

**India's Central Information Commission Directs Governments to Create Spaces
for Public Consultation on Draft Laws
September 11, 2010**

Dear all,

I am reporting on two trend-setting decisions that have issued from the Central Information Commission in the last few months. There are other important decisions as well but I have chosen these because of the commonality of the themes in both cases. **The Central Information Commission has issued recommendations to the Government of National Capital Territory of Delhi and the Central Government for creating spaces for public consultation on draft Bills and draft rules and regulations before they are approved by the respective Cabinets and introduced in the respective legislatures. Unless challenged in court, this is now a mandatory requirement under Section 4(1)(c) of the Right to Information Act, 2005 (RTI Act).**

Section 4(1)(c) of the RTI Act states:

"Every Public authority shall:

X X X

publish all relevant fact while formulating important policies or announcing the decisions which affect public"

We tested these provisions in the context of two draft laws, namely, the draft *Delhi Police (Amendment) Bill, 2010* and the *Public Interest Disclosure and Protection to Persons Making Disclosure Bill 2010*, also known as the Whistleblower Bill tabled in Parliament recently.

These decisions establish two important principles:

- 1) that while formulating draft legislation government departments must place such Bills in the public domain to encourage public consultation; and**
- 2) that papers that are not actually drawn up for submission to the Cabinet but are in the preparatory stage involving consultation within or between ministries and departments are not automatically entitled to the exemption given to Cabinet papers under Section 8(1)(i). However they may be withheld under the exemption related to Cabinet papers or on grounds of parliamentary privilege after they have been approved by the Cabinet.**

Our complaint was limited to the establishment of the first principle in the case relating to the Whistleblower Bill. Thanks to Prof. Shekhar Singh's advice and assistance at the full bench hearing in this matter, the second principle was also highlighted and the Central Information Commission concurred with this argument. I am grateful to him for the timely assistance.

We await the Government's reaction to these decisions. We hope the Governments will not challenge these decisions before the Delhi High Court as no public interest is negated by disclosure of most draft Bills (save Finance Bills perhaps, but secrecy in this matter is also heavily debated). Now we must all gear up to insist upon compliance with these recommendations. We will have to advocate with the DoPT to issue Office Memoranda instructing all ministries to create mechanisms for public consultation on draft Bills before they are finalized for introduction in the legislature. **I request RTI users and activists in the States to use these decisions to get their State Information Commissions to rule in favour of disclosure of draft legislation before they are tabled in the legislature or draft rules before they are gazetted.**

These rulings reiterate an ancient Roman principle that is immensely relevant to the present: ***"What affects all must be decided by all"***. Democracies despite being largely representative in form cannot shy away from public consultation.

As a result of this strategic litigation both Bills have been placed in the public domain and people have been invited to send their comments for improvement.

This email contains the following attachments:

- 1) A detailed narrative of the cases with a background on why we launched this strategic litigation.
- 2) The decision of the Central Information Commission recommending the Government of Delhi to comply with Section 4(1)(c) of the RTI Act (accessible at: http://rti.india.gov.in/cic_decisions/CIC_SG_C_2010_000345_8440_M_37452.pdf)
- 3) The recommendation of the Central Information Commission to the Cabinet Secretariat, Government of India, to comply with Section 4(1)(c) of the RTI Act (accessible at: http://rti.india.gov.in/cic_decisions/CIC_WB_C_2010_000120_T_41373.pdf)
- 4) The interim decision of the Central Information Commission in the aforementioned case (accessible at: http://rti.india.gov.in/cic_decisions/CIC_WB_C_2010_000120_M_39204.pdf)
- 5) Our details arguments in the revised supplementary submission to the Central Information Commission in the aforementioned case.

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