



CENTRE FOR CIVIL SOCIETY

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24 February 2005

Shri Surinder Kumar Watts
Deputy Secretary
Rajya Sabha Secretariat
Parliament House Annexe
New Delhi 110 001

Dear Shri Watts:

The Centre for Civil Society is an independent, non-profit, research and advocacy organisation devoted to improving the quality of life for all citizens of India by reviving and reinvigorating civil society. Good governance is our priority area of focus for research, documentation and dissemination. Many eminent academics, columnists, and activists are associated with the Centre.

We commend you for the open dialogue and discussion on the contours of the new right to information bill that you have initiated by inviting comments and presentations from concerned citizens and civic groups. We take this opportunity to offer our comments and request a personal presentation to the Standing Committee.

Our study and understanding of similar provisions in other democracies suggests that we must challenge the basic premise of the discussed RTI bill: citizens must ask and directly pay for every piece of information they want from the government. The citizens of India have a right to all the information about the governments of India—local, state, and the union. This right is circumscribed only by the limitations specified in the Official Secrets Act, 1923. **All information that is not restricted by the Official Secrets Act must be available to the citizens as a matter of right, as a matter of course, without having to plead, pray or pay.**

A legitimate right of one party imposes a corresponding duty on the other party. In other words, a right cannot be considered to be fully recognised if it entails no duty on the other side. My right to the security of my nose, for example, implies a corresponding obligation on others to stop their hand before it reaches my nose. They must stop where my nose begins or else suffer legal consequences.

Similarly, a citizen's right to information, if to be fully recognised, imposes a duty on the government to actually provide that information. Much of the debate in the RTI bill is over the nature of this duty. What is the nature of government's obligation in relation to citizen's right to information?

The proposed RTI bill suggests that government's duty is to stand ready to accept an exactly worded request for specific information from the citizen. Then evaluate the request and furnish the information, or ask for clarifications and then furnish the information, or raise objections and furnish partial information, or refuse altogether. This type of right seems similar to the current fundamental right to education—when the government gets around to it, children will get education! The government promises to try its best to provide education to all children. The proposed right to information seems on par with other such fundamental rights guaranteed to the citizens of India. But we hope that we can do a little better in case of the right to information.

A legitimate right has a corresponding duty. My right to education would be truly legitimate if it imposed a duty on the government to provide it. Yes, to actually provide it, not to try to provide it, or to try their best to see that I get it in some way or form. No, not to try, or to intend or will, or to commit, but to actually provide it. Only when I actually get education that my right is really fulfilled. May be we can't do much about the right to education now but we surely shouldn't apply that faulty model to the right to information.

For further clarity and emphasis, let's go back to the example of my nose and your hand. My right to life (and that includes the right to my body and nose) means that your hand must stop where my nose begins. Yes, it must stop. No, not try to stop, intend to stop, or commit to stop. It must actually stop. It is also not that you should stand ready to take my request to stop. I don't even have to ask you to stop; I have no such obligation. You must stop, period. Now this is a real right.

If we apply this commonsense understanding of what a real right means to the right to information, **it is obvious that the government's corresponding duty is not to stand ready to receive requests for information on a proper form, in proper words, but to actually provide information.** Provide it without my asking. Like stop your hand without my asking.

True, in the real world there are many constraints in fulfilling real rights. Even when my right to life and body is clearly articulated, it does not mean that my nose never gets punched or touched! But just because it may happen, we do not dilute the real right. We do not say that my right to life means that others should *try* to stop their hand. No, they must stop their hand.

The government's duty, under the citizen's right to information, is to actually provide information. It is the duty to make information actually available. **It is the Duty to Publish! It is the duty to publish all information that is not allowed to be kept secret by the law.**

To entitle a real right to information, we need a real duty to publish along with the duty to furnish information on request. Towards this end, **we suggest a single change in the proposed RTI bill.** The Section 4 of Chapter 2 of the proposed bill deals with the obligations of public authorities. This section should begin with the following text: The fundamental obligation of the government is to put all information in public domain that is not explicitly restricted by the Official Secrets Act, 1923. The government's duty to publish is the most critical component of the citizen's right to information. The situation must be such that only in rare circumstances the citizen should feel compelled to file a request under this Act. To operationalise this duty to publish, the Central Information Commission, in consultation with citizens and civic organisations, should outline the information that must be made public by each public authority. This process must be conducted such that within 24 months of the enactment of this Act, each public authority should be able to meet the '**affected citizen test**'. The test is whether the authority has put all information in public domain that an affected citizen 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.

The above suggestion can also be seen as formalisation of the idea mentioned in sub-section 2 of Section 4, which reads: 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.

Many competent citizens and organisations have diligently combed through the Bill and have proposed several changes to improve the duty to furnish part of the Bill. However **we firmly believe that without the inclusion of the duty to publish, all the other changes would still fall short of genuine empowerment of the citizens of our country.**

We sincerely thank you for your democratic initiative and hope that we would get a chance to make our case in person to the Standing Committee of the Parliament.

In liberty,

Parth J. Shah

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Attachments: CCS Comments: Incorporate the Duty to Publish
Media articles supporting the idea of duty to publish