

## COMMISSIONS AND OMISSIONS IN THE ORISSA RTI RULES VIS-À-VIS RTI ACT' 05

**Table 1: Ultra vires, Repugnant, Deficient and Redundant Provisions made under Orissa RTI Rules vis-à-vis RTI Act 2005.**

**Table 2: Critical Omissions in the Orissa RTI Rules vis-à-vis RTI Act 2005.**

**Table 1: Ultra vires, Repugnant, Deficient and Redundant Provisions made under Orissa RTI Rules vis-à-vis RTI Act 2005.**

Sl.	Matter	Ultra vires of the RTI Act (reasons)	Repugnant, Deficient & Redundant vis-à-vis the RTI Act (reasons)	Recommendation
1.	Rule-2 (e): Identity of citizenship of an applicant (such as Voter Card or Passport etc. to be produced before the PIO for his satisfaction about the citizenship status of the applicant).	Section 6(2) forbids the applicant from disclosing any personal detail to the PIO except his contact address. Moreover, under Part II of the Constitution or Citizenship Act 1955, an Indian is not provided with any citizenship card unlike the practice in many other countries, which he can show to the PIO. Pass Ports are held by a microscopic minority of the population, while persons below 18 years have no voters' identity card at all.		To be deleted.
2.	Rule-3(1,2 &3) Appointment of PIOs/APIOs and 1 <sup>st</sup> Appellate authorities.		Deficient, because Section 4(1b-xvi) requires names and other particulars of the PIOs to be declared, not designations only.	Each public authority to publish the list of PIOs/APIOs and Appellate authorities by name and other particulars, in the format of Manual-7 of GOI's 'Template for Information Handbook under RTI Act' .

3.	Rule-3(4)- PIO to inform the Head of Dept about delay in furnishing information for reasons beyond his control.		Repugnant and Redundant, because a PIO may escape the obligation to provide information timely as contemplated under the Act, just by writing to his HOD.	To be deleted.
4.	Rule 4(1)- Only a written application in Form A having 11 Columns, and that too filled up correctly, can be entertained.	The Act doesn't provide for a compulsory, written application form. Rather Sec.7(9) says that the information shall be provided in the very form in which it has been sought. Sec.6(1b) says that a person can make an oral request, which the PIO is bound to reduce to writing .		The provision for a compulsory, written and complex Application Form should be deleted. An application Form, if at all felt necessary, should be made simple and optional.
5.	Rule 4(2)- An applicant has to satisfy the PIO about his identity, before his application is entertained at all.	Section 6(2): an applicant shall not mention any personal detail except the contact address.		To be deleted.
6.	Rule 4(1)- A non-BPL person has to append the proof of the application fee paid in the form of Treasury Challan or Cash only.		Deficient, because- how can a person who lives in a remote village, far-off from Treasury, submit instantly the proof of the application fee? Again, for payment in cash, one has to visit the PIO personally always. Why not other modes of payment convenient to the citizens be allowed?	A variety of modes of payment such as money order, bank cheque/draft, postal order and court fee stamps etc, besides the prescribed treasury Challan and Cash, depending on the convenience of the applicant living in any part of the State, should be allowed.

7.	Rule 4(1)- The BPL persons are exempted from Appl. Fee only and are required to pay other 2 kinds of fees, exempted by the RTI Act.		Repugnant and Deficient, because Sec-7(5) exempts the BPL persons from Fees for Application, Cost of Information and Cost of Electronic medium.	The provision to be added that BPL persons be exempted from the other 2 fees (cost of information) and (cost of electronic medium) as mandated under Sec-7(5) of RTI Act
8.	Rule 4(1)- An application can be submitted through electronic means.		Repugnant and deficient, because, firstly, Form-A provides no scope for the reply or information to be provided through electronic means [vide Column 5(d and e)], and secondly the Email IDs of PIOs/Appellate Authorities are not publicized yet as required suo moto under Sec.-4 (1b-xvi) of RTI Act.	Provision for a PIO to supply the requested information through email to be made along with the publication of the Email IDs of all the PIOs and Appellate Authorities in the State.
9.	Rule 4(1)- A BPL applicant has to submit his BPL card before the PIO issued as per the latest BPL list, if he wants the exemption of appl. fee.	Sec-4(1b-xii) of RTI Act says that the list and details of beneficiaries of each subsidy programme, under which the BPL category comes, must have been published suo moto by the appropriate public authority through various means including internet [Sec.4(4)] before 12 <sup>th</sup> October last. Since the BPL list is mandatorily available with the public authorities, they can check at their end whether a person is a BPL or not, without having to rely on the proof to be given by the applicant.		The provision for an applicant to produce his BPL card is to be deleted, and alternatively the provision is to be made for the PIO to check from the published list of BPL families about the BPL status of a person claiming to be so.

10.	Rule 4(2)- PIO to intimate the applicant in Form B about the cost of providing information		Repugnant and deficient, because the Sec.7(3a) says that the PIO has to intimate the detail, item-wise breakup of the total amount payable, whereas the Form B provides for mentioning the total payable amount only.	The Form B should contain a format for mentioning the detail, item-wise breakup of the total amount payable by the applicant.
11.	Rule 4(2), Form B, and Schedule 1(Part-II) require the payment for information to be made in cash only.		Repugnant and deficient, because, should a person of Malkangiri, for instance, who applied through post or email to a PIO at Capital have to come all the way physically to make the payment in cash only?	A variety of modes of payment such as money order, bank cheque/ draft, postal order, court fee stamps and Treasury Challan besides Cash should be allowed for payment, for the convenience of an applicant living in any part of the State.
12.	Rule 5(1): PIO to intimate rejection in Form C under Sec 7(1) of the RTI Act.	Sec 7(1) of the Act says that an application can be rejected only on the grounds of Sections 8 and 9, which are to be specified by the PIO. But the Form C in stead of providing necessary space for mentioning the specific grounds, out of the so many, as covered under Sec 8 & 9, simply says in Col.(1) 'It comes under the exempted category covered under Sec. 8 and 9 of the Act.'		The Rule should provide for the specific grounds pertaining to Sec 8 and 9, to be mentioned by the PIO in the Form for intimation about rejection.
13.	Rule 5 & Form C	Sec 7(1) provides for rejection only on specific grounds covered under Sec 8 and 9, and doesn't thereby allow the PIO to reject an application on other grounds. But the Form B besides the Col-i (on Sec 8 & 9), provides for many extraneous grounds [viz. application not complete in all respects (Col-ii), identity		Form C should be amended to provide for mentioning the specific grounds of rejection as relevant to Sec 8 and 9 only. Besides the letter of rejection should mention the details of appellate authority as required under Sec 7(8) along with the specific name and source of the published material

		not satisfactory (Col-iii), available in published material (Col-iv), prohibited under Sec 24-4(Col-vii), and for any other reasons (Col-ix).		containing the requested information.
14.	Rule 6- Meeting of Recommending Committee for State Information Commissioners.		Deficient, because, it doesn't provide for publishing the recommendation of the Committee for public comments, as required under Sec 24 of Orissa General Clauses Act 1937 and Sec 4(1c) of the RTI Act.	A provision to be inserted for publishing the recommendation of the Selection Committee for Information Commissioners, to elicit public opinion on the names so recommended.
15.	Rule 7(2,3,4) Fees for 1 <sup>st</sup> Appeal (40/-) & 2 <sup>nd</sup> Appeal (50/-).	Section 27(2) or any part of the RTI Act doesn't provide for any fee to accompany an appeal to be made, whereas the Orissa Rules have provided for the same.		To be deleted.
16.	Rule 7(1, 3): It is the burden of an appellant to file his appeals to the appellate authorities.		Repugnant and Deficient, because as per Sec 5(2), it is the duty of the PIO to forward both 1 <sup>st</sup> and 2 <sup>nd</sup> appeals to the respective appellate authorities.	Provide for the PIO to forward the appeals to concerned authorities, if the appellant wants so. Alternatively, the appellant can directly approach the appellate authorities, for which no Form or Court Fee is at all required.
17.	Rule 8- State Government having power to issue guidelines for implementing the Act and Rules.		Deficient, because, as per the Section 4(1c) of RTI Act, the public authority concerned with the rule-making business under the Act should first of all publicise the draft rules to elicit public opinion before finalising them.	A provision to be added to Rule-8 that every guideline to be made under the Act or Rule should be first publicized for public comments before being finally notified in the official Gazette.

17.	Rule-9 Penalties against the defaulter PIOs under Section 20 of RTI Act		Deficient, because the Rule prescribes monetary penalty only as per Sec 20(1), but misses to provide for penalty in terms of PIO's service career as per Sec 20(2).	Provision to be made for penalty against a defaulter PIO in terms of his service career as required under Sec 20(2).
18.	Rule 10- Cost of damage caused to public property during sample collection, to be collected from the applicant	(1) The Act nowhere envisages such an absurd and obnoxious provision which compels the citizen applicant to pay for the damage caused to public property, if any, by the PIO in course of his collection of sample for the applicant. (2) Rather the Sec 19(8b) provides for just the opposite, i.e. the PIO has to compensate the citizen for any loss or detriment suffered.		(1) Rule-10 in its present form should be deleted.  (2) A new Rule-10 should be inserted to provide for the concerned PIO to compensate the applicant citizen for any loss or detriment suffered by him, as required under Sec 19(8b) of the RTI Act
19.	Rule 11(2)- Register to be maintained in Form G		Repugnant & deficient, because the Form G provides for transaction through Bank draft, while the Schedule on Fees and Mode of Payment omits to mention it.	(1) Provide for a variety of modes of payment such as money order, bank cheque/ draft, postal order, court fee stamps and Treasury Challan besides Cash to facilitate an applicant, and (2) modify the Form G to include the said variety of payment modes.

20.	Rule-12, Expenditure to be incurred on production of witness/evidence, to be deposited in advance by the appellant before the Information Commission	This absurd, anti-citizen Rule is diametrically opposite to the Sec 19(5) and 20(1) of the Act, that says- in any appeal proceedings the onus to prove one's innocence vis-à-vis the complaint or appeal by a citizen shall lie on PIO himself.		(a) Rule-12 in its present form should be deleted. (b) Alternatively, the Rule-12 should provide for the mechanism of collecting all the expenditure for court expenses from the defaulter PIO, as required under Sec 19(5) and 20(1) of the RTI Act.
21.	Rule-13: Realizing the damage and penalties from the citizen's landed property.	This very absurd and anti-people Rule is in absolute contradiction with letter and spirit of RTI Act, which clearly stipulates that any damage or penalty, if at all chargeable, is to be realized from the PIOs and public authorities [Vide Sec 19(5), 19(8b) & 20(1)]		To be deleted.

**Table 2: Critical Omissions in Orissa RTI Rules vis-à-vis RTI Act 2005**

[Since Section 27(1) of the RTI Act says that each appropriate Government has to make Rules to carry out the provisions of the Act, the Government of Orissa should draft the Rules on matters, which are not covered under the Rules published so far by them.]

Sl.	Provisions Under RTI which Orissa Rules have omitted to address	Recommendation for incorporation into Orissa Rules
1.	<u>Section 4(1a)</u> says that computerization of the duly catalogued and indexed data of all public authorities along with their networking at national level be done in such a manner as to facilitate a citizen's easy access to Information.	The Orissa Rules should specify a time-limit within which to complete the computerization and networking of the data held by public authorities.
2.	As per <u>Section-4 (1b)</u> , the public authorities should have by 12 <sup>th</sup> October 05 completed the suo moto disclosure of all the 17 categories of information for the members of public to view and inspect them.	Provide for each public authority To adopt the 'Template for the Information Handbook under RTI' as prepared and published by Govt. of India for the purpose.
3.	As per <u>Section 4 (1c )</u> , every public authority should seek the opinion of the concerned public while formulating or taking a decision on every matter of public policy. As per <u>Section 4(1d)</u> , every public authority should provide reasons for its administrative or quasi-judicial decisions to affected persons.	Provide that no policy or decision of a public authority shall be held valid, if it were not finalized on the basis of the public opinion.
4.	As per <u>Explanation to Section 4(4)</u> , each public authority should provide for a variety of effective methods for dissemination of proactive disclosures including the arrangement for inspection of public offices by the citizens.	Provide for each public authority to make adequate arrangement for the citizens to visit and inspect their office, records, staff and worksites in regard to suo moto disclosures. Those who won't carry out this mandate of the RTI Act be punished under Sec 19 & 20 of Act.
5.	As per <u>Section 5</u> , each public authority should designate the PIOs, the duty of whom is also to receive appeals for forwarding the same to the appellate authorities, besides disposing of requests for information.	(i) Designate and publicise PIOs by name and detail contact address, in the manner as given in above said Template, (ii) Provide for PIO/APIOs to receive the appeals for forwarding the same.
6.	As per <u>Section 6(1b)</u> , the PIO is to assist a person, as and where necessary to reduce his/her oral request for information into a written one.	Provide for a PIO/APIO to assist a person in reducing his/her oral request into a written one.
7.	As per <u>Section 6(3)</u> , the concerned PIO is to transfer an application to another PIO with whom the requested information is available.	Provide for a PIO to transfer the application to another PIO with whom the requested information available, within 5 days, with intimation to the applicant.



8.	As per <u>Section 7(1)</u> , the information concerning life & liberty shall be made available within 48 hours of the application so made.	Provide for a PIO to supply the information concerning life or liberty within 48 hours.
9.	As per <u>Section 7(4)</u> , the PIO is to assist a disabled person to access and inspect the sources of information.	Provide for the kind of assistance a PIO has to extend to enable a disabled person to access and inspect the sources of information as desired by him.
10.	As per <u>Section 7(6)</u> , the PIO is to provide information free of charge, as and when it is not provided within the time-limit prescribed.	Ensure the provision to supply the requested information free of charge, when the PIO fails to provide within the time-limit.
11.	As per <u>Section 7(9)</u> , the PIO shall provide the Information in the very form in which it has been sought by the applicant, keeping in view the resources and preservational safety of the record in question.	Provide for the PIO not to insist on the specific form in which an applicant has to place his request, but to cater to his manner of requesting for information.
12.	As per the <u>proviso to Section 8(1)</u> , an information which even comes under the exempted category, can be provided to an applicant citizen, if that is given to the Parliament or State legislature.	Provide for the PIO to consider the accessibility of a piece of information by a citizen in the light of its admissibility to the legislature.
13.	As per <u>Section 8(3)</u> , any information on a matter or event that took place 20 years before, can be given to an applicant citizen.	Provide for the inventory-building for the information concerning the matters or events that took place 20 years before, so as to provide them to the applicants as and when the latter want.
14.	As per <u>Section 10</u> , the part of a document containing the exempted information can be severed from the other part, which is not exempted from disclosure.	Provide for specific rules for the PIO to sever the exempted part from a document so as to supply the non-exempted information to an applicant.
15.	As per <u>Section 11</u> , in case of an application for a third party information, the PIO has to issue notices to the third party, and based upon the representation by the latter, to decide on the admissibility of the said information to the applicant.	Provide for the detail course to be adopted by the PIO to dispose of applications concerning third party information.
16.	As per <u>Section 15(1,2,3)</u> , the Information Commissioners including the Chief shall be appointed by the Governor on the recommendation of the Selection Committee. As per <u>Section 4(1c)</u> , every public authority shall publicise all relevant facts while taking a decision. Again, as per <u>Section 4(1b-vii)</u> , every public authority should have arrangement for consultation with the members of public before adopting any policy or decision.	Provide for publishing the names recommended by the Selection Committee for the constitution of Information Commission to elicit public views on the same. The Section 23 of General Clauses Act 1897 and Section 24 of the Orissa General Clauses Act 1937 prescribe the said procedure

		as a legal obligation, besides the Section 4(1c) of RTI Act 2005.
17.	As per <u>Section 15(4)</u> , the State Information Commission after being constituted, shall function autonomously, without being subjected to directions by any other authority.	Provide that the Information Commission shall develop their own rules of business concerning the disposal of appeals and complaints under the Act.
19.	As per <u>Section 18(1a)</u> , the Information Commission shall receive complaints directly from the aggrieved citizens, against the PIOs and public authorities on their failure to implement the provisions of RTI Act.	Provide for the receipt by the Information Commission of the Complaints directly from the citizens along with the provision for their acknowledgement and time-bound disposal.
20.	As per <u>Section 19(1)</u> , the 1 <sup>st</sup> Appellate authority shall receive 1 <sup>st</sup> appeal from an aggrieved citizen.	Provide for the receipt of the acknowledgement of the 1 <sup>st</sup> appeal to be so made.
21.	As per <u>Section 19(3)</u> , the Information Commission shall receive the 2 <sup>nd</sup> appeal from a citizen aggrieved by the decision of the 1 <sup>st</sup> appeal.	Provide for the receipt by the Information Commission of the 2 <sup>nd</sup> appeals from the citizens along with the provision for their acknowledgement and time-bound disposal.
22.	As per <u>Section 19(5)</u> and <u>20(1)</u> , in any appeal matter, the onus to prove that the PIO was diligent and innocent shall lie on the PIO himself.	Provide for the detail procedure as to how the recalcitrant PIO shall appear and bear the case expenses required before the Information Commission in order to execute the onus lying on him.
23.	As per <u>Section 19(8b)</u> , the Information Commission may require a public authority to compensate for loss or detriment suffered by a complainant.	Provide for the detail mechanism of how the amount of compensation shall be collected from the concerned public authority, and thereafter paid to the complainant.
24.	As per <u>Section 20(2)</u> , the Information Commission can recommend disciplinary action against a PIO for his mala fide conduct in respect of providing information to the citizens as required under the Act.	Provide for the specific kinds of disciplinary action in terms of the service conditions, that can be awarded by the Information Commission against a PIO, who is proved guilty.
25.	As per <u>Section 22</u> , the provisions of this Act shall have effect notwithstanding anything inconsistent contained in any other law or instrument in force.	Provide for a time-bound schedule of the identification of the laws and instruments repugnant to the Act for their early repeal or amendment.

26.	As per the proviso to <u>Section 24(4)</u> , a person can apply for information concerning corruption or human rights violation to the security and intelligence agencies of the State which are otherwise exempted from the purview of the Act.	Provide for the detail procedure and form in which a citizen can apply for information to the security and intelligence agencies on matters concerning corruption and human rights violation, and how it shall be disposed of.
27.	As per <u>Section 24(5)</u> , every notification on the list of security and intelligence agencies of the State for the purpose of this Act shall be laid before the State legislature. As per <u>Section 4(1c and d)</u> , every proposal made by a public authority should be placed before the public while being formulated, and every decision administrative or quasi-judicial, once taken, should be placed before the public along with the reasons thereof.	Provide for the draft notification of the security and intelligence agencies of the State enlisted for the purpose of this Act, before the public view, following which the notification may be placed before the State legislature.
28.	As per <u>Section-26 (1a)</u> , the public authorities are to hold awareness programmes for the people, especially the disadvantaged sections in respect of their rights under the Act.	Provide for a time-bound awareness programme, to be organized by each public authority in their respective area for the general public, especially the the Dalits about their rights under the Act.
29.	As per <u>Section 26(2 and 3)</u> , the State Government is required to publish in a compiled form and continue to update the detail guideline on how the citizens can make use of the Act, within 18 months of the commencement of the Act.	Provide for a time-bound schedule for each public authority to complete their respective guideline, for the citizens to make best use of the various provisions of the Act.
30.	As per <u>Sections 27 and 28</u> , the appropriate Government and competent authorities are required to make rules to carry out the provisions of the Act.	Provide for every rule proposed under the Act to be published for public comments, before it is notified in the Gazette.