Right to Information Act 2005 and Beyond

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The Right to Information Act, 2005 is an epoch making legislation that has been enacted by the Indian Parliament. Ever since it came into force, it has created ripples in the democratic firmament of the country. It has set the ball rolling with the avowed objective of promoting transparency and accountability in public life. There is no denying the fact that democracy has been deeply entrenched in Indian body politic. But what disturbs the common man's mind is the erosion of faith in the outcome of democratic process and its far reaching ramifications in the Governance of the State. Transparency, accountability and good governance have found its abode mostly in lip service. People speak of probity in public life, but refrain from practicing in trying situations. Corruption in all forms are becoming more and more pronounced in every walk of life. Everybody points finger to others. Self introspection has become word of myth. One of the major reasons for this kind of frustrating scenario is the lack of free flow of information. Democracy requires an informed citizenry and transparency of information, which are vital to its functioning and containing corruption. Plethora of rules, regulations have been made since independence by successive governments to achieve transparency of information. But, every bit of it's found wanting when put it into practice. We could not, may be subconsciously, make ourselves free from excess use of two words, namely, "Confidentially" and "Secrecy" a legacy let loose in the colonial period to keep people in darkness. RTI Act 2005 is a determined attempt to take us from darkness to sunshine.

The dynamics of "change" has been so profound in legislating this RTI Act, 2005, that the Freedom of Information Act, 2002 could not hold its forte and had to be repealed. Each of the 31 Sections of this Act bear testimony to law makers ' unadultrated intention and sincerity of purpose. Instead of making attempt to discuss this act in totality, let me focus on some of its major strengths.

1. Excepting eighteen subjects enshrined in the Second Schedule of the Act relating to intelligence and security organizations, the Act pervades all other subjects of Governance. Even these exempted subjects are totally not out of bound of this Act. Access is allowed to that part of the record if it is linked with human rights violation or allegations of corruption.

2. Section 4 of the Act makes it mandatory for every "Public Authority" as defined by the Act, to make voluntary disclosure on seventeen items and publish the same for general information. These information need to be computerised and connected through a network all over the country. The Act stipulates one hundred and twenty days

from the enactment of this Act i.e. by 12th October 2005 for publication of the information by Public Authority. Once this is done, majority of information could be available from the publication itself.

3. The definition of information is another landmark in the Act. It includes records, documents, memos, e-mails, opinions, advices circulars, orders etc. In fact, section 8(J) states in the proviso that the information which cannot be denied to the Parliament or State Legislature shall not be denied to any person. This proviso puts any person at par with a Member of Parliament or Member of Legislative Assembly so far as access to information is concerned. It is the general experience to counter question like "Why" and "What for" if one asks for an information from a Public Authority. Then information provider denies giving information on the ground of confidentiality, secrecy, unreasonable, non-connected, so on and so forth. That is the reason section 6(2) clearly states, "an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him." Not only that, as per the Act, right to information includes right to (i) inspection of work, documents, records (ii) taking notes, extracts, certified copies of documents and records (iii) taking certified samples of materials (iv) obtaining information in the form of tapes, floppies, video cassettes, computer printout etc.

4. Each "Public Authority" shall designate Central Public information Officer or State Public Information Officer, as the case may be, in all administrative units or offices to be the provider of information. Wherever necessary the Public Authority can appoint Asst. Public information Officer. Section 7 stipulates that the information need to be provided within 30 days of the receipt of the request. But if the information sought for concerns life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. Unless the information is given within aforementioned specified period, it shall deemed to have been refused. In the event of refusal, the aggrieved party may prefer an appeal before such an officer superior in rank to the Public Information Officer in each Public Authority within 30 days from the date of receipt of the decision of the PIO / APIO. This first Appellate Authority is to be designated by the Public Authority within the ambit of Section 19.

The information seeker may prefer the second appeal against the decision of the first Appellate Authority before the Central Information Commission or State Information Commission, as the case may be, within 90 days from the date of decision of first Appellate Authority is received.

5. The Central Information Commission and State Information Commission constituted by the respective Government as per the guidelines enshrined in the Act under Chapter III and Chapter IV respectively enjoys wide range of powers. Both the commissions, in the matter of inquiry have the same powers as are vested in a civil court while trying a suite under the Code of Civil Procedure, 1908. The strengths of these commissions can be well understood from the Section 19 (7) which says that the decision of the Central Information Commission and State Information Commission, as the case may be, shall be binding.

6. Penalty provision under this Act is unmatched in its quality and content. If the application for information is not received without any reasonable cause or the information is not furnished within the specified time limit, the

commission shall impose a penalty of two hundred fifty rupees each day till application is received or information is furnished subject to condition that the total penalty amount shall not exceed twentyfive thousand rupees. Before imposing penalty, the concerned Public Information Officer shall be given reasonable opportunity of being heard. Further, depending on the" gravity of the offence like malafied denial of request or furnishing of deliberate incorrect information, the commission can recommend disciplinary action against concerned Public Information Officer under the applicable service rules.

The discussion in preceding paras bring home some of the major thrust areas of the Act which make it so much exemplary in helping to contain corruption and providing good governance. But with the passage of time, the shortcomings can be surfaced as feed back through process of implementing the Act. For example, Section 21 of the Act which reads, "No suit, prosecution, or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under" may provide leeway for partial or complete protection from the perview of penalty provisions. Similarly, the gap between first appellate authority and the commission may become the breeding ground, specially at the perception level, for erosion of faith in the Act. For example, at Panchayat level the hierarchical system is so very limited selection of first Appellate Authority with the same Public Authority will be extremely difficult. Secondly, even if it is done, there will be huge gap between the first appellate authority and the commission. These perceived difficulties can be obviated to a great extent provided the appropriate Government in exercise of power conferred by Section 27 of the Act make well thought out rules to carry out the provisions of the Act.

The State Government rules notified on 1st October 2005 is a step in right direction to provide teeth to the Act. But going through the thirteen rules and appendices included in the notification, it appears to be a hasty attempt taken to meet the time limit stipulated by the Act. Usually provisions of the Act are more stringent than the rules framed there under. The Act, in the instant case, instills confidence and sense of dignity in the minds of common citizen. One can feel sense of participation in the governance of the State. But Orissa Right to Information Rules 2005 is yet to generate same feeling.

(i) The Rule 4(2) stipulates that PIO needs to be satisfied with the identity of the applicant before issue of acknowledgement of receipt of application. Further, definition of identity as given by Rule 2(e) specifies documents like Photo Identity Card, Passport etc. But the Section 6 (2) of the Act expects the applicant to give only the personal details for communication.

(ii) The fee structure included in the rule for calculating the amount to be charged is on higher side. For example, when person doing Photocopy business charges 75 paise per page per Photocopy, the State Rules Prescribe Rs.5/- per page. Central Rules has fixed it at Rs.2/- per page. Further, the Central Government has fixed rupees fifty per diskette or floppy whereas state rules has fixed double the amount.

(iii) The Form-B is designed to inform the applicant about "Total Fee" to be paid for providing information. But this form should also mention the detail break up of the fees as it is obligatory on the part of PIO under Section 7(3a).

(iv) The Section 27 and 28 of the Act specifies kind of fees for which appropriate Government and Competent Authority can make rules to provide information. But prescribing fees for first

and second appeals needs to be considered for deletion. The appeal procedure needs to be more vivid for that State Government may bring out separate notification as Central Government has done it.

(v) Orissa rule should also make provision under Section 20 (2) of the Act, recommending disciplinary action against the defaulting PIO under the applicable Service Rules.

(vi) Rule 10 which relates to calculation of cost of damage and charging the cost to the applicant is arbitrary. The applicant is no way linked directly causing damage to the public property. Hence, it needs to be deleted or further elaborated.

(vii) Form -C which relates to intimation of rejection contains nine points. The Section 7(1) of the Act says that a request for information can be rejected for any of the reasons specified in Sections 8 and 9 only. But the tone and tenor of Form-C drives it to become prohibitive in nature and provides shelter for non-compliance of the request.

The Act is now in force. The rules have been notified. Let us now look beyond the Act. How we can help in making it fully functional ? How can we make it citizen friendly ? The first task is to give a relook to the Rules with a positive frame of mind and make necessary additions and alterations so that it serves the objectives of the Act. Secondly, the Official Secrets Act, 1923 promulgated during British era was founded on sheer negativism to keep the citizens in dark by denying information. Unfortunately this Act continued to play the major role in Independent India as it provided protective cover from Public Scrutiny to the executive wing of the Government. Several attempts have been made to modify or abolish Official Secrets Act, but in vein. But, now it has to be relooked and reframed so that it does not act as a stumbling block in successful implementation of RTI Act. Similarly, Orissa Government Servants (Conduct) Rules, 1959 needs reframing. But, what is urgently needed is to drop the word "Confidential" from the format meant for the annual assessment of the Government servants by the superiors in rank in the hierarchical system. If this is done, it will go a long way in emboldening the PIOs / APIOs in providing information without fear or favour.

The RTI Act, if implemented with letter and spirit, will certainly warrant change in dynamics of "Question Hour" in parliamentary democracy. When the path providing access to information is so lucid, the necessity for getting information by Hon'ble members through legislative wings gets limited. As a result the time consumed to get information at every level in the bureaucratic corridor can be saved for addressing other issues. In other words, it will set in inertia of quick disposal resulting in good governance. This is just a food for thought. It requires indepth introspection and analysis to arrive at a decision. But, can we give a start in thinking in that direction ? It is a million dollar question.

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