

## Proposed Amendment to State Rules– a potential death blow to RTI in Orissa

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Most people are yet in dark that there is afoot a surreptitious move by the State Govt of Orissa to amend the Orissa RTI Rules 2005 (<http://203.193.146.66/ipr/RTI/rTI-rule.pdf>) and Orissa Information Commission (Appeal Procedure) Rules 2006, ([http://orissasoochanacommission.nic.in/Procedure%20for%20Appeal%20\(%20english\).pdf](http://orissasoochanacommission.nic.in/Procedure%20for%20Appeal%20(%20english).pdf)), which would render the RTI regime worse for the citizens and further ultra vires the parent Act ([http://203.193.146.66/ipr/RTI/Right\\_To\\_Information\\_Act.pdf](http://203.193.146.66/ipr/RTI/Right_To_Information_Act.pdf)). Instead of issuing a proper notification as mandated under Section 23 of General Clauses Act 1897 (<http://www.vakilno1.com/bareacts/generalclausesact/s23.htm>) to seek public opinion on the draft rules made under any central legislation like RTI Act 2005, the proposed Amendments are placed in an obscure corner of website of I&PR Dept ([http://203.193.146.66/ipr/Amendment\\_Proceeding.asp?lnk=9](http://203.193.146.66/ipr/Amendment_Proceeding.asp?lnk=9)), the State's nodal agency for RTI and that too in the form of proceedings of two consecutive meetings of a 5-member Committee supposedly held on 18 and 27 Nov 2009 chaired by Mr.R.N.Dash, Commissioner-cum-Secretary of the said Dept. It reminds us of the old, notorious story of the State Government that notified the Orissa RTI Rules 2005 straightaway in the Gazette bypassing the mandatory phase of seeking public opinion, on account of which the said Rules have ever since been termed 'illegitimate' by a cross section of RTI activists including Mrs.Aruna Roy, a veteran RTI pioneer in the country (<http://orissarti.com/articles/WhyORulesunjust/arunamemo.htm>).

### Committee's dubious Who's Who

Though the Committee claims to have based their proposals on the recommendations of Orissa Information Commission and as well on the 'viewpoints of RTI activists, senior citizens and eminent social activists', they have refrained from disclosing the latter sources, - a fact, which obviously breeds the public suspicion that the whole exercise was undertaken at the dictate of the Commission only and the reference to the 'viewpoints of RTI activists . . . etc.', a cosmetic one, made only for lending legitimacy to the otherwise objectionable procedure and proposals adopted by the Committee. There is also a valid reason for questioning the bona fides of the very composition of the said Committee, since the first meeting was attended by as many as 3 officer-members from the nodal dept. itself, out of a total five, the other two being an Additional Secretary of Law Dept, who is again a bureaucrat, and one obscure Mr.Jatindra Mohan Mohanty, projected in the proceedings as a 'Former Advocate General, Govt of Orissa' ([http://203.193.146.66/ipr/Download/Amendment\\_1st\\_meeting.pdf](http://203.193.146.66/ipr/Download/Amendment_1st_meeting.pdf)). While there was never an Advocate General in Orissa bearing the above name, it seems, the Committee resorted to this fraudulent falsehood, only to muster credibility for its otherwise rubbish proceedings. In the 2<sup>nd</sup> meeting ([http://203.193.146.66/ipr/Download/Amendment\\_2nd\\_meeting.pdf](http://203.193.146.66/ipr/Download/Amendment_2nd_meeting.pdf)), the Officer-member from the nodal dept (Director, I&PR) kept absent and his place was filled by Prof. Radha Mohan, former State Information Commissioner, a weakling, whose decisions not only betrayed a horrible ignorance of and aversion to RTI Act but also reflected a pitiful lack of minimum language skill (*For instance, Vide Second Appeal No.129/2007 decided by SIC Prof. Radhamohan on 4.1.2008, and SA Appeal No.7/2006 decided on 30 May 2006 by Chief SIC D.N.Padhi & SIC Prof. Radhamohan*) and against whom several allegations of serious omissions and commissions are still pending in the Office of Governor under Section 17 of RTI Act. Above all, no matter who authored the proceedings, it is written so casually and mindlessly as to render it a heap of outrageous non-sense. For instance, the Para-5 of Proceedings of 2<sup>nd</sup> Meeting has proposed 'a substitution of Point-5 in the Form-F', while as a matter of fact, there is nothing called 'Point-5' at all in the 'Form-F' prescribed under Orissa RTI Rules 2005.

### **Summons against complainants- a terrible twisting of law**

The real design behind the proposed Amendment is to arm the Orissa Information Commission with sweeping penal powers with an ulterior motive to stamp out once and for all the very possibility of an aggrieved applicant daring to complain or appeal before the Commission against any defaulter bureaucrat, be he a PIO, APIO or an Appellate Officer or Head of a Public Authority. For instance, the Proceedings of 1<sup>st</sup> Meeting in its section on Amendment to Orissa Information Commission (Appeal Procedure) Rules 2006, provide at Para-1 for vesting the Commission with an additional power to 'issue summons to the appellant/ complainant to remain present during the hearing'. Perhaps quite many RTI activists would falter to grasp the disastrous implications of such 'summons' proposed against an appellant or complainant. As per the existing Civil Procedure Code 1908 and Criminal Procedure Code 1973, a bailable or non-bailable warrant for arrest can be issued against an accused person who fails to attend the hearing in response to the 'summons'. And, if the said person keeps on absconding, then the concerned Court may order the attachment of his property movable or immovable. The fact of the matter is that the Orissa Information Commission having miserably failed to issue any summons against the defaulter, even absconding Officials, for which it is empowered under Section 18(3) of RTI Act, is now out to assume this punitive power against the appellants/ complainants. It is strange indeed, how the Commission could recommend to the Committee such a patently illegal provision to be added to the Rules? Do they not know that the RTI Act has emphatically and repeatedly (Section 19-5 and Section 20-1) placed the onus/burden of proof on the PIO, whose denial of information constituted the ground of complaint or appeal by an aggrieved applicant? As a matter of fact, in keeping with the letter and spirit of the RTI Act, the Rules made by the Centre (<http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/appealrules.pdf>) or different States allowed the freedom to the complainant/ appellant to attend or not to attend the hearing in person or through an authorized representative. Even the existing Orissa Appeal Procedure Rules 2006 falls in line with the above dispensation. Under the circumstances, doesn't it appear fishy and foul on the part of the Orissa Information Commission to recommend a total reversal of this sacrosanct provision in RTI Act?

### **Perpetuating the role anomalies**

An anomalous scenario has ever since dogged the RTI process in Orissa due to non-observance of the role demarcation between the Government and the Commission, which the RTI Act clearly laid down. Nowhere in the country was it so brazenly violated as in Orissa. Everybody knows, the Government of Orissa soon after notifying the Rules and forming the Commission continued to sit with folded hands, blissfully abdicating the host of administrative duties cast on it under Section 26 of the Act. For instance, while the said Section entrusted the task of organizing necessary awareness and training programmes for the officials and public on the Government, it was however left to the discretion of the Commission without any rhyme or reason. And the inevitable followed. The Commissioners neglecting their prime job of hearing and disposing the complaints and appeals, which continued to pile up day after day, were on the contrary, found frittering away their time and energy on a whole hog of financial and organizational activities that were none of their assigned business - distributing funds to NGOs, printing posters and pamphlets, arranging and addressing the meetings and camps, holding award giving ceremonies and the like. As a result, the status of the Commissioners as quasi-judicial authorities soon vanished to be replaced by that of a funding agency interested in image building and cheap publicity. (OSIC to mind its business only, by Chitta Behera 14.7.09 <http://www.box.net/shared/ho5upcbhx0>). It was expected that any Amendment worth the name would restore the mandatory role demarcation between the Government and Commission as prescribed under the Act. But, Alas! The proposed Amendment using a language crooked par excellence aims at perpetuating the role anomalies as before. For instance, Para-2 (v) of the Proceedings of 1<sup>st</sup> Meeting provides for exercise of 'appropriate administrative control' over PIOs, Appellate Officers and Public

Authorities by the ‘Nodal Officer of the Nodal Department’ ‘as and when ordered by Orissa Information Commission’. In absence of a clear and categorical definition of the term ‘administrative control’ either in the parent Act or State Rules, it means and ought to mean the entire gamut of powers and obligations entrusted to the Government in relation to the public authorities as described under Section 26 of RTI Act. Needless to say, such powers and obligations of Government are not conditional or incidental to the occasional orders issued by the Commission but absolute and permanent. Again, Para-2 (iii) of the Proceedings of 1<sup>st</sup> Meeting proposes that ‘every nodal officer would be responsible to Orissa Information Commission to comply to mandatory provisions of Section 4 (1) (a) & (b). . .’. Such an amendment if at all it comes through would directly contravene Section 26 (3-g), which obligates the Government, not Commission, to exercise control over all the public authorities in respect of voluntary disclosures under Section 4. It is true, as per Section 19(8-a-vi) the Commission may, in course of a particular decision, ask the concerned public authority for ‘an annual report’ in compliance with Section 4(1-b). But that role of Commission arises only in course of drafting a particular decision, not otherwise and that too, in respect of a particular public authority, which is the opposite party in an appeal or complaint proceedings. This conditional and incidental power of the Commission can’t be substituted against the perennial control that the Government is mandated to exercise over all public authorities in respect of Section 4.

### **Apparently well meaning, but practically anti-people**

The Para-3 of Proceedings of 1<sup>st</sup> Meeting says that payment of any fee under Orissa RTI Rules can henceforth be made through a variety of modes, such as Cash, Treasury Challan, Money Order, Indian Postal Order or even E-payment. So far, so good. To say the least, this provision should have been in place right since the day one, in keeping with the similar norm in force at Centre and in other States. With Cash or Treasury Challan as the only permissible modes of payment of application fees, it was not only tedious on the part of any applicant from Orissa to arrange the Treasury Challan, but simply impossible altogether on the part of any person stationed outside Orissa to submit an RTI application to any public authority located in Orissa, the obvious reason being non-availability of Orissa’s Treasury Challan anywhere outside the State. Now that this unacceptable limitation in modes of payment is slated for removal, one may feel elated about the future of RTI in the State. But there is a cryptic snag in the very formulation of the amendment, which nullifies its apparent benefits. The amendment requires the applicant citizen to submit the application fee to the PIO ‘under the appropriate Head of Account’. Here arises the moot question, how is an applicant citizen supposed to know ‘Head of Account’ of a particular fee, which is a jargon in budgetary parlance? What was the harm if the proposed Amendment would have straightaway provided for the submission of Application Fee or any other Fee addressed to the concerned Public Authority just as the Central Rules provide for the submission of any Fee to the Accounts Officer of the concerned Public Authority (<http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/FeeCostRTI.pdf>)? Even if the applicant is free to choose any mode of payment out of many, he or she would, at the end of the day, surely fail to submit the application fee and consequently the RTI application too, simply because he knows not ‘Appropriate Head of Account’. Earlier in the past, the applicant stumbled due to the burden of Treasury Challan, now he would simply opt out from the RTI process thanks to the unknown ‘Head of Account’. A great conspiracy indeed to stamp out RTI from Orissa by a stroke of pen!

### **The wish list, which the Minister ignored**

It is worth mentioning that the present Minister for I&PR, Orissa was apprised in detail of the various anti-people and illegitimate features of Orissa RTI Rules 2005 along with the facts about the malfunctioning of Orissa Information Commission in course of a Workshop held at Bhubaneswar on 22<sup>nd</sup> & 23<sup>rd</sup> Oct 2009 under the aegis of Orissa Right to Food Campaign (A Report circulated in Common Concern <http://www.box.net/shared/0212bbqkmz>, and A Brief Press Release by Convener Pradip Pradhan <http://www.box.net/shared/tc3yooxlqk>). Kindling a ray of hope among the RTI activists the Minister assured

to do the needful to rectify the same. But considering the awful nuances of the proposed amendment, a grave anxiety arises as to whether at all and how did the Minister share the civil society's wish list with the concerned bureaucrats and Commissioners. To briefly reiterate the kinds of amendment to Orissa Rules the civil society expected from the Minister, these are briefly as follows-

- Withdrawal of compulsory provision of Form-A for Application, which requires the copy of Voter's Card to be attached as a proof of citizenship. This provision not only deprives the citizens below 18 years of their right to make an application for information, but also discloses personal details like name of father/spouse, permanent address, age and sex etc. (as mentioned in the voter card) in contravention of the Section 6(2) of the Act.
- Withdrawal of compulsory nature of Forms for 1<sup>st</sup> & 2<sup>nd</sup> Appeals and also of Appeal fees of Rs.20/- and Rs.25/- ,which are simply ultra vires the parent Act.
- Withdrawal of fees against cost of information now being charged in Orissa in contravention to Section 7(5) of RTI Act.
- Withdrawal of Rule 12 of Orissa RTI Rules 2005 which obligates the appellant to bear expenditure in connection with production of evidence or witness before the Commission. It contravenes the Sections 19(5) and 20(1) that put the burden of proof solely on the PIO.
- Withdrawal of Rule 10 of Orissa RTI Rules 2005, which requires an applicant for information through Sample to compensate for the loss or damage if any caused to the concerned structure during the sample collection.
- Amendment to Form-B (letter of intimation) for mentioning the detail calculation and break-up of the total amount charged against the cost of information along the particulars of first appellate authority before whom the applicant, if aggrieved by the decision of PIO, may lodge appeal or complaint. This is required under Section 7(3) of RTI Act.
- Amendment to Form-C (rejection), which cites such arbitrary grounds for rejection of an Application as '**Your Application is not complete in all respects**', '**Your identity is not satisfactory**' and '**For any other reason**'. All these grounds are ultra vires the parent Act, which lays down clearly the possible grounds of rejection in Sections 8, 9, 10, 11 and 24.
- Correction of absurd expressions, such as Rule 2(1-c) of Orissa RTI Rules 2005, [*'fee' means amount payable by the applicant for obtaining any information under the provisions of sub-section (1) of Section 6 and sub-sections (1) and (5) of Section 5 excluding the cost of information*"].
- Orissa Notification on Security & Intelligence Agencies dated 29 Oct 2005 to be amended ([http://orissarti.com/rtiorissa/Notif\\_Exempted\\_Agencies\\_29\\_10\\_05.htm](http://orissarti.com/rtiorissa/Notif_Exempted_Agencies_29_10_05.htm)) to provide for regular appointment of PIO, APIO and Appellate Officer in each such agency for disclosing information relating to cases of corruption or human rights violation in the manner as described under Section 24(4) of parent Act.
- The present practice of the Commission in ignoring the complaints around Section 4 (for instance, *C.C.No.04/2006 filed by Shri Taranisen Padhan & 3 Others decided on 20/06/2006 & C.C.No.05/2006 filed by Shri Jaganath Panda & 3 Others decided on 20/06/2006* ) being patently ultra vires must be given up.

- The present practice of the Commission to arbitrarily select the cases of their choice for urgent hearing on out-of-turn basis on the dubious plea of ‘public interest’ (<http://orissasoochanacommission.nic.in/Imp.%20Adm%20Decision.html>) must be given up.
- The present practice of the Commission not to issue acknowledgement of the Complaints and Appeals and not to mention the date of regn. of each case in its Decisions must be given up.
- The present practice of the Commission hijacking the powers and obligations of Government as mentioned under Section 26 and neglecting their quasi-judicial functions with the Government sitting idle round the year must be given up and the role demarcation between the Government and the Commission as clearly laid down in the parent Act must be strictly adhered to.
- The present practice of the Commission in making erratic publication of translation of Act and Rules (OSIC not to play havoc to Oriya language, by Chitta Behera 13.7.2009 <http://www.box.net/shared/6cpvv0x3f2>) and of FAQ must be given up and the said publications be withdrawn from circulation immediately.
- The present practice of the Commission in respect of the other statutory function i.e. drafting the Annual Report on the RTI scenario in the State as per the requirements of Section 25 being too deficient and error-ridden (Complaint to Governor against OSIC by Pradip Pradhan, <http://www.box.net/shared/gn6qq3bf7y>) there should be a Committee of experts including RTI activists constituted to ensure the authenticity and quality of draft reports before their submission to the Government for onward presentation to the Assembly.
- The objectionable practice by the Commissioners in producing legally defective decisions (Vide ‘Orissa Information Commission and its weird verdicts’ by Pradip Pradhan 13 Feb 2007, [http://orissarti.com/articles/WhyORulesunjust/Orissa\\_Information\\_Commission\\_verdicts.pdf](http://orissarti.com/articles/WhyORulesunjust/Orissa_Information_Commission_verdicts.pdf)) and in writing the decisions with erratic, rubbish language (Information Commissioners of Orissa to mind their language by Chitta Behera, 7.7.2009 <http://www.box.net/shared/yrvnv0kdo30>) must be stopped, and an elaborate list of errata on the defective decisions already made in the past to be published, simply to restore the lost sanctity of a statutory authority like Orissa State Information Commission.
- In keeping with the mandate of Section 4(4) of RTI Act, Orissa Information Commission ought to bring out its decisions and draft Annual Reports in the regional language ‘Oriya’ in addition to the existing practice of writing in English, so as to make its writings easily intelligible to the common people of Orissa. Quite many States such as Bihar, Chhatisgarh, Jharkhand, Madhya Pradesh, Uttar Pradesh, Rajasthan, Maharashtra and Gujurat are already practicing it.
- Orissa RTI Rules ought to provide for a time-bound enquiry and disposal of each complaint made against the Information Commissioners by the citizens before the Governor under Section 17 of RTI Act.
- The present practice of both Government and Commission in skirting around a progressive, citizen-friendly legislation ‘Orissa RTI (Amendment) Rules 2006’ (<http://203.193.146.66/ipr/RTI/amendment%20to%20ORTI%20Rules.2005.pdf>) must give way to an honest implementation of the latter, especially in respect of citizens’ right to instant inspection of voluntary disclosures made under Section 4.

- To avoid casual and lackadaisical practice by the public authorities in Orissa in respect of suo motu disclosures under Section 4 of the Act, the proposed Amendment should make it binding on each and every public authority to follow 'The Template for Information Handbook' prescribed for the purpose by the national nodal agency for RTI Ministry of Personnel, Pension and Public Grievances, GoI (<http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/RTI-Templates.pdf>).
- The proposed Amendment must provide that the Governor, who is as per Section 2(e-iv) of RTI Act Competent Authority in respect of 'other authorities established or constituted by or under the Constitution' (e.g. State Election Commission, State Tribal Advisory Body and State Finance Commission), must frame rules for setting up RTI regime in each such authority in the manner prescribed under Section 28 of the Act.
- Any Rule or Amendment to Rule to be made by the State under a central legislation like RTI Act, must pass the indispensable test of Section 23 of General Clauses Act 1897, which mandates the publication by the Government of a notice along with the draft proposal to seek the public opinion thereon before finalizing the draft Rules.

### **Resistance, the only way out**

Despite the fact that the Minister was made sufficiently aware of the above concerns and expectations of the civil society groups, none of them has found space in the proposed amendment to Orissa RTI Rules or Appeal Procedure Rules. On the contrary, he has allowed a clique of bureaucrats to design in collaboration with the malfunctioning Commissioners a blue print for the final blow against the cause of RTI in Orissa, using of course the spacious alibi of amending the objectionable State Rules. It now therefore behooves the civil society groups, who have been all these years working in defense of RTI in the State to mount a stout resistance afresh against the ongoing conspiracy of the bureaucracy-commission combine to push the RTI into a permanent limbo in the State.

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