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From: [Chitta Ranjan Behera](#)

To: [Mandakini Devasher](#)

Cc: [birenn](#) ; [thehumanity](#)

Sent: Friday, March 31, 2006 8:19 PM

Subject: Re: **RE: Resolution adopted at the RTI Conference and impact of RTI work**

Dear

Venkatesh,

My sincere thanks for sending me the Resolution of the National Conference on Working of the RTI Act 2005 held at New Delhi during 27-28 March 2006, partaken by representatives from 20 States along with the Chief Central Information Commissioner and Joint Secretary, Department of Personnel and Training, Government of India. It is indeed great that CHRI and ISI could together make this significant event happen, at a moment when the enforcement of RTI law in the country is a little more than five and half months old, showing both promise of a new era and prognosis of trying challenges. More gratifying is the fact that as many as 12 delegates of the Conference, by far the single largest contingent representing a State, were from Orissa. However much as we might wish to attend it, none of us who, as you know, are working for 'Orissa Right to Information Campaign' (www.orissarti.com) had received any intimation about it from your end.

Be that as it may, barring the Point-7, I am in full agreement with the rest of the 12-point Resolution that was adopted unanimously by the delegates of the Conference. Now I like to place my observations on Point 7 and some ominous omissions of the Resolution, which you shall appreciate, have at least a post-mortem value for the hosts of the Conference.

A) At point 7, the Resolution says, "We recognise that the Act and the subsequent Rules do not specify a time limit for Information Commissions to dispose of appeals and complaints We urge all Information Commissions to lay down for themselves a maximum time limit within which to dispose of appeals and complaints and this time limit must be disclosed proactively (for example, at least 90% of the cases must be disposed of within 3 months". As a matter of fact, the first part is not a factually correct statement, since the States like Madhya Pradesh and Tamilnadu have announced under their respective RTI Rules a time-limit of 30 days for disposal of an appeal by their respective Information Commissions. As regards the second part, why should the civil society groups urge for an over-stretched time-limit of 90 days, when some States like the above two have announced a statutory time-limit of 30 days for the purpose of disposal of an appeal by the Information Commission? Thirdly, when the RTI Act [vide Section 27(2e)] itself has specifically enjoined upon the appropriate Government to prescribe 'the procedure to be adopted by the CIC or SIC, as the case may be, in deciding the appeals under sub-section (10) of Section 19', how far is it justified legally or otherwise on the part of the civil society groups to shift the burden of the same to the Information Commissions, in stead of building up pressure on the appropriate State Governments to properly comply with the mandate of the law? I therefore consider Point 7 of your Resolution as a retrograde one and wish it should have called upon both Central and State Governments to follow the 'good practice' shown by Madhya Pradesh and Tamil Nadu in determining a time-limit of 30 days for disposal of an appeal by their respective Information Commissions.

B) Next, and more importantly, the Resolution seems to be too reticent or too mild to impact any State/UT Govt to rethink the omissions and commissions they have inadvertently or otherwise allowed in respect of the Rules made by them, in naked violation of the mandates of the parent Act. The Resolution has, rightly enough, recognized the objectionable nature of the Rules and practices adopted by various State Governments in such matters as fee structure, mode of payment and proactive disclosure under the Act. But as you shall appreciate, there are many other important matters in respect of which some State Governments have adopted Rules and practices that run diametrically opposite to the letter and spirit of the parent Act, resulting in virtual denial of the lawfully established right to information to the citizens. For instance, look at the case of Orissa, about which our honourable Ms. Maja Daruwala, Director CHRI is not only fairly enlightened, but was at one point of time quite articulate too. In her letter to the Chief Secretary, Govt of Orissa written as far back as 27 October'05, she had raised objections to certain features of Orissa RTI Rules, which in her opinion were 'legally invalid, contrary to the main Act' and deserved to be 'deleted from the Rules'. For brevity, let me reiterate salient extracts from some of her specific objections to the Orissa RTI Rules raised in the said letter:

i) "Application Format Not Compulsory: Section 4(1) [of Orissa Rules- italics mine] gives the impression that citizens are compulsorily required to use Form A for submitting information requests. This is not in tune with the practice followed by the GOI which has not prescribed any application format because the Act recognizes that citizens have the right to file information requests on plain paper."

ii) "Providing a notice accepting an application: The provision appears to permit the notice to be sent only after the PIO has satisfied himself of the identity of the applicant. This provision is not valid because under the RTI Act, an applicant is not required to provide proof of his identity unless he is entitled to a fee waiver under the BPL proviso. An applicant making a request for information is not required to give any personal details or proof thereof other than those necessary for contacting him"

iii) "No imposition of costs for damage during sample collection: The provision under Rule 10 that the cost of damage caused to public property in giving information should be included in calculating the additional fees in providing the information, goes against the spirit of the Act and should be removed as a matter of priority"

iv) "Remove costs of witnesses: It appears from Rule 12 that the expenditure incurred for the production of witness or documents before the State Information Commission would have to be paid for by the applicant. This provision is opposed to Section 19(5) and 20(1) of the Act which place the burden of proof in any appeal proceedings on the Central Public Information Officer or State Public Information Officer as the case may be and not on the applicant. This provision is legally invalid as contrary to the main Act and must be deleted from the rules as a priority".

v) "Forms: A number of provisions in the forms need to be reconsidered:
o Form A: Questions 7 and 8 should be deleted because they are irrelevant and unlikely to glean any useful information, while they may confuse applicants. Question 9 is inappropriate because at the point of making the application the requester has no idea how much the fee for

access will be, so it is unfair to ask whether the requester will (be able to) pay it.

- o Form C: Section (i) should require the PIO to specify exactly which clause in s.8 or 9 is being relied upon and on what factual basis. Section (iii) should be deleted because identity is not a ground for refusal permitted under the Act. Section (iv) should require the PIO to advise where the previously published information can be found.”
- vi) “More generally, we would note that the Rules have been drafted in a very complicated language and may be difficult for the ordinary person - and even many officials - to easily understand and apply.”

Ms.Daruwala in the said letter to the Chief Secretary Govt of Orissa had highlighted other important suggestions too, such as a downward revision of the exorbitant fee regime, waiver of appeal fee and multiple modes of payment. Since the Resolution of National Conference has appropriately taken care of these suggestions for all the appropriate Governments including Orissa to follow, I needn't dilate on these matters any further.

Beside the various points of objection, raised by Ms.Daruwala, I wish to add one very pertinent point that she somehow then missed out to mention about the Orissa RTI Rules. The last provision i.e. Rule-13 says that if any citizen fails to pay the so-called cost of damage or 'any sum payable under the Act' within 30 days of the notice for payment, the said sum shall be recovered from the concerned person as 'arrears of land revenue'. And according to the Orissa Public Demands Recovery Act 1962, which describes inter alia modes of recovery of 'arrears of land revenue', if the concerned person fails to pay up any dues to the Government, his/her landed property may be auctioned off, or alternatively he/she shall have to undergo civil imprisonment for a duration of 6 weeks to 6 months.

Towards the fag end of the letter, Ms.Daruwala summed up her position in the words worth remembering, "In light of many concerns raised above, we urge you to make amendments and deletions to the Rules and issue urgent clarifications incorporating these suggestions as soon as possible to avoid any inconvenience to citizens and any confusion amongst implementing officials."

C) The moot point therefore arises here for Ms.Daruwala to answer, has the Orissa RTI Rules undergone any amendment or deletion as suggested by her since she wrote the above letter? I don't know of course the detail deliberation made by the Orissa delegates in your Conference on the state of affairs concerning RTI in our State, much as I wish to have a report of the same. But besides Ms.Daruwala, the rest of CHRI fraternity that includes above all Mr.Venkatesh, Ms.Mandakini and Ms.Sohini, I firmly believe, are very much abreast of the mess, which is now the other name of Orissa RTI Rules-2005. Then how come, these critical aspects of the Orissa Rules didn't find any reflection in the text of your Resolution?

And mind you ladies and gentlemen, if we allow reticence on our part in speaking out loudly in such forums about the Orissa RTI Rules which is not only ultra vires the mother law but also out and out draconian, reminiscent of the rule by the East India Company, then our poor and backward Orissa shall be the first burial ground of RTI Act 2005, to be followed suit by other States.

Thanking once again the CHRI and ISI for organising a National Conference on Working of RTI act 2005, and anxiously looking forward to a response from your end to this rejoinder of mine on the Resolution of the Conference.

With regards,

Chitta Behera, dt.31.3.2006 , Advisor to Orissa Right to Information Campaign (www.orissarti.com)

4A, Jubilee Tower, Choudhury Bazar, Cuttack-9, Orissa, Mobile: 98610 91455, Emails: chittabehera1@yahoo.co.in, chittabehera@rediffmail.com

To

Venkatesh Nayak

Project Coordinator

Constitutionalism and

Right to Information - India Programme

Commonwealth Human Rights Initiative

B-117, I Floor, Sarvodaya Enclave

New Delhi- 110 017

tel: 91-11- 2686 4678/ 2685 0523

fax: 91-11- 2686 4688

website: www.humanrightsinitiative.org

alternate email: nayak.venkatesh@gmail.com

On Thu, 30 Mar 2006 Mandakini Devasher wrote :

Dear all,

I am writing to inform you that CHRI organised the National Conference on the Working of the Right to Information Act 2005 in collaboration with the Indian Social Institute from March 27-28 in Delhi. More than 90 participants belonging to the civil society and voluntary sectors and people's movements from 20 states including Delhi attended the conference. Mr. Wajahat Habibullah, CIC and Mr. C B Paliwal, Jt. Secretary, DOPT attended the conference as guest speakers on different days. A resolution demanding proper implementation of the RTI Act was adopted unanimously by the house. I have attached the text of the resolution adopted at the conference for your >reference. It is hoped that this will be used as an advocacy document by CHRI and all partners to push for the proper implementation of the Act in the states.

With regards

Sincerely,

Venkatesh Nayak

Project Coordinator

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Commonwealth Human Rights Initiative
B-117, I Floor, Sarvodaya Enclave
New Delhi- 110 017
tel: 91-11- 2686 4678/ 2685 0523
fax: 91-11- 2686 4688
website: www.humanrightsinitiative.org
alternate email: nayak.venkatesh@gmail.com