

## **The Right To Information Law In India----A Comparative Picture**

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The dangerous decline in public administration and standards, the poor quality of products and services offered by the State and authorities set up by it or administered by it, the rampant corruption in public life and institutions with its mind boggling dimensions, the rapid strides in science and technology (particularly advance in bio-technology) are some of the phenomena which require that citizens and the common man must be assured of their right and access to information, which can be delayed no further.

The important dimensions of any meaningful right and access to information can be examined or tested on the touchstone of various parameters. The most important of these parameters are: the exclusion clauses under which the right to information can be denied; the obligatory duty to maintain records in a meaningful and systematic manner; the procedure a person must follow to get the required information; the appeal procedures where the information is denied, to the person seeking it, and the accountability when information is wrongly denied. Equally important is the "time-frame" during which the required information must be supplied.

It is proposed to deal with the various bills and Acts within this wide framework and prepare a comparative note on the efficacy or otherwise, of the provisions of these proposed laws or Acts already in force (as in the case of Tamil Nadu and Rajasthan).

### **THE TAO OF RIGHT TO INFORMATION**

The Right to Information law ensures three important rights to every citizen: Transparency, Accountability and Openness in Governments and every governmental action. Hence one could call it the TAO of the Right to Information Law.

The Karnataka Right to Information Bill, 2000 specifically states this in its preamble as "provide for right to access to information to the citizens of the State promotes, openness, transparency and accountability in administration.

These aspects have been mentioned in some way or other in the preamble of most other laws/bills considered herein.

### **ENFORCEABILITY OF THE RIGHT TO INFORMATION LAW**

Except the Tamil Nadu Right to Information Act, 1997, which has come into force, the other bills, as usual provide that it shall come into force from the date it is so notified. The Karnataka Bill in fact provides that it shall come into force on a future date as may be notified and different dates for enforcement may be appointed for different provisions of Act [Sec. 1(2)].

The scope and applicability of the Act is the widest in the Goa Right to Information Act, 1997 [Sec. 1(2)]. The duty to provide information to any **citizen** seeking information has been cast upon the "Competent Authority". Who is the Competent Authority has been exhaustively defined in the Schedule to Sec. 1(2). It covers virtually all the Government Departments such as Agriculture, Civil Supplies, Co-operative, Education, Food and Drugs etc. In all 113 departments/officers of the Government are covered by the

Schedule. Basically the idea is to ensure that all departments that interface with the public must provide the information that is sought by the citizen.

But unlike the Tamil Nadu Right to Information Act, 1997, the obligation to provide information has not been cast upon private bodies under the Goa Act. In the Tamil Nadu Act, 1997 the **definition of 'information' includes information relating to a company, corporation or a cooperative society even though these may be private bodies. [Sec. 2(3)].** This is in addition to the right to information regarding the State or local or other authorities including the statutory authorities and organisations owned or controlled by the Government [Sec. 2(3)]. Whereas the Tamil Nadu Act defines information illustratively, the Goa Bill defines information **to mean any material or information relating to the affairs of the State etc. [Sec. 2(c)].**

**The Goa Bill also provides that information relating to any public work or service which is provided by a party other than the Government, but on behalf of or as authorised by the Government, shall also be covered under the definition of information. [Sec. 2(c)].**

## **WHO CAN SEEK INFORMATION**

The Tamil Nadu Act and CERC Bill allow **every person bonafide requiring information to access it under the Act [Sec. 3(1)].** However, the Goa Bill, 1997, the Karnataka Bill, 2000 and Rajasthan Bill, 1997 and GoI Bill 2000, restrict the rights to a citizen only.

It is worth discussing whether restricting this right to a citizen is meaningful and enforceable. It would be very easy for anyone seeking information to route this request through the citizen for a consideration. A citizen can also have the information with others. Therefore, what purpose would be achieved by restricting this right to a citizen is a moot question. Secondly, wouldn't it open up another undesirable practice in the social fabric of encouraging moneymaking methods?

Even a more germane consideration would be on the grounds of violation of human rights and the International Covenants to some of which India is a signatory. For example, there are cases where foreign tourists overstay their visa period and are detained, foreign national who are under trials, and non-citizens where human rights violations occur or are detained because they may have been found with narcotic drugs or other banned articles on their person or are even abducted. In such cases how does their spouse, companion, friend seek information regarding their whereabouts if the right to information is restricted to a citizen only?

Therefore, there is a need to rethink this issue closely.

The Goa Bill also defines the right to information itself and includes the inspection of documents, records, taking notes etc. A valuable addition in this right to information is the **right to obtain certified copies of documents or records or taking samples of materials [Sec. 2(d)].**

The value of certified copies of documents or records can be appreciated particularly by the practising lawyers in view of the provisions of the Evidence Act and the Civil Procedure Code, whereby the courts can take judicial notice of such certified copies of records including the Government records. The onus of burden of proof would then shift on the Government or the contesting party to disprove them.

## **EXCLUSION CLAUSES**

The longest listing of exclusion clauses is in the Tamil Nadu Act, rendering the right to information virtually meaningless [Sec. 3(2)]. About 25 grounds for exclusion or negating the right to information have been set out in this Act [Sec. 3(2), 4(a) & 4(b)]. The exclusion clauses are so wide and loosely worded that virtually the most innocuous and harmless information could be denied on mere apprehension or personal beliefs. For example, **information can be withheld on any matter which is likely to help the commission of offence; or likely to help or facilitate to escape from legal custody, or affect prison security, or likely to impede the process of investigation or apprehension or prosecution of offenders [Sec. 3(2)(v)]**. Similarly, information that would harm the ability of the Government to manage economy, prejudice the conduct of official market operations, or could lead to improper gain or advantage to any person, can also be denied [Sec. 3(3)(n)].

Further assuming that, and giving the benefit of doubt to the Government that it genuinely desires to protect the interest of the State by withholding information on any of these grounds, **there should be a provision in the Right to Information Law that the onus of proving it shall be on the Government or the Competent Authority denying this information to the citizen**. In the absence of any such specific provision in any of the proposed bills, including the Government Bill, it would be a double jeopardy on the citizens to first prove his bonafide requirement to access the information and again to prove that non-disclosure or withholding of the information by the Government and the authorities is not justified on the proposed ground.

Instead of a blanket exemption to certain categories of information such as defence matters, security and international relations, the CERC Bill imposes the test of grave and significant damage, in order to seek exemption of such information (Chapter 4 Sections 19,20,21).

The numerous grounds of exclusion or withholding information from the citizens also clearly overlap in the Tamil Nadu Act and it is very hard to clearly understand and apply the demarcation line. For example, non-disclosure of information that would prejudice administration of justice and the enforcement or proper administration of law is an omnibus, catchall provision in the Tamil Nadu Act [Sec. 3(2)(g)]. The same ground has again been repeated subsequently [Sec. 3(2)(h), (j) & (v)]. Similarly, withholding of information on the grounds of prejudice to the economy and commerce are reflected in at least three places [Sec. 3(2)(n), (p) & (q)]\*. Further, the exemption on the ground of privileged and confidential communication under Sections 123 and 124 of the Indian Evidence Act in favour of the Government has been retained as a valid ground for denial of information.

The exemption under Section 123 and 124 of the Indian Evidence Act is absent in the proposed Government of India Bill as well as the Goa, Karnataka and CERC Bills but it is present in the other drafts considered here.

**On the other hand the Goa Bill is far more precise and has only six grounds for withholding the information. Interesting provisions have been made regarding withholding of information on the ground of breach of Parliamentary or Legislative Assembly Privileges [Sec. 5(d)]. Whenever information has to be withheld on this ground, before denying the information, the Competent Authority must refer the matter to the Legislature Secretariat for determination of the issue as to whether disclosure of such information would result in breach of Parliamentary or Legislative Assembly Privilege. If the Secretariat advises in the affirmative, the issue becomes final and no statutory appeal can be made against such a decision under this Act. [Sec. 5(d) proviso].**

The Rajasthan Right to Information Act, 2000 also contains a hotchpotch of various exclusionary clauses along similar lines as in the Tamil Nadu and other right to information bills. In addition, **new grounds are**

also present such as, **denial of information on the ground that the request is general, or that the volume of information required to be retrieved or processed for complying with the request would be disproportionately burdensome or would adversely interfere with the functioning of the authority [Sec. 5(x)].** Two other additional grounds that are not seen in the Tamil Nadu and Goa bills are the denial of information on the ground that by **legal convention the requested information has to be published at a particular time [Sec. 5(x)(b)]; or that the information requested is already contained in the published material for sale [Sec. 5(x)c].** This last ground for denial could further obstruct the free flow of information, because though technically, information is supposed to be published and readily available in the market, the common experience is that the published material is out of print or that ready stocks are not available. The commonest examples are the forest manuals, jail manuals, Law Commission Reports etc., which are generally printed by the Government press, but mostly out of stock. In a reported case, the Bombay High Court had to direct the Telephone Department to ensure that the telegraph rules were made available to the public at least in all its offices!

Also the exclusion clauses show a lack of clarity - to illustrate, information can be withheld if it prejudicially affects the sovereignty and integrity of **India** or the security of the **State**..... The question is whether there was a conscious use of the words India and State by the draftsman? And if so, what was the logic? On the other hand if it is a mere lapse, it shows a total disregard and disinterest in a bill as vital as the Right to Information Act.

This kind of loose drafting is noticeable throughout the Rajasthan Right to Information Act.

## **RECORD KEEPING**

The biggest blow to meaningful access to information in India is the complete absence of a systematic and meaningful record keeping by all public bodies including the Government. Any citizen seeking any information generally does not know where to begin, **because the first step in the access to information is to know what information is available and where?** Unless a directory of the records maintained by any body, authority or institution is regularly maintained and updated, the right to information and accessing it is likely to be a frustrating experience. This seems to have been recognised by some of the Bills under discussion.

The Goa Bill casts a **duty** on every competent authority to maintain all its records as per its operational requirements duly catalogued and indexed [Sec. 7]

The Tamil Nadu Act is silent on this aspect but provides for transfer of the request to the department holding the information.

The Government of India Bill [Sec.4] and Karnataka Bill [Sec.3] are identical. They require maintenance of detailed records and record keeping. Similarly the CERC Bill also requires maintenance of records in easily accessible manner and in detail.

The Rajasthan Bill also casts a duty to maintain records in accordance with the procedure laid down under relevant law or department manuals and proper indexing, listing, numbering and paging of records [Sec. 9]. The drawback is that if the relevant law or department manuals do not have this requirement for record keeping, the citizen will again be at a loss to know what department or body has which kind of information. Therefore, the citizen accessing information will have no option but to make his request in general terms or vague terms, which itself will entitle the incharge officer to deny the request on the ground that it is too general under [Sec. 5(10)] of the Rajasthan Act. The exercise would be one in futility.

The Tamil Nadu Act in this regard is also a self-defeating exercise. If the particular department or competent authority does not have the required information, the competent authority must then transfer the application to another competent authority with whom such information is available [Sec. 3(b)].

In the absence of a clear duty to maintain records and a directory of such records as provided in the Goa Bill, the access to information under the other bills discussed herein, are likely to be non-starters and self-defeating.

## **FEES, REFUND AND PENALTIES**

The Tamil Nadu Act has no provision regarding fees payable but it can be provided by the rule-making power retained with the Government.

The Rajasthan Bill provides for fees to be paid before seeking information [Sec. 8(1)] and denial of information if less fees are paid [Sec. 8(2)]; fees must also be paid when the decision of the authority is to be challenged by way of first appeal [Sec. 6] and fees must again be paid when the decision in the first appeal is challenged by way of second appeal [Sec. 7]. There is no provision for exemption of fees for various categories such as journalists, NGOs etc. Similarly, there is no requirement for charging fees only as per actual costs, or reasonable fees etc.

The Goa Bill states that fees for supply of information shall not exceed the cost of processing and making available of information [Sec. 14]. But it has no exemption clause for journalists, NGOs etc.

Most other freedom of information law worldwide, specifically provides for fees to be paid on actuals except where information is sought for commercial purposes. Fees can also include costs for search time that is reasonable. Similarly there must be exemptions for NGOs, journalists and individuals who due to financial constraints cannot be expected to pay for retrieval of information. Such groups would include tribals, migrant labour etc. Some of the Bills except CERC Bill provide for clear waiver of fees for certain individuals, NGOs, journalist etc.

The Tamil Nadu Act is also silent on penalties for denial of information and deliberate delay in providing information. But the Goa Bill specifically provides for a penalty if the information supplied is false, or if the supplied information is not as requested. **The person who is responsible for providing the information shall be personally liable** (Sec. 8).

However, the penalty of Rs. 100 for every day of delay may not be deterrent enough, particularly if there are other interests involved in withholding the information [Sec. 8(2)]. Similarly the Rajasthan Bill also provides for personal liability of the person responsible for providing information and if he fails to do so (Sec. 10). However, no specific penalty amount has been provided for, unlike the provision in the Goa Bill. A similar provision is also contained in the Karnataka Bill (Sec. 10). However, the penalty is fixed at Rs. 2000 after appropriate enquiry. The CERC Bill provides for Punitive damages and also adequate costs. None of Bills provide for costs to the parties.

None of the Bills/Acts provide for refund of fees if information is not supplied or not supplied as requested for. This is a significant omission. There is no provision for awarding any damages to the adversely affected party.

What is interesting to note is that the person failing to provide the information, is also liable to disciplinary action as per certain rule and condition under provisions discussed above. But such disciplinary proceedings are to be initiated by concerned department or body where the person is employed. The requestor has no role in initiating any such action even though the requestor has suffered due to the denial of information. Similarly though there is provision for imposing a fine, there is no clarification whether the fine that was collected shall be passed on to the requestor, or whether he is to be compensated in any manner.

## **COMPLIANCE AND APPEAL PROCEDURES**

Invariably all the Bills and Acts provide for a 30 days period to comply with information requests. In the Tamil Nadu Bill, the request for information can be transferred to another department that has the information. The request for information must then be complied with within 30 days from the date of the receipt of the transferred request [Sec. 3(3)(b)].

CERC Bill provides for 10 days limit and 15 days from the date of receipt where a request is transferred to another department/body.

The expression used is "**shall furnish information within 30 working days from the receipt of the application**". Practically, since there are only 20-22 working days in a month in any Government office, in actual terms request compliance will take at least 40 days, if not more to be complied with.

In the Rajasthan Bill there is a 30 days period for the first appeal to be disposed of [Sec. 6(2)]. The second appeal also provides for a further 30 days period for disposal [Sec. 7(2)]. Looking to the working of the Consumer Protection Act where a mandatory 90 days period for disposal of complaints has been provided, and which has completely failed, there is little cause for complacency.

In the Goa Bill there is a special provision for providing information that relates to the life and liberty of an individual within 48 hours on receipt of the application [Sec. 4(2) proviso]. Otherwise appeals to the Goa Administrative Tribunal must be disposed off preferably within 30 days.

Such a provision is not found in any of the bills including the Government of India Bill. The CERC Bill provides for a 10 days period for responding to requests for information, and 15 days in cases where the notice has to be given to the third parties about the potential disclosure of information relevant to them.

The total time frame for responding to requests, and hearing of the final appeal where information requests are denied, works out to a minimum 40-180 days period, assuming that the legal provisions are strictly complied with. Unless these provisions are strengthened and stiff penalties are imposed for non-disposal of complaints and appeals, the requests for information would become meaningless. In practical terms the information would lose its significance particularly in cases of human rights violations, environment damage and goods and services endangering public life, health and safety.

The fora for appeals and complaints are most clearly set out in the Goa Bill [Sec. 6]. The appeal may be made to the Goa Administrative Tribunal. The Rajasthan Bill provides for an appeal to the Controlling Officer who is to be specified by the State Government [Sec.6 (1)]. The second appeal may lie to the Vigilance Committee of the concerned District, or to the Rajasthan Civil Services Appellate Tribunal [Sec. 7(1)].

In the Karnataka Bill the appeal may be made to the Authority which may be prescribed [Sec. 7(1)]. A further appeal is provided to the Karnataka Appellate Tribunal [Sec. 7 (3)].

The CERC Bill provides for a 3-tier independent appellate mechanism. The first complaint lies to the Information Commissioner at the District level, then to the State Information Commissioner and finally to the Information Tribunal.

## **THE FREEDOM OF INFORMATION BILL, 2000**

The bill formulated by the Government of India is called the Freedom of Information Act, 2000. It extends to the whole of India except the State of J & K.

The preamble states that with a view 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.

The significant aspects of this Bill are: the exclusion clauses in Sec. 9 do not contain the exemption on the ground of Sections 123 & 124 of the Indian Evidence Act (i.e. disclosure of confidential and official Government information or records.). There is no penalty or accountability of the officers who fail to provide the information to the requestor. There is no protection for whistleblowers. There is also no exemption from payment of fees for certain groups or in certain situations. There is also no provision for urgent requests in cases of human right violations or in cases involving the life and liberty of the individual.

There is an interesting provision for **severability, in cases where the request for information is partly covered by the exclusion clauses. In such cases that part of the request which can be complied with is to be entertained** [Sec. 10].

This provision of severability is also provided for in the CERC Bill. This is an important provision because it saves an otherwise valid request for information from being defended on technical grounds.

The last but not the least significant provision provides that this Act overrides the Official Secrets Act, 1923 and other Acts in so far as they are inconsistent with the provisions of this Act. [Sec. 14] but does not repeal it.

A similar procedure is made in the Goa Bill [Sec. 12] and the Karnataka Bill [Sec. 12]. In both these Bills it is provided that the Freedom of Information provisions shall override other State laws inconsistent with them.

But no similar provision is found in the Tamil Nadu Act or the Rajasthan Bill.

## **SOME GENERAL OBSERVATIONS**

- \* The preamble of some of these Bills and Act speaks of promoting openness, transparency and accountability in the administration. Significantly the word **accountability** is missing in the Goa, Tamil Nadu and Rajasthan Bills. This is a significant (and possibly deliberate) omission, because accountability is the key word in making any law work.
- \* The appeal mechanism also leaves much to be desired. Whereas the Goa Bill provides a single appeal to the existing Goa Administrative Tribunal against the decision of the competent authority, the Tamil Nadu and Karnataka Bills only generally provide for appeals to be filed to the Appellate

Authority that will be prescribed in the future. The Rajasthan Bill provides for appeals to the controlling officer and a further appeal to the Vigilance Committee. Whereas the controlling officer is yet to be designated, possibly the District Vigilance Committees are already existing. In the case of the Government Bill both the public information officer and the first appellate authority have to be appointed. The second appellate authority is clearly defined.

- \* Apart from the usual grounds of exemption such as security, defence, international relations etc. found in all the Bills, some **additional grounds are found for refusing information such as: vague and general requests; unreasonably large volume of information sought; diversion of disproportionate resources of the body from whom the information is requested, for complying with the request; danger to the safety or preservation of the record itself; that the information sought is ordinarily not required to be collected by the authority; that the information requested is required by law or convention, to be published within 30 days of the receipt of the request or that it is already available in the published form for sale.**

## CONCLUSION

A comparison of the provisions of the various Bills show that the following features must be an integral part of any Freedom of Information Law, worth its name.

1. **The law must either utilise the existing infrastructure for its implementation such as the Goa Bill, where the obligation to provide information is clearly cast upon the Competent Authority, who is the Director or Head of every department. Similarly, the first appeal is to the Goa Administrative Tribunal that is already in place.**

All the other Bills talk about prescribing the Authority, appointment of public information officers [Sec. 5-GoI Bill, 2000], and appellate bodies. Till such appointments are made the law becomes unenforceable.

2. **There must be a clear provision for fee exemption for certain classes and categories of institutions and persons.**
3. **There must also be a clear and specific provision for refund of fees if the information is not provided or the information provided is not as requested for.**
4. **There must be a mechanism to respond within the minimum time-frame that is, say 48 hours in cases where the information relates to the life and liberty of the individual.**
5. **All oral requests for information must be translated into writing to avoid any future abuse or misuse of the law.**
6. **There must be clear provision for protecting whistleblowers either in this law or by a separate legislation.**
7. **Penalties must include the right to award exemplary or punitive damages to make the law truly meaningful. Further, the right to initiate disciplinary action against the concerned authority who did not supply the information etc. must not be left to the discretion of the superior officer but must be made mandatory.**

8. **There must be a provision for State and Central Information Councils with the general power to further the scope, object and implementation of this law [Sec. 11 of the Goa Act provides for State Information Council, but it does not have the right to receive complaints].**
9. **The question whether the public body or the authority or the public information officer can further challenge the decision of the first appellate authority is not clear and must therefore be clarified.**
10. **It is not clear whether the requestor is entitled to get copies of the documents relied upon by the Competent Authority, when the request for information is refused. There is a need for greater clarity.**
11. **The provision of Class Immunity and Blanket exemption is also not a good idea. Instead the "content test" should be preferred, which will allow the courts to scrutinise the contents rather than the class of the documents for which exemption is being sought. This would also ensure greater transparency and openness.**
12. **Private bodies, corporations and companies etc. must be made to release information about their products and processes that relate to public safety, health, environment or human rights. (This has already been incorporated in the CERC Bill in Community Right to know).**
13. **There must be a Chief Information Officer or a final authority in charge of overall implementation of the Freedom of Information Law. This authority must be appointed under the Constitution of India and must be independent, and must be answerable only to the Parliament or the State Assembly as the case may be.**
14. **Finally there must be a clear repeal of the Official Secrets Act, 1923, other laws and the reform of the Government of India Rules in so far as they are inconsistent with the provisions of the Freedom of Information Law.**

A number of judicial pronouncements have clearly and significantly made the valid distinction between the need to protect the sovereignty, integrity and security of the State vis-a-vis the need to protect the ruling Government and party from public scrutiny. These legal pronouncements have categorically stated that if information which is sought to be made public, embarrasses the Government of the day and brings about its down fall there is no need to protect and exempt such information from being made public. It is only when the security, stability and integrity of the State is in jeopardy that the information can be withheld.