

Demanding Accountability from the State: Experiences of Civil Society and Citizens on Right to Information in India

Millions of dollars in welfare schemes are wasted in developing and under developed countries as governance institutions are either weak i.e. non accountable or not in place. As a result, poor socio economic conditions of citizens seem to be never ending phenomenon in significant part of the globe. This makes the examination of link between governance and socio economic conditions very important. Number of studies which have examined this link have quite clearly established that good governance is associated with higher GNP per capita, higher adult literacy, lower infant mortality and bad governance is largely associated with lack of accountability and transparency, poverty, crime and corruptions. Almost three-quarters of the countries in the Corruption Perception Index score below five (including all low-income countries and all but two African states) indicating that there is strong correlation between corruption and poverty.¹ It leaves no doubt that corruption hurts the poor, it diverts public services from those who need them most and undermines democratic institutions by creating an erroneous perception that these institutions only benefit well off sections of the society. It obviously establishes that poor governance is an impediment to development and leads to marginalization of countries their citizens from the mainstream.

The challenge is to make governance institutions accountable, participative and transparent in developing and underdeveloped countries, so that public services are effectively delivered. Various methods for transforming governance institutions have been tried but one reform, which has caught the imagination of citizens, is the Right to Information. Freedom of information and in particular the right of access to information has been a central agenda in the democratic accountability discourse, for sometime now. Nearly sixty countries have taken steps to implement it by legally recognizing it through statute law, these countries have joined the list of some of those countries, which have a long tradition of right to information, notably Sweden, Finland, the Netherlands, Australia, Canada and the United States of America.

India also followed the footsteps of other countries and enacted the Right to Information Act in 2005. This Act is considered to be quite radical law as it penalizes government officers for denying access to information. It also promises to be a tool for promoting transparency and accountability in the working of governance institutions. After nearly three years of operationalization of RTI Act in India, it would be worthwhile to examine the extent to which it has been able to fulfill its objectives.

History of Right to Information movement in India

The movement for the right to information was started in early 1990s by Mazdoor Kisan Shakti Sangathan (which literally means ‘organisation for the empowerment of workers and peasants’) in remote village Devdungri (Rajsamand district, Rajasthan). It was a movement to expose corruption in the famine relief work by demanding information related to copies of bills, vouchers and muster rolls for workers recorded in government files. Following a period of struggle, MKSS succeeded in acquiring photocopies of the relevant documents in which the siphoning of funds was clearly evident. The successful experiments of exposing

corruption through access to information was good learning experience for civil society, led to the demand of enactment of RTI law in Rajasthan. Government of Rajasthan yielded to pressure of movement and enacted the law in 2000.

Success of struggle of MKSS led to the genesis of a broader discourse on the right to information in India and RTI laws were enacted in some states of India. The demand for national law started under the leadership of National Campaign on People's Right to Information (NCPRI). In 1996, the Press Council of India headed by Justice P B Sawant presented a draft model law on right to information to the Government of India. A working group (Shourie Committee) under the chairmanship of Mr. H D Shourie was set up by the Central Government and given the mandate to prepare draft legislation on freedom of information. The Shourie Committee's Report and draft law were published in 1997. Eventually, the Shourie Committee draft law was reworked into the Freedom of Information Bill (FOI) 2000, which was passed in the Parliament in 2002 but it was not notified. However, civil society raised several objections to FOI bill and suggested amendments to National Advisory Council. As a result of long drawn struggle of civil society; the RTI was enacted in 2005 in India. But the key question is, can RTI be an effective tool for ensuring accountability in governance institutions? It makes the analysis of relationship between accountability and RTI pertinent here.

Accountability and RTI

Democracy in India as most studies point out suffers from some deficits such as lack of transparency and accountability in working of public institutions, poor implementation of rule of law to guarantee individual and group rights and security, non-existence of effective institutions for checking corruption, non-participatory method of policy making and poor service delivery by the government institutions. As a result of these democratic deficits, India continues to reel under poverty and underdevelopment. Rampant corruption resulting from non-existence of effective accountability mechanisms in different fields of civic administration and public life remains the key challenge of democratic practice and it erodes and undermines democratic institutions in India.

Attempts have been made to address this “*democratic deficit*” by strengthening internal accountability mechanisms namely establishment of administrative bodies like audit departments, *Lok Ayukya* (Ombudsman), Central Bureau of Investigation, Comptroller and Auditor General of India and Central Vigilance Commission but these steps have been cosmetic in nature as these institutions have not been given necessary autonomy and power to function effectively. As a result, the internal accountability mechanisms have failed to deliver, while external accountability mechanisms also referred to as social accountability mechanisms such as *Jan Sunwais* (*Public hearings*) and *Citizen Monitoring/ Report Card, Campaigns* (*media and mass based*) except in some cases have not been used extensively in India.

Right to Information: main features

Right to Information Act, which came into force on 12th of October 2005, is one of the most significant legislations enacted by the Parliament of India. The Right to Information Act 2005 (RTI Act) recognizes that in a democracy like India, all information held by the government ultimately belongs to people. Making information available to citizens is simply a part of normal government functioning because the public has a right to know what public officials do with their money. The Act seeks to establish that transparency is the norm and secrecy is an exception in the working of governance institutions.

Facilities for accessing information

The Right to Information Act gives the right to all the Indian citizens to access information from public institutions. The application procedure for seeking information is very simple and citizen friendly. The application can be written in English or Hindi or the official language of the state. Application should be accompanied by necessary application fees as prescribed under state rules. The application must be submitted to the Public Information Officer (PIO) in the public institution from where the information is sought. Section 4 of the RTI Act mandates every public institution to voluntarily disclose all their activities in a manual, so that citizens can get information about important functions of public institutions without filing application.

Role and responsibilities of Public Information Officers

PIOs are the designated officer in all administrative units or offices of Public Institutions who have been given responsibility of providing information to persons requesting for information under this Act. The PIO must provide information to the citizens within 30 days of receipt of application.

Appeal process

In the event of denial of information, the RTI Act sets in place the process of First and Second Appeal. Section 19 of the RTI Act provides two steps of Appeals against the decision of PIOs by an applicant. An applicant, who does not receive the information within 30 days or is aggrieved by the decision of the PIOs, can file an Appeal to the First Appellate Authority who is usually a designated senior officer of a government department (Public Institution where the request for application had been submitted). If the applicant is not satisfied with the decision of First Appellate Authority, then he can file Second Appeal to the Central Information Commission (CIC) or the State Information Commission (SIC) as the case may be.

Powers and Functions of Information Commissions

Central / State Information Commission is the apex Appellate Authority at the Center / State level for hearing the appeals or complaints from the citizens who have not been able to access information due to some reasons. The power of enforcement and compliance of Right to Information Act has been given to Central Information Commission or State Information Commission. The Central Information Commission/State Information Commission can summon and enforce attendance of persons or documents, discovery and inspection of documents etc. While hearing the appeal if CIC / SIC finds that PIO has deliberately denied information or provided incorrect information, then it can impose a penalty of maximum Rs.25, 000 and can also recommend disciplinary action against the PIO.

Role of Central / State government

Central / state government has crucial role to play in the implementation of the Act. Section 26 of the Act mentions that it should take steps to develop and organize educational programmes to advance the understanding of the public on RTI, in particular of disadvantaged communities; to train PIOs and produce relevant training materials for use by public institutions. They can make rules related to fees and costs for accessing information. The ministries and departments in government have the responsibility of preparing annual report and maintain records for such purposes. Thus central / state government have been allocated the role of taking the message of RTI among the masses through various means.

Experiences of Citizens 2007-08

In 2007 study, 75 percent of the respondents had pointed out that the list of PIOs was not available at district level and 72 percent of government offices from where they tried to access information had not made self-disclosure. The 2008 study demonstrated that nearly 90 percent of citizens had not found the list of PIOs and they had not seen self-disclosures in government offices. They also pointed out that mode of payments of fees was limited in Bihar, Kerala, Madhya Pradesh, Gujarat, Orissa and complexity of procedures were restricting citizens from filing applications in Karnataka, Madhya Pradesh, Orissa and Punjab.

Significant percentage of respondents in both the years found PIOs very uncooperative which is also attested by numerous cases of harassment of applicants in Bihar, Uttar Pradesh, Haryana and Orissa. Mr. Ved Prakash, President, *Suparbhat Sewa Samiti*, (civil society organisation), Sonapat District of Haryana had face bitter result as a result of filing 51 applications, His house was partially demolished by the government officers who were annoyed by his frequent probing into their functioning through RTI. (Source: PRIA Report – Haryana) A 48-year-old humble farmer Shiv Prakash Rai was jailed by District Magistrate (DM) of Buxar, Vishnudeo Prasad for seeking certain information under the RTI Act in May 2008. He was released as Superintendent of Police found that the case to be false. The DM was fined later by SIC for denying information to Prakash Rai. Besides, a large percentage of respondents in the two years pointed out that the response of First Appellate Authorities was apathetic.

The performance of Information Commissions, the Second Appellate Authority was not found satisfactory by the respondents in two years. The delay in disposal of appeals, poor quality of decisions, sympathetic attitude to government officers was also cause of concern among the RTI applicants. Over representation of members from administration and governance background in Information Commissions, particularly retired Indian Administrative Service (IAS) officers, also added to the perception that Information Commissions are 'pro government officers and against citizens.' It is important to note here that disposal rates of appeals has improved in numbers of states in the period 2007 and 2008. But the number of penalties imposed on government officers by SICs has marginally increased. With the exception of Andhra Pradesh, Uttarakhand and Haryana SIC, the respondents felt that that by not being strict on officers, Commissions are proving to be main

bottleneck in implementation of RTI. However, SICs in some states like Andhra Pradesh, Haryana, Uttarakhand and Gujarat are trying to tighten its system by improving its disposal rates and imposing penalties. In fact, the initiatives of Andhra Pradesh and Punjab SIC and the Central Information Commission with regard to self disclosure can be considered to be good. While, the approach of state governments, as evident from allocation of poor budget to the SICs and non-existent awareness generation drives, has been found to be largely apathetic.

Despite the innumerable difficulties faced by citizens, they are using RTI and the 2008 study shows that 68 percent of respondents were satisfied with the information provided to them. Though there has been no impact assessment of RTI in welfare schemes or government departments, but numerous case studies from different parts of the country show that service delivery and entitlements to RTI applicants has improved. The widespread use of RTI has certainly stirred governance institutions into action, as they fear exposure of poor functioning and corruption.

Impact

Right to Information Act has been used by poor and marginalized across the country in spite of numerous constraints created by government departments, government officers and lack of awareness about the Act. They have used RTI to solve the problems related to services like water, electricity, roads etc. and get the entitlements like Below Poverty Line cards (BPL), pensions, scholarships, job cards under National Rural Employment Guarantee Scheme, houses in Indira Housing Schemes (*Awas Yojana*) and voters' identification card from electoral offices etc. In several locations, citizens have conducted public hearings and prepared citizens' report card for taking stock welfare programmes, monitoring the construction of roads, ponds, drains, schools and other public buildings.[see Box 1] The data for hearings and report card e.g. budgets, muster rolls, sanctioned beneficiaries was obtained through RTI which otherwise would have been impossible to access from government institutions. Even media persons have accessed authentic information under the law and exposed malpractices, poor functioning, corruption etc. in governance institutions. RTI, thus, has created fear in the minds of government officers that any involvement in malpractices can be exposed; hence they are becoming reluctant to violate laws.

Box No. 1

1. PRIA study makes noise in Indian Parliament

The Study conducted by PRIA in 2007 was publicized in major national newspapers of the country. As a result of this widespread publication, members of Indian Parliament also became aware of constraints faced by citizens in accessing information under the RTI law in the country. Questions related to performance of public institutions on implementing RTI were raised in the Indian Parliament. The study was also shared with the State Governments. Sharing has starting having some impact - Haryana SIC has taken strong steps for implementing RTI, even punishing government officers for denial of information. Himachal Pradesh Government has engaged civil society in preparation of manual of RTI for officers and citizens. Appointment of members with civil society, law and science and technology background has started taking place in State /

Central Information Commission.

Source: PRIA Annual Report 2007-08

2. Improving public distribution system in Uttar Pradesh

UNDER THE public distribution system, Almapur's villagers had been receiving their share of ration every year. But only on paper. It wasn't until 2006 – after an RTI application was filed – that they actually got it.

“The ration was sanctioned but it was sold in the market by unscrupulous officials. We mobilized people, made them aware that the food at subsidized rates was meant for them,” said Sandeep Pandey, national convener of the National Alliance of People's Movement. So, two years ago, the villagers, filed the RTI plea.

“After getting the information, we were shocked. We decided to hold demonstrations to highlight the harassment. Finally, the guilty were brought to book and today the situation has improved drastically,” said Ram Babu, a resident of Natpurwa village in Hardoi. Within 20 days, the poor villagers started getting ration – for the first time since independence, they say – and licenses of about 30 ration shops were cancelled.”

Source: Hindustan Times, New Delhi, Friday, October 17, 2008

3. Exposing Corruption – Maharashtra

INFORMATION UNEARTHED by a retired businessman and relentlessly followed up with bureaucrats and elected representatives in an campaign by citizen groups, forced Mumbai's civic body to say it will review its plan to permit a private builder to redevelop a Mumbai landmark – the Crawford market.

Businessman Shailesh Gandhi, who is today a Central Information Commissioner, used RTI to access documents. He then crunched figures to conclude that the Brihanmumbai Municipal Corporation's proposal to hand over the 1869 market complex and protected heritage site to a builder for redevelopment will result in a Rs. 1,000 crore loss for the civic body. In exchange, the corporation would only be getting free construction worth Rs. 40 crore. He then led a campaign against the move. Last September, when the proposal came to the civic house, councillors were faced with crowds of silent protestors. Today though the house has passed the proposal, it is pending with the heritage conservation committee, which has raised some questions.

Source: Hindustan Times, New Delhi, Friday, October 17, 2008

4. Bringing transparency in examination system - Chhattisgarh

IRREGULARITIES IN the conduct of examinations and evaluations of the Chhattisgarh Public Service Commission were revealed after some aspirants filed an application under RTI in 2006.

The result was a change in the examination pattern and the commission admitting its mistake before the high court. Ravindra Singh, president of the Pratiyogi Sangarsh Manch (Competitors Forum for Justice), said the commission accepted the blunders that were committed in allotting marks. The entire selection procedure then became disputed.

“The court in 2006 issued notices to all 147 candidates who were selected by the commission,” said Singh. Its chairman Ashok Darbari was suspended, Secretary Manohar Pandey and examination controller D.P. Kashyap were removed and a member preferred to resign.

“The commission told the court that they are prepared to conduct another examination after nullifying the 2006 results. The final hearing is pending”.

Source: Hindustan Times, New Delhi, Friday, October 17, 2008

5. Getting Housing allowance – Gujarat

KASHIRAM SENVE, a landless labourer, was surprised when he received a notice from the state’s Social Welfare department. He was asked to refund Rs. 10,000 of his housing assistance loan.

In 1997-98, Kashiram, a Dalit of Keshavpura village in Ahmedabad district, had been granted Rs. 40,000 under the Ambedkar Awas Yojana to construct his house. But the amount never reached him. Six years later, in May 2004, he received the notice asking him to refund Rs. 10,000 as he had not built the house.

Kashiram approached the panchayat, which assured him that its records did not show any pending dues against him. But in February 2007, he received another notice asking him to refund an additional Rs. 6,350. He then turned to RTI. But the process was not smooth as officials of the District Social Welfare department threatened and asked him to withdraw his application and gave only a partial reply.

The authorities acted on his plea only after a second appeal was filed. He was granted Rs. 40,000, of which he was paid Rs. 20,000 as the first installment.

Source: Hindustan Times, New Delhi, Friday, October 17, 2008

ⁱ The 2006 Corruption Perceptions Index is a composite index that draws on multiple expert opinion surveys that poll perceptions of public sector corruption in 163 countries around the world, the greatest scope of any CPI to date. It scores countries on a scale from zero to ten, with zero indicating high levels of perceived corruption and ten indicating low levels of perceived corruption.

Source: Adapted from PRIA (2008), *Demanding Accountability from the State: An Assessment of Right to Information*, New Delhi and *Accessing Information under RTI: Citizens’ Experiences in Ten States*, New Delhi