिलों की प्रति मोगी अनिगर हैजीनियर अह गया; वरिष्ठ अधिकारियों ने कहा कि उन्हें 1.2 साम ह शुस्त हैना होगा। फिर वे जन शिकायन आयोग चनी गई. 6 दिसंबर को मुनवाई वे बाद उन्हें बनाया गया वि प्रतियाँ दो हफ्ते के भीतर मिन जाएंगी शुन्कर मात्र 6,000 है, परबीत कड़गी हैं, "इथ मामटे की अज्ञान तक है जाईगी "



एस.सी.एव. जटर : ए

"अधिकारी परेशान करते हैं पर हार नहीं माननी है"

जिस्सार वर्षीय नेवालिकृण सेजर जनरम, मागरिक जैनना मेच के अध्यक्ष एस मीरावः जटर ने पुने नगर निगम की कारी के बारे में सूचना मांग पर निगम की अवैध गतिविद्यवां को इजागर किया, नियम की कारों को शहर की मीमा में बाहर नहीं से जाया जा सकता नैकित जटर ने पाता कि 10 महीने के भीतर निगम के अधिकारियों ने करदानाओं का 51 साख द खर्च करके बाहर का दीए किया उन्होंने उन अवधि ने क्रिकेंट की मांग की थी वे कहते हैं, "जब कोई जातकारी सांगना है और अपीस करता है तो अधिकारी परेणास करते हैं क्योंकि उन्हें काफी कुछ छिणाना होना है, तेकिन आप हार नहीं मान सकते "

য। বৰুজৰ ২০০১ । ইতিবাহ্য সি

असीत दल किल

🚻 सचना का अधिकार विधेयक



न्तु पूर्वी दिन्सी को सुर्गा बन्नी बेनकम मज़रूर श्रीमोत्री है दिशक्षी मज़रूर है उनका सब्बन कार्ड को गया और इन्होंने जनवरी 300% में कुमीका सबस नाई के लिए आसेटच दिया जीन महीने तक लाखाना और नागरिक प्राप्ति कारांसय के घरकर कराते छे क्षेत्रित नमके में उसना काम करने या उनके आनेदन की विवृति ने नार में बताना नी दूर, इनकी सरक देवा भी नहीं अनन उन्होंने मुचना ने अधिकार बाह्य के नहत एक आनेदन देशर अपने आवेदन पर रोजयर्श की वार्यवाई, उने देखन ताले प्राप्टनारियों के नाम और उनके निमाप गार्न्सर्द ने बारे में जानना बाहा, एक संज्ञाह वे भागर चात्रान्त विभाग के एक निरीधन में उनसे विश्वार कहा कि उनका काई बन पता है जब अपने दिन बन्तु अपना काई येते गए तो वाग्रास्त और वागरिक आपूर्ति शिक्षकारी वे एन्हें बार मिनाई—और उनसे आग्रह किया कि वे अपना आवदेव वापस ने हैं क्वोंकि वनका नाम हो यहा है,

कक्कू के लोग नग्याह

अब हमें मालम होगा कि हमारा हक क्या है"

च्याचैर में कक्क के सीमों ने काफी जहां केहर के बाद विख्ता पांच साथ में अपनी प्रवासन में विकास कार्यों के भवों का रिकॉर्ड शासित कर जिंगा नीकासाही के প্ৰতিখন চল के प्रावजूद आगमक नागरिक संच की भर : वे पुनिय नेरक्षण में जुनाई 2004 में एक भावजातिक मुखबाई हुई --लेकिन इसमें पहले सरशंव और उनके रारेजनों ने स्वयंसेवकों पर कमला कर दिया दरअनल, ठेकेटररी की माल कार 4 में मदद भर्ते के लिए हिकॉर्ड में हेन्नुफेरी को गई बी कालानिक नगर्भ वाने फर्जी सस्ता, शोध बे बार रिकॉर्ड के उत्तर कम दिहादी की पर्व थी. एक गामील जुसल फनाद कहने 🔭 ' मुनवादं ** देशक नोगो का उत्साह बदा दिया है और भवित्य में हमें मानुस होंगा कि हमारा दृष का है "

नहीं है, बल्कि गरीबी दर करने का लक्ष्य पाने में भी इसकी अहमियत है। लेकिन संसद में पेश किए गए इस विधेयक ने एक ही अटके में पिछले कानून के तहत हासिल राज्य सरकारों और स्थानीय निकायों के सूचना के अधिकार को हटा दिया हालांकि राज्य संकारों और स्थानीय निकायों के सूचना के अधिकार ही आम आदमी के ज्यादा काम के होते हैं इसलिए उन्हों की मांग ज्यादा है, विधेयक उस सचना के अधिकार मे इनकार करता है जो अधिकारियों को जवाबदेह बनाने के लिए जरूरी है

जिन सात राज्यों में सूचना का अधिकार मिला हुआ है, उन पर एक सरसरी नियाह डालने से ही पता चल जाता है कि सभी वर्ग और आय वर्ग के लोगों की मुख्य चिंता स्थानीय स्तर पर विकास-न्यानी सडक, सफाई, जलायति-को लोकर होती है. इस ताह निधेयक के दायर से राज्य मरकारों और स्थानीय निकायों को मकर बन्रके सूचना के अधिकार के मकलद को ही खतम कर दिया गया

五 सरे. एनएसी ने तो अपील की स्वतंत्र 🔫 व्यवन्या की सिफारिश की थी मगर विधेयक में शिर्फ यह कहा गया है कि सूचना आपक्त किसी शिकायत को किसी मजिस्टेट के समझ तभी पेश करेंगे जब संबंधित अधिकारी ''सचना महैया कराने में बार-बार नाकाम रहा हो." मजदुर किसान संगठन संब (एमकेएसएस) के निखिल दे कहते हैं, "कान्त सचना आयक्त को ऐसी प्रक्रिया शुरू करने की बाध्य नहीं करता. यह संयंधित केंद्रोंय अधिकारी के लिए शिकायत करना जरूरी भी नहीं बनाता. यही नहीं, यह भी स्पन्ट नहीं है कि क्या शिकायत सरकार की अनुमति से दायर की जा सकती है. इसलिए इसकी संभावना कन है कि सूचना आयुक्त ऐसी प्रक्रिया शुरू करेगा या संबंधित सरकारी अधिकारी पर कुछ अंकुश लगेगा."

विधेयक के हल्केपन को जानने के लिए इसकी तुलाना महाराष्ट्र के प्रगतिशील अधिनियम से की जा सकती है राज्य में सुचना के अधिकार का आंदोलन बखता जा रहा है. इसकी मुख्य वजह यह है कि महाराष्ट्र सूचना अधिकार (एमआरटीआइ) कानून लोगों को शिकायत करने का औधिकार देता है और उसमें दोयी अधिकारों को दंदित ऋते का प्रावधान है. कम-से-कम 30 मामलों ने देरी की वजह से जुर्माना देना पड़ा है. एमआरटोआइ अपीली अधिकारी को जुर्माना लगाने का भी अधिकार देता है. इसके बावजद लोगों को सन्तरा हासिल करने के लिए जुझना पड़ता है.

जिन राज्यों में तचना अधिकार कानन कमजोर है या उसमें दंड का विधान नहीं है तो दोषी अधिकारी अपीली अधिकारियों को चिता हो नहीं करते. सूचना के अधिकार पर जागरूकता फैलाने के लिए परिवर्तन नामक



3,000 से अधिक 2000 से ज्यादा लोगों ने कानून का सापने 400 ले मांगी, पति दिन 50 उस्तेमाल किया. ਸ਼ਰਿਵਿਜ 250 ਨ रुका दंड है। लेकिन किसी दंड है और 25 अधिकारी को इंड अधिकारियों को नहीं दिया गया है. दंड दिया गया है वर्जे जो 5 रू की है. लगाया गया है.

अपोली पंचार के गुष्य के जेल ज्यादा लोगों मे के पास करीब आक्देन किए हैं. याधिकाएं आवंदन शुल्क नहीं लेखित हैं. अभी है सेकिन जीगेंक्स तक इंड नहीं

और पुलिस बिभए। इस्तेमाल अभीनी स्तरों पर पारदर्शिक अरौर शिकायत दूर करने के लिए हो रहा है आवेदन शत्क मात्र 5 र

अधिस्वार जारी मगतिशील यसन्ती में से एक एति या रोड का कोई दिन 1,000 के का रिकॉर्डनहीं है दंड और 1,500 लेकिन अधीर्याः लोगो ने इसका पाधिकरण २०० म इस्तेपाल विशा ले सकता है

एनओओ चलाने बाले असर्विद केजर्राबाल कहते। देने में देशे करता है, इनकार करता है या सुचन। चिट्ठी लिखकर अपनी निता दर्ज की और हैं कि दिल्लों के कानून में दंड के पावधान में को नष्ट करता है तय भी दंड का कोई विधान किथेयक को ''बेसानी'' यताया राय बताती हैं भी सुधार की जरूरत हैं ने कहते हैं, ''फ्लड़। नहीं हैं इसके अलावा, एनएसी तो सुचना मुहैया। कि विभोषक ''सुनना स्वतंत्रता अधिनियम मे अफसरशाहों की और शुका हुआ है और दोपी। कराने की कारण व्यवस्था की बात करता है। भी काफी धूम है और युर्गाए सरकार के सीव्यपी अधिकारियों को शाथद ही दंड पिलता है.'' सो, संगर विधेयक में नगरिकता प्रमाण पत्र की . मे. दिए 'गए आश्वसकी बन खल्लामखल्ला। राज्यों से इन खबरों और एनएसी की शिफाश्शि अनिवार्यता लागु करके उसे और ऐचीदा बना उल्लंबन है " के वादुजर विधेयक संख् के मामले में मौर है. दिया गया है. सो, आश्चर्य नहीं कि एनएसी के विधेयक संस्ट के शीतकालीन सत्र के कार्र सचना के अधिकार के लिए एकिय चार सटस्यों—एन सी, सक्सेना, अञ्गा राय, विवरण में दर्ज नहीं था और आधिशी मीके पर इसे

कार्यकर्ताओं के मुताबिक कोई अधिकारी सुखना । ज्यां द्रेज और ए के, शिक्कमार—ने सोनिया को । रखा गया, इती से जाहिर हो जाता है कि सरकार

31 अजेबर 2003 - सीलपहर (१६)

र्भे सूचना का अधिकार विधेयक



"हम इस देश के हैं और हमें जानने का अधिकार है"

अभा इंटी लातक, उद्योगपति गांधी ने यह पता लगाते के सिंधू धारटीआउ तानून का इस्तेमाल किया कि नेताओं के इग्नारे पर कितने पुलिस अधिकारियों का तजीवता किया गया. मितंबर 2003 में उन्होंने जन संपर्क अधिकारी (यीआउओ) में गुनारिंग की, पर जवाब नहीं मिता थों, उन्होंने आठ आवेदन और इनती ही अपीतों की, नाफ उनकार मितंने के एक नाल बार 140 दुलिमवानों के जिलाफ कार्रवाई की पई और दो को चेनावनी दी पई गांधी के गत लब कब उन पुलिसवानों की सूची नहीं पी जिनकी सिकारिंग नेताओं ने की थीं, तैकिन बोई नेता सिखित मिफारिंग नहीं करता. यह छोटी कामयाबी है वे बहने है, "इम उप देश के हैं और हमें जानने का अधिकार है"



लिओ सल्धाना | कर्नाटक

"समीक्षा का आदेश सूचना अधिकार की जीत है"

नारिक के मुख्यमंत्री धर्म सिंह के विवादास्यद बंगसूर-मेसूर क्षांज्ञान्त्रन्तर कंग्नियोर प्रोजेक्ट शियास्त्रामा) की समीक्षा के आदेश दो महीने पहते ही दिए यह निश्चों के निए तड़ी कामपाड़ी है नीति विशेषक निश्चों और उनका एन्यावनिष्ट सागेई पुर पिछते ने सात से 2,000 करांड़ के की इस परियोजना की अनियमितताएँ उन्नागर करने में जुड़ा था. इतके तहन वंगतूर और मैसूर के बीच चार तेन का टीन एक्सप्रेमके और पांच कहर बमाने की बोजना है. निओ जानना चाहने दे कि सोगों की 20,000 एकड़ अमीन कैसे अधियमीन की त्या गड़ी है और परियोजना की अपनी जामर पहना रही कंगनी क्या प्रक्रिया अपना रही है यह मूचना उन्हें गार्रियत रही थीं, तेकिन सिओ के हार नहीं सती, वे करने हैं, "धर्म मिंह का नमीक्षा के निए अरिश हैना आरटीआई की जीन है."

के भीतर भी इसना लेकर विगेध है मनमोहन सिंह ने गई। संभावने के बाद शुरुआती दिश्चें अरुकारों को शिखां कि सुशासन मुकुँया करने की कोशिशा कों उन्होंने कैंकिनेट सांचिव को अरुव्यक्षता में टी सीमितियां भी बनाई इनका मकसद सुर्रेद्रनाथ सांमिति और पी सी. होता समिति की सिफारिशों का अरुव्यक्त करना और केंद्र तथा राज्य सरकारों में ईमानदार्स, काबिशियत और पारदर्शिता में सुधार लाने के दिस् व्यवस्थागत बदलांसे का सुसाव नेना है.

पिहले महीने, कार्मिया और प्रशिक्षण विभाग ने एक चुस्त-दुरुस्त प्रस्तुति वैयार करने का पहला अभ्यास पूरा कर लिया है. दो दर्जन ल्लाइडों के साथ इस विस्तृत लेख में कार्य-दायित्व, कार्य-मूल्यांकन और लक्ष्य पूर्ति की समीक्षा के जिए स्रकारी कामकाज के विस्तेषण की नई क्यवस्था का सुकाष दिया गया है.

r-डंबना देखिए कि हर गजनैतिक पार्टी कम-स-कम काराज ... संसद में सूचना के अधिकार की पद्मधर हैं. लेकिन अफसरशाही के विरोध और काननी पेचीदगिश्रों के कारण नेक इसदे भी पटरी नहीं एकड पाए, कारगर कानून की जरूरत 74 गई 1997 को मुख्यमंत्रियों के सम्मेलन में हो भांप ली गई थीं, उसके बाद गृह भामले की स्थायी संसदीय समिति ने सिफारिश की कि सरकार सशासन को प्रश्रय देने की खातिर कानन बनाने के लिए जरूरी बदन उठाए उसके बाद परकार ने एच.डी शॉरी के नेतृत्व में सचना के अधिकार और सरकार में खुलापन तथा पारदर्शिता लाने के लिए एक कार्यदल का गठन किया इस दल ने एक विधेयक का मसीदा पेश किया, जिसका मंत्रियों के समृह ने अध्ययन किया फिर, सूचना स्वतंत्रता विधेयक धना जिसे गजन सरकार में 2002 में पेश किया मगर यह मर्ड 2004 में राजग सरकार गिरने के पहले अधिसचित नहीं हो पाया.

पाँच दशकों से भारतीय लोकतंत्र किसी सन्दर्य राजशाही की तरह ही चलगा आया है, जहां जनता पांच साल के लिए सरकार को गरी सौंपकर उससे रामराव्य की उम्लीट करती रही है. आप क्ल लोगों ने इसमें हस्तक्षेप करना चाहा भी तो इसकी गंजाइश नहीं थी. सचना का अधिकार लोकतंत्र में जनता को नौन दर्शक से सक्तिय सहभागी की भूमिका दिलाता है, पिछले 30 साल में हर चुनाव में 250-315 सांसद अपनी सीट गंबाते रहें हैं. इसे ने विरोधी रुजान पानते रहे हैं. सचाई यह है कि उनकी पराजय का कारण सुशासन का उत्भाव रहा है, सूचना के अधिकार विश्रेयक को चुस्त-दरुस्त बनाकर राजनैतिक नेता न सिर्फ इस विरोध को अफ्सरशाही की ओर मोड़ सकेंगे बहिक मतदाताओं की अधिकार संपन्त भी बना सकेंगे.

–साध में अंत्राति दोषी और स्टीफन डेविड

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Dated the 26th Lebruary 2005

OFFICE MEMORANDUM

St. b.15.6 - Department Related Parliamentary Standing Committee on "vrsonnel, Public Grievances, Law and Justice - examination of the Kign' to Information Bill, 2004.

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and signed is directed to forward herewith a copy each of the Memoranda constraints and animited by the experts/organisations on various provisions of the Right organisation by the Committee.

mustry of Personnel. Public Grievances and Pensions are requested to area. It suggestions contained therein, clause-wise, in a tabulated form and furnish during the 180 copies in English & 25 in Hindi) to this Secretariat, latest by 26th to the consideration by the Committee. A specimen proformal for sending the sending that the contained proforms sent.

.. ominitize will take up clause-by-clause consideration on the 1st March.

S 28/2

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James tty *

(SURINDER KÉMAR WATTS)
DEPUTY SYCRETARY

Tel. (23034262(O)) 23363713(R)

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E-mail: watts a sansadinican

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A Voluntary Organisation for Socio-Legal Action, Awareness & Resears:

सामाजिक-विधिक कार्यवाही, शोध एवं चेतना प्रसार हेतु स्वयंसेवी संगठन. (पजीकरण स॰ 350/2002-03 सोसायटी पजीकरण अधिनयम, 1860)

To.
Shri Surinder Kumar Watts,
Deputy Secretary,
Rajya Sabha Secretariat,
007, Ground Floor, Parliament House Annexe.
New Delhi-110001
(Tel: 23034262 and Fax: 23013917)

Dear Sir.

Kindly find herewith the memorandum containing suggestions regarding The Right to Information Bill, 2004; to be considered by Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, headed by Shri E.M. Sudarsana Natchiappan, M.P. on the subject.

We are also interested in giving oral evidence before the committee.

Thanking you,

Enclosure: Above mentioned

Memorandum in 2 pages.

(Dr. Pradeep Kumar) Secretary

Date 26 02.2005

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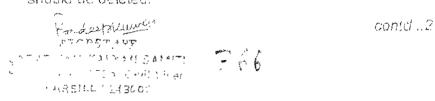
Regd. Office & Secretariat: "HARI NIKETAN" 193-A, Civil Lines, Bareilly-243 001

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Memorandum containing suggestions to The Standing Committee on Personnel, Public Grievances. Law and Justice on the Right to Information Bill, 2004.

As invited by this Standing Committee, we put following suggestions to be incorporated in the Right to Information Bill, 2004

- Sec. 2(c) The word 'Government' should have exactly the same meaning as the words 'the State' as provided under Article 12 of Constitution of India.
- 2. (d) <u>'information'</u>
 - (i) Not only students/candidates and their guardians but general public should have access to evaluated answer books/sheets after declaration of result of all academic and competitive examinations. This will check various malpractices being adopted during evaluation process. Since merit is valuable wealth of nation, it needs to be protected and to be assessed fairly and genuinely.
 - Hence, Sec. 2(d), should include "evaluated answer books/sheets after declaration of result of all academic and competitive examinations."
 - (ii) Similarly, Gazette notifications and government orders (GOs) issued time to time by various government are also beyond reach of common man. They are dumped by the officials to avoid public claims originating therefrom.
 - Hence, Sec. 2(d), should also include in specific manner "Gazette notifications and government orders (GOs)"
- 3. Apart from this, a separate provision should be made at appropriate place that
 - "It shall be duty of every public authority to publicise and to make available all Gazette notifications and Government orders through government and private media, internet etc. Copies thereof shall be made available for sale on each district headquarter at a reasonable price."
- 4 Sec. 2(g) "Public Authority"
 - It should cover law made by the State Legislature, as well, nence be re-grafted as:-
 - "by any other law made by Parliament <u>or any State</u> <u>Legislature</u>."
- 5 Sec 3 the word "citizens" should be substituted by the word "persons."
- 6 Sec 4(1)(a) The chase "within a reasonable time and subject to availability of funds," may be put to misuse. A time limit should be fixed by the Act itself for this purpose (A)vallability of funds must not be a condition and therefore, should be deleted.



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7 Sec. 6 Provision should be added that "a proper and numbered receipt for receiving the request shall be issued by the Public Information Officer or the Assistant Public Information Officer, to the every person making the request."

8. Sec 14(3) One more ground should be added, as follows :-

(f) is found guilty of non performance of his functions or misuse of powers given to him under Sec. 15 of this Act.

One more Sub-section should be added to Sec. 14, providing a time limit of one month for disposal of complaint as follows .-

(5) It shall be duty of the Commission to dispose of the complaint made in Sub-section (1) in any case within one month.

10. Sec. 17 Penalties

9

It should be re-drafted as:

- (1) Breach of any duty imposed by or under this Act (for example, under sections 4,5,6,7,10 & 22) shall make any public authority or Public Information Officer liable for fine which shall not be less than rupees ten thousand which may extend to rupees twenty five thousand and with imprisonment which shall not be less than two years but may extend to five years.
- (2) Notwithstanding anything contained in Section 20, any aggrieved person shall have a right to file a complaint against such public authority or Public Information Officer before a Judicial Magistrate of First Class, who shall dispose of the complaint within a period of ninety days.
- 11 Sec. 21 The proviso should be re-drafted as:

Provided that the information pertaining to the allegations of corruption and of human right violations shall not be excluded under this Sub-section

12 Sec. 23(3) The words. "If necessary" must be deleted.

13. Breach of duty under the Act should be make cognizable. non-compoudable and bailable offence.

14 Provision should be made for constitution of Special Courts to speedily try the offences under this Act. In that case suggestion No. 10(2) shall stand modified upto that extent

Date 26 02.2005

(Dr. Pradeep Kumar) Secretary

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ALL ORISSA STATE BANK OFFICERS' ASSOCIATION

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D. K. ROUT

Shri Surinder Kumar Watts Deputy Secretary, Rajya Sabha Secretariat 007, Ground Floor, Parliament House Annexe New Delhi 110 001

February 25, 2005

Sub.: Memoranda on the Right to Information Bill, 2004.

Sir,

On behalf my Association, I am submitting this Memoranda for kind consideration of the Hon'ble Standing Committee on Personnel, Public Grievances, Law and Justice on the Right to Information Bill, 2004

As a dutiful and thinking citizen. I would seek and pray that I may kindly be favoured with a permission to present oral evidence before the Hon'ble Committee in order to elaborate on this Memoranda and also to strengthen the very cause and purpose of the Right to Information Bill, 2004 to help common citizens get justice.

I shall be grateful for an opportunity.

With kind regards,

Yours faithfully,

(D.K.Róm)

MEMORANDA ON RIGHT TO INFORMATION BILL, 2004

The Bill aims at promoting transparency and accountability in the working of every public authority.

Therefore, in order to make the Bill more effective towards realising the desired goals, the Bill may include a Chapter on the Ciuzens' Right to Inform the appropriate authorities about corrupt practices in public offices and acts of moral turpitude committed by persons manning public offices because without such a right with the citizen, many information on corrupt practices will not come to light,

The Bill may contain clauses of protection to be given to the Informer in case the affected public authority indulging in corrupt / immoral acts takes coercive actions against the Informer.

A case in example is the murder of Satyendra Dubey, the HT -Kampur Engineer who wrote to the office of the then Prime Minister about the corruption in the NHAI works in Gaya but was killed later. Now, late Dubey laid down his life but his family have no social protection. A system of sufficient reward for the Informer may be in place so that every citizen not only has a duty to Inform but also has right to be protected in case of death or permanent disability arising / caused due to his information.

There should also be a clause for tackling false informers with severe punishment so that nobody exercise the right in the wrong way or with ill motives.

The Informer may be permitted to send the information to the Competent Authority, wherever possible with documentary evidence, with his full address by post. The Post Offices throughout the country be directed to issue receipt against the envelop containing the information as is being done in case of Regd. Posts so that an Informer does not require to come to the Commission or the Competent Authority (as defined in the Bill). The Informer's name has to be kept a guarded secret which must be guaranteed to the citizen in the Bill.

Once such a Right to Inform is included in the Bill, it will serve as an inspiration for any efficient to positive contribution to total transparency and accountability in the working of any public authority as it will also serve as deterrent to corrupt people from plundering national wealth for self aggrandizement

(Further elaboration may be permitted through oral evidence)

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TOWARDS A DISCLOSURE LAW

Ramesh Ramanathan

A note in 3 sections – the need for Disclosure followed by a framework for Disclosure and a model act for Disclosure

Section i

The need for Disclosure

Background

- One of the few common characteristics of almost all non-government institutions anywhere in the world (both in the for-profit and the not-for-profit sectors) is the set of FINANCIAL STATEMENTS that are produced either on annual or quarterly basis. These statements are the Balance Sheet, the Revenue & Expenditure Statement, and often but not always, the Cash Flow Statement. Together, these 3 financial statements form the core of the entire edifice of institutional performance appraisal and corporate disclosure.
- The financial statements are the launch pad for any detailed understanding of an institution. Along with the explanatory notes, management discussion and other material disclosures, these documents have become so commonplace that entire segments of the financial markets have evolved to interpret and make decisions based on this information: financial analysts, money managers, chartered accountants, rating agencies, as well as the average shareholder or potential investor.
- Large public-limited companies that have a distributed shareholder base are judged by their quarterly performance, and their share price reflects the response of the financial markets to these announcements. The financial statements offer a window into the functioning of the organisation, and are the diagnostic tools to allow all stakeholders to delve deeper into the details behind the performance. These could be complex issues of revenue mix due to the introduction of new products, or poor control over costs due to weak inventory management, or inadequate reporting systems that cause a one-time write-off.
- Such standards of reporting are not restricted to large publicly traded companies. To a lesser degree, but within the boundaries of generally accepted reporting norms, most firms today have adopted the practice of standardised performance reporting. Even firms that are in the non-profit sector conduct quarterly board meetings where financial statements are distributed, discussed and approved. Information provided in these quarterly statements form the centrepiece of measuring the performance of the institution over the preceding quarter.
- At the core of these disclosure documents are the financial statements. One of the reasons for the ubiquitous presence of these instruments is their standardised format almost universally, the same approach is adopted for the generation and presentation of these statements. There could be differences across countries in tax treatment and accounting charges etc., but the overall framework of these 3 documents (Balance Sheet, Income Statement and Cash Flow Statement) are quite well standardised.
- These practices are well understood and followed in India as well. At the end of every quarter generally June 30th, September 30th, December 31st and March 31st tens of thousands of institutions prepare their quarterly financial statements, call in their auditors to approve the statements, send out notices to their Board of



Directors, and hold meetings to appraise and discuss the performance of the just-concluded three months

Not surprisingly, failure to adhere to the standards prescribed for full disclosure results in possible civil and criminal action in a court of law, and possible appearances before regulatory institutions like SEBI etc.

Financial Statements == Good Corporate Governance

This is not to say that the system is foolproof, rather that it is constantly evolving, attempting to provide the broadest and most flexible implementation toolkit, without being too prescriptive.

Corporate Governance itself is an area that is getting more complex over the past few decades, never more rapidly than in the recent few years, with the cases of earegious deviations from accepted standards, as in the latest Enron case

This goes to prove that the creation of standardised financial statements is not a guaranteed safety ticket to proper institutional conduct, rather that it provides a springboard from which stakeholders can hopefully procure sufficient early warning signals about the true state of an institution. If the ripple effects are felt quickly, and corrective action is taken, then the threshold of full disclosure can be raised, making it more difficult for mistakes to be repeated.

Performance of our Governments

In India, we have a few thousand governments, each of which is elected by an appropriate cluster of citizenry: the Union Government, the 25 State Governments, several hundred urban local governments, and the multitude of Panchayati Raj Institutions in rural India (all legitimate local governments, under the 73rd amendments, although most of them are fledgling institutions).

- Each government is an institution that raises resources and spends them on a variety of activities, many obligatory and some discretionary.
- Each government is an institution that has many stakeholders, the primary ones being the citizens
- Each government has a management that is formed of administrative professionals and elected representatives.
- Each government makes promises of performance every year. Invariably, because no standard performance yardsticks are applied, these promises are anecdotal, sporadic, and can rarely be strung together into any coherent measurement framework.

The Right to Information campaign:

- The past few years have seen the acceleration of the "Right to Information" campaign, with several states having passed legislation to allow citizens and other stakeholders access to government information.
- The campaign for and passage of right to Information legislation has farreaching implications. While the scope of information access is possibly vast, including important facts about how decisions were made, and priorities established, one important component of Right to Information is access to the regular activities of our governments
- "Within this limited context, Right-to-information legislation can be seen as the first phase of a sequential process. The questions that immediately arise are similar to those that have evolved over the past two centuries with private enterprise; how can this information be disseminated in a structured, regular and standardised manner. This is critical because government institutions produce copious quantities of information. Unless a framework is created within which this information becomes intelligible, unless a mechanism of "layering" is developed where we can sequentially ask more and more detailed questions of government, the true power of this information will not be captured

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Here, as we enter the second generation – admittedly, many states are still yet to pass the first phase of legislation – we can look to the learnings of the private sector, and use the tools that have evolved in terms of full disclosure, at least for the regular operations of the institutions concerned.

Over the recent past, many governments are beginning to adopt the approach of business: professionalisation, public-private partnerships, citizen charters etc.

While these are positive developments, they are clearly insufficient since they still do not provide enough standardised information about performance that allows different stakeholders to engage in active debates with government. It may therefore be the right time to apply the language of business to government.

While there are benefits to adopting such an approach, there is also the need for caution, for the following reasons:

- A government institution is much more complex than a private, commercial enterprise. It engages in activities that are social, commercial and fiduciary in nature, in a blend that is never seen in a commercial organisation. This complexity cannot be understood fully in the limited frame of reference of the private sector.
- Proponents of using the language of business risk being seen in an ideological context rather than a just making a utilitarian argument. Such a view would be unfortunate, since it switches attention away from the core issue which is performance measurement of government, to issues about the role of government, class struggles and so on. The potential of the language of business must be carefully presented to various stakeholders, and a rainbow coalition must be created to thwart criticism.
- The value of the business approach must be demonstrated to be fulfilling only a limited, functional need. This acts as the basis for much deeper debates between various interest groups, citizens and government. The instruments of business are merely to set the stage for the larger discussions, and supplement these conversations, rather than substitute them.

Clearly, it is time to ask some critical questions about how our governments manage our money. The common functional thread that runs through all the 3 points raised above is one of resource management: how well do we actually spend our money; how do we make our decisions about where to raise and spend our money; and finally, how do we raise and spend our money directly at the local level so that citizens feel greater ownership. It is time we created the platform for Disclosure from our Governments.

Meeting International standards for Government Reporting:

The pressure to create better standards for accounting, financial management and disclosure is being felt by governments all around the world.

One example is the formation of the Governmental Accounting Standards Board (GASB) GASB was organized in 1984 by the Financial Accounting Foundation (FAF) to establish standards of financial accounting and reporting for state and local governmental entities GASB's website has this to say about accounting standards.

- "Accounting and financial reporting standards are essential to the efficient and effective functioning of our democratic system of government
- Financial reporting plays a major role in fulfilling government's duty to be publicly accountable
- Financial reporting by state and local governments is used to assess that accountability and to make economic, social, and political decisions." Private sector institutions are being asked to adopt internationally accepted standards to allow for standardised interpretation of their performance (Generally Accepted Accounting Principles or GAAP)



Similarly global best practices for government financial disclosure are also being created.

A brief description of the GASB Statement 34 below illustrates the level of detail that is now being demanded of government institutions:

- "This Statement establishes new financial reporting requirements for state and local governments throughout the United States. When implemented, it will create new information and will restructure much of the information that governments have presented in the past. We developed these new requirements to make annual reports more comprehensive and easier to understand and use
- Annual reports currently provide information about funds. Annual reports should allow users to assess a government's accountability by assisting them in determining compliance with finance-related laws, rules, and regulations. For this reason and others, this Statement requires governments to continue to present financial statements that provide information about funds.
- Showing budgetary compliance is an important component of government's accountability. Many citizens—regardless of their profession—participate in the process of establishing the original annual operating budgets of state and local governments. These government-wide financial statements will help users:
- Assess the finances of the government in its entirety, including the year's operating results
- Determine whether the government's overall financial position improved or deteriorated
- Evaluate whether the government's current-year revenues were sufficient to pay for current-year services
- See the cost of providing services to its citizenry
- See how the government finances its programs—through user fees and other program revenues versus general tax revenues
- Understand the extent to which the government has invested in capital assets, including roads, bridges, and other infrastructure assets
- Make better comparisons between governments.
 - This Statement establishes financial reporting standards for state and local governments, including states, cities, towns, villages, and special-purpose governments such as school districts and public utilities. It establishes that the basic financial statements and required supplementary information (RSI) for general purpose governments should consist of:
- Management's discussion and analysis (MD&A). MD&A should introduce the basic financial statements and provide an analytical overview of the government's financial activities. Although it is RSI, governments are required to present MD&A before the basic financial statements.
- Basic financial statements. The basic financial statements should include:
- Government-wide financial statements, consisting of a statement of net assets and a statement of activities. Prepared using the economic resources measurement focus and the accrual basis of accounting, these statements should report all of the assets, liabilities, revenues, expenses, and gains and losses of the government
- Fund financial statements consist of a series of statements that focus on information about the government's major governmental and enterprise funds. Governmental fund financial statements (including financial data for the general fund and special revenue, capital projects, debt service, and permanent funds) should be prepared using the current financial resources measurement focus and the modified accrual basis of accounting. Proprietary fund financial statements



(including financial data for enterprise and internal service funds) and fiduciary fund financial statements (including financial data for fiduciary funds and similar component units) should be prepared using the economic resources measurement focus and the accrual basis of accounting

- Notes to the financial statements consist of notes that provide information that is essential to a user's understanding of the basic financial statements.
- Required supplementary information (RSI). In addition to MD&A, this Statement requires budgetary comparison schedules to be presented as RSI along with other types of data as required by previous GASB pronouncements. This Statement also requires RSI for governments that use the modified approach for reporting infrastructure assets.

Section II

Framework for Disclosure Legislation

1. Background

The GoK has been taking a number of progressive steps in improving the operating environment of its units at various levels in order to be a caring and responsive government with a transparent and accountable executive.

The major initiatives of the GoK since 2000 are:GOK has passed the Fiscal Responsibility Act (FRA), Sep 2002

- i. At GOK level Fiscal Responsibility Rules (FRR) passed under FRA
- ii. Two annual MTFPs have been produced at the GOK level
- iii Ten Departments have produced their DMTFPs, as part of pilot
- iv. Streamlining of budget heads has resulted in substantial reduction in number
- v Khajana has improved cycle-time of information flows into Treasury
- At local government level
 - vi. GOK has drafted a State Local Audit Act, prepared for passage in July session of legislature
 - vii. BMP has moved into a modern accounting system environment, FBAS
 - viii Accounting regulations have been passed, March 2001 BMP
 - ix. Budget regulations are being passed, June 2003 BMP
 - x. Concurrent audit environment has been established
 - xi. GOK moving to introduce FBAS in 30 other ULGs, through DMA "Nirmala Nagara Programme"
 - xii. Accounting and Budget Regulations to be passed for 5 other Corporations, as per provisions of KMC Act, 1976
 - xiii. Accounting/Budget Regulations to be passed in Karnataka Municipalities Act

2. Need for DISCLOSURE legislation

While the above initiatives have been successful in improving the GoK's ability to provide quality services to its stakeholders, significant gaps are nevertheless visible which reduce the sustainability of the efforts taken. The major weaknesses that need to be addressed on a priority basis are:

- xiv. Weak accounting systems
- xv Complex budgetary heads
- xvi Large time gaps in information flows
- xvii Poorly defined relationships and monitoring mechanisms with banking system
- xviii Consolidated financial / audit report for departments, ULBs, and various bodies absent for the State as a whole
- xix Negligible Internal Control Systems
- xx Large time gaps in audit reports
- xxi Lack of adequate follow-up on audit findings
- xxii Lack of information on compliance of various statutes (Act, Rules, Regulations, Bye-laws, etc) at various levels which are leading to internal control weaknesses
- xxiii Ineffective use of PAC and other oversight bodies
- xxiv Minimal opportunities for citizens and other stakeholders to engage in structured manner



xxv Sporadic use of technology

These weaknesses are observed in all the three tiers of Government institutions as shown in Table A.

Table A: Continuing Weaknesses

NO.	ITEM	STATE GOVT	DEPT, GC	K LOCAL GOVT	
1.	Modern accounting systems	X	X		
2.	Banking System Relationship	X	X	X	
3.	Medium Term Fiscal Plans			ı X	\neg
4.	Performance Indicator usage	× ×		i X	
5.	Streamlined Budget heads	to all the second secon	The second section of the second seco	X	
6.	Timely information flows	X		X	
7.	Internal Control Systems	X	X	X	
8.	Concurrent Audit processes	X	Χ	X	i
9.	Quarterly Statutory Audit (annual)	X	X	X	_
10	· Formal oversight process	X,	X	X	
11.	Formal participatory processes	X	X	X	
12	Cutting-edge technology	1	: X	X	
Note: (")	(" marks an area of weakness)				1

The following key weakness areas provide an outline of the status / impact of existing weaknesses and are does not represent an evaluation.

a Modern accounting systems

Limitations of the existing cash basis of accounting

Information of assets, liabilities absent

No specific accounting standards followed, resulting in incomplete and incorrect accounting

Banking System Relationship

Information flows from Banking system irregular and weak

Reconciliation between accounting and banking information not scientific

Banking services not defined resulting excessive work, duplication and tack of controls

Medium Term Fiscal Plans

Planning is taken as a routine (budget) and no medium term plans made

Evaluation of fiscal plans absent

Finance management absent due to lack of planning and efficient accounting

Performance Indicator usage

Performance measurement system absent

Lack of key performance areas results in lack of monitoring of organisation and human progress. Scientific evaluation not possible

Streamlined Budget heads

Scientific budget heads to understand / track activities are absent

Uniform grouping not followed

Huge deviations from accounting heads resulting in confusion in budget variance analysis

Timely information flows

No structure reporting within institutions and to GOK

Even the existing reporting requirements under various statutes not complied



Follow-up action on various reports lacking due to inappropriate form / content and undue time delays

Internal Control Systems

Lack of defined ICS commensurate with the nature and size of operations

Lack of standardized approach in internal controls across various institutions

Existing controls, if any, need to be reoriented under computerized environment

Concurrent Audit Process

Very few organisations have concurrent audit (pre-audit)

Concurrent audits are becoming routines, mundane with out focus on evaluation of control systems

No appreciation / use of technology / tools for improving audit efficiencies and efficiency

Quarterly Statutory Audit (annual)

Delays in statutory audit

Voucher audit and not financial statement audit (lack of defined financial statements)

Proprietary audit and not performance audit

Recognized accounting standards / audit guidelines / tools not followed

Formal oversight process

The legislative oversight is not very structured for various departments and bodies (very deep in one Act and very loose in another)

Implementation of legislative oversight is on conventions and not based on statutory contents / requirements -

Lack of methods to assess / evaluate the compliances

Formal participatory process

Participation generally not welcome (secretive approach)

Most of the governing statutes are silent on participation and hence participation not considered Lack of back up support system for providing information that will enable participation / transparency

Cutting edge technology

Focus is on technology / hardware and not on user-friendly application or decision support Focus is on top end technology and not on 'appropriate technology'. Lack of understanding of what technology can deliver by itself and hence lack of understanding of the role to enable effective performance

The weaknesses reduce the service delivering capacity of the GoK. The expectations of the people from the public administration has increased manifold. The global environment has been transformed to a 'knowledge era' where there is a hue and cry for better governance based on the principles of accountability, transparency and responsibility. People's perception of the Government has undergone a sea change and there is urgent need for reforms and greater citizen participation.

Thus, there is a 'reform push' and 'knowledge pull' that act and call for sophisticated tools for the administration to fulfil people's expectations. GoK has established a responsive approach to people's needs and has been sensitive to their demands. This calls for system of Disclosures.

Disclosure: a system of dynamic and relevant documentation with a transparent review mechanism, by which the Government is able to enhance its service deliverability to the Citizens, through structured information flow for efficient decision making and control thereby inculcating principles of good governance'

This is not a new system per se: but is a consolidation of the various initiatives of the GoK to remove the existing gaps and provide a holistic mechanism for the executive to implement the intentions of the legislature.

3. DISCLOSURE Overview

Disclosures (DISCLOSURE) are central to dramatic improvement in efficiency of government operations, as they not only will provide information of the 'reality' but also provide scientific data base to support structured and informed decision making with minimal time loss and effective utilization of optimum resources.

Impact of DISCLOSURE is substantial on indicators of poverty and human-development. Also it provides opportunity for increases in revenues through better enforcement, and reap the advantage of increased credibility supported by improvements in expenditure efficiency.

The minimal ingredients for DISCLOSURE to be produced are the following:

- Modern accounting systems, capable of capturing and providing highquality information on revenue and capital items
- it Clearly defined relationship and monitoring mechanism with banking system
- iii Medium-term fiscal plans at every level, local government, state department or state government
- iv. Development and use of Performance Indicators to assess efficiency
- v. Bottom-up budgeting, with streamlined budget heads, linked to accounting heads
- vi. Streamlined and timely information flows on actual performance over the course of the financial year
- vii Well-defined Internal Control Systems
- viii. Concurrent audit processes
- ix Quarterly statutory audit within 30 days, wherever possible
- x Clearly-defined oversight and redressal processes for corrective action
- xi. Formal mechanisms for citizen and other stakeholder engagement
- xii. Use of appropriate technology to drive this process

The twelve ingredients can be used as a grid to measure every department/ local government to establish the quality of the ecosystem, and the impact of weaknesses on the ability to produce DISCLOSURE.

4. DISCLOSURE Framework

The framework for development of DISCLOSURE has been developed based on the above twelve ingredients mapped in to four "Core Areas":

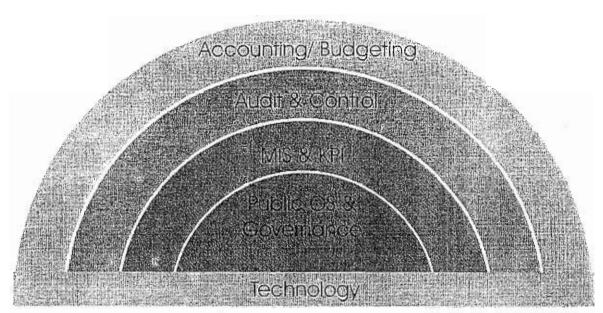
- Accounting and Budgeting
- Audit and Control
- * MIS and Performance Measurement
- Public Oversight and Governance

Table –B shows the details of the links.

Table B: Links between DISCLOSURE Core Areas and DISCLOSURE Ingredients

No	DISCLOSURE Core Areas DISCLOSURE	Accounting / Budgeting	Audit / Control		Public OS / Govern
1.	Modern accounting systems			barranda a sa posseprementa	
2.	Banking System Relationship	1		:	
3.	Medium Term Fiscal Plans	7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			1 to 1 to 1 to 1 to 1 to 1 to 1 to 1 to
4.	Performance Indicator usage		1	✓ ·	
5.	Streamlined Budget heads	<u> </u>	1	i	:
6	Timely information flows		1	1	
7.	Internal Control Systems	The second secon	-		
8	Concurrent Audit processes		: 🗸		
9.	Quarterly Statutory Audit (annual)		1		
10.	Formal oversight process		10 P 10 P 10 P 10 P 10 P 10 P 10 P 10 P	regereration of the state of th	. ✓
11.	Formal participatory processes			ı	·
12	Cutting-edge technology	V			

The overall DISCLOSURE framework is developed based on the four layers of Core Areas. The accounting and budgeting forms the central core are they together ensure correct / scientific accounting, meaningful and bottom-up budgeting. This core ensures that the basic data generation, accounting, etc are complete in all respects. The internal controls, compliance to various rules, regulations, etc and feedback on the actual controls are taken care by the audit and control layer, which cannot exist with out the accounting and budgeting core. The actual management, including planning and evaluation can be done only information provision in a structured, scientific fashion based on parameters of performance. The MIS and KPI layer handles such requirements. The essence of all the efforts has to reach the public not only in terms of service delivery but also in terms of transparent information on performance and should trigger participation of the concerned citizens leading ultimately to proper governance. This is the role of the outer layer of public oversight and governance. Technology is the linking / enabling factor for all these layers to function properly. This layer would also address the 'reliable / single' database and decision support needs of all the layers.



Overall Disclosure Framework

The Fig 2 shows the schematic representation of the DISCLOSURE framework and the four layers.

In order to make the DISCLOSURE framework implementable the DISCLOSURE tools and enablers have been identified and shown in **Table C**. While the 'tools' specify 'what' would contribute for achieving the core areas of the DISCLOSURE, the 'enablers' give details of what needs to be actually done. A sample set of such appropriate enablers has been identified under each of the core areas.

In fact the DISCLOSURE legislation contemplated should be able to provide for all the enabling conditions and factors (present and future).

Table-C: DISCLOSURE Tools & Enablers

DISCLOSURE Core Areas Tools & Enablers	Accounting / Budgeting	Audit / Control	MIS /:Perfor. Measurement	Public OS / Governance
DISCLOSURE Tools	Modern Accounting System	Appropriate Audit practices	Finance Management	Public participation
	Efficient Budgeting Process	Compliance to various legislations, rules, regulations	Structured MIS for Key decision making	Information Sharing with the stakeholder groups
	Process	Internal Control Systems in	Performance Areas	Aspects relating to Transparency
To any other desired and the state of the st	**************************************	recording / storage of data & processes	Key Performance Indicators	
Enablers	FBAS	Audit Tools & Techniques	MTFP	Participation methods
(sample list)	Accounting Regulations	Audit Standards	Reporting Architecture	Public debates
	Accounting Standards	· Concurrent Audit	KPAs KPIs	Stakeholders representation
	BIDS Budget Regulations	. Adoption of Internal Control Standards	Review Mechanisms	

Instruments of DISCLOSURE

Seven important instruments of DISCLOSURE have been identified in Table C. The DISCLOSURE legislation should ultimate contribute for effective generation / utilization of these instruments.

Table - C: DISCLOSURE Instrument

DISCLOSURE Instruments	DISCLOSURE Core Areas
Budge!	Accounting /
Financial Statements	Budgeting
Receipts and Expenditures	<u>.</u>
Assets and Liabilities (Balance Sheet)	:
Cash Flow Statement	- ;
Audit Report	Audit / Control
· Statutes Compliance Report	•
MIS Reports	MIS / Per. Meas.

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Key Performance Indicators	
411 MINER OF THE PROPERTY OF T	and the state of t
Public Accountability Status Report	Public OS / Govern. 💡
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5. Draft DISCLOSURE Legislation

The draft DISCLOSURE Legislation is set out in the next Appendix. The current version contains the structure and ingredients of the proposed Act in Karnataka. Various points that need to be discussed along with comments have been provided in italics.

APPENDIX

DRAFT URBAN LOCAL GOVERNMENT DISCLOSURE BILL

R.S.Mural Dr. A.V.Rajagopalan Ramesh Ramanthan

An Act to provide for the responsibility of Urban Local Governments to adopt best practices for disclosure of information for various stakeholders and to enhance participative democracy thereby improving the performance of the local governments in providing better quality of service to the public and achieve faster human development by improved financial management and controls as well as planning through a medium term fiscal frame work, and for matters connected therewith or incidental thereto.

Whereas it is expedient to provide for the responsibility of Urban Local Governments to ensure adequate disclosure of information, for fiscal stability and sustainability and to enhance scope for improving social and physical infrastructure and human development by achieving performance enhancement, citizen participation and transparency while removing impediments to the effective conduct of fiscal policy and enabling prudent financial management through appropriate modern systems and with greater transparency in all its operations of the Urban Local Government with the use of various improved process all geared towards providing realistic information to the stakeholders for decision making.

The Act has been drafted taking in to consideration the three pillars of the information tripod of Urban Governance: the Accounting System of the ULGs, the Citizen's right to participation and ULG's disclosure responsibilities. All the three are linked and these three together seek to harmonise various missing links in urban local governance. This Act on ULG Disclosure provides for the basic mechanism within the ULG system to be prepared for providing various information that needs to be disclosed.

Be it enacted by xxxxxxxxxxxxxxx of the Republic of the India as follows:

1. Short title, extent and commencement:

- (1) This Act may be called the Urban Local Government Disclosure Act, 2004
- (2) It extends to such Urban Local Governments as may be notified by the State Government[u1] from time to time.
- (3) It shall come into force on such date as the State Government[u2] may, by notification, appoint.
- 2. Definitions: In this Act, unless the context otherwise requires
- (a) "Act" means Urban Local Government Disclosure Act,



- (b) "Accounting Standard" means such accounting standards for preparation and presentation of accounting records and financial statements in respect of Urban Lpcal Governments, as may be prescribed;
- (c) "Annual Budget" means the budget placed before the concerned Urban Local Government as per the applicable Acts or the Rules made thereunder.
- (d) "Central Monitoring Authority" means such authority appointed by the Central Government to supervise the enforcement of this Act:
- (e) "Current Year" means the financial year starting from April 1st ending March 31st the next year under operation, preceding the year for which budget and Medium Term Fiscal Plan (MTFP) are being planned / presented:
- (f) "Disclosure" means the act of making the required information public to the stakeholder in formats and in methods that are prescribed under this Act. Rules. Notifications thereunder with in the 30 days from the end of a quarter or time limits specified:
- (q) "Disclosure Elements" refers to those formats and methods prescribed by the Competent Authority for the disclosure of various information to the Stakeholder and includes print, electronic web-enabled methods as per available technology infrastructure:
- (h) "Key Performance Areas" means such activities which are crucial for this efficient performance Urban Local Government:
- (i) "Key Performance Indicators" means such measures as may be prescribed, for evaluation of the performance of the activities in the Key Performance Areas of the Urban Local Governments:
- (i) "Monitoring Authority" means such authority appointed by the State Governments / Union Territories to supervise the enforcement of this Act in their States / Union Territories under the directions / supervision of the Central Monitoring Authority;
- (k) "Previous Year" means the year preceding the current year,
- (I) "Quarterly" means the period of three month ending June, September, December and March in the Current Year:
- (m)"Rules" means the rules formulated under the Act for the implementation of the Act;
- (n) "Stakeholders" means the citizens of the Urban Local Government, and all other persons interested in the affairs of the Urban Local Governments including academicians, the press, NGOs, and other corporate and non-corporate bodies interested in data / information about the performance disclosed by the Urban Local Governments for the purpose of betterment of quality of urban life and urban governance:
- (0) "Urban Local Government" (ULG) means all such bodies which are governed by the provisions of the 74th Amendment to the Constitution of India,
- Management principles.

Every Urban Local Government will be guided by the following management principles, namely: 15

- (1) ensuring transparency at all stages of policy making and implementation;
- (2) Introducing performance linked budget policies.
- (3) providing for effective and sustained monitoring systems;
- (4) introducing robust financial management principles,
- (5) maintaining Urban Local Government's debt at prudent levels;
- (6) managing guarantees and other contingent liabilities prudently, with particular reference to the quality and level of such liabilities,
- (7) ensuring that policy decisions of the Urban Local Governments have due regard to their current financial position and the financial implications on future generations;
- (8) adopting accrual system of accounting for payables and receivables;
- (9) ensuring that borrowings are used for productive purposes and accumulation of capital assets, and are not applied to finance current expenditure:
- (10) ensuring a reasonable degree of predictability in the flow of funds,
- (11)pursuing tax policies with due regard to economic efficiency and compliance costs;
- (12) pursuing fiscal policies with due regard to cost recovery and equity;
- (13) pursuing expenditure policies that would provide impetus for economic growth, poverty reduction and improvement in human welfare;
- (14)ensuring that physical assets of the Urban Local Government are properly maintained,
- (15) disclosing sufficient information to allow the public to scrutinize the conduct of the policy and the state of its affairs;
- (16)ensuring that Urban Local Government uses resources in ways that give best value for money, and also ensure that public assets are put to best possible use;
- (17) managing expenditure consistent with the level of revenue generated,
- (18) formulating budget in a realistic and objective manner with due regard to the general economic outlook and revenue prospects, and minimize deviations during the course of the year;
- (19) ensuring collection of dues and taxes in an expeditious manner;
- (20) ensuring discharge of current liabilities in a timely manner;
- (21)adopting appropriate techniques for measuring the cost of the services provided by the Urban Local Government.

4. Principles of Disclosure

The ULGs shall follow the principles of disclosure, along with the management principles as provided in Section 3 of the Act:

- (1) Recorded information. The information that are required to be provided under this act shall be based on recording of information enabled by proper systems and procedures and shall not be ad hoc, not supported by relevant records.
- (2) Recording principles. The principles of recording of various information caused to be disclosed under the Act, shall be recorded in the manner, if any, prescribed under the Act or as prescribed under various Acts applicable for the ULGs
- (3) Certification of information. The information so provided under the Act shall be certified by the Commissioner or Auditor in case of financial statements or the person authorized by the Commissioner for the purposes of the Act.
- (4) Disclosure time limit. The periodicity for disclosure of information under this Act shall be in general quarterly or lesser as may be specifically prescribed under the Act. However, the time limit for such disclosure shall not exceed 30 days from such a periodicity.
- (5) Disclosure elements Various elements of disclosure shall be as defined under Sub-section (2) (g) of the Act.



5. Measures for fiscal transparency and disclosure

The ULG shall adopt various fiscal planning and transparency measures discussed in sections (6) to (11) and provide for necessary steps, suitable to its activities, local conditions and needs in the area of its jurisdiction, to enable disclosure of all the disclosure elements as may be provided in the Act and those notified by the Competent Authority from time to time

6. Medium Term Fiscal Plan

The ULG shall, for the purposes of this Act, provide for:

- (1) Preparation in each financial year a Medium Term Fiscal Plan along with the annual budget in respect of every Urban Local Government and shall be submitted for approval of the concerned authority.
- (2) A four-year rolling target for the fiscal indicators with specification of underlying assumptions while preparing the Medium Term Fiscal Plan.
- (3) In particular and without prejudice to the provisions contained in sub-section (2), an assessment of sustainability relating to:
 - (a) the balance between revenue receipts and revenue expenditures; and
 - (b) the use of capital receipts including borrowings for generating productive assets.
- (4) Details in the Medium Term Fiscal Plan with regard to:
 - (a) the medium term fiscal objectives of the Urban Local Government:
 - (b) the mission, objectives and goals of the Urban Local Government;
 - (c) an evaluation of the performance of the fiscal indicators in the previous year vis-a-vis the targets set out earlier, and the likely performance in the current year as per revised estimates;
 - (d) a statement on recent trends and future prospects for growth and development affecting fiscal position of the Urban Local Government;
 - (e) the strategic priorities of the Urban Local Government in the fiscal area for the ensuing financial year;
 - (f) the policies of the Urban Local Government for the ensuing financial year relating to expenditure, borrowings and other liabilities, lending and investments. And all such activities which have potential budgetary implications and the key fiscal measures and targets pertaining to each of these:
 - (g) an evaluation as to how the current policies of the Urban Local Government are in conformity with the financial management principles set out in section 4 and the fiscal objectives set out in the Medium Term Fiscal Plan;
 - (h) a clear linkage of the physical and financial targets;
 - (i) the key performance areas and corresponding performance indicators in as much quantitative detail as possible.
- (5) Making the Medium Term Fiscal Plan the source document for the preparation of the annual budget and to address the prime needs of the citizens, and the local area development and maintenance as relevant to the specific Urban Local Government authority such as water supply, construction of road, education, public health, solid waste management and the like, as contained in the Schedule to the 74th Constitutional Amendment Act, 1992
- (6) Providing the Medium Term Fiscal Plan with a functional focus and linkages to backend modalities such as fund based accounting system (FBAS), computerization and realistic and transparent budgeting process
- (7) Preparing the Medium Term Fiscal Plan in such form as may be prescribed.



7. Budgeting System

The ULGs shall, for the purposes of this Act, provide for

- (1) A structured bottom-up budgeting system with clearly laid out budget calendar and budgeting formats
- (2) The budgeting process which shall be linked to the accounting system as specified in section 8(1). The budget heads corresponding to and properly linked with the accounting heads so that the budget actual variance analysis is facilitated.
- (3) Disclosure to the Stakeholders, as per principles of disclosure provided in Section 4 of the Act, the following budget accounting related disclosure element(s) disclosed every quarter or in periodicity less than the quarter as may be notified in special or specific circumstances
 - (a) Budget Variance Analysis;
- (4) Format(s) of the above statement(s) (disclosure elements) as per Schedule to the Act and as may be modified in form and content by the Competent Authority as prescribed by the Central Government, taking in to account the recommendations of the National Task Force on Municipal Accounting and the amendments there at.

8. Accounting System

The ULG shall, for the purposes of this Act, provide for:

- (1) Suitable accounting processes to enable adequate disclosure of all its transactions under appropriate categories with relevance to the functionality and purpose of such transactions. For this purpose, a system of fund based accounting system (FBAS) shall be installed, adopting modified accrual accounting by classifying transaction enabling scrutiny of achievement of objectives of ULG and support such disclosure of information to the Stakeholders, in the place of accounting system maintained on cash basis.
- (2) The accounting systems should be properly linked to the Budgeting System as specified in Section 7(1).
- (3) The preparation of the accounts in the prescribed format prepared with adequate notes and explanations in such a manner that it is easily understood by the person of reasonable common sense and understanding; and preferably presented in the local language to enhance it understandability by a large section of the Stakeholders.
- (4) Disclosure to the Stakeholders, as per principles of disclosure provided in Section 4 of the Act, in the following accounting related disclosure elements disclosed every quarter or in periodicity less than the quarter as may be notified in special or specific circumstances:
 - (a) Balance Sheet;
 - (b) Revenue and Expenditure Statement;
 - (c) Receipts and Payments Statement (Cash Flow Statement);
- (5) Formats of the above financial statements (disclosure elements) as per Schedule to the Act and as may be modified in form and content by the Competent Authority as prescribed by the Central Government, taking in to account the recommendations of the National Task Force on Municipal Accounting and the amendments there at

9. Ward Information System

The ULGs shall, for the purposes of this Act, provide for

- (1) A Ward Information System supported by appropriate budgeting system referred to in Section (7) and accounting system referred to in Section (8) and of the Act.
- (2) Maintenance of appropriate records in relation to collection of various revenues, provision of various expenditures, in particular with regard to various ward works (new, improvement, maintenance) planned and in the wards to facilitate disclosure elements as provided in this section.

- (3) Incorporating the inputs of various administrative and operational set-up like the District Officer[u3], Ward Committees, etc for the purpose of disclosure of various information as required under the Act
- (4) Disciosure to the Stakeholders as per principles of disclosure provided in Section 4 of the Act, the following ward level disclosure element(s) disclosed every quarter or in periodicity less than the quarter as may be notified in special or specific circumstances:
 - (a) Revenues collected by the ward for period specified;
 - (b) Expenditure incurred by the ward for the same period,
 - (c) Ward work information. Status of each and every work planned, taken up (in process) and completed during the period concerned, along with work wise sanction, work order, bill, payment and liability details properly classified.
- (5) Format(s) of the above statement(s) (disclosure elements) as per Schedule to the Act and as may be modified in form and content by the Competent Authority as prescribed by the Central Government.

10. Management Information System

The ULGs shall, for the purposes of this Act, provide for

- (1) A Management Information System supported by appropriate budgeting system referred to in Section (7), accounting system referred to in Section (8) and Ward Information System referred to in Section (9) of the Act.
- (2) Such a Management Information System shall be based on a set of processes with proper record maintenance procedures and appropriate technology to record, maintain, compute, analyse and report the required financial and non-financial information.
- (3) Identification of suitable Key Performance Areas and Key Performance Indicators to evaluate the performance of the ULG, apart from those prescribed under the Act.
- (4) Having proper procedures for established system for assessing cost of various services rendered by the ULG in its health, education, water supply and so on activities.
- (5) Disclosure to the Stakeholders, as per principles of disclosure provided in Section 4 of the Act, the following performance disclosure element(s) disclosed every quarter or in periodicity less than the quarter as may be notified in special or specific circumstances
 - (a) Statement of Physical and Financial Key Performance Indicators (classified per Key Performance Area)
 - (b) Service Cost Sheet for specific services provided by ULG.
 - (5) Format(s) of the above statement(s) (disclosure elements) as per Schedule to the Act and as may be modified in form and content by the Competent Authority as prescribed by the Central Government, taking in to account the recommendations of the National Task Force on Municipal Accounting and the amendments there at.

11. Internal Control and Audit System

The ULGs shall, for the purposes of this Act, provide for:

- An internal control system commensurate with the size and operational complexities of the ULG
- (2) Documentation with regard to maintenance of accounting and non-accounting records for providing 'audit trails' in relation to various disclosure elements under this Act
- (3) An internal audit system depending on the size of the ULG and as prescribed by various authorities in this regard[u4]
- (4) Internal systems by which prescribed statutory audit is conducted with in the timeframes specified by making available necessary records for the audit.
- (5) Furnishing the information, as per principles of disclosure provided in Section 4 of the Act:
 - (a) Certified by the authorized signatory of the ULG, even though audit contemplated under this section has not been completed or commenced.
 - (b) Certified by the designated auditors in relation to those statements prescribed.

12. Public Oversight and Governance

- (1) Public Access to Information. All persons covered under the definition of "stakeholders" in section 2 of this act shall have a right of access to the various data prepared by the ULGs under this Act. For this purpose such stakeholders can approach the concerned authority in the ULGs and can demand for any information pertaining to all the activities of the ULGs.
- (2) Public provision of Information. It is the duty of the ULGs to provide such information as specified in this Act, Rules and Notifications formed there under, with in 24 hrs or such earlier time as may be prescribed by the Monitoring Authority, for all transactions relating to the previous quarter.
- (3) Public Debates. The Stakeholders shall have the right to form groups at the level of ULG or Ward or at such other offices of the ULGs in order to discuss the issues covered under sections 6 to 11 of Act. The representatives of such groups shall make arrangements to meet either on a fixed day or at such other dates as decided by the groups for the purpose of discussion and debates in matters relating to information to be disclosed under the Act. This shall be informed to the ULG / ward / Office of the ULGs in writing atleast three days in advance. It is imperative for the ULGs offices to ensure that the senior official are available on such date and time to participate in the public debates and provide such information as may be required by the stakeholders for such debates. The arrangement of venue and other infrastructure required for such meetings shall be the responsibility of the ULGs. Failure to comply with the requirement of this section shall be punishable with a fine or other penalties as may be prescribed by the Central Monitoring Authority.

13. Stakeholders Representation, Action and Appeals

- (1) Representation The stakeholders either collectively or through a the selected representative may represent to the monitoring authority in writing if:
 - (a) The ULG does not arrange for the conduct of the meetings after getting the notice mention in this section or
 - (b) The information desired by the stakeholders is not provided in full or
 - (c) They have reason to suspect that the information provided is not true or is inadequate or
 - (d) They suspect or have reasons to suspect that the affairs of the ULGs are not conducted in a transparent manner or there is lack of accountability in the discharging of the duties by the officials of the ULGs or there are other lapses in the function of ULGs which can impair the public welfare or
 - (e) The information provided to them, indicate possibilities of fraud, misfeasance or corruption.
- (2) Action. The Monitoring Authority shall:
 - (a) Acknowledge the receipt of such representations within 7 working days from the date of representation:
 - (b) Initiate immediate necessary actions to rectify the issues raised by the shareholders;
 - (c) Inform the action taken and the result there of within 60 days from the date of the representation.
- (3) Appeals. If the actions prescribed this Act, Rules formed and Notifications issued there under, are not taken by the Monitoring Authority within 30 days from the date of appeal, the stakeholders have a right to appeal to the Central Monitoring Authority for the redressal of their grievances as prescribed in the Rules.

14. Measures to enforce compliance to this Act

(1) The Central Monitoring Authority shall enforce compliance with

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the provisions of this Act and the rules made thereunder.

- (2) The Monitoring Authorities may oversee the compliance and a suitable mechanism may be notified by the State (Central??) Government regarding the submission of periodical review reports.
- (3) The State Government shall ensure that the Urban Local Governments comply with provisions of the relevant Act and the rule relating to budget and the budget prepared is in accordance with the Medium Term Fiscal Plan already approved and variations, if any, are explained.
- (4) Audit of accounts of the Urban Local Government shall be conducted by the auditor appointed under the relevant Acts and the rules and orders issued there under which is the authority and the report shall be submitted to the concerned authorities within the time stipulated.
- (5) The Monitoring Authorities shall be responsible to ensure strict follow action on the audit reports by the Urban Local Government and slackness, if any, noticed in this behalf shall be reported to the State Government, for appropriate action against Urban Local Government in default.
- (6) The State Government may, by notification, constitute a Local Fund Audit Overseeing Authority comprising of such officers and having such powers as may be specified in the notification. The Local Fund Audit Overseeing Authority shall submit to the State Government periodical report on compliance to audit reports by the Urban Local Government, as may be prescribed.
- (7) The State Government may withhold release of funds to any Urban Local Government which fails information as required by this Act
- (8) The Urban Local Government shall introduce and strengthen appropriate internal audit measures and a sustainable computerization Programme using appropriate technology.
- (9) For ensuring that the requirements of this Act are fully met, the ULG's staff may require certain entry qualification[u5] or upgradation through specific training in the concerned areas. The Monitoring Authority shall, in collaboration with other State/Central Government agencies arrange for the provision of such training.
- (10)It may be necessary to make suitable enhancements to the existing accounting and other procedures envisaged in this Act. Towards this end, necessary alterations shall be prescribed by the Monitoring Authority in consultation with the concerned Department of the Central / State Government.

15. Power to make rules

- (1) The Central / State Government may by notification and after previous publication, make rules for carrying out all or any of the purposes of this Act
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions.
- (3) If before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any

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modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such, modified form or be of no effect, as the case may be. However, any such-modification, annulment shall be without prejudice to the validity of anything previously done under that rule.

- 16. Protection of action taken in good faith. No suit, prosecution or other legal proceedings shall lie against the Central Government, State Government, any Urban Local Government or any officer or servant or any other person acting under the direction of the Central Government, State Government or Urban Local Government in respect of any thing done or intended to be done in good faith under this Act or any rule or order made there under.
- 17. Applications of the laws. The provisions of the Act shall be in addition to the provisions of any other law for the time being in force, to the extent they are not inconsistent with the provisions of this Act and the Provisions of this Act shall have effect notwithstanding anything contrary contained in any other law for the time being in force.
- 18. Removal of difficulties. If any difficulty arises in giving effect, to the provisions of this Act, the Central / State Government may by order, published in the official gazette, as the occasion may require, do anything which appears to it to be necessary to remove the difficulty.

Provided, that no order shall be made after the expiry of a period of two years from the date of commencement of this Act

Schedule to the Act

Formats of

- 1. Budget Variance Report (section 7)
- 2. Financial Statements (section 8)
 - a. Balance Sheet
 - b. Revenue and Expenditure Statement
 - c. Receipts and Payments Account (Cash Flow)
- 3 Ward Information Reports (section 9)
 - a. Revenue Statement
 - b. Expenditure Statement
 - c. Ward Works Information Statement
- 4. Management Information Reports (section 10)
 - a. Statement of Physical and Financial Key Performance Indicators (classified per Key Performance Area).
 - Service Cost Sheet for specific services provided by ULG

791

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No. 32/CM/2004

CABINET SECRETARIAT

EXTRACTS FROM THE MINUTES OF THE MEETING OF THE CABINET HELD AT 1700 HOURS, ON WEDNESDAY, THE 15TH DECEMBER, 2004, IN PANCHVATI, 7, RACE COURSE ROAD, NEW DELHI

Case No 273/32/2004

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Proposal for repeal of the 'Freedom of Information Act, 2002' and legislation of the 'Right to Information Act, 2004'.

The Cabinet considered the note dated 13.12.2004 from the Ministry of Personnel, Public Grievances and Pensions (Karmik, Lok Shikayat tatha Pension Mantralaya), Department of Personnel and Training (Karmik aur Prashikshan Vibhag) and

- (i) approved the proposals contained in paragraph 12 thereof with the modification that as far as creation of posts is concerned, the Issue will be examined in consultation with the Ministry of Finance; and
- (ii) Directed that a Group of Ministers may be set up to consider the Government amendments that may need to be made in the Bill.

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In accordance with the Rules of Procedure in Regard to Proceedings of the Cabinet (Rule 10), progress of action to implement the decision may be included in the Ministry's Monthly Summary for the information of the Members of the Council of Ministers

Action taken to implement the decision may be communicated to the Cabinet Secretariat with reference to the Implementation Schedule attached to the agenda note.

<u>Se</u>cret

MOST IMMEDIATE

Copy No. /2.

No. 483/3/3/2004-Cab. GOVERNMENT OF INDIA (BHARAT SARKAR) CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA) RASHTRAPATI BHAVAN

New Delhi, the 5th January, 2005 15 Pausa, 1926 (S)

Subject:

Constitution of a Group of Ministers to consider amendments in the proposed tegislation regarding 'Repeal of the 'Freedom of Information Act, 2002' and tegislation of the 'Right to Information Act, 2004'

The Cabinet, in its meeting held on 15th December, 2004, considered the note dated 13.12.2004 from the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training regarding Repeal of the 'Freedom of Information Act, 2002' and legislation of the 'Right to Information Act, 2004" and inter-alia directed that a Group of Ministers may be set up to consider the Government amendments that may need to be made in the 8III.

It has, accordingly been decided, with the approval of the Prime Minister, to constitute a Group of Ministers (GoM) with the following

Shri Pranab Mukhertee, Minister of Defence

Shrt Sharad Pawar,

Minister of Agriculture and Minister of Consumer Affairs. Food and Public Distribution.

Shri Shivraj V. Patil,

Minister of Home Affairs.

Shri S. Jaipal Roddy,

Minister of Information & Broadcasting and Minister of Culture.

Shri P. Chidambaram, Minister of Finance.

Shri H.R. Bhardwaj,

Minister of Law & Justice.

Shri Dayanidhi Maran,

Minister of Communications and Information Technology.

Shri Suresh Pachouri,

Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Parliamentary Alfairs.

The Group of Ministers will be serviced by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions.

> (K.L. Sharma) for Cabinet Secretary

Tele: 301 5802

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Shri Pranab Mukherjee, Minister of Defence. Shri Sharad Pawar, Minister of Agriculture and Minister of Consumer Affairs. Food and Public Distribution. Say Shiving V. Puri. Blacker of Home Affairs

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Shri S. Jaipal Reddy, Minister of Information & Broadcasting and Minister of Culture.

Shri P. Chidambaram, Minister of Finance.

Shri H.R. Bhardwaj, Minister of Law & Justice.

Shri Dayanidhi Maran, Minister of Communications and Information Technology.

Shri Suresh Pachouri, Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Partiamentary Affairs.

Copy forwarded for information to >-

Secretary to the President. Secretary to the Vice-President.

(K.L.\Sharma)
Deputy Secretary (Cabinet)

Copy also forwarded for information to the Principal Secretary to the Prime Minister.

(K.L. Sharma) Deputy Secretary (Cabinet)

Copy also forwarded, for information to .-

Secretary, Department of Personnel & Training.

Secretary, Department of Legal Affairs.

Secretary, Department of Expenditure.

Secretary, Legislative Department.

Secretary, Ministry of Parliamentary Affairs.

(K.L.\Sharma)
Deputy Secretary (Cobinet)

<u>*SKB *</u> 33 Copies.

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Conv No.

No. 34012/1(s)/2005-Estt.(B) Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training

New Delhi, dated the 3May, 2005

Minutes of the meetings of Group of Ministers held on 26th April, 2005 at 6.30 P.M. in Parliament House (Room.No. 9) and on 30th April, 2005 at 2.00 PM in South Block, New Delhi.

Present	
1.ShriPranab Mukherjee	Minister of Defence, CHAIRMAN
2. Shri Shivraj V.Patil	Minister of Home Affairs
3. Shri S.Jaipal Reddy	Minister of Information & Broadcasting and Minister of Culture
4.Shri P. Chidambaram	Minister of Finance
5 Shri H.R.Bhardwaj	Minister of Law & Justice
6.ShriDayanidhi Maran	Minister of Communications and Information Technology
7. Shri Suresh Pachouri	Minister of State in the Ministry of Personnel, Public Grievances and Pensions and Minister of State in the Ministry of Parliamentary Affairs.

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In Attendance

I. Shri A.N. Tiwari	Secretary, Ministry of Personnel, PG & Pensions
2. Shri T.K.Vishwanathan	Secretary, Legislative Department, Ministry of Law & Justice
3. Shri Z.S. Negi	Additional Secretary, Legislative Department Ministry of Law & Justice
4. Shri K.D. Singh	Additional Secretary, Department of Legal Affairs Ministry of Law & Justice
5. Shri Badal,K. Das	Establishment Officer & Addl. Secretary. Department of Personnel & Training
6. Shri R.S. Koli	Joint Secretary & LA, Department of Legal Affairs
7. Shri T. Jacob	Joint Secretary, Department of Personnel & Training
8. Shri S.R. Dhaleta	Addl. Legal Adviser, Legislative Department Ministry of Law and Justice

Subject:- Proposal for repeal of the 'Freedom of Information Act, 2002' and legislation of the 'Right to Information Act, 2004'.

The Cabinet in its meeting held on 15th December, 2004, while approving the proposal to introduce the 'Right to Information Bill, 2004', also directed that the Bill may be looked into by a Group of Ministers to consider the Government amendments that need to be made therein.

- 2. The Defence Minister took a meeting of the Group of Ministers on 26th April, 2005 at 6.30 PM. in Parliament House (Room,No.9) followed by another meeting on 30th April, 2005 at 2.00 PM in South Block (Room,No. 102). The Group of Ministers considered the Note dated 21th April, 2005 of the Department of Personnel and Training and examined the 'Right to Information Bill, 2004' in the light of the comparative position given in the Table provided in Annexure –VIII thereto.
- Taking into consideration the various constitutional, administrative and implementative aspects, the Group of Ministers <u>inter-alig</u> made following recommendations:-
 - (i) The Group of Ministers were of the view that the Parliament has the legislative competence to enact a Law on Right to Information in respect of all public authorities under the Central Government or the State Government (clause-2).
 - (ii) The Group also approved the proposal of the Department of Personnel and Training to insert in sub-clause after clause 7(3)(a) so as to provide that



(a) the fee shall be reasonable; and

- (b) Below Poverty Line families shall be provided information free of cost.
- (iii) In respect of categories of information exempt from disclosure under the bill (clause 8), the GOM recommended to retain the formulations made by National Advisory Council subject to security related information and Cabinet papers retaining an all time exemption from disclosure.
- (iv) The composition of selection committee for recommending members of the Central Information Commission provided (Clause 12) in the Bill, is as under :-

Prime Minister

: Chairman

ii) Leader of Opposition in Lok Sabha: Member

iii) Chief Justice of India

: Member

The GOM, however, recommended that a Minister nominated by the Prime Minister should be the third Member of the Committee in place of the 'Chief Justice of India'.

- As regards the penalty provisions (Clause 17 of the Bill), the (v) Group approved the revised formulation as under:-
 - (1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal, finds that the Central or the State Public Information Officer, as the case may be, has failed to provide information without any reasonable cause within the period specified under subsection (1) of section 7, the burden of proving that he acted reasonably and diligently shall be upon him and the Central Information Commission or the State Information Commission, may impose a fine of Rs.250/- for each day's delay in furnishing the information, subject to a maximum of Rs.25000/-, after giving the Central or State Public Information Officer, as the case may be, a reasonable opportunity of being heard.
 - (2) Notwithstanding anything contained in Section 20, where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central or State Information Officer, is persistently guilty of any misconduct under Sub-section (3) of this

clause, he shall file a complaint before a Judicial Magistrate of First Class, after giving the Central or State Public Information Officer, a reasonable opportunity of being heard.

- (3) Where it is found by a Judicial Magistrate of First Class that any Central or State Public Information Officer has
- Persistently failed to provide information without a reasonable cause within the period specified under sub-section (1) of section 7
- (ii) Refused to receive an application for information;
- (iii) Mala-fide denied a request for information;
- (iv) Knowingly given incorrect or misleading information;
- (v) Knowingly given wrong or incomplete information:
- (vi) Destroyed information subject to a request; or
- (vii) Obstructed the activities of a Public Information Officer, any Information Commissioner or the Courts; he would be guilty of misconduct under this sub-section and will be liable upon summary conviction to a fine of not less than rupees two thousand and not more than Rs.25000/- and an imprisonment upto one year or both.
- (4) Without prejudice to the sub-sections (1), (2) and (3), the Central Information Commission or the State Information Commission, as the case may be, may recommend for disciplinary action against the Central or State Public Information Officer, as the case may be, under the Service Rules applicable to him.
- (vi) Security and intelligence agencies are exempted (Clause 21) under the Bill from providing any information except in ease of allegations of corruption. The GOM, however, recommended as under:-
 - (a) The security and intelligence agencies should not be exempted from providing the information pertaining to the allegations of corruption and human rights violations;
 - (b) In case of allegations of violation of human rights, information shall be given with the approval of the concerned information. Commissioner and notwithstanding anything contained in Section 7, such information shall be provided within 45 days of the receipt of request.

4. The provisions formulated by Parliamentary Standing Committee in respect of other clauses of the Bill were also approved by the Group of Ministers with some modifications. A tabular statement of all recommendations of the Group of Ministers as regards each clause of the Right to Information Bill, 2004 is annexed.

(PRANAB MUKHERJEE) Chairman

DEPARTMENT OF LEGAL AFFAIRS

This relates to solicit the opinion of Learned Attorney General for India on the recommendation made by the National Advisory Council to make a provision in the Right to Information BIII, 2004 to provide the citizen the option to access (a) Central Information through the Central Right to Information Act: and (b) State Information either through the Central Act or the State Act should there be one.

- 2. It may be recalled that the National Common Minimum Programme of the United Progressive Alliance, inter alia, provides that the Right to information Act will be made more progressive, participatory and meaningful. In pursuance of this commitment the National Advisory Council (NAC) has proposed certain amendments to the freedom of Information Act, 2002. The NAC, inter alia, has also proposed to insert a sub-clause (4) in Section 1 of the Act, 2002 to provide that where a State Legislation, dealing with the right to access information, exists simultaneously, a citizen will have the right to seek information under the State law only if the information pertains to a subject under the State List in the Seventh Schedule of the Constitution of India. The said subclause (4) proposed in Section 1 of the Act was as under:-
 - "...Where State legislation exists dealing with the Right to access Information, a person will have the right to seek Information under the State Law as well as under this Act, if the information pertains to a subject under the State List in Schedule VII of the Constitution of India."
- 3. In regard to the above sub-clause (4) proposed by NAC in Section 1 of the Freedom of Information Act, 2002, it was stated by this Department vide note dated 09.12.2004 that 'the record maintained by the offices of the State Government would relate to the executive functions and that such executive functions may relate to legislative entries in List II (in State List). The subject of information including the public records maintained by the State Government offices, corporations, Government Companies and other bodies owned and controlled by the State Government would all relatable to those entries."
- 4. The Legislative Department had also examined the said proposal and it was on the view that if the competence to legislate on the access to information is derive from Entry 97 of LET of the Seventh Schedule to the Constitution, there can be only one Central Act which can be made applicable to both the information held by the Central Government as well as the State Government.
- 5. It may be recalled that in the course of drafting the freedom of Information Bill. 2000, a reference was made to the then Attorney General in 1998 seeking his opinion on the issue as to whether the Union Government has the legislative competence to enact a law on the proposed Freedom of Information Bill, 1997. The Learned Attorney General vide his opinion dated 14.10.1998 has opined that "the proposed Freedom of Information Bill, 1997.

does not fall oither in List II or List III. Consequently, It is fully within the leaklative competence of Parliament and would be covered. by the residuary Entry 97." The said opinion of the then Attorney General for India was also examined in this department and vide note dated 27.10.1998 it was stated that \sim

> " ...information about a subject in List () or ()), which is administered by the State Government. would relate to that subject, and may not be said to be not covered by it. A subject in the State Ust would cover all aspects including records, maintenance : of disclosure Information, etc. In other words, the information would also naturally flow from the particular subject of legislative entry in the State List. It would be for the State Government to see whether any information should be disclosed in respect of their public records and if so, to what extent. It would be over stretching to take a view that information relatable to subjects mentioned in the State tist would not be covered by such subjects.

> It is understood that some of the States have already enacted laws on freedom of information in respect of their public records. If a view is taken that the information relatable to State subjects is covered by a residuary entry 97 of the Union List, competence of State Legislatures for enactment of those laws may become questionable. It appears to us that competence of State Legislatures cannot be doubted for enacting law in respect of public records of the State Governments. Parliament's competence to make laws in respect of the records of the State Governments may be open to question."

The then Hon'ble MLI had approved the above view of this Department. Thereafter the opinion of Ld. Attorney General for India was forwarded to the DOP&T along with our above said views.

Since, the legal position on the tegislative competence of the Central Government as well as of the State Government on the subject of right to information is emphatically clear and there is no doubt on the competence of the State Governments to enact a law on the subject. Accordingly, we may not consider it appropriate to trouble the Ld. Attorney General for India for opinion in the matter.

May kindly see.

Joint Secretary & Legal Adviser

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sweeping, giving an impression of denying practically all information to the public despite the evowed intention of right to information. It was suggested that the draft Bill should spell out items where the supply of information was mandatory, and areas where a citizen would have right to seek and get information.

- Accordingly, a draft positive list has to be prepared, which is sought to be included in one of the schedules to be appended to the Bill. The positive list would contain items, such as copies of land records, the list of beneficiaries under various developmental schemes at village level, proceedings of Gram Sobbas, details of charges and fee for various civic services, copies of monthly crime report, etc.
- Secretaries recently, a doubt was expressed that since the positive list would include items listed under List II (State List) of the Seventh Schedule to the Constitution, the proposed Bill might appear to be falling outside the legislative compotence of Parliament. Another view that was expressed was that if the doctrine of 'pith and substance' was applied and the item did not come under List II or List III of the Seventh Schedule to the Constitution, then it would come under Entry 97 of List I, in respect of which the Parliament was competent to legislate. It was accordingly decided that the opinion of the Attorney General in the matter would be solicited. For the sake of convenience of the learned Counsel, the relevant constitutional provisions are being indicated in the subsequent paras.
 - 6. According to Art. 1 of the Constitution, India in a union of States. Our Constitution provides for a Federal

STATEMENT OF CASE

examining a proposal to introduce a Bill, namely, the Preedom of Information Bill, in the Parliament. The proposal contained in the draft Bill seeks to provide freedom to every citizen to secure information under the control of public authorities, consistent with public interest. The proposal is sized at promoting openness, transparency and accountability in administration. The draft Bill also contains a list of items, information in relation to which will be exempt from disclosure. A copy of the draft Bill is enclosed at Annexure—I.

- Under the draft Bill every public authority shall 2. appoint one or more Public Information Officer who will deal with requests for information. Public authority has been defined as any authority or body established or constituted by or under the Constitution, or by any law made by the appropriate Government, and includes any other body owned, controlled or substantially funded by the Covernment. Appropriate Government in relation to a public authority, has been defined as the Central Government or a State Government, as the case may be. Thus the proposed Bill will cast an obligation on any public authority whother coming under the Central Covernment or a State Government, to provide information subject to other provisions of the Bill. The Bill is pased on the Report of the Working Group on Right to Information end Promotion of Open and Transparent Government, a copy of which is placed at Annexure-II.
 - as folt that the proposed exemptions appeared too large and

System of Government. Every Federation requires a division of powers between the Federal Government and the States. In our Constitution, this has been effected by Part XI dealing with 'Relations Between the Union and the States'. While Articles 245 to 255 deal with distribution of legislative powers, the administrative relations between the Union and the States is dealt with in Articles 256 to 261.

7. Art. 246 deals with the distribution of legislative powers as between the Union and the State Legislatures with reference to the different Lists in the Seventh Schedule. The provisions of this Article are extracted below for the sake of convenience:

*246. Subject matter of laws made by Parliament and by the Legislatures of States -(1) Notwithstanding enything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

- (2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legisloture of any State wise, have power to make lowe with respect to any of the metters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List".)
- (3) Subject to clouses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with

respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

As per the above scheme, the Union Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II and has concurrent power with respect to matters included in List III. Further, Article 248 dealing with residuary powers of legislation reads as follows:

- *(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.
- (2) Such powers shall include power of making any law imposing a tax not montioned in either of these Lists"

Entry 97 of List I (Union List) also reads as

under:

"Any other matter not enumerated in List II or List III including any tax not mentioned in

either of those lists."

As would be clear, if an item does not relate to any of the matters enumerated in List II or III, it will come under Entry 97 of List I. Consequently, Parliament alone will be competent to make low on such a subject.

- 8. It follows from the above that the Parliament would be competent to make law in relation to a subject covered by List I or List II. Similarly, the State Legislature would be competent to make law in relation to a subject falling in List II or List III. So far as the power of the State Legislature in relation to a satter contained in List III is concerned, the same would be subject to law made by Parliament.
 - The Supreme Court has held that various entries in the three Lists are not 'powers' of legislation, but 'fields' of legislation. The power to legislate is given by Art. 245, and other Articles of the Constitution [AIR 1962 SC 1044 Calcutta Gas Company v State of Hest Bengal: (1970) 1 SCR 4797 Barakchand v. Union of India: (1971) 2 SCC 779 Union of India v Dhillion). The Supreme Court has also held that the language of these entries should be given the widest scope of which their meaning is fairly capable because they set up a machinery of Government ((1995)) SCR 1071 Dhunichand v. Dhuwalka Bros: AIR 1957 SC 459 Sri Ram v. State of Domocy: AIR 1965 SC 1387 Samuari v. WTO). Each general word should, accordingly, se held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it ((1955) 1 SCR 1285 Hans Huller v. Superintendent: ATR 1963 SC 1667 Ram Kizhan v. State of Biharl. The doctrine of videst possible interpretation of a legislative entry would not, however,

onable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an Entry (AIR 1965 SC 1975 Navnit Lai v. K.K.Sen, A.A.C of IT).

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- 10. It may be apt to point out at this stage that the executive power of the Union is co-extensive with its legislative power (Art. 73). Similarly, the executive power of the State is co-extensive with its legislative power (Art. 162).
- 11. Now, under the draft Bill, both the Central Governments as well as the State Governments will be obliged to make information available in respect of their respective executive functioning. So far as the State Government is concorned, its executive function would relate to the legislative entries in Lists II and III. As has already been indicated, a legislative entry has to be given widest interpretation so as to include all ancilliary and subcidiary matters. It is possible to take a view that the obligation to provide information in relation to an executtive function would be covered under the corresponding legislative entry being an ancillary or subsidiary matter. If the view is accepted, then only the State legislature would be competent to enact a law on the subject, in respect of an item included in List.II. So for as an executive function corresponding to an entry in list III is concerned, if the field is occupied by a Parliamentary legislation, them Parliament would be competent to enact a law regarding right to information in respect of that matter. Otherwise, the State Legislature only will have power to provide for right to information. So far as Parliament is concerned. It can make law in respect of an administrative function corresponding to an entry in List I or List III.

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- AS regards residuary power of Parliament, the Supreme Court has, in H/s. International Tourist Corporation v. State of Baryana [AIR 1991 SC 74] held that before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislation sust be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III. The residuary power cannot be so exclusively incorporated as to whittle down the power of the State Legislature.
 - oxecutive functions of the States are concerned, the power to enact a law on Right to Information could be clearly traced to the legislative entries in List II & III. As such, no occasion to invoke the residuary power of Parliament would arise. Parliament can, however, make law on right to information in relation to matters included in List I and those matters in List III in respect of which a law made by Parliament is already in existence.
 - 14. The question relating to the competence of Parliament was also considered by the Working Group on Right to Information and Promotion to Open and Transparent Government. The Group was of the view that since the subject matter of eight to information was not included in any of the untries in list II of the Seventh Schedule, it would be covered by Entry 97 of List 1. This may be seen in para 3.4 of the Report of the Working Group. The Department of Administrative Reforms and Public Grievances has also written a letter to this Department, drawing attention, inter alia, to the above reference in the said Report and to the Bill on

right to information, of the Press Council of India. It has been stated that while drafting the hill, Justice F.V. Sawant took a clear view that Parliament alone had the legislative competence to enact a legislation on freedom of information. The Department of Administrative Reforms and Public Grievances has requested that the contents of their letter may also be brought to the notice of the learned Counsel. Accordingly, a copy of the letter is placed at Amberure-III. It may be pointed out in this connection that the proposal to draw up a positive list covering the State subjects was not considered by the Working Group.

- 15. So far as the doctrine of 'pith and substance' is concerned, it means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it, then it cannot be neld to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. As has already been explained above, the administrative functions performed by the State Governments relate to matters included in List II and III. The disclosure of information in respect of those matters would be ancilliary or subsidiories to those legislative entries. As such, the State Legislatures alone would be competent to enact law on 'Right to Entry 97 of List I would not give Information' on them. incidental powers to Parliament to encroach upon the above right of the State Legislatures. As such, the doctrine of 'pith and' substance' does not appear to be applicable in this case.
 - 16. In the light of the above, the opinion of the learned Counsel is solicited on the following:-
 - Whether, in pursuance of Entry 97 of List I,
 Parliament would be competent to make a law on

'Right to Information' casting obligations on the State Governments to make disclosure in respect of the information maintained by their offices concerning functions performed by them. Which are relatable to Entries in List II and III?

- (11) Whether the State Legislatures are competent to enact law on 'Right to Information' in respect of the information maintained by the offices under the State Governmenta?
- (iii) Whether the proposed positive list can be validly incorporated in the law to be enacted by Parliament? and

(10) Generally.

New Delhi, 7th July, 1998 (A. SINNA) JS(A) & LA



PARLIAMENT OF INDIA RAJYA SABHA

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DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

THIRD REPORT

ON

THE RIGHT TO INFORMATION BILL, 2004

(PRESENTED TO THE RAJYA SABHA ON 21⁵¹ MARCH, 2005) (LAID ON THE TABLE OF THE LOK SABHA ON 21⁵¹ MARCH, 2005)

RAJYA SABHA SECRETARIAT NEW DELHI MARCH, 2005/ PHALGUNA, 1926 (SAKA)

PARLIAMENT OF INDIA RAJYA SABHA

DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

THIRD REPORT

ON

THE RIGHT TO INFORMATION BILL, 2004

(PRESENTED TO THE RAJYA SABHA ON 21ST MARCH, 2005) (LAID ON THE TABLE OF THE LOK SABHA ON 21ST MARCH, 2005)



RAJYA SABHA SECRETARIAT NEW DELHI MARCH, 2005/ PHALGUNA, 1926 (SAKA)

CONTENTS

PAGE COMPOSITION OF THE COMMITTEE (i) 2. INTRODUCTION (ii) -(iii) 3. REPORT 1-37 *4. RELEVANT MINUTES OF THE MEETINGS OF THE COMMITTEE ANNEXURES: " (i) The Right to Information Bill, 2004 (As introduced in Lok Sabha); ^{5.} (ii) List of the witnesses who appeared before the Committee; ¥ (iii) A comparative tabular statement showing the provisions of the Freedom of Information Act, 2002, the recommendations made by the National Advisory Council (NAC) and the provisions of the Right to Information,

Views/suggestions of individuals/organisations on the Right to Information Bill, 2004 and comments of Government thereon, and

(v) The Right to Information Bill, 2004 as amended by the Committee.

Bill, 2004;

To be appended at printing stage.

COMPOSITION OF THE COMMITTEE (2004-05)

Shri E.M. Sudarsana Natchiappan — Chairman

RAJYA SABHA

- 2. Dr. Radhakant Nayak
- Shri Balavant alias Bal Apte
- Shri Ram Nath Kovind
- Shri Varinder Singh Bajwa
- Shri Ram Jethmalani
- Dr. P.C. Alexander
- Shri Tariq Anwar
- Shri Raashid Alvi
- Vacant

LOK SABHA

- 11. Dr. Shafiqurrahman Barq
- 12. Smt. Bhavani Rajenthiran
- Shri Chhatar Singh Darbar
- Justice (Retd.) N.Y. Hanumanthappa
- Shri Shailendra Kumar
- Smt. Kiran Maheshwari
- Shri Dahyabhai V. Patel
- Shri Brajesh Pathak
- Shri Harin Pathak
- 20. Shri V. Radhakrishnan
- 21. Shri Vishwendra Singh
- Shri Bhupendrasinh Solanki
- 23. Prof. Vijaya Kumar Malhotra
- Kumari Mamata Banerjee
- Shri S.K. Kharventhan
- Shri Shriniwas D. Patil
- 27. Shri A.K. Moorthy
- 28. Shri Ramchandra Paswan
- Vacant
- 30. Vacant
- Vacant

SECRETARIAT

Shri Tapan Chanterjee, Joint Secretary Shri Surinder Kumar Watts, Deputy Secretary Shri H.C. Sethi, Under Secretary Shri Vinoy Kumar Pathak, Committee Officer

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INTRODUCTION

I, The Chairman of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice having been authorized by the Committee to present the Report on its behalf, do hereby present this Third Report on the Right to Information Bill, 2004.

- 2. In pursuance of the rules relating to the Department Related Parliamentary Standing Committees, the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha referred* the Right to Information Bill, 2004 as introduced in the Lok Sabha on 23rd December, 2004 for examination and report.
- 3. The Committee considered the Bill in five sittings held on the 1st, 14th and 16th February and 1st and 2nd March, 2005.
- The Committee heard the oral evidence of the Secretary, Ministry of Personnel, Public Grievances and Pensions in its sitting held on 1st February, 2005.
- 5. The Committee heard the views of the prominent NGOs and eminent experts on the Bill (Annexure-I) in its sittings held on 14th and 16th February, 2005.
- 6. In its sittings held on 1st and 2st March, 2005 the Committee took up clause-by clause consideration of the Bill.
- 7. In its sitting held on 16th March, 2005 the Committee considered the draft report on the Bill and adopted the same.
- 8. In the said sitting, the Committee also decided that the evidence tendered before it may be laid on the table of both the Houses of Parliament.
- 9. In the course of its deliberations, the Committee has made use of the background note on the Bill received from the Ministry of Personnel, Public Grievances and Pensions; similar legislations of various States of India and foreign countries; suggestions received from organizations/experts; comments of the Ministry on the views received from organizations/experts; queries raised by the Members on the Bill in the meetings, the Freedom of Information Act 2002; 78th Report of the Committee on Home Affairs on the

Freedom of Information Bill, 2000 and recommendations of the National Advisory Council (NAC) proposing amendments to the Bill.

- For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the
- On behalf of the Committee, I would like to acknowledge with thanks the contributions made by experts/organizations who deposed before the Committee and submitted their valuable suggestions on the Bill.

E.M. SUDARSANA NATCHIAPPAN

Chairman

NEW DELHI: March 16, 2003

Committee on Personnel, Public Grievance Law and Justica

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REPORT

1. Worldwide trend to promote freedom of information:

It is being recognized globally that public participation in the democratic and governmental process is at its meaningful best when citizens have adequate access to official information. This access lays the foundation for good governance, transparency, accountability and participation. This realization has found expression with over fifty-five countries having enacted their comprehensive laws that protect the right to information and many more countries are coming forward to enact specific legislations in pursuit of this objective. Sweden, Australia, Canada, New Zealand, Beliez, Pakistan, South Africa, Trinidad and Tobago, United Kingdom, Zimbabwe, Jamaica and USA are among the countries exhibiting their Governments' commitment to open governance through legislative measures guaranteeing citizens access to information.

Campaign for the right to information in India

2.1 India too is not left behind in the race. Growing realization for open governance and assured access to information has brought it on the world map. Eight States namely, Maharashtra, Tamil Nadu, Rajasthan, Karnataka, Jammu and Kashmir, Assam, Goa and Madhya Pradesh have already

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building a more dynamic and prosperous society by involving people in governance and decision making process. Not only this, the Supreme Court of India has, from time to time, interpreted article 19 which upholds the right to freedom of speech and expression, to implicitly include the right to receive and impart information. The Supreme Court's judgement in S.P. Gupta v/s Union of India (AIR 1982 SC 149) reinforced the right information by stating:

"The citizens have a right to decide by whom and by what rules the shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability in that the people should have information about the functioning of the government... The concept of open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guarantees.

Article 19(1)".

2.2 Despite this, a demand for an 'access to information taw', at the central level, grew extensively. There had been relentless efforts and man mobilization in favour of a comprehensive Central Act providing access to

information regimes. It also became necessary to protect the fundamental right by some legal mechanism. The campaign started by some prominent social groups like Mazdoor Kisan Shakti Sanghathan (MKSS) and the National Campaign for People's Right to Information, took concrete shape when in January, 1997 the Government set up a Working Group on "Right to Information and Transparency" under the chairmanship of Shri H.D. Shourie to examine the feasibility and need for a full-fledged law. Chief Ministers Conference held in Delhi in 1997 on 'Effective and Responsive Government' recognized the importance and approved the Thereafter, for greater deliberations, a statutory scheme was scheme. circulated to the States/Union Territories and the Ministries of Govt. of India who submitted their report with constructive suggestions and comments. The report of the Working Group together with the responses was placed before the Committee of Secretaries, which broadly endorsed the legislative proposal subject to certain modifications. Finally, the draft Bill was submitted to the Group of Ministers prior to approval of the Cabinet. The Cabinet approved the proposal in its meeting held on 13th May, 2000. Thus, the legislative process which passed through the different levels concretised in the form of Freedom of Information Bill, 2000,

Freedom of Information Bill, 2000:

- 3. The Freedom of Information Bill, 2000 was introduced in the Lok Sabha on 25th July, 2000. The Bill was referred to the Parliamentary Standing Committee on Home Affairs for examination and report on 14th September, 2000.
- 4. In order to live up to the ideals reflected in the commitment to the right to information, the Bill laid emphasis on the following features contained in us 21 clauses:-
 - (i) Right to information to all citizens of the country;
 - (ii) Access to information held by or under the central as well as the State Governments and local bodies;
 - (iii) Obligation on every public authority to provide information and publish all records at regular intervals;
 - (iv) Exemption from disclosures; and
 - (v) Appellate mechanism to deal with the cases of defaults in providing information.
- 5. The Committee on Home Affairs presented its report to Parliament on 25th July, 2001 recommending some changes/modifications in that Bill. The Itil. was massed by Parliament in December, 2002 and got assent of the President of 6th January, 2003.

6. The vigorous campaign for bringing out a central legislation has seen only partial success as the Act had not been brought into force, as according to the Government, the basic infrastructure required for its operationalisation had not been fully established. Meanwhile, there had been growing apprehensions that the Act in many respects fell short of the aspirations and expectations of the people. The Government had reportedly received a number of representations from people/civil society/groups pointing out the key issues needing modifications so that the information access right of citizens were fully realized and the legislation truly achieved its objectives.

Need for an improved legislation:

National Common Minimum Programme (NCMP) inter-alia declared that it would strive for a corruption free, transparent and accountable governance. The NCMP envisaged enactment of a more progressive, participatory and meaningful law in place of the Freedom of Information Act, 2002. In pursuance of the above commitment, the Government assigned to the National Advisory Council (NAC) the task of suggesting constructive changes in the Act of 2002. The NAC based on the inputs received from several NGOs, social group and experts, proposed some 35 amendments to the Freedom Information Act, 2002 to ensure: -

- Maximum disclosure and minimum exemptions consistent with the constitutional provisions;
- (ii) Independent appeal mechanism;
- (iii) Penalties for failure to provide information as per the law, and
- (iv) Effective mechanism for access to information and disclosure by authorities.
- 8. The amendments proposed by NAC were examined comprehensively by the Government and certain provisions suggested by the Council were modified keeping in view legislative, constitutional and administrative requirements. Considering that the changes envisaged were extensive, a nach also been decided to enact a new legislation on the subject and simultaneously repeal the existing Freedom of Information Act, 2002. In furtherance thereof the Right to information Bill, 2004 was introduced in the Lok Sabha on 23rd December, 2004.
- 9. As per the Statement of Objects and Reasons appended to the Bili, to important changes proposed to be incorporated inter-also memorestablishment of an appellate machinery with investigative powers to review decisions of the Public Information Officers', penal provisions for faiture to provide information as per law, provisions to ensure maximum disclosur and minimum exemptions consistent with constitutional provisions and at

effective mechanism for access to information. The Statement of Objects and Reasons also reassured that the proposed legislation would provide an effective mechanism/frame work for effectuating the right to information recognized under article 19 of the Constitution of India.

Deposition of the Secretary, Ministry of Personnel, Public Grievances and Pensions

10. The Secretary, Ministry of Personnel, Public Grievances and Pensions in his deposition before the Committee stated that the Bill made provisions for designation of Public Information Officers within 100 days of the enactment of the Act and such officers would be under the Ministries/Departments of Government of India Making distinction between the Freedom of Information Act 2002 and the present Bill, the Secretary stated that there was a definitiveness as to when action would be taken to create the required infrastructure for the implementation of this Act. There was a provision for transfer of a request by a public authority to another public authority wherein the subject matter/information was held by the latter. As per the Bill, exemptions provided in clause 8 of the Bill were not absolute and withholding of information must be balanced against disclosure in the public interest. All the exemptions were conditional and were weighed against disclosure in public interest. Clarifying the issue further, the Secretary stated that information was to be released if the public benefit in disclosing the information outweighed the harm that might be caused by such disclosure.

10.1 He further stated that the Bill envisaged creation of an independent non-judicial appellate machinery in the form of the Central Information Commission comprising an Information Commissioner and ten Deputy Information Commissioners to decide the second appeals. The tental Information Commission was to monitor the implementation of the Act and prepare an Annual Report to be laid on the table of both the Houses of Parliament.

10.2 On being asked why the Freedom of Information Act, 2002 was sought to be repealed and replaced by the Right to Information Bill, 2004, despite so much efforts put in the past to give it legislative shape, the Secretary replied that the number of amendments suggested by the NAC to the Freedom of Information Act, 2002 were quite elaborate. Therefore was becoming very difficult to incorporate so many amendments in the second both cosmetic and substantive. Therefore, it was decided in consultation with the Department of Legal Affairs and Legislative Department that perhaps a better alternative would be to bring in a new Bill incorporating all those amendments rather than to amend the Act comprehensively.

Broad suggestions/recommendations made by the National Advisory Council (NAC):

- Advisory Council (NAC) laid the foundation for repealing the Freedom of Information Act, 2002 (hereinafter referred to as Act of 2002) and introduction of the Right to Information Bill, 2004 (hereinafter referred as the Bill) in the Lok Sabha. As informed by the Ministry, the suggestions of the NAC based on the public inputs were considered by the Government and substantive recommendations were incorporated in the proposed legislation. Some important recommendations of the NAC alongwith analysis of those issues in the Act of 2002 and the Bill are as follows:-
 - (i) The Bill should prescribe a period of 120 days within which the

 Act would come into force. In the Act of 2002, no time limit

 was specified for its commencement. It was left to the

 discretion of the Central Government to decide the date of

 commencement. In the new Bill, however, the recommendation

 of the NAC has been incorporated
 - (ii) As in the Act of 2002, applicability of the Bill should be expanded to the State Governments also. Provisions of the Bill

- at present are applicable to the Central Government and the bodies under its control.
- (iii) Definition of 'Right to Information' should be modified so as to cover some more categories therein. The Bill has incorporated the suggestion. The Act of 2002, however, had narrower definition of the term.
- States, Panchayati Raj Institutions and other Local Bodies. The Act of 2002 has a provision by and large of the similar nature.

 But the Bill restricts its applicability to the Central government or Bodies controlled and owned by it.
- (v) Right to information should be conferred on all persons The
 Bill restricts the right to citizens only.
- (vi) Information should be published within six months of the Act coming into force and thereafter be updated at least and twelve months. The Act of 2002 requires information to published at intervals to be prescribed by the non-low act of Government. The Bill, however, provides for publication of information before the commencement of the Act.

- (vii) Public Information Officers should be designated within one month of the enforcement of the Act. The Bill prescribes one hundred days from its enactment for appointment of Public Information Officers. The Act of 2002 does not fix any time limit for the purpose.
- (viii) Information seekers should have liberty to request in the official language of the area to make access procedures simple. The Act of 2002 does not give this liberty. The Bill incorporates the suggestion.
- (ix) The fee payable by the applicant for seeking information should be reasonable and should in no case exceed the actual cost of copying the information. Neither the Act of 2002 nor the Bill contains any such provisions.
- (x) Information Commissioner should impose a penalty of rupees two hundred fifty for each day's delay in furnishing the information. The Act of 2002 does not have penal provisions. The Bill does not empower the Information Commissioner to impose penalty on the delinquent Public Information Officer.
- (xi) Offences should be comprehensive and detailed and should include:

- (a) Refusal to receive an application for information.
- (b) Malafide denial of a request for information;
- (c) Knowingly giving incorrect, wrong or meomplete information;
- (d) Destroying information;
- (e) Obstructing the activities of a Public Information Officer and any Information Commissioner or the one of the Bill does not provide for the comprehensive detail of offences. It provides penalty merely for percentage delay in supplying information.
- (xii) There should not be blanket exemption for intelligence and security agencies. Information should be released where it pertains to allegations of human rights violations besides the allegations of corruption. Proviso to sub-clause (1) of clause 21 of the Bill does not cover allegations of human right violations.
- 11.1 A comparative tabular statement showing the provisions of the Provisions made of the National Advisory Council and the provisions of the Right to information Bill, 2004 is appended as Annexure.....

Oral evidence

- 12.1 The Committee in its meeting held on the 1st and 2nd March, 2005 heard Ms. Aruna Roy and other representatives of Mazdoor Kisan Shakti Sangathan (MKSS); National Campaign for People's Right to Information (NCPRI), eminent social activist Shri Anna Hazare and Shri Prakash Kardley, Ms. Maja Daruwala, Director, Commonwealth Human Rights Initiative (CWHRI) Delhi; and other representatives, Dr. Jean Dreze, Professor, Centre for Development Economics, Delhi School of Economics; Eminent Supreme Court Advocate and former Law Minister Shri Shanti Bhushan; Shri Shailesh Gandhi, Fellow, Indian Institute of Management, Ahmedabad and Dr. Jaiprakash, Convener, Lok Satta. The Committee also received several written suggestions from different groups, organizations and individuals on the provisions of the Bill.
- 12.2 The suggestions/views put forward by the organizations/individuals and the witnesses who deposed before the Committee are summarized below:-
 - (i) The Bill should have a preamble to clearly state the scheme and scope of the law so as to be consistent with the principles of democracy and ideals of the Constitution;

- (ii) The applicability of the Act should not be restricted to citizens but should cover non-citizens as well;
- (iii) The Bill should not only apply to the Central Government and bodies owned or controlled by it but be extended to the States. Local Bodies or Authorities;
- (iv) The definition of 'Government' as provided in clause 2 (constant) should be amended to ensure its consistency with the definition of 'public authority' in clause 2 (g),
- (v) The information regime should be extended to private sector.
- (vi) All political parties, MLAs/MPs/Ministers and such other public representatives should be included in the category of 'public authorities' under the Act;
- (vii) There should be no provision for paying fee at the time of making a request for information;
- affordable and should in no case exceed the actual cost of supplying the information. There should be a provision or waiving the fee in case the information is in the larger public interest.

- (ix) To bonour the spirit of the rule of maximum disclosure and minimum exemption, the Bill should make suitable provisions that information related to security, sovereignty and integrity of India, relations with foreign countries/states and cabinet papers etc. as exempted under sub-clauses (a) (i) of sub section (1) of clause 8 should not be an all time exemption;
- (x) The exemptions should be qualified with a strong public interest override, in the sense that the citizens should have access to information about the exempted agencies, their policies, personnel etc. so far the information relates to corruption and issues of public interest;
- (xi) Clause 11 of the Bill lays down procedure for seeking third party information. This clause, by its nature, provides the Public Information Officer and the third party an opportunity to deny information on the ground of confidentiality. It should, therefore, be deleted;
- (xii) Clause 12 to 15 of the Bill provide for constitution of the Centre Information Commission, appointment of Information Commissioners and Deputy Information Commissioners, their terms of offices and powers and functions etc. This is the

information will depend on effectiveness of this system. In should therefore be ensured that the Commission and its functionaries perform their duties independently and with complete autonomy. For this, it is necessary to elevate their status to that of the Election Commission of India. Moreover their appointment criteria should include elements like integrity, transparency and accountability;

- (xiii) There should be a provision clarifying that the information Commissioner can hear appeal where an applicant has received no response to an appeal under sub-clause (1) of clause 16:
- (xiv) Sub-clause (1) of clause 16 should be amended to provide that the appeals should be made to the head of the public authority who can delegate this power to a subordinate functionary;
- impeded, sub-clause (10) of clause 16 should be amended provide that the procedure for deciding an appeal the Commission should be prescribed by the Commission should be prescribed by the Commission instead of the Central Government.

- (xvi) Clause 17 providing penalty for delay in supplying information needs to be amended suitably as it does not prescribe the adequate punishment. Sub-clause (1) of the clause should be amended so as to recognize the more acts of 'omission or commission' as offences for the purpose of imposing penalties;
- (xvii) The Commission should be authorized to initiate legal proceedings against the delinquent officer through one of its officers instead of through an officer of the Central Government;
- (xviii) An explicit provision should be made to empower the appellate authority including the Information Commission to impose all penalties available under the law;
- (xix) Clause 17 should be amended to provide a penalty of Rs.250/for per day's delay against the defaulting Public Information Officer beyond the stipulated deadline and disciplinary action like suspension and dismissal at the departmental level;
- (xx) Clause 20 providing bar on jurisdiction of Courts should be deleted as it is both unconstitutional and inconsistent with the right to appeal to the High Court;

- proviso to the sub-clause be amended so as to include therein the information pertaining to human right violations. This clause, otherwise gives blanker exclusion to the intelligence and security agencies from application of the Bill; and
- (xxii) Provision should be made in the Bill to remove difficulties in functioning of the proposed legislation.
- 12.3 The views/suggestions received from organizations/individuals of witnesses were forwarded to the Ministry of Personnel, Public Grievante and Pensions for comments. The views/suggestions in brief and comments of the Ministry are appended as Annexure......
- 12.4 The Committee is of the view that the amendments/suggestions received on the Bill form an important part of the legislative process as they give an idea as to how to make the formulations better and more effective. In this endeavour, many suggestions, not incorporated in the Bill, need consideration by the Government so that the Bill, can squameet its objects.

Clause-by-clause consideration

14. The Committee took up clause-by-clause consideration of the \mathbb{R}^n , its meetings held on the \mathbb{R}^n and 2^{nc} March, 2005

- 14.1 The clause defines the various terms used in the Bill
- 14.2 Sub-clause (c) of the clause defines the term 'government' as follows:-

"Government in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or a Union Territory Administration, means the Central Government".

- 14.3 The Committee noted that the above definition of the term 'Government' restricts the right to access information to the subjects held by or under the public authority owned or controlled by Central Government, whereas the Freedom of Information Act, 2002 had an all India applicability covering State Government under the definition. The Committee also noted that eight states have already enacted specific laws protecting this right. The Committee considered the recommendation of the NAC which had also supported the idea of all India applicability of the Bill much on the pattern of the Act of 2002.
- 14.4 The Committee held detailed discussion on this issue and heard the views/suggestions of prominent NGOs, social groups, experts and individuals and came to the conclusion that the proposed Right to

Information Bill, 2004 assumed paramount importance as a was stated in the a touchstone for democracy and development. Not only that, by passing this legislation, India would join the world community having legislations guaranteeing access to information

- 14.5 The Committee is, therefore, of the view that passing a law with all India applicability will send a positive signal and would squarely serve the purpose of the proposed law.
- 14.6 Subject to the observations of the Committee in the foregoing paras, it suggests that sub-clause (c) should be amended in such manner as may bring the states and local bodies or authorities under its purview.
- 14.7 The Committee recommends that in sub-clause (k), the words 'and includes a public authority' should be <u>deleted</u> as one government body should not be considered a third party in respect of another government body.
- 14.8 The clause is adopted as amended.

Clause - 3

- 15. The clause confers the right to information on all citizens
- 15.1 The issue who can access information triggered an animated debate.
 Witnesses in their deposition favoured the idea of extending the coverage of

the law to all persons. Examples of some foreign jurisdictions were placed before the Committee, which permit the right to access to be exercised by all persons.

15.2 The Committee took note that the Act of 2002 gives the access right to the citizens only. Not only this, the fundamental rights enshrined in the Constitution are exercisable by citizens and not by all. After some discussion, the Committee favoured retention of the provision.

15.3 The clause is adopted without any change.

Clause - 4

- 16. The clause requires public authorities to maintain information within a reasonable time and publish it before the commencement of the Act. The information to be published under the Act has been categorized widely to cover a broad spectrum of information. The clause also provides for suo motu information through various means of communication.
- 16.1 The Committee sought clarification from the representatives of the Ministries of Personnel, Public Grievances and Pensions and Law and Justice with regard to the expression 'within reasonable time' used in sub-clause (1) as it had apprehension that the expression could be lead to undue delay in maintaining the records. Similarly, the Committee desired to specify a time limit in sub-clause (1) (b) to publish information. It observed

Secretary, Ministry of Personnel clarifying the position explained the fixing a time limit may delay the process rather than to expedite it. The idea according to him was to put information regime in place by the time the Act came into force.

16.2 The Committee bowever recommend that in sub clause (b) 'with the words, 'recipients of' should be inserted after the words' particulars of'.

authority to publish information before the commencement of the Act and thereafter update these publications at such intervals as may be prescribed, leaves wide discretion to the authority, which may lead to delay in providing the latest and updated information to the public. It, therefore, suggests that the clause should be amended in such manner as may specify the time for updating publication of information therefore, suggests that in sub-clause (b) after item (xvii) for the ways and thereafter update these publications within such intervals in the clause and thereafter update these publications within such intervals in the clause are as may be prescribed the words and thereafter update these publications within such intervals in the clause are publications every year's should be substituted.

- 16.4 The Committee recommends that in sub-clause (2) after the word 'communications' the words 'including internet' should be inserted.
- 16.5 The clause is adopted as amended.

- 17.1 The clause lays down the procedure for designation of Public Information Officers within one hundred days of the enactment of this Act.
- 17.2 The Committee considered the provisions contained in subclauses (4) and (5) and felt that these may do more harm than good. It therefore, recommends that the sub-clauses should be deleted.
- 17.3 The clause is adopted as amended.

Clause – 6

- 18.1 The clauses prescribes the procedure for obtaining information from the Public Information Officers.
- 18.2 The clause is adopted without any change.

Clause - 7

- 19.1 The clause provides for disposal of request of applicants by the Public Information Officers as per the procedure prescribed.
- 19.2 The Committee notes that the Public Information Officer is to provide the information on payment of such fee as may be prescribed or any further fee representing the cost of providing the information. The clause thus

allows the Public Information Officer to use discretion in determining the fee structure to access information. The Committee in this regard considered the views expressed by the witnesses and other suggestions received on the Billi from a wide cross section of the society, strongly arguing in favour of reasonable and affordable fee not exceeding the actual cost of supplying the information to the requester. It was also debated that if payment of fee causes financial hardship then it may invite serious obstacion in implementation of the Act.

- 19.3 Clarifying the position in this respect, the Ministry of Personnel. Public Grievances and Pensions has explained that in many jurisdictions across the world the factors which go to determine the fees to be charged for providing the actual information also include search charges, charges for preparing the documents for supply etc. The Bill however does not contain any provision for levying search charges etc.
- 19.4 The Committee is of the view that in a country like India whom a majority of the people are poor or belong to rural areas, it will not be in the fitness of thing to insist on payment of fee, which is beyond the reach of a commoner. The Committee strongly feels that people living below the poverty line should be exempted from paying any fee for accessing information and in other cases it should not exceed the actual cost of

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supplying the information. The Committee, therefore, recommends that provisions should be inserted to give effect to the suggested changes.

19.5 Subject to the above, the clause is adopted.

Clause – 8

20.1 The clause provides for exemption of certain information from disclosure.

20.2 The Committee held detailed deliberation on the question of exemption from disclosure of information relating to sovereignty, integrity, security, foreign relations, trade secrets, cabinet papers etc. enumerated in sub-clauses (a) to (j) of the clause. The Committee heard the views of experts/NGOs and others who vehemently contended that to ensure maximum disclosure, exemption should be kept to the absolute minimum and narrowly drawn. A Member of the Committee was of the view that the provisions regarding exemption from disclosure leave many flaws and as such they may be interpreted in a manner that may restrict or curb the extent of disclosure and widen the scope of exemptions which is against the spirit of the legislation and will defeat the very purpose of its enactment. The Committee feels that the provisions regarding exemption should be redrafted appropriately so as to logically justify

their genuineness. The Committee therefore recommends that the provision should be zmended suitably as suggested by the member.

20.3 Subject to the above, the clause is adopted.

Clause - 9

- 21.1 The clause empowers the Public Information Officer to reject a request for information where an infringement of a copyright subsisting in a person would be involved.
- 21.2 The clause is adopted without any change.

Clause - 10

- 22.1 The clause enables the public authority to severe and provide partial information which falls partly under the exempted categories and partly under the non-exempted categories.
- 22.2 The clause is adopted without any change.

Clause - 11

- 23.1 The clause seeks to disclose any information or record which relate to or has been supplied by a third party.
- 23.2 The clause is adopted without any change.

- 24.1 The clause proposes to constitute the Central Information Commission to exercise the powers conferred on and to perform the functions which may be assigned to it.
- 24.2 The Committee is of the view that no specific qualification has been prescribed for appointment of the Information Commissioner and the Deputy Information Commissioners and scope of the areas/fields included in the eligibility criteria under sub-clause (5) is also very limited. It merely states that a person eligible for the posts of the Information Commissioner and Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of administration and governance. The Committee feels that persons from other walks of life should also be considered to be eligible for appointment to these posts. The Committee, therefore, recommends that the sub-clause should be so amended as to cover thereunder the disciplines of law, science and technology, social iournalism, service. management, mass media apart from administration and governance.
 - 24.3 The Committee observed that sub-clause (6) unnecessarily puts a restriction on the Member of Parliament or Member of the Legislature of a State or person holding any other office of profit or carrying on any

business or pursuing any profession, to be appointed as the Information Commissioner and the Deputy Information Commissioners. It there recommends deletion of the sub-clause.

24.4 The Committee considered sub-clause (8) and found that the Deputy Information Commissioner would have to function as per the direction of the Central Government. The Committee feels that this provision curbs the independence and autonomy of the officers.

Clause – 13

- 25.1 The clause seeks to provide the term of office and other conditions of service of the Information Commissioner and the Deputy Information Commissioners.
- 25.2 The Committee considered sub-clause (5) and felt that it would neither be desirable nor justifiable to put a restriction on the Information Commissioner and the Deputy Information Commissioner from being considered eligible for further employment to any office of profit under the Central or 2 State Government or any diplomance assignment or Administrator of Union Territories on cessation of their offices. The Committee, therefore, recommends that this sub-clause should be deleted.

- 25.3 The Committee is of the view that the Central Information Commission is an important creation under the Act which will execute the laudable scheme of the legislation and will hold an all India responsibility for this. It should, therefore, be ensured that it functions with utmost independence and autonomy. The Committee feels that to achieve this objective, it will be desirable to confer on the Information Commissioner and Deputy Information Commissioners, status of the Chief Election Commissioner and the Election Commissioner, respectively. The Committee, accordingly, recommends insertion of a suitable provision in the clause to this effect.
- 25.4 Subject to the above, the clause is adopted.

- 26.1 The clause lays down the procedure of removal of Information Commissioner or Deputy Information Commissioners.
- 26.2 The clause is adopted without any change.

Clause – 15

- 27.1 The clause provides for powers and functions of the Central Information Commission.
- 27.2 The clause is adopted without any change.

- 28.1 The clause provides for appeal mechanism through which at aggrieved person who does not receive a decision or aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer may prefer an appeal within the prescribed period.
- 28.2 The clause is adopted without any change.

Clause - 17

- 29.1 The clause proposes to impose penalties on the Public Information Officers for persistently delaying the information required.
- 29.2 The Committee notes that the provisions imposing penalty lack in many respects. Firstly, the Information Commission has discretionar power which is restricted to authorize an officer of the Central Government to file a complaint against the defaulting Public Information Officer before a Judicial Magnistrate of First Class. Secondly, the Commission may do so after forming an opinion that the Public Information Officer has persistently failed to provide information and such an opinion may be formed at the time of deciding an appeal. Thirdly, the burden of proof to establish that the Public Information Officer has failed to provide information without any reasonable cause her on the public. It also notes that only an appeal has been considered for the purpose of initiating penal action. Almost alt

NGOs/Social Groups and other persons who deposed before the Committee were of the unanimous view that penal provisions need to be strengthened, as the existing provisions were weak and ineffective. A concern was also expressed that in the absence of adequate and comprehensive penal provisions, objective of the law for which it was being brought in would not be achieved fully.

29.3 In the light of the above observations, the Committee feels that unless the Information Commission is vested with direct powers to initiate penal action against the Public Information Officers or some kind of disciplinary action under the service rules applicable to them, it would not be able to exercise due control and superintendence over the Public Information Officers who are the frontline functionaries in the access regime. In this connection, it notes that the Right to Information Act of Maharashtra is being implemented effectively in the State and one of the reasons for its success has been assigned to the stringent penal provisions of that Act. The Committee is of the view that similar provisions should also be inserted in the Central Act and shortcomings or defects as noted above be removed by amending the provisions sultably.

29.4 Subject to the above, the clause is adopted.

- 30.1 The clause seeks to provide protection of action taken in good faith.
- 30.2 The clause is adopted without any change.

Clause - 19

- 31.1 The clause provides that this Act shall have overriding effect over the provisions of the Official Secrets Act, 1923 and any other law for the time being in force.
- 31.2 The clause is adopted without any change.

Ciause – 20

- 32.1 The clause bars jurisdiction of courts in any suit, application or other proceedings in respect of any order made under this Act.
- 32.2 The clause is adopted without any change.

Clause – 21

- 33.1 The clause provides that the provisions of the Act shall not apply to the intelligence and security organizations specified in the Second Schedule.

 The proviso to the clause, however, casts an obligation on the authorities provide information relating to allegations of corruption.
- 33.2 It was argued that keeping the intelligence and security agence of purvious of the Act will not be in the larger public interes. Curtou disclosure or denial of any information may be justified only on the ground

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of principle of public interest override. In other words, information can be refused only if releasing such information may be prejudicial to the larger public interest.

33,3 The Committee appreciates the role and importance of the intelligence and security agencies. Though these agencies might have acted fairly and legitimately still they are not free from allegations of excesses. The Committee notes that keeping in view the importance of these agencies in national security and maintaining law and order, the exemption granted by the law may not be said to be totally irrational or illogical. It is, however, of the view that giving blanket exclusion to these agencies may also not be justified. Though provise to sub-clause (1) leaves some scope for getting information pertaining to the allegations of corruption, it is also felt desirable to include allegations of violation of human rights. The Committee, therefore, recommends insertion of a suitable provision in the provise to the sub-clause to give effect to the suggestion of the Committee.

Clause – 22

- 34.1 The clause provides for preparing a report on the implementation of the provisions of this Act.
- 34.2 The clause is adopted without any change.

- 35.1 The clause seeks to east an obligation on the Central Government to develor, and promote scheme—for advancement of the information regime.
- 35.2 The clause is adopted without any change.

Clause - 24

- 36.1 The clause seeks to empower the Central Government to make rules so as to carry out the provisions of the legislation.
- 36.2 The clause is adopted without any change.

Clause - 25

- 37.1 The clause seeks to empower the competent authority to make rules so as to carry out the provisions of the legislation.
- 37.2 The clause is adopted without any change.

Clause - 26

- 38.1 The clause seeks to require the Central Government to lay the rules before each House of Parliament.
- 38.2 The clause is adopted without any change.

Clause - 27

39.1 The clause empowers the Central Government to remove difficulties in giving effects, the programme of the reproductive within a feet at our very years from the commencement of the legislation.

39.2 The clause is adopted without any change.

Clause - 28

- 40 1 The clause seeks to repeal the Freedom of Information Act, 2002.
- 40.2 The clause is adopted without any change.

Clause 1, Enacting Formula and Title

- 40.3 Clause 1, the Enacting Formula and the Title were adopted with some changes which were of consequential or drafting nature, namely, the figure "2004" and the words and "Fifty-fifth" to be substituted by the figure "2005" and the words "Fifty-sixth", respectively.
- 41.0 The Committee has suggested amendments in the light of the above observations. The Bill as amended by the Committee has been appended to the Report at Annexure...... The Committee recommends that Government should give due consideration to the proposed amendments.

Recommendations on some key issues

41.1 During the course of deposition of the Secretary, Ministry of Personnel, Public Grievances and Pensions, some Members raised a specific query as to why the Freedom of Information Act, 2002 could not be enforced. Members were concerned with non-implementation of the Act even after a lapse of almost two years of its enactment. In fact, no

such a long time. The Committee felt that an important legislation of the kind should have been enforced at the earliest to send a positive message. The Committee is optimistic that the new Bill, after its enactment, would be enforced within the specified time affirming commitment of the Government to citizens to have access to information regimes through this legislation, which, in turn, will mobilize the people to he an effective and better participation in governance and strengthen the institution of democracy.

41.2 Members of the Committee as well as the witnesses who appeared before it were of the view that the long title of the Bill does not explain the democratic ideals which the Bill seeks to enforce. It seems to be inadequate so far as it fails to send an appropriate message consistent with the principles of maximum disclosure.

It was argued that a Preamble to the Bill would better serve the purpose. The Committee considered the suggestions in the light of the views of the members and experts. It found that the recommendations of the National Advisory Committee were also worthwhile considering as they aimed at broadly stating the principles of disclosure, transparency and

accountability. The Committee therefore recommends insertion of Preamble to the Bill on the lines suggested by a member of the Committee.

41.3. The Committee is of the view that in the light of its recommendations in clause 2 (definitions clause) for bringing the States and other local bodies or authorities within the purview of the proposed legislation, it becomes imperative to amend definitions of the various terms to bring them in consonance with the spirit of its recommendations. Likewise, other consequential changes at appropriate places of the Bill need to be effected. The Committee also recommends insertion of new clauses 14A, 14B and 14C in the Bill providing for constitution of State Information Commissioners and State Deputy Information Commissioners and the procedure for removal of the State Information Commissioners or the State Deputy Information Commissioners.

(See page 36, para 41 0 of the Report)

THE RIGHT TO INFORMATION BILL, 2004

(AS AMENDED BY THE STANDING COMMITTEE)

fWords underlined indicate the amendments/insertions suggested by the Committee, asterisks indicate deletions]

Α

BILL

to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic, and

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain compation and to hold Governments and their instrumentalities accountable to the governed:

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests such as efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information.

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountey of the democratic ideal.

NOW, THEREOFRE, IT is expedient to provide for furnishing certain information to persons desirous of it;

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER 1

PRELIMINARY

- (1) This Act may be called the Right to Information Act, 2004 Short utile.
 (2) It extends to the whole of India except the State of Jamma continencement and Kashmir.
- (3) It shall come into force on the one hundred and twentieth day of its enactment.

2 In this Act, unless the context otherwise requires —

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Dentise in

(20) "appropriate Government" memos in relation to a public authority which is established, constituted, owned or substantially financed.

10 In the Central Government or the Union territor administration, the Central Government:

(ii) by the State Government, the State Government,

(a)"Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12.

(b) "competent anthority" means—

- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory and the Chairman in the case of the Council of States or a Legislative Council of States.
 - (ii) the Chief Justice of India in the case of the Supreme Court,
 - (m) the Chief Justice of the High Court in the case of a High Court
 - (av) the President <u>or the Covernor</u> as the case may be, in the case of other authorities created by or under the Constitution;
 - (v) the administrator appointed under article 239 of the Constitution;

(c) ********

- (d) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time; being in force.
- the "Control Information Commissioner" and Central Deputy Information Commissioners" mean the Central Information Commissioners and the Deputy Central Information Commissioners appeared under sub-section (2) of section (2).
- (f) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority as the case may be
- (i) "public authority" means any tegra authority of local body or local helf Government institution established a constituted.

(1) by or under the Constitution.

- (if) by any other law made by Parliament;
- (iii) by any other law made by State Legislature.
- (iv) by notification issued or order made by the appropriate Government.

and includes any non-Government organisation or any other body owned, controlled or substantially financed by funds provided directly or industrily by the appropriate Government.

- (h) "Central Public Information Officer" means the Seniral Public Information Officer appointed under subsection (I), and includes an Assistant Information Officer designated as such under sub-section (2), of section 5;
 - (f) "record" includes-
 - (f) any document, manuscript and file.
 - (ii) any inscrofilm, microfiche and facsimile copy of a document;
 - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not), and
 - (iv) any other material produced by a computer or any other device;
- (f) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
 - (I) inspection of work, documents, records;
 - (II) taking notes, extracts, or cartified copies of documents or records;
 - (III) taking certified samples of material,
 - (n) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printonts where such information as stored in a computer or in any other device;
 - (II) "State Information Commission" means the State Information Commission constituted under subsection (1) of section 17 B:
 - (iii) "State Information Commissioner" and "State Deputy Information Commissioners" mean the State Information Commissioner and the State Deputy Information Commissioner and the State Deputy Information Commissioner and the State Deputy Information Commissioner and the State Deputy Information Commissioner and the State Deputy Information Commissioner and the State Deputy Information Commissioner and State Deputy Information Commissioner and State Deputy Information Commissioner and State Deputy Information Commissioner and State Deputy Information Commissioners" mean the State Deputy Information Commissioners and The State Depu
 - (iii) "State Public Information Officer" means the State Public Information Officer appointed under subsection (1) and includes an State Assistant Information Officer designated as such under sub-section (2) of

section 17∆.

(k) "third party" means a person onte: thus the person making a request for information. *****

CHAPTER P.

RIGHT TO INFORMATION AND CHARGATIONS OF 11 ABOVE AUTHORITIES

 Subject to the provisions of this Act, all citizens shall have the right to information.

Right to utformation

Obliga: -

public

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- (1) Every public authority shall—
 - (a) maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country or different systems so that access to such records facilitated:
 - (b) publish before the commencement of the Act.—
 - (i) the particulars of its organisation, functions and duties;
 - (ii) the powers and duties of its officers and employees,
 - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
 - (iv) the norms set by it for the discharge of its functions;
 - (v) the rules, regulations, instructions, manuals and records, held by it or under its control of used by its employees—for discharging infunctions;
 - (vi) a statement of the categories of document: that are held by it or under its control
 - (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the

formulation of its policy or administration thereof;

- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xil) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes,
- (xiii) particulars of <u>recipients of</u> concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form:
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xv/) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed,

and thereafter update these publications every year.

- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public.
- (d) provide reasons for its administrative or quasijudicial decisions to affected persons;

- (c) before unitiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which a leareasonable access, which is its opinion should be known in them in the best interest of natural justice and pronounce of democratic principles.
- (2) It shall be a constant endeavour of every public authoris to take steps in accordance with the requirements at clause (6, of sub-section (1) to provide as much information suo more to the public at regular intervals through various means of communications including internet so that the public have minimum resort to the use of this Act to obtain information.
- (3) For the purpose of sub-section (1), every information strill be disseminated widely and in such form and manner which is easily accessible and comprehensible to the public.
- (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central or the State Public information Officer, available free or at such cost of the medium or the printest price as may be prescribed.

Explanation—For the purposes of sub-sections (10 and 12) idescendented—means making known to communicated the information to the public through notice boards newspaper—more, announcements, media broadcasts, the internet of any other order, including inspection of offices of any public authority.

Designation of Central or State Public Information Officers

- 5. (1) Every public authority shall, within one hundred cave of the enactment of this Act, designate as many officers as the Compile Public Information Officers of the State Public Information officers as the case may be. In all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.
- (2) Without prejudice to the provisions of sub-scenton (1), every public authority shall designate an officer, within one fundral days of the enactment of this Act, at each sub-divisional level or other sub-district level as the Central Assistant Public Information Officer or the State Assistant Public Information Officer, as the saste may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or in the appropriate Government.

Provided that where an application for information of appeal is given to a <u>Central or State</u> Assistant Public information Officer, a period of five day, which is added in computing the period for response appendix under sub-section (1) of section 7

(3) Every Central or State Public Information Officer shall deal with requests from persons seeking

information and render reasonable assistance to the persons seeking such information

- (4) **********
- (5) **********
- 6. (1) A person who desires to obtain any information under this Act shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

Request for obtaining information.

- (a) the <u>Central or State Public Information Officer</u> of the concerned public authority;
- (b) the <u>Central or State</u> Assistant Public Information Officers designated by the concerned public authority.

specifying the particulars of the information sought by him or her

Provided that where such request cannot be made in writing, the <u>Central or State</u> Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

- (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.
- (3) Where an application is made to a public authority requesting for an information,—
 - (i) which is held by another public authority; or
 - (ii) the subject matter of which is more closely connected with the functions of another public authority.

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7 (1) Subject the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the

Disposal of request.

Central Public Information Officer or the State Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the request

- (2) If the <u>Central Public Information Officer</u> or the <u>State</u> Public Information Officer fails to give decision the request for information within the period specifier sub-section (1), <u>such Public Information Office</u> is the deemed to have refused the request.
- (3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the <u>Central Public Information</u> Officer or the State Public Information Officer shall send an intimation to the person making the request, giving—
 - (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (I), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section.
 - (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided including the particulars of the appellate authority time limit, process and any other forms.
- (4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled to Central Public Information Officer shall provide assistance to enable access to the information, include providing such assistance as may be appropriate to inspection.
- (5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall,

subject to sub-section (6), pay such fee as may be the prescribed.

- (6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge—where a public authority fails to comply—with the time limits specified in sub-section (1).
- (7) Before taking any decision under sub-section (1), the Central Public Information Officer or the State Public Information Officer shall thue into consideration the representation made by a third party under section 11
- (8) Where a request has been deemed to be rejected under subsection (2), the <u>Central Public Information Officer or the State</u> Public Information Officer shall communicate to the person making the request.—
 - (i) the reasons for such rejection;
 - (ii) the period within which an appeal against such rejection may be preferred, and
 - (iii) the particulars of the appellate authority.
- (9) 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 or would be detrimental to the safety or preservation of the record in question.
- 8. (1) Nothing in the foregoing sections shall compel any public authority to disclose the following:

Exemption from disclosure of information.

- (a) information which, if disclosed will prejudicially affect the sovereignty and integrity of India or the defence and security of India or relations with foreign States and which has been classified as such in pursuance of any rule or order made by the appropriate Government:
- (b) information which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court.
- (c) legitimate trade secrets, and commercial or financial information obtained from or furnished by a third party on condition of strict confidentiality.
- (d) information the disclosure of which will lead to identification of an informer or his sources of

information or which would endanger the life or safety of any person for having furnished material information useful to the Indian nation or would materially hamper investigations into crimes or other law enforcement activities:

(c) the Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken, shall be made public after the decisions has been taken, and the matters is complete, or over.

Provided further that those matters which come under the exemptions listed in this section shall not be disclosed.

- (f) information not related to operations of appropriate Government of its instrumentalities and disclosure of which would constitute a clear unwarranted invasion of privacy of an individual.
- (2) Information which cannot be denied to Parliament or Legislature of a State, as the case may be, shall not be denied to any person.
- (3) A public authority may, notwithstanding the exemptions specified in sub-section (1), allow access to information if public interest in disclosure of the information outweighs the harm to the public authority
- (4) Subject to the provisions of clauses (a) and (c) of subsection (I), any information relating to any occurrence, event or matter which has taken place or occurred ten years before the date on which any request is made under section 6, shall be provided to the person making the request under that section:

Provided that where any question arises to the date from which the said period of ten years has to be computed, the demands of the appropriate Government shall be final.

9 Without prejudice to the provisions of section is a Central or State Public Information Officer may be request for information where such a representation access would involve at intrinsic copyright substituting in a person other man

Ground rejection access to the sale cannot be seen and the sale cannot be seen and the sale cannot be seen and the sale cannot be seen and the sale cannot be seen and the sale cannot be

10. (1) Where a request for access to information in hereralities rejected on the around that it is in relation to information.

rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

- (2) Where access is granted to a part of the record under sub-section (1), the <u>Central Public Information Officer or the State Public Information shall give a notice to the applicant, informing.—</u>
 - (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
 - (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
 - (c) the name and designation of the person giving the decision;
 - (d) the details of the fees determined by him or her and the amount of fee which the applicant is required to deposit; and
 - (c) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

11 (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or the State Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

Third party information

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

- (2) Where a notice is served by the Central Public Information Officer or the State Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed dis losure.
- (3) Notwithstanding anything contained in section 7, the <u>Central Public Information Officer or the State</u> Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision

CHAPTER III

THE CENTRAL INFORMATION COMMISSION

- 12 (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
- (2) The <u>Central Information</u> Commission shall consist of—
 - (a) the Central information Commissioner: and
 - (b) such number of <u>Central</u> Deputy Information Commissioners not exceeding ten as may be deemed necessary.
- (3) The <u>Central</u> Information Commissioner and the <u>Central</u> Deputy Information Commissioners shall be appointed by the President on the recommendation of a

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committee consisting of-

- (i) the Prime Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Lok Sabha; and
- (in) the Chief Justice of India.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

- (4) The general superintendence, direction and management of the affairs of the Central Commission shall vest in the Central Information Commissioner who shall be assisted by the Central Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Commission autonomously without being subjected to directions by any other authority under this Act.
- (5) The Central Information Commissioner and the Central Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in the discipline of law, science and technology, social service, management, journalism, mass media or administration and governance.

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(7) The headquarters of the <u>Central</u> Commission shall be at Delhi and the Central <u>Information</u> Commission may, with the previous approval of the <u>Central</u> Government, establish offices at other places in India.

13. (/) The <u>Central</u> Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Terms of office and conditions of service

Provided that the Central Government may extend the term of five years by one more year if recommended by the committee referred to in sub-section (3) of section 12.

Provided further that no <u>Central</u> Information Commissioner shall no d office as such after he has attained the age of sixty-rive years.

(2) Every <u>Central</u> Deputy Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier

Provided that every <u>Central</u> Deputy information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the <u>Central</u> Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the <u>Central</u> Deputy Information Commissioner is appointed as the <u>Central</u> Information Commissioner, his term of office shall not be more than five years in aggregate as the <u>Central</u> Deputy Information Commissioner and the <u>Central</u> Information Commissioner.

- (3) The Central Information Commissioner or a Central Deputy Information Commissioner, shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule
- (4) The <u>Central</u> Information Commissioner or a <u>Central</u> Deputy Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the <u>Central</u> Information Commissioner or a <u>Central</u> Deputy Information Commissioner may be removed in the manner specified under section 14

- (5) The salaries and allowances payable to and other terms and conditions of service of—
 - (a) the Central Information Commissioner shall be the same as that of the Chief Election Commissioner of India:
 - (b) the <u>Central</u> Deputy Information Commissioner shall be the same as that of the friection Commissioner of India

Provided that if the <u>Central</u> Information Commissions:

a <u>Central</u> Deputy Information Commissioner, as the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or entire the

Government of a State, his salary in respect of the service as the Central Information Commissioner or a Central Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement greatity:

Provided further that f the Central Information Commissioner or a <u>Central</u> Deputy Information Commissioner if, at the time of his appointment is, in receipt of retirement benealts in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Central Information Commissioner or the Central Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and the other conditions of service of the Central Information Commissioner and the Central Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

(7) The Central Government shall provide the Central Information Commissioner and the Central Deputy Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

14. (1) Subject to the provisions of sub-section (3), the Central Information Commissioner or any Central Deputy Information Commissioner shall be removed from his office only by order of the President on the Information ground of proved misbehaviour or incapacity after the Commissioner Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Information Commissioner or any Central Deputy Information Commissioner, as the case may be, ought on

Removal of Information Commissioner or Deouty

such ground be removed

- (2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the <u>Central</u> Information Commissioner or <u>Central</u> Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (I) until the President has passed orders on receipt of the report of the Supreme Court on such reference
- (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Information Commissioner or any Central Deputy Information Commissioner if the Central Information Commissioner or a Central Deputy Information Commissioner, as the case may be.—
 - (a) is adjudged an insolvent, or
 - (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude, or
 - (c) engages during his term of office in any paid employment outside the duties of his office; or
 - (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
 - (c) has acquired such financial or other interest as is likely to affect prejudicially his functions as an <u>Central</u> Information Commissioner or a <u>Central</u> Deputy Information Commissioner
- (4) If the <u>Central</u> Information Commissioner or any <u>Central</u> Deputy Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India a participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than a member and in common with the other member as incorporated company, he shall, for the purpose section (1), be deemed to be guilty of misbehalt.

CHAPTER IN A

THE STATE INFORMATION COMMISSION AND PUBLIC INFORMATION OFFICER

14A (1) Every State Government shall, by notification in

the Official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers confirmed on, and to perform the functions assigned to, it under this Act

Constitution of State Information Commission

- (2) The State Commission shall consist of—
 - (a) the State Information Commissioner; and
 - (b) such number of State Deputy Information Commissioners not exceeding ten as may be deemed necessary.
- (3) The State Information Commissioner and the State Deputy Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-
 - (1) the Chief Minister, who shall be the Chairperson of the committee:
 - (II) the Leader of Opposition in the Legislative Assembly; and
 - (iii) the Chief Justice of High Court.

Explanation—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

- (A) The general superintendence direction and management of the affairs of the State Commission shall yest in the State Information Commissioner who shall be assisted by the State Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Commission autonomously without being subjected to directions by any other authority under this Act.
- (5) The State Information Commissioner and the State Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of law, science and technology social service, management, journalism, mass media or administration and governance.
- (6) The headquarters of the State Commission shall be at such place as the State Government may, by notification in the Official Gozette, specify and the State Information. Commission may, with the previous approval of the State Government, establish offices at other

committeelectusisting of-

(i) the Prime Minister, who shall be the Chairperson 14Bf the queroitheetnformation Commissioner shall hold office the second displacement of the second secon conters upon his office and shall not be eligible [0]

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Explanation For the numoses of removal of doubts, it is hereby declared that where the Lender of Silving that where the Lender of Silving that where the Lender of Silving the more year if recommended hyplic the Hings of the People has been recommended hyplic the Lender of the single largest group in opposition of the GBrevidedofestherettinione Stathdiffeepletsin Comdesseder to hall hald afficer the soulpation he has attained the age of (4) KINT Five years at superintendence, direction mailingomena to ter Reput militario frubei (Gentral pariministria) shald-caffaciforCentrahlnExfancion:(Commissiprepisthen sixhichenesterd thouse: 6thembellibusy alukamatique Cohartsmilitery and marice couries of lively powers and do all such acts and things which may be exercised or done by the depth of community without mention of the common of Aftiformation Commissioner in the manner specified in (SubThetiGetOub[laformation Commissioner and the Central Deputy Information Commissioners spall be frowing during that where the State Deputy in Commissioners and the personnel of the province of the commissioner is appointed as the State playing the and experience in the distribute of the State playing than and experience in the distribute of the Commissioner is appointed as the State playing than technique should be a small from the commissioner in the state of the State pentity information mass media to administration and povernite.

(3) The State Information Commissioner or a State Obligation State of Commissioner or a State Obligation State of Commission and the American Information Commission and The Commission of Commission in interest or some other person appointed by him in the behalf-an-voth or affirmation according to the trace of out for the purpose in the First Schedule

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Provided furthers sther TIO Central Information Commissioner shall hold office as such after he has attain 1518 are of 1814 closypers payable to and other

terms and conditions of service of-

(a) the State Information Commissioner shall be the same as that of the Election Commissioner of India.

(b) the State Deputy Information Commissioner shall be the same as that of the Chief Secretary to the State:

Provided that if the State Information Commissioner or a State Deputy Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Information Commissioner or a State Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the State Information Commissioner of a State Deputy Information Commissioner if at the time of his appointment is in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Information Commissioner or the State Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and the other conditions of service of the State Information Commissioner and the State Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

(2) The State Government shall provide the State Information Commissioner and the State Deputy Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

14C. (1) Subject to the provisions of sub-section (3), the State Information Commissioner or any State Deputy Information Commissioner shall be removed from his office only by order of the Governor on the ground of

Removal of State Information Commissioner or State Deputy

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proved misbehaviour or incapacity after the Sugreme Court, on a reference made to it by the Governor has on inquity, reported that the State Information Commissioner or any State Deputy Information Commissioner, as the case may be ought on such ground be removed.

- (2) The Governor may suspend from office, and if neemnecessary prohibit also from attending the office during
 inquiry, the State Information Commissioner or State
 Deputy Information Commissioner in respect of whom a
 reference has been made to the Supreme Court under
 sub-section (1) until the Governor has passed orders on
 receipt of the report of the Supreme Court on such
 reference.
- (3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Information Commissioner or any State Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner as the case may be...
 - (a) is adjudged an insolvent; or
 - (b) has been convicted of an offence which in the opinion of the Governor, involves moral turproduct
 - (c) engages during his term of office in an participation outside the duties of his office or
 - (d) is, in the opinion of the Governor, with we continue in office by reason of infirmity of mind of body; or
 - (e) has acquired such financial or other interest as it likely to affect prejudicially his functions as at. State Information Commissioner or a State Deputy Information Commissioner.
- Opputy Information Commissioner of any State Deputy Information Commissioner in any way concerned or interested in any contract or agreement made by or on behalf of the Government of indicinates in any way in the profit thereof of matterinates in any way in the profit thereof of matterinates in any way in the profit thereof of matterinates in any way in the profit thereof of a member and in common with the other member of an incorporated company, he shall, for the purposes of subsection (1), he deemed to be guilty of misbehavious

CHAPTER III B

POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

- 15 (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission to receive and inquire into a complaint from any person,-
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Powers and

- (a) who has been unable to submit a request to a Central or State Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the Central or the State Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the appropriate Government:
- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act,
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading or false information under this Act, and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this
- (2) Where the Central Information Commission or the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof
- (3) The Central Information Commission or the State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely -
 - - (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things.
 - (b) requiring the discovery and inspection of

5 of 1908

documents:

- (c) receiving evidence on affidavit.
- (d) requisitioning any public record or copies thereof from any court or office:
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed
- (4) Notwithstanding anything inconsistent contained in any other Act, of Parliament or the State Legislature, as the case may be, the Central Information Commission of the State Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

16. (1) Any person who, does not receive a decision. Appear within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggreeved by a decision of the Central Public Information Officer or the State Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer of the State Public Information Officer, as the case may be in each public authority

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfier that the appellant was prevented by sufficient cause from filing the appeal in time

(2) A second appeal against the decision under sale section (1) shall lie within ninety days from the date or which the decision should have been made or with actually received, with the Central Information Commission or, as the case may be, the State Information Commission:

Provided that the Central or the State information Commission may admit the appeal after the experior the period of ninety days if it is satisfied the the appellant was prevented by sufficient cause from filing the appeal in time

(3) Where an appeal is preferred against an order made

by the <u>Central or the State</u> Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order

- (4) If the decision of the Central or the State Public Information Officer against which an appeal is preferred relates to information of a third party, the Central Information Commission or, as the case may be, the State Information Commission shall give a reasonable opportunity of being heard to that third party.
- (5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority which denied the request
- (6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing
- (7) The decision of the <u>Central or State</u> <u>Information</u> Commission shall be binding
- (8) In us decision, the <u>Central or State Information</u>
 Commission has the power to.—
 - (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - (1) by providing access to information, if so requested, in a particular form;
 - (11) by appointing a <u>Central or a State</u> Public Information Officer,
 - (iii) by publishing certain information or categories of information;
 - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to information for its officials.
 - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (I) of section 4;
 - (b) require the public authority to compensate the

complainant for any loss or other detriment suffered:

- (c) impose any of the penalties provided under this Act.
- (d) reject the application.
- (9) The Central or the State Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority
- (10) The <u>Central or the State Information</u> Commission shall decide the appeal in accordance with such procedure as may be prescribed
- (11) An appeal against the decision of the Central of the State Information Commission shall lie in the High Court on any point of fact and law
- (2) Any <u>Contral or State</u> Public Information Officer or State Public Information Officer, as the case may be, who is in distantional sub-section (1) shall be liable on conviction to fine which numericand to suppose twenty-five thousand or a term of impresentation which may extend to five years, or with both
- (3) Without prejudice to the provisions of sub-sections of and (2), the Central Commission or the State Commission as the case may be may recommend for discribinary action opened the Central Public Information Officer under the service rules amplicable to him.

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CHAPTER IV

MISCELLANEOUS

18. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

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19 of 1923.

The provisions of this Act shall have effect inconsistent therewith notwithstanding anything contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding. cffcct.

20. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Bar of jurisdiction of courts.

21.(1) Nothing contained in this Act shall apply to the intelligence. Act not to apply and security organisations specified in the Second Schedule, being to certain organisations established by the Central Government or any organization. information furnished by such organisations to that Government:

Provided that the information pertaining to allegations of violation of human rights or corruption shall not be excluded under this sub-section.

- (2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.
- (3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.
- (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the Official Gazette, by a State Government form time to time
- (5) Every notification issued under sub-section (4) shall be laid before the State Legislature

22 (1) The Central <u>Information</u> Commission or the State <u>Information</u> Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Central Government or the State Government.

Monitoring and reporting.

- (2) Each Ministry or Department shall in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or the State Information Commission, as the case may be, as is required to prepare the report under this section, and comply with the requirements, concerning the furnishing of that information and keeping of records for the purposes of this section.
- (3) Each report shall state in respect of the year to which the report relates.—
 - (a) the number of requests made to cach public authority;
 - (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked.
 - (c) the number of appeals referred to the <u>Central Information Commission or</u>, as the case may be the <u>State Information</u> Commission for review, the nature of the appeals and the outcome of the appeals;
 - (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
 - (e) the amount of charges collected by each public authority under this Act;
 - (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
 - (g) recommendations for reform including recommendations in respect of the porticular public authorities, for the development, improvement, modernisation reform or amendment to this Act or other registation or common taw or any other matter relevant for operations used the right to access information.
 - (4) The Central Government of the State Government may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission of the State Information Commission of the State Information Commission referred to sub-election (1) to be find before each House of Partiament of at the case may be before each House of Partiament of at the case may be before each House of the State Legislature before there is one House of the State Legislature before that House
 - (5) If it appears to the Central Information or the State Information Commission that the

practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

 (1) The <u>appropriate</u> Government may, to the extent of availability of financial and other resources.—

Appropriate
Government to
prepare
protamines.

- (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
- (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves:
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and
- (d) train <u>Central Information Officers of State</u> Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves.
 - (3) The <u>appropriate</u> Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may teasonably be required by a person who wishes to exercise any right specified in this Act.
 - (3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (3) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (3), include—
 - (a) the objects of this Act;
- (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or the State Public Information Officer of every public authority appointed under sub-section (1) of section 5:
- (c) the manner and the form in which request for access to an information shall be made to a public authority.
- (d) the assistance available from and the duties of the Central Public Information Officer or the State Public Information Officers of a public authority under this Act.
- (e) the assistance available from the <u>Central Information</u>
 <u>Commission or the State Information Commission</u>;
- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the

Central Information Commission or, as the case may be, the State Information Commission:

- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4.
- (h) the notices regarding fees to be paid in relation to requests for access to an information; and
- (f) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.
- (4) The <u>appropriate</u> Government must, if necessary, update and publish the guidelines at regular intervals.
- 24. (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely —
 - (a) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;
 - (b) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
 - (c) the fee payable under sub-section (1) of section 6.
 - (d) the fee payable under sub-sections (I) and (S) of section T_{ij}
 - (e) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (7) of section 13.
 - (f) the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16, and
 - (g) any other matter which is required to be, or may be, prescribed.
- 25 (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act
- (2) In particular, and without projudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (i) intervals at which matters referred to in satisfance;
 (i) to (xvii) of clause (b) of sub-section (i) of section 4 shall be published.
 - (ii) the cost of the medium or point cost prior of the materials to be disseminated under sub-section (3) of section 4.
 - (iii) the fee payable under sub-section (7) of section (5)
 - (iii) the fee payable under sub-section (I) of section, \mathcal{I} and
 - (v) any other matter which is required to be, or may be, prescribed.

Power to make rules by appropriate Government

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26 (1) Every rule made by the Central Government under this Act. Laying of rules. shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

- (2) Every rule made under this Act shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House,
- 27 (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament

5 of 2003.

28 The Freedom of Information Act, 2002 is hereby repealed

Repeal

-2v

THE FIRST SCHEDULE [See sub-section (3) of section 13 and sub-section (3) of section 14B]

Form of eath or affirmation to be made by the <u>Central Information</u>

Commissioner/State Information Commissioner or the Central

Deputy Information Commissioner/State Deputy Information

Commissioner

Commissioner/State Information Commissioner/Central Deputy Information Commissioner/State Deputy Information Commissioner/State Deputy Information Commissioner swear in the name of God that I will bear true faith and allegiance to the

solemnly affirm

Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the dates of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

THE SECOND SCHEDULE (See section 21)

INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT

- Intelligence Bureau.
- 2. Research and Analysis Wing of the Cabinet Secretariat.
- 3. Directomic of Revenue Intelligence.
- 4. Central Economic Intelligence Bureau.
- 5. Directorate of Enforcement.
- Narcotics Control Bureau.
- Aviation Research Centre.
- 8. Special Frontier Force.
- 9. Border Security Force.
- 10. Central Reserve Police Force.
- 11. Indo-Tibetan Border Police.
- 12. Central Industrial Security Force.
- National Security Guards.
- 14. Assam Rifles
- 15. Special Service Bureau.
- 16. Special Branch (CID); Andaman and Nicobar.
- 17. The Crime Branch-C.I.D.+ CB, Dadra and Nagar Haveli,
- 18. Special Branch, Lakshadweep Police.

STATEMENT OF OBJECTS AND REASONS

In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act. 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, inter also, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers, penal provisions for failure to provide information as per law, provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act. 2 etc. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

The Bill seeks to achieve the above objects.

NEW DELHI, SURESH PACHOURI

The 18th December, 2004

Notes on clauses

with come into force on the one hundred and (weptieth day of its assent by the Provided).

Clanse 2 defines various words and expressions used to the Bill

Clause 5 sceles to confer on the citizens a right of access to information held by public authorities

Clause a scoke to entrust a duty on every public authority to maintain records and publish manual, succ. regulations, instructions, etc. if its possession

Clause i promone for designations is Public to explain $a \in \mathbb{A}^n$ or and observes, Public Information Offices,

Clause to specifies the manner in which requests, may be made by a prozen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

Clause 7 lays down specific time limit with in which a public authority shall provide information and the fees to be paid for processing the request and for providing the information.

Clause 8 deals with various categories of information which shall be exempted from disclosure

Clause 9 empowers the Public Information Officer to reject a request for information where an infringement of a copyright subsisting in a person would be involved.

Clause 10 enables the public authority to severe and provide partial information which falls partly under the exempted categories and partly under the non-exempted categories.

Clause 11 provides for consultation with the third party where the request relates to or has been supplied by a third party and has been treated as confidential by that party.

Clauses 12 to 15 provides for constitution of Central Information Commission, the terms and conditions of service and the powers of the Information Commissioners and the Deputy Information Commissioners

Clause 16 seeks to provides for first and second appeals, the first appeals lies with the officer senior in rank to the Public Information Officer and the second appeal may be made to the Commission

Clause 17 provides for imposition of penalty on a Public Information Officer for persistently failing to provide information without any reasonable cause within the specified period. The Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate and on conviction, a penalty upto rupees twenty five thousand, or an imprisonment upto five years, or both, may be imposed.

Clause 18 bars the institution of legal proceedings against any person for things done in good faith under the Act.

Clause 19 seeks to make the legislation overriding in character so that the scheme is not subverted through the operation of other enactment.

Clause 20 seeks to bar the jurisdiction of the subordinate courts.

Clause 21 seeks to exempt certain intelligence and security organisations from the purview of the legislation but information pertaining to allegation of corruption, shall, without prejudice to the exemption, be provided

Clause 22 provides for preparation of an annual report by the Commission and laying of such report by the Central Government before each House of Parliament

Clause 23 weeks to east an obligation on the Courts! Government to develop and prompte schemes for advancement of the information regime

Clause 24 seeks to empower the Central Government to make rules so as to carry out the provisions of the legislation

Clause 25 seeks to empower the competent authority to make rules so as to carry out the provisions of the legislation.

Clause 26 seeks to require the Central Government to lay the rules before each House of Parliament

* Tause 27 empowers the Central Government to remove difficulties in giving effect to the provisions of the legislation within a period of two years from the commencement of the legislation.

Clause 28 seeks to repeal the Freedom of Information Act, 2002.

FINANCIAL MEMORANDUM

- 1. Sub-clauses (1) and 2 of clause 12 provide for constituting the Central Information Commission which shall consist of a Information Commissioner and such number of Deputy Information Commissioners, not exceeding ten, as may be deemed necessary
- Sub-clause (7) of clause 13 provides for appointment of officers and employees for assisting the Information Commissioner and the Deputy Information Commissioners as may be necessary for the efficient performance of their functions under the Act.
- An estimated recurring expenditure of rupees one erore eighty-six takhs is likely
 to be incurred on the salaries of the Information Commissioner, Deputy Information
 Commissioners and other officers and employees of the Commission.
- 4. At this stage, it is not possible to give precise details of the expenditure to be incurred on material resources in terms of office accommodation, vehicles, telephones and other office equipments required by the Commission. Adequate provisions will have to be made in the annual grants of the Commission to meet this expenditure.
- The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 21 of the Bill empowers the Central Government, by notification in the Official Gazette, to amend the Schedule for including any other intelligence or security organization established by the Central Government or omit therefrom any organization already specified therein.

Clause 24 of the Bill empowers the Central Government to make rules to earry out the provisions of the Act. Sub-clause (2) of that clause enumerates the matter with respect to which rules may be made under this clause.

These matters relate to, inter alia, the publishing of particulars of public authority, functions and duties of its officers, details of facilities available to citizens for obtaining information, fee payable to obtain an information from a public authority, salaries and allowances payable to and the terms and conditions of service of the officers and other employees, procedure for disposal of appeals and the authority before whom an appeal may be preferred against the decision of Public Information Officer.

Clause 25 of the Bill empowers the competent authority to make rules to carry out the provisions of the Act. These matters relate to, inter-alia, the fee payable for obtaining the information from the Public Information Officer of a public authority, the appellate authority before whom an appeal may be preferred against the decision of the Public Information Officer and the procedure to be adopted by the Commission in deciding the appeals.

Clause 27 of the Bill empowers the Central Government by order to remove certain difficulties which may appear to it to be necessary or expedient in giving effect to the provisions of the Act with in a period of two years from the commencement of the Act.

The matters in respect of which rules and the order may be made are matters of administrative details and procedure and it is not practicable to make provisions for them in the Bill. The delegation of legislative power is, therefore, of a normal character.

- 26 Laying of rules27. Power to remove difficulties28. Repeal

THE FIRST SCHEDULE
THE SECOND SCHEDULE

uost Immediate



No.VHS-1005-GOI-15-ARTD-II
GOVERNMENT OF GUIARAT
당하는 지원 30년
General Administration Department,
H. 내대 국년대2 [국어내기]
Sathivalaya, Gandhinagar-382 010.
원칙대대대, 기타에서지국-32 3040.

Λíο

Shri T.Jacob,

Department of Personnel & Training,
Ministry of Personnel, Public grievances and Pension,
North Block,
New Delhi- 110 001

Subject: The Right to Information Act-2005
List of Districts, Sub-Districts and Talukas in Gujarat.

Dt.8-8-2005

Sir,

Please refer to your switer No. 34612/13(s)/2005-Estt.(B) dated 28^{th} July,2005 on the above subject.

A list of Districts, Sub-districts and Talukes in the State of Gujarat is attached herewith, as sought for.

An E-mail is also sent to you.

Thanking you.

hat (47)

Yours faithfully

(Pradip Parekh) Deputy Secretary

General Administration Department

Government of Gujarat

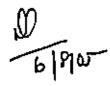
Encl: As above,

Details of total number of Districts , Sub-Divisions and Inlukas in GUJARAT STATE.

F

Sr.No. Name of District	Sr.No.	Name of Sub-Division	Sr.No.	Name of Taluka
1 2	3	4	5	6
i Anmedabad	\$	City	1	Ahmedabad City
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Name of Districts	Name of Sub-Divisions	Name of Blocks	
1. West District	1.Sadar Sub-Division	1.Bishalgarh	
	2.Bishalgarh Sub-Div.	2.Boxanagar	
	3.Khowai Sub- Div.	3.Dukli	
	4.Sonamura Sub -Div.	4.Hezamara	
		5. Jampuijala.	
		6. Jirania.	
		7. Kalyanpur.	
		8. Kathalla.	
		9. Khowai.	
		10. Mandai	
		11. Melaghar.	
		12. Mohanpur.	
		13. Mungiakami	
		14. Padmabill.	
	_ -	15. Teljamura.	
		16. Tulasikhar.	
	 -	10. 10/43//2/21.	
2. South District	5.Udaipur Sub -Div.	17.Amarpur	
	6.Amarpur Sub -Div.	16.Bagafa	
	7.Sabroom Sub-Dly.	19.Hrishvamukh	
•	8.Belonia Sub -Div.	20.Kakraban	
	 	21.Karbook	
		22.Killa	
		23.Matabari	
		24.Ompi	
		25.Rajnagar	
		26.Rupaichari	
		27.Satchand	
3. North District	9.Kailashahar Sub-Div.	28.Dasda	
	10.Dharmanagar -do-	29.Gournagar	
	11.Kanchanpur - do-	30.Kadamtala	
		31.Kumarghat	
		32.Panisagar	
		33.Pecharthal	
		34.Jampui Hill	
		35.Damcherra	
4. Dhalai District.	12 Ambassa	36.Ambassa	
TOTAL DISTILL	13.Kamalpur	37.Dumburnagar	
	14.Ganda Cheira	38.Manu	
	15.Longtharai Valley	39.Salema	
	SALES SALES	40.Chawmanu	





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IboM 15% MINISTER ARAT STATE



Sardar Bhavan, Sactivalaya Block No. 1, 5th Floor Gandhinagar-362 010 Gujarat Phone. (O) (079) 23232611 to 23232619 Fax No. (079) 23222101

September 13, 2005.

Respected Pradhan Mantri Ji,

The enactment of the Right to Information Act in June. 2005 is an important step towards ensuring transparency and accountability in government and empowering the people for real participation in governance. The Government of Gujarat is also committed to the concept of Right to Information and we have already taken preliminary steps for implementation of this Act in Gujarat.

However, I would like to point out certain difficulties enumerated below, which are likely to arise while implementing this Act because of certain provisions in the Act.

- 1. The time frame of 120 days for starting the implementation of the Act is very short in view of the number of activities which are required to be undertaken prior to the implementation date. Many countries of the world had a transition/preparation period of as much as 5 years before the Act was implemented. While this kind of time-frame may be considered too long, 120 days is inadequate to complete all the actions required prior to the implementation of the Act.
- 2. The success of the Act lies in bringing about the change of mindset of the civil servants who are to implement this Act. This requires an extensive training for change of mindset at all levels. In Gujarat, we have already trained 1.4 lakh government employees (including Class-IV employees) for change of mindset through a module of training called V-Governance Training which has helped us prepare the ground for accepting any Good Governance initiative such as Right to Information. Training is now required to be given to all the State Govt employees about the provisions of Right to Information Act, for which we will need extensive support and funding from Government of India as well.

Email , on @ gujeratintia.com Website , www.gujaralii dia.com

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I mad & CAOH NY ON 15/9

- 3. One of the provisions of the Act exempts persons belonging to Below Poverty Line family from payment of any fees/charges for getting information. It is mentioned in the Act that the purpose of acquiring information will not be asked from the applicant. There is, therefore, a definite possibility that anyone wanting to get voluminous information from the Government will take the route of a BPL family so as to avoid payment of even the cost of stationery. We need to plug this loop-hole by putting a limit of certain number of pages of information which can be given free to members of BPL families and charging them for additional pages required.
- 4. Since even the personnel information is also not exempted under this Act, question will arise when information is asked for regarding the confidential reports of officers and records of Departmental Promotion Committees etc. ? Unless a specific exemption is made for personnel information, the Act is likely to be misused by various employees by taking a route of citizen seeking information.
- 5. The success of the Act will depend on dissemination of information about the provisions of the Act to public at large. This exercise will involve organizing mass-scale seminars, meetings, distribution of print material, and use of electronic media. It is necessary that Government of India sets apart some money for assistance to State.
- 6. The obligations arising out of the Act will necessitate business process re-engineering and modernization and up-gradation of record compilation in Government to meet the deadline of providing information within the 30 days. Each State Government will have to spend lakhs of rupees for computerization of data. It is important that Government of India strengthens the State Governments by providing necessary funds.

We estimate that training all the employees, preparation of print literature, compilation of data base and its computerization will cost at least Rs. 200 erores. We request Government of India to fund at least 50% of this.

Since as per the existing provisions of the Act, it comes into force from 120 of October, 2005, the matter will need prompt and positive consideration by Government of India.

I look forward to active support of Central Government in pursuance of our request.

With regards.

Yours sincerely.

[Narendra Modi]

Dr. Maumohan Singhji, Hon'ble Prime Minister of India, Prime Minister's Office, NEW DELHI.

GOVERNMENT OF TRIPURA GENERAL ADMINISTRATION (ARI DEL'ARTMENT

541 SES-6A(AB)2004 /1788

Unted, Againsta, the Sept., 2005

To Sri T. Jecob, Joint Secretary (E) to the Government of India, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi -110 001

Div (& II)

Subject: Implementation of the Right to Information Act, 2005 — Sanction of financial assistance.

I am directed to inform you that the Right to Information Act, 2005 which is required to be implemented by every State Government. The implementation of the Act involves creation of some new infrastructure, such as constitution of State Information Commission with one Chief Information Commissioner and not more than 10(ten) other State Information Commissioners. Moreover, the State Government is required to appoint officers and employees for the Commission for discharge of its functions under the Act.

- Tripura is a small, and backword State in the North-Eastern Region and it does not have the means of meeting the expenditure of a State Commission, its officers and employees.
 - 3. The approximate annual expenditure against the State Information Commission, besides other expenses, is estimated to be to the time of Rs 48.36 laklis. An estimate of the annual expenditure on various items against the State Information Commission is enclosed at Annexaire-1, to this letter.

Contd. to Page-2

Establishment cost of State Information Commission

1.	Chief Information Commissioner Pay + DA minus Pension = Rs. 30,940 Per month x 12	=Rs. 3,71,280/-
	a) Medical Allowance (per annum) b) L.T.C. (per annum)	≃Rs 50,000/- ≃Rs 100000/-
2.	Information Commissioner =Rs.29,545 per month x12 (Emoluments minus pension)	≖Rs. 3,54,540/-
3.	Secretary to the Commission = Rs. 28000 per month x12 (TCS Gr-1, Selection Grade)	= Rs 3,36,000
4	Stenographer – 3 (three) nos. = Rs.18000 per month x3x12 (P.S. – IV)	= Rs 6,48,000
5 .	Office Superintendent - I(one)≈ Rs. 15000 per month x12	- Rs 1,80,000
6 .	Head Clerk - 1(one) = Rs. 14,000 per month x12	= Rs 1,68,000
7.	U. D. Clerk - 2(two) = Rs. 12000 per month x2x12	= Rs 2,88,000
8.	L.D. Clerk - 4 (four) = Rs. 10000 per month x4x12	= Rs 4,80,000
9.	Class - IV - 5 (five) = Rs. 8000 per month x 5x12	= Rs 4,80,000
10.	Driver - 3 (three) = Rs. 10000 per month x3 x12	= Rs 3,60,000
11.	Cost of New Vehicle (Ambassador non AC) (3 nos.) 3,40,000 x3 nos Total:	= Rs 10,20,000 Rs. 48,35,820

K. Eles

NO. F.3(5)-GA(AR)/2005/ GOVERNMENT OF TRIPURA GENERAL ADMINISTRATION (AR) DEPTT. AGARTALA, TRIPURA.

Dated, Agartala, the 3rd August, 2005.

To
Sri A. N. Tiwari,
Secretary to Government of India,
Ministry of Personnel, Public Grievance & Pension,
New Delhi- 110001

Sub:- Implementation of Right to Information Act, 2005 - clarification thereof.

Sir.

I am directed to inform you that necessary action for implementation of the Right to Information Act, 2005 is being taken in the State of Tripura. It is proposed that Govt. of India may consider organizing a workshop on implementation of different provisions of the Right to Information Act, 2005. In addition, in case any Ministry of Govt. of India has made any model exercise, a copy of the model may be sent to us for our guidance.

 I may also request you to kindly intimate us whether there is any scope to get any financial assistance from the Govt. of India towards implementation of different provisions of the Act.

Yours faithfully,

(B. Sinha)

Copy to :-

The Special Commissioner . Tripura Bhavan, New Delhi, For kind information .

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Telefax: 0771-2221204



Nand Kumar Secretary General Administration Department (RTI), Mantralaya, Raipur 22rd September 2005

To,

Miradini Shri T Jacob,
Joint Secretary
(Right to Information)
Department of Personnel and Training
North Block, New Delhi

Budget Requirements for Implementation of RTI Act

Sir,

The State of Chhattisgarh very implementing the Right to Information Act, 2005 in right earnest. We are progressing well in terms of appointing PIOS and APIOs and also in preparations for the document on proactive disclosures. Preparations have also been made for uploading these documents in the Internet.

The Chief Minister of our State is very committed in implementation of the Act. This can be seen from the fact that he has selected his home district for in depth implementation of the Act. Also, as per his guidance we are organizing one-day workshop each for Council of Ministers, Chairpersons of Municipal Corporations and Councils, District and Block Panchayats where he himself will guide the participants.

We have worked out the budget requirements for effective implementation of the Act that is attached in the adjoining page. Kindly arrange the fund of Rs 14.62 Crores to enable us to effectively implement the Act.

Thanking you and with best regards,

Yours sincerely,

(Nand Kumar)

Budget Requirements For Effective Implementation

Description	Amount (Lakhs)
Establishing and operating the institution of CIC (one year)	150
Training all PIOs and APIOs of the State	10
Sensitization of all employees and Sarpanch (Rs 20 lakhs per district)	320
Awareness generation in the public (Rs 20 lakks per district)	320
Provision of computers /printers to all PIOs and APIOs excluding Sarpanch and schools (Rs 40,000 X 1,000)	400
Establishing Information Kiosks for the public upto block level to begin with (Rs 1 lakh at 150 places)	150
Establishing Facilitation Centres - one at every district HQ (one year) - 3 persons with computers, printers and photocopiers (Rs 5 lakks per district per year) for one year	80
Establishing public libraries where all the documents proactively disclosed should be put - for one year (Rs 2 lakhs per district)	32
Total	1462

(Nand Kumar)
Secretary
Govt. of Whattisgarh.

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Dated, Yeartala, the

Sept. Mats

In (a) I. Jevob. Joint Secretary (E) to the Government of India. Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi -110 001

a love.

Subject: Implementation of the Right to Information Act, 2005 — Sanction of financial assistance.

I are directed to inform you that the Right to Information Act. 2005 which is required to be implemented by every State Government. The implementation of the Act involves ereation of some new infrastructure, such as constitution of State Information Commissioner and not more than 10(ten) other State Information Commissioner, the State Government is required to appoint officers and employees for the Commission for discharge of its functions under the Act.

- Tripora is a small, and backward State in the North-Eastern Region and it does not have the means of occupa the expenditure of a State Commission, its officers and employees.
- The approximate annual expenditure against the State Information Commission, besides other expenses, is estimated to be to the time of Rs. 48,36 lakhs. An estimate of the annual expenditure on various against the State Information Commission is action 2007 <u>Approximent</u> for missioners.

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d. The State Government is quable to meet the above mentioned annual expenditure of the Commission.

You say, therefore, respected to kindly sametion Rs. 48.36 hates, annually to meet the expenses of the State Information Commission on priority basis...

Enclo :- As stated,

Commissioner & Secretary to the Government of Tripura.

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No. 34012/I(S)2005- Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 3rd May, 2005

NOTE FOR THE CABINET

Subject:- Proposal for repeal of the 'Freedom of Information Act, 2002' and legislation of the 'Right to Information Act, 2004'.

With a view to make the legislation on 'Right to Information more progressive, participatory and meaningful, Government had, with the approval of the Cabinet, introduced—the 'Right to Information Bill, 2004' in the Lok Sabha on 23rd December, 2004. A copy of the Bill is at Annexure-I (pages 8 - 31). The Bill seeks to repeal the existing 'Freedom of Information Act, 2002' and enact a new legislation in its place entitled the 'Right to Information Act, 2004'.

2. The 'Right to Information Bill, 2004', as introduced in the Lok Sabha and pending therein, was referred on 31st December, 2004 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report. The Standing Committee presented its Third Report on this Bill to the Rajya Sabha on 21st March, 2005 and laid this Report in the Lok Sabha on the same day. The Committee has recommended a number of amendments to the various clauses in the Right to Information Bill, 2004 and a copy of the clause by clause recommendations of the Committee, together with the Bill drafted by

Pg. 1 of 162

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DEPARTMENT OF PERSONNEL & TRG. F.No.34012/1(s)/2005-Esn.(B) it after incorporating its recommendations, is at Annexure II (Pages 32 - 111).

- 3. In its meeting held on 15th December, 2004, the Cabinet, while approving the proposal to introduce the 'Right to Information Bill, 2004' in the Lok Sabha, also directed that the Bill may be looked into by a Group of Ministers to consider the Government amendments that need to be made in the Bill. In pursuance thereto, the amendments to the Bill recommended by the Parliamentary Standing Committee were placed before the Group of Ministers for its consideration. The proposal also included certain amendments to the provisions of clause 12 as formulated by the Ministry of Personnel, Public Grievances & Pensions.
- 4. The Group of Ministers met on 26th April, 2005, and again on 30th April, 2005, to examine the 'Right to Information Bill, 2004' with a view to consider amendments, as are necessary, thereto. Taking into consideration the various constitutional, administrative and implementative aspects, the Group has made a number of recommendations to amend the Bill. Based on the recommendations of the Parliamentary Standing Committee and the further recommendations made by the Group of Ministers, it is now proposed to make the following amendments to the Bill, namely
 - the applicability of the contemplated enactment may be expanded to cover the State Public authorities as also the non-Government organizations who are substantially funded by the Government;
 - (ii) amend clause 6 to provide that a request for information can be made in Hindi also:

B. 2 of 162

12

- (iii) amend clause 7 to provide the fee to be charged for providing information shall be reasonable and that 'Below Poverty Line' families shall be provided information free of cost:
- (iv) in respect of categories of information exempted from disclosure, the formulation made by the National Advisory Council in its draft Bill recommended to the Government for consideration, shall be adopted subject to the modification that information pertaining to security, Cabinet papers, etc. as given in sub clause 1(a) and (i) of the formulation, shall have an all time exemption from disclosure;
- (v) that the Central Information Commissioner and the Central Deputy Information Commissioner shall be redesignated as Chief Information Commissioner and Information Commissioner who will have a single tenure of 5 years till they attain the age of 65 years, whichever is earlier, with no extensions thereof;
- (vi) that the salaries and allowances of Chief Information Commissioner and Information Commissioner shall be same as those of Chief Election Commissioner and Election Commissioner respectively;
- (vii) that the third member of the Committee to make selection of Chief Information Commissioner and Information Commissioner shall be a Minister nominated by the Prime Minister instead of the Chief Justice of India:
- (viii) the clause making the Chief Information Commissioner and Information Commissioner ineligible to take up future employment to an office under the Government or any Constitutional appointment, etc. should be deleted;
- (ix) subject to the contemplated enactment being made applicable to State Public authorities, analogous provisions may be made in the Bill for setting up State Information Commissions and appointing State Chief Information Commissioner and State Information Commissioner with further recommendations that

Pg. 3 of 1632

- (a) the salaries and allowances of a State Chief Information Commissioner and State Information Commissioner shall be the same as those of an Election Commissioner and Chief Secretary to the State Government respectively; and
- (b) the third Member of the Committee to select the State Chief Information Commissioner and State Information Commissioner shall be a Minister to be nominated by the Chief Minister in place of the Chief Justice of the High Court;
- (x) to empower the Central Information Commission or State Information Commission to impose on the Public Information Officer a fine of Rs.250 for each day's delay in furnishing the information subject to a maximum of Rs.25000;
- (xi) to empower the Central Information Commission or State Information Commission with direct powers to file before the Judicial Magistrate of First Class a complaint against the defaulting Public Information Officer.
- (xii) that persistent failure to provide information within the prescribed time, refusal to receive an application for information, mala fide denial of a request for information, knowingly giving incorrect, misleading, wrong or incomplete information, destroying information subject to a request, obstructing the activities of Public Information Officer, any Information Commissioner or the Courts shall, on summary conviction, make the Public Information Officer liable to a fine of not less that rupees two thousand and not more than rupees twenty five thousand and imprisonment upto one year or both;
- (xiii) that the departmental disciplinary action shall be without prejudice to the penalties enumerated above;
 - (xiv) that, apart from matters related to allegations of corruption, the security and intelligence organizations as are exempted from the purview of the Act shall, subject to the approval of the Information Commission, have the additional obligation to provide information in matters relating to violation of human rights and that the response time for such requests shall be 45 days.

B 4 of 162

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The details of the amendments as summarized above, together with the other amendments as are proposed to be made in the Bill, are given in the comparative Table as in Annexure-III (Pages 112-162)

- 5. The proposed amendments to the Bill also envisage the setting up of Information Commissions in States and Union Territories to be headed by the State Chief Information Commissioner who will be assisted by such number of State Information Commissioners, not exceeding 10, as are required to meet the functional needs. Beside the State Chief Information Commissioner and the State Information Commissioners, additional man power shall have to be sanctioned for the Commissionerate in order to provide the necessary administrative support. It is proposed that to begin with, the Commissions may be provided with not more than five State Information Commissioners and on that basis, the expenditure involved in creation of these posts is estimated to be rupees 65 crore per annum. In addition, funds shall have to be provided for accommodation, office equipment, vehicles and other ancillary needs of the Commission as per the prescribed norms. The Commissions are proposed to set up immediately after the enactment is notified.
- 6. In view of the paucity of time, the Ministry of Finance(Department of Expenditure) and the Ministry of Law and Justice have been requested to furnish their views in the Cabinet meeting. The amendment notice will be drafted and finalized in consultation with the Legislative Department subject to such drafting or consequential changes as may be required or directed by the Cabinet.

Pg. 5 of 162

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DEPARTMENT OF PERSONNEL & TRG. F.No.34012/1(s)/2005-EstL(B)

- 7. The Prime Minister, as Minister-in-charge of the Ministry of Personnel, Public Grievances and Pensions, has approved of this Note for the Cabinet.
- 8. Approval of the Cabinet is accordingly solicited for the following:-
 - (i) to approve the amendments to the 'The Right to Information Bill, 2004' as recommended by the Group of Ministers and for the introduction of a 'Notice of Amendment' in this regard in the Lok Sabha; and
 - (ii) setting up the Information Commissions in the States/Union Territories, and creation of posts therefor, as proposed in para-6 of this Note.
- 9. The Statement of Implementation Schedule in respect of the above proposals has been given in Appendix to the Note.

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SECRETARY TO THE GOVERNMENT OF INDIA

16

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No. 34012/1(s)/2005-Estt.(B) Government of India

Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training

STATEMENT OF IMPLEMENTATION SCHEDULE

SUBJECT:- The Right to Information Bill, 2004.

Gist of decision required	Projected benefits/results	Time schedule for manner of implementation/reporting to Cabinet Secretarint.
To implement certain recommendations made by the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice and the Group of Minister on Preamble, clauses 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 22, 23, 24, 25 and 26. No. 34012/1(s)/2005-Estt.(B)	recommendations made by the Department-related Parliamentary Standing Committee on Personnel,	An official amendment to 'Th

(A.N.TIWARI)

SECRETARY TO THE GOVERNMENT OF INDIA. Dated the

May, 2005.

Page 7 of 162

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PRIME MINISTER'S OFFICE

South Block, New Delhi

Subject:

Right to Information Act - Disclosure of 'File notings' under the definition of information.

Section 2 (f) of the Right to Information Act, 2005 as passed by the Parliament, defines the term 'Information'. The word 'File Notings' is not specifically included in the definition of 'Information'.

- 2. It has been the demand of the civil society that disclosure of file notings would be necessary in order to bring about transparency, which is the objective of the Act.
- 3. In this regard, the unsigned noting given to PM by MoS(PP) (copy enclosed) has been examined. The PM, as Minister-in-Charge, has approved as under for appropriate incorporation in the Rules to Right to the Information Act:-
 - (i) File notings relating to identifiable individuals, group of individuals, organizations and bodies, shall not be disclosed.
 - (ii) File notings relating to appointments, enquiries, departmental proceedings etc., shall not be disclosed,
 - (iii) File notings relating to any of the subjects exempted from disclosure under Section 8(i)(a) to Section 8 (i)(j) of the Right to Information Act, shall not be disclosed.
 - (iv) Internal jottings, comments, etc., on attached slips and postit notes, shall not be disclosed.
 - (v) Only <u>substantive</u> file notings on plans, schemes, programmes and projects of the Government that relate to developmental and social issues may be disclosed.
 - (vi) If, in the view of the PIO, the disclosure of a substantive file noting relating to plans, schemes, programmes and projects of the Government pertaining to developmental and social issues, can result in any adverse consequences for the Government functionary, the PIO may direct that the identity of the

functionary may be withheld if, in his view, no larger public interest justifies the disclosure. In case any portion of the notings are hand written, they may be disclosed after being typed out, in order to protect the identity of the writer. References in the notings that could reveal the identity of the writer may also be deleted.

The DoPT may kindly incorporate the above directions appropriately in the Rules of the Act in consultation with the Ministry of Law & Justice.

> (Smt. V. Vidyavathi) Director

Secretary, Deptt. Of Personnel & Training

PMO I.D.No. 600/40/4/5/08/EIDt. 10.10.2005

THE RIGHT TO INFORMATION ACT, 2005

QUESTION: WHETHER "FILE NOTINGS" SHOULD BE EXEMPTED FROM DISCLOSURE.

- Advisory Council(NAC), the expression "information" in Clause 2(e) was defined to mean 'any material in any form, including records, documents, file notings, memos, e-mails, etc.' The provisions of the NAC Bill were subsequently discussed with Chairperson, NAC by MOS(PP), wherein a conscious decision was taken to exclude the "file notings" from disclosure under the contemplated enactment following which the expression "file notings" was deleted from the above definition. The RTI Bill, with the definition as revised above, was introduced in the Lok Sabha in December 2004. The Bill was later examined by the Parliamentary Standing Committee, as also the Group of Ministers, and considering that the Committee/GOM did not recommend any changes to the definition, the obvious inference is that Government had taken a decision that "file notings" would not be open to disclosure under the legislation.
- (2) "File notings" present the internal discussions within the government system. These deliberations may contain frank opinions at various levels of proposal, adverse comments by senior officers about junior officers, explanations, etc. In matters of examination of court judgements, the "file notings" may contain remarks about the attitude of individual judges, Members of a Tribunal, etc. For example, any officer may write on file that he believes that a certain judge or judicial officer has a prejudicial view in a judicial outcome or given a track record of a particular judge, the case may have have no chance of succeeding. Exposure of these notes on file to the public may invite contempt proceedings.

Further, the type of discussions which are recorded in the 'note portion' of a file, if allowed to go in public domain, may be smirch the reputation of an officer and/or expose the conflict between the officers or between an officer and a Minister. This will have a <u>far reaching</u> impact on the functioning of the Government, as also the morale of the services, and will tend to impair the freedom and felicity with which officers write notes.

(3) Under the Business Rules of certain States, it is specifically provided that Note portion of a file shall not be disclosed - nor given to courts unless specifically summoned.

515

- (4) Under the Information Acts legislated by other countries in the world, notably, USA, UK, Australia, New Zealand, France, Canada, Ireland, The Netherlands, "internal discussion and advice" is specifically exempted from disclosure. It may be worth mentioning that in the Freedom of Information Act, 2002, notified by the Government in 2003, "minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decisions or policy formulation" was specifically exempted from disclosure under Section 8 (1)(e) of the enactment.
- (5) Exposure of the file notings may involve govt, in avoidable litigation in so far as private individuals may use specific 'notings' of the specific officer to challenge a decision of the govt.
- (6) In the event of govt, decision being challenged in courts on the basis of individual officers notings on file, such officers may also become parties in the litigation.
- (7) The public is not going to specifically benefit by disclosure of "file notings" whereas adverse impact of such disclosure on the morale of the govt, servants would be high.
- (8) It is rather strange that after agreeing in principle to the "file notings" being exempted from the disclosure under the Act and subsequently agreeing to the defetion of the expression "file notings" from the definition of the term 'information', certain members of the NAC are now demanding that "file notings" should be brought back and made available for disclosure.
- (9) It may perhaps be necessary to set at rest all doubts on this issue by making a specific provision under Section 8 of the RTI Act 2005 to provide that internal deliberations of the government shall be exempted from disclosure.
- (10) Incidentally, the President has also expressed himself against disclosure of "file notings" to the public and the government, in its reply, had assured the President that no such disclosure is permitted.

RIGHT TO INFORMATION ACT

PREAMBLE

A Bill to operationalise the right to information by setting out the practical regime for people to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability and in relation to matters connected therewith or incidental thereto.

Chapter I: PRELIMINARY

- 1. (1) This Act may be called the Right to Information Act 2004
 - (2) It extends to the whole of India except the State of Jammu and Kashmir.
 - (3) It shall come into force within 120 days of it being enacted.
 - (4) Where State legislation exists dealing with the right to access information, a person will have the right to seek information under the State law as well as under this Act, if the information pertains to a subject under the State List in Schedule 7 of the Constitution of India.
 - (5) Objectives of the Act: The objectives of the Act are to -
 - (i) give effect to the Fundamental Right to Information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability In Union, State and Local Self Government Institutions.
 - (ii) establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner.
 - (iii) promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to:
 - understand their rights in terms of this Act in order to exercise their rights in relation to public authorities;
 - understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.
- 2. In This Act, unless the context otherwise requires:
 - (a) "appropriate Government" means in relation to a public authority established, constituted, owned, substantially financed by funds provided directly of indirectly or controlled-
 - (i) by the Union Government, the Union Government;
 - (ii) by the State Government, The State Government;
 - (iii) by the Union territory, The Union Government;
 - (b) "competent authority" means-
 - (i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council:

- (ii) The Chief Justice of India in the case of the Supreme Court;
- (iii) The Chief Justice of the High Court in the case of a High Court;
- (iv) The President or the Governor, as the case may be, in case of other authorities created by or under the Constitution:
- (v) the administrator appointed under article 239 of the Constitution;
- (c) "Chief Information Commissioner", "Information Commissioner" and "State Information Commissioner" means the authorities so appointed under this act
- (d) "right to information" means the right to access information held by, legally accessible by or under the control of any public authority and includes:
 - (i) Inspection of works, documents, records;
 - (ii) Taking notes and extracts and obtaining certified copies of documents or records;
 - (iii) Taking certified samples of material;
 - (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.
- (e) "information" means any material in any form, including records, documents, file notings, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a public authority under any law;
- (f) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;
- (g) "public authority" means any authority or body established or constituted,-
 - (i) by or under the Constitution;
 - (ii) by any law made by the appropriate Government, and includes any other body owned or controlled by the appropriate Government and includes panchayati raj institutions and other community bodies, like district councils, and village or locality durbars, performing public functions in areas notified under schedule 5 and 6 of the Constitution.
- (h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) and/or (1)(a) of section 5;
- (i) "record" includes-
 - (i) any document, manuscript and file;
 - (ii) any microfilm, microfiche and facsimile copy of a document;
 - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not): and
 - (iv) any other material produced by a computer or by any other device.
- (j) "third party" means a person other than the person making a request for information and includes a public authority.

CHAPTER II

FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

- 3. Subject to the provision of this Act, all persons shall have the right to information.
- 4. Every public authority shall-
 - (a) maintain all its records, duly catalogued and indexed, in a manner and form which facilitates the right to information as provided for in this Act, including ensuring that all records, covered by the Act that are appropriate to computerise, are within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that authorised access to such records is facilitated.
 - (b) publish within 6 months of this Act coming into force and thereafter update at least every 12 months-
 - (i) The particulars of its organisation, functions and duties.
 - (ii) The powers and duties of its officers and employees
 - (iii) Procedures followed during the decision making process, including chains of supervision and accountability.
 - (iv) The norms set by the public authority for the discharge of its functions.
 - (v) Rules, regulations, instructions, manual and records held by or under its control used by its employees for discharging its functions.
 - (vi) A statement of the categories of documents that are held by or under the control of the public authority.
 - (vii) Particulars of any arrangement that exists for consultation with, or representation by, members of the public in relation to the formulation of policy in, or in the administration of, the public authority.
 - (viii) A statement listing all boards, councils, committees and other bodies constituted by two or more persons, that are part of, or that have been established for the purpose of advising, the public authority, and whose meetings are open to the public, or the minutes of whose meetings are available for public inspection;
 - (ix) A directory of their public servants, from the level of the head of the department or his/her equivalent and below;
 - (x) The monthly remuneration received for each position, including the system of compensation as established in regulations;
 - (xi) Information concerning the budget assigned to each agency, including all plans, proposed expenditures and reports on disbursement,
 - (xii) The design and execution of subsidy programs, including the amounts allocated to them, criteria for access, implementation details and beneficiaries.
 - (xiii) All concessions, permits or authorisations granted, with their recipients specified.

- (xiv) All information available to the public authority in electronic form or capable of being reduced to electronic form which is not exempt under this Act, subject to availability of resources.
- (xv) the details of facilities available to citizens for obtaining information, including if the public authority maintains a library or reading room that is available for public use, a statement of that fact including details of the address and hours of opening of the library or reading room; and
- (xvi) the name, designation and other particulars of the Public Information Officer;
- (xvii) such other information as prescribed by the appropriate government or Information Commissioner from time to time which would promote transparency across public authorities or in specific public authorities, as appropriate;

on the basis that it shall be a constant endeavor of public authorities to take steps to provide as much information to the public suo moto at regular intervals through various means of communication so that the public have minimum resort to the use of this Act to obtain information.

- (c) publish all relevant facts concerning important decisions and policies that affect the public while formulating and announcing such decisions and policies;
- (d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions;
- (e) before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public generally or to the persons affected or likely to be affected by these in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.
- (f) For the purpose of this section, information should be disseminated widely and in a form and manner which is easily accessible and comprehensible to the public. "Disseminated" shall mean appropriately making known to the public the information to be communicated through notice boards, newspapers, public announcements, media broadcasts, the internet or other such means and shall include inspection at all of the bodies offices. All materials shall be disseminated keeping in mind cost effectiveness, the local tanguage and the most effective method of communication in that local area. Such information should be easily accessible, with the Public Information Officer, where possible in electronic format, which shall be available free or at the cost of the medium, or in print at cost price.
- 5. (1) Every public authority shall for the purposes of this Act, designate as many officers as Public Information Officers, in all administrative units and offices under such authority, as are necessary to render the public body as accessible as reasonably possible for requesters of information, within one month of this Act coming into force.
 - (a) An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act. He/she shall receive all requests for information, and appeals, both under the

state and the central acts, and pass them on to a designated authority for onward transmission to the relevant department/agency.

- (b) Where applications/appeals are handed over at the sub divisional or sub-district level, an additional period of five days would be added to the time of response specified under this act, in order to enable the request/appeal to be communicated to the relevant authority.
- (2) Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information.
- (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.
- (4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his/her assistance and be treated as a Public Information Officer for the purposes of the penalty provisions in this Act
- 6. (1) A person desirous of obtaining information shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being submitted, to:
 - (a) the Public Information Officer of the relevant public authority;
 - (b) other designated Public Information Officers, as specified in 5 (1a)

specifying the particulars of the information sought by him/her.

Provided that where such request cannot be made in writing the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.

- 6 (2) An applicant for access to information shall not be required to give any reason for requesting access to that information or any other personal details except those necessary for contacting the applicant.
- 6 (3) (1) Where an application is made to a Public Authority for information:
 - (a) which is held by another Public Authority; or
 - (b) the subject matter of which is more closely connected with the functions of another Public Authority,

the first mentioned Public Authority shall transfer the application or such part of it as may be appropriate to that other Public Authority and shall inform the applicant immediately of the transfer.

- (2) A transfer of an application pursuant to subsection (1) shall be made as soon as practicable but not later than 5 days after the date of receipt of the application
- 7(1) Subject to section 5, sub section (1b) above and section 7, sub-section (3)(a) below, on receipt of a request under section 6, the Public Information Officer shall as expeditiously as possible and in any case within fifteen days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9.
 Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request:
- 7(2) If a Public Information Officer fails to give the decision on a request for access to the requestor concerned within the period contemplated in section 7(1), the Public Information Officer would, for the purposes of this Act, be regarded as having refused the request.

- 7(3) Where it is decided to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving:
 - (a) the details of such fees as determined by him, showing the calculations as per the act, at prescribed rates, requesting him to deposit the fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of fifteen days referred to above;
 - (b) information concerning his/her rights with respect to review the decision as to the amount of fees charged and/or the form of access provided, including the contact details of the appellate authority, time limits, process and any relevant forms.
- 7 (4) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given has a sensory disability, the public authority will provide assistance to enable access to the information, including providing assistance with inspection as appropriate.
- 7(5)(a) Subject to sub-sections (b) and (c) below, where access to information is to be given in the form of printed copies, or copies in some other form, such as on tape, disk, film or other material, the applicant shall pay the prescribed fee.
 - (b) Any fees payable by the applicant shall be reasonable, and shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice.
 - (c)Notwithstanding subsection (a), where a public authority fails to comply with the time limits specified in section 7, any access to information to which the applicant is entitled pursuant to his request shall be provided free of charge.
- 7(6) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.
- 7 (7) Where a request is rejected under sub-section (6), the Public Information Officer shall communicate to the person making request,
 - (i) the reasons for such rejection;
 - (ii) the period within which an appeal against such rejections may be preferred;
 - (iii) the particulars of the appellate authority.
- 7(8) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.
- 8(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person:
 - (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c) information, 'the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- d)information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the Competent Authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign government;
- (g) 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;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over; provided further that those matters which come under the exemptions listed in Section 8 shall not be disclosed.
- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Information Officer or the apellate authority, as the case might be, is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

Notwithstanding anything in the Official Secrets Act 1923 nor any of the exemptions permissible in accordance with section 8 (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(2) Subject to the provisions of clause (a) and (i) of sub section I of section 8, any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section.

Provided that the matters covered by Sub-Section 8(a) and Sub-Section 8(i) may be disclosed after twenty-five years.

Provided that where any question arises as to the date from which the said period of ten years or twenty-five has to be computed, the decision of the Union Government shall be final, subject to the usual appeals provided for in this act.

- Without prejudice to the provisions of section 8, a Public Information Officer 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.
- 10. (1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.
- 10(2) Where access is granted to a part of the record in accordance with sub-section (1), the Public Information Officer shall send a notice to the applicant, advising:
 - (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
 - (a) The reasons for the decision; including any findings on any material questions of fact, referring to the material on which those findings were based;
 - (b) The name and designation of the person giving the decision; and
 - (c) Details of the fees determined by him/her and requesting the applicant to deposit the fees;
 - (d) Information concerning his/her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fees charged and/or the form of access provided, including the contact details of the appellate body, time limits, process and any relevant forms;
- 11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission, in writing or orally, regarding whether the information should be disclosed, which submission shall be taken into account when determining whether to disclose the information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweights in importance any possible harm or injury to the interests of such party.

(2) where a notice is given by the public information officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure

- (3) Notwithstanding anything contained in section 7, the public information officer shall, within twenty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal against the decision under section 12(2).
- 12(1): (i)(a) The President shall appoint or designate a Chief Information Commissioner for all matters pertaining to the Union. Such appointment shall be made on the basis of a recommendation made by an Appointing Committee presided by the Prime Minister, with the Leader of Opposition in the Lok Sabha and the Chief Justice of India as members.
 - (i)(b) The Governor shall appoint or designate a State Information Commissioner for all matters pertaining to the State. Such appointment shall be made on the basis of recommendation made by an Appointing Committee presided by the Chief Minister, with the Leader of Opposition in the Legislative Assembly and the Chief Justice of the High Court as members.
 - (ii) Information Commissioners may be appointed by the President or the Governor, as the case may be, in consultation with the appropriate Appointing Committee and the Chief Information Commissioner or State Information Commissioners, as the case may be.
 - (iii) Every Chief Information Commissioner, State Information Commissioner and Information Commissioner shall be a person with wide knowledge and experience of administration and governance, and/or a person with high public stature.
 - (iv) The Chief Information Commissioners and any Information Commissioners shall not be members of Parliament or members of the Legislative of any State or Union Territory and shall not hold any other office of profit and shall not be connected with any political party or be carrying on any business or practice any profession;
 - (v) The requisite budgetary allocations for the emoluments and expenses, including office expenses, of the Chief Information Commissioner and of other Information Commissioners will be provided by the Government of India through special budgetary provisions made available to the respective states out of the Union Government Budget.
 - (vi) The Chief Information Commissioner and of other Information Commissioners shall function autonomously without being subjected to directions by any other authority and would be under the administrative control of the Government of India, Ministry of Personnel, Administrative Reforms and Public Grievances.
 - (vii) Every person appointed as a Chief Information Commissioner or an Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office. He/she will not be eligible for reappointment.
- 12. (2)(i) Any person who does not receive a decision in the time period specified in Section 7(1) or 7(3)(a) above, or is aggrieved by a decision of the Public information officer may, within thirty days of the expiry of such a

period or of receipt of such a decision, prefer an appeal to an appellate authority prescribed for the purpose in each department and senior in rank to the Public Information Officer.

Provided that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appealant was prevented by sufficient cause from filing the appeal in time.

(ii) A second appeal against the decision (or lack of it), under sub-section (i), shall lie within 90 days from the time by which the decision should have been made or was actually received, with the relevant Chief/State/Information Commissioner;

Provided that the relevant Chief/State/Information Commissioner may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

- (iii) Where an appeal is being preferred against an order made by the Public Information Officer under Section 11 to disclose "third party" information, the appeal by the concerned third party must be made within thirty days of the order.
- (iv) If the decision of the Public Information Officer against which the appeal is preferred relates to information of a third party, the relevant Information Commissioner shall give a reasonable opportunity of being heard to that third party.
- (v) In any appeal proceedings, the onus to prove that a denial of a request was justified will be on the public authority that denied the request.
- (vi) Appeals to any appellate authority/Information Commissioner shall be disposed of within thirty days of the receipt of the appeals, or within such extended period, not exceeding a total of forty five days from the date of filing of appeal, for reasons to be recorded in writing.
- (vii) The decision of the Information Commissioner shall be binding.
- (viii) In his/her decision, the relevant Information Commissioner has the power to:
 - (a) require the public authority to take any such steps as may be necessary to bring it into compliance with the Act, including by;
 - (i) providing access to information, including in a particular form;
 - (ii) appointing an information officer;
 - (iii) publishing certain information and/or categories of information;
 - (iv) making certain changes to its practices in relation to the keeping, management and destruction of records:
 - (v) enhancing the provision of training on the right to information for its officials;
 - (vi) providing him or her with an annual report, in compliance with section 4(b);
 - (b) require the public body to compensate the complainant for any loss or other detriment suffered;
 - (c) impose any of the penalties available under this Act;
 - (d) reject the application.
- (ix) The Information Commissioner shall serve notice of his/her decision, including any rights of appeal, on both the complainant and the public authority.

- (x) A decision of the Information Commissioner may be appealed to the High Court or the Supreme Court, on any point of fact and law.
- 12(3) Powers of the Chief Information Commissioner/State Information Commissioners/Information Commissioners
 - (1) Subject to this Act, the Chief Information Commissioner /State Information Commissioners/Information Commissioners shall receive and investigate complaints from persons:
 - (a) who have been unable to submit a request to a Public Information Officer, either because none has been appointed as required under the Act or because the Public Information Officer has refused to accept their application;
 - (b) who have been refused access to information requested under this Act;
 - (c) who have not been given a response or access to information within the time limits required under this Act;
 - (d) who have been required to pay an amount under the fees provisions that they consider unreasonable;
 - (e) who believe that they have been given incomplete, misleading or false information under this act;
 - (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.
 - (2) Where a Chief Information Commissioner/State Information Commissioner/Information Commissioner is satisfied that there are reasonable grounds to investigate a matter relating to requesting or obtaining access to records under this Act, he/she may initiate a complaint in respect thereof.
 - (3) The Chief Information Commissioner/State Information Commissioners/Information Commissioners have, in relation to the carrying out of the investigation of any complaint under this Act, power:
 - (a) to summon and enforce the appearance of persons and compel them to give oral or written evidence on oath and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of the complaint, in the same manner and to the same extent as a superior court of record;
 - (b) to administer oaths;
 - (c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as the relevant Information Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law;
 - (d) to enter any premises occupied by any government institution on satisfying any security requirements of the institution relating to the premises;
 - (e) to converse in private with any person in any premises entered pursuant to paragraph (d) and otherwise carry out therein such inquiries within the authority of the Chief Information Commissioner under this Act as the Commissioner sees fit; and
 - (f) to examine or obtain copies of or extracts from books or other records found in any premises entered pursuant to paragraph (d) containing any matter relevant to the investigation.
 - (g) To impose the penalties prescribed under this act, after giving due opportunity to the concerned official of being heard.

- (4) Notwithstanding any other Act of Parliament or any privilege under the law of evidence, an Chief Information Commissioner /State Information Commissioners/Information Commissioners may, during the investigation of any complaint under this Act, examine any record to which this Act applies that is under the control of a government institution, and no such record may be withheld from any Commissioner on any grounds.
- (5) All the powers of the Chief Information Commissioner would also be enjoyed by the State Information Commissioners and other Information Commissioners, within their jurisdictions.

12(4) Penalties

- (1) Subject to sub-section (3), where any Public Information Officer has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the relevant Information Commissioner shall, on appeal, impose a penalty of rupees two hundred fifty, which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information, after giving such Public Information Officer a reasonable opportunity of being heard.
- (2) Subject to sub-section (3), where it is found in appeal that any Public Information Officer has -
 - (i) Refused to receive an application for information;
 - (ii) Mala fide denied a request for information;
 - (iii) Knowingly given incorrect or misleading information,
 - (iv) Knowingly given wrong or incomplete information,
 - (v) Destroyed information subject to a request; or
 - (vi) Obstructed the activities of a Public Information Officer, any Information Commission or the courts; he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand and imprisonment of up to five years, or both.
- (3) An officer whose assistance has been sought by the Public Information Officer for the performance of his/her duties under this Act shall be liable for penalty as prescribed in sub-sections (1) and (2) jointly with the Public Information Officer or severally as may be decided by the relevant Information Commissioner.
- (4) Any fines imposed under sub-sections (1), (2) and (3) shall be recoverable from the salary of the concerned officer, including the Public Information Officer, or if no salary is drawn, as an arrears of land revenue, recoverable within a maximum of six months of the order imposing the fine.
- (5) The Public Information Officer or any other officer on whom the penalty under sub-sections (1), (2) and (3) is imposed shall also be liable to appropriate disciplinary action under the service rules applicable to him. Provided that in cases where the officer is proved guilty of deliberate denial of information or misinformation, the punishment imposed shall be a major penalty, i.e., dismissal or removal or reduction in rank.

CHAPTER III MISCELLANEOUS

13. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

- 14. The provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.
- 16. (1) Nothing contained in this Act shall apply to the intelligence and security organisations, specified in the Schedule being organisations established by the Union Government or any information furnished by such organisations to that Government.

Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations od corruption will not be excluded under this clause.

- (2) The Union Government may, by notification in the official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be omitted from the Schedule.
- (3) Every notification issued under sub-section (2) shall be laid before each house of parliament.
- (4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the official gazette, by a state Government from time to time. Provided that information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause
- (5) Every notification issued under sub section (4), shall be laid before the state legislature...

16A Monitoring and Reporting

- (1) The Chief Information Commissioners/State Information Commissioners/Information Commissioners shall, as soon as practicable after the end of each year, prepare a report on the implementation of this Act during that year and cause a copy of the report to be laid before the legislatures of the concerned state and each House of the Parliament.
- (2) Each responsible department/ministry shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Chief/State/ Information Commissioners as is required to prepare the report under this section, and shall comply with any prescribed requirements concerning the furnishing of that information and the keeping of records for the purposes of this section.
- (3) Each report shall, at a minimum, state in respect of the year to which the report relates:
 - (a) the number of requests made to each public authority;
 - (b) the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
 - (c) the number of appeals sent to the Information Commissioners for review, the nature of the complaints and the outcome of the appeals;

- (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- (e) the amount of charges collected by each public authority under this Act;
- (f) any facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act;
- (g) recommendations for reform, including recommendations in respect of particular public authorities, for the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law or any other matter relevant to operationalising the right to access information, as appropriate.
- (4) The Union Government Ministry responsible for the administration of this Act, as soon as practicable after the end of each year, prepare a summary report on the implementation of this Act during that year and cause a copy of the report to be laid before the concerned state legislatures and each House of the Parliament, drawing on the information provided in the reports of the Chief Information Commissioners for each State.
- (5) If it appears to any Chief Information Commissioner that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with provisions or spirit of the Act, s/he may give to the authority a recommendation specifying the steps which ought in his/her opinion to be taken for promoting such conformity.
- 16B (1) The Government must, to the extent that financial and other resources are available:
 - (a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Notification and of how to exercise the rights contemplated in this Act;
 - (b) encourage public authorities to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and
 - (c) promote timely and effective dissemination of accurate information by public authorities about their activities.
 - (d) train information officers of public authorities and/or produce relevant training materials for use by authorities themselves.
 - (2) The Government must, within 18 months of this Act coming into force, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.
 - (3) The Government must, if necessary, update and publish the guide at regular intervals The guide must, without limiting the generality of subsection (2), include a description of-
 - (a) the objects of this Act;
 - (b) the postal and street address, phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority as appointed under sub section (1) of section 5
 - (c) the manner and form of a request for access to a information of a public authority;

- (d) the assistance available from and the duties of Public Information Officers of a public authority in terms of this Act;
- (e) the assistance available from the Information Commissioners in terms of this Act;
- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act, including the manner of lodging an appeal with the appellate authorities/Chief/State/ Information Commissioners and a court against a decision by the Public Information Officer of a public authority;
- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
- (h) the notices regarding fees to be paid in relation to requests for access; and
- (i) any additional regulations or circulars relevant to obtaining access to information in accordance with this Act.
- (4) The Government must, if necessary, update and publish the guide at regular intervals.
- 17 (1) The Union Government may by notification in the Official Gazette, make rules to carry out the provisions of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely
 - (a) intervals at which matters referred to in sub-clauses (i) to (vi) of clause (b) of section 4 shall be published.
 - (b) The fee payable under sub-section (1) of section 7;
 - (c) The authority before whom an appeal may be preferred under sub-section (2) of section 12;
 - (d) any other matter which is required to be, or may be, prescribed.
- 18. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of the Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the fee payable under sub-section (1) of section 7:
 - (b) the authority before whom an appeal may be preferred under sub-section (2) of section 12:
 - (c) any other matter which is required to be, or may be prescribed:

Provided that initially the rules shall be made by the Union Government by notification in the official gazette.

- 19. (1) The competent authority may, by notification in the official gazette make rules to carry out the provisions of this Act.
 - (2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-
 - (a) the fee payable under sub-section (1) of section 7:
 - (b) the authority before whom an appeal may be preferred under sub-section (2) of section 12;
 - (c) any other matter which is required to be, or may be, prescribed.

- 20. (1) Every rule made by the Union Government under this Act shall be laid, as soon as may be after it is made, before each house of parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified from or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
 - (2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.
- 21. (1) If any difficulty arises in giving effect to the provisions of this Act, the Union Government may, by order publised in the official gazette, make such provision not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:
 - Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.
 - (2) Every order made under this section shall as soon as may be after it is made, be laid before the houses of parliament.

THE SCHEDULE

(See section 16(1))

Intelligence and Security Organisations Established by the Union Government

- 1. Intelligence Bureau.
- 2. Research and Analysis Wing of the Cabinet Secretariat.
- 3. Directorate of Revenue Intelligence.
- 4. Central Economic Intelligence Bureau.
- 5. Directorate of Enforcement.
- 6. Narcotics Control Bureau.
- 7. Aviation Research Centre.
- 8. Special Frontier Force.
- 9. Border Security Force.
- 10. Central Reserve Police Force.
- 11. Indo Tibetan Border Police.
- 12. Central Industrial Security Force.
- 13. National Security Guards.
- 14. Assam Rifles.
- 15. Special Service Bureau.
- 16. Special Branch (CID), Andaman and Nicobar.
- 17. The Crime Branch-CID, CB, Dadra and Nagar Haveli.
- 18. Directorate of Vigilance including Anti Corruption Branch, National Capital Territory of Delhi.
- 19. Special Branch, Lakshadweep Police.



केन्द्रीय ! सचिवालय

कार्यालय पद्धति

नियम पुस्तिका

CENTRAL SECRETARIAT

MANUAL

OF

OFFICE PROCEDURE

ग्यारहवां संस्करण ELEVENTH EDITION

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
प्रशासनिक सुधार और लोक शिकायत विभाग
MINISTRY OF PERSONNEL, PUBLIC
GRIEVANCES AND PENSIONS
DEPARTMENT OF ADMINISTRATIVE REFORMS
AND PUBLIC GRIEVANCES

मार्च, 1996 MARCH, 1996



CHAPTER 1 - INTRODUCTION

- 1. Special meanings—Special meanings to be attached to some of the terms used in the manual are given below:—
 - (1) 'Appendix to correspondence' in relation to a file means lengthy enclosures to a communication (whether receipt or issue) on the file, inclusion of which in the correspondence portion is likely to obstruct smooth reading of the correspondence or make the correspondence portion unwieldy.
 - (2) 'Appendix to notes' in relation to a file means a lengthy summary or statement containing detailed information concerning certain aspects of the question discussed on the file, incorporation of which in the main note is likely to obscure the main point or make the main note unnecessarily lengthy.
 - (3) 'Branch officer' in relation to a section means the officer who takes the work directly from the section.
 - (4) 'Case' means a current file or a receipt together with other related papers, if any.
 - (5) 'Central issue section' means the unit within a department responsible for typing of drafts, comparing of fair copies, preparation of pads for signature and despatch of communication to the addressees and includes functionaries like resident clerk and night duty clerk. In departments where centralised typing pool does not exist in central issue section, this section will be responsible only for despatch of signed communications to the addressees.
 - (6) 'Central receipt and issue section' means a unit within a department consisting of the central registry and the central issue section.
 - (7) 'Central registry' means a unit within a department charged with the responsibility of receiving, registering and distributing dak meant for that department and includes functionaries like resident clerk and night duty clerk.
 - (8) 'Classified dak' means dak bearing a security grading.
 - (9) 'Come-back case' means a case received back for further action such as re-examination or preparing a draft or a summary of the case.
 - (10) 'Correspondence portion' in relation to a file means the portion containing 'receipts' and office copies of 'issue' pertaining to the file including self-contained inter-departmental notes but excluding those recorded on the notes portion of the file itself.
 - (11) 'C.R. No,' means the serial number assigned by the central registery to dak in the dak register preceded by the code letter identifying the register.
 - (12) "Current file" means a file action on which has not been completed.
 - (13) 'Dak' includes every type of written communication such as letter, telegram, savingram, interdepartmental; note, file, which is received, whether by post, or otherwise, in any department for its consideration.

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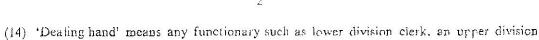
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गंख्या से

ं निखित ति है। clerk, an assistant, entrusted with initial examination and noting upon cases.



- (15) 'Department' means any of the ministries, departments, secretariats and offices mentioned in the First Schedule to the Government of India (Allocation of Business) Rules.
- (16) 'Departmental index' means a consolidated index of files opened by different sections of a department during a year (except those of a classified nature or those proposed to be retained for less than 10 years) arranged in a single series in the alphabetical order of the catchwords under which they have been indexed.
 - (17) 'Departmental instructions' means instructions issued by a department to supplement or vary the provisions of the Manual of Office Procedure.
 - (18) 'Desk' is an officer-oriented work unit within a department with a specific task assigned to it.
 - (19) 'Desk functionary' means an officer assigned a well-defined sub-function or activity in the charge of desk.
 - (20) 'Diarist' means a clerk within a section charged with the responsibility inter alia of maintaining the section diary.
 - (21) Diarising means registering of receipts in the section diary.

- (22) 'Diary number' means the serial number assigned to a receipt in the section diary followed by code letters identifying the section diary ('H' for section diary for Hindi receipt and 'O' for section diary for other receipts), the year and the abbreviated symbol of the section, e.g., 205-H/87-O&M.
- (23) 'Docketing' means making of entries in the notes portion of a file about the serial number assigned to each item of correspondence (whether receipt or issue) for its identification.
- (24) 'File' means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:
 - (a) Correspondence

- (h) Notes
- (c) Appendix to correspondence
- (d) Appendix to notes.

- (25) 'Final disposal' in relation to a case under consideration means completion of all action thereon culminating, where necessary, in the issue of final orders or final reply to the party from which the original communication emanated.
- (26) 'Fresh receipt (FR)' means any subsequent receipt on a case which brings in additional information to aid the disposal of a paper under consideration.
- (27) Indexing in relation to a file means indicating its title under appropriate catchwords arranged in their alphabetical order with a view to facilitate its location in the event of need.

34012/10(s)/2005 ESH. E



शष्ट्रपति भारत गणतंत्र PRESIDENT REPUBLIC OF INDIA

15 June, 2005

Dear Dr. Manmohan Singhji,

The Right to Information Bill, 2005 duly passed by both Houses of Parliament has been sent to me for according assent. In due deference to our Parliament, I have given my assent too. However, I thought it appropriate and advisable to bring the following points to your notice for such action as you deem fit.

- (1) Section 8 provides for exemption from disclosure of information. The grounds of exemption are so wide-ranging that by resorting to them, the authorities concerned can prevent disclosure of even routine information.
- Proviso to Section S(1)(i) appears to contravene Article 74(2) (2)of the Constitution. According to the above Section in the Right to Information Bill, decisions taken by the Council of Ministers and the material on the basis of which decisions were taken have to be made public after the decision has been taken and the matter is complete. In other words, all advice tendered by the Cabinet to the President would have to be made available to the public on demand. This militates against Article 74(2) of the Constitution which states that advice tendered by Ministers to the President shall not be enquired into by any Court.' It may be recalled that this Article was invoked recently so as to avoid sharing of privileged communication exchanged between the former President and the former Prime Minister on the Godhra Similarly, in cases of Article 356 Proclamation incident. including dissolution of the Assembly, the material facts contained in the advice of the Cabinet to the President and vice-versa are precluded from enquiry into by a Court of Law. Apparently, the Right to Information Act has not taken this crucial dimension of our Constitution into consideration.

- (3) Prima-facie it appears that this legislation has been enacted under entry 97 of the Union List under the Seventh Schedule. If that he so, then Section 28 of the Right to Information Bill is defective as it allows the competent authorities at the State level to frame their own rules. These rules can always turn out to be at cross purposes with the rules framed by the competent authority at the Central Government level. Technically speaking, since this legislation is under the Union List, the State Governments get automatically debarred from framing their own rules. This aspect has been overlooked in this Act.
- (4) The definition of the words, "information" in Section 2(i); "record" in Section 2(i) and "right to information" in Section 2(j) are such that even note portions of the file which contain advice/opinion tendered by officials on arriving at a final decision can be insisted upon for production. This is not a fair approach and will harm the process of decision making as officials would be more cautibus in or ever refrain from rendering objective, frank and written advice or file. Sharing of information on how the decision is actually arrived at have entirely different dimensions and ought to have been handled differently.

You may like to have these points gone into for appropriate action.

Yours sincerely,

(A.P.J. Abdul Kala<u>m)</u>

Dr. Manmohan Singh Prime Minister of India South Block New Delhi.



प्रधान मन्त्री Prime Minister

New Delhi July 26, 2005, .

Respected Rashtrapati ji,

I am grateful to you for your assent to the Right to Information Bill, 2005 which has now become Act with effect from 15th June, 2005. I am also in receipt of your letter dated 15th June, 2005 inviting my attention to some of the provisions of the Act for a possible reassessment.

- 2. The Right to Information Act acknowledges the inherent conflict between the State as the custodian of information and the citizens' right to have access to the same. The Act resolves this conflict in favour of the citizen. Therefore, it is quite natural to expect that when the State enacts an empowering legislation such as the Right to Information Act, it generously allows the information held in its charge to be shared with the citizens.
- Your point regarding the range and the scope of the exemptions in the Act is, in that context, quite relevant. This matter had engaged Government's attention and was very closely examined. Allow me to say that the range of the exemptions under Section 8 of the Act is no more extensive than it is in similar Acts of other Parliamentary Democracies of the world. Similar exemptions were provided in the Freedom of Information Act, 2002, which has now been repealed. Exemptions relating to national security, information received from other countries, privacy, confidentiality, contempt of court, privileges of the legislatures, deliberations of the Council of Ministers, etc. are traditionally exempted in all other similar Acts the world over. There are certain underlying principles regarding these exemptions. One is that the State is required to maintain a certain level of confidentiality for its functioning and should be given the benefit of exemption from the disclosure of information in those select areas. Matters concerning sovereignty and integrity of the country thus are exempted from the purview of this Act. Certain exemptions such as those regarding commercial information are meant to ensure that the provisions of this Act are not misused by interested parties for wrongful gains. Privacy of the individual also needs to be protected from intrusive examination,

- 4. You may, therefore, kindly observe that the exemptions listed in Section 8 are based upon sound principles derived from historical experience, experience within the country as well as from abroad. However, lest the provisions under Section 8 are used, or stretched, to defeat the very purpose of conferring the right to information on the citizen, the Act has included, in its Section 8(2), the 'public interest override' clause which ensures that the exemptions notwithstanding, access to information may be allowed where public interest outweighs the requirement of confidentiality. There is also no bar to the disclosure of the non-sensitive parts of a document or record, even when the document as a whole comes under the exempted category. Thus, it may be seen that apart from the limited scope of the range of the exemptions, care has been taken not to make them too rigorous through suitable provisions incorporated in various Sections of the Act.
- 5. I may invite your attention to Section 22 of the Act which allows the Right to Information Act to override the provisions of the Official Secrets Act, as also any other Act or Instrument, in case of any conflict. This only underscores the point that not only does the Right to Information Act allows unprecedented scope for the citizen to receive a large variety of information from the State, it also softens the secrecy and confidentiality provisions of other Acts as well. I may also mention that the Right to Information Act is somewhat unique in the sense that no other country, as far as I know, has an identical provision in its Information Act.
- 6. The point made by you about a possible conflict between Article 74(2) of our Constitution and the proviso to the Section 8(1)(i) of the Right to Information Act has been carefully examined. The position in this regard is brought out in the following paragraphs.
- 7. Article 74(2), as it is expressly worded, bars an inquiry by any court into the question whether any, and if so, what advice was tendered by the Ministers to the President. However, there is no bar if the Government, for any reasons discloses such advice, or the reasons therefor, to the public. This position has been upheld in judicial pronouncements. The first proviso to Section 8(1)(i),

which provides for disclosure of the decisions of the Council of Ministers and the reasons thereof, is based on the accepted legal jurisprudence and, in this view of the matter, there seems to be no conflict with the constitutional provisions.

- 8. I may, however, hasten to add that disclosures under the aforesaid first proviso are not unrestricted as the second proviso to Section 8(1)(i) expressly forbids disclosure of the decisions of the Council of Ministers which attract any of the other exemptions provided in this section. Our understanding, therefore, is that not all the advice tendered by the Council of Ministers to the President shall be open to the public on demand. Similarly, any communication from the President to the Council of Ministers, which attracts any of the exemptions specified in Section 8(1), stands exempted from disclosure. In other words, it shall be the nature of the content of the communication which will ultimately decide whether the information requested should be given or not:
- 9. The Right to Information Act cannot confer any right to the citizens over and above the Constitutional rights. For example, even though the jurisdiction of the courts over orders issued under this Act has been barred under Section 23, the writ jurisdiction of the High Court and the Supreme Court will still remain intact and available to both the Government as well as the citizen.
- 10. You have also pointed out that the State Governments, which have been authorized under Section 27 of the Right to Information Act to frame Rules, cannot enjoy such a power given the fact that the Act itself has been enacted under entry 97 of the Union List, of the Seventh Schedule to the Constitution.
- 11. I may point out that this provision has been incorporated in the Right to Information Act, 2005 following legal advice, that even when the Act was within the Centre's legislative competence, there was no bar to the legislation delegating the rule making authority either to the State Government or to any other authority. In a practical sense, this sounds reasonable since the rules will then reflect the specific and unique conditions in the States. You will kindly notice that the States have to draft Rules in regard to fee to be charged from citizens, terms and conditions of the service of the staff of the State Information Commission, the appeal procedure to be adopted by the Commission

as also any other matter as may be required or prescribed. These are matters of detail and the process of formulation of the Rules, therefore, is better left to the individual States.

- 12. Furthermore, there is nothing uncommon about such a provision enabling the States to frame their own Rules in respect of a law enacted under the Centre's legislative competence. I may point out that not only did "The Freedom of Information Act, 2002" have a similar provision, but the "Narcotics Drugs and Psychotropic Substances Act, 1985" too has such a provision under Section 78 of it.
- 13. There is thus no technical or legal lacunae in the arrangement provided.
- 14. You have very correctly pointed out that "note" portion of the files should not be disclosed to the citizens, who invoke the provisions of this Act. I fully agree that the notings contain the deliberations inside a department, or across departments, preceding a decision.—The disclosure-of "note" portion of a file will inhibit civil servants, experts and advisors from recording their views freely and frankly.
- 15. I may share with you that the draft of the RTI Bill, which was received from the National Advisory Council for consideration of the Government, had mentioned file notings as one of the items that can be disclosed. But, the Group of Ministers, as well as the Department-related Parliamentary Standing Committee, pointedly excluded file notings from the items liable for disclosure.
- 16. As you are well aware, it is the practice in Government that file notings are withheld even when they are summoned by courts of law. Accordingly, file notings may also be excluded from disclosure requirement under this Act. As you have pointed out, it may be possible for some one to seek disclosure of file notings under such expressions as 'records', 'advice', 'memo' and so on. In case it is noticed that file notings are in danger of exposure under this Act, we will consider amending the Act suitably at the appropriate time.

17. In conclusion, I wish to thank you for your very sage and practical advice about the Right to Information Act. By all accounts, this is a path-breaking legislation which will be a powerful tool in the hands of the citizens against the State's traditional monopoly on information. It will be refined and improved as it evolves through the experience gained and the lessons learnt:

Wilk worm oregards,

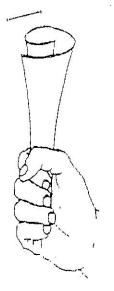
Yours sincerely,

[Manmohan Singh]

Dr. A.P.J. Abdul Kalam President of India Rashtrapati Bhavan New Delhi ANNEX C

Exemptions: the Code and overseas FOI

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13	. Third party's commercial confidences	Œ	®	®	®	®	®	B	
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NATIONAL CAMPAIGN FOR PEOPLE'S RIGHT TO INFORMATION

C 17A MUNIRKA, NEW DELHI 110 067 Tel: +91 (0)11 26178048, Fax: +91 (0)11 26168759, www.righttoinformation.info

25 August 2005

Dear Shri Pachauri,

It was very nice of you to have met us on 13 August 2005 and discussed the proposed rules for the Right to Information Act. We hope that by now your Ministry has been able to examine the suggested rules and is now ready for a wider consultation, as discussed that day.

Unfortunately, after we met it was brought to our notice that your Ministry's website contains the following information:

"Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings" [S.2(f)]. " (emphasis added)

However, the highlighted statement is incorrect as section 2(f) does not exclude file notings. Section 2(f) is quoted below:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

32

As is clear from the above, the law explicitly includes opinions and advices and states that information means "any material in any form" - without any exclusions. In case the Act had envisaged any exclusions, these would have explicitly been mentioned in section 8. However, even in section 8

there is no mention of file notings being excluded.

Given the above, it is wrong for the DoPT to mis-interpret a law passed by Parliament and to at 'bute to it things that are not there.



As a lot of harm has already been done by this wrong statement on the DoPT web site and many officers are quoting it, the DoPT immediately needs to withdraw this wrong statement from its website.

We would, therefore, be grateful if you could accordingly instruct the concerned officers and also let us know,

With regards,

Yours sincerely,

Áruna Roy

Shekhar Singh

· On behalf of the National Campaign for People's Right to Information

Shri Suresh Pachauri,

Minister

Ministry of Personnel, Public Grievances and Pensions

North-Block, New Delhi - 110 011

Working Committee: Ajit Bhattacharjea, Anjali Bhardwaj, Aruna Roy, Bharat Dogra, Fiarsh Mander, Maja Daruwala, Nikhil Dey, Prabhash Joshi, Prakash Kardaley, Prashant Bhashan, Shailesh Candhi, Suman Sahai, Vishaish Uppal, Shekhar Singh (Convenor) Explaining the new right to information law, Govt's website says information you can get does not include 'file notings.' Law doesn't say this at all

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AWARE that its days of hiding behind red tape are numbered, the bureaucracy is making a last-ditch attempt to subvert the Right to Information Act which comes into force from October 12.

The Act, passed with over 100 amendments that strengthened it, thanks largely to the pressure exerted on the Government by UPA chairman Sonia Gandhi's National Advisory Council, is not due to come into force till October 12.

Flagrantly violating the law, the Ministry of Personnel has issued guidelines, also posted on its official website, claiming that Section 2(f) of the RTI Act defines information in such a manner that it "does not include file notings."

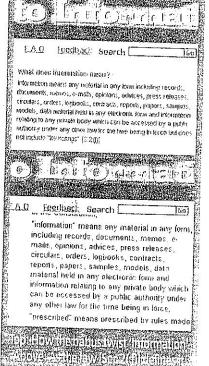
Incidentally, Section 8 of the Freedom of Information Act 2002, which has been repealed by the RTI Act 2005, did exempt file notings from disclosure. The misrepresentation of the new law indicates that the bureaucracy hasn't still come to terms with the change.

File notings are invaluable information on the government's decision-making process as these form the basis for executive decisions and policy formulations. These also help track responses of different departments and officials and identify who did what when and why.

Backdoor, because there is, in fact, no such exemption of file notings in Section 2(f) nor any other provision of the RTI Act.

On August 25, Shekhar Singh, convenor of the National Campaign For Peo-





OPENING UP: A right to information camp in Delhi organised by The Indian Express and Parivartan

ple's Right to Information, along with Aruna Roy, member of the NAC, wrote to Suresh Pachauri, Minister of Personnel, Public Gelevances and Pensions pointing this out. "A lot of harm has already been done by this wrong statement on the DoPT web site," they wrote, "and many officers are quoting it, the DoPT immediately needs to withdraw this wrong statement."

No reaction has come from the Ministry so far, the website hasn't been changed. Pachauri, despite repeated attempts, was not available for comment.

The alleged exclusion of file notings is repeatedly highlighted on the website in the form of response to a fundamental question: "What is information?"

The answer given is: "Information means any material in any form including records, documents, memos, emails, opinions, advices ... but does not include "file notings" [\$.2(f)]."

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'More autonomy for scientific institutions'

PRESS TRUST OF INDIA THIRUVANANTHAPURAM I SEPT 3

SCIENTIFIC institutions in the country would be given more autonomy for their effective functioning, Union Minister of State for Science and Technology Kapil Sibal said today.

At the Sree Chitra Tirunal Institute of Medical Sciences and Technology here, Sibal said the proposal to accord deemed university status to the Centre for Scientific and Industrial Research was under consideration. A legislation to enable scientists to have more stakes in research and development projects had also been mooted.



Shiv Sena leader Uddhav Thackerry along with former chief minister Manohar Joshi visited the Shivaji Maharaj Memorial in Rigad after lighting struck the manorial, destroying the Kalash on the spire on Saturday. Express show

Babus try to block your right to know

The entire answer is a verbatim reproduction of Section 2(f) except for the gratuitous disclaimer at the end that file notings are excluded from the definition of information.

One probable fallout is that public authorities at the Centre and states may, following the Personnel Ministry's own misinterpretation of the law, refuse to disclose any file notings, thereby frustrating an important aspect of the Right to Information (RTI) Act.

The definition of information in Section 2(f) is all-encompassing and does not exclude any form of material.

The Act only exempts certain categories of information under Section 8 and certain intelligence and security organisations under Section 24.

Thus, contrary to the Personnel Ministry's

Why you need to access file notinus

Bureaucrats argue that letting people see file notings may hamper frank exchanges, But right to know campaigners argue otherwise:

- 爾 They show who said what, who did what, at what stage
- 國 Can be only defence for honest bureaucrats
- ME Disclosure may show that some controversial decision was taken despite the objections of a conscientious bureaucrat.
- **御** Fixes accountability

blanket disclaimer, a lot of the file notings that are made every day by bureaucrats and ministers are not exempted from disclosure by either Section 8 or Section 24 of the Act.

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For example, take the Anopheles Stephensi. "We have preserved a sample of this species from Civil Lines area in Delhi since 1905 and it's still causing the disease, though its density has decreased. How has it survived all these years needs to be studied."

The study itself is being planned with extra effort. "We have to select the species very carefully as once used, we will lose them for ever," said Saxena.

The museum has all the 3,552 species of culex mosquitoes (causing different forms of encephalitis) present in the world. These include all the 350 present in India. All the 59 Anopheles mosquito (causing malaria) are there along with all species of ades or denguecausing mosquitoes.

These species have been collected from across South Asian countries including Nepal, Sri Lanka. Pakistan. Myanmar, Bongladesh. Species have also been collected from Phillipines. Africa. Brazil. Central and South America. Australia, Africa. Indian species are preserved as according to their states.

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PRIME MINISTER'S OFFICE

नई दिल्ली-110 011 New Delhi-110 011

Please find enclosed a copy of an e-mail dated 04.09.05 received in this office from Sh.Manoj Mitta, New Delhi regarding Right to Information Act, 2005.

The undersigned has been desired to request that comments on the inclusion of file notings on the web may kindly be sent to this office by 28.09.05 positively for submission to the Prime Minister.

(V. Vidyavathi) Director

Secretary. Department of Personnel & Training

J. (SHB-M) PMO UO No.600/40/C/05/2004-ES.II (Vol.V) Dated: 21.09.05

(The Indian Express, 04 September 2005)

Time running out, babus try to block your right to know Explaining the new right to information law, Govt's website says information you can get does not include 'file notings.' Law doesn't say this at all

MANOJ MITTA

NEW DELHI, SEPTEMBER 3: Aware that its days of hiding behind red tape are numbered, the bureaucracy is making a last-ditch attempt to subvert the Right to Information Act which comes into force from October 12.

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4)



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Thus, contrary to the Personnel Ministry's blanket disclaimer, a lot of the file notings that are made every day by bureaucrats and ministers are not exempted from disclosure by either Section 8 or Section 24 of the Act.

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рм-4256 | S-w Дуба) — PRIME MINISTER'S OFFICE — 30-9-2017

नई दिल्ली-110 011 New Delhi-110 011

Reference is invited to this office UO of even number dated 21.09.05 regarding an e-mail received from Shri Manoj Mitta, New Delhi about Right to Information Act. 2005.

The comments requested by 28.09.05 are still awaited and THE May kindly be expedited.

Secretary, Department of Personnel & Training
PMO UO No.600/40/C/05/2004-ES.II (Vol.V) Dated: 29.09.05



Executive Committee
B. G. Verghese
Chairperson

P. H. Parekh Treasurer

Maja Daruwala Director

Members

R. V. Pillai
Anu Aga
K.S. Dhillon
B.K. Chandrashekar
Mool Chand Sharma
Harivansh
Bhagwan Das
Poonam Muttreja
Sanjoy Hazarika



NGO in Special Consultative Status with the Economic and Social Council of the United Nations

B-117, Sarvodaya Enclave, 1st Floor, New Delhi-110 017
Tel.: 91-11-2652 8152, 2685 0523, 2686 4678 Fax: 91-11-2686 4688
E-mail: chriall@nda.vsnl.net.in
Website: www.humanrightsinitiative.org

29 September 2005

Shri Suresh Pachouri

Minister of State for Personnel, Public Grievances, Pensions & Parliamentary Affairs Ministry of Personnel, Public Grievances and Pensions Room #102 North Block New Delhi –110001

Dear Minister Pachouri:

Re: CHRI Letter to the Prime Minister with regard to exclusion of 'file notings' from the purview of the Right to Information Act 2005.

We are deeply disturbed and concerned by reports that there are moves within Government to exclude 'file notings' from the purview of the Right to Information Act (RTI Act). In this regard we have written to the Hon'ble Prime Minister, Shri Manmohan Singh voicing our concerns. A copy of the referenced letter is being enclosed for your consideration.

In this regard I draw your attention on the official website of the Ministry of Personnel, Public Grievances and Pensions which defines 'information' as:

"Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings" [S.2(f)].

This view has no legal foundation and is in our opinion misleading officers in their duty. 'File notings' come firmly within the purview of the RTI Act. These notings, - unless they satisfy the criteria for exemptions under Sec. 8, must be made public on request. Even where these fall within the exemptions under Sec.8, file notings can be made public where the greater interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advice' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or

For Necessary Action
To: MOS (PP)

No

FCRA Registration No. 231 650671; Registration No. S-24565 under Societies Registration Act; Registration No. D.I.T. (Exemption) /94-95/C-390/94/417 U/S 80-G

quasi-judicial decisions to affected persons." In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives the Government the power to remove any difficulties that may arise in giving effect to the Act's provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries in the Government have the power to recommend amendments for enforcing the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen's right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Any support for a move to exclude file notings would go back on the promise contained in the UPA Government's Common Minimum Programme, that "the Right to Information Act would be made more progressive, participatory and meaningful." It will take us so far back that the legislative effort of the present Government will have been meaningless. Sir, we trust that the Department of Personnel and Training which has piloted this Act into being will not permit any attempts at diluting the Act when it gives its opinion on the matter.

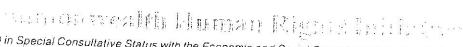
We are happy to provide any clarification on this issue or discuss this further with your office. We would be deeply appreciative of an opportunity to do so

Yours Sincerely,

Director

Encl: As above.





NGO in Special Consultative Status with the Economic and Social Council of the United Nations

B-117, Sarvodaya Enclave, 1st Floor, New Delhi-110 017 Tel.: 91-11-2652 8152, 2685 0523, 2686 4678 Fax: 91-11-2686 4688 E-mail: chriall@nda.vsnl.net.in Website: www.humanrightsinitiative.org

29 September 2005

Executive Committee B. G. Verghese Chairperson

P. H. Parekh Treasurer

Maja Daruwala Director

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Dr. Manmohan Singh Hon'ble Prime Minister Government of India Room 152, South Block New Delhi - 110001

Dear Prime Minister:

Re: Exclusion of 'File Notings' from the Purview of the Right to Information Act 2005.

We are deeply disturbed to read reports of intensifying resistance to the fulsome implementation of the new Right to Information Act 2005 (RTI Act). We are most particularly concerned to hear that there are moves within Government to exclude 'file notings' from the purview of the Act.

File notings come firmly within the purview of the RTI Act. These notings, unless they satisfy the criteria for exemptions under Sec. 8, which lay out the limited occasions on which information can be withheld, - must be made public on request. Even where these fall within the Sec. 8 criteria file notings can be made public where the greater interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

We have been given to understand that there is an argument that file notings are part of the deliberative process and therefore somehow can be removed from the purview of the Act. Sec. 4(1)(b) of the Act makes it mandatory for every public authority to publish amongst other things - "the procedure followed in the decision making process, including channels of supervision and accountability" and "the norms set by it for the discharge of its functions." Sir, I would like to draw your attention to the fact that even Cabinet papers which are exempt from disclosure, under Sec. 8(1)(i) of the Act are also subject to disclosure. The Act requires that not only these decisions be made public but the reasons and the material on the basis of which these decisions have been arrived at be made public after the matter is



FCRA Registration No. 231 650671; Registration No. S-24565 under Societies Registration Act; Registration No. D.I.T. (Exemption) /94-95/C-390/94/417 U/S 80-G complete and over. Given this level of openness required of the Cabinet – the highest decision-making body in the Executive – there is no justification for keeping out of public view file notings which contain, the reasons and their material basis in other matters, where decisions have been taken at levels lower than the Cabinet. There is nothing sacrosanct about these notings per se.

The notings penned by officers form an important and inseparable part of the 'record' and 'file' and the Act ensures citizens access to both the form and the contents of this decision-making process. It is our strong belief that to remove file notings from the definition of 'information' and 'record' or to provide some special protection to file notings would entirely destroy the legislative intent of the Act.

It has been reported that there is a widespread view within officialdom that disclosure of file notings would deter officers from recording their opinions freely and fairly on matters of public importance. In particular, the Central Department of Personnel and Training on its website has indicated that 'file notings' are not included under the definition of 'information' under the Act. This view has no legal foundation and is in our opinion misleading officials in their duty.

Based on our own experience of training and interacting with close to 1600 officers (till date) from the Central and State Governments, it has become apparent to us that there is a large majority of officers who are not in favour of file notings being exempt from the purview of the Act. Everywhere, a majority of these officers asserted that disclosure of file notings would help end arbitrariness and extraneous considerations that are known to influence the decision-making process within government in many cases. We would urge you to listen to these voices that do not perhaps reach you at your high level.

Both the Judiciary and Parliament are long used to functioning openly without any adverse effects and it is only the bureaucracy that presently functions under this unnecessary veil of secrecy. Amending the law to take away file notings from the public domain is a retrograde measure that will appearse only that miniscule part of officialdom that stands to unduly benefit from such secrecy.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advice' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or quasi-judicial decisions to affected persons." In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives your Government the power to remove any difficulties that may arise in giving effect to the Act's provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries in your Government have the power to

recommend amendments for enforcing the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen's right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Sir, any support for a move to exclude file notings would in one stroke go back on the promise contained in your Government's Common Minimum Programme, that "the Right to Information Act would be made more progressive, participatory and meaningful." It will take us so far back that the legislative effort of the present Government will have been meaningless.

When the Act was being debated in parliament it was stated, when resisting amendments, that the law would only be amended in light of experience. But even before the Act has become fully operational, Government is eager to pacify powerful bureaucrat lobbies with retrograde amendments that sadly presage the fate of any administrative reforms which your Government says it is committed to.

Sir, I know of your deep commitment to administrative reforms and we believe it bodes ill for all future reform efforts if this Act is sought to be diluted in any way. It is a liberal act, which takes account of the circumstances of the citizens in the country, the state of governance and the corrosive influence of secrecy on democracy and development. I am encouraged to write to you knowing that you have given so much support to the cause of transparency in your report on Democracy and Development written by the expert group you chaired for the Commonwealth.

We would urge you to allow the Act to stand as it is and let practical experience show how well it can serve the nation by saving it billions in reduced corruption; ensuring better targeted development; and ensuring enhanced government performance. India is renowned the world over for the vigorous grassroots movement that fuelled efforts to make this law a reality. It would dishonour those very poor people, who have fought so hard and risked so much, to dilute it or put any obstacles in the way of its fullest implementation. Like them, we too are looking to your leadership to protect the rights guaranteed by this Act.

We are happy to provide any clarification on this issue or discuss this further with your office and the Government. We would be deeply appreciative of an opportunity to do so

Respectfully Yours.

Maja Daruwala

Director

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प्रधान मंत्री कार्यालय PRIME MINISTER'S OFFICE

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Department of Personnel & Training may kindly refer to their ID No.34012 15(s)/2005-Estt.(B) dated 12.12.05 regarding Right to Information Act, 2005 – Disclosure of file notings - tandor amendment to Rules.

JS &E)

It is requested that action taken in the matter may kindly be intimated to this office urgently.

V. ULduguua W (V. Vidyavathi) Director

28/12

Secretary, Department of Personnel & Training

PMO UO No.600/40/C/05/2004-ES.II

Dated: 21.12.05

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Calculated as a year of

Department of Personnel and Training IR Section

Subject:- Right to Information Act, 2005- Disclosure of 'file notings'-amendment to Rules.

PM's Office may please refer to their U.O.No. 600/30/05/2004-ES.II dated 21.12.2005 on the above subject.

2. A proposal to amend the 'Right to Information Act, 2005', with a view to exempt 'file notings' from disclosure, has been examined in consultation with the Department of Legal Affairs and a draft Note for taking the matter to the Cabinet has been put up for obtaining approval of MOS(PP)/PM.

(Rakesh Malhotra) Under Secretary

PMO(Ms. V.Vidyavati, Director)
DOPT I.D.No. 34012/15(s)/2005-Estt.(B) dated 3rd January, 2006

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