



**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**

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**(PRESENTED TO THE RAJYA SABHA ON 21<sup>ST</sup> MARCH, 2005)  
(LAID ON THE TABLE OF THE LOK SABHA ON 21<sup>ST</sup> MARCH, 2005)**

**RAJYA SABHA SECRETARIAT  
NEW DELHI  
MARCH, 2005/ PHALGUNA, 1926 (SAKA)**

## COMPOSITION OF THE COMMITTEE (2004-05)

1. Shri E.M. Sudarsana Natchiappan- Chairman

### **RAJYA SABHA**

2. Dr. Radhakant Nayak
3. Shri Balavant alias Bal Apte
4. Shri Ram Nath Kovind
5. Shri Varinder Singh Bajwa
6. Shri Ram Jethmalani
7. Dr. P.C. Alexander
8. Shri Tariq Anwar
9. Shri Raashid Alvi
10. Vacant

### **LOK SABHA**

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12. Smt. Bhavani Rajenthiran
13. Shri Chhatar Singh Darbar
14. Justice (Retd.) N.Y. Hanumanthappa
15. Shri Shailendra Kumar
16. Smt. Kiran Maheshwari
17. Shri Dahyabhai V. Patel
18. Shri Brajesh Pathak
19. Shri Harin Pathak
20. Shri V. Radhakrishnan
21. Shri Vishwendra Singh
22. Shri Bhupendra Singh Solanki
23. Prof. Vijay Kumar Malhotra
24. Kumari Mamata Banerjee
25. Shri S.K. Kharventhan
26. Shri Shriniwas D. Patil
27. Shri A.K. Moorthy
28. Shri Ramchandra Paswan
29. Vacant
30. Vacant
31. Vacant

### **SECRETARIAT**

Shri Tapan Chatterjee, Joint Secretary  
Shri Surinder Kumar Watts, Deputy Secretary  
Shri H.C. Sethi, Under Secretary  
Shri Vinoy Kumar Pathak, Committee Officer

## INTRODUCTION

1. 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 Rights 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 23<sup>rd</sup> December, 2004 for examination and report.
3. The Committee considered the Bill in five sittings held on the 1<sup>st</sup>, 14<sup>th</sup> and 16<sup>th</sup> February and 1<sup>st</sup> and 2<sup>nd</sup> March, 2005.
4. The Committee heard the oral evidence of the Secretary, Ministry of Personnel, Public Grievances and Pensions in its sitting held on 1<sup>st</sup> 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 14<sup>th</sup> and 16<sup>th</sup> February, 2005.
6. In its sittings held on 1<sup>st</sup> and 2<sup>nd</sup> March, 2005 the Committee took up clause-by clause consideration of the Bill.
7. In its sittings held on 16<sup>th</sup> 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 House 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 Pension; 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; 78<sup>th</sup> Report of the Committee on Home Affairs on the Freedom of Information Bill, 2000 and Recommendation of the National Advisory Council (NAC) proposing amendments to the Bill.

10. For facility of reference and convenience, observation and recommendations of the Committee have been printed in bold letters in the body of the Report.
11. On behalf of the Committee, I would like to acknowledge with thanks the contribution made by experts/organizations who deposed before the Committee and submitted their valuable suggestion on the Bill.

**E.M. SUDARSANA NACHIAPPAN**  
Chairman  
Committee on Personnel, Public Grievances,  
Law and Justice

**New Delhi:**  
March 16, 2005

# **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, Belize, 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

enacted laws on the right to information to show their commitment for 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 to information by stating:

“The citizens have a right to decide by whom and by what rules they 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 is 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 guaranteed under Article 19(1)”.

2.2 Despite this, a demand for an ‘access to information law’, at the central level, grew extensively. There had been relentless efforts and mass 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. The Chief Ministers Conference held in Delhi in 1997 on 'Effective and Responsive Government' recognized the importance and approved the scheme. Thereafter, for greater deliberations, a statutory scheme was 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 13<sup>th</sup> 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 25<sup>th</sup> July, 2000. The Bill was referred to the Parliamentary Standing Committee on Home Affairs for examination and report on 14<sup>th</sup> 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 its 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 25<sup>th</sup> July, 2001 recommending some changes/modifications in that Bill. The Bill was passed by Parliament in December, 2002 and got assent of the President on 6<sup>th</sup> 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:**

7. Having regard to the above considerations, the Government in its 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: -

- (i) 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, it had 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 23<sup>rd</sup> December, 2004.

9. As per the Statement of Objects and Reasons appended to the Bill, the important changes proposed to be incorporated *inter-alia* include, establishment of an appellate machinery with investigative 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 constitutional provisions and an

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 Central 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, it was becoming very difficult to incorporate so many amendments in the Act 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):**

11. The Committee notes that the amendments suggested by the National 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.
- (iv) Definition of 'public authority' should be modified to cover the 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 every twelve months. The Act of 2002 requires information to be published at intervals to be prescribed by the appropriate 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 incomplete information;
- (d) Destroying information;
- (e) Obstructing the activities of a Public Information Officer and any Information Commissioner or the Courts. The Bill does not provide for the comprehensive/detailed list of offences. It provides penalty merely for persistent 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 Freedom of Information Act, 2002, the recommendations made by 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 1<sup>st</sup> and 2<sup>nd</sup> 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 (c) 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;
- (viii) The fee charged under clause 7 (5) must be reasonable, affordable and should in no case exceed the actual cost of supplying the information. There should be a provision for waiving the fee in case the information is in the larger public interest;

- (ix) To honour 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

essence of the Bill in the sense that the mechanism of access to information will depend on effectiveness of this system. It 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;
- (xv) In order to ensure that the autonomy of the Commission is not impeded, sub-clause (10) of clause 16 should be amended to provide that the procedure for deciding an appeal by the Commission should be prescribed by the Commission itself 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;

(xxi) Sub-clause (1) clause 21 should be deleted or alternatively the proviso to the sub-clause be amended so as to include therein the information pertaining to human right violations. This clause, otherwise gives blanket 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 and witnesses were forwarded to the Ministry of Personnel, Public Grievances 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 squarely meet its objects.**

### **Clause-by-clause consideration**

14. The Committee took up clause-by-clause consideration of the Bill in its meetings held on the 1<sup>st</sup> and 2<sup>nd</sup> March, 2005.

## Clause – 2

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 it was stated to be 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 deleted 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

that the NAC had also recommended a time limit for this purpose. The Secretary, Ministry of Personnel clarifying the position explained that 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 however recommend that in sub clause (b) (xiii), the words, ‘recipients of’ should be inserted after the words ‘particulars of’.**

**16.3 The Committee is of the view that the obligation of public 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. It therefore, suggests that in sub-clause (b) after item (xvii) for the words ‘and thereafter update these publications within such intervals in each year as may be prescribed’ the words ‘and thereafter update these publications every year’ 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.**

#### **Clause – 5**

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 sub-clauses (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 Bill 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 obstacles 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 where 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**

**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 amended 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 sever 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 relates to or has been supplied by a third party.

**23.2 The clause is adopted without any change.**

## Clause – 12

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 service, management, journalism, 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 therefore recommends deletion of the sub-clause.**

**24.4 The Committee considered sub-clause (8) and found that 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. It therefore recommends deletion of this provision.**

### **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 Commissioners from being considered eligible for further employment to any office of profit under the Central or a State Government or any diplomatic 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.**

#### **Clause – 14**

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.**

## **Clause – 16**

28.1 The clause provides for appeal mechanism through which an 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 discretionary 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 Magistrate 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 lies on the public. It also notes that only an appeal has been considered for the purpose of initiating penal action. Almost all

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 suitably.**

**29.4 Subject to the above, the clause is adopted.**

**Clause – 18**

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.**

**Clause – 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 to provide information relating to allegations of corruption.

33.2 It was argued that keeping the intelligence and security agencies out of purview of the Act will not be in the larger public interest. Curbing disclosure or denial of any information may be justified only on the ground

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 proviso 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 proviso 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.**

**Clause – 23**

35.1 The clause seeks to cast an obligation on the Central Government to develop and promote schemes 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 effect to the provisions of the legislation within a period of two 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

convincing reply came from the Government for not enforcing the Act for such a long time. The Committee felt that an important legislation of this 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 have 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 Commission, terms of and conditions of service 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.**

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