

A Draft Note on the Review and Reform of the Orissa RTI Rules 2005

The Right to Information Act 2005 has already come into full force with effect from 12th of October all over the country including Orissa. As required under Section 27 of the Act, the Government of Orissa have announced on 8th of October a set of Rules, called the Orissa Right to Information Rules, 2005 for operationalising the Act in the State. The said Rules consisting of 13 Rules, 7 Forms and a Schedule are available on the website of the Dept. of Information and Public Relations, which is the nodal agency for implementation of the Act in the State. Moreover, on 9th and 10th instant last the leading Oriya dailies carried full-page advertisement informing the members of the public about the Orissa Government's decision to implement the Act along with a model 11-Column Application Form and a list of the Fees chargeable on different heads. **The full text of the Orissa Rules under the Act which is available only on the abovementioned website, has not yet been brought to the general notice of the people at large.**

Following the announcement of the said Rules, a **quick Consultation** of the representatives of selected civil society groups working in the State under the aegis of **Right to Food Campaign, Orissa** (a State level Network of Civil Society Groups) was held at DRTC-CYSD, Bhubaneswar **on 9th instant to review the said Rules and suggest appropriate modifications**, wherever necessary for making the operationalisation of the RTI Act 2005 genuinely effective and user-friendly in the context of Orissa. To start with, the participants of the Consultation felt quite unhappy about the hot-haste and roughshod manner in which the Government of Orissa straightaway brought about a sudden notification of their Rules under RTI Act on the orders of Governor just on the eve of the Puja holidays and that too just on the verge of the dateline for the full enforcement of the Act, bypassing the legal imperative of consulting the members of public prior to the said notification. Besides the members of Consultation deliberated on various commissions and omissions in the Orissa RTI Rules so notified. Based upon the consensus of these deliberations, a **Memorandum containing a gist of the said review along with a list of corrective suggestions was presented to Sri Navin Patnaik Chief Minister, Sri Debasis Nayak Minister of State for Information and Public Relations, Sri Biswabhusan Harichandan Minister Revenue, Sri Janaki Ballav Patnaik Leader of the Opposition and Sri Maheswar Mohanty Speaker of the Orissa Legislative Assembly for their kind perusal and timely action.**

Pursuant to the objective and rationale of the said Memorandum, further discussions have been made meanwhile with several individuals and groups belonging to various walks of life across the State. Some more ideas novel and useful have come forth from them, their central thrust being to help the Orissa RTI Rules evolve into the best possible of its kind in the country. **What is presented below is a draft note on the latest and comprehensive position of the civil society groups on the Orissa RTI Rules 2005, for the purpose of carrying forward the ongoing discourse around it to a logical culmination.**

1) **On the FORM-A** : *[Rule 4 (1)] relating to Application for Information under Section 6(1) of the RTI Act :*

With a view to ensure an easy and user-friendly process for accessing information on the part of the vast millions of poor, semi-literate and literate people including the BPL persons, the original RTI Act 05 under the Sub-section (2) of its Section 6 clearly says, **'An applicant making request for information shall not be required to give any other personal details except those that may be necessary for contacting him'**. But the Form-A as prescribed under the Rules is a highly complex, elongated and exacting 11-column format, which an average person would not only feel difficult to fill up, but some columns of which are also absolutely redundant in view of the original mandate of the Act. Our suggestions:

- (a) **The Column 7 (Has the information been provided earlier?) and Column 8 (Is this information not made available by the public authority?), are redundant and may be altogether struck off from the Format.**

Were the Column 7 to be retained, the concerned PIO might reject an application on the possible ground that the said information was provided earlier and might quote in justification of his rejection the same spacious ground mentioned under Column-ix of Form-C (Intimation of Rejection) which reads, 'For any other reason please see overleaf'. And reversely, it is very much possible that a person might apply for an updated version/statement on the same particular piece of information, which he had received earlier. And precisely for that reason, the Sections 4(1b) and 4(2) make it obligatory on the part of the public authorities for updating their information bank at regular intervals so as to enable the citizens to avail the latest information on a subject of public interest. Moreover, the Courts, Banks and almost all public offices do demand as a matter of principle the latest copy of an official document, which a person might have to submit in connection with a transaction with the said institutions. It is just impossible to understand why an applicant should be required to comply with this column, when he (if a non-BPL) is prepared to pay the cost of the information besides the application fee. **So the Column 8 which is redundant and restrictive vis-à-vis the citizen's larger right to information as sanctioned under the Act should be struck off from the Form-A.**

As regards the redundancy of Column 8, the argument is like this- a person may just apply for a piece of information to a PIO whom he believes to be competent enough to supply the requested information. Were he sure about the authentic source of the information he needs, he might be able to scout this information on his own without having to go through the 30-day long, costly business of application making. Under the circumstances, retaining this column, as it is would give only an undue discretion to the PIO to reject an otherwise genuine request for information showing the reasons as stated under Form C. If the applicant writes 'yes' against the column 8 of Form-A, then the PIO might reject the request quoting the column-iv under Form-C (Intimation of rejection) which says, 'The information is contained in published material available to public'. Shall this sketchy reply help the applicant access the required information at all? If the applicant writes 'no', the PIO who wants to reject the request might take the pretext of column-ix under Form-C, which says, 'For any other reason please see overleaf'. The question arises, can there be any other reason for rejecting an application beyond the reasons explicitly stated under the RTI Act? Above all, the Column 8 is redundant for another basic reason emanating from the RTI Act itself. The RTI Act in its Section 6(3) firstly makes it obligatory on the part of a PIO to accept a request for information from any person even if the information asked for is not available with him, and secondly to transfer such an application to the concerned PIO who has or deals with the said information within 5 days of the receipt of the application, along with an intimation to the applicant about such transfer. **So the Column 8 which is redundant from all points of view and potentially limits a citizen's scope of access to information by way of enlarging the discretionary powers of the PIO as against the liberal provisions made under the RTI Act should be altogether struck off from the Form-A.**

- (b) **A BPL person, who is required to submit a proof of his/her BPL status under the Column 11, should not be again required under Column 4 to furnish 'particulars in respect of Identity of the applicant'.**
- (c) Since the Section 6(1) starts with the saying, 'A person (*not 'citizen' - Italics ours*) who desires to obtain any information under this Act ..', and **since the Section 6(2) categorically enjoins upon the applicant not to mention 'any other personal details except those that may be**

necessary for contacting him’, the applicant shouldn’t be compelled to furnish so-called ‘particulars of citizenship identity’ (such as electoral photo identity card, a passport or any other document to satisfy the authority about the citizenship of the person [Vide Rule 1(e)]. Therefore our suggestion is that **either the Column 4 be struck off or the response to the Column 3 of the Form-A may be made optional**, that is, if a person has no such document available readily with him, he/or she may write ‘not available’ or ‘not applicable’.

- (d) At the Column 2, the applicant is required to mention ‘Father/ Spouse Name’. As is well-known, there are many orphans who don’t know the name of the father and who may be at the same time unmarried too. Such a person can’t provide either the name of his father or spouse in his application. **So the words ‘Parents/Guardian’ should be added to the existing expressions at Column 2.**
- (e) The format requires an applicant to give his/her full signature at the end of the application. But as is well-known, hundreds and thousands of persons in the State, being illiterate as they are, can’t sign a paper at all. **So the words ‘or thumb impression’ should be added to ‘Full Signature’.**
- (f) The **Rule 4 of Orissa RTI Rules allows a person to submit his application for information (Form-A) through electronic means** i.e. through email. But the corresponding Form-A at its Column 5 (d) and (e) provides for two options only i.e. through post or in person. **So the option for receiving the information through email from the concerned PIO should be added to the said Column-5**, and simultaneously the Email IDs of the PIOs and Appellate authorities should be at once publicized for the knowledge and use of the public at large.

2) **On the Form-B** [See Rule 4(2) 1] *Information for Payment:*

This Form requires a PIO to inform the Applicant inter alia about the gross total of the amount to be paid by him for getting the requested information. But the **Section 7 (3a) of the RTI Act clearly and categorically enjoins upon the PIO to inform** not the gross total only, but **‘the details of further fees representing the cost of providing information as determined by him, together with the calculations made to arrive at the amount’**. So, in place of the only word ‘fee’ occurring at the end of the format, **the words ‘Head-wise Break-up of the total fees’ should be inserted.**

Next, this letter of intimation allows only ‘Cash’ to be deposited. But the **other forms of payment such as through Treasury Challan, Cheque, DD, Stamped Paper and Money Order etc. should be allowed too.**

This Form should contain **some additional columns**, such as (a) for intimating the decision of the PIO **on Transfer of Application to another PIO who can supply the requested information**, as and when required under Section 6(3) of the RTI Act; (b) for intimating the decision **on the severe-able information** as required under Section 10 (2); and (c) for asking the applicant, **in case he/she be ‘sensorily disabled’ as to what assistance would be required to enable him/her to access the information, ‘including providing such assistance as may be appropriate for the inspection’**, as required under Section 7(4) of the Act.

3) **On FORM C:** [See Rule 5(1) and (2)] *Intimation of Rejection:*

In the light of the discussion made in the context of the Form A above, **the column (iii) saying, ‘Your identity is not satisfactory’ is absolutely redundant** and goes against both letter and spirit of the RTI Act and should therefore be struck off.

The last Column (ix) ‘For any other reason please see overleaf’ is redundant, since all the reasons that the Act stipulates for rejecting a request for information, are amply covered under the preceding 8 nos. of Columns mentioned therein. Such an additional provision shall only give an arbitrary handle to the PIO to reject an application even if it has qualified for all other legitimate criteria. So the Column (ix) be struck off.

The Form-C contains a separate column (vii) mentioning the ‘unwarranted invasion of privacy’ as a ground for rejection of the application, whereas the Column (i) [that mentions Sections 8 inter alia] already covers this factor. As is well-known, the Sub-section 1(j) under Section 8 of the RTI Act mentions this very factor itself as a ground for rejection. So the **Column (vii) being redundant should be struck off.**

The last para provides for a very sketchy space for informing about the appellate authority. But **the Section 7(8) of the RTI Act requires the intimation of rejection to inform the applicant about the particulars of the appellate authority** such as name, designation, address of office, phone, Fax, email, website and working hours etc of the Appellate Authority. So the Form C should be modified accordingly.

4) On Form-D and Form-E (Relating to Memorandum for 1st Appeal and 2nd Appeal under Section 19(1) and Section 19(3) of the RTI Act respectively).

The words ‘thumb impression’ should be added to the ‘Signature of the Appellant’ occurring at the end of each Form, for the reasons stated under the Point 1 dealing with FORM- A.

A Format for the Acknowledgement Receipt should be added at the end of each Form, be it for first appeal or the second appeal to help both the appellant and appellate authority to record the date of filing of the appeal.

The Column 6(b) of the Form-E asks the appellant to mention ‘Name of the office or Department to which the information relates’, which is redundant. Needless to say, only because of one’s ignorance about such information on one hand and of his compelling need to access the same on the other, he/she applies under the Act to a public authority whom he/she believes to be having such information. If the said public authority denies the request on some ground or the other, and the first appellate authority justifies this denial, then the applicant so aggrieved by this double denial feels compelled to take recourse to the second appeal before the Information Commission, with the hope (a) to get the desired information, and (b) to get compensated for the loss and detriment suffered in the process. Under the circumstances, how is it possible on the part of the applicant-appellant to provide the information asked for under the Column 6(b) of the Form-E ? **So this Sub-column deserves to be struck off.**

The Section 19(8b) of the RTI Act has provided for the Information Commission to order the concerned public authority ‘to compensate for any loss or detriment’ suffered by the complainant. **So the Form-E should add a column for mentioning ‘the details of the loss or other detriment suffered’ by the Complainant** on account of the failure of the PIO in providing timely information to him. And further the **Rules should categorically mention as to how this amount of compensation shall be collected** from the public authority and paid thereafter to the complainant.

5) OMISSIONS IN THE RULES TO BE PLUGGED IN

- a) The Orissa Rules under RTI should provide for a **time-limit (30 to 45 days) for the disposal of an appeal** by the Information Commission.

- b) The Orissa Rules should specifically prescribe that **each public authority should adopt the Template for the Information Handbook for disclosure of 17 categories of suo moto information** under Section 4 of the RTI Act, as prepared and disseminated by the Ministry of Personnel, GOI.
- c) **The Orissa Rules should specifically provide for each public authority to arrange for adequate infrastructural facilities like reading room and library etc.** including enough sitting and waiting space and toilet for the visitors going for inspection of the records under suo moto disclosures as required under Section 4 of the Act.
- d) The Orissa Rules or the Form-B or Form-C provided there-under bear no provision for supplying the 'severe-able' information to the applicant-citizen as permissible under the Section 10 of the RTI Act. **So the Orissa Rules should be modified to enable the citizens to avail the 'severe-able' information under Section 10 of the Act.**
- e) The Section 24(4) of the RTI Act allows **a citizen to apply for information to the Security and Intelligence agencies of a State, if it concerns 'the allegations of corruption and human rights violations'**. So the Orissa Rules should specifically **prescribe the procedure along with a Form, using which a citizen can apply for information to the notified security and intelligence agencies** under Section 24 (4) of the Act.
- f) **The Section 6(3) of the RTI Act categorically instructs that if an application for information reaches a PIO with whom the said information is not available, then the said PIO shall transfer the application so made, to another PIO who has or deals with the concerned information,** within 5 days of the receipt of the said application, along with an intimation to the applicant about such transfer. But the Orissa Rules under the Act or Forms prescribed there-under are conspicuously deficient in making any provision for such transfer of applications. **So the Orissa Rules should prescribe the necessary procedure and a Form, if necessary for 'Intimation about the Application Transfer' as required under Section 6(3) of the RTI Act.**
- g) The Section 11 of the RTI Act provides for the direction to the concerned PIO as to how an application for a third party information should be disposed of in a time-bound procedure. But the Orissa Rules under the Act or Forms prescribed there-under are conspicuously deficient in making any provision for the same. **So the Orissa Rules should prescribe two additional Forms, such as for (a) the first Notice of Intimation by the PIO to the third party** inviting his opinion/representation, if any, on the possibility for disclosure of the said information supplied earlier by him, as required under the Sub-section-1; and for **(b) the second Notice of the decision taken by the PIO to the third party** as required under Sub-section-3 along with a Statement about the right of the third party to prefer an appeal permissible under Section 19, as required under Sub-section-4 of the Section 11.
- h) **The RTI Act categorically requires a PIO to reduce the oral versions of illiterate or otherwise disabled persons seeking information into written applications** [Vide Section 6(1b) and Section 7(4)]. But the Orissa RTI Rules are silent on how this mandate of the mother law shall be carried out in practice. Considering the vast magnitude of backwardness, illiteracy and various disabilities of the people of Orissa, **the State RTI Rules should provide for the specific provision as to how the PIOs should act in the matter of writing an application for**

an illiterate or semi-literate or otherwise disabled person requesting for information or in the matter of helping them for inspection.

- i) The Orissa RTI Rules have made provision, though a dearly one, for ‘inspection of documents’ as explicit in the Schedule on Fees/Amount attached thereto. **But the said Rules including the Schedule are conspicuously silent about a person’s right to ‘inspection of offices of any public authority’ in regard to the 17 categories of information (For the list vide Section 4-1b)] to be suo moto disseminated by each public authority as mandated under the Explanation to Section 4.** The Explanation to the Section 4 of the RTI Act 2005 reads, “. ‘disseminated’ means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of public authority”. **So the Orissa RTI Rules should specifically prescribe the procedure and a Form of Application, if need be, for facilitating the inspection of offices of each public authority by any person.**

6) ON FEES AND COSTS (*Schedule to the Rules*)

While fixing the cost and fees on various heads, the State Government should respect the rider given under Section 4(4) of the RTI Act [suo moto information to be available free or at the cost price only] and again the rider given under its Section 7 (5) of the Act that all fees should be made ‘reasonable’.

(a) Application Fee:

It may be reduced from the prescribed Rs.20/- to Rs.10/- only, so as to bring it at par with the corresponding amount fixed by the Central Government.

Since the RTI Act no where provides for the application fees to be prescribed for making appeals at the first or second stage (Vide Sections 18, 19, 27 or 28), the **Application fees for the said Appeals as prescribed ‘beyond the scope of the law’ by the Orissa Rules under the Act should be waived.**

(b) Fee for Providing Information:

- (i) Since the inspection of a document, and more so, of a document in the nature of suo moto disclosure involves no material cost and **since the original Act no where provides for an inspection fee to be prescribed, it should be waived too.**
- (ii) **The prescribed type/photocopy charge of Rs.5/- per page of A4 size paper should be reduced to 50 to 75 paise only, to bring at par with the market rate. The computer print-out per page should be reduced from the proposed Rs.10/- to Rs. 2/- to Rs.5/- only.**
- (iii) **The proposed fee of Rs.100/- per CD with cover should be reduced to Rs.15/- to Rs.20/- only to bring it at par with the market rate.**
- (iv) **The proposed fee of Rs.100/- per Floppy diskette (1.44MB) should be reduced to a range between Rs.15/- to Rs.20/- to bring it at par with the current market rate.**

(c) Mode of Payment:

In place of the single mode of payment through cash as proposed under the Rules, **a variety of modes such as cheque, DD, stamped paper, money order and treasury challan besides cash should be prescribed.**

7) ULTRA-VIRES PROVISIONS IN THE ORISSA RTI RULES-

- (a) **The Rule 10 of the Orissa Rules (Calculation of cost of damage)** under RTI Act says, ‘If any damage is caused to the public property in the course of giving any information in the form of samples of materials, the damage caused to such property shall be included while calculating further fees representing the cost of providing the information’. In plain and simple. This provision not only militates against the letter and spirit of the RTI Act, but also is ultravires of the Act itself. As the Section 6(1) of the Act says, it is the citizen who shall apply for the information (including samples if required) with accompanying application fee (i.e. applicable in case of non-BPL persons only) to the concerned PIO, and the Section 7(1) provides for the PIO to supply the requested information including samples if any, on receipt of the cost of providing the information [the cost to be made ‘reasonable’ as per Section 7(5)]. **So it is the duty of the PIO to see that while collecting information including samples no damage is caused to the public property.** Despite this, if any damage takes place, then the concerned PIO should be held responsible and pay for the damage so caused. **It is just impossible to understand why and how an innocent citizen just seeking the information should be compelled to pay for the damage caused by the PIO in course of the sample-collection by him.** Moreover, **the Sections 27 and 28 of the RTI Act** while specifying the various fees to be collected from the applicant **have not mentioned ‘cost of the damage’ to be paid by the applicant.** Rather, the intention of the RTI Act as evident from its Section 19(8b) is clear on the **principle that it is the public authority who has to compensate for any ‘loss or detriment’** suffered by the applicant citizen. So this ultravires Section 10 should be altogether struck off from the Orissa RTI Rules.
- (b) **The Rule 12 of the Orissa RTI Rules (Deposit of Expenditure)** says, ‘The expenditure to be incurred for production of witness or documents before the State Information Commission shall be deposited . . . by the party at whose instance the witnesses or the documents are to be produced’. In plain and simple language, this provision asks the complainant/appellant citizen to deposit the advance fees against the expenditure to be incurred on account of the production of witness/documents necessary in connection with the hearing of his complaint or appeal by the Information Commission. This provision runs diametrically opposite to the principle enunciated repeatedly under the Sections 19(5) and 20(1) of the RTI Act that **‘in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request’.** Thus the Act clearly and loudly obliges the concerned PIO, not the complainant/appellant to bear all the burdens of expenditure necessary in connection with the production of any witness/documents before the Commission. **So the ultravires provision made under the Rule 12 of the Orissa RTI Rules be struck off.**
- (c) **The Rule 13 under the Orissa RTI Rules(Realisation of penalties or damages)** says, “Any penalty or damage or any other sum payable under the Act, if not paid within thirty days can be realized from such person as arrears of land revenue.” But the Rule 9 has already provided for the modus operandi for the payment of the penalty by the PIO including its realization from his salary in the event of his failure to deposit it within the stipulated thirty days. **So there is no need to say again under Rule 13 that the amount of penalty pending against a defaulting PIO would be recovered from the arrears of his land revenue.**

But if one reads the Rule 13 carefully in conjunction with the Rule 10 (Calculation of cost of damage) as discussed above, he/she is left with no doubt that the **Rule 13 seeks to recover the cost of damage from the citizen-applicant against the ‘damage caused to public property’ during the collection of samples of materials as mentioned under Rule 10.** But it has already been shown under Para 7(a) above that **it is simply ultravires to ask the citizen to pay for a damage which has been caused by the PIO** in course of the sample-collection by him. Again, **‘any other sum’ as mentioned under Rule 13 doesn’t carry any meaning, unless specified,** since the original RTI Act clearly, comprehensively and repeatedly lists out the specific kinds of fees (Vide Sections 6, 7, 27 and 28) that may be collected from a citizen-applicant. **So the Rule 13 being both superfluous and ultravires may be struck off altogether.**

8) INVITE PUBLIC OPINION ON THE RULES BEFORE NOTIFYING THEM.

The text of the proposed Orissa Rules under the RTI Act 2005, which has as of today been published on the website only, have not been brought to the public view at large, since only a microscopic minority of people in Orissa have access to the internet. **The exact text of the Orissa Rules, which contains several, objectionable omissions and commissions vis-à-vis the RTI Act 2005 should therefore be widely publicized in various print and electronic media to invite public opinion thereon before their final notification takes place.** The Orissa General Clauses Act 1937 in its Section 24 enjoins upon the State Government to follow this conventional course in respect of the Orissa Rules under RTI Act too. Above all, **the Government of Orissa by their act of sudden notification of the RTI Rules bypassing the public opinion, have already violated the provision made under the Section 4(1-vii) of RTI Act** that enjoins upon each public authority to provide for ‘the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof’. It is worth noting here that this very provision came into force with effect from the 15th June 2005, the date when the President assented it [Vide Section 1(3)]. **If the State Government pay no heed to the suggestion for inviting the public opinion on the Rules so made under the RTI Act, the civil society groups in the State shall be left with no option but to approach the concerned Ministers, Speaker and all Members of the Orissa Legislative Assembly along with Governor to do corrective justice to the arbitrary act of the State administration in notifying an ‘objectionable’ set of Rules including some ultravires ones without any consultation with the members of the public.**

(The draft-note prepared by Sri Chitta Behera, 4A Jubilee Tower, Choudhury Bazar, Cuttack-9, Mobile: 98610-91455, Email: chittabehera@rediffmail.com for circulation and discussion in the Consultation with Media Persons on Orissa RTI Rules 2005 held on 14th of October 2005 at Hotel Keshari, Bhubaneswar under the aegis of Right to Food Campaign Orissa, Plot No-17/A, Laxmivihar , Post-Sainik School, Bhubaneswar)

For Further correspondence, please contact:

Sri Pradip Pradhan

State Convener

Right to Food campaign, Orissa

Mobile: 9337330804, Email: thehumanity@rediffmail.com

