

Commonwealth Human Rights Initiative, New Delhi.

Comparative Reading of the Third Report
on the
Right to Information Bill, 2004,
by the
Parliamentary Standing Committee

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The Right to Information Bill introduced in the Lok Sabha in December 2004 is pending approval. It is intended to replace the *Freedom of Information Act* passed in 2002. The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice considered the Bill having heard the views of Government, prominent NGOs and experts on the Bill and produced a report and added recommendations into the Bill. The Committee is chaired by Sri. EM Sudarsana Natchiappan. Its report has been tabled in the Lok Sabha on March 21st, 2005. (A copy of the Report will be uploaded on CHRI's website on the RTI India: National page shortly.)

Given below is the comparative reading of the clauses where change has been recommended by the Standing Committee.

s.2 – Definitions

1) Government

Existing Provision: (s.2c) "Government" – Includes only offices of Public Authorities established, owned or substantially financed by the **Central Government** and the Administration of the **Union Territories**.

Recommendation for change: aa) "appropriate Government" – The jurisdiction of the proposed law has been expanded to include the State governments and all bodies established, constituted, owned or substantially financed by them.

2) "Commission"

Existing Provision: (s.2a) the Central Information Commission constituted under sub-section 12.

Recommendation for change:

1. Same definition but the body at the Union level will be called the **Central Information Commission**. It will be headed by a Central Information Commissioner and will have no more than 10 Central Deputy Information Commissioners.

(jjj) At the State level there will be a **State Information Commission** (see new Chapter IIIA below for more details). Its head will be called the State Information Commissioner and it will have not more than 10 State Deputy Information Commissioners.

3) Competent Authority

Existing Provision: (s.2b) “competent authority” – Noted were a list of positions and offices that constitute what is a competent authority

Recommendation for change: (b) Added to the list are (i) Speaker of the Legislative Assembly of a **State**; (iii) the Chief Justice of the High Court in the case of a High Court; (iv) President, or the **Governor**, as the case may be in the case of the executive

4) Public Authority

Existing Provision: (s2g) “public authority” – means any authority or body constituted by (i) Constitution; (ii) Parliament; (iii) notification/order by Government

Recommendation for change:

(g) “public authority” – A change in the definition to: any **local** authority or **local** body or **local Self Government institution** (like Panchayats and Municipal bodies) constituted: **by any other law made by State Legislature.**

Includes any **non-government organisation** or any **other body** that is owned, controlled or **substantially financed** – in/directly – by the **appropriate Government** (Central, State or local govt.)

5) Public Information Officer

Existing Provision: (s.2h) “Public Information Officer” – means Public Information Officer constituted under sub-section (1)

Recommendation for change: (h) The same definition but title changed to **Central Public Information Officer**. (jjj) “**State Public Information Officer**” and **State Assistant Information Officer** are constituted under sub-section (2) of section 17A

6) Third Party

Existing Provision: (s.2k) Defines what a “third party” is under the Bill which includes another ‘public authority’

Recommendation for change: “Third party” will not include public authorities.

s.4 – Obligations of public authorities

Existing Provision: [s.4(1)]: This section outlines the obligations on a public authority. In (b) a list of 17 things that they must pro-actively (*suo moto*) publish is given.

Recommendation for change: (b) The public authority now has an obligation to give details of recipients of concessions, permits or authorisations issued by it.

An obligation to **update the publications yearly** of all the information that is given in this section, is added.

Existing Provision: [s.4(2)] An obligation to provide as much information *suo moto* to the public at regular intervals

Recommendation for change: Added in the recommendations is the obligation to use the internet as a means of providing information *suo moto*

s.5 – Designation of (Central or State) Public Information Officers

Existing Provision: [s.5(4)] The Public Information Officer may seek the assistance of any other officer he/she considers necessary for the discharge of his/her duties.

Recommendation for change: This sub-section has been deleted in the recommendations because the Committee thinks this can do more harm than good.

Existing Provision: [s.5(5)] Any officer whose assistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her assistance and. for the purposes of any contravention of the provisions of this Act such other officer shall be treated as a Public Information' Officer.

Recommendation for change: This sub-section has been deleted in the recommendations because the Committee thinks this can do more harm than good.

s.8 - Exemption from disclosure of information

Existing Provision: [s.8(1)] A list of 11 exemption categories is given which exclude the right to information

Recommendation for change: The list has been shortened. Some of the definitions remain roughly the same but a change of wording has made them less open to arbitrary interpretation. The additional exemptions are listed below:

- (c) **legitimate trade secrets, and commercial or financial information obtained from or furnished by a third party on condition of strict confidentiality;**
- (d) **information the disclosure of which will lead to identification of an informer or his sources of information or which would endanger the life or safety of any person for having furnished material information useful to the Indian nation or would materially hamper investigations into crimes or other law enforcement activities.**

s.12 – Constitution of Central Information Commission

Existing Provision:[s.12(5)] Outlines a set of base requirements for an applicant must fulfil in order to become a Information Commissioner or Deputy

Recommendation for change: Added to these requirements is: wide knowledge and experience **in the discipline of law, science and technology, social service, management, journalism, mass media or administration and governance**

Existing Provision:[s.12(6)] This bars Member of Parliament and Members of the Legislature from holding the office of Information Commissioner or his/her Deputy.

Recommendation for change: This sub-section has been deleted in the recommendations – effectively allowing Members of Parliament and of the Legislature of becoming Central/State Information Commissioner, or his/her Deputy.

Existing Provision:[s.12(8)] This specified that every Deputy Information Commissioner shall perform his/her functions within an area specified by the Central Government

Recommendation for change: This sub-section has been deleted in the recommendations – allowing more independence and autonomy for the officers

s.13 – Terms of office and conditions of service

Existing Provision:[s.13(5)] This outlined restrictions for the future employment of the Information Commissioners and their Deputies. For example restricting them to any diplomatic assignment or employment in an office of profit under the Government of India.

Recommendation for change: This sub-section has been deleted in the recommendations because the Committee thinks these restrictions are neither desirable nor justifiable.

New Chapter IIIA – Constitution of State Information Commission

s.14A This proposed new section obligates **every State Government to constitute a body known as the State Information Commission.** It outlines what this will constitute and the powers conferred upon them.

s.14B This proposed new section outlines the term of office and conditions of service that applies to the State Information Commissioner and his/her Deputy.

s.14C This proposed new section outlines the procedure for the removal of the State Information Commissioner or his/her Deputies. The procedure is the same as with the Central Information Commissioners but here the Governor has the power to refer the matter to the Supreme Court and remove the State Information Commissioner. **The High Court of the State has no role to play.** Governor has the power to suspend a State Information Commissioner until the Supreme Court gives its opinion on the matter.

s.17 – Penalties

Existing Provision:[s.17(1)] Permitted penalties to be imposed only for persistent failure to provide information without a reasonable cause

Recommendation for change: If it is found, when investigating a **complaint** or appeal, that the **Central or State** Public Information Officer has failed to provide information without any reasonable cause, **the burden of proof that he acted reasonably and diligently shall be upon him.**

(s. 3) This proposed new section states that **without prejudice to the provisions of sub-sections (1) and (2), the Central Commission or the State Commission, as the case may be, may recommend for disciplinary action against the Central Public Information Officer under the service rules applicable to him**

s.21 – Act not to apply to certain organisations

Existing Provision:[s.21(1)] Details the categories of organisations such as security agencies and intelligence agencies that the Act will not apply to

Recommendation for change: These exclusions will not be upheld if the information pertains to an **allegation of a violation of human rights** or corruption

s.22 – Monitoring and reporting

Existing Provision:[s.22(4)] The Central Government, yearly, will lay before each House of Parliament the report of the Information Commission (the details of the report are outlined in the previous sub-sections)

Recommendation for change: The Central Government will yearly, lay before each House of Parliament the report of the **Central, Information Commission.** In the case of the States a report of the State Information Commission will be laid before each **House of the State legislature where there are two houses, and where there is one House of the State legislature, before that House by the State Government**

s.26 – Laying of rules

Recommendation for change: (2) This proposed new section states: **Every rule under this Act shall, as soon as may be after it is made, be laid before the State legislature.**

First Schedule

Recommendation for change: A first schedule has been added in the recommendations forming an **oath/affirmation** to be made by the **Central and State Information Commissioners**, this also applies to his/her **Deputies**. This is outlined in sub-section (3) of section 13 and sub-section (3) of section 14B

Further Committee Recommendations Not Reflected in the Bill Annexed by the Committee:

Fees – s. 7

The Committee recommends that it is not in the interest of the spirit of the law to impose a fee on the poor, as it will create a barrier to their usage of the Bill. People ‘below the poverty line’ should thus be exempted from paying any fees for accessing information. In other cases it should not exceed the actual cost of supplying the information.

Information Commissioners – s. 13

The Committee recommends that the Information and Commissioners and their Deputies be conferred the status of Chief Election Commissioner and Election Commissioner, respectively. This recommendation was made with the need for independence and autonomy, in mind.

Penalties – s. 17

The Committee recommend that the Information Commission be vested with direct powers to initiate penal action against the Public Information Officers, and stringent penalty provisions be incorporated into the Bill. This is in order to allow them to exercise due control and superintendence over the Public Information Officers.

Notes from CHRI:

1. The Committee has proposed that the law cover all Government bodies throughout the country. This reflects the approach adopted by the *Freedom of Information Act 2002* (FOI Act). Based on the experience of the FOI Act, it is understood that, if the Bill is amended as proposed by the Committee, the Government may require all State Governments which currently have State right to information laws to repeal their laws, so that the Central Act consistently covers all State bodies.
2. The Committee has proposed a substantial change by recommending that State Information Commissions are set up, as well as the Central Information Commission proposed in the RTI

Bill. However, the Committee has not clarified the jurisdiction of each of these bodies or how they will interact with each other. It is understood that the Central Information Commission will exclusively hear appeals in relation to requests for records held by Central Government public authorities and that the State Information Commissions will exclusively hear appeals in relation to requests for records held by State Government public authorities.

3. Under s.13, the Committee recommended that that the Information and Commissioners and their Deputies be conferred the status of Chief Election Commissioner and Election Commissioner, respectively. Under Article 324 of the Constitution, the Election Commission has the powers to make rules on election-related matters that are not covered by the existing law. By giving the Information Commissioners the status of the CEC and the EC will the RTI law give them similar powers is a matter that needs clarifying.