

Odisha Right to Citizens' Services Bill: Who is its biological father?

Along with this author several persons from civil society sat through the half-day long Consultation meeting which was held on 11th last at Red Cross Bhavan, Bhubaneswar at the behest of Odisha Nagarik Samaj to deliberate upon a draft law called 'The Odisha (Right of Citizen to Time Bound Delivery of Services) BILL, 2011' (<http://www.box.net/shared/7qctkqn8vkytrbhk8ogh>). The said draft was purportedly prepared by Dr.Bhagban Prakash Chairman ONAS who also admitted to that effect in course of the Consultation which he happened to moderate as its chairman all through. At first instance, it must be said to the credit of ONAS and its chairman Dr.Prakash that he could pioneer a discourse in Orissa on an emerging issue of critical significance, which is worth reflection and discussion by the conscious members of public worried about our ill-governed polity. It is for this reason that several persons like me felt enthused to come forward to contribute their bit to the unfolding debate around the proposed Bill.

However, given the weird text of Odisha draft Bill and the hot-haste manner in which the above Consultation was carried out, two very critical ponderables have fallen out, which need to be sorted out before we proceed along a meaningful discourse around the draft Bill.

- Whether the draft Bill was actually drafted by Dr.Bhagban Prakash as was naively believed by the most participants in the Consultation? Or is there a behind-the-scene drafter, who engaged a learned civil society actor like Dr.Bhagban Prakash to market it lest he can't get through his shady, political game-plan with which the launching of a draft bill of the above kind has a strong though invisible nexus?

- Given the series of bizarre anomalies that stalk both structure and language of the draft Bill, has it the minimum standard to serve as a base document for further refinement into a draft bill worth the name?

To take up the 2nd ponderable first, I strongly hold that the draft Bill in its present shape and size, is not acceptable at all from a civil society perspective, even as a base document, for the simple reason that it has been badly copied from the corresponding Delhi Act (<http://www.delhi.gov.in/wps/wcm/connect/8e0b1a8046929ac58a8fde0956274163/ESLA-ACT.pdf?MOD=AJPERES&lmod=1567745503>), which has least relevance for Odisha's governance scenario. Just as the proverbial thief who while stealing away other's property in a hurry, leaves behind unawares certain clues of his ignoble act, the novice drafter of the Odisha Bill while blindly adapting the Delhi Act has left behind definite proofs of his stealthy malpractice. At one crucial point, he has failed to replace the word 'Delhi' by Odisha, which points to the unmistakable fact of Odisha Bill being a thoughtless plagiarization from the Delhi Act. Ludicrously enough, Subsection (3) of Section 15 (Power to make Rules) of Odisha Bill reads, "Every rule made under this Act by the Government shall be laid, as soon as may be after it is made, before the Legislative Assembly of Delhi . . .". This conundrum, which I shall call a malpractice syndrome, takes us to the first question i.e. Is Dr.Bhagban Prakash the real drafter of the Odisha Bill or a mere loudspeaker for HMV (His Master's Voice) & Co. to which he might privately belong. Because, Dr.Pakash being a man of letters himself couldn't have possibly shown such a horrible instance of rank idiocy to write Delhi instead of Odisha in the above place while authoring the draft Bill for Odisha. Alternately it seems, Dr.Prakash had so

much unalloyed faith in the intellectual caliber of his political supremo that he didn't care to go through the text of the plagiarized draft even for once either before or after consenting to market it before the civil society. Otherwise, how come such a mindless mishmash marred the Draft Bill purportedly authored by him?

That the so-called Odisha draft bill has been fathered by somebody else than Dr. Bhagaban Prakash, who can now of course be called its foster father, is too glaringly evident from another instance of outlandish blunder that has made its way during the cunning copy-and-paste operation by the behind-the-scene drafter. The Section 2(f) of Odisha draft Bill reads, "Government" means the Governor of the State of Odisha appointed by the President under article 239 and designated as such under article 239 AA of the Constitution". Not only this so-called definition is imported in extenso from the exactly corresponding Section of Delhi Act i.e. Section 2(f), but also both the fathers biological and foster have exposed their utter ignorance about rudiments on Government of Orissa or Constitution of India. While the word 'Government' occurring in the Odisha Bill should, correctly speaking, be defined simply as 'Government of Odisha', it has absolutely nothing to do with the Article 239 or 239 AA of the Constitution, since the two referred Articles are captioned 'Administration of Union Territories' and 'Special provisions with respect to Delhi' respectively, which, needless to say have nothing to do with Odisha. As a matter of fact, except two opening sentences added to its preamble, replacement of the word Delhi by Odisha in several places and minor changes in words and expressions here and there, the so-called Odisha Bill is a verbatim reproduction of Delhi Act, both bearing a similar title and an identical lay-out of 16 Sections and 1 Schedule. Even where the drafter has brought in minor changes for cosmetic purposes, he has laid bare his lack of a modicum of common sense. For instance, his innovative definition of 'local body' in Section 2(h) of Odisha Bill includes 'Collectorate and its subordinate offices'.

It is of course true that while drafting a particular law for a State or region it is not only customary but also necessary to consult the existing corpus of laws made on the subject elsewhere in the country. But the cardinal principle that should guide the concerned drafters all through is how to customize an imported provision to suit the specific and special needs of the State or region for which he has set out to draft the law in question. The moot point therefore arises, why did the drafter of Odisha Bill decide to copy the remotely located quasi-State of metropolitan Delhi instead of consulting two nearby States Madhya Pradesh and Bihar whose history and geography, society and culture, economy and politics have so much to share with that of Orissa? As is well known, these two States have already enforced such laws as Madhya Pradesh Public Services Guarantee Act 2010 with effect from 17 September 2010 (<http://www.mppkvvel.org/html/loksewaguaranteeadhiniyam2010.pdf>) and Bihar Right to Public Services Act 2011 with effect from 3rd May 2011 (<http://gad.bih.nic.in/Acts/noti-1354-03-05-11.pdf>), whereas Delhi has as per the official admission not yet enforced the Act in absence of Rules, though the Act was passed by its legislative assembly on 29 March 2011. ([http://delhi.gov.in/wps/wcm/connect/doi_it/DoIT_IT/Home/Proposed+The+Delhi+Right+Of+Citizen+To+Time+Bound+Delivery+Of+Services\)+Act,+2011p](http://delhi.gov.in/wps/wcm/connect/doi_it/DoIT_IT/Home/Proposed+The+Delhi+Right+Of+Citizen+To+Time+Bound+Delivery+Of+Services)+Act,+2011p)).

The solution to the above riddle is not far to seek either. While the Acts of MP and Bihar are quite tough on the accountability of the officers of all categories, the Delhi Act has expressly exempted without any rhyme or reason the creamy layer of the officialdom i.e. the holders of all

India services like IAS, IPS, IFS and allied services from any manner of liability even if they are instrumental for failure in time-bound delivery of services to the members of public. At tandem with Section 1(4) of the Delhi Act, the said section in the Odisha Draft Bill shamelessly declares inter alia, "This Bill . . shall not apply to- .. (iii) persons whose terms and conditions of services are regulated by or under the provisions of the Constitution." The question arises, if the officers of all India services who as a matter of course head and lead the various service provider Ministries and Departments of the Government at Centre and in States, are kept outside the ken of accountability, can this law at all deliver the good as promised in its magniloquent preamble- "To provide for the delivery of services to the citizens . . . within the stipulated time limit, including liabilities of the government servants, in case of default."

The most striking lacunae in both Delhi and Odisha bills is the lack of any space whereby to start with an aggrieved citizen can put forth his/her grievance that a particular service was not delivered to him/her within the stipulated time. Moreover, like the Delhi Act, Odisha Bill has no provision for a time limit within which 'the competent officer' shall make available the service denied to a citizen by the concerned 'Government servant'. Such being the case, the Odisha Bill even if made into an Act would ever stay a non-starter all through. The apparently pro-citizen feature of the Odisha Draft Bill, often talked about, is its provision for payment of compensatory cost of Rs.20/- per day, as against Rs.10/- in Delhi Act by the defaulter Government servant to the aggrieved citizen for the entire period of delay in delivery of services, 'subject to a maximum of five hundred rupees per month per application in aggregate' as against Rs.200/- in Delhi Act. But the question arises, if, for instance, a person is denied a certificate of caste within a stipulated time he may lose the opportunity of getting admitted to an educational institution or even a job; what shall he do with a mere pittance of Rs.500/- given to him as compensatory cost at long last? Moreover, this compensatory cost of Rs.500/- shall not accrue to the aggrieved citizen automatically, but he shall as per Section 8 have to apply for in accordance with the rules to be prescribed, and that too only after getting the delivery of withheld service. Further, the reason for which both Delhi Act and Odisha Bill are a laughing stock is the protective cover given to the 'habitual defaulters' among the government servants. While it is said in Section 12 of both instruments that "a Government servant shall be deemed to be a habitual defaulter in case he/she incurs more than twenty five defaults in one year", it has been left to the discretion of the competent officer 'to take appropriate administrative action' after giving him 'a show-cause notice and opportunity of hearing'. While the envisaged 'administrative action' is not defined, neither is any time-limit prescribed within which the competent officer shall complete the long drawn-out process of show-cause and hearing and thereon pronounce 'the administrative action'.

Again, the most critical lacunae in Odisha Bill and Delhi Act is conspicuous absence of any penalty provision whatsoever against the defaulter Government servants, whereas both MP and Bihar Acts have provided for strong penalty against the non-performing officers. As per the Section 7 of the MP Act if a designated officer fails to deliver time bound service without sufficient cause he shall be fined with minimum Rs.500/- extending to Rs.5000/-, and against each day's delay he shall be fined Rs.250/- which may go upto Rs.5000/- at maximum. The first Appellate Officer shall also be fined Rs.500/- to Rs.5000/- for his failure to decide the appeal within the stipulated time-limit. Besides, both designated officer and first appellate officer shall be subject to disciplinary proceedings, if necessary, in addition to monetary fine by the 2nd Appellate Officer. Above all, the amount of penalty so realized from the defaulter officers can be

fully or partially awarded as compensation to the aggrieved person. The Bihar Act has a similar regime of penalty except the provision for compensation.

As is well known, the effectiveness of a law is derived from the overriding nature of its provisions. But the Odisha Bill like its Delhi counterpart says in Section 14 that its provisions shall not exist in derogation of the existing service rules and regulations meant for the government servants but as supplement to them. Moreover, its Section 12(1) has categorically declared, “The defaults on the part of the government servant . . . shall not be counted towards misconduct . . .”. This is precisely why Odisha Bill even if made into an Act is doomed to stay absolutely toothless all through. Whereas the Bihar Act mandates the overriding effect of its provisions (Section 12) on one hand, and declares ‘non-compliance amounting to misconduct’ (Section 8) on the other.

Under the circumstances, Dr.Bhagban Prakash, be he the biological father of the Odisha Bill or its foster father, has to clarify what prompted him to mimic the erratically drafted, not-yet-enforced toothless Delhi Act for its transplantation on the body politic of Orissa, while avoiding the already enforced and relatively effective Acts of Madhya Pradesh and Bihar that have closer relevance for addressing the issues of a wretchedly mal-functioning and utterly corruptible administrative regime of Orissa. Then only can we together move forward as Dr.Prakash expects all of us to.

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