

Centre for Civil Society

**CCS Comments on the
Right to Information Bill, 2004**

INCORPORATE THE DUTY TO PUBLISH

Genuine Empowerment =
Duty to Publish + Duty to Furnish



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The proposed Right to Information (RTI) Bill, 2004 is a great step in a right direction. There are many laudable changes in it that we wholeheartedly support.

Our primary concern with the bill is its central focus on how to effectively process the request for information once it is filed by the citizen. It does not dwell upon seriously on how to reduce filing of individual requests for information. It fails in putting forth a system where most of the routine information is first made available to the citizen automatically and where only in rare circumstances that the citizen has to resort to applying, waiting, and paying for the information. In short, the new Bill does not challenge the basic assumption of the RTI Act, 2002: people must ask and directly pay for every piece of information they want from the government. The citizen still has to plead, pray, wait, and pay. The Bill disappoints on genuine empowerment.

We suggest that the bill should make a categorical statement that the citizen has right to all government information except what is restricted by the Official Secrets Act, 1923, and it is government's duty to put all information in public domain *suo moto*. The government should commit to its duty to publish along with streamlining procedures to acquire information through individual requests. We need both the duty to publish and the duty to furnish upon request to achieve genuine empowerment of the citizen.

The sub-section 2 of Section 4 of the proposed Bill alludes to the idea of duty to publish but fails to recognise its pivotal importance: It shall be a constant endeavour of every public authority to take steps ... to provide as much information *suo moto* to the public at regular intervals through various means of communications so that the public have minimum resort to the use of this Act to obtain information (p. 4). We suggest that this sub-section should become the first pillar of the proposed Bill.

The Bill has made tremendous strides in improving the procedures and imposing penalties to ease the process of acquiring information by individual requests. Wherever there are still lacunae, many competent citizens and civic groups have offered their suggestions in this consultative process. Thus the revised Bill will do a great public service in fulfilling the government's duty to furnish. But that is only half the work. We must pay equal if not more attention to government's duty to publish.

Two of the most dramatic uses of the Delhi RTI Act are related to ration shops and public road work. Ration card holders made RTI request on the delivery of ration supplies to ration shops in their area and the disbursement of these rations to card holders. Just by getting this information out in the open, the working of the ration shops has improved beyond imagination. Seeing the impact of this information, the Delhi government promises to make it available automatically every month. The ration card holders would no longer have to file individual requests and fight monthly battles to assure them their ration.

Similarly, some citizens filed RTI requests about the road repair and construction work done in their wards by the Delhi Municipal Corporation.

They collected information on the award and competition dates of the work as well as the quality standards that the road should meet as per the contracts of the MCD. In some cases, the work was shown completed in the MCD record with disbursement of payment to the contractor but there was no work done on the ground. In some other cases, the quality of the road constructed was far below the standards set in the contract.

Examples of such remarkable uses of the RTI Act abound. What is surprising is that the proposed Bill does not build on these experiences. **It is clear that such information should be put first in public domain automatically. Once we know its impact, why should we wait for some citizens of every ward in every town and municipal corporation to file requests individually?**

Shouldn't this be made the government's duty to publish? Without this duty to publish, the duty to furnish would go only so far, even when it is vigilantly monitored and enforced.

How can we then operationalise the government's duty to publish? The Central Information Commission, proposed in the Bill, should be entrusted with the task to list all the information for every public authority that the authority must make public *suo moto*. This process should be completed in a reasonable period of time, say, within 24 months of the enactment of the Bill. **By the end of this period, each public authority should be able to meet the 'affected citizen test.'** The 'affected citizen test' we propose is similar to the 'reasonable person standard' used in the common law. The test is whether the public authority has put all the information in public domain that an affected citizen—affected by the work of the public authority—would expect to have ready access. The duty to publish guided by the 'affected citizen test' would help fulfil the citizen's right to information in a genuine sense.

Along with consultations with civil society organisations and public authorities, the Central Information Commission can start the process by compiling and tabulating the type of information that is requested by citizens across the country under the RTI Act. It should then require the concerned public authorities to publish those types of information automatically and regularly. We suspect that the Central Information Commission would not have to spend too much time or effort in listing the type of information that should be automatically made public by each public authority; millions of our citizens and activists would provide that information by filing their first request under the RTI Act. **The Commission needs only to compile those requests, inform public authorities, and then make sure that the authorities publish those types of information automatically and regularly.**

The DTP (duty to publish) approach has many advantages over the current RTI approach of DTF (duty to furnish). First and foremost, it would change the debate from what the government should reveal to what it can keep secret. Instead of deciding on a case-by-case basis, as it does today, the government would need to develop general guidelines that determine what information can be kept out of the public domain. This fundamental restructuring of the debate—from what should be revealed to what can be kept secret—would strengthen the hands of citizens far more than any severe penalty clause in the

Bill.

The RTI Act seems to work in many developed democracies, not so much because of higher penalties to erring bureaucrats or more transparent adjudication of denials, but because most of the information that citizens would like to know is already generally available. The people in western democracies do not need to file RTI requests to learn about ration shops or food stamps, tenders for public works or the local forest management plan of the national park service. That is all easily and automatically available.

POTENTIAL QUESTIONS ON DUTY TO PUBLISH

1. Would DTP be too laborious and expensive a task for the government?

With the falling prices of computer hardware and software, the costs of digitising information are not too high. Moreover, with the government moving towards e-governance and the paperless office concept, data would have to be converted into digital format anyway. Many governments already maintain detailed websites on their ABCDs—agencies, boards, corporations and departments. Making the digitised information then available on the net involves little extra expense or effort.

The much cherished transparency and accountability unfortunately does not come for free. We impose serious costs on private companies, trusts, and foundations so that they meet our desired levels of transparency and accountability. Isn't the government work at least equally important? Any cost-benefit analysis would without a doubt favour the expenditure necessary to bring about higher levels of transparency and accountability in public governance.

2. Isn't DTP too forward a step for the government in the initial stages of RTI Act?

A rudimentary form of DTP is already a part of the proposed Bill, in Section 4. Currently it requires that the government should publish the basic information as regards the departments' structure, roles, responsibilities and projects. We suggest that we build and expand on our experience of the state RTI Acts with ration shops and public works and include that in the central act. Make duty to publish the first half of the new Bill.

3. Wouldn't DTP lead to information overload?

Certainly the Central Information Commission has powers to set parameters and guidelines about the form in which the information should be made public so that it does not unduly create complications in its use. Nonetheless, the government's primary responsibility is to publish information, not to cook it according to the taste and need of each citizen and spoon feed it. We do not want a paternalistic government but a responsible, transparent and accountable government. **It will be the task and test of the civil society to take the information and translate and transpose it so that it is useful to citizens in their endeavours.**

4. Why should all citizens pay for services that only a tiny percentage of the population might use?

It may turn out that a majority of citizens do not request information from the government under the RTI Act, but their tax money will be used for the implementation of the RTI Act. However the use of the Act and the information by some citizens and civil society organisations would benefit not only them but the vast majority of the population. The publicly listed companies are required to publish detailed quarterly and annual results, which are rarely read even by all their shareholders, but the information is available to those who want it. Some brokers, analysts, managers, shareholders use the information. Their use of the information benefits not only them but also all the others in the market.

The long and arduous struggle for the Right to Information would do more for the citizens as well as for our democracy if instead of relying on only the one half, we combine the two halves of Duty to Publish and the Duty to Furnish. We strongly believe that our suggestions to modify the proposed Bill would make India a more vibrant and participatory democracy.