



**KARNATAKA RIGHT TO INFORMATION LAW  
-a comparative analysis of salient features<sup>1</sup>**

**Right to Information in India**

Debate on right to information has been on in India for more than 15 years. Though the constitution does not specifically recognize the right to information as a separate fundamental right, the Supreme Court has in various decisions held that right to know is integral to a democracy and that right to information is an inherent part of the right to freedom of speech and expression and is necessary to exercise the right to life.

The central government has been discussing the enactment of a right to information legislation since the early nineties, this legislation is still to see the light of day – the Freedom of Information Bill, 2000 (FOI Bill 2000) is still pending in parliament. In the mean time various state governments took the initiative and enacted legislations as of date Tamilnadu, Goa, Maharashtra, Rajasthan, NCT Delhi and Karnataka have right to information laws in place. While states such as Madhya Pradesh and Chattisgarh have issued executive orders to over 50 departments directing them to provide access to information to people, as have the Panchayat departments in Orissa and Kerala have issued directions to their officers to provide information to those who demand the same.

The Karnataka Right to Information Act (KRIA) was enacted in 2000 and was in cold storage till July 2002 when the rules under the Act were notified. There has been considerable delay on the part of the GoK in bringing the Act into effect. In contrast Delhi government brought the Delhi Right to Information Act into effect within 3 month from the date of enactment by drafting rules and notifying them. Maharashtra had enacted a law in 2000 which was found to be unsatisfactory – the act of 2000 was repealed and a new law was drafted by a committee appointed by the government in 2001. The Maharashtra Right to Information ordinance, 2002 was promulgated in September 2002 – the rules were notified simultaneously.

**Content of an ideal Law**

Over the years some basic principles have emerged internationally as being the essential to right to information laws. A law on right to information must contain the following:

- a) Positive duty on government and public bodies to make suo moto disclosure and also to give information to any person who seeks the same.
- b) Narrowly defined exceptions to right to information.
- c) Simple procedure for accessing information.
- d) A fee structure that is not excessive in nature.
- e) Penalties on government officials for failing to provide or providing wrong information.
- f) Independent forum to appeal.
- g) Monitoring body which will look into the implementation and working of the law.

This paper looks at the KRIA in light of the above principles and also compares KRIA with other legislations in the country in respect of the above.

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<sup>1</sup> © Commonwealth Human Rights Initiative; written by Deepika Mogilishetty-Farias, Project Officer, Right to Information Programme.



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### **Information from whom?**

Under traditional right to information laws – information should be available from public bodies. Keeping within this line of thinking KRIA states that a citizen can ask for information from all offices of the state government, all local authorities, all authorities created by or under an act of the state legislature and any organization or body funded, owned or controlled by the state government – these are defined as “public authorities”. All state RTI laws that are in operation have defined “public authorities” in a similar manner.

However, Maharashtra and Goa laws have added to the above. The Maharashtra ordinance includes within this definition bodies that have received government land at a concessional rate or have received monetary concessions like tax exemptions. In Goa the RTI law also recognizes the right of a citizen to seek information from a body that executed public works or service on behalf or of as authorized by the government.

### **Comment:**

While the definitions as they stand today cover governmental or government funded bodies they do not take into consideration **private bodies** that are involved in performing functions affecting the public in general - schools, hospitals, etc. In an environment where privatization is the norm – the accountability of bodies engaged in providing public services earlier provided by the state needs to be stressed on. A case on point is Delhi Vidyut Board (DVB) – when the Delhi Right to Information Act was enacted the DVB which distributed electricity to Delhi came under the purview of the law. Since then the DVB has been privatized – there is ambiguity as to whether the DVB now comes under the ambit of the right to information law. The DVB is involved in providing electricity to the people of Delhi, it only seems logical that people should have the right to information with respect to the affairs of such a body.

### **Duty to provide information Suo Moto:**

The most important component of a right to information legislation is the suo motto disclosure clause, by and large suo motto disclosure clauses in RTI laws in India are the same. KRIA states that each public authority is required to publish the following information atleast once in a year:

- a. particulars of the organisation, its functions and duties.
- b. powers and duties of officers and employees and procedure followed by them in decision making
- c. norms set by the public authority for the discharge of its functions
- d. details of facilities available to citizens for obtaining information<sup>2</sup>.

### *Information regarding policies*

Public authorities are expected to publish all relevant facts concerning important decisions and policies in respect of all matters that affect the public while announcing such decisions and policies<sup>3</sup>.

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<sup>2</sup> Section 3(b) KRIA

<sup>3</sup> Section 3(c) KRIA



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### *Facts relating to projects, schemes and activities*

Before sanctioning or initiating or causing to sanction or initiate any project, scheme or activity as may be specified by the State Government, all public authorities are required to publish or communicate to the public generally or to the persons affected or likely to be affected by the project, scheme prescribed, 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<sup>4</sup>.

### Comment:

It is not enough to merely state that certain types of information must be provided *suo moto* the law must also clearly lay down in what manner publication should be made. Providing directions as to where information is to be published will help public authorities work in an effective manner. Using newspapers is one way to get information across to the masses. The manner of communication of information to a largely illiterate population must be very clear and simple. Public authorities must be put under a duty to ensure that information given by them reaches even that section of the population that is illiterate. As of now rules under KRIA do not state where and in what manner *suo moto* disclosure must be made.

Further, information regarding public entitlements must be communicated directly and effectively to the people, using means that the people can readily understand, including traditional means of giving information at weekly markets or by beat of dums, etc. Extensive use must also be made of public broadcast media especially radio by development of more community-based programmes which give information to people.

It is universally acknowledged that right to information is essential for participation in governance. The *Suo motto* disclosure clause in the Act state that before initiating any activity or project the government should provide information regarding this to citizens. The law however, does not contain a mechanism to receive feedback or hear the views of citizens. The law therefore does not facilitate participation.

### **Exceptions to right to information:**

The most contentious part of any right to information legislation is the exceptions clause. While it is commonly accepted that there are certain types of information that is outside the public realm, it is difficult to clearly define what exactly these are. Moreover there is a tendency on the part of the government to be overzealous while drafting this clause by using wide language and including all and every type of information under the exceptions. A case on point is the Tamilnadu right to information legislation enacted in 1997 which has more than 22 exceptions – the list is so long and exhaustive that the it is difficult to get information using the law. In fact, Maharashtra had enacted a right to information law in 2000 based on the Tamilnadu model – within 2 years of its enactment the inadequacies of the law came to light. The Maharashtra government repealed the act of 2000 and enacted a new and progressive law which was promulgated as an ordinance in September 2002.

Other than Tamilnadu the exceptions clause contained in all other right to information legislations on the issue in India are the same – especially Karnataka, Goa, Delhi and

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<sup>4</sup> Section3(d) KRIA



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Maharashtra. However, the Goa and Maharashtra laws contains an interesting clause which has an overriding effect on the exceptions – these laws says that **any information that cannot be withheld from parliament or state legislature must be necessarily provided to the citizen.**

### *Public interest over ride*

The exception clauses in Right to information legislation's world over have a *public interest override*. What this means is, notwithstanding that a certain type of information falls under the exempt category if the public interest in providing the information outweighs the interest in keeping the information a secret then that information shall be provided to the public. The only law in India which contains a public interest over ride clause is Maharashtra where information which is a trade secret or is protected under intellectual property law may be disclosed if the competent authority feels that the larger public interest is served by disclosure. If one were to look at international legislation on the issue – exempt information will be provided to the public in situations where public health, safety and environment is at stake.

### **Access to Information - procedure**

In order to access information from any public authority, an application is to be made in a manner prescribed by law. The application format set out in the KRIA rules requires the applicant to state the *details of the document or order* required, *year to which the document pertains* and also *the purpose for which copies are required and how the applicant is interested in obtaining these copies*<sup>5</sup>.

### Comment:

There are a few practical problems associated with the questions in the format:

- a) the law presumes literacy on the part of all its applicants – it makes no provision for providing information to people who cannot read and write. Oral requests should be permitted.
- b) it is ridiculous to expect an ordinary citizen to have knowledge of dates and complete descriptions of the documents they are seeking. People are not always looking for specific information, they would have a general idea of what they are looking for. The law should provide for a mechanism through which people can access and scrutinize documents before deciding what copies they wish to apply for. Citizens are not provided with the opportunity to merely scrutinize documents – a person may wish to take a look at a document and then decide to make copies. The Madhya Pradesh right to information Bill, 1998<sup>6</sup> contained provisions for scrutiny of documents. If a person does not want to make copies, they could scrutinize documents and make notes a minimum fee was to be charged for such scrutiny.
- c) KRIA rules require the applicant to state reasons for seeking information. This goes against the very basis of right to information. ***Every citizen has a right to know – it is of no consequence to the government why information is being sought.*** If at any time information obtained from the government is misused – it should be dealt

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<sup>5</sup> Section 5(1) KRIA and Rule 4 of KRIA Rules

<sup>6</sup> The M.P Bill of 1998 was never enacted



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with in the normal course by the relevant law of the land. Fear of misuse cannot be used as a justification to deny information.

However, the Maharashtra, Tamilnadu and Goa laws also ask the purpose for which information is being sought before providing the same. The big difference between KRIA and other state legislations in this respect is that an application can be returned if the competent authority feels that the application is defective or incomplete or purpose for requesting information is not clearly stated<sup>7</sup>. There is a great deal of potential here for misuse of the unfretted discretionary power in the hands of the competent authority.

### **Fees**

The norm on fees is that the charges should not be so high and prohibitive that people are unable to pay in order to access information. The Delhi law for instance states that every person applying for information must pay an application fee of Rs 50 – in addition to this application copying fees are charged. Citizens in Delhi are finding that exercising their right to information is an expensive proposition. Citizens groups in the city are campaigning to have this provision deleted.

Under the Maharashtra Right to Information Ordinance 2002 also a court fee stamp of Rs 10 is required to be fixed to the application form. The ordinance makes a distinction between information that is readily available where the fee is 0.50 ps page and information that has to be collected where the fee is Rs 2 per page.

Under KRIA the fee payable for obtaining information is as follows:

- a) information received in A4 size paper – Rs 5 per page
- b) information supplied on a 1.44MB floppy disc – Rs 100 per floppy
- c) maps, plans etc - a reasonable fee will be prescribed by the competent authority depending on cost of labor and material required to be employed<sup>8</sup>.

The positive aspect of the KRIA fee structure is that there is no application fee. However, fee structure under KRIA is somewhat excessive – Rs 5 per page – is five times the cost of photocopying a page. The fee structure in fact goes against Section 5(1) of KRIA which states that the fee charged should not exceed the actual cost of supplying information.

Fees for providing maps and plans is left to the discretion of the competent authority. While it may not be possible for the government to at this stage determine what the cost of providing copies of plans and maps would be, an upper limit should have been set under the Act to curb misuse of this discretionary power.

### **Time Limits**

Information under KRIA is required to be provided/refused as the case may be within 30 days from the date of application<sup>9</sup>

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<sup>7</sup> Rule 4(6) of KRIA rules.

<sup>8</sup> Section 5(1) KRIA ; Rule 4(2) and (3) of KRIA Rules.

<sup>9</sup> Section 5 (2).KRIA



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A general period of thirty days is an unreasonably long time limit. KRIA does not provide for gradations of information in terms of urgency. There could be classes of information that are required urgently and getting the information after 30 days may render the whole exercise redundant. Certain situations affecting the life and liberty of a person would warrant immediate access to information. The Maharashtra ordinance states that where information requested is related to the life or liberty of person such information must be provided within 24 hours, Goa law sets the time limit for such type of information at 48 hrs.

### **Appeals**

Legislation on right to information is inadequate and incomplete without an independent appellate body. The Karnataka Law has provided two levels of appeals. The first appeal will lie to the authority immediately superior to the competent authority, second appeal is available with the Karnataka Appellate Tribunal. An Independent appeals mechanism is the bed rock of a right to information legislation – by providing for an appeal to the Karnataka Appellate Tribunal – an independent body – KRIA fulfils the most important criterion of a model right to information law. Other legislations in the country provide for appeals to administrative and civil service tribunals<sup>10</sup>, public grievances commission<sup>11</sup> or Lok Ayukta<sup>12</sup>. FOI Bill 2000 does not have a provision for independent appeal and neither does the Tamilnadu law.

### **Penalties**

Under KRIA if the competent authority a) fails to provide information or b) furnishes false information that the competent authority knows or has reasonable cause to believe to be false. The penalty of a maximum of Rs 2000 maybe levied and this can be recovered from the salary of the Competent Authority, in addition to the fine disciplinary action may be taken under service rules<sup>13</sup>.

### **Comment:**

Legislation on right to information would mean nothing without a penalty clause. In this respect KRIA fulfils the criterion of a model right to information law, unlike the Tamilnadu law and central Freedom of Information Bill, 2000 which contain no penalty clause making them toothless. The Maharashtra ordinance is most progressive on the issue of penalties – a fine of Rs 250 per day is to be levied on the concerned officer for every day of delay, in addition a fine upto a maximum of Rs 2000 for giving incorrect/misleading/incomplete information.

### **Issues not covered by KRIA**

#### Independent monitoring body

An essential component of a right to information legislation is the constitution of an independent monitoring authority - a body which will review the working of the law, identify problem areas and suggest mechanisms for better implementation, training of officials, record keeping and in general keep track of and provide suggestions and recommendations to improve information delivery.

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<sup>10</sup> Goa and Rajasthan

<sup>11</sup> Delhi

<sup>12</sup> Maharashtra Ordinance.

<sup>13</sup> Section 9 KRIA.



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The Delhi RTI Act has provision for a council for information which consists of ministers, bureaucrats, journalists, lawyers, representatives of NGO's, residents welfare associations, etc. The body looks into the implementation of the law and provides feedback and recommendations to the government on putting in place better systems for information delivery, training of officials, etc. The State Council is to monitor the implementation of the Act and is required to submit a report every year to the state legislature.

The Maharashtra RTI Act goes a step further requires that councils be created a) at the state level – headed by the chief secretary and b) in every revenue division – headed by the divisional commissioner. The councils are to include members of media, non-governmental organizations and academicians. The councils have to review the working of the law once every six months and make recommendations to the government.

### Training of officials and changing the culture of secrecy

The biggest hurdle in accessing information is the culture of secrecy prevalent in government. Unless this issue is addressed no amount of legislation will help people realise their right to information. The right to information law should have stressed on the need for training and a game plan for the same should be evolved to build capacity amongst government officials to operate in a people friendly manner. None of the RTI laws in force in India currently provide for mandatory training of officials on implementation of RTI laws.

### Publicity and awareness building

Lack of publicity on the part of the government and awareness amongst people has been at the heart of the failure of many progressive a legislation and policies of the government. Even though laws on right to information have been in existence in various parts of the country since 1997 – experience has shown that they have been ineffective mainly due to lack of awareness on the part of citizens. Notification in the official gazette is not sufficient publicity – the government has to take a more pro active approach with the help of civil society organizations to publicize social legislation. Lack of awareness is present not only amongst the public but also amongst the government officials who are in charge of implementing these laws.

### **Conclusion**

KRIA is one of the better legislation's on RTI in the country the law will remain on paper and amount to nothing unless there is will on the part of the government to implement the same. The Karnataka government has already slacked in this front by delaying implementation – it remains to be seen what steps will be taken by the government in the future to make the law effective. Needless to say laws by themselves will not bring about change. KRIA needs to be tested and this is only possible if demand for information is created. This is where citizens groups would have a more active role to play, by demanding information and spreading awareness about the law – the ball is now in our court.