

Supreme Court sets deadline on FOI law

Hopes for India's languishing Freedom of Information Act becoming effective were given a boost on July 20. Subramaniam Vincent reports on the Supreme Court's deadline and implications.

July 2004 - The establishment of a strong legal framework for government transparency in the country may have received a fillip this month. On July 13, the Supreme Court heard a public interest litigation on the languishing Central Freedom of Information (FOI) Act, passed in 2002. The petitioners were the Centre for Public Interest Litigation and the National Campaign for People's Right to Information (NCPRI). Noted public interest lawyer Prashant Bhushan is handling the case on behalf of the petitioners. (Writ Petition (Civil) No. 637/98 Centre for Public Interest Litigation And Another Vs. Union of India).

After 2 days of hearings last week, the Chief justice asked the Government to either notify the Central FOI Act or formulate rules and guidelines to give effect to it right away. The government sought time to respond, and the matter was adjourned till July 20. On July 20, the government's lawyers represented that some rules and guidelines for the FOI Act have been formulated but the Centre has sent them to all the State governments for review and comments. New Delhi wanted time until September 15. With the petitioners' counsel Prashant Bhushan agreeing to this, the Court set September 15 as the deadline for the States to respond to the Central Government.

Readers will be aware the Central Freedom of Information Act was passed in 2002, and received assent from the President in January 2003. But since then, the rules and guidelines to give effect to the law had not been announced and this was the essence of the petitioner's complaint.

In the meantime, nine states already have their own RTI laws, enacted before the Central version. Citizens and civil society groups have using the state laws, particularly in Delhi, Goa, Maharashtra and Karnataka.

But for sometime now there have been concerns of conflict between the Central law and state laws as well operational confusion on the ground and when the Central law is operationalized. Arvind Kejriwal, who leads Delhi's Parivartan campaign that has produced remarkable results using the state's RTI law, says that unless very clear directives and publicity exists, lower level government officials may cite the presence of both laws, to obfuscate matters.

After enactment of the Central law, the previous government at the Centre had written to the states asking for a repeal of the respective state RTI laws. The opinions of the state governments on this matter has not yet been fleshed out. But repealing the state laws is also a matter of concern to some because the state laws have been used by Delhi and Maharashtra citizens groups to somewhat good effect recently. So if a Central Act replaces the state law, the concern is that campaigns must not suffer reversals.

Bhushan however disagrees with the Central government's view that a repeal of state RTI laws is necessary on the mere grounds that the Central law will override state laws. In his legal opinion on this matter, Bhushan argues that "The enactment of the Central legislation (after it has been notified and has come into force), would only mean that the Central Act will override the State Acts, if there is a conflict between the two. However the State act will continue to apply to areas covered by the State list as well as areas covered by the concurrent list, provided there is no conflict with the Central legislation. There is thus no occasion for the repeal of the State Right to Information Acts even after the Central Act has been notified."

But experts and activists are worried about another factor. The Central Act is weaker than state laws in several respects. When effectuated, it will have overriding effect in areas of conflict between Centre and State, and this may actually work against government accountability.

Bhushan, the Commonwealth Human Rights Initiative (CHRI), RTI leader Aruna Roy and noted economist Jean Dreze feel that the current version of the Central Act and its rules need changes inherently as well as to reflect the best of the respective State Acts. "It would be best if the Central Act were to incorporate the most liberal elements of the State Acts", says Bhushan.

Dreze and Roy are also members of the National Advisory Council (NAC). Separately last week, both the economist and the noted RTI campaigner wrote to the chairperson of the NAC, Sonia Gandhi giving specific recommendations for the government to strengthen and amend the Freedom of Information Act, before giving it effect. "Transparency of government and the right to information are not merely linked to corruption but in fact affect the right to life and livelihood of the people. It is a tool to fight the arbitrary use of power. It is also crucial for ensuring the rule of law and the effective functioning of regulatory, development and service mechanisms...The Freedom of Information Act needs to be strengthened and amended, and notified in the shortest possible time frame", they wrote.

It must be noted that the NAC itself had recently been constituted for civil society leaders to monitor the government's progress on its commitments through the CMP, as well as provide specific inputs from a ground reality perspective. The NAC members' initiative on the FOI law and the Supreme Court's deadline of September 15 for the states have crucially come together.

Despite the concerns, the developments of the last two weeks are positive, on balance. Public domain research and information on both the RTI laws is also available, to feed into informed discourse. In fact, last year, the CHRI had placed information comparing the state laws with each other and the Central law, and also pointing out the current weaknesses in the various laws on their website at: <http://www.humanrightsinitiative.org/programs/ai/rti/india/india.htm>.

At the conclusion of the Supreme Court hearings on July 20, the government's lawyer is reported to have asked Prashant Bhushan to provide inputs on the guidelines for the FOI Act to the government. "The possibility of the Government passing Administrative

Guidelines on RTI remains alive and this could ensure interim access to Central Government information, until an amended Act is passed", feels Charmaine Rodrigues of CHRI. Bhushan expects that there is now scope for consultations within civil society, the Central government and the state governments over the coming weeks. The Supreme Court deadline gives added impetus.

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