DRAFT RIGHT TO INFORMATION RULES, 2010

related to

THE RIGHT TO INFORMATION ACT, 2005

Preliminary Comments

and

Recommendations for Improvement

Submitted by

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INTRODUCTION

The Department of Personnel and Training (the DoPT) under the Government of India has publicised an Office Memorandum (the OM) along with a set of draft Rules to be prescribed under the *Right to Information Act, 2005* (the RTI Act or the principal Act). These draft Rules are intended to supersede the *Right to Information (Regulation of Fee and Cost) Rules, 2005* (Fee and Cost Rules) and the *Central Information Commission (Appeal Procedure) Rules, 2005* (CIC Appeal Rules) which have regulated the process of seeking and obtaining of information under the RTI Act for more than five years. The OM as displayed on the website of the DoPT invites comments on the contents of the draft RTI Rules by 27th December, 2010. The OM does not indicate as to who it is addressed to nor does it specifically indicate that members of the citizenry are expected to respond to the OM. However the fact of publication of the draft Rules through a publicly accessible website is indicative of the desire of the DoPT to invite comments from the people in addition to members of the bureaucracy. CHRI commends the decision of the DoPT to engage in public consultation prior to the notification of the new set of Rules.

CHRI submits this preliminary analysis of the contents of the *Right to Information Rules, 2010* (the draft Rules) to the DoPT for consideration and incorporation in the draft Rules before their notification in the Gazette. General comments on the process of consultation have been offered below followed by a more specific analysis of the draft Rules along with recommendations for change. Each Rule requiring amendment is discussed first followed by recommendations for change.

CHRI reserves its right to submit, at a later date, a broader proposal for subordinate legislation on areas not covered by the current draft but which needs to be instituted in order to give effect to various provisions of the RTI Act.

GENERAL COMMENTS

a) Absence of proper procedure for public consultation: Although the draft Rules have been made public prior to their notification in the Gazette, it is not clear whether the DoPT had intended to follow the procedure specified for prior consultation in the *General Clauses Act, 1897* (GC Act). According to Section 23 of the GC Act, the Government is required to formulate a policy for public consultation on draft subordinate legislation.[1]

[1] ***"23. 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.*

Unfortunately despite this provision being on the statute book for more than two centuries, the Government of India has not developed a policy for public consultation prior to instituting subordinate legislation under any statute. For example there is no requirement in the RTI Act for notifying Rules after previous publication. However the *National Rural Employment Guarantee Act* (since rechristened as *Mahatma Gandhi National Rural Employment Guarantee Act*) passed in the same year requires every rule to be made after previous publication. Few other laws passed in 2005 and later years contain such a mandatory requirement.

b) Directives of the Central Information Commission on pre-legislative consultation process: In a democracy it is important for statutes and subordinate legislation to be made after due consultation with people who are affected by their operation. The common argument that such consultations will delay the legislative process must be consigned to the dustbin of history because in a democracy nothing can be more important and urgent than the people themselves and the public interest which the governments are sworn to protect. A full bench of the Central Information Commission (the Commission) has directed the Cabinet Secretariat to amend its procedural guidelines to enable public consultation on draft legislation.[2] In another case a single member bench of the Commission directed the Government of the National Capital Territory of Delhi to develop a mechanism to enable public consultation on draft legislation and draft rules and regulations as a matter of permanent policy.[3] These directives have not been implemented in all seriousness by the respective governments even though they are aimed at restoring the true meaning of a democracy, namely, participatory government. Given this lack of adequate response to the directives for instituting public consultation, the limited initiative taken by the DoPT to consult on the draft Rules is laudable.

c) Need for wider dissemination of awareness about the draft RTI Rules: However the manner in which the public consultation has been initiated leaves much to be desired. The draft Rules have not been publicised in the manner prescribed in the GC Act. The

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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 me 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 bye-law has been duly made."

See: http://trivandrum.gov.in/trivandrum/images/pdfs/generalclausesact.pdf accessed on 26 December 2010.

[2] *Venkatesh Nayak v Department of Personnel and Training*, (Complaint No. CIC/WB/C/2010/000120, decision dated 30.8.2010).

[3] *Venkatesh Nayak v Chief Secretary, Government of the National Capital Territory of Delhi* (No. CIC/SG/C/2010 /000345+000400/8440, decision dated 07 July, 2010)

draft Rules ought to have been publicised much more widely. Neither the Gazette nor the DoPT's Internet website is accessible to more than 90% of the people in India. The official website of the Gazette is a pay and use service, of which even many Internet-literate citizens are unaware. Several lakhs of citizens have already used the RTI Act since its inception. No other law including the Constitution of India has drawn as much attention to itself as the RTI Act throughout the country's history. Even as this analysis is being written and read, several RTI applications may be in the process of being drafted by citizens in different parts of the country. Recognising the multi-faceted ownership of the RTI Act, demonstrated by the very public campaign that was launched to place it on the statute book and acknowledging its popularity, demonstrated through its widespread usage over the last five years, the Government of India could have adopted a more effective means of public outreach during this consultative process. The text of the draft Rules ought to have been published in major regional language dailies to enable access to citizens who do not use English as a means of communication but have used the RTI Act much more than the English-speaking segments of the citizenry. The Government could have also used the All India Radio and DoorDarshan channels to publicise the consultation process as both networks are under its control. The Government could have given a month long notice for receiving comments from the larger citizenry rather than hurry through the process by publication through the Internet. Effective consultation with a broader section of society (rather than merely civil society and the bureaucracy) is necessary as the draft Rules intend to effect major changes in the rights of access to information for all citizens.

d) Duty to publicise reasons for rejecting people's comments: The DoPT must also assure the people of India that it will publicise the number and types of objections it has received in relation to every draft Rule/sub-Rule and the reasons for rejecting any at the time of notifying the final version of the Rules. This is an obligation under Section 4(1)(d) of the RTI Act. As changes in the Rules regime will affect every citizen of India who has used or is a potential user of the RTI Act, the DoPT as a public authority has a statutory duty to publicise cogent arguments and reasons for retaining Rules that have been objected to by citizens during the consultation process.

e) Need for Rules to regulate complaint procedure under Section 18: Last, the draft Rules are silent about complaint procedure which is an effective remedy available to an applicant when his or her rights under the RTI Act are infringed. The procedure for second appeals provided in the draft Rules can be applied to the complaints procedure under Section 18 of the RTI Act as recommended at paras #VII-XVI below.

Recommendations:

Consideration may be given to:

1) **immediately extending the timeline for public consultation on the draft Rules by at least one more month to enable effective participation of citizens who are not Internet-literate;**
2) **publicising the text of the draft Rules in popular English and regional language dailies along with an explanation as to why changes are being made in the existing set of RTI Rules;**

3) publicising the consultation exercise through radio and TV channels to reach out to a wider cross-section of the citizenry;

4) issuing an assurance publicly that the number and types of objections received in relation to every draft Rule/sub-Rule and cogent reasons for rejecting any of them will be published along with the notification of the final version of the Rules;

5) acting upon the said assurance with due diligence at the time of notifying the final version of the draft Rules; and

6) the draft Rules applicable for the second appeal process may be made applicable to complaints as well.

SPECIFIC COMMENTS

I Comments on Draft Rule 3 and staffing autonomy of the Commission

Draft Rule 3 undermines the autonomy of the Commission guaranteed by the principal Act. Section 12(4) of the Act requires the Commission to function independently without being subjected to the directions of any authority. This autonomy extends to operational matters of the Commission also. The Commission's freedom to decide who its Secretary, Registrars and other officers shall be, must be respected. The Secretary is proposed to be made the Chief Executive Officer (CEO) of the Commission. According to Section 12(4) the powers of general superintendence and management of the Commission's affairs are vested in the Chief Information Commissioner. In essence the Chief Information Commissioner is the CEO of the Commission. This position granted in the principal Act cannot be diluted through subordinate legislation. There is no need to designate anybody as the CEO when the principal Act has already filled up this position.

Further, the Commission's dependence upon the Government for its staff has considerably affected the volume of work disposed as well as its quality. The Rules may be re-drafted to enable the Commission to hire qualified personnel from the non-government sector in addition to securing the deputation of officers from the government pool. Terms such as "Registrar General" unnecessarily complicate the hierarchy in the Commission and turn it into an institution similar to courts. This is unnecessary as the RTI Act envisages the establishment of simple procedures that are with easy reach of citizens.

Recommendations:

1. Consideration may be given to amending draft Rule 3 as follows:

"3. Staff of the Commission: (1) The Commission may appoint such staff and engage consultants, advisors and other persons as may be required for the efficient discharge of its functions under the Act, from the government sector or the non-government sector or both, on such allowances or remuneration and terms and conditions as may be determined by it in consultation with the Government.

(2) There shall be a Secretary to the Commission.

(3) Where an officer is chosen from the government sector for appointment as the Secretary

to the Commission, he or she may not be below the rank of Additional Secretary to the Government of India.

(4) The Secretary shall be the Registrar of the Commission and be responsible for the functioning of the Registry under the directions of the Chief Information Commissioner."

2. Consequent to effecting the above changes all references to the term "*Registrar General"* **may be deleted in the draft Rules.**

II Comments on Draft Rule 4 – simplifying the application process

a) Doing away with application fees and issuing acknowledgement: The draft Rules do not recognise the popular demand of doing away with application fee for seeking information. The DoPT representatives had attended a public meeting New Delhi in 2008 where the then Chairperson of the parliamentary Standing Committee on Personnel, Law and Justice Dr. E M S Natchiappan had agreed with the popular view that application fees have become an impediment in the process of submission of a request for information. Harassment of citizens in terms of modes of fee payment by public authorities is not uncommon. The demand for abolition of application fee has not been taken into account in the draft Rules. There is no compulsion on the Government to collect application fee within the meaning and construction of Section 6(1) of the principal Act. Further the draft Rules do not make it mandatory for a public authority to issue an acknowledgement for receiving a request under Section 6(1) of the principal Act.

b) Recognising Post Offices as CAPIOs: A convenient system has been created by the Department of Posts for receiving RTI applications from citizens and transmitting them to public authorities under the Government of India. Officers of this department have been designated as Central Assistant Public Information Officers (CAPIOs). This system must be officially recognised in the draft Rules as an accepted mode of submission of RTI applications.

c) Unlawful restrictions on RTI applications: The proviso to Draft Rule 4 imposes subject matter restriction and a word limit on RTI applications. These restrictions are unjustified. The RTI Act was enacted to give effect to a deemed fundamental right. Drafting an RTI application is an act of expression the freedom of which is guaranteed by the Constitution of India under Article 19(1)(a). The fundamental right to speech and expression may not be interfered with except under the conditions specified in Article 19(2) of the Constitution. There is no mention of word limit in Article 19(2) of the Constitution.

Further, drafting of an RTI application is essentially a private act. The RTI Act's procedures get activated only upon submission of the application to the public authority. The State does not have the power to interfere in private acts unless there is sufficient ground to show that it is necessary in the public interest to do so. The RTI Act does not empower the Government or any public authority as the agency of the State to interfere with the affairs of citizens in any manner prior to the initiation of procedures under that statute. Word limits and subject matter restrictions are open to misuse in

order to frustrate genuine information seekers.

If these restrictions are notified the central public information officers (CPIOs) and CAPIOs will use them as grounds for refusing to receive RTI applications. This in itself will be a violation of the RTI Act. According to Section 7(1) a PIO may reject an information request only on grounds specified under Sections 8 and 9 of the principal Act. Under Section 20(1) of the principal Act the PIO is liable for penalty for refusing to accept an information request without reasonable cause. The draft Rules create additional grounds for rejecting a request which are *ultra vires* of the RTI Act. The rule-making power under Section 27 is given to the Government to enable it to carry out the provisions of the RTI Act. This power may not be used to frustrate the exercise of the rights recognised in the principal Act or nullify the original intention and spirit of its provisions.

Nevertheless it is necessary to provide guidance to PIOs who occasionally receive lengthy applications. Such cases may be handled by crafting Rules that require the PIO to provide reasonable assistance to the applicant in accordance with Section 5(3) of the RTI Act. No Rule has been drafted to unpackage this provision. The draft Rules may be amended to require the APIO or the PIO to advise the applicant to prioritise the points on which information is required.

Recommendations:

1. Consideration may be given to amending draft Rule 4 as follows:

"4. Request for Information: (1) A person who desires to obtain any information from a public authority may submit an application to the Central Public Information Officer in accordance with Section 6 of the Act.

(2) A person may submit an application for information at any of the designated post offices through the Central Assistant Public Information Officer designated for this purpose at such post offices.

3) Every Central Public Information Officer shall in writing duly acknowledge the receipt of a request for information made under this Act and despatch such acknowledgement to the person making the request along with the communication of the decision made in accordance with sub-section 1 of Section 7 of the Act.

4) A Central Assistant Public Information Officer who receives a request for information under Section 6 of the Act shall despatch an acknowledgement to the person making the request within the time limit specified in sub-section 2 of Section 5 of the Act.

(5) Where a request for information received from a person attracts the conditions specified under sub-section 9 of Section 7 of the Act, the Central Public Information Officer shall provide reasonable assistance to such person, to identify the information that may reasonably be provided on a priority basis within the time-limit stipulated under sub-section 1 of Section 7 of the Act, or to alter the form of access requested."

III Comments on Draft Rule 5 – rationalising the fee structure

a) Guidance on cost for providing samples needed: The current Fee and Cost Rules do not provide any guidance to the CPIO for determining actual cost of providing samples. As a result public authorities have demanded exorbitant amounts of fee for providing samples of materials used by them. The draft Rules also do not contain any guidance for the CPIO for charging fees for providing samples. The draft Rules may be amended to include appropriate guidance for the CPIO for charging costs for providing samples of materials.

b) Fee for machine reproduced information liable for misuse: Draft sub-Rule 5(g) permits wide discretionary powers to the CPIO for charging fees for machine reproduced information. This may be abused by CPIOs in a bid to frustrate an information-seeker. It is common for machine reproduction services to be provided by private players in the open market. There is no need to hire expensive machines for the purpose of the RTI Act. Draft sub-Rules 5(b) and (c) are adequate for the purpose of covering such costs. Draft sub-Rule 5(g) may be deleted as it opens up avenues for abuse of the fee-related provisions.

c) Do not pass on the burden of postal charges to the applicant: In Draft sub-Rule 5(h) the Government has changed its policy of not passing on the burden of postal charges to an applicant. Without giving any statistics about the cost to the exchequer on account of bearing postal expenses under the RTI Act. This is in violation of Section 4(1)(c) of the RTI Act which requires every public authority to mention facts and figures while announcing important policies. This mandatory requirement applies to situations where existing policies are changed by the Government. In any case the postal charges are defrayed from the tax payer's contributions to government. So there is no need to pass on the burden to citizen tax-payers a second time. Draft Rule 5(h) may be deleted.

d) Providing proof of delivery of the information: A common complaint of applicants is that information despatched by public authorities are not delivered even though their representatives display proof of despatch during appeals and complaints proceedings. In several cases an applicant may receive the information well after the passage of the deadline stipulated in the RTI Act. In such situations the applicant is rightfully entitled to a refund of any fee paid by taking recourse to an appeal or complaint proceeding. Therefore it is important that public authorities also maintain proof of delivery for use during appeals or complaint proceedings. This does not cost more than INR 1 per packet if sent by registered post or speed post. Draft Rule 5 may be amended to require the public authority to obtain proof of delivery from the applicant.

e) Reiterate supply of information free of cost if deadline is crossed: Section 7(6) of the principal Act entitles an applicant to receive information free of charge if it is not supplied within the timelines stipulated under Section 7(1). As Draft Rule 5 mentions the fee waiver for applicants below the poverty line, a second proviso may be inserted after Draft sub-Rule 5(h) as follows to reiterate the applicant's entitlement to receive the information free of cost past the time limit stipulated under Section 7(1) of the RTI Act.

Recommendations:

1. Consideration may be given to amending sub-Rule 5(c) as follows:

"*c) for samples and models:*

(i) for samples of a material or substance held in multiple units, the unit purchase price calculated on a pro rata *basis or the prevalent market price, whichever is lesser;*

(ii) for samples constituting portions of a material or a substance that may reasonably be extracted from the whole, without causing irreparable damage to the material or structure as a whole, or without causing an unreasonable depletion of the substance, the unit purchase price calculated on a pro rata *basis or the prevalent market price, whichever is lesser;*

(iii) for samples that require to be extracted from a structure using equipment available with the public authority, the actual cost of using such equipment:

Provided that where a public authority is required to hire special equipment for extraction of the sample, the actual cost of hiring such equipment may be charged;

(iii) actual cost for models;"

2. Draft Rule 5(g) may be deleted.

3. Draft Rule 5(h) may be deleted.

4.Consideration may be given to inserting a second proviso after the existing proviso to Draft Rule 5 as follows:

"Provided further that the information shall be provided free of charge where the public authority fails to comply with the time limits specified in Section 7(1) of the Act."

5. A new Rule 5A may be inserted after Draft Rule 5 as follows:

*"**5A. Maintaining proof of delivery of information:** Where a decision is taken to provide information in accordance with Section 7 of the Act, the Central Public Information officer shall despatch the information and maintain on file, the proof of delivery of the information to the requester for future use, if any."*

IV Comments on Draft Rule 6 – further simplifying fee payment

a) Increasing convenience of fee payment: The draft Rules do not improve the convenience levels of making fee payments for applicants. Several citizens and civil society organisations have recommended the inclusion of postage stamps as a mode of fee payment under the RTI Act. This will require amendment of the *Indian Post Office Act, 1898*. The Department of Posts is currently engaged in an exercise to overhaul this statute which is a remnant from the colonial Raj. The DoPT may advise the Department of Posts to amend the law to permit payment of fees to public authorities under the RTI Act through postage stamps.

b) No discretion for public authorities to notify exclusive mode of fee payment: The proviso below draft sub-Rule 6(c) allows public authorities to collect fees through modes of payment other than those specified in the main Rule. The current formulation of the

sub-Rule may be interpreted to imply that public authorities may specify special modes of payment to the exclusion of others specified in the Rules. This draft sub-Rule may be amended to rectify this error.

c) Mode of fee payment for Indian diaspora must be prescribed: A large number of Indian citizens live abroad for a variety of reasons. They are also entitled to use the RTI Act to obtain information from public authorities. However payment of fee becomes a problem as they cannot avail themselves of the instruments available to citizens residing within India. The DoPT must work with the Ministry of External Affairs to develop a method for collecting fee at Indian embassies and High Commissions stationed abroad.

Recommendations:

1) Consideration may be given to amending the *Indian Post Offices Act, 1898* to enable payment of fees under the RTI Act through postage stamps.

2) Consideration may be given to amending the proviso to draft sub-Rule 6(c) as follows:

"*Provided that a public authority may accept fee by any other mode of payment in addition to the aforementioned modes of payment."*

3) Consideration may be given to developing a mode of fee payment for non-resident Indian citizens at the Indian embassies and High Commissions abroad in consultation with the Ministry of External Affairs.

V Comments on Draft Rule 7 –fleshing out the first appeal process

***a) Preventing the complication of the first appeal process*:** It is commendable that the DoPT has sought to make Rules to regulate the first appeal process. There are no such rules currently. However Draft Rule 7 creates an impression that use of the format given in the Appendix is indispensable for filing an appeal with the first appellate authority. The appellant is also expected to prepare an index of documents as is required in formal court procedures. This amounts to turning the appeals procedure into a complicated exercise requiring the assistance of legal practitioners. This is not in tune with the letter and spirit of the Act. The Rules must clearly state that no appeal letter will be rejected solely on the ground that it is not in the prescribed format. The appellant must not be compelled to prepare an index of documents. The only documents relevant to a first appeal are the original information request, the rejection order issued by the CPIO or the fee intimation letter and the information actually received by the applicant. If copies of these documents are submitted along with the appeal letter the appeal may be treated as being complete and it may be taken up for consideration.

b) Specifying a procedure for disposing first appeals: Draft Rule 7 fights shy of detailing the procedure to be followed in deciding the first appeal. Section 27 empowers the Government of India to prescribe rules for regulating the first appeal process in its entirety. A major reason for the increase in the number of second appeals before the Commission is the sub-optimal functioning of the first appeal process. The Rules must provide guidance to the first appellate authority about the manner in which first appeals must be decided. The Rules must require the first appellate authority to dispose every appeal by applying the principles of natural justice and the principles themselves must

be enumerated in brief. In an Office Memorandum issued in July 2007, the DoPT provided detailed instructions for the disposal of the first appeal.[4] These instructions may be incorporated in the Draft RTI Rules to make them mandatory.

Recommendations:

1. Consideration may be given to amending Draft Rule 7 as follows:

"7. Appeal to the First Appellate Authority: *A person aggrieved by any order passed by the Central Public Information Officer or non-disposal of his or her application by the Central Public Information Officer within the time limit specified in Section 7 of the Act, may file an appeal to the first appellate authority, providing the information listed in the Appendix, as may be applicable to his or her case:*

"Provided that the first appellate authority shall not refuse to consider an appeal made on plain paper solely on the ground that it is not drafted in the same order of items as given in the Appendix."

2. Consideration may be given to inserting a new Draft Rule 8A after Draft Rule 8 as follows:

"8A. Disposal of first appeal: *(1) The first appellate authority shall dispose of every appeal within the time limit specified in Section 19 of the Act, by applying the principles of natural justice, in the following manner:*

(i) if the appellant has specifically requested a hearing, by giving an opportunity to the appellant to present his or her case in person or through an authorised representative, who may not be a legal practitioner; and

(ii) by recording his or decision on the appeal in writing as a speaking order and including reasons for delay, if the decision has not been made within thirty days of receipt of the appeal; and

(iii) by ensuring the delivery of a signed copy of the order to the appellant within the time limit specified in Section 19 of the Act; or

(iv) by recusing himself or herself from considering the appeal, within five days of the receipt of an appeal by the public authority, if he or she had any role in making a decision on the information request that is the subject of the appeal and informing the public authority and the appellant of such decision in writing;

(2) Where a designated first appellate authority has recused himself or herself from an appeal proceeding under clause (i), the public authority shall as expeditiously as possible and in any case within five days of such recusal, designate another officer, senior in rank to the Central Public Information Officer, to dispose of the appeal.

(3) Where the first appellate authority, in any appeal case, decides in favour of complete or partial disclosure of the information requested, he or she may himself or herself supply the information to the appellant or pass an order directing the Central Public Information Officer to supply the information to the appellant expeditiously."

3. Consideration may be given to amending the Appendix as explained under para #XVI.

[4] OM of No. 10/23/2007-IR dated 9th July 2007 issued under the signature of Shri K G Verma, Director, DoPT.

VI Comments on Draft Rule 8 – simplifying the first appeal process

Draft Rule 8 requires the appellant to submit copies of documents duly authenticated and verified. This is an unnecessarily cumbersome process requiring the appellant to hire the services of a legal practitioner or wait on a gazetted officer to authenticate documents. The existing CIC Appeal Rules merely require the appellant/complainant to submit self-attested copies of the documents related to the appeal/complaint. This is a simple procedure that works to the convenience of the appellant/complainant. A similar procedure may be adopted for the first appeal process also.

Recommendation:

Consideration may be given to amending the opening sentence of Draft Rule 8 as follows:

"*8. Documents to Accompany First Appeal to the First Appellate Authority:* *Every appeal made to the first appellate authority shall be accompanied by the following documents duly attested by the appellant himself or herself:"*

VII Comments on Draft Rule 9 – need to include complaint procedure

a) Making the Appeal Rules applicable to complaint procedures: Except for a stray reference in Draft Rule 16, the draft Rules completely ignore the remedy available to an aggrieved requestor under Section 18 of the principal Act in the form of a direct complaint to the Commission. This is unacceptable because the complaint procedure is a valuable remedy for dealing with all kinds of contraventions of the RTI Act. Rules must be made for regulating the complaint procedure as well. As it is possible to file a complaint with the Commission for all reasons that form grounds for submitting a second appeal, the draft Rules dealing with second appeal procedure can be made applicable to complaint procedure also.

b) Preventing the complication of second appeal and complaint procedures: Draft Rule 9 requires the appellant to submit the second appeal in a specified format. The appellant is also expected to prepare an index of documents as is required in formal court procedures. This amounts to turning the appeals procedure into a complicated exercise requiring the assistance of legal practitioners. This is not in tune with the letter and spirit of the Act. The Rules must clearly state that no second appeal or complaint will be rejected solely on the ground that it is not in the prescribed format. The appellant/complainant must not be compelled to prepare an index of documents for reasons explained at para #V(a) above.

Recommendation:

Consideration may be given to amending Draft Rule 9 as follows:

"*Appeal and Complaint to the Commission:* *(1) A person aggrieved by any order passed by the first appellate authority or non-disposal of his or her appeal by the first appellate authority within the time limit specified in Section 19 of the Act, may file a second appeal to the Commission, providing the information listed in the Appendix, as may be applicable to his or her case.*

(2) A person may file a complaint with the Commission for any of the grounds specified in Section 18 of the Act:

"Provided that the Commission shall not refuse to consider an appeal or complaint made on plain paper solely on the ground that it is not drafted in the same order of items as given in the Appendix."

VIII Comments on Draft Rule 10 – simplifying the second appeal and complaint procedure

a) Draft Rule 10 requires an appellant to submit documents relating to the second appeal case duly authenticated and verified. This is cumbersome and creates more inconvenience to the appellant for reasons explained at para #VI above in the context of the first appeal process. Draft Rule 10 may be amended to indicate that the appellant need only submit self-attested copies of documents pertaining to his or her case. Additionally the provisions of Draft Rule 10 may be made applicable to the complaint procedure also.

b) Draft sub-Rule 10() requires the appellant to submit an index of the documents attached to the second appeal. This is cumbersome for the appellant/complainant for reasons already explained at para #V(a) above. Draft sub-Rule 10() may be deleted.

Recommendations:

1. Consideration may be given to inserting the words: *"or Complaint"* **after the words:** *"Documents to accompany Appeal"* **in the title of Draft Rule 10.**

2. Consideration may be given to amending the opening sentence of Draft Rule 10 as follows:

"Every appeal or complaint made to the Commission shall be accompanied by the following documents duly attested by the appellant or the complainant as the case may be:"

3. Consideration may be given to amending Draft sub-Rule 10(v) as follows:

"(v) Copies of other documents relied upon by the appellant or the complainant and referred to in the appeal or complaint as the case may be;"

4. Consideration may be given to deleting Draft sub-Rule 10(vi).

IX Comments on Draft Rule 11 – simplifying admission of second appeals

a) Deleting redundant sub-Rules: Draft Rule 11 states the grounds on which an appeal may be admitted by the Commission. Draft sub-Rules (2) and (3) are merely a reiteration of the position clearly understood in Section 19 of the Act. In view of the clarity provided in the Act these sub-Rules are redundant. They may be deleted.

b) Preventing rejection of appeals and complaints on technical grounds: Draft Rule 11 empowers the Commission to refuse to admit an appeal at a preliminary stage. This power must be exercised with great caution. Experience shows that the Commission has

rejected several appeals and complaints at the admission stage on mere technicalities. This amounts to taking away the citizens' right of appeal on flimsy grounds which is not permitted in the Act. Safeguards must be introduced in Draft Rule 11 to ensure that whatever technical lacunae may be found in the appeal or complaint submitted by a person, those may be rectified forthwith through the Registry instead of refusing to admit the appeal or complaint.

Recommendations:

1. Consideration may be given to amending Draft Rule 11 as follows:

*"**11. Admission of Appeals and Complaints:** (1) On receipt of an appeal or complaint, if the Commission is satisfied that it is a fit case for consideration, it may admit such appeal or complaint; but where the Commission is not so satisfied, it may, after giving an opportunity to the appellant or the complainant, as the case may be, of being heard and after recording its reasons, refuse to admit the appeal or complaint.*

(2) No appeal or complaint shall be rejected for reasons of technical defect or incomplete information provided by the appellant or complainant, as the case may be.

(3) Where an appeal or complaint contains one or more technical defects or incomplete information, the Registry of the Commission shall within ten days of receipt of the appeal or complaint require the appellant or complainant to rectify every defect or provide such information as may be necessary to complete the appeal or complaint letter."

X Comments on Draft Rule 12 – removing the redundancy in the procedure for deciding appeals

a) Draft sub-Rule 12(vi) is in essence a repetition of the content of Draft sub-Rule 12(i). Both sub-Rules empower the Commission to receive evidence on affidavit from the relevant and necessary parties to a case. It is a commonly accepted principle of legislative drafting that there should not be any redundancy in the provisions of a statute, rule or regulation. Draft Rule 12(vi) may be deleted.

b) As the procedure for inquiring into complaints received under the RTI Act are specified along with the powers of the Commission in Section 18, there is no need to repeat those provisions in Draft Rule 12.

Recommendation:

Consideration may be given to deleted Draft sub-Rule 12 (vi).

XI Comments on Draft Rule 13 – amendment and withdrawal of appeals

Draft Rule 13 introduces a policy change over the existing CIC Appeal Rules. It allows for the amendment or withdrawal of an appeal after it has been filed. This draft Rule is likely to be misused to harass appellants into withdrawing their appeals. It may also be misused to blackmail CPIOs and other concerned officers. When an application is not responded to or information is not given within the stipulated time limits without

reasonable cause or excess fees is charged or information is *malafidely* denied or wrong incomplete and misleading information is given, an appeal constitutes an allegation about a contravention of the law. Even if the appellant may be unwilling to pursue his or her case, the Commission has a duty to inquire if indeed any contravention had occurred once such an allegation is received. Comparison may be drawn with first information reports of crimes filed under Section 154 of the *Criminal Procedure Code, 1973*. Investigation and prosecution procedures are continued despite the lack of willingness of the complainant or the victim of crime to pursue the matter. It is the States' responsibility to inquire whether a crime indeed occurred or not and punish the culprits. The same principle must apply to appeal and complaints procedures under the RTI Act. Despite the lack of willingness of the appellant or the complainant to pursue a matter the Commission must take the case to a logical conclusion deciding whether any contravention of the Act had occurred or not. If at any stage the appellant or complainant claims that he or she has been provided the information in part or whole the case may be disposed by the Commission by recording such claims in its final order. Draft Rule 13 may therefore be deleted.

Recommendation:

Draft Rule 13 may be deleted.

XII Comments on Draft Rule 14 – clarify the position about personal appearance at hearings

a) Appellants and complainants must have the option not to be present at hearings: The current CIC Appeal Rules permit an appellant or complainant not to attend his/her appeal proceeding if he/she so desires. Draft sub-Rule 14(2) takes away this option. This option must be restored as there is no need to compel an appellant or complainant to appear in a case unless he or she desires to be present. Further this draft sub-Rule places discretion in the hands of the Commission to decide whether or not to allow the authorised representative of the appellant to attend the hearing. This is unfair. When an appellant or complainant authorises a representative, such person must be permitted to attend the hearing automatically. Also no adverse inference must be drawn by the Commission merely because the appellant or complainant was absent from the hearing. Appeals and complaints are lodged in relation to contraventions of the provisions of the RTI Act. Such matters must be decided on the basis of the merits of the case.

b) Appeals and complaints processes must not require lawyers: The current CIC Appeal Rules ensured that the second appeal or the complaint process was not turned into a judicial proceeding requiring the appellant or the complainant to hire lawyers. It is for this purpose that the current Rules explicitly state that the authorised representative may not be a lawyer. This provision is missing from the Draft Rules and must be restored to make the appeal and complaint procedures less cumbersome and inexpensive.

Recommendations:

1. Consideration may be given to inserting the words: *"or complaint"* **after the word:** *"appeal"* **and the words:** *"or the complainant"* **after the words** *"the appellant"* **wherever**

occurring in Draft Rule 14.

2. Consideration may be given to amending Draft sub-Rule 14(2) as follows:

In Draft sub-Rule 14(2) the words: *"if permitted by the Commission*" **may be deleted and the words:** *"or may opt not to be present"* **may be inserted after the words:** *"through video conferencing"*.

3. Consideration may be given to inserting three new Draft sub-Rules (4), (5) and (6) after Draft sub-Rule 14(3) as follows:

"(4) The appellant or the complainant may seek the assistance of any person in the process of the appeal while presenting his or her points and the person representing him or her may not be a legal practitioner.

"(5) It shall not be lawful for the Commission to draw adverse inference merely on the basis of the absence of an appellant or complainant at a hearing.

(6) Where an appellant or complainant elects to remain absent from a hearing without seeking an adjournment under sub-Rule 3, the Commission may dispose of the appeal or complaint based on the merits of the case."

XIII Comments on Draft Rule 15 – Ensuring that public authorities do not send lawyers to every hearing

a) Discouraging presentations by lawyers for public authorities: Draft Rule 15 leaves the door wide open for public authorities to hire legal practitioners for representing the CPIOs and other officers in proceedings before the Commission. This will create pressure on appellants and complainants who may not be able to afford lawyers to represent them at the Commission. Further, if permitting lawyers becomes the norm in all Commission proceedings, the speed of disposal of appeals cases is likely to reduce considerably. Therefore public authorities must be discouraged from hiring the services of lawyers, who are not their officers for presenting their case, under ordinary circumstances. Further, when a CPIO, CAPIO or first appellate authority or a deemed PIO is summoned by the Commission for a hearing by name, such officer must present himself or herself at the hearing.

b) CPIOs to pay for legal representation in penalty proceedings: In penalty proceedings a CPIO must not be permitted to bring a lawyer paid for by the public authority as the Commission would have issued show cause notice only upon determining that grounds mentioned in Section 20(1) of the principal Act are attracted. In other words the show cause notice is issued for a contravention of the provisions of the Act. Section 20(1) imposes a personal liability on the CPIO and the CAPIO. In all such situations if the CPIO and other concerned officers hire lawyers it must be at their own expense and not at the expense of the public authority. Draft Rule 15 may be amended as recommended below.

Recommendation:

Consideration may be given to amending Draft Rule 15 as follows:

*"**15. Presentation by the Public Authority:** (1) The public authority may authorise any of its officers to present its case before the Commission:*

Provided that where the Commission issues notice of a hearing under Rule 17 to a Central Public Information Officer or a Central Assistant Public Information officer or a deemed public information officer under Section 5(5) of the Act or a first appellate authority designated under Section 19(1) of the Act, by name, it shall be compulsory for such officer to present himself or herself at the hearing;

(3) A public authority shall not be liable to pay for the expenses incurred by an officer to whom notice has been issued in a penalty proceeding, if he or she desires to be represented by a legal practitioner, who is not an officer of that public authority."

XIV Comments on Draft Rule 16 – abatement clause can be misused to eliminate appellants and complainants

Draft Rule 16 appears innocent at the superficial level but it can become a tool for harassing RTI users with the ultimate threat, namely, elimination. Murders of RTI users and activists are not uncommon in India. During the last five years at least 8 murders across the country have been linked to usage of RTI that caused inconvenience to vested interests. Draft Rule 16 can become a means for encouraging more such murders i.e., leading to the following practice: "eliminate the appellant for abatement of the appeal" As is the recommendation with Draft Rule 13 above, the appeal must continue and reach the logical conclusion even in the event of the death of the appellant. The legal heirs may pursue the case after the demise of the appellant in accordance with procedures specified in the *Code of Civil Procedure, 1908*.

Recommendation:

Consideration may be given to deleting Draft Rule 16.

XV Comments on Draft Rule 18 – Improving transparency and accountability in relation to the orders of the Commission

a) Commission must pronounce orders in open proceedings: The current CIC Appeal Rules require the Commission to pronounce its orders in open proceedings. Draft Rule 18 omits this requirement. Pronouncing orders in open proceedings is a crucial element of a fair trial or adjudicatory proceedings. This is a hard won right of litigants and has acquired sanctity through several pronouncements of the Supreme Court of India. This is a requirement of natural justice also. The Draft Rule must be amended to restore this position.

b) Empowering the Commission to reserve its orders: Ordinarily courts and tribunals are vested with the power to reserve their judgement/order in a dispute adjudication process in order to think the case through after all arguments have been made by the concerned parties. This freedom must be assured to the Commission as well. Neither the current CIC Appeal Rules nor the Draft Rules provide the Commission with the power to reserve its decision. This power may be vested in the Commission through Rules.

c) Incorporating the verbal orders of the Commission in the written order: Cases are not uncommon where appellants and complainants are dissatisfied because the verbal directions or orders issued by the Commission at the end of the hearing are not properly reflected in the written order issued by the authorised officer of the Commission. As neither the current CIC Appeal Rules nor the Draft Rules address this problem, the Draft Rules must be amended to provide this safeguard.

d) Appellant/Complainant's right to know why a penalty is not imposed: A frequent grievance voiced by RTI users and activists is that Information Commissions do not justify their decision not to impose penalty on officers despite issuing show cause notices. Section 4(1)(d) of the RTI Act requires every public authority to mandatorily give reasons for its quasi-judicial and administrative decisions to affected parties. An appellant or a complainant is an affected party in every penalty proceeding as he or she was responsible for instituting the cause in the first place. The decision whether or not to penalise an officer is in the nature of a quasi-judicial decision. Therefore the appellant or the complainant is entitled to know the reasons as to why the Commission decides not to penalise an officer. Section 4(1)(c) of the RTI Act merely reiterates this important principle of natural justice. The Rules must enable the communication of reasons to the appellant or the complainant as to why an officer has not been penalised.

Recommendations:

Consideration may be given to amending Draft Rule 18 as follows:

"18. Order of the Commission: *(1) An order of the Commission shall be pronounced in open proceeding, be in writing and issued under the seal of the Commission duly authenticated by the Registrar or any other officer authorised by the Commission for this purpose.*

(2) The Commission may in an appeal or complaint case, after hearing all parties, at its discretion, reserve its decision for a reasonable period of time.

(3) Where any verbal order, directive, instruction or recommendation is issued by the Commission at the end of a hearing, the same shall be recorded in writing, by the appointed staff of the Commission and accurately incorporated in the written order issued under the procedure provided in sub-Rule 1.

(4) Where the Commission decides against imposing penalty under sub-section 1 of section 20 of the Act or recommending disciplinary action under sub-section 2 of section 20 of the Act against an officer, the Commission shall record detailed reasons in its decision and ensure the delivery of a copy of such decision to the appellant or the complainant, as the case may be."

XVI Amending the Appendix attached to the Draft Rules

As indicated at paras #V(a) above the format for filing appeal contained in the Appendix attached to the Draft Rules is cumbersome and too technical for citizens to make use of. So a simplified version of the minimum content of an appeal or complaint letter is given below:

Recommendation:

Consideration may be given to amending the Appendix as follows:

"***Appendix***

Information to be submitted in a letter of appeal to the first appellate authority or the Central Information Commission or in a complaint letter to the Central Information Commission.

1. *Name and address of the appellant/complainant**

2. *Name and address of the Central Public Information Officer to whom the application was addressed.*

3. *Name and address of any other officer who has communicated with the appellant/complainant* [applicable to cases of transfer of application under Section 6(3) of the Act]**

4. *Name and address of the Central Public Information Officer who has given a decision on the application.*

5. *Name and address of the First Appellate Authority who has given a decision on the first appeal.**

6. *Brief description of information sought in the RTI application.*

7. *Details of fee paid, if any.**

8. *Brief description of information provided by the Central Public Information Officer.**

9. *Brief description of the information provided by the First Appellate Authority.**

10. *Brief description as to why the appellant/complainant* is aggrieved.*

11. *Specific prayers or relief sought by the appellant/complainant* (include demand for imposition of penalty or payment of compensation where applicable)*

12. *Any other information relevant to the appeal/complainant*.*

13. *Verification as follows:*

"I hereby verify that the aforementioned facts are true to the best of my knowledge."

14. *Signature of the appellant/complainant.**

** Strike off whichever is not applicable."*

XVII Areas that have been left out of the Draft Rules

The following areas require urgent attention as neither the current Rules nor the Draft Rules address these areas of the RTI Act:

1) Stipulating a time limit for the Commission to dispose of second appeal and complaint cases is essential for speedy disposal of cases. [Sections 18 and 19]

2) Detailed procedures for the appointment of Information Commissioners in a transparent and participatory manner as essential to prevent capture of the Commission by ex-bureaucrats. [Section 12]

3) Rules need to be made to regulate the internal working of the Commission on a day-to-day basis. [Section 12]

4) Rules are required to regulate the procedure for giving information under the urgent request clause. [Proviso to Section 7(1)]

5) Rules are required to regulate the procedure for obtaining information from exempt organisations. [Section 24 read with Schedule 2]

6) Rules must clarify where a citizen's right of appeal against a decision of the Commission will lie. [Sections 19(9) and 23]

CHRI reserves the right to send at a future date more detailed recommendations to cover the aforementioned areas after consulting with other RTI users and civil society organisations.

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