Bihar Right to Information (Amendment) Rules, 2009

A Critique with Recommendations for Change

Background

Amongst the 27 States covered by the Right to Information Act (RTI Act) Bihar was the slowest to implement it. While the scheme of the Act required all the Governments to put in place mechanisms for its implementation within 120 days of enactment, the Bihar Government notified the RTI Rules only in June 2006 – eight months late. Some of the Rules were citizen-unfriendly. For example, the Rules require citizens to pay fees for filing appeals at both stages. There is no provision in the RTI Act for collecting fees for appeals or complaints. This fee related Rule was clearly against the letter and spirit of the RTI Act.

Over the last couple of years the Bihar Government has taken progressive measures steps to create greater convenience for citizens to access information from public authorities. The fee for filing appeals internally has been reduced from Rs. 50 to Rs. 10 while no fee needs to be paid for approaching the Bihar State Information Commission. The Bihar Government took a truly innovative step to enable citizens to file RTI applications by telephone by setting up the *Jaankaari* call centre. This has reduced the need for citizens to go to government offices personally for filing RTI applications, leaving little room for public information officers (PIOs) to refuse an RTI application at the gateway stage.

However the Government's commitment to implement the RTI Act effectively seems to be waning in recent times. The Bihar State Information Commission remained headless for several months after the retirement of the first State Chief Information Commissioner. This post has been filled up only in October 2009 with the appointment of Shri Ashok Kumar Choudhary.

On 19th November, the Bihar Government notified a set of amendments to the RTI Rules. Several of these amendments will negatively affect people living below the poverty line (BPL). For example, unreasonable restrictions have been imposed on the extent of information that may be given free of cost to applicants belonging to the poorest segments of society. Subject-matter restriction and word limits have been imposed on all RTI applications. Applicants will be compelled to request information only on one subject matter at a time and within 150 words only. In addition to paying application and additional fees applicants will now be required to submit self-addressed stamped envelopes if they wish to obtain information. Restrictions have been imposed on the transfer of applications to multiple public authorities. The Bihar Government has notified all these anti-poor and RTI-unfriendly restrictions without any prior consultation with the people of Bihar.

No public consultation on amendments

While imposing these new restrictions on the people's fundamental right to seek and obtain information, the Bihar Government has failed to honour an important statutory obligation under the RTI Act. Section 4(1)(c) of the Act states as follows:

*"**4**. (1) Every public authority shall—*

X X X

c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;"

Since 2005, several citizens have been using the RTI Act in Bihar, some of whom belong to the BPL category. The latest amendments clearly are important decisions that affect the public not only in Bihar but Indian citizens all over the globe. In fact, the RTI Act empowers every Indian citizen sitting in any corner of the planet to access information from any public authority in any part of the country, including Bihar. There has been little discussion in the public domain about the need for these amendments. The Bihar Government has a statutory obligation to disclose all the facts and figures during the formulation of such an important policy change prior to its notification in the Gazette. It is important to place in the public domain material facts and all considerations that guided the imposition of restrictions on the fundamental rights of citizens. However the Bihar Government has not placed any information before the people justifying the necessity of imposing these restrictions on their fundamental right.

Further section 4(1)(d) of the RTI Act states as follows:

*"**4**. (1) Every public authority shall—*

X X X

d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

The amendment of the RTI Rules, clearly, is an administrative decision of the Bihar Government. They potentially affect every information-seeking Indian citizen in Bihar and elsewhere on the planet. The Government is duty bound to disclose in the public domain the reasons for bringing about these changes in the RTI Rules. However the Bihar Government has not disclosed any reasons for making these changes prior to or after their gazette notification. The amendments have been incorporated in an arbitrary manner without adequate consultation with the most important stakeholders, namely the people of Bihar.

Given below is an analysis of the positive and negative aspects of the amendments notified by the Government.

Positive aspects of the amendments

Reference to Jaankaari Call Centre included: The original Rules were notified before the creation of the Jaankaari call centre mechanism. Hence the inclusion of this mechanism in the Rules as a valid method of submitting RTI applications is welcome.

Negative aspects of the amendments and recommendations for change

1. **BPL requestors will be charged fee for information beyond 10 pages:** The most retrograde of amendments is in the context of fee-related Rules. A new proviso has been introduced to Rule 3 making it compulsory for applicants from BPL families to pay photocopy charges at regular rates if the information exceeds 10 pages in length. Clearly this is against the very letter and spirit of the RTI Act. The proviso to section 7(5) of the RTI Act states that no fees will be charged from BPL applicants at any stage. Both application fee and additional fee, that covers the cost of reproducing the information in print or electronic form, have been waived for the poorest segment of society. The Bihar Government cannot use its rule-making power to override the fee waiver for BPL applicants given in the principal statute passed by Parliament. Rule-making powers have been given to the State Government under section 27 only to carry out the provisions of the Act, not frustrate its objectives.

   Parliament had intended that very poor people should not be asked to bear the financial burden of exercising their right to information. Often, the cause of deprivation of such people can be linked to the lack of access to crucial information about their entitlements which is under the control of public authorities. Frequently the choice for the impoverished is between spending money on a meal or on seeking information relating to their entitlements. Therefore Parliament had intended to provide them information free of cost. The restriction of ten pages seems arbitrary even though it may appear to be designed to prevent diversion of a public authority's resources. No reasoning has been provided as to how 10 pages have been found to be the ideal limit for providing information free of cost. In *Maneka Gandhi v Union of India* (AIR 1978 SC597) and several other decisions, the Supreme Court of India has stated that no action of the government or its instrumentality can be arbitrary in nature.

   Other states like MP and Chhattisgarh have found more reasonable ways of handling requests for information from BPL applicants. Both States amended their fee-related provisions to ensure adherence to the provisions of the RTI Act keeping in mind the rights of BPL applicants and the need for optimum utilization of the resources of a public authority – a public interest protected in the preamble of the RTI Act, read with section 7(9). In Chhattisgarh, if the information relates to the life and liberty of the applicant, such information is to be provided in the form in which it has been requested, free of cost, regardless of its length. In both Chhattisgarh and Madhya Pradesh, information may be given free up to fifty pages or up to a maximum cost of Rs. 100 if it is not directly related to the applicant. If the information is voluminous, the BPL applicant will be given the opportunity to inspect the records free of cost. Under no circumstance is the BPL applicant to be charged for accessing information in these States. This arrangement is in harmony with the intention of the RTI Act unlike the amendments notified by the Bihar Government. **This offending and anti-poor Rule instituted by the Bihar Government must be deleted.**

Recommendation:
Rule 3(2) in the *RTI (Amendment) Rules, 2009* must be deleted. Instead a new

proviso must be inserted below Rule 3 of the *RTI Rules, 2006* to allow BPL applicants to access information free of cost up to fifty pages. If the request is for voluminous information then the applicant must be allowed to inspect all the records free of cost so that he/she may prioritise the documents whose copies are required.

2. **Applicants to provide self-addressed, stamped envelopes:** A new Rule has been introduced making it compulsory for applicants to submit self-addressed, stamped envelopes. This new provision has been placed at the bottom of Rule 3 after the details of procedure regards application fee and additional fee have been described. The amendment cryptically states that an application will not be rejected merely because such an envelope has not been provided by the applicant.

   This amendment appears to indicate that the Bihar Government intends to pass on the burden of postal charges to the applicant. This is clearly in contrast to the practice in the Government of India where all public authorities bear the expenditure on postal charges incurred by public authorities while communicating with the applicant. Ideally the Bihar Government could bear this expenditure in a similar manner. However some states like Maharashtra have specifically indicated in their Rules that the postal charges will have to be borne by the applicant. So the intention of Bihar Government is not entirely out of place. It is the vagueness of this amendment that has the potential to create problems during implementation. For example, the new Rule does not state whether the applicant is required to submit the envelope at the application stage or at the stage of paying additional fee.

   If the envelope is required to be submitted at the application stage a problem will arise: if the envelope is meant to be used by the public authority only to communicate the amount of additional fee payable by the applicant, the public authority will still have to bear the expenditure of postal charges while sending the copies of documents. As only one envelope is required to be submitted by the applicant, the public authority would have used it up. The purpose of the amendment would not be fulfilled.

   A second problem will arise in the context of applications made with the assistance of the *Jaankaari* call centres. It is not clear how and when an applicant, using this facility, is required to send the self-addressed, stamped envelope. This Rule has been formulated without paying adequate attention to all the dimensions of the applications process.

   On the other hand if the envelope is required to be submitted by the applicant while paying additional fee, two problems will arise:

   a) The amendment does not indicate anything about the value of stamps that must be affixed on the envelope- this creates the first problem. More often than not the applicant will not be in a position to know the actual number of pages on which the information may be provided by the public authority. In the absence of knowledge of the total number of pages, the applicant will not be able to calculate the weight of the

packet and affix stamps of the required value. This will only create confusion. The applicant may either affix more stamps than required causing wastage of postal stationery (not to mention the extra financial burden on the applicant) or may end up fixing stamps of lesser value.

b) The second problem will arise when an applicant affixes stamps of lesser value than is required according to the weight of the package. The amendment states that an application may not be rejected because the envelope was not submitted. This may appear to be a positive provision but its impact will be negative. A PIO may simply delay the supply of information on the pretext that adequate postage has not been paid by the applicant. This is likely to be treated as delay in supplying the information for a reasonable cause and the statutory time limit of 30-days stipulated by the RTI Act may be given a quiet go by. In effect this amendment will create loopholes in the information furnishing process especially with regard to the strict adherence to time-limits required under the Act.

Rather than create loopholes that will slow down the process of supplying information to the applicant, the Bihar Government may simply amend the Rules requiring the PIO to inform the applicant of the postal charges payable while sending the intimation of additional fee. **However it is advisable for the Bihar Government to bear the postal charges itself thereby emulating the good practice established by the Government of India.**

Recommendation:
Rule 3(iii) must be deleted. It is advisable for the Bihar Government to bear the postal charges. If this is not found to be feasible, then the words "including postal charges" may be inserted in Rule 3(ii) after the words: "other fees and charges".

3. **Imposition of subject matter restriction and word limit:** The amendments introduce a new Rule 3(ka) below the existing Rule 3(ba) imposing two kinds of restrictions:

a) a citizen is allowed to seek information on one subject matter only in one RTI application. If the request includes multiple topics then the PIO is instructed to answer the first point only; and

b) the application must not, ordinarily, exceed 150 words.

Bihar appears to be following in the footsteps of Karnataka which introduced similar restrictions at the behest of the Karnataka State Information Commission in 2008. File notings, related to the decision-making process accessed under the RTI Act, revealed that the inspiration for the amendment was drawn from the regulations governing the raising of starred questions in the Karnataka legislature. Legislators are required to restrict their questions put to the government to one subject matter described in not more than 150 words. The file notings revealed that the Karnataka Information Commission had before it three cases where requests were made for voluminous information in lengthy

applications. The Commission initiated the amendments exercise in order to discourage such applications in future based on a very miniscule number of RTI applications.

These restrictions are retrograde and will negatively affect the fundamental right of citizens to seek and obtain information from the Bihar Government for the following reasons:

a) **Rule 3(ka) places unlawful limitations on the fundamental right to information:** Rule 3(ka) places unlawful limitations on the citizens' fundamental right to information. The right to information is a fundamental right derived from the fundamental right to freedom of speech and expression guaranteed under Article 19(1) of the Indian Constitution. Restrictions on these rights may be placed only on grounds such as sovereignty and integrity of the State, public order, morality and decency, defamation, incitement to offence, friendly relations with foreign States or contempt of court, as enumerated in Article 19(2). Limiting the space available for the citizen to express himself/herself is an unacceptable restriction on both the fundamental right of speech and expression and the fundamental right to seek and obtain information. This is undesirable and goes against the letter and spirit of the Indian Constitution.

   Furthermore, under Article 350 of the Indian Constitution any citizen may submit a written representation regarding any grievance he/she may have to any government officer. There is no restriction on the word limit or diversity of the subject matter contained in such representations. There should be not be any unlawful restriction on RTI applications either because they are often filed in order to seek redress of a grievance arising out of maladministration or unaccountable decision making in a public authority. **When the regular grievance redress mechanism in public authorities has become defunct due to neglect or conscious design, RTI applications are providing an important outlet for aggrieved citizens. The Bihar Government needs to look into this aspect of RTI-usage seriously and improve its systems for handling complaints from citizens rather than strive to impose unreasonable restrictions on their right to express themselves or seek information from public authorities.**

b) **Rule 3(ka) amounts to increasing grounds for refusal:** The RTI Act gives effect to the fundamental right of all citizens to access information from public authorities at the level of the Central and State Governments. According to section 7(1) of the Act only sections 8 and 9 are valid limitations on the exercise of this right. No other limitation is recognised in the law. By requiring the PIO to deal only with one subject matter contained in an RTI application the Rule effectively empowers him/her to reject the remaining points. This amounts to increasing the grounds for rejection of an application beyond the grounds mentioned in the principal Act. The Bihar Government does not have the power to impose additional restrictions on citizens' rights protected by a law passed by Parliament.

c) **Rule 3(k) will only cause an increase in the number of RTI applications:** Experience indicates that ordinarily applicants seek information about not more than 3-4 points in one RTI application. The number of applicants seeking voluminous

information is very small compared to the totality of information requests received in a given year. The manner of handling such requests for voluminous information is discussed below (page 8). Imposing a word limit and subject-matter restriction on RTI applications will only lead to an exponential growth in their numbers. Instead of filing one request seeking 3-4 points of information, citizens will file 3-4 applications henceforth. Consequently the workload of the public information officer will increase 3-4 fold. As a result there is every likelihood of a proportionate increase in the number of first and second appeals as well. **This new Rule will only succeed in creating more headaches for public authorities and the State Information Commission in Bihar.**

d) **Rule 3(ka) has enormous potential for misuse:** Rejection of an RTI application on the ground that it contains more than one subject matter is not uncommon in public authorities around the country even in the absence of a rule like Rule 3(ka). There will be cases where it may be necessary to give some explanation to the PIO as to what information is being requested and this may at times exceed the word limit prescribed in the new Rule. Under Rule 3(ka) PIOs will be tempted to reject an application on the ground that it exceeds the word limit. **Should an application be rejected because it is five or ten words in excess of the word limit? This Rule is another instance of arbitrariness that has come to characterise the attitude of the Bihar Government towards implementing the RTI Act.**

This Rule also places an unreasonable amount of discretion in the hands of the PIO while deciding what constitutes a 'single subject matter' in an RTI application. As this phrase is left undefined in the Rules it is likely to be misused more often than nought. For example, let us assume that an applicant seeks a copy of the annual budget of a gram panchayat [required to be proactively disclosed under section 4(1)(b), but rarely done so] for the year 2008-09, a list of developmental works undertaken under various schemes for the same year in the same gram panchayat and a certified sample of the materials used in the construction of the road connecting the village to the nearest district road under the Prime Minister's Gram Sadak Yojana (PMGSY). Will this application be treated as relating to one subject matter, namely the 'development of the village' or three subject matters, namely, 'annual budget of the panchayat', 'list of development works' and 'PMGSY? The applicant may be a citizen resident of that very village who is genuinely concerned with the rampant corruption and misuse of development funds and may like to obtain this information to hold the concerned officers accountable. Should restrictions be imposed at all on any RTI application?

The primary objectives of the RTI Act are to create an informed citizenry and bring about greater transparency and accountability in the working of all public authorities and contain corruption. Where this right is likely to conflict with other public interests such as optimum use of the resources at the disposal of the Government, the preamble of the Act requires that such conflict be harmonised keeping the democratic ideal as paramount. Plainly said, the democratic ideals as spelt out in the Preamble of the Constitution of India are freedom, equality and justice for all. Instead of creating more convenience to the citizens the Bihar Government has chosen to adopt a retrograde

measure which is geared to put more discretion in the hands of the bureaucracy. The Rule issued by the Government is not in tune with the legislative intent or the philosophy underpinning the RTI Act.

d) **Rules cannot curtail the scope of the citizens' right to information:** The Rule-making power given in section 27 of the Act is required to be used for carrying out the provisions of the RTI Act, not for curtailing them. Rule 3(ka) in effect curtails the scope of the citizen's right. Therefore this Rule must be termed illegal. The State Government does not have the power to tamper with the operation of the Act under the pretext of creating subordinate legislation. **Rule 3(ka) is an unreasonable and unnecessary restriction on the citizens' right to information.**

Recommendation:
Rule 3(ka) must be deleted.

A practical and intelligent interpretation of section 7(9) is preferable: The appropriate method of handling voluminous information requests is for the PIO to read the RTI application carefully and make a reasoned judgment of what can be given within 30 days, subject to the two caveats mentioned in section 7(9) of the Act namely, 'disproportionate diversion of the resources' and 'safety and preservation of the record in question.' The PIO is required by law to inform the applicant how much additional fees will be charged if the information is fit for disclosure. At this stage itself the PIO can inform the applicant that he/she will get only a part of the information if it is not possible to provide all the information requested within the time limit. Under section 7(3) of the RTI Act it is mandatory for the PIO to mention the details of the appellate authority so that the applicant may seek a review of the additional fees required to be paid if he/she thinks they are unreasonably high. The applicant therefore has the space to challenge before the appellate authority the PIO's decision of disclosing only a part of the information requested. This will provide an opportunity to an officer senior to the PIO to judge whether the latter's decision was judicious or not. If the appellate authority believes that the information ought to have been disclosed within the 30-day period he/she may order disclosure. If the information is voluminous, he/she may advise the applicant to prioritise the information he/she needs urgently. Applicants are amenable to such negotiation if only PIOs and appellate authorities would adopt a more considerate approach to handling information requests.

There is no compulsion on the PIO to provide access to all the information sought just because it is being sought under the RTI Act or because there is a fundamental right to information. The PIO has the space to talk to the applicant, inform him/her of the extra time that may be required to comply with the request fully. If the applicant agrees, then the PIO may provide the information within the extended time line. Nothing in the law prohibits the PIO from taking such humane and considerate action. If the applicant does not agree then the appeals route is always open to him/her. In any case there is no unnecessary burden placed on the PIO under the existing scheme of processing RTI

applications. There is no reason for complicating this system by placing unreasonable restrictions on the applicants.

4. Restrictions on transfer of applications received in person or by post: Section 6(3) of the RTI Act enables a PIO to transfer an application partially or wholly if it is related to the working of a public authority other than his/her own. Amendments have been incorporated to Rule 4 providing detailed instructions to handle this process ostensibly based on the guidelines issued by the Department of Personnel, Government of India in 2008. The amendment to this Rule is reasonable in all respects except where multiple public authorities are involved or where an application is received in the *Jaankaari* call centre. The new Rule 4(6) states that where an application partially relates to the working of the public authority, which received it in the first instance, but also contains information points that relate to the working of multiple public authorities, the PIO is not required to transfer the relevant parts to the concerned public authorities. Instead he/she will advise the applicant to approach those public authorities with separate applications.

This Rule may work to the best interests of both the PIO and the applicant in a situation where comprehensive proactive disclosure under section 4(1)(b) of the RTI Act has been made by all public authorities at all levels of the administration. Implementation of this provision of the RTI Act has been poor in Bihar as well as in other States. The objective of proactive disclosure is to make available to every citizen a wealth of basic information about the working of a public authority without waiting for him/her to file a formal request. When such basic information about all public authorities is not easily available in the public domain, it is only natural that an applicant may club multiple requests in one application. Further, BPL and unlettered applicants may not be able to access even this kind of information in order to prepare an application cautiously. So it is not fair to empower the PIO to refuse to transfer parts of the application to concerned public authorities. This does not amount to reasonable assistance that a PIO is required to provide every applicant under section 5(3) of the RTI Act. This Rule may be dropped until such time when a comprehensive exercise regards proactive disclosure has been completed by every public authority at all levels of its operation and is easily accessible to all persons in the public domain.

Recommendation:
Rule 4(6) must be dropped until such time when proactive disclosure has been made by every public authority and is regularly updated and easily accessible to every citizen in real time.

5. Transfer of applications received by *Jaankaari* call centre: Rule 4(7) introduced by the amendments states that if the *Jaankaari* call centre transfers an application to the wrong PIO, such PIO may transfer the application to a competent PIO under section 6(3) of the RTI Act. However for the purpose of any dispute that may arise in this case at a later date the PIO who received the application in the first instance will not be deemed to be the PIO. While the objective of this new Rule is laudable, its vague construction creates loopholes in the transfer process. The linkage of this new Rule with section 6(3) of the

RTI Act implies that the transfer to the proper PIO must be made within five days and the applicant should be informed in writing. However by stating that the first PIO will not be considered as the competent PIO for the purpose of disputes, the new Rule absolves him/her of any responsibility for causing delays. For example, if the first PIO does not transfer the application within the stipulated time of five days, he/she cannot be hauled up before the Information Commission as he/she will claim immunity under because according to Rule 4(7) he/she is not be deemed the PIO for this case. The PIO of the competent public authority will on the other hand shirk responsibility for the delay by arguing that he/she was not able to process the application as it did not reach him/her on time. **In effect both PIOs will escape clean while the right of the applicant to have his application processed in a timely manner will suffer with no remedy. A major loophole is created by Rule 4(7). This Rule should be amended to clarify the position that the first PIO will still be responsible for delays. This can be done by simply deleting the immunity granting clause in Rule 4(7).**

Recommendation:
In Rule 4(7), the last sentence beginning with *"Aise maamlon mein…"* must be deleted.

Concluding Recommendation

CHRI urges the Bihar Government to take serious note of the lacunae in the *RTI (Amendment) Rules, 2009* which are clearly anti-poor and RTI-unfriendly. CHRI also urges the Bihar Government to immediately amend the Rules as recommended above and issue a fresh Gazette notification.

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