

Transparency and Accountability in Governance and Right to Information in India

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Introduction

In the six decades of independence from alien rule, India, despite its burgeoning population, grinding poverty, large-scale illiteracy and unparalleled diversity, has not only remained successfully afloat in the democratic ark, remarkably so in a destabilizing neighborhood, but can also rightfully boast of significant advances made in agriculture and food production, science and technology, trained technical man power and higher education to name a few areas of success.

While these are the positive developments, there are other areas where India is lagging as a nation. Still considered as a developing country, India ranks 132 out of 175 countries according to the UNDP's human development index (HDI). When it comes to competitiveness on the global economic front, according to the world competitiveness Index it ranks 58th out of 53 countries. And when it comes to corruption, India's record is rather dismal as it is ranked 66th out of 85 in the corruption perception Index by the German NGO Transparency International, which arranges nations in the order of perception of corruption in the country.¹ Needless to mention, the above three indices have a direct bearing on governance.

Governance Discourses

Etymologically and semantically, words like 'governance' and 'good governance' seem to belong to the same genus as very ancient terms like 'state' and 'government'. In fact right from the recognition of the concept of government, either for the community or for the nation state, value premises have been developed as to how a government has to perform and how not to function. Thinkers and theorists have pondered upon the concept continuously. 'Good governance' was traditionally related to resource management. It has been a subject in the political discourse right from Socrates to Mahatma Gandhi. Ancient literature provides ample evidence for the establishment of 'good governance'.

Yet, there was no such intense discussion on this concept earlier. In fact it has gained currency only in the last two to three decades as a descriptive label for some parts of the policy packages associated with the 'conditionalities' of donor agencies viz. IBRD, IMF, WB who have lent loans for development works etc. in the Third World. The lending experiences in many developing countries soon brought home the realization that, despite technical soundness, development programmes and projects, loans financed by them often failed to produce desired results given the extreme diversity of the political culture and administrative structures prevalent in most of the Third World countries. Often, it was felt that the laws were not enforced properly. In the absence of proper accounting, budgetary policies were not efficiently monitored. All this obviously encouraged corruption and lead to distortion of investment priorities.

Operating on commercial principles of supporting 'bankable' projects, the World Bank etc. were compelled to adopt prudential policies and devise new conditionalities to ensure proper utilization of its loans. Thus was born the concept of 'good governance' which became a critical component for determining a loan recipients' capacity for successful implementation of carefully planned World Bank loan assisted projects.

Thus the World Bank and later the OCED identified significant list of 'good governance' dimensions which entail explicitly or implicitly, reduction or curtailment of the existing functions traditionally being performed by various governments. As per the World Bank definition 1992 the basic function of governments should be 'management of country's economic and social resources for development'.

It would be pertinent to highlight the fact that while the Constitution of India casts a wide array of welfare and regulatory functions upon the union and state governments, the World Bank governance discourse focuses on 'developmental function' with narrow economist and technicist dimensions, more in tune to its agenda of maintaining its supply of loans with assured payback prospects.

Paradigm shift

Paradoxically, this donor driven exercise, to reform government and administration has successfully elicited strong-willed responses from recipient countries, to the extent that academic and administrative analysts have been vying with each other in highlighting the pathologies afflicting the politico-administrative system.

On the other hand, it cannot be denied that the success story of command economies was critical in determining the 'interventionist' role of state in India in the early decades of post independence. In keeping with the spirit of the times, India adopted the 'prescriptive planning' process. But unfortunately, the controlled economic system was widely abused and infused with rampant corruption, inordinate delays and inefficiency. The ominous result was a serious 'balance of payment crisis' owing to a steady decline in exports, negative growth rates in industry and agriculture, decline in domestic productivity, inadequate returns and continuing losses from massive investments in public sector enterprises and economic populism resulting in increasing state subsidies, especially in fertilizers, and hidden payments incurred through lower tariff rates of public sector enterprises in power and transport sectors. Understandably, the need for change was inevitable.

Consequently the endeavours to 're-invent' government in accordance with the World Bank agenda of 'good governance' included dismantling of its regulatory mechanisms, disinvestment of its mammoth public sector enterprises and withdrawal from all business activities. This also implied adoption of a new market-driven package of economic policies popularly known as Liberalization, Privatization, Globalization (LPG) reforms.

To operationalize the above in consonance with good governance, 'new public management' has been considered a vital input. The past couple of decades have witnessed a great deal of structural adjustments, limiting of the role of state, downsizing of bureaucracy, devolution of authority, cost reduction, contracting out some of the operative functions of the government, developing and designing result oriented appraisal systems and commercialization as well as market orientation of governmental activities. This has been supported by effective accountability through an open reporting system. The administration is apparently moving from rule to result orientation, from systems to enterprise, from obedience to reward, from centralization to decentralization and from the duties of administrators to the rights of citizens.³

Both in economy and polity an over hauling has taken place, altering totally the paradigm of governance, administration and development.⁴ A new paradigm has been developed by which new opportunities, which are uncommon, can be harnessed by enhancing the capacity of the stake holders. Through this paradigm power is given to

the people to determine their destiny.⁵ People have been projected as the major stakeholders and they have to decide their course of action in the process of development. The government is no longer conventionalized as 'provider', but is instead envisaged as 'facilitator' and therefore, is accorded a back seat, while the community or user group is expected to take the front in development initiatives.⁶

Good Governance: Indian Experiment

For the success of any event or programme a centralized drive is necessary to prepare the stake-holders to hold their hands on to it. It could be called a descent and ascent process.⁷

Interestingly, the 73rd Amendment with the proclaimed objective of democratic decentralization was not a response to pressure from the grass roots, but to an increasing recognition that the institutional initiatives of the proceeding decades had not delivered the desired results of ushering equity and social justice. The growing conviction that big government cannot achieve growth and development in a society without people's direct participation and initiative heralded the enactments of the 73rd and 74th Constitutional Amendment Act and the subsequent state-wise Panchayati Raj Acts in India. This process of decentralization of power, provision for participation of citizens in local decision making and implementation of schemes affecting the livelihood and quality of life was pushed vigorously with the aim to accelerate thus the 'top down', process of government to an interactive process and thus make inroads in to the internationally acclaimed standards of good governance.

There emerged a political consensus that governance has to extend beyond conventional bureaucracies and involve actively citizen and consumer groups at all levels, to inform the public and disadvantaged groups, so as to ensure service delivery and programme execution through autonomous elected bodies.⁸ That the traditional government-citizen relationship, cast in a donor-recipient mould and the bureau-centric power focused approach, per force has to undergo change in the new scenario.

Information: Tool for empowerment

Transparency and accountability in administration as the sine qua non of participatory democracy, gained recognition as the new commitments of the state towards its citizens. It is considered imperative to enlist the support and participation of

citizens in management of public services. Traditionally, participation in political and economic processes and the ability to make informed choices has been restricted to a small elite in India. Consultation on important policy matters, even when they directly concern the people was rarely the practice. Information-sharing being limited, the consultative process was severely undermined.

There is no denying the fact that information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on 'access', the greater the feelings of 'powerlessness' and alienation. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices.

Government information is a national resource. Neither the particular government of the day, nor public officials, creates information for their own benefit. This information is generated for the purposes related to the legitimate discharge of their duties of office, and for the service of public for whose benefit the institutions of government exist, and who ultimately (through one kind of import or another) fund the institutions of government and the salaries of officials. It follows that government and officials are 'trustees' of the information of the people.

Nonetheless, there are in theory at least, numerous ways in which information can be accessible to members of the public in a parliamentary system. The systemic devices promote the transfer of information from government to parliament and the legislatures, and from these to the people. Members of the public can seek information from their elected representatives. Annual reporting requirements, committee reports, publication of information and administrative law requirements also increase the flow of information from government to the citizen. Recent technological advances also help to reduce further the gap between the 'information rich' and the 'information'.¹⁰

However, in spite of India's status as the world's most populous democratic state, there was not until recently any obligation at village, district, state or national level to disclose information to the people – information was essentially protected by the colonial secrets Act 1923, which makes the disclosure of official information by public servants an offence. The colonial legacy of secrecy, distance and mystification

of the bureaucracy coupled with a long history of one party dominance proved to be a formidable challenge to transparency and effective government let alone an effective right to information secretive government is nearly always inefficient in that the free flow of information is essential if problems are to be identified and resolved.

Need for RTI Legislation

Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamics that exist between people marginalized through poverty and their governments. This transparent approach to working also helps poor communities to be visible on the political map so that their interests can be advanced. The right to information is therefore central to the achievement of the Millennium Development goals.¹¹

Right to information legislation therefore acquired fundamental attention for the development of society. RTI laws gained prominence as critical tools to combat corruption, and inefficiency. Although corruption exists in all societies, it has a particularly pernicious effect on less developed countries. As also acknowledged by donor agencies, corruption discourages foreign investment and eats away at the budgets allocated to public procurements which enable basic infrastructure such as roads, schools and hospitals to be built. It also debilitates political institutions by reducing public confidence in their operation. If unbridled corruption continues to infect a society or political system, it may eventually lead to social interest due to the division it creates between those who have easy access to goods and services and those who remain excluded. It is the poor who always bear the greatest burden of a corrupt society.

Right to information legislation, is therefore, considered fundamental in furthering the development of society and in eradicating poverty. An unprecedented number of governments around the world with UNDP support are therefore increasingly enacting RTI laws. These laws vary enormously and often depend on the circumstances and specific campaigns, besides the development, and political context or the places where they are launched.

The right to information can be guaranteed in a number of ways. Many countries provide for the right in their constitutions, usually by means of a broad

statement guaranteeing the right of access to information. In the context of India the constitutional right to freedom of expression is specified (Article 19(1)(a)) and the right to information is inferred from this constitutional right.

RTI in India also received judicial recognition through some landmark judgements of the Supreme Court. Brick by brick the judiciary has built an impregnable edifice of the Fundamental rights providing thereby a semantic expansion and wholesome judicial connotation to RTI.

In pursuance of the need to provide RTI and enhance transparency respective Governments made attempts to amend the Official Secrets Act (1923) In 1996 the first major draft legislation on RTI was circulated by the Press Council of India. This draft originated in a meeting of social activists, civil servants and lawyers in Mussoorie and culminated in the Freedom of Information Bill, 2000 introduced in Parliament.

Meanwhile instead of waiting for a central legislation, half a dozen states enacted their own laws on RTI.

State Level Laws

Tamil Nadu was one of the pioneer states to introduce the RTI Act on April 13, 1996. The enacted legislation was full of exceptions and inadequacies and was not clear as to how the Act would apply to Panchayat Unions Municipalities and Panchayats. This uninspiring model definitely did not merit emulation.

Goa was the second state to enact this legislation (Oct. 1997). Despite tall claims made by the state government regarding transparency and openness to strengthen democracy, the Goa Act also ironically consisted of several peculiar provisions, which allowed the state to withhold information without sustainable reasons for doing so. Vague exceptions and lack of clarity as to who would be the competent authority to furnish information were some of the deficiencies of this Act.

Madhya Pradesh passed a bill a year later which was inexplicably sent for assent to the President. The assent never came.

Rajasthan passed a bill in May 2000.

Thereafter governments of Delhi, Karnataka and Maharashtra also enacted legislations for RTI. But there has been observed a marked difference between all other

state legislations and that of Rajasthan. The distinguishing feature has been the demand for such Act made at the grass roots level by a Civil Society Organization (MKSS) in Rajasthan.

Rajasthan Experience

The most important feature that distinguishes the movement for the people's right to information in Rajasthan from that in other parts of the country is that it was deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged rural people. It is necessary to point out how critical the difference in the perspective to RTI is when the demands emerge from the people (at the grassroots) and the suggestions of change emanate from policy makers and academics considering and debating political reform. While legislative and systemic change is the goal of both efforts, there is a vast difference in the focus and perspective not only in the demand but also in the final outcome of such changes. The Rajasthan experience amply illustrates that the demand for RTI emerging from a people's struggle is far more incisive and has the potency to drastically alter the parameters of decision making and governance.

The first political commitment to the citizen's Right to Information found manifestation on the eve of Lok Sabha elections in 1977 as a corollary to public resentment against suppression of information, press censorship and abuse of authority during the internal emergency period of 1975-77. The Janata Party government in pursuance of its promise in its election manifesto to provide an open government constituted a working group of government officials to recommend modifications in the Official Secrets Act 1923. The 'no change' recommendations given by this group was although against popular expectations, indicative of bureaucratic inclination towards secrecy.

Political commitment to RTI for the second time was the outcome of the frustration of people over the earlier governments reluctance to disclose information relating to Bofors and other deals¹² unfortunately, the subsequent National Front government's vociferous commitments towards RTI did not translate into any action whatsoever. The next multi-party coalition NDA at the centre fortunately succeeded in fulfilling its commitment, towards establishing 'transparent' and 'efficient' government by introducing the Freedom of Information Bill, 2000 in Parliament.

It was the H.D. Shourie's Draft Bill which eventually got enacted under the name of Freedom of Information Act 2002. This Act was severely criticized for allowing too many exemptions, and absence of penalties for not complying with request for information. This Act thus did not meet the expectations of 'open government'.

In 2004 Government of India appointed a National Advisory Council which with the support of NCPRI and the Common Wealth Human Rights Initiative undertook the task of drafting the presently prevalent RTI bill.

This draft which was presented to Parliament on 22nd December 2004 was finally passed on 12 October, 2005 only after more than a hundred amendments were initiated under pressure from civil society groups.

Under the terms of this Act, any citizen may request a department of the Central government, State government or Public Sector Company or Bank for information on almost any question related to the department or company's functioning. The government body is expected to comply within 30 days, failing which the officials responsible for non-compliance faces financial penalties and, in persistent cases, jail terms. The Act also requires government bodies to publish certain specified information on website. This is considered to be a major milestone in the 'march from darkness of secrecy to down of transparency' and an important tool in the fight against corruption.

Government officials continue to complain that the law goes too far and that by requiring them to disclose file. Nothing, it leaves them open to blackmail and intimidation. Critics have generally not been sympathetic to these claims contending that these are merely expressions to camouflage their frustration at having to perform under the glare of public scrutiny and being deprived of indulging in corruption. It is obvious that democratization becomes a difficult task especially so when the human collectivities that gain advantage from the existing form of governance turn against any form of reform in governance particularly in giving power to the people, as the existing order and practices would be challenged.

Advocacy by Civil Society

Civil society organizations known as 'third sector of democracy' have played important roles in counter-balancing state, through monitoring their activities, all along

demanding 'transparency' and 'accountability'. The lack of political will and reluctant and lackadaisical attitude of bureaucracy to recognize the people's Right to Information found substitution in CSO efforts towards this end.

It is pertinent to mention that the first major draft legislation on RTI was circulated by the Press Council of India in 1996. This draft was derived from an earlier one which had been prepared in 1995 at a meeting of social activists, civil servants and lawyers at Mussoorie.

Another such detailed legislation for RTI was drafted by (CERC) Consumer Education Research Council.

One of the most unique movements in this context is the Mazdoor Kisan Shakti Sansthan Movement (MKSS) in the state of Rajasthan. The most important feature that distinguishes the movement for the people's RT in this arid state of Rajasthan is that it is deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged rural people.

Ordinary People: Extraordinary Efforts

Undoubtedly one of the biggest problems facing democratic institutions in India today is the dwindling interest and participation of people fuelled by the sense of helplessness citizen's face when relating to institutions of governance. It is in the context of this prevailing atmosphere of cynicism, apathy and despair that the story of the collective efforts to bring about political change by ordinary people in a small part of Rajasthan, becomes remarkable and significant.

It is often assumed that right to information laws are only of interest to the urban elites, or those concerned with policy making. But one of the most imaginative campaign histories can be traced to this desert state of Rajasthan in India, in which a grassroots organization was able to successfully illustrate the link between lack of transparency and corruption. Its grass roots approach was able to convince people of the direct relevance of access to information on their everyday lives. This movement served as the inspiration for a national campaign and also motivated international efforts - ODAC in South Africa has used this model to challenge corruption in rural South Africa.¹³

In 1994, this movement of MKSS broke new ground with experiments in fighting corruption through the methodology of 'Jan Sunwai' (Public hearing) through which people have been able to voice their grievances towards government functionaries and expose arbitrariness and corruption in state bureaucracy. This movement sowed the seeds for the growth of a highly significant new dimension to empowerment of the poor, and the momentuous enlargement of their space and strength in relation to structures of the state.

For years, indeed centuries, the people have been in their daily lives habitual victims of an unremitting tradition of acts of corruption by state authorities—graft, extortion, nepotism, arbitrariness to name only a few—but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous 'whistle blowers' have attempted to fight this scourge and bring relief to the people. But in most such efforts the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event, and died down as suddenly, or has been sustained, critically dependant on a charismatic leadership. Consequently, the results of campaigns against corruption have been temporary and unsustainable.

Breaching the walls of exclusion

The mode of public hearing (Jan Sunwai) initiated by MKSS, despite its local character, has had state - wide reverberations and has considerably succeeded in shaking the very foundations of the traditional monopoly, arbitrariness and corruption of the state bureaucracy. In these locally organized Jan Sunwais, expenditure statements derived from official records are read out aloud to assembled villagers. A panel of respected individuals from within and outside the area presides over the hearings wherein, local people are invited to give testimony which identifies discrepancies between the official record and their own experiences as labourers on public works, projects or applicants for means-tested anti-poverty schemes. Through this direct form of 'social audit' many people discovered that they had been listed as beneficiaries of anti-poverty schemes though they never received any payment. Others were astonished to learn of large payments to local building contractors for works that were never performed.

The Jan Sunwai has turned out to be a very powerful mode. It has been conducted in a comfortable, informal idiom of conversation and exchange. Yet it has all the seriousness and impartiality of court proceedings. Every Jan Sunwai has a panel of judges with independent credentials, who can ensure that the proceedings are fair, allowing everyone a bearing.

Most importantly, this forum breaks the heavy reliance on the government for redressal.

Despite confronting initial reluctance and resistance this momentous arduous struggle led by MKSS in Rajasthan succeeded in compelling the government of Rajasthan to finally introduce the Right to Information law on 1st May, 2000.

Undoubtedly this legislation was inordinately delayed, but once implemented it did provide teeth to the empowerment of the common man.

Conclusion

The strategies to achieve 'good governance' being forwarded by international lending agencies are being applied to realities prevailing in The Third World. The concept is being touted as a panacea for all political ills the march afflicting nations on democracy. Good governance is characterized as a participatory, consensus arrived, accountable, transparent, responsive, effective and efficient government based on the rule of law. The government of the day, viz. of the Third World is expected to move in a specific direction, obviously in consonance with LPG.

The 'recipient' state no longer retains its autonomy to deliberate on its own model of good governance, which prescribes to its conditions.

In the specific case of India, good governance is primarily an agenda for restructuring the on-going state driven governance into market friendly governance which may, euphemistically, be disguised as people-friendly governance.

Good governance, thus, seems to be a synonym for effective government in the sense that the basic government functions are 'developmental' whereas the fact remains that all governments carry out several more important extra developmental functions e.g. defence of country's frontiers, conduct of diplomacy and maintenance of domestic peace and world order.

After six decades experience of democratic governance in India, academics and intellectuals have started exercising on the theme of good governance by accepting the fact that it is not in vogue and further that governance has become bad also.

Nevertheless, there are numerous ailments that have afflicted the functioning of the political system in India. Criminalization of Politics, poverty, illiteracy, backwardness political instability, corruption and unaccountability of bureaucracy are but a few of them. Several significant initiatives have been launched to combat these ills even though at the behest of donors.

The path breaking Right to Information Act (2005) which has come into effect recently has been heralded as the most significant reform in public administration in India in the last 60 years.

This far reaching law is the light of hope which can dispel the darkness of secrecy and storms of corruption, and ensure transparency and accountability which are hallmarks of efficient governance. It can act as a catalyst to facilitate the onset of a new value system, rejuvenation of hope to establish a better society.

References

1. N Vittal : Better Governance through H.C. Mathur Memorial lecture delivered in August 16, 1999 at HCM, RIPA, Jaipur.
2. O.P. Dwivedi, "Common Good and Good Governance", The Indian Journal of Political Science, Vol. XLIV No. 3 (July-Sept. 1998) pp 253-264.
3. World Bank Governance : The World Bank's Exercise, Washington, World Bank 1994.
4. M. Ajit Banerjee, and K.A. Chidambaram (eds.) Renewing Governance : Issues and Options, New Delhi : Tata McGraw Hill Publishing House, 1996.
5. International Commission on Peace and Food. Developing Human Resourcefulness : Strategies to eradicate poverty in the 1990's : Draft working Paper ICPE 1989.
6. Rajesh Tandon and Ranjita Mohanty Civil Society and Governance, New Delhi : Sanskrit 2002.
7. Evolving Grass Roots Democracy, G. Pattanithurai, Concept Publishing Company, New Delhi, 2007.
8. Minocha, O.P. (1997), Good Governance : Concept and Operational Issues : Management in Government.
9. Harsh Mander and Abha Joshi : The Movement for Right to Information in India, Peoples Power for the Control of corruption.
10. Ibid.
11. R.P. Sood, Right to Information Sublime Publications Jaipur, 2008, p.2.
12. Guha, Roy Jaytilak, 1990, "Open Government and Administrative Culture in India", Indian Journal of Public Administration, Vol. 36 No.3 (July - Sept.) 493.
13. R.P. Sood, Right to Information Sublime Publications Jaipur, R.P., p.8.