



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 24] नई दिल्ली, वृहस्पतिवार, दिसम्बर 23, 2004 / पौष 2, 1926

No. 24] NEW DELHI, THURSDAY, DECEMBER 23, 2004 / Pausa 2, 1926

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 23rd December, 2004:—

BILL NO. 104 OF 2004

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Third Amendment) Act, 2004. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 340 of the Constitution, the following article shall be inserted namely:— Insertion of new article 340A.

‘340A. (1) There shall be a Commission for the Minorities to be known as the National Commission for Minorities. National Commission for Minorities.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Commission shall consist of a Chairperson, Vice-Chairperson and five other Members and the conditions of service and tenure of the office of the Chairperson, Vice-Chairperson and other Members shall be such as the President may by rule determine:

Provided that at least five Members including the Chairperson shall be from amongst the Minorities.

(3) The Chairperson, Vice-Chairperson and other Members shall be appointed, by the President by warrant under his hand and seal, from amongst persons of eminence, ability and integrity.

(4) The Commission shall have the powers to regulate its own procedure.

(5) It shall be the duty of the Commission—

(a) to evaluate the progress of the development of Minorities under the Union and the States;

(b) to monitor the working of the safeguards provided in the Constitution and the laws enacted by Parliament and the State Legislatures;

(c) to make recommendations for the effective implementation of safeguards for the protection of the interest of the Minorities by the Central Government and the State Governments;

(d) to look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities;

(e) to cause studies to be undertaken into problems arising out of any discrimination against the Minorities and recommend measures for their removal;

(f) to conduct studies, research and analysis on the issues relating to socio-economic and educational development of the Minorities;

(g) to suggest appropriate measures in respect of any Minority to be undertaken by the Central Government and the State Governments;

(h) to make periodical or special reports to the Central Government on any matter pertaining to the Minorities and in particular the difficulties confronted by them; and

(i) to discharge such other functions in relation to the protection, welfare, development and advancement of the Minorities as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

(6) The President shall cause the recommendations referred to in sub-clause (c) of clause (5) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any recommendation referred to in sub-clause (e) of clause (5) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendation or part thereof.

(8) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses and documents;

(f) any other matter which the President may, by rule, determine.

(9) For the purposes of this article, "Minority" means a community which the President may, by public notification, specify to be a minority.'

STATEMENT OF OBJECTS AND REASONS

The National Commission for Scheduled Castes and the National Commission for Scheduled Tribes have been constituted in pursuance of article 338 and article 338A respectively of the Constitution. Article 350B of the Constitution provides for appointment of a Special Officer for linguistic minorities. The Central Government set up a Minorities Commission in January, 1978 for providing an institutional arrangement for evaluating the safeguards provided in the Constitution and to make recommendations for effective implementation of the safeguards given to the Minorities. Subsequently, in May, 1993, the Central Government constituted the National Commission for Minorities as a statutory body under the National Commission for Minorities Act, 1992.

2. There has been a persistent demand for giving constitutional status to the National Commission for Minorities. It is felt that the constitution of the National Commission for Minorities under a constitutional provision would inspire greater confidence amongst the minorities and the Commission would be more effective in safeguarding their interests. It is, therefore, proposed to amend the Constitution by way of insertion of a new article 340A in the Constitution.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 16th December, 2004

MEIRA KUMAR.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to insert a new article 340A in the Constitution for setting up of a Commission for the Minorities to be known as the National Commission for Minorities. The proposed Commission shall consist of a Chairperson, Vice-Chairperson and five other Members.

2. It is proposed to repeal the National Commission for Minorities Act, 1992 and dissolve the Commission constituted thereunder by enacting the National Commission for Minorities (Repeal) Bill, 2004 introduced separately. It is also proposed to utilise the services of the Secretary and other officers and employees of the National Commission for Minorities constituted under the said Act for the proposed Commission.

3. An amount of Rs. 303 lakhs has been provided for the National Commission for Minorities constituted under the National Commission for Minorities Act, 1992 for the year 2004-05 under Non-Plan. It is estimated that no additional recurring or non-recurring expenditure is likely to be involved during the said financial year for setting up the Commission under the proposed new article 340A of the Constitution, when enacted.

BILL NO. 105 OF 2004

A Bill to repeal the National Commission for Minorities Act, 1992.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the National Commission for Minorities (Repeal) Act, 2004. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

19 of 1992. 2. The National Commission for Minorities Act, 1992 is hereby repealed and the National Commission for Minorities constituted under section 3 of the said Act shall stand dissolved. Repeal.

3. On the dissolution of the National Commission for Minorities, the person appointed as the Chairperson and every other person appointed as Member of the National Commission for Minorities and holding office as such immediately before the commencement of this Act, shall vacate their respective offices and no such Chairperson or Member shall be entitled to claim any compensation for the premature termination of the term of his office. Consequential provision.

STATEMENT OF OBJECTS AND REASONS

A Minorities Commission was set up for the first time in January, 1978, *inter alia*, to provide an institutional arrangement for evaluating the safeguards provided in the Constitution for protection of the minorities, to make recommendations for ensuring implementation of the safeguards and the laws, etc. Subsequently, in May, 1993, the Central Government constituted the National Commission for Minorities as a statutory body under the National Commission for Minorities Act, 1992. With a view to inspire greater confidence of the Minorities in the effectiveness and working of the Commission, it has been decided to give constitutional status to the National Commission for Minorities by suitably amending the Constitution. Accordingly, it is proposed to insert a new article 340A in the Constitution *vide* the Constitution (One Hundred and Third Amendment) Bill, 2004, which has been introduced in Parliament. It is, therefore, proposed to repeal the National Commission for Minorities Act, 1992 and dissolve the Commission constituted under the said Act.

2. The Bill seeks to achieve the above objects.

NEW DELHI;

MEIRA KUMAR.

The 16th December, 2004

BILL NO. 107 OF 2004

A Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Right to Information Act, 2004.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on the one hundred and twentieth day of its enactment.
2. In this Act, unless the context otherwise requires,—

(a) "Commission" means the Central Information Commission constituted under section 12;

(b) "competent authority" means—

(i) the Speaker in the case of the House of the People or the Legislative Assembly of a Union territory and the Chairman in the case of the Council of States;

Short title,
extent and
commence-
ment.

Definitions.

- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of the High Court of Delhi in the case of the High Court of Delhi;
- (iv) the President in the case of other authorities created by or under the Constitution;
- (v) the administrator appointed under article 239 of the Constitution;
- (c) "Government", in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or a Union territory administration, means the Central Government;
- (d) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
- (e) "Information Commissioner" and "Deputy Information Commissioners" mean the Information Commissioner and the Deputy Information Commissioners appointed under sub-section (3) of section 12;
- (f) "prescribed" means prescribed by rules made under this Act by the Government or the competent authority, as the case may be;
- (g) "public authority" means any authority or body established or constituted,—
 - (i) by or under the Constitution;
 - (ii) by any other law made by Parliament;
 - (iii) by notification issued or order made by the Government, and includes any other body owned or controlled by the Government;
- (h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1), and includes an Assistant Information Officer designated as such under sub-section (2), of section 5;
- (i) "record" includes—
 - (i) any document, manuscript and file;
 - (ii) any microfilm, microfiche and facsimile copy of a document;
 - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
 - (iv) any other material produced by a computer or any other device;
- (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
 - (i) inspection of work, documents, records;
 - (ii) taking notes, extracts, or certified copies of documents or records;
 - (iii) taking certified samples of material;
 - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
- (k) "third party" means a person other than the person making a request for information and includes a public authority.

CHAPTER II

RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Subject to the provisions of this Act, all citizens shall have the right to information.

Right to information.

4. (1) Every public authority shall—

Obligations of public authorities.

(a) maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) publish before the commencement of this Act,—

- (i) the particulars of its organisation, functions and duties;
- (ii) the powers and duties of its officers and employees;
- (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
- (iv) the norms set by it for the discharge of its functions;
- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed;

and thereafter update these publications within such intervals in each year as may be prescribed;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or quasi judicial decisions to affected persons;

(e) before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interest of natural justice and promotion of democratic principles.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* 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.

(3) For the purpose of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible and comprehensible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Public Information Officer, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

Designation of
Public
Information
Officers.

5. (1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Public Information Officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or to the Government:

Provided that where an application for information or appeal is given to an Assistant Public Information Officer, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Public Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer whose assistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act such other officer shall be treated as a Public Information Officer.

Request for
obtaining
information.

6. (1) A person who desires to obtain any information under this Act shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Public Information Officer of the concerned public authority;

(b) the Assistant Public Information Officers,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. (1) Subject the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Disposal of request.

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1), the Public Information Officer shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the public authority shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to sub-section (6), pay such fee as may be the prescribed.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been deemed to be rejected under sub-section (2), the Public Information Officer shall communicate to the person making the request,—

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred;
and

(iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Exemption
from
disclosure of
information:

8. (1) Notwithstanding anything contained in this Act, except as otherwise provided herein, the following information shall be exempted from disclosure, namely:—

(a) information, the disclosure of which would,—

(i) prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interest of the State, relation with foreign State;
or

(ii) lead to an incitement to commit an offence;

(b) information, which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which may result in a breach of privileges of Parliament or the Legislature of a State;

(d) information, including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party:

Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship:

Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information;

(f) information received in confidence from a foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or cause to identify the source of information or assistance given in confidence of law enforcement or security purposes;

(h) information, the disclosure of which would impede the process of investigation or apprehension or prosecution of offenders;

(i) the Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken, shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions listed in this section shall not be disclosed;

(j) information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual:

Provided that such information may be disclosed, if the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

(2) Information which cannot be denied to Parliament or Legislature of a State, as the case may be, shall not be denied to any person.

(3) A public authority may, notwithstanding the exemptions specified in sub-section (1), allow access to information if public interest in disclosure of the information outweighs the harm to the public authority.

(4) Subject to the provisions of clauses (a) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place or occurred ten years before the date on which any request is made under section 6, shall be provided to the person making the request under that section:

Provided that where any question arises to the date from which the said period of ten years has to be computed, the decision of the Central Government shall be final.

9. Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Grounds for rejection to access in certain cases.

10. (1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

Severability.

(2) Where access is granted to a part of the record under sub-section (1), the Public Information Officer shall give a notice to the applicant, informing,—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees determined by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

11. (1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Third party information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Public Information Officer under sub-section (1) to a third party in respect of any information, or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision.

CHAPTER III

THE CENTRAL INFORMATION COMMISSION

Constitution
of Central
Information
Commission.

12. (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Commission shall consist of—

(a) the Information Commissioner; and

(b) such number of Deputy Information Commissioners not exceeding ten as may be deemed necessary.

(3) The Information Commissioner and the Deputy Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) the Chief Justice of India.

Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

(4) The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who shall be assisted by the Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Information Commissioner and the Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of administration and governance.

(6) The Information Commissioner or a Deputy Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

(8) Every Deputy Information Commissioner shall perform his functions within such area as may be specified by the Central Government.

Term of office
and conditions
of service.

13. (1) The Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that the Central Government may extend the term of five years by one more year if recommended by the committee referred to in sub-section (3) of section 12:

Provided further that no Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Deputy Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier:

Provided that every Deputy Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Deputy Information Commissioner is appointed as the Information Commissioner, his term of office shall not be more than five years in aggregate as the Deputy Information Commissioner and the Information Commissioner.

(3) The Information Commissioner or a Deputy Information Commissioner, shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(4) The Information Commissioner or a Deputy Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Information Commissioner or a Deputy Information Commissioner may be removed in the manner specified under section 14.

(5) The Information Commissioner or a Deputy Information Commissioner shall, on cessation of his office, not be eligible for—

(a) any diplomatic assignment, assignment as administrator of a Union territory or such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(b) further employment to any office of profit under the Government of India or the Government of a State.

(6) The salaries and allowances payable to and other terms and conditions of service of—

(a) the Information Commissioner shall be the same as that of a Secretary to the Government of India;

(b) the Deputy Information Commissioner shall be the same as that of a Joint Secretary or an Additional Secretary to the Government of India:

Provided that if the Information Commissioner or a Deputy Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Information Commissioner or a Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Information Commissioner or a Deputy Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Information Commissioner or the Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and the other conditions of service of the Information Commissioner and the Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

(7) The Central Government shall provide the Information Commissioner and the Deputy Information Commissioners with such officers and employees as may be necessary

for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Removal of
Information
Commissioner
or Deputy
Information
Commissioner.

14. (1) Subject to the provisions of sub-section (3), the Information Commissioner or any Deputy Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Information Commissioner or any Deputy Information Commissioner, as the case may be, ought on such ground be removed.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Information Commissioner or Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Information Commissioner or any Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as an Information Commissioner or a Deputy Information Commissioner.

(4) If the Information Commissioner or any Deputy Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Powers and
functions of
Commission.

15. (1) Subject to the provisions of this Act, it shall be the duty of the Commission to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to a Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the Government;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

5 of 1908. (3) The Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, the Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

16. (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer in each public authority:

Appeal.

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Commission:

Provided that the Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred against an order made by the Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(4) If the decision of the Public Information Officer against which an appeal is preferred relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority which denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Commission shall be binding.

(8) In its decision, the Commission has the power to,—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;

- (ii) by appointing a Public Information Officer;
- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- (v) by enhancing the provision of training on the right to information for its officials;
- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

(9) The Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Commission shall decide the appeal in accordance with such procedure as may be prescribed.

(11) An appeal against the decision of the Commission shall lie in the High Court on any point of fact and law.

Penalties.

17. (1) Notwithstanding anything contained in section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class.

(2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.

CHAPTER IV

MISCELLANEOUS

Protection of action taken in good faith.

18. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Act to have overriding effect.

19. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

19 of 1923.

Bar of jurisdiction of courts.

20. No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Act not to apply to certain organisations.

21. (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption shall not be excluded under this sub-section.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the

publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

22. (1) The Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Central Government. Monitoring and reporting.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

(a) the number of requests made to each public authority;

(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) the number of appeals referred to the Commission for review, the nature of the appeals and the outcome of the appeals;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government may, as soon as practicable after the end of each year, cause a copy of the report of the Commission referred to sub-section (1) to be laid before each House of Parliament.

(5) If it appears to the Commission that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

23. (1) The Central Government may, to the extent of availability of financial and other resources,—

Central Government to prepare programmes.

(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) train Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily

comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

- (a) the objects of this Act;
- (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority appointed under sub-section (1) of section 5;
- (c) the manner and the form in which request for access to an information shall be made to a public authority;
- (d) the assistance available from and the duties of the Public Information Officers of a public authority under this Act;
- (e) the assistance available from the Commission;
- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;
- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
- (h) the notices regarding fees to be paid in relation to requests for access to an information; and
- (i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The Government must, if necessary, update and publish the guidelines at regular intervals.

Power to make rules by Central Government.

24. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;
- (b) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
- (c) the fee payable under sub-section (1) of section 6;
- (d) the fee payable under sub-sections (1) and (5) of section 7;
- (e) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (7) of section 13;
- (f) the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16; and
- (g) any other matter which is required to be, or may be, prescribed.

Power to make rules by competent authority.

25. (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (i) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;
- (ii) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;
- (iii) the fee payable under sub-section (1) of section 6;

(iv) the fee payable under sub-section (1) of section 7; and

(v) any other matter which is required to be, or may be, prescribed.

26. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of rules.

27. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Power to remove difficulties.

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

5 of 2003.

28. The Freedom of Information Act, 2002 is hereby repealed.

Repeal.

THE FIRST SCHEDULE

[See sub-section (3) of section 13]

Form of oath or affirmation to be made by the Information Commissioner or the Deputy Information Commissioner

“I, ..., having been appointed Information Commissioner/Deputy Information Commissioner swear in the name of God that I will bear true faith and allegiance to the solemnly affirm

Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.”

THE SECOND SCHEDULE
(See section 21)

INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Special Service Bureau.
16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.

STATEMENT OF OBJECTS AND REASONS

In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, *inter alia*, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

The Bill seeks to achieve the above objects.

NEW DELHI;
The 18th December, 2004

SURESH PACHOURI

Notes on clauses

Clause 1 deals with the short title, extent and the commencement of the legislation. The legislation will come into force on the one hundred and twentieth day of its assent by the President.

Clause 2 defines various words and expressions used in the Bill.

Clause 3 seeks to confer on the citizens a right of access to information held by public authorities.

Clause 4 seeks to entrust a duty on every public authority to maintain records and publish manuals rules, regulations, instructions, etc. in its possession.

Clause 5 provides for designation of Public Information Officers and Assistant Public Information Officers.

Clause 6 specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

Clause 7 lays down specific time limit within which a public authority shall provide information and the fees to be paid for processing the request and for providing the information.

Clause 8 deals with various categories of information which shall be exempted from disclosure.

Clause 9 empowers the Public Information Officer to reject a request for information where an infringement of a copyright subsisting in a person would be involved.

Clause 10 enables the public authority to sever and provide partial information which falls partly under the exempted categories and partly under the non-exempted categories.

Clause 11 provides for consultation with the third party where the request relates to or has been supplied by a third party and has been treated as confidential by that party.

Clauses 12 to 15 provides for constitution of Central Information Commission, the terms and conditions of service and the powers of the Information Commissioners and the Deputy Information Commissioners.

Clause 16 seeks to provide for first and second appeals, the first appeals lies with the officer senior in rank to the Public Information Officer and the second appeal may be made to the Commission.

Clause 17 provides for imposition of penalty on a Public Information Officer for persistently failing to provide information without any reasonable cause within the specified period. The Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate and on conviction, a penalty upto rupees twenty five thousand, or an imprisonment upto five years, or both, may be imposed.

Clause 18 bars the institution of legal proceedings against any person for things done in good faith under the Act.

Clause 19 seeks to make the legislation overriding in character so that the scheme is not subverted through the operation of other enactment.

Clause 20 seeks to bar the jurisdiction of the subordinate courts.

Clause 21 seeks to exempt certain intelligence and security organisations from the purview of the legislation but information pertaining to allegation of corruption, shall, without prejudice to the exemption, be provided.

Clause 22 provides for preparation of an annual report by the Commission and laying of such report by the Central Government before each House of Parliament.

Clause 23 seeks to cast an obligation on the Central Government to develop and promote schemes for advancement of the information regime.

Clause 24 seeks to empower the Central Government to make rules so as to carry out the provisions of the legislation.

Clause 25 seeks to empower the competent authority to make rules so as to carry out the provisions of the legislation.

Clause 26 seeks to require the Central Government to lay the rules before each House of Parliament.

Clause 27 empowers the Central Government to remove difficulties in giving effect to the provisions of the legislation within a period of two years from the commencement of the legislation.

Clause 28 seeks to repeal the Freedom of Information Act, 2002.

FINANCIAL MEMORANDUM

1. Sub-clauses (1) and 2 of clause 12 provide for constituting the Central Information Commission which shall consist of a Information Commissioner and such number of Deputy Information Commissioners, not exceeding ten, as may be deemed necessary.

2. Sub-clause (7) of clause 13 provides for appointment of officers and employees for assisting the Information Commissioner and the Deputy Information Commissioners as may be necessary for the efficient performance of their functions under the Act.

3. An estimated recurring expenditure of rupees one crore eighty-six lakhs is likely to be incurred on the salaries of the Information Commissioner, Deputy Information Commissioners and other officers and employees of the Commission.

4. At this stage, it is not possible to give precise details of the expenditure to be incurred on material resources in terms of office accommodation, vehicles, telephones and other office equipments required by the Commission. Adequate provisions will have to be made in the annual grants of the Commission to meet this expenditure.

5. The Bill does not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (2) of clause 21 of the Bill empowers the Central Government, by notification in the Official Gazette, to amend the Schedule for including any other intelligence or security organisation established by the Central Government or omit therefrom any organisation already specified therein.

Clause 24 of the Bill empowers the Central Government to make rules to carry out the provisions of the Act. Sub-clause (2) of that clause enumerates the matter with respect to which rules may be made under this clause.

These matters relate to, *inter alia*, the publishing of particulars of public authority, functions and duties of its officers, details of facilities available to citizens for obtaining information, fee payable to obtain an information from a public authority, salaries and allowances payable to and the terms and conditions of service of the officers and other employees, procedure for disposal of appeals and the authority before whom an appeal may be preferred against the decision of Public Information Officer.

Clause 25 of the Bill empowers the competent authority to make rules to carry out the provisions of the Act. These matters relate to, *inter alia*, the fee payable for obtaining the information from the Public Information Officer of a public authority; the appellate authority before whom an appeal may be preferred against the decision of the Public Information Officer and the procedure to be adopted by the Commission in deciding the appeals.

Clause 27 of the Bill empowers the Central Government by order to remove certain difficulties which may appear to it to be necessary or expedient in giving effect to the provisions of the Act with in a period of two years from the commencement of the Act.

The matters in respect of which rules and the order may be made are matters of administrative details and procedure and, it is not practicable to make provisions for them in the Bill. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 108 OF 2004

A Bill further to amend the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908.

BE it enacted by Parliament in the Fifty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Merchant Shipping (Amendment) Act, 2004.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENT OF THE MERCHANT SHIPPING ACT, 1958

Amendment of
long title.

2. In the Merchant Shipping Act, 1958 (hereinafter referred to as the principal Act), in the long title, for the words "registration", the words "registration, certification, safety and security" shall be substituted.

44 of 1958.

Amendment of
section 3.

3. In section 3 of the principal Act, after clause (44), the following clause shall be inserted, namely:—

'(44A) "security" means maritime security and includes any measure to protect ports or ships or any person or thing relating directly or indirectly to maritime navigation,—

(i) against terrorism, sabotage, stowaways, illegal migrants, asylum seekers, piracy, armed robbery, seizure or pilferage; and

(ii) against any other hostile act or influence,

employed by the owners or operators or persons in charge of the vessels or management of port facilities, offshore installations and other marine organisations or establishments;'

Amendment of
section 31.

4. In section 31 of the principal Act, after clause (a), the following clause shall be inserted, namely:—

"(aa) the ship identification number;".

Insertion of new
section 99A.

5. After section 99 of the principal Act, the following section shall be inserted, namely:—

'99A. (1) No person shall engage or carry to sea any seafarer in any ship, unless the seafarer is in possession of seafarer's identity document.

(2) The seafarer's identity document under sub-section (1) shall be issued in such form and manner and on payment of such fees as may be prescribed.

Explanation.—For the purposes of this section, "seafarer" means any person who is employed or engaged or works in any capacity on board a sea going ship ordinarily engaged in maritime navigation, other than a ship of war.'

Prohibition of
engagement of
seafarer without
seafarer's
identity
document.Insertion of new
Part IXB.

6. After Part IXA of the principal Act, the following Part shall be inserted, namely:—

'PART IXB

SECURITY OF SHIPS AND PORT FACILITIES

Application.

344J. (1) Subject to sub-section (2), this Part shall apply to—

(a) the following types of ships engaged on international voyages, namely:—

(i) passenger ships including high speed passenger craft;

(ii) cargo ships including high speed craft of five hundred gross tonnage and above;

(iii) mobile offshore drilling units:

Provided that the Central Government may extend the application of this Part to those ships which are exclusively engaged on coastal voyages;

(b) the port facilities serving ships referred to in clause (a):

Provided that the Central Government may, after taking decision, on the basis of port facility security assessment having carried out under this Part, extend the application of this Part to those port facilities which, although used primarily

by ships not engaged on international voyages, are occasionally required, to serve ships arriving or departing on international voyages.

(2) This Part shall not apply to war ships, naval auxiliaries, or other ships owned or operated by the Central Government and used only for non-commercial service by that Government.

344K. In this Part, unless the context otherwise requires,—

Definitions.

(a) “company” means the owner of the ship who, or any organisation which has assumed the responsibility of operation of the ship from the owner of such ship and who or which has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

(b) “declaration of security” means an agreement between ships or a ship and a port facility specifying therein the security measures to be complied with;

(c) “designated authority” means such authority as the Central Government may, by notification in the Official Gazette, specify;

(d) “International Ship and Port Facility Security Code” means the code for the security of ships and port facilities provided in the Safety Convention;

(e) “port facility” means any location or area including anchorages or waiting berths or approaches from seaward and determined by the Central Government or the designated authority, as the case may be, where interface between ships or a ship and a port takes place;

(f) “recognised security organisation” means any organisation, company, firm or body of individuals having expertise in matters relating to security and knowledge of ship, and port operations, which or who are authorised by the Central Government by notification in the Official Gazette, to carry out assessment or verification or approval or certification required by this Part or by the International Ship and Port Facility Code;

(g) “security level” means the qualification of the degree of risk associated with the threat or an unlawful act against a ship, or against a port facility or any other area connected therewith;

(h) words and expressions used in this Part but not defined in this Part shall have the respective meanings as assigned to them in the Safety Convention.

344L. (1) The Central Government or such other authority as may be designated by it shall provide every Indian ship of one hundred gross tonnage and above and every Indian cargo ship of three hundred gross tonnage and above, a ship identification number, which conforms to the relevant scheme formulated by the International Maritime Organisation.

Ship
identification
number.

(2) All the certificates issued under this Act and all certified copies thereof shall bear the ship identification number.

344M. (1) The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to all the Indian ships, as may be prescribed.

Security
measures.

(2) The Central Government or the designated authority, as the case may be, shall set security levels and provide information thereof to port facilities within India and to every ship prior to entering an Indian port or while in a port within India, as may be prescribed:

Provided that the Central Government may authorise any recognised security organisation to carry out any of the security measures under this section, on behalf of it, with such conditions as may be prescribed.

Port facility
assessment.

344N. The Central Government shall carry out port facility assessment in the manner as may be prescribed.

Obligations of
companies, etc.

344O. Every company, ship or port facility shall comply with the relevant requirements under the Safety Convention and the International Code for the Security of Ships and Port Facility.

Obligations of
port facility.

344P. Every port facility in India shall comply with the requirement of this Part or the rules made thereunder.

International
Ship Security
Certificate.

344Q. The Central Government or such other authority as may be designated by it shall issue every Indian ship to which this Part applies, an International Ship Security Certificate or an Interim International Ship Security Certificate, as the case may be, in the form and manner as may be prescribed.

Ship Security
Alert System.

344R. Every Indian ship shall be provided with such Ship Security Alert System, as may be prescribed.

Control
measures.

344S. Every ship to which this Part applies shall be subject to such control measures as may be prescribed.

Power to make
rules.

344T. (1) The Central Government may, having regard to the provisions of the Safety Convention, make rules to carry out the purposes of this Part.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide—

- (a) for alternative or equivalent security levels;
- (b) fee to be levied for any service rendered;
- (c) any other matter which by this Part is to be, or may be, prescribed.

CHAPTER III

AMENDMENT OF THE INDIAN PORTS ACT, 1908

Insertion of new
section 68D of
Act 15 of 1908.

7. After section 68C of the Indian Ports Act, 1908, the following section shall be inserted, namely:—

Maritime
security.

‘68D. A port facility in India shall comply with all the requirements contained in Chapter IXB of the Merchant Shipping Act, 1958 or the rules made thereunder so far as they are not inconsistent with the provisions of this Act. 44 of 1958.

Explanation.—For the purposes of this section, the expression “port facility” shall have the same meaning as assigned to it in Part IXB of the Merchant Shipping Act, 1958.’

STATEMENT OF OBJECTS AND REASONS

India has ratified the International Convention on Safety of Life at Sea 1974 (SOLAS 1974) on 16th June, 1976 which came into force on 25th May, 1980. This Convention in its successive forms is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The main objective of the SOLAS 1974 is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. There are 11 Codes or similar instruments that are made mandatory under SOLAS 1974. Of these, the last Code is the 'International Code for the Security of Ships and Port Facility' (ISPS Code). This Code was adopted as an amendment to SOLAS 1974 by the conference of contracting States on 12th December, 2002, by passing 11 resolutions. Resolution 6 prescribes 1st July, 2004 as the application date for the Code. The objectives of the ISPS Code are to establish an international framework involving co-operation between contracting States, Government agencies, local administrations and the shipping and port industries to detect or assess security threats and take preventive measures against security incidents affecting ships or port facilities used in international trade; to establish the respective roles and responsibilities of all concerned at the national and international level for ensuring maritime security; to ensure the early and efficient collation and exchange of security related information; to provide a methodology for security assessments so as to have in place plans and procedures to react to changing security levels and; to ensure adequate and proportionate maritime security measures. If the ISPS Code is not implemented, it will be difficult for the Indian ships to secure entry in the ports of other contracting States and also for the foreign ships to visit Indian Ports. The present text of the Merchant Shipping Act, 1958 and the Indian Ports Act, 1908 do not contain the provisions addressing the above.

2. With a view to implement the provisions of the ISPS Code, it is proposed to amend the Merchant Shipping Act, 1958 so as to incorporate therein provisions relating to security measures to be adopted by ships and port facilities, ship identification number, port facility assessment, international ship security certificate, ship security alert system, control measures and compliance. India being a major seafarer supplying nation, it is essential to ensure that our seafarers' employment prospects and movements to other countries are not hampered for want of Seafarers' identity document. Accordingly, it is proposed to incorporate necessary provisions in the Bill.

3. Since the implementation of ISPS Code also involves ports, it is proposed to consequentially amend the Indian Ports Act, 1908 so as to facilitate a port facility in complying with the requirements of the maritime security proposed to be included under the new Part IX B of the Merchant Shipping Act, 1958.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 17th December, 2004

T. R. BAALU.

FINANCIAL MEMORANDUM

Clause 6 of the Bill proposes to insert a new Part IX B which makes provision for Ship Identification Number setting security measures, port facility assessment, issuance of International Ship Security Certificate, Ship Security Alert System, Control and compliance measures. In order to implement the above, an expenditure of rupees ten lakhs to two crores are required to be spent in respect of major ports and maritime boards and private ports in India.

Additional infrastructure is also required in terms of manpower, communication facilities, etc. Accordingly, an additional staff of five officers and three support staff are required for Central Government and other hardware and software facilities are also required for data keeping, monitoring etc. The cost of manpower works out to an annual recurring expenditure of rupees twenty-two lakhs twenty thousand and for hardware and software facilities, a non-recurring expenditure of forty lakhs and running cost of approximate rupees twenty-four lakhs per annum, which is a recurring expenditure, are required against the proposed provisions in the Bill.

Besides an expenditure on infrastructure of which rupees four crores as non-recurring expenditure for implementation of the proposals over two to three years is required. The expenditure on infrastructure, manpower and office expenses for the three shipping offices will be around rupees fifty-eight lakhs forty-five thousands per annum which is a recurring expenditure.

The Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 5 and 6 of the Bill propose to confer power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made relate, *inter alia*, to the provision for the issuance of a seafarers' identity document and levying of fees thereof for the purposes of sub-section (1) of the proposed section 99A and to carry out the purposes of the new Part IX B such as, to the extension of application of the said Part to a ship engaged exclusively on coastal voyage; to identify and notify 'designated authority', 'port facility', 'recognised security organisation'; the terms, conditions and duties of 'recognised security organisation'; to set appropriate security levels and to provide information on security levels to Indian ships and port facilities in India and to every ship entering a port in India; to carry out port facility assessments; to the form and manner of issuance of International Ship Security Certificate; to provide Ship Security Alert System; to the control measures for the requisition of information from ships before entering an Indian Port and detention, expulsion thereof for non-compliance; to the provision for alternative or equivalent security levels; and to the fees to be charged for any service rendered.

2. The rules to be made by the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

3. The matters in respect of which rules may be made are general matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

G.C. MALHOTRA,
Secretary-General.