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## **That lofty cabal of secretive babus**

**Chitta Behera Posted: Oct 30, 2004 at 0000 hrs IST**

Except a few people who have been chasing the Freedom of Information Act 2002 not everyone is aware about the Draft Rules of this all-important central legislation published in the website of the Ministry of Personnel, Public Grievances and Pension. Again, as irony would have it, the Government has carefully chosen not to publicise through the print or electronic media the very set of Draft Rules of an Act which supposedly promises free flow of information. This semi-clandestine manner of notification of the Draft Rules, in the words of Delhi-based CHRI, seems to make a cruel joke at the grandiloquent commitment given in the CMP of the UPA Government, "The Right to Information Act will be made more progressive, participatory and meaningful."

Utterly disappointing is the provision of the Draft Rules seeking to impose a multi-level fee regime that the citizen seeking information has to comply with. Strangely enough, while the FOI Act 2002 in its Section 6 had provided for a plain written application to be submitted to the Public Information Officer without any fee to accompany it, the proposed Rules under its Section 4 make it mandatory for a Demand Draft or a Banker's Cheque of Rs 50 to be attached to the application seeking information. In a country where the overwhelming majority are illiterate in bank transactions, can this provision be implemented at the grass root level? Again, take the case of a working man or woman whose minimum wage, say for instance in Orissa, is only Rs 50. Is it possible for such an individual to apply at all for information before a BDO or a tehsildar for a piece of information, even if that relates critically to basic life issues such as roti, kapda, makan?

Further, where the Public Information Officer refuses to disclose information quoting any of the spacious exemption clauses of the Act, the Draft Rules don't provide for a refund of the deposited amount of Rs 50 to the applicant, thus making the latter a double loser.

Again, the Draft Rules has fixed Rs 5 per page as its reproduction charge to be paid by the applicant, whereas the cost of photocopying a standard page everywhere in India hovers between a meagre 50 to 70 paise only. Then if the PIO decides to give the information through the medium of a floppy or a CD, he'll charge as much as Rs 50 per piece, whereas its average cost now is somewhere between Rs 10 to Rs 15 only. The prohibitive fee structure proposed thus under the Draft Rules has given rise to the double suspicion that the state is not only trying to siphon off funds from the poor but also safeguard its infamous secrecy.

The next dispensation of the Draft Rules (Section 5) that deals with the first appellate authority is simply laughable. The FOI Act in its Section 12 (Appeals) provides for the aggrieved citizen to go for the first appeal against the decision of the PIO before an authority to be prescribed by the Rules. If still displeased with the result of this appeal, he can choose to lodge a second appeal. But the First Appellate Authority and the Second

Appellate Authority are the same in the Act and the Rules! That is a Secretary of the Government of India receives appeals against his own decision. This is a legal absurdity. In the course of a country-wide debate over the FOI Act 2002 a consensus had emerged among the RTI activists that the ultimate authority of appeal should be an outside body having adequate standing and power like the Vigilance Commission as suggested by CHRI or a retired Judge acting as a Chief Information Commissioner. But those who drafted the Rules are obviously too paranoid to implement these.

Also, no provision has been made for an acknowledgement receipt that needs be issued by the PIO to the requestor for information as soon as his application is submitted in the prescribed form. It is just a common sense that a dak receipt is just like a copy of FIR, a prime, critical and all-time instrument, which would stand the petitioner in good stead throughout, during his chase after the desired information as well as punitive justice against the defaulting PIO from the appellate authority. The next critical omission is the conspicuous absence of any penal provisions in the shape of either fine or disciplinary action vis-a-vis the proven acts of transgression of the FOI rules by the PIOs, which renders the whole legislation a toothless one. If a PIO knows for sure that nothing would happen to harm his personal interest for violating the FOI rules, why should he feel impelled to honour the request of an ordinary citizen and cater to his information needs in time?

Even the eminent RTI activist Aruna Roy, who is a member of National Advisory Council of UPA Government and whose alternative draft law entitled 'Right to Information Act 2004' was accepted in principle in the NAC meeting in August chaired by Sonia Gandhi herself, seemed thoroughly disheartened with the roughshod manner in which the Draft Rules were notified the next day on Ministry's website without her knowledge. Soon afterwards she said that although the current law (FOIA 2002) was not acceptable to the NAC, she was not aware how the Ministry of Personnel issued this notification at the same time that the NAC finalised draft amendments to the law itself.

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