

## Potential amendment to the RTI Act: charging wages and search costs – June 22, 2009

Dear Friends,

Following on from our recent notes on the potential amendments to the RTI Act 2005, we would like to further highlight the danger of amending the Act to charge wages and search costs on requestors of information under the RTI Act.

The Right to Information (Regulation of Fee and Cost Rules) 2005 ("RTI-RFCR") incorporated only two amendments affecting the availability of information under the RTI Act: one relates to the payment of fees for inspecting information and the other allows for an Indian Postal Order as a mode of fee payment. No further related amendments have been passed. The RTI-RFCR does not contain any reference to a separate category of fees payable under section 7(3) (the "additional fees" provision) of the RTI Act, and it is clear from the provisions of the RTI-RFCR that officials are not empowered to charge the applicant for costs relating to the wages of officers, information searches, compiling the information, or other related costs.

There is also no power, under section 27(2) of the RTI Act, to make rules which enable a PIO or any other authority to charge the requestor these costs. While it may be argued that the general powers for making such rules are available under section 27(1), this not a tenable argument, since the rule-making power can only be used to 'carry out' the provisions of the Act, not defeat or frustrate the intention behind its provisions. While making rules, the Government of India is required to pay attention to the caveat contained in section 7(5) of the principal Act namely: any 'fee prescribed must be reasonable'. This possible amendment to the RTI Act is far from reasonable.

When access to documents (other than of A4/A3 size) or materials is sought under the current law, the only costs which can be charged to the applicant are those which relate to the process of reproducing the information, and the cost of supplying samples of materials. The motivation behind adding to the possible charges under this potential amendment is to discourage chronic and motivated information seekers - targeting either requests which are considered to be "vexatious and frivolous" in nature, or where voluminous information is sought.

As we have already highlighted, over 80% of Indian citizens survive on less than US\$2 per day. Charging a requestor for an official's wages, along with search and compilation costs will act as a severe disincentive for people who would otherwise use the Act for accessing information. PIOs and other authorities under the Act are likely to exploit this provision to prevent people from seeking the disclosure of information relating to wrongdoing or instances of corruption. The primary objectives of the RTI Act- to create an informed citizenry, contain corruption and enable people to hold government and its instrumentalities accountable - will be defeated if this amendment goes through. The general rule-making power cannot be used to impose unreasonable burdens or create any disincentives for requestors.

It must be emphasized that the costs relating to the time spent by officers in searching and compiling the requested information, together with the costs incurred during that process, are not borne by them out of their own pockets. The costs are paid from the taxes which citizens contribute every day. Charging requestors for these costs again will amount to a double-burden on the taxpayer, which is not what Parliament intended when it enacted this ground-breaking legislation.

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