

VIEWS/SUGGESTIONS ON THE RIGHT TO INFORMATION BILL 2004

First of all, while complimenting the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for inviting the views and suggestions of the interested persons on the provisions of RTI Bill 2004, the undersigned, a member of the civil society wishes to observe with all the emphasis at his command that a transparency law like the current one should be formulated in a transparent manner, that is, by way of involving the wider cross sections of the people at large. The current practice of inviting views of the people on the proposed RTI Bill by the Standing Committee within a deadline of 15 days is no doubt a worthwhile step in itself. **But the real purpose of enriching the Bill with more new, creative inputs would be served if the current Bill is placed by your Standing Committee before the people of the nation for a threadbare debate and discussion over it spanning say, a period of 3 to 6 months.**

However, be that as it may, the following are my views/suggestions on different Sections of the Bill, which I wish you to peruse and incorporate at appropriate places into the body of the Bill

*** Section 1(3) to be read with Sections 24 and 26:** As per the Section 1(3), the Act shall be enforced on the 120th day of the enactment of the Bill. Well and good. But as every one knows, no Act can be enforced until and unless the Rules are notified. The Section 24 enjoins upon the Central Government to make the necessary Rules but does not fix a deadline within which they shall frame the Rules. Similarly, the Section 26 provides for the discussion and approval of the Rules by the Parliament, but doesn't provide for a deadline within which the Parliament shall approve the said rules. The incongruity thus existing between the deadline mentioned under the Section 1(3) and the lack of any deadline as found under Sections 24 and 26 shall render the blanket promise given by the Bill for enforcing the Act on the 120th day of its enactment just impossible.

So the Sections 24 and 26 should provide for the deadline of less than 120 days within which the Central Government and Parliament in a coordinated manner shall finish their respective duties so as to realise the goal of enforcement of the Act on the 120th day of its enactment.

*** Section 2:** The Bill has excluded the States and Statelevel authorities (Speaker of the Legislative Assembly, Chief Justice of the High Court and Governor) from the scope of its application. It is a retrograde feature of the Bill in comparison to the FOI Act 2002, which it seeks to replace.

It is therefore urged that the Section 2 of the Bill should be so amended as to incorporate the aforesaid Competent Authorities at the State level within the purview of its application.

*** Section 3:** The Bill has provided for the access to information under the Act to be made available to the 'citizens' only. On account of this a PIO may harass a person by way of asking for producing the proofs of his or her citizenship before entertaining his application for obtaining information. Moreover, those persons who have been living in India but are not yet its citizens should have access to all information of public interest.

So the word 'citizen' be removed from the Bill and let it be declared unequivocally that every person has right to information held by public authorities, subject of course to the other provisions of this Act.

*** Section 6:** The Bill doesn't provide for an acknowledgment receipt to be issued by the PIO to the applicant on the receipt of his application for information. As is well known, no public office has as of now an obligatory provision of issuing such acknowledgement receipt to any petitioner or applicant. As a result, much time, energy and money of an applicant-citizen is simply wasted away in trying to know whether his application is received, diarised and put up for consideration before the officer to whom his application was addressed. A compulsory provision for immediate issuance of an acknowledgement receipt shall benefit both the concerned public office and the applicant citizen in the matter of timely disposal of the subject matter of the application by the competent officer concerned. Moreover, an acknowledgement receipt shall enable the applicant to pursue and remind the PIO for supplying the requested information within the stipulated deadline and also to put up a proper case before the appellate authorities in the event of the PIO refusing to give information timely and properly. An acknowledgement receipt from the PIO is like the copy of an FIR from a Police Station, which shall stand the applicant and honest PIOs in good stead throughout the process of disposal of an application for information and also that of the adjudication of a litigation relating to the said application if and when it so arises.

It is therefore urged that the Section 6 of the Act should provide for an acknowledgement receipt to be issued by the PIO to the applicant just after receipt of his application.

*** Sections 6 and 7:** If read carefully the Bill has spoken of fees to be paid by an applicant in 3 places. Firstly, under 6(1), the applicant has to submit an application fee along with the application for obtaining information. Secondly, under 7(1) the PIO is required to collect the requisite fees from the applicant at the time of providing the needed information within the stipulated period of 30 days. Thirdly, under 7(5), the applicant has to pay further fees if required against supply of information to him in printed or electronic form. Besides the very confusing wording and structure of the concerned sections, a multiple fee regime is not at all in the interest of the citizen for whom this legislation is essentially meant. Moreover, a multiple fee regime shall generate a lot of paper works in all Government offices, to handle which shall prove a formidable task in itself keeping in view the existing state of misfeasance that afflicts almost every public office in the country. Again, it is not desirable that the amount of fees should be fixed centrally and uniformly from above under a Rule to be made under the RTI Act in view of the wide-scale differences that might exist in respect of the cost of production for the information from area to area.

So the Bill should scrap the provision for a multi-level fee regime to be fixed centrally and uniformly for the whole country, and in stead provide for only a one-time fee to be paid by the applicant against the delivery of the requested information to him and the fee to be fixed by the concerned public office at a rate commensurate with the prevalent market rate at the local level for the cost of production for the items of information sought.

*** Section 7:** As per the Section 7(2), if the PIO remains silent without responding in any manner to the application for information, then such silence should be deemed to be the rejection of the application. This is blatantly unfair and shall encourage a gross sense of irresponsibility among the PIOs in the matter of responding timely to the applicant indicating 'yes' or 'no' to the request for information. Of course, under the 7(8), the Bill provides for the PIO to intimate the grounds for rejection of the request for information, but there is no deadline fixed for the PIO within which he shall have to intimate the applicant. This loophole shall generate laxity among the PIOs while making the applicants wait ad infinitum for getting the response from the PIO.

So the Bill's provision that non-response of the PIO is to be deemed as the rejection of the application for information should be scrapped, and alternatively, the Bill should provide for obligatory response by the PIO to be made to the applicant within the given deadline of 30 days, even if the PIO decides to reject the request for information.

*** Section 17:** The Bill has legitimately provided for an independent appellate authority in the person of Central Information Commission. But it has not vested the Commission with power to penalise the errant PIOs and in stead provided for the Commission to refer the acts of omission of an errant PIO to an official of the GOI to institute the case against him with the Judicial Magistrate First Class who shall adjudicate the case and award the punishment if the concerned PIO is found guilty. With such a round-about, multiphase and complex procedure in place, no errant official can possibly be brought to book and punished. Moreover, the said Courts are already overloaded with piles and piles of pending cases which linger even for decades. Is it wise to throw more load in the form of RTI cases to these Courts and make the situation unbearable for the courts themselves and for the citizens crying for swift justice in the matter of RTI related litigations?

It is therefore urged that the provision for RTI cases to be tried by the First Class Judicial Magistrate be scrapped from the Bill and in stead the Information Commission be endowed with the power and jurisdiction to try and penalise the errant PIOs.

*** Section 19:** This Section provides that the provisions of the RTI Act 'shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act 1923'. It means that the colonial OSA is not going to be abolished; and there shall open up an endless spate of lingering and contentious litigations in and outside the Courts as to which of the provisions of OSA are inconsistent with that of the RTI. But as a matter of fact, a transparency law worth the name runs diametrically counter to both letter and spirit of the anachronistic OSA that forms the bedrock of the regime of secrecy that colours to this day our entire system of governance.

So the Section 19 should declare the removal of the Official Secrets Act 1923 lock, stock and barrel from our inventory of Statutes forthwith.

*** Section 21:** The Bill says that a person shall not be entitled to information concerning the 18 nos. of security and intelligence agencies of Government of India except the cases where the information concerning these agencies relates to corruption. But as is well known these days, the personnel of these special agencies do indulge in cases of violation of human rights of individuals and groups, the information about which is of crucial significance from the public interest point of view.

So the Bill should additionally provide for another exception to the general prohibitive rule, by way of saying that a person shall have right to information relating to the scheduled security and intelligence agencies if the information sought relates to the cases of human rights violation by the personnel of these agencies besides the cases of corruption already provided in the Bill.

*** Statement of Objects:** As is well known, our Ministers at Centre or in States swear by an Oath of Secrecy as mentioned under 3rd Schedule of our Constitution, that says that they shall not disclose any official information to the people in the ordinary course of performing their duties except where they shall be required to disclose as a part of their duty as Ministers. It is also equally well known that the Ministers are at the same time front-ranking members of the legislature and the heads of the various administrative departments. On the other hand the Right to Information law requires that all the wings of the State – legislative, executive and judiciary and the public

authorities serving under them including the Ministries and Departments be transparent to the public in respect of all their functions bearing on public interest. Thus the Oath of Secrecy, if maintained further in our Constitution shall work as an unavoidable legal hindrance to the obligation of our public authorities including the Ministers and their Departments to disclose the official information held by them to the people at large, which is supposedly the true intent of the current RTI Bill.

So the Statement of Objects and Reasons appended to the Bill should contain a commitment to abolish in due course of time the Oath of Secrecy from the 3rd Schedule of our Constitution along with all anti-transparency laws, codes, manuals and instruments, so that the proposed RTI Act is implemented genuinely in both letter and spirit.

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