

February 22, 2005

Shri. Surinder Kumar Watts
Deputy Secretary
Rajya Sabha Secretariat
007, Ground Floor
Parliament House Annexe
New Delhi - 110 001

Dear Sir,

Subject: Recommendations by KRIA Katte on the Right to Information Bill, 2004

KRIA Katte is a state-wide forum of individuals and civil society organisations working to energise the Right to Information in Karnataka ('KRIA' is an acronym for the Karnataka Right to Information Act & 'Katte' means 'forum' in Kannada). The Katte is a platform for citizens to exchange information on using the Right to Information Act and to disseminate and replicate positive experiences in using the Act. The Katte and its members have organised state-level symposiums and workshops to discuss problems encountered in using KRIA & devise strategies to overcome the same. The Katte has also been interacting with senior Government officials (including the Chief Secretary) for advocating administrative and legal reforms with regard to KRIA.

The KRIA Katte would like to thank the Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for providing an opportunity to present its views with regard to the Right to Information Bill, 2004. In presenting these recommendations, the Katte has drawn upon varied experiences from Karnataka, where the Act has been in force since July 2002. Our views, we hope, will contribute to making the proposed Right to Information Act more meaningful and citizen-friendly.

We hereby appeal to you to kindly take cognisance of the recommendations made by the Katte to fulfil the commitment made in the Preamble of the Right to Information Bill, 2004 which is to "provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority..."

Yours Sincerely,

Samuel Paul
Chairman
Public Affairs Centre

On behalf of KRIA Katte

Recommendations of KRIA Katte, Karnataka on The Right to Information Bill, 2004

1. Section 2 (j) - Inclusion of “private bodies”

The RTI Bill does not cover information held by private bodies, which are increasingly exercising significant influence on public policy. It is suggested that the term ‘public authority’ include privately owned undertakings, non-statutory authorities, companies and other bodies whose activities affect public interest (including Non-Government Organisations). The Karnataka Right to Information Act (KRIA) also includes in its purview corporations, trusts, societies or any other organisation or body funded, owned or controlled by the State Government.

2. Section 2 (j) - Widen scope of “right to information”

The Katte suggests the following inclusions:

- (i) inspection of work, documents, records *and taking photocopies of the same*
- (iii) taking certified samples of material *and taking samples during the stage of work itself*
- (v) *status reports regarding applications, projects, etc*

3. Section 3 - Obligation of Public Authorities

The list of topics that Public Authorities are required to disclose *suo moto* should include publication of details of all contracts entered into by the Public Authorities. This will bring in transparency in procurement, tendering etc. Upon signing, public authorities must publish information like the name of the contractor, name of the work, tendered amount, goods acquired or rented, the period within which the contract must be completed, penalties for delay, etc.

However, there is no provision in the Bill to penalise officials that do not comply with the above provision. Our experience in Karnataka shows that in the absence of penalties for non-compliance, the provision for *suo moto* declaration (Section 3b) is not enforced. Hence it is suggested that a fine be imposed when a Public Authority fails to make *suo moto* disclosure in a timely manner, does not appoint Public Information Officers or Appellate Authorities.

The fine so levied should be recoverable from the salary of the concerned officer, as in the case of the Maharashtra Right to Information Act. In addition, like in KRIA, an officer should also be liable to appropriate disciplinary action under the service rules applicable to him/her.

4. Section 5 (1) - Designation of Public Information Officers

It is recommended that each public authority display in a prominent place the name and details of the Public Information Officer. The Katte also feels that there should be wide publicity regarding appointment of Public Information Officers. This will dispel any confusion regarding the notified authorities.

Moreover, in case of transfer, long leave, etc of the Public Information Officer, it must be clearly mentioned that whosoever performs the duties of the officer will be considered as the officiating Public Information Officer, with full powers and authority of the designated Public Information Officer. This will ensure that the crucial interface between citizens and the public authority is not left vacant for long periods of time.

5. Section 8 - Exemptions from disclosure of information

Sub-section 8 (1)(i) relates to Cabinet Papers. While some information in some cabinet papers may be sensitive - and on that basis, will be covered by one or the other exemptions provisions in the Bill - it is not the case that all cabinet papers are always sensitive. There is also no clarity in the Bill as to what constitutes Cabinet Papers.

Blanket exemptions will defeat the purpose of the Bill. Completely exempting Central Intelligence and Security Organisations from providing information can have serious reverberations, especially with regard to human rights violations.

6. Section 8 (j) - “Privacy” of the individual

Who is the authority to judge that personal information asked for “would cause unwarranted invasion of the privacy of the individual”? The term itself is vague and could be misinterpreted and used to deny information. The Katte feels that this provision places wide discretion in the hands of the deciding officer. Therefore, it is suggested that an Explanation be provided for the term ‘privacy’.

This section also provides undue protection to a *third party*, which could considerably delay (and even deny) provision of information under the guise of confidentiality.

7. Section 15 - Powers and functions of the Commission

Our experience in Karnataka shows that the Second Appeals Authority (Karnataka Appellate Tribunal) has refused to entertain appeals without a specific order from the (First) Appellate Authority. In order to avoid such a situation, the present Bill should include a clause stating “where the first appeal body does not make an order within the stipulated time, it would be deemed a decision of the appeal body for the purpose of second appeals”. Further the Information Commission should be empowered to deal with appeals even where the First Appeal Body has made no order.

8. Section 16 (1) - Notification and publicity regarding Appellate Authorities

The Bill mentions that the Appellate Authority is “...such officer who is senior in rank to the Public Information Officer in each public authority.” If such an authority is not notified, it is not clear whom the citizen must approach for redress. To avoid confusion regarding Appellate Authorities, it is recommended that Appellate Authorities be notified and wide publicity be given to the same.

9. Section 17 - More teeth to the Information Commission

Section 17 (1) - The penalty clause must be made mandatory - only punishments of a severe nature will serve as a deterrent and can truly deliver citizens their right to information. It is strongly recommended that the Information Commission be given the power to decide penalties on erring notified authorities. Denying the Information Commission the power to take immediate action would cause undue delay. An independent and efficient forum for appeal is essential to ensure citizens' faith in the system of grievance redressal.

Section 17 (2) - It is suggested that a fixed amount of fine be levied per day of delay as in the case of the Maharashtra Act (Rs. 250). This will do away with discretion in levy of fines against erring Public Information Officers.

10. Section 22 (3) - Reporting on the fines collected

It is suggested that section 22 (3) (d) include particulars of the fines/penalties collected.

11. Penalties against erring Appellate Authorities

Nowhere does the Bill mention penalties, including disciplinary action, against erring Appellate Authorities. In Karnataka, Appellate Authorities have refused to enforce appeals against Competent Authorities, thereby denying citizens' recourse to justice. If penalties are not made mandatory, it could lead to corruption and eliciting personal loyalties from lower rank officials. To prevent such discretion, the Katte suggests that the Information Commission be given the power to levy fines on first Appellate Authorities for dereliction of duty. The Katte also suggests that this fine be higher than that imposed on Public Information Officers (for example, Rs. 500 per day of delay).

12. Fees

Fees charged must be affordable and reasonable - i.e. fees should not exceed the actual cost of supplying information. Specifying fees for various forms of information (floppies, CDs, maps, drawings, etc) will deter officials from charging arbitrary sums.

13. Complementarity of Central & State Acts

The Katte recommends that the Central & State Right to Information Acts co-exist. At present, a number of State laws have forward-looking and praise-worthy provisions. Incorporating such provisions of State legislations can ensure that the Central Right to Information Act is truly progressive. The Centre must insist that all States enact their own Right to Information legislations, thereby ensuring that citizens have access to information under both the Central and State law.