Right to Information: A Long Struggle Ahead

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1. **RTI & Swaraj:**

“The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity to resist authority when abused”. That was how Mahatma Gandhi, years ago, had so succinctly defined his idea of a genuine people’s democracy. In a way, these words also carry the essence of Right to Information (RTI).

2. **The Forum for Better Visakha (FBV) & RTI:**

2.1 The following critique of the status of RTI in Andhra pradesh and the rest of the country is based on FBV’s own experience during the last two years or so. FBI has been campaigning to promote RTI among the disadvantaged, including the adivasis, the fishing communities and the slum dwellers. RTI campaigns have been conducted for the prisoners in the Central Jail in Visakhapatnam. Even professionals in and around Visakhapatnam have been approaching FBV for help in seeking information under the RTI Act. FBV has been trying to propagate the essential features of the RTI among the disadvantaged people by preparing the RTI material in the local language and making it available among them. Volunteers are being motivated to promote RTI in different parts of North Andhra region. On behalf of the FBV, a mobile van with all the requisite material in Telugu, has been moving around Visakhapatnam and the neighbouring areas to promote awareness of RTI among the public and extend help to those that require it. This is perhaps the first of its kind in the country.

3. **Status of RTI:**

3.2 While RTI Act is indeed a landmark legislation for promoting good governance through greater transparency in the functioning of the government and greater accountability, for various reasons, even after more than 2 years, it remains, by and large, out of the reach of those that need it most. It may remain that way for a long long time, unless the advantaged sections of the civil society extend their helping hand to the rest of the people.

3.3 At the outset, one should remember that the RTI Act has come into existence, not out of the government’s own volition, but as a result of the pressure exerted by the civil society. When the Central Government tried to dilute it, by precluding access to file notings, it was once again the civil society that offered resistance and persuaded the government to withdraw that order.

3.4 But for the outstanding support extended by the legal fraternity in the country and the landmark guidelines issued by the Hon’ble Supreme Court on the interpretation of the fundamental rights enshrined in the Constitution, RTI, in its present form, would not have been available to the people of this country. In this process, over the decades, the relevant provisions of the Indian Constitution have gained a great deal of meaning and vitality.

4. **Citizens’ Problems & RTI:**

4.1 Ration cards, caste certificates, pensions, land for agriculture, housing, sanitation, drinking water, healthcare, education and so on are the problems usually faced by the poor. To translate these concerns into effective questions seeking information under RTI Act is not an easy task for the 40 million people in Andhra Pradesh that cannot read or write. In addition, there are many more that are literate but not confident enough to take on the bureaucracy under the RTI. All these need help from the others.

4.2 The procedures under RTI are protracted and, sometimes, frustrating.

5. **1st Stage- Application under RTI Act:**

5.1 The first step in the process of seeking information is to file an application before the concerned Public Information Officer (PIO) under the Act. BPL families are not required to pay the prescribed amount i.e. Rs.10. When they try to go to the office of the Tehsildar, or some other PA, and file the application, they are made to go round the concerned officials, merely for obtaining an acknowledgement. If they send the application by registered post, it involves an expenditure of at least Rs.20/- that they cannot afford.

5.2 Even in the case of non-BPL applicants, in addition to the prescribed Rs.10 for the application, additional cost is to be incurred for postal registration.

5.3 Many among us are unaware of the intricacies of the various departments of the government, their respective duties and functions and their hierarchical systems. Section 6(3) requires any Public Authority (PA) receiving an application for certain information that is available with another PA to forward it to the concerned authority for disposal within the time limit of 30 days specified in Section 7(1). Often, it is our experience that the applications under this category are routinely returned to the applicant, causing inconvenience and delay. One could contest this but, usually, no decision would be available except at the level of the State Information in the second appeal. Such matters take more than 3 to 4 months to get resolved.

5.4 We have come across applications being rejected on grounds of confidentiality under the exemption provisions contained in Section 8, even though such a decision may not be appropriate if it were to be subject to the test of “public interest” so elaborately defined by the courts. In one case, the PA refused to provide the information on the ground that a case was “pending” before the Court, despite the fact that the Court had not prohibited the PA from furnishing that information. While the law provides for a 2-stage appeal, as already stated, it tests the patience of the applicant rather than securing timely justice for him.

5.5 There have been a number of cases in which the applicant is asked to provide the reasons for seeking the information, even though Section 6(2) does not permit such a question from the PA.

5.6 In the recent times, just to avoid being penalized for delay under Section 20, some PAs have resorted to issuing pre-dated replies. In such cases, if the applicant is vigilant enough, he could establish the fact of the false date by extracting the postal date mark. But the effort involved here is an avoidable burden on the applicant.
5.7 In addition to the application fee of Rs.10, the PAs have been asking the applicants to make additional payments towards copying documents, postal charges etc. The copying charges, as prescribed, work out to Rs.2 per page, whereas the market rate in many places may be around 50 paise. While the more affluent among the non-BPL applicants may willingly make such payments, such additional charges act as a barrier to flow of information to the poorer households.

5.8 Also, when a PIO asks a BPL applicant to pay such additional amounts, in utter disregard for the Proviso under Section 7(5), the latter feels helpless, as he is not in a position to contest the PIO’s decision!

6. **2nd Stage: First Appeal**

The stage of the first appeal under Section 19(1), from the experience so far with such appeals, has become somewhat ineffective, as the appellate authorities are ill-equipped and often insensitive to handle the appeals in a quasi-judicial and pro-active manner, as required. Nevertheless, it takes more than 30 days for such appeals to be disposed of. For this, the applicant is forced to incur postal registration charges and await the expiry of the 30-day period, without any commensurate benefit. Since the Act seems to be somewhat silent on how to deal with any delay at this stage, no penalty is levied by the SIC on the appellate authority.

7. **3rd Stage- Second Appeal before the State Information Commission**

7.1 The State Information Commissions (SICs) have played a crucial role during the last two years in promoting the concept of RTI in a fairly effective manner. Despite this, the applicants have been facing problems in securing timely justice on their requests.

7.2 While there are time limits prescribed in the Act for the PIO and the first appellate authority, no such stipulation is available in the case of the CIC and the SICs. It takes several months for the SICs to dispose of the cases filed with them.

7.3 For the sake of convenience, the SIC has prescribed a “format” for an appeal being filed before it. An illiterate applicant is at a loss when he finds that his appeal has been returned by the SIC as it is not in the standard form!

7.4 SIC’s proceedings are in English, a language that has always acted as a serious impediment to communication with the people in this country. The SIC holds its proceedings at the State Hqrs. That precludes the applicant, especially an applicant whose income is low, from presenting his case.

7.5 Finally, even though Section 20 provides for a fairly stiff penalty for delays in furnishing information, for some reason, many SICs are hesitant to invoke that provision. Imposition of penalties would have gone a long way in waking up the government departments to the reality of RTI. If either the PIO or any other officer of the PA who is deemed to be the PIO under Section 5(5) has caused delay in providing information to the applicant, he should incur the penalty under Section 20. If the first appellate authority has failed to dispose of the appeal within the prescribed 30 days, the CIC or the SIC, as the case may be, could, in the interest of providing justice to the applicant, cause an entry to that effect made in the confidential record of the concerned appellate authority.
8. **How can the Man-on-the-Street avail of the RTI Benefits?**

8.1 The procedure, as described above, is indeed a tortuous and demanding one. How can an adivasi in a remote area or a fisherman facing the uncertainties of the weather or a hassled slum-dweller ever take full advantage of the fruits of RTI?

8.2 Section 26(1)(a) enjoins upon the government the onerous responsibility of taking all such measures that will enable the disadvantaged people to exercise their RTI rights. One is not sure whether the government has grasped the intent of this provision fully!

9. **How has the State discharged its own Obligations?**

9.1 Section 4 has cast the responsibility of proactive disclosure of information on the government itself.

9.2 For example, under Section 4(1)(b), the various PAs are required to place in the public domain, within 120 days from the date of enactment of the Act, information about themselves, inter alia, on the following items.

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<thead>
<tr>
<th>Item</th>
<th>Clause</th>
<th>Description of Information</th>
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<tbody>
<tr>
<td>1</td>
<td>Sec 4(1)(b)(iii)</td>
<td>Decision making procedures, channels of supervision, accountability</td>
</tr>
<tr>
<td>2</td>
<td>Sec 4(1)(b)(iv)</td>
<td>Norms for Services</td>
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<tr>
<td>3</td>
<td>Sec 4(1)(b)(vii)</td>
<td>Arrangement for Public Consultation in Policy/Implementation</td>
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<td>4</td>
<td>Sec 4(1)(b)(xi)</td>
<td>Budgetary allocations/ Plans</td>
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<td>5</td>
<td>Sec 4(1)(b)(xii) &amp; (xiii)</td>
<td>Beneficiaries of concessions/subsidies</td>
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9.3 A cursory scanning of the websites of the municipal corporations, urban development authorities and the other departments in A.P. having a public interface shows that they are yet to comply with these requirements.

9.4 Section 4(1)(c) likewise requires the PAs to disclose the relevant facts while formulating important policies or announcing decisions that affect the public. So far, no department has tried to comply with this requirement.

9.5 Section 26(1)(c) enjoins upon the government the responsibility of promoting timely and effective dissemination of information by PAs about their activities. The government is yet to act on this. A well-meaning RTI activist in Visakhapatnam has been operating a mobile van for promoting RTI. The local police have expressed some difficulty in permitting the van to use a loudspeaker for announcements. Unless the government issues clear guidelines on this and exempt the van from the levy of fees, such activists will feel constrained in their effort.
10. **Government’s Failures have Burdened the Citizen:**

Citizens are often forced to seek information that the government ought to have provided on its own. Does it not imply the citizen having to bear the cost of government’s default? Who should pay for these avoidable costs? There is a case for the citizen to be fully compensated for the time he is forced to spend and the cost he is forced to bear on this account!

11. **Suggestions to take RTI to the People:**

On behalf of the FBV, we would make the following suggestions to make RTI more people-friendly.

- Government should ensure 100% compliance with Sec.4 & Sec. 26 within the next 3 months (A responsible government is expected act on this on its own. Otherwise, the citizen will be left with no other alternative than adopting the PIL route!)

- Non-compliance with any of the provisions contained in Sec. 4 should attract departmental action against the head of the PA concerned

- RTI Cells (adequately funded) should be set up by the government at the state and District levels to coordinate with the RTI activists on
  
  - Implementation of Sec. 26(1)(a) for empowering the disadvantaged
  - Help-Kiosks at all important offices with public interface (The local Collectorate, the Municipal Office and the Tehsil Office should provide space for these Kiosks)

- Government should provide sufficient budget to SIC to be able to hold hearings at District Hqrs./Mandal Hqqs. SIC in turn should hold hearings at these locations

- SIC should conduct Adalats for quick disposal of appeals. As the time limit for the disposal of an application, either at the PIO level or at the 1st Appellate Authority level, has been fixed at 30 days, the SIC should also strive to dispose of appeals received by it within a month.

- The State Government should enter into an arrangement with the Postal Department to declare all the post offices in the State as the “receiving points” for RTI applications. The acknowledgement issued by the Post Office should be deemed to be sufficient proof of the date of receipt of the application.

- Similarly, all e-seva centers in the State should also be declared as “receiving points”

- No fee of any kind should be charged from BPL applicants. This concession should apply not only to the original application but also to copying and other charges
• In view of the occasional shortage of court-fee stamps, postal orders etc., the government should allow flexibility and choice to the citizen in the matter of paying the prescribed fee. For example, payment through ordinary postal stamps or payment of cash at the designated receiving points should be allowed

• RTI should be incorporated in the School Curriculum

• The Bihar Model that permits appeals through toll-free telephone numbers should be adopted in A.P. and throughout the State

• Summary procedures should be provided for dealing with BPL applicants

• In RTI proceedings, the use of local language (e.g. Telugu or Urdu) should be encouraged as per Go Ms No 420

12. **Epilogue:**

The Chinese Emperors were expected to **“admit their own imperfection as a proof for their love of the truth and in fear of ignorance and darkness.”** This seems to have inspired the right-to-information enthusiasts in Sweden to take the lead to pass the first Information Law in the world 240 years ago!

A group of openness-in-government activists from more than thirty nations met in Bulgaria on September 28, 2002 to form a coalition known as the “Freedom of Information Advocates Network”. The day on which they met at Sofia in Bulgaria is now celebrated as the International Right-to-Know Day. It is hoped that our own civil society, especially the legal community that constitutes its cream, join their hands in a similar network and translate Gandhiji’s dream of a true Swaraj into reality!