

RIGHT TO INFORMATION ACT - PANACEA OR PAPER TIGER ?

Citizen's Rights are a major indicator of a country's progressiveness and human development. Though the Indian Constitution got off to a roaring start with a bunch of awesome sounding fundamental rights, the right to information (RTI) was not one of them. Citizen's rights are, in a sense, an abridgement of the corresponding rights and authority of government. The non-inclusion of RTI as a fundamental right, therefore, preserved the traditional, unquestioned right of government to maintain secrecy in its functioning by taking shelter under an Official Secrets Act (OSA) including the discretion to decide what is official and what is a secret (A Hitler joke : A German who called Hitler a fool was prosecuted on two counts - one, abusing the Head of State and two revealing a state secret).

Growing public concern about callousness and corruption in government resulted in a clamor for greater transparency culminating in a demand for an RTI Act. The Consumer protection law created and strengthened the notion of citizens as consumers of government services. The Mazdoor Kisan Shakthi Sanghatan (MKSS) movement in Rajasthan was a turning point in the RTI Movement and showed that even illiterate, socially mute and exploited laborers could assert and get their other rights conceded by invoking the RTI. The Government of India,

based on the recommendations of the Chief Secretaries' conference on "responsiveness in government," appointed the Shourie Committee to review the OSA and suggest a draft RTI Bill. The draft, called the Freedom of Information Bill 2000 has been passed into Law. Seven State Governments had already passed their own versions of RTI Acts.

In practice, most information requirements can be categorized as follows :

As	From
Citizens	Government & Elected Representatives
Voters	Candidates & Elected Representatives
Consumers	Producers & Sellers
Clients	Professionals
Stake Holders	Corporates
Social activists	All the above

A citizens' RTI should, therefore, cover not only the government but also those activities of private organizations and individuals mentioned above which are likely to be of legitimate concern to citizens, or have an adverse impact on public resources or welfare. This is reflected in the stringent disclosure requirements under the

Consumer Protection Act, Environment Protection Act, the Companies Act, etc. However, most individual professionals, such as doctors and lawyers, communicate cryptically and condescendingly or not at all, and almost never voluntarily, with their clients. In fact Indian professionals have always regarded their expertise and judgment as beyond question by lay mortals and even by courts and considered it *infra dig* to be brought under the Consumer Protection Act.

Possible Scenario

Let us consider possible scenario in an average citizen's interaction with the government under the RTI Act. An imposed system can be resisted and killed by an entrenched bureaucracy by three methods - overuse, disuse and hide - and - seek.

First, overuse, The RTI Act provides for an elaborate system of written application, acknowledgement, time limit, appeal, etc. In actual practice how many will have the time, patience and stamina to go through the whole gamut of such procedures if it is insisted upon in every case? In other words, the bureaucracy's may hit back by a too literal and procedurally rigid implementation of the Act and defeat its purpose. The bureaucracy's real power is the citizen's urgency, the high opportunity cost of delay and the high transaction costs of repeated visits to the office. The strategy of a hostile bureaucracy will be to make the total cost of a corrupt approach appear to be less than that of a statutory approach.

Now killing by disuse, though it is about two years since seven State Governments passed their own RTI Acts, very few in and outside the government seem to know, much less care, about the Act's existence or operation; and there is no information on whether the Act has been invoked,

if so, in how many cases, by what categories of citizens and with what results, (Karnataka has an RTI Act, Yet even the Tamil Nadu Government is unable to get reliable information on Cauvery flows). Even if the Act is invoked by citizens and requests filed, they could easily be delayed to the point of their death.

Finally, hide - and - seek. A lot of information about government schemes, policies, achievements, etc. is already published in the form of reports, publicity material, budget documents, five year plans, etc. A lot of information is also placed on the table of the legislature in the form of annual administration reports, audit reports, replies to questions, etc. Giving this type of information will not present any difficulty. The problem arises, as it did in the case of the MKSS. When a citizen or an NGO wants to look in the internal documents and notings to see whether there has been any avoidable delay or impropriety. Sensation mongering media and politicians may be interested in knowing the views expressed by officers and ministers on the files. It is to guard against this type of inquisitiveness that the whole government culture is carefully and consciously oriented towards a single, overriding value - whatever the truth, under no circumstances shall the government appear in an adverse or embarrassing light in public eyes. The tendency for lower level officers would be to reject, or push up to higher levels, most requests under the Act in order to avoid being blamed later.

The Official Secrets Act (OSA) has neither been scrapped nor even circumscribed confining its application to precisely defined, specifically listed and genuinely secret matters. The OSA is better known and already in force whereas the RTI Act is yet to take off. If both Acts co-exist, Gresham's law may force the latter to remain a paper tiger.

Use of muscle power by politicians and misuse of legal power by the State against persons fighting doggedly for their rights or exposing irregularities in government is now a reality of our politics and administration. No doubt, any citizen, poor or rich, educated or illiterate, can file a writ petition for getting any of his fundamental rights enforced - that is, provided he does not get beaten up or get acid thrown on his face on his way to the court. These days invoking the Right to Information act to ask for information which may get powerful people into trouble is likely to attract physical retaliation. This can, therefore, be attempted only by strong NGOs with an established reputation and wide mass support like the MKSS or politicians with countervailing muscle power, and not by ordinary citizens however patriotic and public-minded they might be. Even under the most progressively drafted RTI Act, can we imagine an ordinary citizen ever feeling safe to walk into a police station and demand factual information on the detenus, duration of custody, prescribed documentation, etc. This is the area crying for the RTI Act to produce some real impact. This is also the area where the maximum resistance to disclosure from the bureaucracy and the political executive will be faced.

At this stage, the reader might ask Is the RTI Act, then, useless as the administrative ambience and culture are not conducive to its effective implementation ?

Laws are the crystallized symbols of a civilized, democratic society's values amid a last resort remedy if other approaches fail. They set the tone for social behavior, deter potential delinquents, penalize actual delinquents and remedy wrongs to some extent. It is a fact that their mere existence has, to some extent at least, prevented more violations and that in their absence the situation, bad as it may be, would certainly

have been worse. The RTI Act, a much needed piece of legislation, will in practice suffer the same limitations as other laws. But since it activates the exercise of many other rights, it is not enough to have the Act passed and lean back waiting for miracles to happen. It is necessary to create a conducive environment as well as systematic support so that the Act comes alive as an accessible, effective tool of improved citizen's interaction with the government.

Remedies

Possible remedies for the anticipated difficulties in the working of the RTI Act are

- * In order to minimize the need for citizens to frequently invoke the Act, the government should be required under the Act to embark on large-scale simplification and demystification of its systems through technology and decentralization, and periodical, suo motu disclosure of all information relevant and useful to citizens (as is required of corporates). What this information should be could be finalized in a workshop involving active citizen groups.
- * The OSA should be amended confining its operation to specified matters genuinely affecting the security of the country. These provisions should be the sole exceptions under the RTI act.
- * Internal notings and memos need not be exempted under the Act though the public servants concerned should be protected from resultant malignment or litigation if any. The idea of open files (i.e. government files being open to inspection by any citizen who has a legitimate proximate interest therein) should be tried out as a pilot experiment and expanded.

- * Bona fide disclosure under the RTI Act shall not be punished even if it is subsequently held that this was wrong. As a logical extension, a whistle-blowers protection act should be enacted providing immunity from penal action to public servants who, with a bona fide intention of serving the public interest, are left with no choice but to disclose information on perceived misgovernance.
 - * A citizen's RTI should cover not only government departments but also corporates, professionals and legislators in matters to be specified in the Act in respect of each. While legitimate professional autonomy, business risks and constitutional privileges should be respected, these should not entitle any category to blanket exemption from the RTI Act.
 - * Grievances in regard to non-supply of the requested information should be sorted out on the spot by the highest officer in the same office instead of being converted into formal complaints or appeals and referred to some distant office.
- Necessary empowerment of officers should be done.
- * Information Technology should be used, wherever appropriate and feasible not only to make government systems transparent to citizens but also to speed, them up.
- * Special mechanisms to deal with genuinely urgent requests for information - if necessary within 24 hours - have to be created and monitored.
 - * Providing information should not be made unduly expensive or considered a source of revenue.
 - * Existing consumer courts may function as appellate authorities in cases of refusal to supply information under the RTI Act.
 - * A balance has to be struck between one person's right to privacy and another's right to information. The former has normally to be protected unless the balance of public interest lies in disclosure. Such situations should be listed out as far as possible and the authorities competent to make this trade-off judgment specified in the Act itself.
 - * Citizen's power to exert and sustain legitimate pressure is the crux of good democratic governance. Knowledge is power and information is the seed of knowledge. RTI is, therefore, nothing but the observe of people's right to good governance.
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- (*Courtesy* : RTI Cell YASODA)

