विषय/Subject

'FREEDOM OF INFORMATION ACT, 2002'

AMENDMENTS TO

RECOMMENDATIONS BY

NATIONAL

Advisory
Council
The 'Freedom of Information Bill, 2002, as passed by the Lok Sabha on the 3rd December, 2002 and by the Rajya Sabha on the 16th December, 2002, received the assent of the President on the 6th January, 2003 and the 'Freedom of Information Act, 2002' has been published in the Gazette of India on the 7th January, 2003. Section 1(3) of the Act lays down that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. As the basic infrastructure required for operationalising the Act is in the process of being set up, the Act has not yet been brought into force.

2. The National Common Minimum Programme of the United Progressive Alliance inter-alia provides that

'The Right to Information Act will be made more progressive, participatory and meaningful.'

In pursuance of the above commitment, the National Advisory Council has, besides suggesting amendment of the Preamble, proposed 34 amendments to the 'Freedom of Information Act, 2002.' These amendments relate to Sections 1 to 12 and 16 of the Act which include changing the title of the Act from 'The Freedom of Information Act, 2002' to 'The Right to Information Act, 2004'. A comparative statement showing the existing provisions in the FOI Act, 2002 which are proposed to be amended, together with their formulation after the proposed amendment, is at flag 'A'.

3. The Prime Minister has directed that the Department of Personnel & Training may look into the above proposal on priority basis and bring a formal note to the Cabinet as soon as possible so that an Amendment Bill can be tabled by the Government in the next Session of the Parliament. The minutes of MOS(PP) on prepage, as a sequel to the discussions with the PM's Office, also refer in this connection.

4. Having regard to the directions of the Prime Minister, a draft 'Note for the Cabinet' has been prepared and placed on file. Ministry of Law & Justice (Department of Legal Affairs) may kindly see for clearance to the proposed amendments from the legislative and Constitutional point of view. A copy of this Note
is also being forwarded to the Legislative Department, in advance, for drafting the ‘Notice of amendment’.

(RAKESH MALHOTRA)
Under Secretary
October 13, 2004

Dir(E-II)- not in position

Dir(E)

Mos(PP)  Sanch
20/10/04

SURESH PACHOURI
Mos (PP)

Ministry of Law & Justice
[Dept. of Legal Affairs - St. R. & Meena, Secretary]

Copy forwarded, in advance, to the Legislative Department, Ministry of Law & Justice, for taking action as proposed in para 4 of the Note.

(RAKESH NALHOTRA)
Under Secretary
4.11.2004

Legislative Department (Shri Z.S. Negi, Joint Secretary and Legislative Counsel, Ministry of Law & Justice, Shastri Bhawan DOP&T I.D.No.34011/6(s)/2004-Estt.(B) dated 4th Nov., 2004.)
2. The Department of Personnel and Training has forwarded a copy of the draft Note for the Cabinet to the Department of Legal Affairs for their clearance to the proposals contained therein from legal and constitutional point of view and a copy thereof in advance to this Department. The proposal contained in the draft Note for the Cabinet is to make several amendments to the Freedom of Information Act, 2002 (5 of 2003). Since the comments of the Department of Legal Affairs have so far not been received, we have tentatively examined the proposals and our comments are as follows:-

(i) The amendments proposed are large in number and substantive in nature which are capable of giving a new shape to the existing Act. Further, one of the proposals is to provide commencement of the amending Act after 120th day of its enactment but there is no proposal as to how the period from 6th January, 2003 to the date of enactment is to be covered up (especially when the principal Act remained un-enforced till now and will remain so un-enforced till the enactment of the amending legislation). In view of this, it would be appropriate that the administrative Department may consider for repealing the existing Act and enact a new legislation in its place.

(ii) It is proposed to insert a new sub-section (4) in section 1 of the Act. If the existing Act has been enacted under entry 97 of the Union List, then the question of existence of any State enactment on the subject does not arise. If there is any confusion/controversy about the legislative competence of Parliament to enact on this subject, then the same should be removed before amendment or new legislation is attempted. This should be done in consultation with the Department of Legal Affairs.

(iii) It is proposed to provide a clause relating to objectives of the enactment. The objectives are generally contained in the long title of the Act. The proposed long title covers the major objective of the enactment. Providing objectives presently in the legislation is generally not in vogue in India.

(iv) It is proposed to appoint the Chief Information Commissioner, State Information Commissioners and Information Commissioners without proposing to establish a Central Information Commission and a State Information Commission consisting of the Chief Information Commissioner and State Information Commissioner, etc. There is no proposal for appointment of officers and employees of the Commission and also no proposal for salaries, allowances and other conditions of service including pension, etc to the Chief Information Commissioner, a State Information Commissioner, Information Commissioners, officers and other employees of the Commissions. Further, there is also no proposal for the resignation by the Commissioners or their removal, etc. Besides these, there is no proposal to provide for jurisdictional areas to the Commissioners including the Commissioners appointed by the President of India and the Governors of the States. This may cause overlapping of jurisdiction and difficult to ascertain the appellants in second appeals. In clause 12(2) (ii), it is also proposed to provide that appeal shall lie to the relevant Chief/State/Information Commissioner but nowhere it is provided
as to which is the relevant Commissioner especially when there is no provision for determining jurisdictional areas of information Commissioners.

(v) clause 7(3) provides for showing of calculation of fee as per the Act but there is no provision for the purpose of calculation of fee except prescribing fee under clause 7(1).

(vi) clause 12(4)(1) provides for the relevant Information Commissioner shall on appeal impose a penalty of Rs.250 which amount must be increased by regulation at least once every five years, for each day's delay in furnishing the information. It is not clear as to how the scale of penalty can be increased once in every five years by regulations. Regulations are generally made by authorities subordinate to the Government. In the present proposed enactment who will be the authority subordinate to the Government to make these regulations and where is the provision for making such regulation. Even if there is any proposal to increase the scale of penalty by regulation without providing any upper limit of scale will not be proper. Further, in clause 12(4)(2) it is provided that he/she would have committed an offence and will be liable upon conviction to a fine of not less than Rs.2000 and imprisonment of upto five years, or both. It is presumed that this provision is for conviction by court but how the court will take cognizance or who will file the complaint is not specified. If the presumption is right, there should be an independent provision for that. However, such provision will be in contradiction to section 15 of the existing Act which is proposed to be retained. If this provision is for the purpose of appellate authority then such conviction power cannot be provided to an authority other than the court.

The above comments may be considered by the administrative Department and appropriate decision is taken thereon and conveyed to the Legislative Department before it attempts a draft legislation.

(Z.S. Negi)
Additional Secretary
23.11.2004

Department of Personnel and Training
[Attn. Shri S. Chandrasekaran, JS(E)]

\[\text{Note:}\]

- The above comments may be considered by the administrative Department and appropriate decision is taken thereon and conveyed to the Legislative Department before it attempts a draft legislation.
- (Z.S. Negi)
  Additional Secretary
  23.11.2004
- Department of Personnel and Training
  [Attn. Shri S. Chandrasekaran, JS(E)]
Office of the Minister of State for Personnel, PG & Pensions

The file No.34011/2(5)/2004-Estt (B) dealing with Freedom of Information Act has been submitted for kind perusal of Hon'ble PM.

However, since the issue under consideration is a part of the Common Minimum Programme of the UPA Government, I feel that all-out efforts should be made to ensure that the Bill is introduced in the Parliament in the forthcoming Winter Session, 2004.

I have also personally requested the Law Minister to get the issues on the file examined by his Ministry expeditiously. Secretary(Personnel) may personally coordinate with Ministry of Law as well as other concerned Departments to enable resolution of pending issues on a fast-track basis and placing the Act before the Cabinet at the earliest.

[ SURESH PACHOURI ]
MOS(PP)
22.11.2004

Secretary (Personnel)
The proposal to amend the 'Freedom of Information Act, 2002', as per the recommendations of the National Advisory Council, was discussed by Secretary(Personnel) with Shri Pulok Chatterjee, JS, PMO today. During the course of discussions, it was agreed that keeping in view the nature and number of amendments, it may be more appropriate to repeal the present Act and enact a new law on the subject. It was also felt that certain provisions in the changes suggested by the NAC may have to be redrafted to meet the Constitutional and administrative requirements. For this purpose, it would be necessary to recall the main file from the Legislative Department. A draft d.o. letter, to this effect, is accordingly placed below for approval.

(RAKESH MALHOTRA)
Under Secretary
2.12.2004

Dir(E-II) – not in position

Spoke to Secretary(EB). He desired a communication from us so that the file in question can be returned.

JS(E)

Secretary(E)

JS(E)

Dir(E-II)