

Good Governance and Right to Information

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ABSTRACT

“Be informed and be empowered” is the essence of right to information. The government like our’s, a democratic government, should govern the masses. Masses should be their own masters and governors or what Gandhi Ji has imagined “self governance,” but in the darkness of over governance by the office secrets - Right to know and good governance are the ‘Dawn of New India’, India at the Cross-Roads of Vision 2020. Right to information is the basis of (PURA) providing urban rencitics to Rural Areas. Participation, Consensus, accountability, transparency, responsiveness, efficiency, will provide life to democracy,

Key Words : Participation, Responsiveness, Consensus, Media, Cross roads, Oxygen, Governance

INTRODUCTION

Information Technology has made impressive inroads into the Indian Society and government. This information age parading shift in Concept; manner and method by which the Government has to deliver its Services. The new practice of administrate has been developed in the concept of Electronic Governance (EG). The Electronic Governance is an application of Information Technology to the processor of Government functioning to as to being about simple Moral, Accountable, Responsive and Transparent (SMART) Governance. This process is known as Good Governance.

Defining Good Governance:

- (1) Political Accountability.
- (2) Participation by Various Social Economic colossal and professional groups in governance.
- (3) Rule of Law.
- (4) Bureaucratic Accountability oath Systems to monitor and Control performance of government official in relation to quality of service.
- (5) Openers and Transparency in Administration.
- (6) Freedom of Information.

(7) Value for money and cost effectiveness.

(8) Co-operation between the Government and Civil Society organization.

The main objective of pending information is not only to promote offences, transparency and accountability in administration but also to ensure participation of people in all the matters related to Governance

The need for right to information:

The aim of democracy has everywhere to eliminate “man made, socially postured, disquit mention that has enlarged for same and has restricted for others avenues that lead to education, income and advancement (Tripathi, 2012, 21).

It is said that the first forty years (pre-independence) represent to period when India rightly asserted that good government is no substitute for self government. In the last forty years, thinking Indian become equally conscious. The self government is no “with how little wisdom the world is governments” (Palkhivla, 1994; 323).

Ensure people participation:

RTI is safeguard for those who are beneficiary of government programmes, besides those who are part of planning projects, Right to know ensures participation to

those who are illiterate, deprived, marginalised and their opinion will divert the program in the line of their needs and necessities, instead of needs of those who diverts funds in wrong direction. This will also ensure actual projects cost as well as to make project socially viable.

Ensure Principle of Accountability:

In a democratic country like our's govt works as 'Welfare State', ensures welfare of all Preamble of RTI act begins with the accountability of those who are the part of 'services of the masses', of the deprived. For whom Govt. officers are engaged and deployed from bottom (block) to top (state and nation), the right to information will make them able to inspect papers, Rights, samples and they can ask the information related with their grievances.

Transparency:

In the period of 'official secrecy' (OSA 1923) every thing, was in dark Govt. good plans programmes, Funds, foods, fodder, forests, facilities - regarding - education, health, wealth, weather, shelter resulted misuse, misappropriation and embezzlement of funds, and birth of scames and rackets in very organized manner. Once king Martin Luther has said "Darkness cannot drive out darkness only light can do it." Light of information can counter this darkness. This light of information is essential that there should be complete transparency in all Government Projects allotted for public good. Transparency will bring informed citizenary and empowerment of masses in developmental activities.

Empowerment:

Transparency will empower masses. They will be able to know what government officers are doing for their good. Appropriate utilization of funds will enhance their life quality, poor people will get rid of their poverty by employment guarantee, proper education will accomplish themselves and they will be able to know by inspecting projects actually what is going on in note sheets and files that will be a bold step for poor, emancipation from slavery.

Makes media more effective:

McLuhan has said 'Media' is the Message' Media is a bridge between the citizens and government. Media's right to known is not a special but rather an aspects of the publics right to know. Media will report actual informations that should be in favour of Nation-building

and citizens welfare. Before enactment of Right of information Government offices always maintained official secrecy and in most of cases, right or wrong, they always denied the primary sources and govt.-documents of information. Right to know will justify the statement that, "Information is the oxygen of democracy." Media will report actual facts and Journalism will not be captive of darkness.

Some Issues of Applicability and Implementation:

There is a certain anxiety among political and social analysts all over the world about how India will implement the Right to Information Act – a law which supposedly reinforces its democratic foundations. It is obvious that there are certainly a few challenges before our country posed by this statute, particularly in socially imbibing the paradigm shift envisaged in the Act.

Those challenges can be listed down as follows:

1. Bureaucracy to handle change management
2. Empowering weaker and disadvantaged sections of the society with RTI
3. Geographical challenges
4. Handling economic implications for tertiary sector
5. Sorting out situational and interpretation issues
6. Handling the magnitude of applications, appeals and complaints

The list may extend further. The anxiety among the political and social analysts all over the world, is similar to that in 1950. At that time, the issue was whether a largely populated country like India with disparities, illiteracy and poverty, can sustain the challenge of implementing democracy as a mode of governance or not. History has evidently proved that most of the neo independent countries of that era fell in to the clutches of Military Raj in one form or the other, but it was never the case in India. By and large, our experiment of democracy has proved to be successful.

Who made this success possible? Certainly the mass of Indians. Common people who are faceless but conscious enough of the nation's good. The same mass will rise again to make Right to Information Act a success, it is hoped.

History Beginning :

'Sprit of openness flows from an unreported judgment delivered in the case C. Vaidy V. H. D. Penda and repredenced in abridged from (Sorabjee, 1976, 187).

"Free press and the right of dissent are the

arteries of society through which flows the blood of democracy”.

The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases :

Right to Information as a Fundamental Right :

That the right to information is a fundamental right flowing, from Article 19(1)(a) of the Constitution is now well-settled. Over the years, the Supreme Court has consistently ruled in favour of the citizen’s right to know.

Supreme Court on the Right to Information (bhansali S.R., 2006. 3-6)

- In Bennett Coleman,¹ the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19(1)(a)
- In Raj Narain,² the Court explicitly stated that it is not in the interest of the public to ‘cover with a veil of secrecy the common routine business The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.’
- In S. P. Gupta,³ the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.
- In Cricket Association of Bengal,⁴ the right to impart and receive information from electronic media was included in the freedom of speech. The airwaves were held to be public property and hence distribution of these waves between government and private channels was to be done on an equitable basis.
- In P.U.C.L.,⁵ the right to information was further elevated to the status of a human right, necessary for making governance transparent and

The Right to Information Act, 2005 has been made fully applicable from 12th October 2005. Before that, State level statutes for Right to Information were in force in 8 States. It is now time to look at implementation issues that have come forth during this period. The Act will mature over a period of time and interpretation issues will get resolved through Clarifications, Case Laws and Amendments required. But the implementation issues are to be projected and resolved practically. Of course, systemic defects are required to be taken into consideration. The objective of this paper is to discuss

the coverage issue of implementation with reference to identification of Public Authorities and initiation of some discussion for resolving the same.

Identification of Public Authorities:

Public Authority is one of the key concepts around which the provisions of the Act rotate. The Act defines which establishment should be treated as Public Authority under S. 2 (h). It reads as under :

S. 2(h) “public authority” means any authority or body or institution of self-government established or constituted —

- (a) by or under the Constitution;*
- (b) by any other law made by Parliament;*
- (c) by any other law made by State Legislature;*
- (d) by notification issued or order made by the appropriate Government, and includes any-*
 - (i) body owned, controlled or substantially financed;*
 - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;*

However, there is no mention in the Act about who should declare Public Authorities. Particularly, regarding those organisations which disclaim to be Public Authorities. Logically, Appropriate Government, as defined in S.2(a), should publish a list of Public Authorities that come under the purview of the Act, but there is no provision of ‘Declaration’ by the Government. Even Information Commission is not empowered to ‘declare’ list of Public Authorities under the law. Hence, Appropriate Government should at least publish the list identifying organisations which are Public Authorities in its opinion. Actually, the Act envisages that a Public Authority will identify itself as Public Authority and comply with the provisions under the Act. In case it doesn’t happen, citizens can use tool given by S.18 *i.e.* Complaint to Information Commission. One of the grounds mentioned in S.18, is regarding not appointing Central or State Public Information Officer. The verbatim is as follows:

S. 18. (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

- (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by*

reason that no such officer has been appointed under this Act ...

It should be noted that it is a complaint and not an appeal. Though the Authority is same for inquiring into complaint and for deciding second appeal, the Act differentiates between the two. For inquiring into a complaint under S.18, the Information Commissioner (Central or State as the case maybe) has the powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of matters specified in the Act. That is not the case with appeal cases under S.19 of the Act. Hence, an establishment disclaiming status of Public Authority, can be brought into the purview of the Act by making complaint to the Information Commission (Central or State, as the case maybe). But, such cases will have to be handled by the Commission on case to case basis. It seems that it will result in large influx of complaints to the Information Commissions. Further, it is mentioned in the Act (S.18) that the Commission can examine any record to which the Act applies and which is under the control of the Public Authority. It is further mentioned that no such record may be withheld on any grounds. The powers are vast but what will happen if the records need to be examined are not under a Public Authority? Of course, this is an interpretation issue that may be sorted out through Case Laws.

To determine whether particular organisation is Public Authority or not, the Commission will practically be depending upon records of the Appropriate Government only. Proactive identification of Public Authorities by Appropriate Government, seems to be the logical and practical solution.

Various Departments of Appropriate Government are expected to list Public Authorities in concerned field. Section 25 (2) narrates role of Ministries or Departments in monitoring and reporting and assisting Information Commissioner in preparing his Annual Report. The provision says :

Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

Here, actually Ministries and Departments can play

a very active role. Can this role be extended upto proactive level? Identifying Public Authorities from own jurisdiction, will be a great proactive step by Ministries/ Departments. The organisations having dispute about inclusion of their names in such list will have to refer that to the Government. It will reduce the influx of complaints towards Information Commission regarding the organisations disclaiming to be Public Authority.

The appropriate Government will have to clarify particularly on two terms mentioned in the Definitions Clause of the Act.

1. 'Controlled' used in Section 2(h) i
2. 'Substantially' used in Section 2(h) ii

Unless and until these two terms are clarified by the Appropriate Government, the issue of coverage of the Act in terms of definition of Public Authority cannot be resolved. Further, it is linked with proactive disclosure under S.4 also because, the organisations which are not publishing their information under S.4, are having the excuse of the two terms mentioned above in definition clause. The novelty of the Act actually lies in covering NGOs in the definition of Public Authorities. What sort of Government control will differentiate NGOs covered under RTI and not covered under RTI Act? The answer is to be provided by appropriate Government.

The categories of Public Authorities under Section 2(h) of RTI ACT, 2005 are as follows: By or under the constitution, By any other law made by parliament, By any other law made by State Legislature, By notification issued or order made by the appropriate Government; and Under Section 2(h) (i)(ii), two categories can be added : Body owned controlled or substantially financed and Non-Government, organisation substantially financed

Access issues for citizens:

How to provide access to the citizens to get information he/she wants, is an important issue. Access for citizens to the machinery can be classified further as follows :

1. Access to Assistant Public Information Officer or Public Information Officer appointed by the Public Authority from which a citizen is seeking information.
2. Access to information published by Public Authority under S. 4 (1) b of the Act.
3. Access to Appellate Authority appointed by Public Authority for first appeal.
4. Access to Central/State Information Commission for complaint under S. 18 of the Act and second appeal.

To sort out such access issues, location of officers designated as PIO or APIO or Appellate Authority, is very important. But actually the location issue comes later. It needs to be decided firstly that whether Public Authority can be identified in decentralized way or not. Of course, the Act is very open on this count. If Government Departments are successful in identifying Public Authorities even at lowest level or at village level, nothing like that. It will be according to the spirit of the Act.

S.6(3) of the Act deals with transfer of the application. The verbatim is as follows:

Where an application is made to a public authority requesting for an information:

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

There is no mention of transfer within Public Authority *i.e.* PIO to PIO. It means the Act expects transfer of the application only among Public Authorities. Unwieldy size of a Public Authority will complicate the task of giving information. On the other hand, small sized Public Authorities will be able to respond to the applications easily and promptly. S. 4 published by small sized Public Authorities will enable citizens to locate appropriate Public Authority for appropriate information.

Access issue for proactive disclosure under S. 4 (1) b, can also be addressed through identification of small sized and lowest level Public Authorities. The disclosure under S. 4 is mandatory. In addition to that, it is expected from Public Authority to disseminate that information properly. S. 4(3) and (4) in the Act narrates :

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format

with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

More localized the nature of the Public Authority, better are the chances to reach the public in effective manner. Hence, the Ministries/Departments should attempt to identify Public Authorities in concerned area with decentralization approach not only departmentally but also for establishments outside the Department.

Leader of the bureaucracy in the State *i.e.* Chief Secretary at State level should take lead for this to get this work done by various Ministries/Departments in a time bound manner. At central level, Department of Personnel and Training may take up this task. Information Commissioners will appreciate such initiative as it will help them in two ways. One is preparing Annual Report and second is reduction in number of complaints.

Conclusion:

Right to information is the antithesis of official secrecy, when the truth is dismissed and buried underground it will work as explosive force to reveal facts. Sunlight is the best disinfectant in the voice of judiciary, so the light of information will disinfect and end the virus of corruption. Good governance will establish rule of law as everybody is equal before Law and equal protection of human rights, on the one side justice system through due process of law for all. This situation ensure the citizens of a nation, to live and work with dignity, maintain morality and enjoy equality.

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