

# Suggestions of the National Campaign for Peoples' Right to Information (NCPRI) on the proposed RTI Rules, 2017

## 1. Appointment of Secretary (Rule 2(j) & Rule 7 of the proposed RTI Rules, 2017)

*"2. Definitions:- In these rules, unless the context otherwise requires,—*

*XXX*

*(j) "Secretary" means an officer so appointed as Secretary to the Commission by the Central Government."*

*"7. Appointment of Secretary to the Commission:- The Central Government shall appoint an officer not below the rank of Additional Secretary to the Government of India as Secretary to the Commission."*

### **NCPRI's comments and suggestions**

The proposed rules undermine the authority of the Commission by giving the Central Government the power of appointing the Secretary to the Commission. The Commission should have the freedom to appoint officers of its choice through a transparent process. Further, the Annual Performance Appraisal Report (APAR) of the Secretary should be written by the Commission for the duration of his/her tenure.

**Therefore, we suggest that Rule 2(j) & Rule 7 of the proposed rules be amended and replaced as follows:**

*"2. Definitions:- In these rules, unless the context otherwise requires,—*

*XXX*

*(j) "Secretary" means an officer so appointed as Secretary to the Commission by the Commission."*

*"7. Appointment of Secretary to the Commission:- The Commission shall appoint an officer not below the rank of Additional Secretary to the Government of India as Secretary to the Commission. For the duration of the tenure of the Secretary, the Annual Performance Appraisal Report (APAR) of the Secretary will be written by the Commission."*

## 2. Application fee and word limit (Rule 3 of the proposed RTI Rules, 2017)

***"3. Application Fee:-** An application under sub-section (1) of section 6 of the Act shall be accompanied by a fee of rupees ten or as notified by Central Government from time to time and shall ordinarily not contain more than five hundred words, excluding annexures, containing address of the Central Public Information Officer and that of the applicant:-*

*Provided that no application shall be rejected only on the ground that it contains more than five hundred words."*

### **NCPRI's comments and suggestions**

It is not clear why rule 3 which is titled as "Application Fee", also includes rules regarding word limit for RTI applications. Therefore, either the title should be revised or the provisions should be under a separate heading.

It appears that the rules seek to empower the central government to revise fee through notifications. As per the provisions of the RTI Act, fee can only be prescribed through rules and therefore, any attempt to empower the central government otherwise, through rules, is without a legal basis.

**Therefore, we suggest that Rule 3 of the proposed rules be amended and replaced as follows:**

***"3(a). Application Fee:- An application under sub-section (1) of section 6 of the Act shall be accompanied by a fee of rupees ten"***

***"3(b). Request for information under the RTI Act:- An application under sub-section (1) of section 6 of the Act shall ordinarily not contain more than five hundred words, excluding annexures, address of the Central Public Information Officer and that of the applicant:-"***

*Provided that no application shall be rejected only on the ground that it contains more than five hundred words."*

### **3. Fee for providing information (Rule 4 of the proposed RTI Rules, 2017)**

***"4. Fees for providing information:- Fee for providing information under sub-section (4) of section 4 and sub —section (1) and (5) of section 7 of the Act or as notified by Central Government from time to time shall be charged at the following rates, namely:-"***

*(a) rupees two for each page in A-3 or smaller size paper;*

*(b) actual cost or price of a photocopy in large size paper;*

*(c) actual cost of price for samples of models;*

*(d) rupees fifty per diskette or floppy;*

*(e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;*

*(f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hours or fraction thereof; and*

*(g) so much of postal charge involved in supply of information that exceeds fifty rupees."*

### **NCPRI's comments and suggestions**

It appears that the rules seek to empower the central government to revise fee through notifications. As per the provisions of the RTI Act, fee can only be prescribed through rules and therefore, any attempt to empower the central government otherwise, through rules, is without a legal basis.

Priced publications fall within the category of “information” as defined in the RTI Act. Therefore, access to photocopies of the publication should be as per the prescribed rules and not as per the price of the publication.

In terms of requiring information seekers to pay postal charges in excess of fifty rupees, this limit must be increased to hundred rupees given the prevailing rates for postage.

Further, information must be sent to the applicant in a manner such that a dated proof of receipt is available with the public authority. Where, due to excess weight, postage is over Rs. 100, the additional amount can be charged to the applicant provided that it is calculated and demanded with the additional fee due. Also, the rules must clarify that the applicant has the right to personally, or through an authorised representative, collect, or have collected, the information without any postal charge.

Also, as the RTI Act states that information shall be provided free of cost wherever it is not furnished in the stipulated time-frame, no postal charges should be recovered from the applicant.

We suggest that wherever the cost of providing information is less than the cost incurred in realising the further fee, information should be provided free of charge. We further suggest that if the applicant so desires, information be made available via email, if possible, free of charge.

**Therefore, we suggest that Rule 4 of the proposed rules be amended and replaced as follows:**

***“4. Fees for providing information:- Fee for providing information under sub-section (4) of section 4 and sub-section (1) and (5) of section 7 of the Act shall be charged at the following rates, namely:-***

*(a) rupees two for each page in A-3 or smaller size paper;*

*(b) actual cost of price of a photocopy in large size paper;*

*(c) actual cost of price for samples of models;*

*(d) rupees fifty per diskette or floppy;*

*(e) rupees two per page of photocopy for priced publications;*

*(f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hours or fraction thereof; and*

*(g) so much of postal charge involved in supply of information that exceeds hundred rupees, provided that no such fee shall be charged to information seekers who choose to collect information personally or through an authorised representative.*

*(h) no fee for supplying information through email;*

*Provided that no fee, under (a) to (g) shall be charged where a public authority fails to comply with the time limits specified in the RTI Act and wherever such fee has been charged, it shall be refunded to the applicant.”*

#### 4. Mode of payment of fee (Rule 6 of the proposed RTI Rules, 2017)

***“6. Mode of Payment of fee:- Fees under these rules may be paid in any of the following manner, namely;--***

*(a) in cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or*

*(b) by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority; or*

*(c) by electronic means to the Accounts Officer of the Public authority, if facility for receiving fees through electronic means is available with the public authority.*

*(d) by any other mode notified by Central Government.”*

#### **NCPRI's comments and suggestions**

For facilitating access to information, it is suggested that other modes of payment of fee such as postage stamps/instruments or money paid receipts or money order also be included.

In several cases, it has been found that PIOs are rejecting RTI applications on the grounds that the mode of payment used has been filled inaccurately or because it has been left blank by the applicant, even though the applicant may have requested the PIO to fill in the requisite details. The role of the PIO, as envisaged under the RTI Act, is to provide assistance to persons seeking information and facilitate them in the process (Section 5(3)). Therefore, in all such cases, the PIO must provide the required assistance in terms of making payment rather than rejecting information requests.

The central government must ensure that facility of making payment through electronic mode is extended to all public authorities covered by these rules. Also, progressively facility of making payment through government payment apps must also be made available.

**Therefore, we suggest that Rule 6 of the proposed rules be amended and replaced as follows:**

***“6. Mode of Payment of fee:- Fees under these rules may be paid in any of the following manner, namely;--***

*(a) in cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or*

*(b) by demand draft or bankers cheque or Indian Postal Order or money order payable to the Accounts Officer of the public authority; or*

*(c) by electronic means to the Accounts Officer of the Public authority, if facility for receiving fees through electronic means is available with the public authority.*

*(d) by any other mode notified by Central Government, including postal stamps.*

*Provided that an application for information shall not be rejected merely on the ground that the instrument of payment of fee is not correctly filled and in all such cases the PIO shall assist the information seeker in making the requisite corrections.”*

## 5. Appeal to the commission (Rule 8 of the proposed RTI Rules, 2017)

### ***“8. Appeal to the Commission:-***

*(1) Any person aggrieved by an order passed by the First Appellate Authority or by non —disposal of his appeal by the First Appellate Authority, may file an appeal to the Commission either online or offline in the format given in the Appendix and shall be accompanied by the following documents, duly authenticated and verified by the appellant, namely:-*

*(i) a copy of the application submitted to the Central Public Information Officer;*

*(ii) a copy of the reply received, if any, from the Central Public Information Officer;*

*(iii) a copy of the appeal made to the First Appellate Authority;*

*(iv) a copy of the order received, if any, from the First Appellate Authority;*

*(v) copies of other documents, if any, relied upon by the appellant and referred to in his appeal;*

*(vi) an index of the documents referred to in the appeal;*

*(vii) A request for condonation of delay in submission of appeal wherever required, giving reasons.*

*(viii) A certificate stating that the matter under appeal has not been previously filed and disposed or are pending, with the Commission or any court; and*

*(ix) Proof of service of appeal to respondent.*

*(2) Every appeal, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly and in double line spacing.*

*(3) Before submitting an appeal to the Commission, the appellant shall cause a copy of the appeal, as the case may be, to be served on the Central Public Information Officer and shall submit a proof of such service to the Commission.”*

### **NCPRI’s comments and suggestions**

Assessments have shown that anywhere between 40 to 60 lakh RTI applications are filed every year in India. A large percentage of these applications are filed by the poor and marginalized and therefore, the process of filing an appeal to the Commission should be people-friendly and not burdened with legalistic procedures. Therefore, we suggest that rather than requiring the appellant to get accompanying documents, “*duly authenticated and verified*”, the requirement should be limited to self-attestation by the appellant. Similarly the requirement to certify that the matter under appeal has not been previously filed and disposed or is pending with the commission or any court, should be done away with.

In terms of serving a copy of the appeal on the PIO, we believe that the Commission rather than the appellant, should be tasked with this responsibility. The Commission is already creating scanned electronic copies of all the appeals and complaints before it. Therefore, it would be the easiest for the Commission to electronically serve a copy of the appeal on the PIO. An electronic delivery will also produce a permanent record of the delivery. Therefore, rather than burdening the appellant with

meeting additional requirements and also incur additional costs in terms of photocopying and posting copies of the appeal, it should be the responsibility of the Commission. Further, since we are suggesting the Rule 9 regarding return of appeal be deleted, the provisos to rule 9 should be brought in after Rule 8(1).

**Therefore, we suggest that Rule 8 of the proposed rules be amended and replaced as follows:**

***“8. Appeal to the Commission:-***

*(1) Any person aggrieved by an order passed by the First Appellate Authority or by non-disposal of his/her appeal by the First Appellate Authority, may file an appeal to the Commission either online or offline in the format given in the Appendix and shall be accompanied by the following documents, duly self-attested by the appellant, namely:-*

*(i) a copy of the application submitted to the Central Public Information Officer;*

*(ii) a copy of the reply received, if any, from the Central Public Information Officer;*

*(iii) a copy of the appeal made to the First Appellate Authority;*

*(iv) a copy of the order received, if any, from the First Appellate Authority;*

*(v) copies of other documents, if any, relied upon by the appellant and referred to in his appeal;*

*(vi) an index of the documents referred to in the appeal;*

*(vii) A request for condonation of delay in submission of appeal wherever required, giving reasons.*

*Provided that no appeal shall be returned only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in rule 8.*

*Provided further that no appeal which is accompanied by the documents specified in Rule 8 will be returned only on the ground that the attached documents have not been self-attested by the appellant or due to any other deficiency. However, the appellant may be required to self-attest the document(s) and address any deficiencies before disposal of appeal.*

*(2) Every appeal, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly.*

*(3) Upon receiving an appeal, the Commission shall cause a copy of the appeal, electronically or otherwise, to be served on the Central Public Information Officer.”*

## **6. Return of Appeal (Rule 9 of the proposed RTI Rules, 2017)**

***“9. Return of Appeal:-*** *An appeal may be returned to the appellant, if it is not accompanied by the documents as specified in rule 8, for removing the deficiencies and filing the appeal complete in all respects.*

*Provided that no appeal shall be returned only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in rule 8.*

*Provided further that no appeal which is accompanied by the documents specified in Rule 8 will be returned only on the ground that the attached documents have not been authenticated and verified by the appellant. However, the appellant may be required to authenticate/verify the document(s) before disposal of appeal.”*

#### **NCPRI’s comments and suggestions**

We believe that the Commission must not return appeals merely because they are deficient in some form. People, especially the marginalised, reach the Commission after a lot of hardship and a long wait, and therefore, the Commission needs to facilitate and assist people in the process of registering their appeals, rather than summarily returning them due to a deficiency.

**Therefore, we suggest that Rule 9 be deleted and the provisos in the proposed Rule 9 be amended and included in Rule 8 as suggested above.**

### **7. Process of appeal (Rule 10 of the proposed RTI Rules, 2017)**

**“10. Process of Appeal:-** (1) *The Commission shall not consider an appeal unless it is satisfied that the appellant has availed of all the remedies available to him under the Act.*

(2) *For the purposes of sub- rule (1), a person shall be deemed to have availed of all the remedies available to him under the Act:*

*(a)if he had filed an appeal before the First Appellate Authority and the First Appellate Authority or any other person competent to pass order on such appeal had made a final order on the appeal: or*

*(b)where no final order has been made by the First Appellate Authority with regard to the appeal preferred, and a period of forty —five days from the date on which such appeal was preferred has elapsed.”*

#### **NCPRI’s comments and suggestions**

The proposed rules seem to suggest that an official other than the designated First Appellate Authority (FAA) may dispose the first appeal. This would be going beyond the RTI Act and hence should be deleted. Further, the reference to a “final order” of the FAA again goes beyond the provisions of the law. The FAA is required to decide an appeal within 45 days. The reference to “final order” of the FAA should be deleted.

**Therefore, we suggest that Rule 10 be amended and replaced as follows:**

**“10. Process of Appeal:-** (1) *The Commission shall not consider an appeal unless it is satisfied that the appellant has availed of all the remedies available to him under the Act.*

(2) *For the purposes of sub- rule (1), a person shall be deemed to have availed of all the remedies available to him under the Act:*

*(a) if he/she had filed an appeal before the First Appellate Authority and the First Appellate Authority made an order on the appeal: or*

*(b) where no order has been made by the First Appellate Authority with regard to the appeal preferred, and a period of forty —five days from the date on which such appeal was preferred has elapsed.”*

## 8. Procedure for deciding appeal (Rule 11 of the proposed RTI Rules, 2017)

***“11. Procedure for deciding appeals:- The Commission, while deciding an appeal may***

*(i)receive oral or written evidence on oath or on affidavit from concerned or interested person;*

*(ii)peruse or inspect documents, public records of copies thereof;*

*(iii)inquire through authorized officer further details or facts;*

*(iv)hear Central Public Information Officer, Central Assistant Public Information Officer or the First Appellate Authority, or such person against whose action the appeal is preferred, as the case may be;*

*(v)hear third party; and*

*(vi)receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, First Appellate Authority and such other person against whom the appeal lies or the third party;”*

### **NCPRI’s comments and suggestions**

The rules should also indicate that the Commission is free to exercise any other powers as per the RTI Act.

**Therefore, we suggest that Rule 11 of the proposed rules be amended and replaced as follows:**

***“11. Procedure for deciding appeals:- The Commission, while deciding an appeal may***

*(i)receive oral or written evidence on oath or on affidavit from concerned or interested person;*

*(ii)peruse or inspect documents, public records of copies thereof;*

*(iii)inquire through authorized officer further details or facts;*

*(iv)hear Central Public Information Officer, Central Assistant Public Information Officer or the First Appellate Authority, or such person against whose action the appeal is preferred, as the case may be;*

*(v)hear third party; and*

*(vi)receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, First Appellate Authority and such other person against whom the appeal lies or the third party;*

*(vii) exercise any other powers as per the RTI Act”*

## 9. Withdrawal/Abatement of Appeal (Rule 12 of the proposed RTI Rules, 2017)

### ***“12. Withdrawal/Abatement of Appeal :-***

*(1)The Commission may in its discretion allow a prayer for withdrawal of an appeal if such a prayer is made by the appellant on an application made in writing duly signed or during hearing. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.*

*(2)The proceedings pending before the Commission shall abate on the death of the appellant.”*

### **NCPRI’s comments and suggestions**

There is no provision in the RTI Act which permits, or even leaves open the possibility of appellants withdrawing their appeals and therefore, the rules appear to go beyond the law. More importantly, given the Indian reality where RTI applicants are at times harassed, threatened, physically attacked or even killed, such provisions will provide a perverse incentive to vested interests to silence the information seeker through coercion or physical harm. We believe that this provision must be deleted.

In fact, to deter attacks on RTI users, the rules must include the principle adopted by the CIC in its resolution taken at its meeting held on 13.09.2011, wherein the CIC resolved, *“that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.”*

**Therefore, we suggest that Rule 12 of the proposed rules be deleted and replaced as follows:**

### ***“12. Information to be proactively disclosed in cases of attacks on RTI users :-***

*As per the resolution of the CIC taken at its meeting on 13.09.2011 on receiving a complaint regarding assault or murder of an information seeker, the Commission will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.”*

## 10. Complaint to the Commission (Rule 13 of the proposed RTI Rules, 2017)

### ***“13. Complaint to the Commission:-***

*(1) A person may file a complaint to the Commission on the grounds mentioned in clauses (a) to (f) of sub-section (1) of section 18 of the Act either online or offline in the format given in the Appendix and shall be accompanied by the following documents, duly authenticated and verified by the complainant, namely:-*

*(i)a copy of the application submitted to the Central Public Information Officer;*

*(ii)copies of other documents, if any, relied upon by the complainant and referred to in his complaint;*

*(iii)an index of the documents referred to in the complaint;*

*(iv) A complaint submitted beyond 90 days from the date the cause of complaint arises, should be accompanied with the request for condonation of delay giving reasons.*

*(v) A certificate stating that the matter under complaint has not been previously filed and disposed or are pending, with the Commission or any court; and*

*(vi) Proof of service of complaint to respondent.*

*(2) Every complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly and in double line spacing.*

*(3) Before submitting a complaint to the Commission, the complainant shall cause a copy of the complaint, as the case may be, to be served on the Central Public Information Officer and shall submit a proof of such service to the Commission.*

*Provided that if the complainant does not know the name, address and other particulars of the Central Public Information Officer or of the First Appellate Authority and if he approaches the Commission under section 18 of the Act, he shall cause a copy of his complaint petition to be served on the concerned Public Authority and proof of such service shall be annexed along with the complaint petition."*

#### **NCPRI's comments and suggestions**

The requirements in the proposed rules for filing complaints to the CIC go beyond the law and fall foul of the dicta of the Supreme Court. In 2012, the Supreme Court in its judgement in *Union of India Vs S. Srinivasan* (Civil Appeal No. 3185 of 2005) cited various earlier orders in support of the principle that, "a rule must be in accord with the parent statute as it cannot travel beyond it". The proposed rules state that each complaint must be accompanied with a copy of the RTI application submitted to the PIO. The RTI Act provides for filing a complaint to the information commission in cases where a PIO has not been appointed or where a PIO has refused to accept an RTI application, among others. Similarly, the only way to highlight cases of non-compliance with provisions of proactive disclosure under section 4 of the Act is by filing a complaint to the information commission. In such matters, the complainant would not have a copy of the RTI application submitted to the PIO. Yet the proposed rules make attaching a copy of the RTI application a mandatory requirement for filing a complaint.

Further, the proposed amendments, without any legal basis, require that a complaint should be filed within 90 days from the date the cause of complaint arose, failing which a request for condoning the delay is required. Under the RTI Act, while the procedure of appealing to the commission is time-bound, there is no timeframe within which a complaint has to be filed. Since violations of the RTI Act, such as being provided false information may be proved much after the information has been furnished, the Act has not prescribed a time-frame for filing complaints. Therefore, the rules must not define any time-frame for complaints.

As suggested in the comments related to Rule 8, the rules must ensure that no unnecessary demands are placed on the complainant. The accompanying documents should only require self-attestation and there should be no requirement of certifying that the matter is not pending elsewhere and also, the responsibility for serving a copy of the complaint to the PIO should be on the Commission, rather than the complainant.

**Therefore, we suggest that Rule 13 of the proposed rules be deleted and replaced as follows:**

*(1) A person may file a complaint to the Commission on the grounds mentioned in clauses (a) to (f) of sub-section (1) of section 18 of the Act either online or offline in the format given in the Appendix and shall be accompanied by the following documents, duly self-attested by the complainant, namely:-*

*(i) a copy of the application submitted to the Central Public Information Officer, if any;*

*(ii) copies of other documents, if any, relied upon by the complainant and referred to in his complaint;*

*(iii) an index of the documents referred to in the complaint;*

*Provided that no complaint shall be returned only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in rule 13.*

*Provided further that no complaint which is accompanied by the documents specified in Rule 13 will be returned only on the ground that the attached documents have not been self-attested by the complainant or due to any other deficiency. However, the complainant may be required to self-attest the document(s) and address any deficiencies before disposal of complaint.*

*(2) Every complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly.*

*(3) Upon receiving a complaint, the Commission shall cause a copy of the appeal, electronically or otherwise, to be served on the Central Public Information Office or the concerned Public Authority, as the case may be."*

## **11. Return of Complaint (Rule 14 of the proposed RTI Rules, 2017)**

**"14. Return of Complaint:-** *A complaint may be returned to the complainant, if it is not accompanied by the documents as specified in rule 13, for removing the deficiencies and filing the complaint complete in all respects.*

*Provided that no complaint shall be returned only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in rule 13.*

*Provided further that no complaint which is accompanied by the documents specified in Rule 13 will be returned only on the ground that the attached documents have not been authenticated and verified by the complainant. However, the complainant may be required to authenticate/verify the document(s) before disposal of the complaint."*

### **NCPRI's comments and suggestions**

We believe that the Commission must not return complaints merely because they are deficient in some form. People, especially the marginalised, reach the Commission after a lot of hardship and a long wait, and therefore, the Commission needs to facilitate and assist people in the process of registering their complaints, rather than summarily returning them due to a deficiency.

**Therefore, we suggest that Rule 14 be deleted and the provisos in the proposed Rule 14 be amended and included in Rule 13 as suggested above.**

## 12. Procedure for deciding complaints (Rule 15 of the proposed RTI Rules, 2017)

**“15. Procedure for deciding complaints:-** (i) After a complaint is registered, comments/replies of the opposite parties shall be obtained within the specified time to be indicated in the notice issued for the purpose.

ii) On receipt of the comments/replies of the opposite parties or if no response is received within the specified time, the matter shall be placed before the Information Commissioner concerned for orders/disposal.

iii) On perusal of the case file if the Commission is satisfied that there are reasonable grounds to inquire in to the matter, an enquiry in respect thereof shall be made in accordance of section 18 of the Act otherwise the complaint shall be closed by passing an order.

iv) The Commission may in its discretion allow a prayer for any amendment of a complaint during the course of its hearing, including conversion of the complaint into second appeal, if available remedies have been exhausted, on a prayer made by the complainant. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.”

### **NCPRI's comments and suggestions**

The rules should not empower the Commission to close a complaint without giving the complainant an opportunity of being heard.

While the proposal to allow request for conversion of complaint to second appeal is welcome, the requirement that this may be allowed only “if available remedies have been exhausted” will limit the scope to only such matters where a first appeal has already been filed. Therefore, it is suggested that this requirement be done away with and in cases where the complainant has not filed a first appeal but is seeking relief in the form of access to information, it is suggested that the commission forward the complaint to the First Appellate Authority with a recommendation to treat it as a first appeal and condone the delay and then accordingly proceed with the matter. Further, it must be clarified that even in matters where a request for such conversion is accepted, the Commission must still proceed with adjudicating and deciding the grounds for the complaint, including penalising violations, if any.

**Therefore, we suggest that Rule 15 of the proposed rules be amended and replaced as follows:**

**“15. Procedure for deciding complaints:-** (i) After a complaint is registered, comments/replies of the respondent parties shall be obtained within the specified time to be indicated in the notice issued for the purpose.

li ) On receipt of the comments/replies of the respondent parties or if no response is received within the specified time, the matter shall be placed before the Information Commissioner concerned for orders/disposal.

iii) On perusal of the case file if the Commission is satisfied that there are reasonable grounds to inquire in to the matter, an enquiry in respect thereof shall be made in accordance of section 18 of the Act otherwise the complaint shall be closed by passing an order.

Provided that where the Commission decides to close the complaint, it shall, before passing the order for closure, provide an opportunity of being heard to the complainant.

*iv) The Commission may in its discretion allow a prayer for any amendment of a complaint during the course of its hearing, including conversion of the complaint into second appeal on a prayer made by the complainant. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.*

*Provided that if the request for conversion of the complaint into second appeal is accepted, the grounds for the complaint and the relief sought in the complaint must be disposed by the commission in accordance with the provisions of the RTI Act*

*Provided further that wherever the complainant has not filed a first appeal and has made a prayer for conversion of complaint into second appeal, in order to facilitate access to information, the Commission may forward the complaint as a first appeal to the First Appellate Authority with a recommendation for condoning the delay.*

*(v) exercise any other powers in accordance the RTI Act”*

### **13. Compliance of the orders of the Commission (Rule 16 of the proposed RTI Rules, 2017)**

**“16. Compliance of the orders of the Commission:-** A communication as per the format given in the appendix reporting non-compliance of the Commission's orders passed under the Act shall be dealt with as follows:-

*(i)A non-compliance communication which is not submitted in the format or does not contain sufficient details may be returned to the sender with an appropriate facilitation memo.*

*(ii)The communication for non-compliance of the Commission's order shall be entertained only if it is made within 3 months from the date of non-compliance.*

*(iii)Provided that a communication of non-compliance may be considered after the prescribed period, if the applicant satisfies the Commission that he had sufficient cause for not submitting the application within such period.*

*(iv)In cases where no time period is fixed for complying with the orders of the Commission, it shall be presumed that the same are to be complied within 30 days from the date of the said order.*

*(v)On receipt of a non-compliance communication, the Commission shall determine whether compliance of the decision has been made. Where the Commission finds non-compliance of its decisions, it may proceed for action under the Act.”*

#### **NCPRI's comments and suggestions**

We welcome the move by the Ministry to address the issue of non-compliance of orders of the Commission. However, to ensure on-going monitoring of compliance with the orders of the Commission, we suggest that in all matters the Commission must fix a time limit within which their orders have to be complied with and compliance reported to the commission in writing. Every order of the commission where some action is required to be taken by a public authority should also fix a hearing two weeks after the time given for compliance is over, with the proviso that the Commission will only have a hearing if the appellant/complainant communicates in writing that the orders of the commission have not been complied with or where the PIO/Public Authority fails to submit a

compliance report. Where no such complaint is received and where a compliance report has been filed, the hearing should be cancelled and the orders assumed to have been complied with, unless evidence to the contrary is presented subsequently. Such a procedure will also address the issue of whether a complaint about non-compliance is to be treated as a fresh complaint and hence heard chronologically or is to be heard out of turn.

Given the fact that the RTI Act mandates the Commission to require public authorities to take any steps that may be necessary to secure compliance with the provisions of the Act, and in view of the doctrine of *implied powers* defined by the Supreme Court, the Commission is legally empowered to impose penalties, award compensation and exercise all its powers as per the RTI Act and in various other laws including the Indian Penal Code, in cases of non-compliance with its orders.

The practice of keeping a case open till its orders are complied with, and only close the case after such compliance, should be adopted by the Commission.

**Therefore, we suggest that Rule 16 of the proposed rules be amended and replaced as follows:**

**“16. Compliance of the orders of the Commission:-**

*(i) In every order, the Commission must fix the time period within which its order is to be complied with and reported to the Commission in writing. In cases where no time period is fixed for complying with the orders of the Commission, it shall be presumed that the same are to be complied within 30 days from the date of the said order.*

*(ii) Fourteen days after the expiry of the time period fixed by the commission for compliance with its orders, a hearing shall be held if the PIO or Public Authority fails to submit a compliance report in writing or if the appellant/complainant communicates in writing that the orders of the commission have not been complied with, even if a compliance report was filed.*

*(iii) A non-compliance complaint may be filed as per the format given in the appendix.*

*Provided that no non-compliance complaint shall be returned only on the ground that it has not been made in the specified format.*

*(iv) In hearing matters of non-compliance, the commission may exercise all its powers as per the RTI Act and powers derived from other statutes.*

*(v) Appeals or complaints shall be held to be disposed only after the final order of the Commission following the non-compliance hearing, if any, has been given.*

*(vi) Every order of the Commission shall be a speaking order and shall be pronounced in open court and be in writing in the suggested format given in the appendix and issued under the seal of the Commission duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose.”*

#### 14. Posting of appeal/complaint/non-compliance before the Information Commissioner (Rule 17 of the proposed RTI Rules, 2017)

***“17.Posting of appeal/complaint/non-compliance before the Information Commissioner:-***

*An appeal/complaint/non-compliance shall be posted before a Single Bench for hearing/disposal, unless the Chief Information Commissioner by a special or general order issued in this behalf from time to time directs that the appeal/complaint/non-compliance or a category of the same may be posted for hearing/disposal by another bench or a bench of two or more Information Commissioners either at the request of an Information Commissioner, or suo motu if the same involves an intricate question of law or larger public interest.”*

**NCPRI’s comments and suggestions**

This proposed rule could lead to suspicion and/or misuse. Therefore, while the Chief Information Commission with the assistance of the other commissioners as per Section 12(4), may take decisions regarding the posting of appeals/complaints/complaints about non-compliance, we believe that in all such decisions, reasons must be recorded and made public.

**Therefore, we suggest that Rule 17 of the proposed rules be amended and replaced as follows:**

***“17.Posting of appeal/complaint/non-compliance before the Information Commissioner:-***

*An appeal/complaint/non-compliance complaint shall be posted before a Single Bench for hearing/disposal, unless the Chief Information Commissioner assisted by the Information Commissioners, by a special or general order issued in this behalf from time to time directs that the appeal/complaint/non-compliance or a category of the same may be posted for hearing/disposal by another bench or a bench of two or more Information Commissioners either at the request of an Information Commissioner, or suo motu if the same involves an intricate question of law or larger public interest.*

*Provided that in all such cases, the decision and the reasons thereof, shall be recorded and made public and posted on the website of the Commission.”*

#### 15. Presence of the parties before the Commission (Rule 18 of the proposed RTI Rules, 2017)

***“18.Presence of the parties before the Commission:- (1) The parties shall be informed before the date of hearing.***

*(2)The Commission shall notify the parties the date and place of hearing of the appeal or complaint in such manner as the Chief Information Commissioner may by general or special order direct.*

*(3)The Commission may allow the parties to be present in person or through their duly authorized representative or through video/audio conferencing, at the time of hearing by the Commission.*

*(4)Where the Commission is satisfied that the circumstances exist due to which the any party is unable to attend the hearing, then, the Commission may afford the parties another opportunity of being heard before a final decision is taken or take any other action as it may deem fit.*

*(5)The public authority may authorize any representative or any of its officers to present its case.”*

**NCPRI’s comments and suggestions**

The proposed rules must stipulate that the parties are informed atleast 30 days prior to the date of hearing. Further, the rules must clarify that the PIO against whom an appeal or complaint has been filed should be present before the commission and in case he/she is represented through their duly authorised representative, the onus shall still lie with the original PIO(s).

**Therefore, we suggest that Rule 18 of the proposed rules be amended and replaced as follows:**

**“18.Presence of the parties before the Commission:-** *(1) The parties shall be informed at least 30 days prior to the date of hearing.*

*(2)The Commission shall notify the parties the date and place of hearing of the appeal or complaint in such manner as the Chief Information Commissioner may by general or special order direct.*

*Provided that the notification must be sent in a manner such that a dated proof of receipt is available with the Commission.*

*(3)The Commission may allow the appellant, complainant or third party to be present in person or through their duly authorized representative or through video/audio conferencing, at the time of hearing by the Commission.*

*Provided that the appellant or complainant may choose to not attend the hearing.*

*Provided further that the absence of the appellant or complainant cannot be grounds for closure of the matter and no adverse implication would be drawn from the absence of the appellant/complainant and/or representative. The Commission should proceed with the matter on the merits placed before it and as per the provisions of the law.*

*(4) Where the Commission is satisfied that the circumstances exist due to which the any party is unable to attend the hearing, then, the Commission may afford the parties another opportunity of being heard before a final decision is taken or take any other action as it may deem fit.*

*(5) The PIO against whose decision the appeal/complaint has been filed must be present for the hearing of the matter and must also be present for any hearing held under section 20 of the law.*

*Provided that the Commission may allow the PIO to be present in person or through their duly authorized representative, with a written authorisation or through video/audio conferencing, at the time of hearing by the Commission.*

*Provided further that in all such cases where the PIO is represented through their duly authorized representative, with a written authorisation the onus and all relevant penalties shall lie against the PIO.*

*(6) The public authority may authorize any representative or any of its officers to present its case.*

*(7) For any hearing held under section 20 of the law, the appellant/complainant must also be given the option of attending the hearing and be informed at least 30 days prior to the date of hearing. ”*

## Additional issues on which rules are required

Several provisions of the RTI Act are not being properly implemented due to the absence of rules. Therefore, we suggest that the DOPT frame rules on the following issues through public consultation-

- 1. Compliance with Section 4-** In order to ensure compliance with section 4, DoPT must take appropriate steps, through framing of rules, to operationalise and implement the recommendation made by a committee set up under the chairmanship of Shri Devesh Chaturvedi, Joint Secretary - DOPT to examine the report of the committee of experts on suo motu disclosures (report available from <https://goo.gl/wc0c0b>), that compliance with Section 4 be included as one of the performance indicators in the annual performance appraisal report (APAR) of the HoDs of public authorities.
- 2. Accessing information about private bodies-** Formulate rules, pertaining to accessing information about private bodies under section 2(f), to specify the obligations of private bodies under the RTI Act and to clarify the procedure to be adopted by PAs in accessing and providing such information to the applicants.
- 3. Information and Facilitation Centres-** The role of the PIO, as envisaged under the RTI Act, is to provide assistance to persons seeking information and facilitate them in the process (Section 5(3)). Section 6(1) requires the PIO to render all reasonable assistance to a person making an information request orally and also reduce the same in writing. Despite more than 11 years of the implementation of the RTI Act in India, in most public authorities no mechanism to assist information seekers has been put in place. Therefore, it is suggested that 'Information and Facilitation Centres' (IFCs) be set up in each public authority. These centres could keep copies of Section 4 disclosures of the public authority, copies of citizen charters, applications forms for various services, and also facilitate the process of filing applications under the RTI Act. The proposal to set up IFCs was also approved by the committee set up by the DOPT to examine proactive disclosures (report available from <https://goo.gl/wc0c0b>). Till such time that IFCs are set up, it must be ensured that in every public authority mechanisms are adopted whereby information seekers can directly contact the PIO and seek his/her assistance in filing an information application.
- 4. Suggested time-frame for disposal of appeals and complaints-** Second appeals and complaints before the information commission should be disposed of as speedily as possible and preferably the final order should be no later than 90 days from the filing of an appeal or a complaint.
- 5. Appropriate level of officers designated as "Registrar" of the Commission-** In order to ensure that officials of adequately senior level are designated as "Registrars" to the Commission, the rules must specify that no officer below the rank of Under Secretary to the Government of India can be designated as a "Registrar" as defined in Rule 2(h) of the proposed RTI Rules, 2017.
- 6. MIS for uploading RTI applications and responses -** In order to streamline the process of uploading RTI applications and responses, we suggest that rules for a publicly accessible MIS be framed which would, in addition to providing the RTI application and reply, also display relevant dates, status of the RTI application and details of PIO before whom the matter is pending.
- 7. Rules related to appointment of information commissioners-** The issue of lack of transparency in the appointment of information commissioners has been widely debated since the enactment of the RTI Act. Therefore, to establish a transparent process, appropriate rules are required to be framed.

- 8. Procedure for dealing with appeals related to cases of life and liberty-** The RTI Act lays down that in matters related to life and liberty, information is to be provided within 48 hours. However, there is no concomitant time-frame for disposal of first appeal, second appeal or complaints in cases where information is not provided within 48 hours. Therefore, to effectively operationalise this provision, appropriate rules should be framed with a clearly defined procedure and time frame.
  
- 9. Procedure for Section 24-** DoPT must take appropriate steps through framing rules to put in place a proper mechanism to ensure wide public consultation prior to any public authority being exempted from the RTI Act under Section 24. As per the recommendation of a committee set up by the DoPT (report available from <https://goo.gl/wc0c0b>), prior to the government issuing a notification under section 24(2), the name of the proposed body, details of its functioning and the reasons on how it responds to the grounds set out under Section 24 should be publicly disclosed and a specified time-frame should be allowed for members of public to raise objections to the proposal. This would also be in line with the proactive disclosures required under Sections 4(c) and (d) of the RTI Act and the government's stated Pre-legislative Consultation Policy (PLCP).

## **Appendix: Suggested standard format for orders of the Information Commission**

All orders of the Information Commission should be speaking orders and must be passed keeping in mind that the onus of justifying denial, delay, or any other violation of the RTI Act is on the PIO both for appeals and complaints. Each order must provide the following categories of information:

### **I. Factual information**

1. Whether an appeal, a complaint, or both:
2. Particulars of the appellant/complainant:
3. Particulars of the CPIO, including name, designation and address:
4. Particulars of the Public Authority:
5. Date of RTI Application, if any:
6. Date of response, if any/ otherwise record deemed refusal:
7. Date of First Appeal, if any:
8. Date of hearing of first appeal, if any:
9. Date of order of First Appellate Authority, if any:
10. Date of second appeal/complaint filed with the Information Commission:
11. Date(s) and details of notice(s) issued:
12. Date(s) of hearing(s):
13. Particulars of those present in the hearing (including authorised representatives, if any):
14. Date(s) of order(s) of the Information Commission:
15. Date of show-cause notice issued to PIO, if any:
16. Date of response, if any:
17. Date of hearing on show cause notice, if any:
18. Particulars of those present in the show cause hearing:
19. Date of penalty order, if any:

### **II. Summary of case**

1. Summary description of the information sought in the RTI application:
2. Summary description of response from PIO, if any:
3. Reasons given for refusal, delay, other violations, if relevant:
4. Grounds for first appeal, if any:
5. Summary description of order of First Appellate Authority, if any, including reasons thereof:
6. Summary of issues raised in second appeal/complaint:
7. Summary of any additional material/arguments presented during hearing:
8. Summary of response to show cause notice, if received:

### **III. IC Decision**

1. Decision of IC on each of the points raised in the appeal/complaint (giving legal basis, reasons and basis of decision, including sections of RTI Act invoked):
2. Time frame within which the order/directions should be complied with and a status report filed to the Commission:
3. Whether information was provided in the form asked for (section 7(9)):
4. Whether application was forwarded to other PA(s), if some or all of the information was held by them:
5. If part or whole of the information was denied, whether the exceptions to the exemptions (public interest test of 8(2), and proviso to section 8(1) which states that information that

- cannot be denied to the Parliament/state legislature shall not be denied to a person) were examined and found to be not applicable:
6. Directions regarding provision of information free of charge and refund of charges already collected, if there was delay in providing information as per section 7(6):
  7. Quantum of compensation awarded under section 19(8)(b), if any, including reasons for awarding, and for determining quantum:
  8. Whether the exempt information can be severed (S. 10) and the remaining record provided:
  9. Whether the information sought should have been proactively disclosed under section 4:
  10. Whether any of the following violations of the RTI Act have occurred as per section 20(1):
    - i. Refusal to receive an application:
    - ii. Delay in furnishing information:
    - iii. Denial of part/full information by the PIO which was subsequently overturned:
    - iv. Provision of incorrect information:
    - v. Provision of incomplete information:
    - vi. Provision of misleading information:
    - vii. Destruction of information which was the subject of any request:
    - viii. Obstruction in any manner to the furnishing of information (eg. delay in responding, refusal to provide in the form asked for, refusal to forward to appropriate PA, refusal to collect from other officers in PA and forward, etc.), with details:
  11. Wherever the answer is “yes” or “maybe” to any one or more of the violations listed above (in 10) details of the show cause notice issued:
  12. Where penalty is imposed:
    - i. Quantum of penalty imposed:
    - ii. Name and designation of official on whom penalty is imposed:
    - iii. Reasons/legal basis for imposing penalty, including reasons for quantum of penalty imposed:
  13. If penalty not imposed, reasons/legal basis for non-imposition of penalty:
    - i. The violation that was thought to have occurred did not actually occur, as deduced from the explanation/information/records provided by the PIO as a part of the response to, and hearing on, the show cause notice:
    - ii. Though the violation did take place, the PIO is not liable to be penalised as, based on the response to the show cause notice, there was-
      - a) reasonable cause for refusal to receive an application:
      - b) reasonable cause for delay in supplying information:
      - c) bonafide reasons for denying the request for information:
      - d) the PIO unknowingly gave incorrect information:
      - e) the PIO unknowingly gave incomplete information:
      - f) the PIO unknowingly gave misleading information:
    - iii. Any other, please specify with reasons and legal basis:
  14. Whether the PIO is persistently violating the RTI Act:
    - i. If yes, details of disciplinary action recommended by IC under section 20(2):

Note: Wherever the categories mentioned above are not relevant for a particular appeal/complaint, as it may relate to non-compliance of Section 4 etc., ‘not applicable’ may be recorded.