

NAC's Draft Right to Information Act 2004 : From Devil to Deep Sea

Ironically enough, the Central Ministry of Personnel notified the draft Rules of Freedom of Information Act 2002 on its website on the very day i.e. 14th August, when National Advisory Council of UPA Govt in its 3rd meeting as chaired by Mrs. Sonia Gandhi resolved to replace the said Act by a new one, Right to Information Act 2004 and endorsed to the PM its enactment in Parliament. This development though little known outside the interested circles, has of course fulfilled the prime wish of NAC's two eminent members Mrs. Aruna Roy of MKSS Rajasthan and economist Mr. Jean Dreze along with that of their NCPRI (National Campaign for People's Right to Information) compatriots who had doggedly advocated a change-over from the flaw-ridden FOI Act of 2002 to a supposedly foolproof RTI Act 2004. In absence of a scanning exercise at any level, an over-all impression now reigns throughout that the new draft fulfils CMP's mandate to render the RTI legislation more 'progressive, participatory and meaningful'. However, the moot point arises, is this claim true?

Firstly, the draft Act under Section 2(g) adds community bodies like Panchayatiraj institutions and district/village councils of 5th and 6th Schedule areas to the list of public authorities as accountable to disclose information under law, but ominously omits MPs/MLAs from its purview. The latter as everyone knows are not only the nation's law-makers but also nowadays the trustees of huge chunks of public money called LAD, about whose use or abuse, even the legislatures can't raise a question, let alone the common citizens. Similarly the political parties who are the key players of country's governance have also been kept outside the accountability ken. The next conspicuous failure of the draft Act like its predecessor is its hesitancy to question the very Oath of Secrecy, a colonial relic found in the Constitution's 3rd Schedule that a Minister is obliged to swear by before assuming the office. It sounds simply paradoxical that the very Ministers, who are in our kind of parliamentary democracy not only front-ranking legislators, but also executive heads of Ministries/Departments, are allowed the constitutional discretion of what to disclose and what not, while their subordinates from a Secretary down to a BDO shall have to disclose all matters of public interest as defined under an RTI law. The drafters seem to have cold-shouldered the Report of National Commission to Review the Working of the Constitution-2002 that recommended replacing the long obsolete oath of secrecy by an oath of transparency for all actors of governance from top to bottom.

Next, the Section 7 of draft Act just like the Act 2002 uses two ambiguous expressions 'a fee' and 'a further fee', implying the possibility of a double fee regime for information seekers. Worth recollecting is the vehemence with which most RTI activists including NCPRI think-tank had resisted the idea of a double fee provision as mooted by the Draft Rules under FOI Act in August last. Ideally the Act should have provided for a one-time affordable fee payable by the applicant against the delivery of the requested information.

An assumed hallmark of the draft Act vis-a-vis the preceding one, as flaunted by its champions is its impeccable penalty provision under Section 12 (4) i.e. Rs.250/- per day recoverable on the orders of the appellate authority from the salary or land revenues of a defaulting Public Information Officer against his proven act of delay in furnishing appropriate information to the applicant citizen. But the question arises, how and whether at all a PIO could be proved a defaulter, since as per Section 12(4)(5) of the draft Act his case shall be adjudged 'under the service rules applicable to him' and since every service rule today, be it AIS [Conduct] Rules, Manual of Office Procedure or CCS (Conduct) Rules is squarely biased against the very act of disclosure of information by public servants to the citizens. Unless and until the Service Codes be reframed basing upon a diametrically opposite principle of making disclosure a rule and withholding an exception, any reference to them as instruments of adjudication is sure to favour the defaulting bureaucrat himself as against the citizen complainant already harassed by the former.

The innovative provision of the draft Act for a statutory, independent and autonomous appellate-cum-investigative-cum-monitoring authority in the person of an elaborate Information Commissionerate stretching hierarchically from Centre to every State/UT and down to local levels, accountable to none but Central and State legislatures sounds on one plane idyllic, but on another frightening too, given the current, ubiquitous go for downsizing the State. Apart from the bureaucratic proliferation and additional investment that the proposed mega-Commissionerate might entail for its establishment and annual recurring costs, the very rationale of combining appellate, investigative and monitoring powers, all into one single authority as provided under Sections 12 and 16 is itself questionable in our kind of parliamentary democracy where the judge who adjudicates never investigates, and the police whose job is only to investigate never adjudicates.

The draft Act like its predecessor fails to ensure a very vital, natural right to the citizens applying for information, the right to an acknowledgement receipt from the PIO on submission of his application. The acknowledgement receipt just like the FIR from a Police Station is the single-sharpest, nay indispensable instrument for the information seeker to vindicate the bona fides of his case although before the PIOs or the appellate authorities too.

Unlike the FOI Act the draft Act lacks in a Statement of Objects and Reasons, which is not only a legal requirement but a quintessential adjunct to a citizen-oriented legislation like the proposed one. Moreover confusion galore stalks the commitment dished out in Section 1(3) for enforcing the Act within 120 days of enactment, since the other related Sections 17 to 20 dealing with rule-making by Centre and States and laying-of-rules in the Parliament and State legislatures far from reinforcing the said commitment dilute it beyond recognition by repeatedly using hackneyed and hollow phrases like 'as soon as', a perfect Indian euphemism for escaping a commitment.

Since the draft RTI Act seems to carry forward some known omissions and commissions of the FOI Act while engendering a few new snags, the NAC could do with releasing the draft Act for a country-wide debate in next six months or so and thereby making for a more pragmatic and citizen-friendly version of a transparency law to emerge. **TOTAL WORDS: 1061**

Chitta Behera, 4A Jubilee Tower, Choudhury Bazar, Cuttack-9, Orissa, dated 8th Nov. 2004
PH: 0671-2623518 Email: chittabehera@rediffmail.com