

**RTI Rules being drafted in secrecy in India- DoPT must copy with CIC decisions on public consultation on draft laws, policies and rules**  
**November 23, 2010**

Dear all,

I am writing to alert you about Government of India's attempts to draft a new set of Rules under the *Right to Information Act, 2005*. Some of you may already be aware of this exercise. I am only adding to this debate a very important element, namely, **the current absence of and urgent need for public consultation**.

The minutes of the meeting held at the Central Information Commission (CIC) on 16th November 2010 indicate that it has been asked to comment on a set of draft RTI Rules prepared by the Government of India. The relevant extract from the minutes is given below:

*"Agenda 1: Draft RTI rules- for discussions*

*Commission discussed the draft rules and suggested some modifications. The changes as suggested by the Commission shall be incorporated and sent to the Government at the earliest. (Action: Secretary/JS (law)) "*

The complete text of the minutes of this meeting is attached and may also be accessed on the CIC website at: <http://cic.gov.in/CIC-Minutes/Minutes16112010.pdf>

In 21st century where the RTI Act seeks to establish a regime of transparency, rules governing the processes of seeking and obtaining information are being discussed by only a handful of people behind closed doors. There is no official word on what the draft RTI Rules contain. Till date neither the Department of Personnel and Training (DoPT) the administrative department for the RTI Act, nor the CIC, has taken any step to consult with the people of India on these draft Rules. The people of India- the world's largest democracy are its the primary stakeholders and have a deeply vested interest in ensuring that there is transparency in the administration, especially in policy making and implementation. **The secrecy surrounding the draft RTI Rules is in clear violation of two decisions of the CIC emphasising the duty of public consultation while drafting laws and policies. Whether the CIC has reminded the DoPT about the imperative of public consultation on these Draft RTI Rules is not publicly known.**

**Public Consultation is necessary while drafting legislation or policy: CIC directs the Delhi Government in July 2010**

In July 2010 a single member bench of the CIC directed the Government of the National Capital Territory of Delhi (GNCTD) to fully comply with Section 4 of the RTI Act while formulating draft laws and policies. In this decision the CIC observed as follows:

*" A plain reading of Section 4(1) (c) of the RTI Act suggests that every public authority is required to publish or disclose all facts and circumstances which are relevant and taken into account while formulating policies and taking decisions that would affect the public. Section 4(1)(c) of the RTI Act requires proactive disclosure of proposed laws/ policies and amendments thereto or to existing laws/ policies to enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing such laws/ policies. Given that the DP Bill" (Delhi Police Amendment Bill) "is a significant legislative change, the relevant public authorities involved in drafting of the said bill had a duty to proactively disclose its contents under Section 4(1)(c) of the RTI Act... The public authority should have disclosed the contents of the DP Bill suo motu and by omitting to do so, the very purpose of Section 4(1) of the RTI Act stands defeated. The Commission has further observed that at present, the GNCTD is not fully complying with Section 4 of the RTI Act and therefore, is of the view that citizens must be provided with means to debate legislative and policy changes which are likely to affect public lives as contemplated by the GNCTD. The citizens individually are the sovereigns of the democracy and they delegate their powers in the legislature. The RTI Act has recognized this and Section 4(1) (c) is meant to ensure that the citizens would be kept informed about proposals for significant legislative and policy changes...*

*In view of the aforesaid, the Commission, under the powers vested in it vide Sections 25(3) (g) and 25(5) of the RTI Act hereby directs the Chief Secretary, GNCTD to develop a credible mechanism in*

*all departments for proactive and timely disclosure of draft legislations/ policies and amendments thereto or to existing laws/ policies in the public domain, as required under Section 4(1)(c) of the RTI Act, during the process of their formulation and before finalization."*

The complete text of this decision is attached. It is also accessible at: [http://rti.india.gov.in/cic\\_decisions/CIC\\_SG\\_C\\_2010\\_000345\\_8440\\_M\\_37452.pdf](http://rti.india.gov.in/cic_decisions/CIC_SG_C_2010_000345_8440_M_37452.pdf)

### **Public Consultation is necessary while drafting legislation or policy: CIC full bench directs the Central Government in September 2010**

In September 2010 a full bench of the CIC reiterated this stand and directed the Cabinet Secretariat under the Government of India and the DoPT to take steps to create a mechanism for public consultation on draft laws before they are tabled in Parliament. In this decision the CIC observed as follows:

*"The Commission further recommends u/s 25 (5) that Cabinet Secretariat considers amending Part V of Circular No. 1/16/1/2000-Cab of 15.4.2002 to allow for public consultation in appropriate form."*

The complete text of this decision is attached. It is also accessible at: [http://rti.india.gov.in/cic\\_decisions/CIC\\_WB\\_C\\_2010\\_000120\\_T\\_41373.pdf](http://rti.india.gov.in/cic_decisions/CIC_WB_C_2010_000120_T_41373.pdf)

### **What does Part V of Circular No. 1/16/1/2000-Cab of 15.4.2002 contain?**

The Cabinet Secretariat issued a circular in April 2002 instructing all departments and ministries under the Government of India on the methodology of preparation of Cabinet notes. Drafts of proposed laws or amendments to existing laws are attached to draft Cabinet notes and circulated to the relevant ministries and departments for consultation. Part V refers to the procedure for conducting such inter-ministerial consultations. During such consultations with various ministries the draft Cabinet note is circulated with the classificatory label- "**TOP SECRET**" So save a handful of senior officers, all other citizens of India are excluded from this consultation process. The full bench of the CIC directed the Cabinet Secretariat to amend this portion of the circular and create appropriate spaces for public consultation.

The complete text of this circular is attached. It is also accessible at: [http://cabsec.nic.in/showpdf.php?type=circulars\\_april\\_2002&special](http://cabsec.nic.in/showpdf.php?type=circulars_april_2002&special)

**Despite the principle of mandatory public consultation having been laid down by the CIC, the DoPT has not yet begun consultation with the people of India on the draft RTI Rules. If the draft is ready for consultation with the CIC which is a body outside of Government, surely it can be opened up for a more widespread consultation with the people of India who are using this law every day. Surely no harm would be done if people's views are elicited on so important a subject. The Rules lay down the detailing of the framework for accessing information under the RTI Act. The people of India have a right to be consulted on the draft Rules as they are the primary users of the RTI Act. THE PEOPLE OF INDIA HAVE THE RIGHT TO BE CONSULTED NOW.**

### **The principle of public consultation on draft Rules is more than a century old in India**

The principle of consulting people on draft Rules under any law made by Parliament or a State legislature is not a recent one. It is mentioned in the *General Clauses Act*, enacted under the British Raj in 1897. The complete text of this Act is available at: <http://trivandrum.gov.in/trivandrum/images/pdfs/generalclausesact.pdf> This law explains how common terms and phrases used in all laws enacted before and after independence must be interpreted or understood. It is the basic law for interpreting the meaning of terms used in the Constitution as well (see Article 367, Constitution of India- accessible at: <http://indiacode.nic.in/coiweb/welcome.html>). According to Section 23 of the *General Clauses Act*:

***"Provisions applicable to making of rules or bye-laws after previous publication.- Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:- The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of person likely to be affected thereby.***

*The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the (Government concerned) prescribed.*

*There shall be published with the draft a notice specifying a date on after which the draft will be taken into consideration.*

*The authority having power to make the rules or bye-laws, and where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified.*

*The publication in the (Official Gazette) of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or byelaw has been duly made."*

In simple terms Section 23 explains that an administrative department may make draft Rules public knowledge through a gazette notification, give people the time to file suggestions and objections on the draft Rules and take such comments into consideration before finally notifying the Rules. The administrative department is free to fix a time limit for this consultation.

#### **Why is this principle not observed in practice?**

The principle of public consultation on draft Rules is sidestepped by almost all governments by using a simple device. They simply fail to mention the phrase - "subject to previous publication" in the rule-making provision of a statute. When this phrase or its equivalent is not mentioned, the Government is not duty bound to consult with people on draft Rules. Section 23 of the *General Clauses Act* becomes ineffective. It has remained a dead letter for a long time except in some instances in States like Karnataka. So the noble principle of public consultation developed under foreign rule, 100 years ago, is mostly ignored by democratically elected governments in independent India. This is one of the ironies of governance in India today. More often than not undue secrecy governs the exercise of drafting laws, rules and regulations.

#### **What can you do to make the discussion on the draft RTI Rules more transparent and participatory than it is today?**

You may send an email or a post card or a letter to the Minister and the Secretary in charge of DoPT urging them to publicise the draft RTI Rules and allow people adequate time to offer their comments and suggestions. The DoPT is under the charge of a new Minister of State: Shri V. Narayanasamy and a new Secretary Ms. Alka Sirohi.

You may use the following sample message or adapt it as you think fit:

***"Dear sir, (if addressing the Minister) or Dear Madam, (if addressing the Secretary)***

***I/We have learnt that your Ministry has drafted a new set of Rules under the Right to Information Act, 2005 (RTI Act) and sought comments from the Central Information Commission. These draft Rules have not been placed in the public domain.***

***The RTI Act was drafted after widespread consultations with the people. Civil society organisations actively participated in these consultations. These consultations have helped in crafting a robust law that has become a model for many countries.***

***There is no justification for drafting the Rules under the RTI Act in secrecy. In September 2010 the Central Commission directed the Government to India to open up draft laws and policies for public consultation before they are finalised for introduction in Parliament. Your Ministry has not yet honoured this directive in relation to the draft RTI Rules.***

***I/We urge you to direct your Ministry to immediately place the draft Rules in the public domain and give us a month's time to send comments and recommendations. The existing RTI Rules must not be changed without undertaking public consultation in a credible manner.***

***Thanking you,***

***Yours sincerely,***

***(Name/postal address/signature of the sender)"***

**Please send your email/postcard/letters to:**

**Shri V. Narayanasamy**

**Minister of State for Personnel, Public Grievances and Pensions**

**Government of India**

**North Block**

**New Delhi- 110 001**

**Email:** [mos-pp@nic.in](mailto:mos-pp@nic.in), [samyselvi@sansad.nic.in](mailto:samyselvi@sansad.nic.in)

and to

**Ms. Alka Sirohi, IAS**

**Secretary to the Government of India**

**Department of Personnel,**

**Ministry of Personnel, Public Grievances and Pensions**

**North Block**

**New Delhi- 110 001**

**Email:** [secy\\_mop@nic.in](mailto:secy_mop@nic.in)

**In order to access the our previous email alerts on RTI and related issues please click on:**

[http://www.humanrightsinitiative.org/index.php?option=com\\_content&view=article&id=65&Itemid=84](http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84)

**You will find the links at the top of this web page. If you do not wish to receive these email alerts please send an email to this address indicating your refusal.**

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