

**Commonwealth Human Rights Initiative's Recommendations**  
*on*

**The Karnataka Draft Right to Information Bill 2000**

CHRI is happy to know that the Karnataka Government has decided to legislate on the Right to Information soon. We are also happy to know that the government is following an open and transparent procedure for consulting with different groups of people on the provisions of the Bill.

Having gone through the provisions of the Bill in circulation, CHRI would like to make the following comments and recommendations and hopes that they would be taken up for discussion at the appropriate forum.

**Title and Introduction**

The Karnataka Bill is rightly titled "Right to Information Bill" as it gives effect to an important and fundamental right of persons, part of which is covered by Article 19 of the Constitution (Right to Freedom of Speech and Expression) and partly under Article 21 (Right to life and personal liberty).

However, the wording needs to be amended a little for the following reasons :

- 1) The words 'a Bill to provide for right of access to information to the citizens of the state.....' need to be amended as there is no separate citizenship of states. Secondly, some provisions such as access to information pertaining to life and liberty of persons would apply even to persons who are not citizens of India and appropriate words should be added to cover this contingency. A new section detailing this aspect would need to be added.

The introductory statement could therefore read,

*'A Bill to provide for right of access to information to citizens and to others in accordance with the provisions of this Act.'*

The same changes need to be made in paragraph 4 of the introduction.

**Section 1 (2)**

The date for coming into effect should not be entirely left to the discretion of the government. The legislation itself should contain at least a time bar within which the law must be notified. Laws in the past have remained dead letters for this very reason.

Section 2(1) could be amended accordingly to read,

*'It shall come into force from such date as the State Government may, by notification, appoint. Provided that the date of notification should not be beyond a period of six months from the passing of this Act, failing which it will automatically come into effect upon completion of six months.'*

## **Section 2**

**Section 2 (c) (ii)** is confusing and needs to be redrafted for the following reasons:

- 1) The numbering of the section is incorrect. Since small Roman numbers have been used for the exceptions from i to vi , capital Roman numbers should be used for the foregoing clauses of subclause (c ) of Section 2.
- 2) The definition should be an inclusive one rather than a conclusive one, since the exclusionary clause is also given separately.
- 3) It mentions that public authorities means ‘all authorities constituted by or under any Act of the State Legislature for the time being in force’ and then again, ‘any statutory authority.....’. This appears to be a repetition.
- 4) There is no reason to exclude all offices of all courts and organisations of a judicial nature. For instance, there is no reason to not give access to details of administrative expenditure, or the salaries and allowances drawn by people working there. Likewise, these bodies should also be under a duty under Section 3 to provide information suo motu to people on certain aspects of their working.

**Section 2(c)** could be redrafted as,

***‘ Public authority includes all offices of the State and local governments, any statutory authority, administrative offices of Courts, tribunals and other judicial and quasi judicial bodies functioning under the State Government and any company, trust, society or organisation owned, funded, or controlled by the State Government.’***

**Section 2 (d)** needs to be amended to include the right to inspect records, as, most often, it is not possible to ascertain which particular record, document or piece of information is to be applied for. The practice of inspecting records prevails in land records and judicial records and is also otherwise universally followed. Accompanying provisions for procedure of inspection would have to be included in the Act or in the rules.

Section 2 (d) must also include the right to have information from private authorities if it is related to or required for the protection of people’s rights. Section 2(d) could be redrafted as under:

***‘Right to Information’ means right of access to information***

- I) from any public authority***
  - (i) by inspecting the records and taking notes or extracts manually or by photocopying***
  - (ii) by obtaining photocopies of any records***
  - (iii) by obtaining diskettes, floppies, any other electronic device, or through printouts, information stored in a computer or any electronic device***
  - (iv) in such other manner as may be prescribed.***

**II) *Obtaining information in the above manner from any other source where the information is related to or affects any person's fundamental rights protected by the Constitution of India.***

**Section 2 (f)** defines 'trade secret' too broadly. The definition should either be restricted to the words 'trade secrets protected by law' as used in Section 4, or should read as :

***'trade secrets' means information contained in a formula, pattern, compilation, programme, device, product, method, technique or process which is protected under the law by an agreement of non-disclosure.'***

### **Section 3**

Section 3 needs the following changes:

- 1) The word 'publish' needs to be defined clearly, as most government agencies feel that publication in the gazette or the annual reports of the department is sufficient publication. This would defeat the very purpose of the provision. The section should therefore be divided into sub clauses I and II. Sub clause II could read as under:

***"II ) For the purposes of this section, the term 'publish' shall mean appropriately making known to the public by means of notice boards, newspapers, public announcements, media broadcasts and other such means, the information to be communicated. Further, such methods shall at all times be employed which keep in mind the local language and methods of communication."***

In **section 3(d)** the word 'or' needs to be added after the words 'before sanctioning or initiating'. The wording of the section is not conducive to easy reading and could be redrafted as under:

***' before sanctioning or initiating or causing to sanction or initiate any project, scheme or activity as may be specified by the State Government, publish or communicate to the public generally, and in particular to the persons affected, or likely to be affected by the project, scheme or activity, the facts available to it or to which it has reasonable access.***

The words, 'which in its opinion should be known to them in the best interests of maintenance of democratic principles' may be deleted since they are of a vague import. In the absence of specific parameters contained in the law itself as to how the opinion would be formed and what constitute the 'best interests of maintenance of democratic principles' this formulation leaves too much discretion with the public authority'.

**Section 3(e)** is an excellent provision and can be made more effective by adding some provision as to the time within which it is to be published. Moreover, since the state has a constitutional mandate to protect the lives, liberty and human rights of all persons, regardless of whether they are citizens or not, the word 'citizens' should be replaced with the word 'persons'. Section 3(e) could be accordingly redrafted as:

*‘publish information relating to the life, liberty and human rights of persons, in particular in custodial institutions, at such intervals and frequency as may be prescribed.’*

#### **Section 4**

For reasons mentioned earlier, Section 4 can be redrafted as under:

*(1) ‘The State shall provide the right to information to people in accordance with this Act.*

*Notwithstanding anything contained in sub section (1), no person shall be given .....*’

#### **Section 5**

Section 5 is lacking in the following respects:

- 1) It does not clarify the procedure sufficiently.
- 2) It does not make provision for making oral requests and their recording in an appropriate manner.
- 3) It does not provide for acknowledging the receipt of the request.
- 4) It does not specify the limits of the fee that can be prescribed sufficiently. The requester cannot be expected to bear the entire retrieval expense for the information sought.
- 5) It does not provide for urgent requests.
- 6) It does not specify the time limit for refusal of a request.

Section 5 could accordingly be redrafted as under:

*‘ A person desirous of obtaining information shall make an application to the competent authority in writing in the prescribed form and upon payment of the prescribed fee, shall obtain a receipt for the same specifying the nature of the request and the date of receiving the same.*

*Provided that where a person is unable to make a written request, the competent authority shall either assist the requester to reduce it in writing or shall receive an oral request and reduce it in writing and give a receipt for the same.*

*Provided further, that the fee to be charged shall in no case exceed the cost of photocopying of the requested information.*

*(2) On receipt of an application requesting for information the competent authority shall consider it and pass orders for supply thereon, as soon as practicable, and in any case within 30 working days of receiving the request.*

*Provided that where the request is of such nature that it relates to the life or personal liberty of a person, information shall be made available forthwith, and in any case not later than 48 hours from the time of making the request.*

*(3) Where the competent authority does not have the information, he shall, within 15 days from the date of the receipt of the request, transfer it to the authority superior to the competent authority with whom such information is available and inform the applicant accordingly. Such superior authority shall, thereupon, furnish the said information within 30 working days from the receipt of the request from the competent authority.*

*Provided that where the request cannot be complied with for reasons falling under Sections 4 and 6 of this Act, the competent authority, or the superior authority as the case may be, shall, within 15 days of receiving the request, reject the request and communicate to the party concerned,*

- (i) the reasons for such rejection;*
- (ii) the period within which the appeal against such rejection may be preferred; and*
- (iii) the particulars of the appellate authority.*

## **Section 6**

Section 6 (b) and (c) need to be changed in order to give de facto access to people. For instance, departments are bound to publish their annual reports, accounts, notifications, etc.. However, these are quite inaccessible to ordinary people for several reasons, such as unavailability, and use of complicated official language. Moreover, the provision for refusing 'published material available to the public' can likewise create several problems, such as, that information can be given out to private publishers who will sell the same for a high price, thereby making it accessible only to a few. The veracity of information thus available will also always be in doubt. This is borne out by several instances of private publishers printing and selling the Bare Acts (texts of laws passed by the legislatures). The law should therefore take care of these contingencies. Section 6 (b) could be redrafted to read as under:

*'(b) relates to information that is required by law, rules, regulations or orders to be published at a particular time and such information is published and made freely available at a reasonable price from the competent authority or its agents, or is likely to be so published and made available within the next 30 days of making the request.'*

## **Section 7**

Serious difficulties will be created by leaving the identification of the appellate authority to subordinate legislation. At the least, the level of the appellate authority must be indicated in the law itself.

## **Section 9**

The protection in this section appears to be redundant. It is good insofar as it protects a public official from the adverse consequences of releasing in good faith information which he believes can be given, but which falls under the prohibited categories. However, this provision should not be misused to escape the penalty provisions for refusal or delay, contained in Section 10.

## **Section 13**

The language of section 13 can be modified to make it clearer. Section 13 (3) could be redrafted to read as under:

*‘ Every rule made under this Act shall be laid as soon as may be after it is made and in no case later than two legislative sessions, before each House of the State Legislature while it is in Session, for a total period not exceeding 30 days which may be comprised in one session or two consecutive sessions. If, before the expiry of the aforesaid session or sessions, both the Houses agree in making modifications to a rule or agree that a rule should not be so made, the said rule shall have effect only in such modified form, or not at all, as the case may be.*

*Provided that any such modification or annulment shall be without prejudice to the validity of anything done under the said rule prior to such modification or annulment.*