

Draft Right to Information Rules, 2017

Critical Analysis and Recommendations for Improvement

submitted by

Commonwealth Human Rights Initiative (CHRI)¹

Background

The *Right to Information Rules* notified by the Department of Personnel and Training (DoPT), Government of India in July 2012 provide for detailed procedures for seeking and obtaining information under *The Right to Information Act, 2005* (RTI Act). Through a Circular published in March, 2017, the DoPT has placed in the public domain a set of Draft Rules (in English and Hindi) that seek to **replace the 2012 RTI Rules**. **'Concerned stakeholders' have been invited to send their views and suggestions by email or in hard copy** to the DoPT by 15th April, 2017. Through a further circular dated 13th April, 2017, the DoPT extended the time limit for sending views and suggestions up to 25th April.

The latest rule-making initiative appears to be in response to a petition filed by the Central Information Commission (CIC) before the Supreme Court of India, challenging a 2010 Division Bench judgement of the Delhi High Court quashing its Management Regulations instituted in 2007. The Government of India has assured the Court that it will put in place a fresh set of RTI Rules to include some of the provisions contained in the 2007 CIC Regulations.

CHRI has analysed the Draft RTI Rules and discussed its implications with various RTI advocates and activists. CHRI is submitting the following critical comments and recommendations for change in the Draft RTI Rules for consideration and action.

1) General Comments and Recommendations

CHRI welcomes the DoPT's initiative to seek comments and suggestions on the Draft RTI Rules. However this exercise is limited in two ways:

- a) It is of a very short duration (3 weeks only); and
- b) It has **been advertised only through the DoPT's website** and has clearly failed to **reach out to the citizenry beyond 'concerned stakeholders'**.

¹ **This critical analysis and recommendations have been drawn up by CHRI's Access to Information Programme in April 2017 for submission to the Department of Personnel and Training, Government of India in response to its Circular of No. 1/5/2016-IR dated 31st March, 2017 inviting views and suggestions from the public.** CHRI is an international, independent non-profit non-governmental organisation headquartered in New Delhi, India. **CHRI works for the practical realisation of people's human rights across Commonwealth countries.** CHRI has been closely associated with the processes of crafting and implementing the laws that give effect to people's fundamental right to information in India. The comments and recommendations contained in this note are **based on CHRI's experience of assisting with the implementation of these RTI laws, training duty-holders and citizenry and monitoring the unfolding of the regime of transparency across the country for more than a decade and a half.** Please visit www.humanrightsinitiative.org for more information about CHRI's work. CHRI's ATI Programme Coordinator, Mr. Venkatesh Nayak may be contacted at- +91-11-4318 0215 or by email at: venkatesh@humanrightsinitiative.org

As RTI is a deemed fundamental right within the meaning and scope of Article 19(1)(a) (freedom of speech and expression) and Article 21 of the Constitution (right to life and liberty), all citizens automatically become stakeholders of RTI. Barely a quarter of the citizenry has access to the Internet across India. Adequate efforts must be made to publicise the Draft RTI Rules through other media as well. The 'Explanation' of the term 'dissemination' underlying Section 4(4) of the RTI Act serves as a guide for non-digital and analog methods of dissemination of knowledge about the Draft RTI Rules amongst the 1.3 billion citizens living across India.

On 2nd May, 2017, the next date of the hearing of the pending case, the DoPT may seek the leave of the Supreme Court for reporting on the action taken on the Draft RTI Rules at a later date. As the appointed guardian of the people's fundamental rights, the Apex Court is not likely to refuse its indulgence on such an important issue requiring widespread consultation with the citizenry.

Recommendations:

- 1.1) *This consultation exercise may be conducted in accordance with the Pre-Legislative Consultation Policy adopted by the Central Government in January 2014.*
- 1.2) *The time limit for the consultation exercise may be extended by at least one more month. The Draft RTI Rules may be translated into all languages included in Schedule VIII of the Constitution and publicised widely in the manner provided for under Section 4 of the RTI Act. Adequate explanation as to why new areas of RTI implementation not covered by the 2012 Rules are being included in the Draft Rules, must be volunteered, in accordance with Section 4(1)(c) of the RTI Act, so that people may better understand the Government's intentions for revising the RTI Rules.*

2) Specific Comments and Recommendations

2.1) Draft Rule 2(g):

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

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(g) "Non-Compliance" means non-implementation of the decisions in an appeal/complaint of the Commission by any person including the Central Public Information Officer or the public authority.

Comment:

A close reading of the RTI Act indicates that the CIC is empowered to pass orders or directions and issue recommendations to public authorities or its officers who deal with various processes for providing access to information to the citizenry. Under Section 19(7) the decision of the CIC is binding. A perusal of the powers vested in the CIC under Sections 18 and 19(8) of the RTI Act indicates that it may issue orders, directions or recommendations only to public information officers, deemed public information officers, first appellate authorities, public authorities and the Central Government only. To the best of our understanding the CIC is not empowered to issue binding orders on any 'other person'. Yet, Draft Rule 2(g) contains a reference to 'any person' in the definition of the term 'non-compliance'. This is surplusage. There is adequate case law to show that the High Courts

have struck down orders and directions of Information Commissions on non-RTI matters which they were not empowered to issue. The RTI Rules must not leave a window open for the CIC to overstep the bounds of its authority.

Recommendation:

2.1) *The phrase: "any person" may be omitted from Draft Rule 2(g).*

2.2) Draft Rule 3:

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.

Comments:

2.2.a) Draft Rule 3 leaves a window open for the Central Government to change the application fee from time to time through subsequent notifications. It is not clear whether these notifications will be issued in exercise of its rule-making powers under the Act or merely as executive directions. The purpose of empowering the Central Government with rule-making powers under Section 27 of the RTI Act is to provide for the detailing of the procedures for seeking and obtaining information. Rules notified by virtue of the exercise of these powers must lend clarity to the procedures. The Rule-making power may not be used to leave matters open to executive discretion. Executive directions issued by the DoPT detailing RTI-related procedures from time to time, strictly speaking, are not 'law' because they are never tabled in Parliament. They do not undergo the mandatory exercise of parliamentary scrutiny provided for under Section 29(1) of the Act.

Section 6(1) read with Section 27(2)(b) clearly indicate that the quantum of application fee payable may be varied only by using the rule-making power. Varying the quantum of application fee through any other notification will be illegitimate and invalid. So Draft Rule 3 must be amended to reflect this position.

Recommendation:

2.2.a) *The phrase: "or as notified by Central Government from time to time" may be omitted from Draft Rule 3.*

2.2.b) Nothing in Draft Rule 3 provide guidance to the CPIO as to the course of action that must be adopted if an RTI application exceeds the 500-word limit. In other jurisdictions which prescribe much lower word limits, several instances, of PIOs rejecting an RTI application because it was too long, have been reported in the past. Such a situation may be avoided by plugging the gap in the RTI Rules. The RTI Act itself contains

guidance to overcome this difficulty. Section 5(3) of the Act requires a CPIO to render reasonable assistance to the RTI applicant at the time of receiving the information request. Rules may be made as recommended below for guiding the CPIO to provide reasonable assistance to the RTI applicant.

Recommendation:

2.2.b) *A new proviso may be inserted after the existing proviso under Draft Rule 3 as follows:*

"Provided further that where the application is longer than five hundred words, the Central Public Information Officer shall render reasonable assistance to the person making the request to prioritise the information he or she requires so as to enable the disposal of the request within the period specified in Section 7 of the Act."

2.3) Draft Rule 4:

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.

Comments:

2.3.a) Draft Rule 4, in the manner of Draft Rules 3, leaves a window open to the Central Government to change the fee rates for providing information from time to time through subsequent notifications. The objection to this issue already explained at para # 2.2a) above equally applies to Draft Rule 4. Section 7(1) read with Section 27(2)(c) clearly indicate that the rate of fee payable for providing information may be varied only by using the rule-making power.

Recommendation:

2.3.a) *The phrase: "or as notified by Central Government from time to time" may be omitted from Draft Rule 4.*

2.3.b) Draft Rule 4(d) stipulates the rates at which fees may be paid for obtaining information through floppies and diskettes. These modes of information storage and transmission have become outdated. There is no reason why fee rates must continue to mention them. Instead the Rules should provide guidance for supplying information on CDs, DVDs and by email. There should be no reason why information supplied through email must be charged on the applicant at all, given the fact that the RTI Rules permit only the collection of charges for reproducing the information. At the same principle must apply if the applicant elects to obtain the information on CDs and DVDs that he or **she provides on one's own**. Rules may be made as recommended below to provide adequate guidance for the CPIO.

Recommendation:

2.3.b) *Draft Rule 4(d) may be substituted with the following:*

"rupees fifty per CD or DVD, but no fee shall be charged for supplying the information on the CD or DVD provided by the applicant or if the information can be provided through email.

2.3.c) Draft Rule 4(g) permits the collection of postal charges for providing the information if such charges exceed fifty rupees. As the Department of Posts has increased postal charges for recorded mail delivery, since 2012, this amount may be increased to provide some relief to the RTI applicant.

Recommendation:

2.3.c) *The word: "hundred" may be substituted for the word" "fifty" in Draft Rule 4(g).*

2.3.d) There is no guidance in the Act or the RTI Rules of 2012 as to what should the CPIO do if the RTI applicant does not pay the charges for obtaining the information. This is a challenge is frequently raised by CPIOs in RTI training workshops. In the matter of *Satpal Singh vs State Information Commission, Haryana & Ors.*, [(2011) 163 PLR 683], the Punjab and Haryana High Court ruled that the PIO does not have a duty to provide the information if the applicant does not pay the prescribed fee. There are some instances where PIOs have paid photocopying charges from their pockets for fear of inviting penalties, when the applicant did not pay up. Such situations may be avoided by providing guidance in the Rules in the following manner.

Recommendation:

2.3.d) *The following new sub-Rule (2) may be inserted immediately after Draft Rule 4 after renaming the existing Rule as Draft Rule 4(1):*

"(2) Subject to Rule 5, the Central Public Information Officer need not provide the requested information until the requester has paid the fees stipulated in **this Rule."**

2.3.e) There are several instances where CPIOs have spent public funds far in excess of the actual fees payable for providing the information in communicating the fee rates to the RTI applicant. Such wastage of public resources may be avoided by providing an exception to the general rule of fee payment as recommended below:

Recommendation:

2.3.e) *The following new sub-Rule (3) may be inserted after Draft Rule 4:*

"3) The Central Public Information Officer shall be at liberty to waive the fee chargeable under this Rule if the cost of realising such fee exceeds the amount of fee payable by the information requestor."

2.3.f) There are several instances where CPIOs have supplied the requested information well after the 30-day deadline despite payment of the additional charges without delay. In all such instances the RTI applicant is entitled to a fee refund automatically, in view of the principle stated in Section 7(6) of the RTI Act. Guidance may be provided to the CPIO in such cases as follows:

Recommendation:

2.3.f) *The following new sub-Rule (4) may be inserted after Draft Rule 4:*

"4) Where the Central Public Information Officer fails to provide the information to the applicant within the period of time stipulated under the Act, the fee already collected under sub-section (1) or sub-section (7), if any, shall be refunded forthwith."

2.4) Draft Rule 6:

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.

Comments:

2.4.a) In 2016, CHRI made a detailed submission to the DoPT pointing at the need for operationalising the system of Personal Deposit accounts under Rules 88-89 of the General Financial Rules 2005 (Now Rules 96-97 in GFR 2017) to CPIOs to receive fees and use them for copying charges. CHRI reiterates this recommendation now as opening such a system has multiple benefits-

- a) all fee payments can be made to the CPIO and the confusion created by diverse bank accounts such as AO, P&AO, DDO etc. maintained by various public authorities can be alleviated; and
- b) the CPIO may utilise the fee paid for meeting the expenses of providing the information without having to draw from the Imprest account of the public authority.

Initiating such a system creates a win-win situation for the information seeker as well as the public authority.

Recommendation:

2.4.a) *DoPT may take action to operationalise the Personal Deposit Account system for all CPIOs to receive and utilise fees paid under the RTI Act.*

Until such time that the Personal Deposit Accounts are operationalised for CPIOs, the following amendments may be considered for Draft Rule 6:

2.4.b) The RTI Rules must be amended to create more convenient modes of payment for citizens to use under the RTI Act, such as money order. Special RTI stationery such as adhesive RTI stamps purchasable and redeemable at post offices may also be created.

Recommendation:

2.4.b) *In Draft Rule 6 (b) the words: "or money order" may be inserted after the words: "Indian Postal Order" may be inserted.*

Consideration may be given to creating special RTI stationery such as adhesive RTI stamps that can be bought and redeemed at post offices.

2.5) Draft Rule 7:

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.

Comments:

2.5.a) Draft Rule 7 provides for the appointment of a Secretary to the Commission without clarifying the incumbent's role, responsibilities or functions. Draft Rule 2(h) defines the "Registrar" of the CIC but there is no corresponding Draft Rule regarding his or her appointment, nor are the role and functions of such an office delineated anywhere. This is a glaring gap in the Draft Rules.

The CIC Management Regulations which the Delhi High Court quashed in 2010 provided for the position of a Registrar, but there was no mention of a Secretary to the CIC. So it is advisable to clearly define the role of the Secretary who looks after the day-to-day affairs of the Commission for routine operational matters. The Secretary should be under the administrative supervision of the Commission for the entire duration of his or her tenure at the Commission.

The Registrar, on the other hand should be responsible for managing the adjudicatory functions of the Commission. The CIC must have the final say in appointing a qualified person to such position in order to ensure its operational autonomy. The Central Government may suggest a panel of senior officers to the CIC to choose from in addition to openly advertising the vacancy. The Chief Information Commissioner should be empowered to write the Annual Performance Appraisal Report of the officer appointed as the Registrar for the duration of his or her tenure at the CIC, after due consultation with other serving Information Commissioners as to how they assess the performance of the incumbent.

Recommendation:

- 2.5.a) (i) *Draft Rule 7 may be expanded to include a clear delineation of the role and functions of the Secretary of the Commission. The Secretary should be of the rank of a Secretary to the Government of India (in keeping with the high rank of the Chief Information Commissioner and the Information Commissioners) and he or she may be appointed in consultation with the Commission.*
- (ii) *The Chief Information Commissioner should be empowered to write the Annual Performance Appraisal Report of the Secretary after ascertaining the assessment of other Information Commissioners about **the incumbent's performance**.*
- (iii) *A new Draft Rule 7A may be inserted after Draft Rule 7 containing the relevant clauses relating to the Registrar, drawn from the erstwhile CIC Management Regulations, 2007.*
- (iv) *The CIC should have the autonomy of selecting a suitable candidate for appointment as Registrar through open advertisement of the vacancy. The Central Government may also place a panel of names of senior officers of Addl. Secretary rank for the consideration of the CIC.*
- (v) *The Chief Information Commissioner should be empowered to write the Annual Performance Appraisal Report of the Registrar after ascertaining the assessment of other Information Commissioners about the **incumbent's performance**.*

2.6) Draft Rule 8:

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.

Comments:

2.6.a) Draft Rule 8(1)(viii) requires every appellant to state that he or she has not filed an appeal pertaining to similar matters before the Commission or any court (either disposed or pending). The rationale behind such a requirement is not apparent. There can be instances where a complaint regarding non-receipt of RTI application by the CPIO or an appeal regarding excess fee charged may have been filed before the CIC and a second appeal about the lack of an order from the first appellate authority or non-compliance with the FAA's order may have been filed as a complaint before the CIC. So there can be multiple situations where a single RTI application may have resulted in multiple cause of action instituted before the CIC. These would all be legitimate grievances under the RTI Act. So Draft Rule 8(1)(viii) only seeks to take away the rights of the citizen from seeking remedies from the CIC except once in relation to a single RTI application. This Draft Rule serves little purpose and may be omitted.

Recommendation:

2.6.a) *Draft Rule 8(viii) may be omitted.*

2.6.b) Draft Rules 8(1)(ix) and 8(3) require an appellant to show proof of serving the appeal on the respondents. This is wholly unnecessary in the electronic age when the CIC is making laudable efforts to digitise all its records and processes. Rather than require the appellant to serve copies of the appeal on the respondents, the CIC may simply transmit the entire e-book pertaining to an appeal to the concerned Public Authority by email soon after the appeal is admitted. **CIC's own guidelines instead of RTI Rules** may provide for such an e-process.

Further, an appeal may be described as such only after it has been admitted by the CIC. Until such time that it is admitted, it will remain only a "draft appeal: submitted to the CIC. It becomes an "appeal" case only after admission. So on this ground also, the said Draft Rules do not make any sense. These draft Rules will only make the CIC's procedures as complicated as that of a common civil court. This was not the intention of Parliament which provided for a simple dispute resolution process by establishing a tribunal such as the CIC (vested no doubt with quasi-judicial functions). This Draft Rule also serves little purpose and may be omitted.

Recommendation:

2.6.b) *Draft Rules 8(ix) and 8(3) may be omitted.*

2.7) Draft Rule 9

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.

Comment:

2.7) Draft Rule 9 provides for the return of appeal for removal of deficiencies. Past practice of the CIC shows that Rule 9 in the 2012 RTI Rules which is a similar provision was 'creatively' used to 'artificially' reduce pendency levels at the Commission. Such situations may be avoided. The right of appeal is clearly a statutory right provided for by the RTI Act. Such a right cannot be rendered nugatory on minor technical grounds. Instead, the Rule must require the Registry of the CIC to record all defective appeals with diary numbers and provide reasonable assistance to the appellants to cure the deficiencies prior to their admission and posting before the CIC.

Recommendation:

2.7) *Draft Rule 9 may be substituted with the following:*

"9. Assistance for curing deficient appeals: (1) As soon as every appeal is received in the Commission, it shall be diarised with a unique number allotted for this purpose.

2) The Registrar of the Commission or such other officer as may be appointed for this purpose, shall point out the deficiencies in the appeal if any, to the appellant, verbally or in writing and provide him or her reasonable assistance to cure such deficiencies before

admitting such appeal in the Commission.

3) The Commission shall not return an appeal to the appellant on the ground that it has any technical deficiency."

2.8) Draft Rule 10:

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.

Comment:

2.8) Draft Rule 10(2)(a) implies that an order on the first appeal may be made by an officer other than the first appellate authority (FAA). Nothing in the RTI Act permits an officer who is not designated as the FAA to entertain or decide first appeals howsoever high in rank he or she may be. The Draft Rule lends itself to ambiguity of jurisdiction and may be rectified.

Recommendation:

2.8) In Draft Rule 10(2)(a) the words: "or any other person competent to pass order on such appeal" may be omitted.

2.9) Draft Rule 12:

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.

Comment:

2.9) Draft Rule 12 permits the withdrawal of an appeal on the request of the appellant. It also allows for the abatement of an appeal on the death of the appellant. Senior representatives of the DoPT have reasoned that these were included in the CIC Management Regulations in 2007, so it is justified to include them in the new RTI Rules. While this is factually correct, attention must be paid to the deteriorating situation of safety and security of RTI activists and information seekers. There are close to 400 documented cases of attacks on information seekers by vested interests. Of these 65 incidents relate to the murder of the information seeker and the remaining relate to physical assaults and threats and harassment. In at least six cases such harassment has reportedly driven the information seeker to commit suicide. In 2007, there were only 8 cases of assaults or harassment of the information seeker across the country. In 2017 this has become a gory phenomenon. During the consultation process on the instant Draft RTI Rules, one RTI activist was allegedly murdered by a group of anti-social elements in Maharashtra. Draft Rule 12 will only legitimise such attacks and embolden vested interests who wish to keep corruption and maladministration under wraps to compel appellants to withdraw their cases. They may even resort to murder to cause the abatement of pending case. There is no justifiable reason why such a Rule must be included. The doctrine of implied powers is more than enough for the CIC to close a case if it is reasonably satisfied that the appellant wishes to withdraw a case for reasons provided in writing.

When the CIC receives news of the death of an appellant under whatever circumstances, the CIC must direct the disclosure of all information sought in accordance with the provisions of the law. The CIC approved a resolution in 2011 requiring it to examine *suo motu*, cases of RTI activists who are murdered or attacked and direct proactive disclosure of the information sought in accordance with the law. Draft Rule 12 must be amended to empower the CIC to take such action. Filing an appeal before the CIC is not an exercise of the appellant's right to sue which should extinguish with his or her death. Often the information sought is of public interest, so there would be no harm in directing the concerned public authority to proactively disclose such information.

Recommendation:

2.9) *Draft Rule 12 may be substituted as follows:*

"12) Suo motu disclosure in certain cases: Where it comes to the notice of the Commission that an information requestor has been injured or harmed in any manner, for seeking information under the Act, the Commission shall call for all the papers relating to the pending information request or appeal or complaint as the case may be, from the concerned authorities and direct that information be disclosed suo motu in accordance with the provisions of the Act."

2.10) Draft Rule 13:

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.

Comments:

2.10.a) Draft Rule 13(1)(i) makes it mandatory for a complainant to submit a copy of the RTI application along with a complaint to the CIC in addition to other documents. This Draft Rule does not take into account the clear distinction drawn by the Supreme Court of India between a complaint procedure under Section 18 and an appeal procedure under Section 19 of the RTI Act. In the matter of *Chief Information Commr. of Manipur & Anr. vs State of Manipur & Anr.* [AIR 2012 SC 864] the Apex Court pointed out that a remedy against lack of response from the CPIO to an RTI application lies only in the appeals procedure provided for under Section 19 of the Act. The Court further emphasised on the supervisory nature of the powers granted to the CIC under Section 18 of the Act. Complaints may be legitimately submitted to the CIC under Section 18 on a variety of matters, namely,:

- a) failure to submit an RTI application because a CPIO has not been appointed;

- b) non-compliance with the final order of the CIC by the CPIO or the public authority;
- c) poor or non-compliance with the requirements of *suo motu* disclosure of information under Sections 4(1) and 25(1)(c) of the Act;
- d) poor or non-compliance of a public authority with its records management obligations under Section 4(1)(a) of the Act; and
- e) poor or non-compliance with the recommendation of the CIC under Section 25(5) of the Act.

In all such cases it makes no sense to insist that the RTI application be annexed as an essential document to the complaint. Draft Rule 13(1)(i) may be amended as follows:

Recommendation:

2.10.a) *In Draft Rule 13(1)(i) the phrase: "if any" may be inserted after the words: "Central Public Information Officer".*

2.10.b) Although Draft Rule 13 does not indicate the timeline within which a complaint under Section 18 may be submitted to the CIC, para(1)(iv) in this Draft Rule indicates that it must not be more than 90 days. Nothing in Section 19 stipulates a deadline for the submission of complaints to the CIC. Parliament has deliberately kept the process open ended. So the rule-making power may not be used to introduce time limits as this will curtail the open-ended nature of this right.

Further, Draft Rules 13(1)(vi) and 13(3) require a complainant to show proof of serving the complaint on the respondent. This is wholly unnecessary in the electronic age when the CIC is making laudable efforts to digitise all its records and processes. Rather than require the appellant to serve copies of the complaint and annexures, if any, on the respondent, the CIC may simply transmit the entire e-book pertaining to an complaint to the concerned Public Authority by email soon after the complaint is admitted. **CIC's own guidelines instead of RTI Rules may provide for such an e-process.**

Further, a complaint may be described as such only after it has been admitted by the CIC. Until such time that it is admitted, it will remain only a "draft" complaint: submitted to the CIC. It becomes a "complaint" case only after admission at the Commission. So on this ground also, the said Draft Rules do not make much sense. These draft Rules will only make the CIC's procedures as complicated as that of a common civil court. This was not the intention of Parliament which provided for simple dispute resolution process by establishing a tribunal such as the CIC (vested no doubt with quasi-judicial functions).

Further, Draft Rule 13(1)(viii) requires every complainant to state that he or she has not filed a similar matter before the Commission or any court (either disposed or pending). The rationale behind such a requirement is not apparent. There can be instances where a complaint may be filed in relation to a single RTI application where the issue may be non-compliance with the direction of the CIC in an appeal matter or delayed supply of information despite the CIC's clear directive. In all such cases it is legal to submit a complaint to the CIC demanding that penalty be imposed on the errant CPIO. So this Draft Rule serves little purpose for all the reasons described above and may be omitted.

Recommendation:

2.10.b) *Paras (iv) to (vi) in Draft Rule 13(1) and Draft Rule 13(3) may be omitted.*

2.11) Draft Rule 14:

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.

Comment:

2.11) Draft Rule 14 provides for the return of a complaint for removal of deficiencies. Past practice of the CIC shows that Rule 9 in the 2012 RTI Rules which is a similar provision was 'creatively' used to 'artificially' reduce pendency levels at the Commission. Such situations may be avoided in the context of complaints also. The right of submitting a complaint is clearly a statutory right provided for by the RTI Act. Such a right cannot be rendered nugatory on minor technical grounds. Instead, the Rule must require the Registry of the CIC to record all defective complaints with diary numbers and provide reasonable assistance to the complainants to cure the deficiencies prior to their admission and posting before the CIC.

Recommendation:

2.11) *Draft Rule 14 may be substituted with the following:*

"9. Assistance for curing deficient complaints: (1) As soon as every complaint is received in the Commission, it shall be diarised with a unique number allotted for this purpose.

2) The Registrar of the Commission or such other officer as may be appointed for this purpose, shall point out the deficiencies in the complaint if any, to the complainant verbally or in writing and provide him or her reasonable assistance to cure such deficiencies before admitting such complaint in the Registry.

3) The Commission shall not return a complaint to the complainant on the ground that it has any technical defect."

2.12) Draft Rule 15:

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.

Comment:

2.12) Draft Rule 15(iii) empowers the CIC to close a complaint case instituted under Section 18 of the Act by issuing an order. However there is no requirement either in the RTI Act or in the Draft Rules to afford a hearing for the Complainant before the matter is closed. It is settled law that unless the statute explicitly provides for holding a hearing prior to the issuance of a decision by the competent authority, a person affected by such a decision cannot insist on being heard as a matter of right. It is an accepted ground norm that all adjudicatory processes must be underpinned by the principles of natural justice. The principle of *audi alteram partem* cannot be dispensed with while closing a complaint case under the Section 18 of the RTI Act by an order. Further, Section 4(1)(d) requires every public authority to give reasons for its administrative or quasi-judicial decisions to persons affected by such decisions. This duty devolves on the CIC also. Therefore the Draft Rules must require the CIC to hear the Complainant before closing his or her case and give detailed reasons for closing the case. Further, the CIC must be required to remand a complaint back to the First appellate authority if it finds that such remedy has not been exhausted instead of closing the case.

Recommendation:

2.12) In Draft Rules 15(iii) the **phrase:** "issued in writing along with detailed reasons, after giving the Complainant an opportunity of being heard" may be inserted after the words: "shall be closed by passing an order".

Further, a new proviso may be inserted after Draft Rule 15(iii) as follows:

"Provided that where the remedy of submitting an appeal under Section 19(1) of the Act

exists and the Complainant has not exhausted such remedy, the Commission may remand the case to the officer designated under that Section to hear and decide the matter within such period of time as the Commission may specify in its order.”

2.13) Draft Rule 16:

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.

Comments:

2.13.a) Draft Rule 16 refers to the written submission of a matter regarding non-compliance of a public authority with the order of the CIC as a “communication”. Further, there is no reference to such a term in Draft Rule 18 relating to presence of parties before the Commission creating an impression that such matters may be decided without requiring the presence of the parties. This lapse creates an absurdity vis-à-vis the procedures to be followed by the Commission.

Further, nowhere is the term “communication” used in the RTI Act and no special procedure is provided for to deal with issues of non-compliance. However, non-compliance with the orders of the CIC is not uncommon across public authorities. All such matters must be treated as complaints that may be submitted to the CIC for appropriate action. Section 18(1)(f) of the Act is sufficiently broad to cover issues of non-compliance or partial compliance. So the term 'complaint' must be used in the Draft Rules for the sake of avoiding confusion.

Recommendation:

2.13.a) *The word: "communication" wherever used in Draft Rule 16 may be substituted with the word: "complaint."*

2.13.b) Draft Rule 17(i) permits the return of a non-compliance matter if it is not submitted in the prescribed format. This requirement is in contradiction to the Draft Rule relating to submission of appeals where an appeal may not be rejected on the grounds that it is not submitted in the prescribed format or does not contain all accompanying documents. In such cases the Commission must be required to provide reasonable assistance to the complainant in the manner recommended for improving Draft Rule 9.

Recommendation:

2.13.b) *Draft Rule 16(i) may be substituted with the following:*

"(i) As soon as a non-compliance complaint is received in the Commission, it shall be diarised with a unique number allotted for this purpose. The Registrar of the Commission or such other officer as may be appointed for this purpose, shall point out the deficiencies in the non-compliance complaint if any, to the complainant, verbally or in writing and provide him or her reasonable assistance to cure such deficiencies before admitting such complaint in the Commission. The Commission shall not return a non-compliance complaint to the complainant on the ground that it is not in the prescribed format or has any other technical deficiency."

2.14) Draft Rule 17:

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.

Comment:

2.14) Draft Rule 17 vests discretionary power in the Chief Information Commissioner to post appeals and complaints including a complaint of non-compliance before the Information Commissioners. The Chief Information Commissioner may transfer a matter from one Information Commissioner to another Information Commissioner or multiple Information Commissioners during the pendency of a case. This Draft Rule is in contravention of Section 12(4) of the RTI Act. No doubt the responsibility of handling the general superintendence and management of the day to day affairs of the Commission is vested in the Chief Information Commissioner, he or she is not expected to act alone under this provision. Section 1(4) clearly states that the other Information Commissioners are required to provide assistance in this matter. It is settled law that where consultation of the members of a collegium or body is required by a statute, such consultation must be purposive and real. The same principle may be applied to understand the requirement of "providing assistance" under Section 12(4) of the RTI

Act. The management of the affairs of the CIC is a collective responsibility of all members of the Commission. The Rules must clarify the process of so doing.

Recommendation:

2.14) *Draft Rule 17 may be substituted with the following:*

"17) Posting of appeal or complaint before the Commission: 1) *The posting of appeals and complaints before one or more Information Commissioners shall be the collective responsibility of the Commission with the Chief Information Commissioner coordinating such decision making process.*

2) *The Chief Information Commissioner may post an appeal or complaint before more than one Information Commissioner either at the request of an Information Commissioner or on the request of any of the parties concerned, if it involves an intricate question of law or larger public interest, by a written order giving detailed reasons.*

3) *Where a member of the Commission recuses himself of herself from hearing or deciding a case, the Chief Information Commissioner may reassign the case to one or more Information Commissioners after due consultation with the members of the Commission.*

4) *All orders pertaining to posting of matters before one or more members of the Commission shall be displayed on the website of Commission without any undue delay."*

2.15) Draft Rule 18:

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.

Comments:

2.15.a) Draft Rule 18 leaves it to the discretion of the Chief Information Commissioner to notify the date and place of hearing of an appeal or complaint. The 2012 RTI Rules

provided for serving a notice of hearing on the parties at least seven days in advance. In order to ensure that all parties appear before the Commission, well prepared, it is essential that they be given adequate advance notice of the date of the hearing.

Recommendation:

2.15.a) *Draft Rule 18(2) may be substituted as follows:*

"2) The Registrar or any other officer appointed for this purpose shall notify the parties of the date and place of hearing of the appeal or complaint, as the case may be, at least thirty days in advance of the date of the hearing.

2.15.b) Under the *Central Information Commission (Appeal Procedure) Rules* notified in 2005, an appellant could opt not to be present at a hearing. This provision was inexplicably dropped in the 2012 RTI Rules. This provision must be restored as the appellant or the complainant must have the right to waive his or her right of attending a hearing.

Further, the present formulation of Draft Rule 18(5) does not make it mandatory for the CPIO whose decision or action has been challenged in an appeal or complaint to be present at the hearing. The presence of the CPIO is mandatory especially when the Commission decides whether or not to impose a penalty under Section 20 of the Act. Further, the Rules must clarify that the Commission must decide the appeal or complaint on the basis of the merits of the case instead of closing the case by making the assumption that the appellant or complainant is no longer interested in the case.

Recommendation:

2.15.b) *Draft Rule 18(3) may be substituted as follows:*

"3) The appellant or the complainant, or the third party as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorized representative or through video conferencing or may opt not to be present.

Draft Rule 18(5) may be substituted as follows:

"5) The public authority may authorize any of its officers or a duly authorised representative to present its case. However, where the Commission is required to make a determination regarding the imposition of a penalty under Section 20 of the Act, it is mandatory for the concerned Central Public Information Officer to be present during the hearing."

A new Draft Rule 18(6) may be inserted after the new Draft Rule 18(5) as follows:

"6) In the event of the appellant or complainant opting not to be present at the hearing, the Commission shall decide the appeal or complaint, as the case may be, based on the facts and records available before it."

2.16) Draft Rule 19:

19. Filing of Counter Statement by the Central Public Information Officer or the First Appellate Authority: After receipt of a copy of the appeal or complaint, the Central Public Information Officer or the First Appellate Authority or the Public Authority may file counter statement along with documents, if any, pertaining to the case. A copy of the counter statement(s), if any, shall be served to the appellant or complainant by the CPIO, the First Appellate Authority or the Public Authority, as the case may be and proof of service submitted to the Commission.

Comment:

2.16) Draft Rule 19 contains no mention of the requirement to serve copies of the counter statement and attached documents on the third party in a case. As the third party has a right to be heard by the Commission the Draft Rule must include such a reference.

Recommendation

2.16) *In Draft Rule 18 the words: "or third party" may be inserted after the words: "shall be served to the appellant or complainant"*

3) Missing provisions and Recommendations

3.1) Specify time limits for deciding appeals in matters relating to life and liberty:
The *proviso* underlying Section 7(1) of the RTI Act recognises the right of a citizen to seek and obtain **information concerning any person's life and liberty within 48 hours**. This is an exception to the general rule of providing information or rejecting a request for information within a period of thirty days. The intention of the Act is that where matters involve an urgency involving the life or liberty of a person, the provision of information should not be delayed. However, the Act is silent about the timelines for deciding first appeal under Section 19(1) and the second appeal under Section 19(3) of the Act. In practice, the CIC is said to take up such matters out of turn. However this **depends on 'discretion' at several levels in the Registry and when the matter finally reaches the desk of the concerned Information Commissioner**. There is no guidance in the Act or in the Rules for FAAs about the promptitude with which such matters must be decided.

When the Act has recognised specific right but is silent about what must be done when that right is in dispute, the Rules must step in to remove the lacuna or else the right will be rendered nugatory at the appeals stage. It is recommended that a provision be included in the proposed Rules to decide first and second level of appeals in life and liberty matters within specified deadlines.

Recommendation:

3.1) *A new Draft Rule 11A may be inserted after Draft Rule 11 as follows:*

"11A. Time limits for appeals about information concerning life and liberty:- 1) Notwithstanding anything contained in Section 19(1) of the Act, the First Appellate Authority shall communicate his or her decision on an appeal relating to information concerning the life or liberty of a person within forty eight hours of receipt of the appeal to the appellant.

2) Where an appeal received under Section 19(3) of the Act concerns the life and liberty of a person, the Commission shall communicate its decision within a period not exceeding seven working days of receipt of the appeal to the appellant."

3.2) Rules must stipulate the procedure for deciding first appeals:

There are multiple reasons why the RTI Act contains a provision for reviewing the decision of the CPIO within the public authority. First, the public authority must have the opportunity to correct any erroneous decision of its CPIO so that matters may be resolved quickly within. Second, it will enable quicker resolution of information access disputes. It is well recognised that there is a long waiting period at the CIC owing to the large number of pending second appeal and complaint cases. Third, needless, to say if the FAA is able to resolve the dispute internally, the burden on the CIC will reduce considerably.

However, multiple studies have shown that the first appeals system has failed to act as a time saving and resource-saving dispute resolution mechanism. It is also not uncommon for FAAs to mechanically agree with the decision of the CPIO allowing the case to escalate to the CIC thereby increasing its burden. There are instances where FAAs have requested the CPIOS to draft the order on the first appeal. This is a negation of an important principle of natural justice, namely, *nemo judex in causa sua* (no one shall be a judge in his own cause).

One of the reasons why the first appeals system has failed is because neither the Act nor the RTI Rules 2012 provide any guidance to the FAA about how appeals must be decided. **The DoPT's OM^s issued in July 2007 and April 2008 and the Uttarakhand RTI Rules** provide ample guidance for putting together a set of detailed provisions for the FAAs to decide first appeals. It is essential to clearly lay down the procedure for deciding first appeals through subordinate legislation instead of letting them remain as executive instructions.

Recommendation:

3.2) A new Draft Rule 6A may be inserted after Draft Rule 6 as follows:

"6A. Procedure for deciding first appeals:- 1) Any person aggrieved by a decision or action of the Central Public Information Officer or by the non-disposal of his information request within the time limit specified in Section 7(1) of the Act, may prefer an appeal to the First Appellate Authority of that public authority either online or offline or through the Central Assistant Public Information Officer, clearly mentioning the grounds of appeal and such appeal 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, including any intimation regarding payment of charges for providing the requested information, if any;*
- (iii) copies of other documents, if any, relied upon by the appellant and referred to in his or her appeal;*

(iv) a request for condonation of delay in submission of appeal, wherever required, giving reasons.

2) Upon receipt of an appeal, if the First Appellate Authority finds that it is deficient in any respect, he or she shall provide the appellant reasonable assistance to remove the deficiency:

Provided that the First appellate authority shall not return or reject an appeal on the ground that it is deficient in any respect.

3) While deciding an appeal, the First Appellate Authority may, if necessary, seek the views of the concerned Central Public Information Officer or any officer whose assistance was sought under Section 5(4) of the Act:

Provided that the First Appellate Authority shall not be bound by the views of any officer of the public authority for the purpose of making a decision on the appeal:

Provided further, that the First Appellate Authority shall not delegate the responsibility of drafting or making a decision on the appeal to any other officer of the public authority.

4) The First Appellate Authority may conduct a hearing before deciding an appeal and require the appellant to be present at such hearing by serving him or her written notice of the date, time and place of hearing, at least fifteen clear days in advance.

5) The appellant may be present at the hearing in person or through a duly authorised representative or opt not to be present.

6) If the appeal is for the disclosure of information that relates to or has been supplied by a third party and which has been treated as confidential by that third party, the First Appellate Authority shall take the views of such third party into consideration while deciding the appeal.

7) In his decision, the First Appellate Authority may-

a) set aside the decision of the Central Public Information Officer, rejecting the request for information and direct that the information be disclosed wholly or partially; or

b) notwithstanding the correctness of the decision of the Central Public Information Officer, direct that the information be disclosed in the larger public interest under Section 8(2) of the Act; or

c) reject the appeal for reasons to be recorded in writing with a detailed explanation as to why the information ought not to be disclosed along with the contact details of the Commission where the appellant may prefer a second appeal and the time limits for so doing.

8) If the First Appellate Authority decides that the information ought to be disclosed to the appellant, wholly or partially, he or she may either:

- i) pass an order directing the Central Public Information Officer to furnish the information to the appellant within a specific period of time; or
- ii) supply the information to the appellant forthwith, while disposing of the appeal.

9) The First Appellate Authority may cause the information to be supplied free of charge to the requestor, if:

- i) he or she is below the poverty line as may be determined by the appropriate Government; or
- ii) if the Central Public Information Officer had not disposed of the information request within the time limits specified in the Act.

10) If the First Appellate Authority decides that the information relating to a third party is fit for disclosure and if such third party has objected to the disclosure, he or she may issue a decision notice only and advise the third party of his or her right to prefer an appeal against such decision before the Commission and the time limits for so doing.

11) The First Appellate Authority shall provide a copy of his or her decision free of charge to all parties and cause the same to be uploaded on the website of the public authority **along with the RTI application, the CPIO's reply, if any and the first appeal letter along with annexures, if any.**

Consequently, the subheading of Draft Rule 11 may be substituted with the following:

"11. Procedure for deciding second appeals: -"

3.3) Guidance for applying Section 7(9) of the RTI Act:

It is common practice for CPIOs to invoke Section 7(9) of the RTI Act to reject a request on the ground that it involves collection of voluminous information or if the requested information is not available in aggregate form in one record. This is contrary to the letter and the spirit of the RTI Act because Section 7(1) permits a CPIO to reject a request only on the grounds specified in Sections 8 or 9 of the Act. However, there is no guidance in Section 7(9) of the Act as to what the CPIO should do if providing information in the form requested by the applicant will lead to disproportionate diversion of the resources of the public authority or cause detriment to the safety and preservation of the records. The 2012 RTI Rules are also silent in this regard. The Draft Rules must include some guidance about what the CPIO should do in such cases.

Recommendation:

"3.3) A new Draft Rule 6B may be inserted after the proposed Draft Rule 6A under Draft Rule 6 as follows:

"6B. Providing information through alternative modes: If a request for information attracts any or all of the conditions specified in Section 7(9), it shall be the duty of the Central Public Information Officer to provide access to the information in some other form that is acceptable to the requestor including by allowing inspection of the desired records."

3.4) Maintaining daily order sheets by the Commission:

In the matter of *Fruit and Merchant Union vs Chief Information Commissioner & Ors.*, [CWP No. 4787/2011, decision dated 2/11/2012], **the Hon'ble High Court of Punjab and Haryana** had directed the CIC to maintain daily order sheets in all cases. This direction **was noticed and reiterated by the Hon'ble Delhi High Court in the matter of R K Jain vs Central Information Etc.**, [W.P.(C) 3550/2013, order dated 23/03/2016] in the following words:

“Since the CIC is a quasi-judicial body, this Court was also of the view that its records must reflect a true and correct state of affairs.”

The CIC gave an undertaking that it will evolve a procedure for maintaining daily order sheets within a period of six months. Such a requirement may be included in the Draft Rules, given the fact that two High Courts have taken judicial notice of this lapse.

Recommendation:

3.4) *A new Draft Rule 20A may be inserted after Draft Rule 20 as follows:*

20A. Maintenance of daily order sheets:- The Registrar, or such other officer specially authorised for this purpose, shall maintain daily order sheets in relation to every appeal or complaint admitted by it, in such form as the Commission may specify for the purpose of recording the true and correct state of affairs.

3.5) Pronouncement and authentication of the orders of the Commission:

There are no provisions in the Draft RTI Rules about how the orders of the Commission should be pronounced and how such orders shall be authenticated. Rule 15 of the 2012 **RTI Rules provided for the manner in which the Commission's order were to be issued** and authenticated. Rule 8 of the 2005 Central Information Commission (Appeal Procedure) Rules, 2005 provided for the pronouncement of the Commission's orders in open proceedings. Both these provisions are missing but are necessary for the smooth functioning of the Commission. Further, with the efforts to digitise all work at the CIC, all papers pertaining to appeals and complaints are available with it in electronic form. It should not be difficult to upload **along with the CIC's orders** the relevant RTI applications and appeal letters and the orders of the CPIO and the FAA after redacting the personal details of the appellant or complainant. This will ensure greater transparency in the manner in which the Commission decides cases.

Recommendation:

3.5) *A new Draft Rule 23 may be inserted after Draft Rule 22 as follows:*

“23. Pronouncement and authentication of the orders of the Commission:- 1) The order of the Commission shall be in writing and be pronounced in open proceedings.

2) Every order of the Commission shall be duly authenticated by the Registrar or such other officer authorised by the Commission for this purpose.

3) The order of the Commission shall be supplied free of charge to all parties to a case and subsequent copies of the order may be supplied on request on payment of such charges as

may be specified by the Commission from time to time.

4) *All orders of the Commission shall be displayed along with the relevant papers relating to the appeal or complaint, as the case may be, after redacting personal information of the appellant or the complainant from such records."*

3.6) Clarifying the locus of appeals under Section 19(9):

Section 19(9) of the RTI Act empowers the CIC as follows:

"(9) The Central Information Commission... shall give notice of its decision, including any right of appeal, to the complainant and the public authority." [emphasis supplied]

Further, Section 23 of the Act states as follows:

"No Court shall entertain any suit, application or other proceeding in respect of any order made under this Act, and no such order shall be called in question otherwise than by way of an appeal under this Act." [emphasis supplied]

In other words, the jurisdiction of regular courts is barred in relation to all matters under the RTI Act and no order made by any authority may be called into question except by way of an appeal under this Act. So the first appeal against an order of the CPIO lies with the First Appellate Authority and a second appeal lies with the CIC in the case of public authorities under the Central Government. However, Section 19(9) seems to indicate the possibility of an appeal against the decision of the CIC which the CIC is empowered to specify in its decision. As the jurisdiction of the regular courts is explicitly barred, it must follow that such appeal will lie within the CIC itself. Any other interpretation will be absurd as the CIC is not a constitutional court of plenary jurisdiction that it may give a certificate to file an appeal against its decision before a higher court.² Further, as the statute itself grants a right of appeal it cannot be rendered nugatory by virtue of the non-existence of Rules clarifying where such appeal will lie. It is advisable to make Rules requiring the Commission to allow an appeal against its own order (delivered by an Information Commissioner) before a group of Information Commissioners if new facts emerge after a decision has been given or if there is an error of law or an error of fact in the decision of the CIC which must be corrected.

Recommendation:

3.6) *A new Draft Rule 24 may be inserted after Draft Rule 22 and the proposed Draft Rule 23 as follows:*

"24. Appeal against the decision of the Commission:- 1) Under Section 19(9) of the Act, a further appeal against the decision of the Commission shall lie before a group of three or more Commissioners as the Commission may collectively determine, any or all of the following conditions are satisfied:

² This is not to discount the possibility of a judicial review of the decision of the CIC before the High Courts or even the Supreme Court. That is a different procedure called – "judicial review" which exists by virtue of Articles 226 and 32 of the Constitution that empower the High Courts and the Apex Court to review the decision or order of any executive, administrative or quasi-judicial authority and has no bearing on the right of appeal mentioned in the RTI Act.

- (i) if by way of an application from any of the parties to a matter already decided by the Commission, under Section 18 or 19 of the Act, any new facts are brought to its notice, that were not presented earlier; or
- (ii) if by way of an application from any of the parties, any error of fact or of law **apparent on the face of the record of the Commission's decision given under Sections 18 or 19 of the Act** are brought to the notice of the Commission, subsequently.

2) The Commission shall decide an appeal received under Section 19(9) in accordance with the procedures laid down under Rules 11, 17, 18, 19, 20, 20A and 23.

* * * * *