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## **NCPRI SUBMISSION TO THE PARLIAMENTARY STANDING COMMITTEE RIGHT TO INFORMATION BILL 2004**

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Any good right to information (RTI) law typically has: a) **maximum disclosure and minimum exemptions**; b) **independent appeal mechanisms**; c) **penalties for failure to provide information**, and d) **wide and easy accessibility to the public**. The draft RTI Act recommended by the National Advisory Council to the Government of India had made an attempt to ensure that all these four aspects were adequately covered.

1. In terms of **maximum disclosure and minimum exemptions**, the following issues need consideration.

i. Intelligence and Security Agencies

Though the NAC draft allowed blanket exclusion of all security and intelligence agencies, something that we do not support, it at least had some exceptions. It stated that "information pertaining to alleged violations of human rights, to the life and liberty of human beings and to the allegations of corruption will not be excluded under this clause" (section 16). The RTI Bill 2004 has removed the obligation of these agencies to provide information in relation to human rights violations and threats to the life and liberty of persons, though it has retained this proviso in cases of corruption. Surely the violation of human rights and the threat to life and liberty is no less worrisome than corruption, and requires no less public scrutiny.

If the primary purpose of this Act, as stated in the Statement on Objects and Reasons, is to make the Government accountable, then it seems strange that there is a feeling in the Government that security and intelligence agencies should be exempt vis-à-vis human rights issues. Recent events in Manipur and elsewhere have highlighted this as a major demand of the people. Moreover, there are enough exemptions in Section 8 to ensure that no security issues would be compromised.

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ii. Exemptions

The NAC draft gave citizens the right to access all documents after a 25 year period - even those covered by the exemption clauses Section (8(2)). The RTI Bill 2004 has deleted this provision. The NAC had recommended that "matters covered by Sub-Section 8(a) and Sub-Section 8(i) may be disclosed after twenty-five years." It is unacceptable that the Government thinks that some types of information would NEVER be made public. Therefore, some suitable provisions have to be made to address this issue.

iii. Exclusion of States

Perhaps the most crucial weakness in the Act is the fact that it has been restricted to authorities and bodies under the Central government alone. This is despite the fact that, for the common man and woman, the information that most affects their survival is with the state and district authorities, and with panchayats and local governments. Also, most states do not have a right to information act and those few that have, with two or three honourable exceptions, have very ineffective acts. Therefore, there is urgent need to provide the people of India, especially the poorer people, with this fundamental right. Yet the RTI Bill denies them this.

The argument that there is a legal or constitutional impediment to making this Act applicable to all states seems weak as the earlier Freedom of Information Act 2002, duly passed by both houses of Parliament and duly assented to by the President of India, was applicable to all states and local bodies. Therefore, there could be no real impediment for the new Bill to be similarly applicable.

iv. Restrictions on Third Party Information:

Another crucial issue deals with third party information. Section 11 of the Bill which provides that disclosure of such information may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of the third party. This means that information about a third party which includes public authorities can be withheld even in the information does not fall within the exclusions provided in Section 8, if the information officer feels that the public interest in disclosure does not outweigh the interests of the third party. This would go completely against the letter and spirit of Section 8 which provides that information can only be restricted if it falls within one of the exclusionary clauses and even if it does it can be disclosed if the

public interest in disclosure outweighs the harm to the public authority, or if it is information of a kind which must be supplied to Parliament etc.

**Therefore the proviso to Sub section 1 of Section 11 may be amended to read as follows:**

Provided, that information of a third party can only be withheld if it falls within one of the exclusionary clauses of Section 8. Provided further that such information must be disclosed if the Public Interest in disclosure outweighs in importance any possible harm or injury to the interests of such third Party.

2. In terms of independent appeal mechanisms, the following issues need consideration.

i. Information Commission

The RTI Bill 2004 envisages an Information Commission comprising an Information Commissioner of the status of a secretary to the Government of India, and Deputy Information Commissioners at the level of additional or joint secretaries (13(6)). However, the Information Commission is not only the appellate authorities for the executive, judiciary and the legislature but would also be responsible to oversee the implementation of the RTI law. In order to effectively perform these roles, the Information Commissioner (and the Deputy Information Commissioners) must be of an appropriate stature. It is, therefore, suggested that the Commission comprise of a Chief Information Commissioner and Information Commissioners, at the level of the Chief Election Commissioner and Election Commissioners.

ii. Deputy Information Commissioners

The RTI Bill 2004 limits the Deputy Information Commissioners to 10 in number only (12(2)b). This is not enough to cover the country. The NAC had envisaged covering all States and the Center. It was thought that there should be at least one Information Commissioner for each State. In any case, it would be impractical for people from all over the country, especially poor people to travel all the way to Delhi or to the limited regional offices to pursue their appeals. There should be an Information Commissioners at State and, where required, even at the sub-state level to provide effective oversight.

3. In terms of **penalties**, the following issues need consideration.

i. The Process of Imposition of Penalties

The NAC draft envisaged that the Information Commissioner's would also be competent to impose penalties on officials who violated the provisions of the RTI Act. However, the RTI Bill 2004 has drastically altered and weakened the penalty clause by laying down that the Commission "may authorize any officer of the Central Government to file a complaint ..... before a Judicial Magistrate of First Class" (17(1)). In other words, the Commission and the Commissioners are no longer competent to impose penalties and must "authorize" Central Government officials to file a complaint. There is no compunction for the Central Government to listen to the Commission and actually file a complaint and there is, of course, no time limit within which the complaint has to be dealt with. All this makes the penalty clause toothless.

This is especially regrettable because experience from states where there is an RTI law shows that where there are no penalties or weak penalties, the defaulting officers ignore the appellate authorities.

Therefore, it is important that the Bill be amended to allow the Commission to impose at least a monetary penalty and to make the imposition of such a penalty mandatory when the relevant provisions of the Act are violated. Similarly, the Commission should also have the authority to themselves file criminal charges against those officials who have committed offences that attract criminal provisions. The filing of such charges should also be made mandatory.

ii. The Nature of Offences

The RTI Bill 2004 seems to recognize only one offence, that of persistently failing to provide information without any reasonable cause within the period specified. This has resulted in the absurd situation where, under the RTI Bill 2004 the giving of false information or even the willful and malafide destruction of information is not an offence, only "persistent" delay is an offence. To escape from this absurdity, it is important that the following be recognized as offences:

- a. Refusal to accept an application for information.
- b. Delay in providing information (beyond the time limit specified in the Act).
- c. Malafide denial of a request for information.

- d. Knowingly giving incorrect or misleading information,
- e. Knowingly giving wrong or incomplete information,
- f. Destroying information subject to a request; or
- g. Obstructing the activities of a Public Information Officer, any of any Information Commissioner

Whereas for a. and b. above, the penalty can be a fine, and in the case of b. above, the fine must be imposed for each day of delay, for the remaining offences there must also be a provision of criminal action and imprisonment, as already provided for in the Bill.

4. In terms of **easy accessibility**, the following issues need consideration.

i. Reasonable Fees

In the NAC draft, Section 7 (5) (b) read as "Any fees payable by the applicant shall be reasonable, and shall in no case exceed the actual cost of copying the information or in the case of samples of materials the cost of obtaining the sample, and shall be set via regulations at a maximum limit taking account of the general principle that fees should not be set so high that they undermine the objectives of this Act in practice." Unfortunately, this clause has been dropped in the RTI Bill of 2004, thereby opening the doors to governments prescribing exorbitant and prohibitive fees that would deter the common person. Even in Delhi, initially the application fees for getting a commercial document was fixed at Rs. 500 per application. When residents of poor resettlement colonies wanted copies of contracts to ensure that the work contracted for their area was actually being carried out, they found it impossible to raise the fees.

The importance of having a reasonable fees that is not more than the cost price is highlighted by another example from Delhi where the application fee for an RTI application is Rs 25 with an additional photocopying charge of Rs 5 per page. Effectively, it would cost a BPL or Antodayya ration card holder Rs 30 to access one page of information regarding whether ration was drawn in their name. This is the equivalent of 15 kgs of wheat! Surely, this is not 'reasonable' fees.

ii. Person vs. Citizen

The NAC draft gave all "persons" the right to information. However, the RTI Bill of 2004 restricts the right to information to "citizens" alone. Apart from the fact that this is not fair, as fundamental rights are available to all, citizen's and non-citizen's and the right

to information is a fundamental right, it also puts the onus on the applicant to first prove that he or she is a citizen. A very large proportion of the people of India do not have proof of citizenship and this requirement, if it persists, would not only severely restrict the access of many people to this right, but it would also become another way of harassing the common person. In fact, in a recent case in the Delhi High Court, filed by the ration shop owners who did not want to give information under the Delhi Right to Information Act, they argued that information could not be given to the applicant because the applicant was not an Indian citizen but an NGO!

By creating this distinction, the government may in fact be merely adding to its problems. Surely any information shared with a citizen will be in the public domain. Moreover, there is nothing to stop the non-citizen from accessing this information via an Indian citizen. Therefore, it would appear that this distinction between persons and citizens adds additional burdens on the ordinary people and poses greater hurdles to easy accessibility of information, without giving any advantages to the government or the country.

5. Some **Other Issues**

i. Certified Copy and Photocopies:

In Chapter 1, Section 2 (j), the right to information accessible under the Act should include the right to certified copies and photocopies of the kinds of information listed as accessible.

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