

AMENDMENTS TO THE FREEDOM OF INFORMATION ACT 2003

ABSTRACT OF PRELIMINARY PROPOSALS

Though a detailed table has been circulated listing out the provisions in the present act and the amendments proposed, in actual fact only six major amendments are proposed for the moment. These are listed below along with the sections in the amended act that they refer to.

1. Though the Central Act will cover all matters listed in the central, concurrent and state lists, the Central Act will not interfere with the right of state legislatures to pass a right to information law for matters in the state list, provided that the applicants have a right to choose which act to invoke in matters relating to state subjects. [Section 1(4), page 1]. The present act is silent on this and one expert opinion is that once a Central Act comes into force, all state acts will cease to exist. This has reportedly been challenged by some states, including Delhi.

Rationale: Allows for states to extend the Right to Information beyond provisions of the Central Act (as has been done in Maharashtra, Delhi and Karnataka), and also to enact transparency provisions on matters pertaining to the State lists. However, the option to use either act would ensure that where state acts are conservative, the Central act could be invoked by the applicant.

2. The proposed amendments specifies that information pertaining to all other agencies or authorities (including those that use public funds or affect public interest) needs to be accessed through the government and that the government must make available all information about such agencies/bodies etc. that it can or is required to collect under any law [Section 2 (d) and (f), pages 2-3].

Rationale: It might not be possible for small NGOs, small groups and small businesses and enterprises to create the infrastructure required to deal with direct requests for information. Besides, such small entities could be harassed by a large number of RTI requests. Also, there is an advantage, even where large NGOs and enterprises are concerned, if the information is requisitioned through the government, for then the government would have an automatic responsibility to take cognisance of such information and not wait for the applicant to point out any wrong doing.

3. The proposed amendments allow the people to submit their applications and appeals to a local official whose responsibility it would be to send it on to the relevant department. In the rural areas this could be the Block Development Officer and in the urban area the Sub-Divisional Magistrate. The option to send the application by post, by electronic mail or deliver it by hand also remains. [Section 5(1), page 5]

Rationale: This is intended to save the people time and costs, and also solve the difficulty often faced in trying to find the specific department that deals with the information sought.

4. The list of the type of information exempted under this act has been pruned, consistent with the ruling of the Supreme Court on exemptions allowed to the freedom of expression under Article 19(A). Specifically, exemptions relating to intelligence and security matters are limited to those listed under Section 8 of the amended Act; the blanket exemption provided under Section 16 of the existing Act has been deleted. Also, specific exemptions to cabinet papers, and to minutes, advice etc. made/given during the decision making process have also been deleted [section 8 (c), (d), and (e) on page 8, The Schedule on page 22].

Rationale: The exemptions included under section 8 of the amended act [page 8] are adequate, in their generality, to cover all those aspects of cabinet papers, notings, etc. that should legitimately be kept secret. Also, they are adequate to protect all the information with intelligence and security agencies that should legitimately be protected. (All other matters might in any case violate the Supreme Courts provisions on the specific exemptions allowed to the rights of a citizen under Article 19 (1) a)

5. The amendments provide for the appointment of Chief Information Commissioners and Information Commissioners in each state, to act as independent appellate authorities under the act and to help in the proper implementation of the RTI act [Sections 12 (1), 12(2) and 12 (B), pages 13-16].

Rationale: Experience in India and around the world has established that the two most critical factors determining the success of an RTI law are the existence of truly independent appellate authorities and the availability of stringent penalties for delays, refusals, and provision of false information.

6. Penalties for the violation of various sections of this act have been specified, starting from Rs. 250 per day for unjustified delays to a minimum fine of Rs. 2000.00 and/or imprisonment of up to 2 years for mala fide refusal to give information, knowingly giving false information, destroying sought for information and obstructing the information officers, etc. [Section 12 (c), page 17].

Rationale: See rationale for 5 above.