

India's Right to Information and Social Inclusion-Wajahat Habibullah

India represents an unprecedented experiment in nation building after centuries of being part of empires that had etched its geographic boundaries. This experiment is unprecedented because it differs radically from the idea of a Nation State based on European experience, which based national boundaries on the strength of ethnic, linguistic and religious commonalities. In framing its Constitution, India, describing itself as a 'Union of States' gave to itself a Federal Constitution with a strong unitary bias. Emerging from a bloody Partition amidst doubts, most famously voiced by former British Prime Minister Sir Winston Churchill that India was not even a nation, India sought to weave itself together, while acknowledging diversities, particularly of religion, education, culture and language, into a cultural fabric that allowed for minimum political autonomy to ethnic diversities. "India is an abstraction," said Churchill, India is no more a political personality than Europe. India is a geographical term. It is no more a united nation than the Equator." "None knows," pondered Lord Wavell, Viceroy of India 1943-47 "where the partition of India, once it starts, will end, short of Balkanisationⁱ."

To this day there is a view *that multiethnic states cannot become nations*. In a closely argued essay "Us and Them" in Foreign Affairsⁱⁱ, *Jerry Z Muller, Professor of History at the Catholic University of America has so argued*. "In short", Muller argues, "ethno nationalism has played a more profound and lasting role in modern history than is commonly understood, and the processes that led to the dominance of the ethno national state and the separation of ethnic groups in Europe are likely to reoccur elsewhere. Increased urbanization, literacy, and political mobilization; differences in the fertility rates and economic performance of various ethnic groups; and immigration will challenge the internal structure of states as well as their borders. Whether politically correct or not, ethno nationalism will continue to shape the world in the twenty-first century." His

conclusion, remarkable in the light of India's history: "Partition may thus be the most humane lasting solution" How has India's experiment worked for Indians?

India's Planning Commission's *India Human Development Report 2011* focuses on Scheduled Castes, Scheduled Tribes, which have traditionally been regarded as the excluded groups, and Muslims. It cannot be denied that in India's own quest in building a multi-ethnic nation state, the fundamental rights of equality and equal opportunity, guaranteed under its Constitution, have not been fully realized, in different measures, in the context of the minorities in India, where, despite sophisticated and focused plans, various exclusionary forces are entrenched deep in the systems and mechanisms that have kept sections of the minorities, Muslim, Christian Sikh and Buddhist, on the fringes of the development process. Its struggle has been complicated by an evolving democratic framework, with the dictates of the Union increasingly looked upon as an intrusion by the States, themselves increasingly politically self-sustaining, even if not, thanks to India's financial structure, not so financially. To address this, the government at the Centre and in each State, has to act proactively to create an environment where, first and foremost, all sections of the community has access to strong legal tools and redress mechanisms already extant in the system, to address specific forms of exclusion and protection of its human rights. Emerging instruments of governance provide the leverage. We have decentralization of governance through the 73rd and 74th Amendments to the Constitution making Panchayat Raj, an instrument of local self-government, a constitutional imperative, thus making every registered voter a legislator for his own village or township. To ensure accountability and transparency in governance India has among the world's strongest laws on the subject, the Right to Information Act 2005, failure to comply with which has often brought government to grief. So, within civil society a glimmer of consciousness is already discernible.

An exact replication taken from the internet, of a letter received by me by e-mail on Friday, April 13, 2012, will, I hope, demonstrate the access to authority that a Muslim, like every Indian today enjoys:

“To,

The Chairman
National Commission for Minorities
New Delhi

Sub:- PM's New 15 point program is not properly enforced in Bihar state

Sir,

I humbly submit that the PM's New 15 point programme is not properly implemented in letter and spirit as per guidelines .

In fact there are no such committees constituted neither in the state level nor in district level for the benefits of the minority communities.

As because it has been initiated by the P.M.O, the govt of Bihar is not seriously interested to implement the same on political bias perhaps . The govt of Bihar issued a notification No.456 dated 17/07/2007 in this regard without proper and proportionate representation of the minorities .

According to the Govt's notification No 456 dt.17/07/2007 only the govt.officials of the concerning department are included in such committees since last 5 years .

Hence virtually there is no progress at all in this regard.

I therefore request your kind honour to look after the same as it will change the face and status of the minority people at large economically, educationally and morally.

Thank,s

Your's Faithfully

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As the RTI Act celebrates the seventh year of its coming, there has been much heated discussion, often emotional, of the benefits that it has brought and also the challenges with which it has confronted government, and indeed the nation. 'Scams' centering on government initiatives have agitated government and the public leading to a universal clamour for an effective Ombudsman, a 'Lokpal'. This can be said to have been predicted in the Prime Minister's

inaugural address to the Annual Convention of the Central Information Commission on October 14, 2011.

It is accepted in all circles that the essence of government in a democracy must be transparency with every organ of government; executive, judiciary and legislature being answerable to the citizen. Hence the father of the Nation, when describing his vision of self governance for India, described it as follows:

“The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused”

India’s Right to Information Act, 2005 therefore asserts that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. And this is a universal truth of particular relevance to India as a country the government of which has, at least since the ‘70s, remained committed to *‘garibi hatao’*. Seen in this light, the RTI is an instrument that has the potential to strengthen governance immeasurably. In the words of Kofi Annan, former UN Secretary General

“The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task, your task ... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge of a potential for all, the path to poverty can be reversed”.

This thought found resonance in our Prime Minister’s speech introducing the Bill in Parliament on May 11, 2005:

“I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.”

But is governance achieving this end? Amidst the clamour for better governance, the answer today will, of course be resoundingly in the negative. The basic question that needs to be asked therefore is for whom are the benefits of governance intended? And if this is identified, how is the target to be reached? We know that infrastructure in India is still woefully inadequate, despite privatization-the breakdown of the power grid on July 30-31 is an example of that, if an example were needed; employment growth of 2.1% in 1983 had in fact declined to 1.84% in 2004; in the health sector there are regional, socio-economic, caste and gender based disparities; Centre-State Fiscal relations are a matter of concern; an institutional framework for public-private Partnership is still to be developed; access to justice is not universal despite the constitutional provision of local self government (Panchayati Raj). Finally, because of the demands of national security vs. social security and individual freedom, the essence of democracy, which respects the sovereignty of individual liberty, is vague at best. Some of these challenges, specifically the need to address a persistent threat to whistleblowers, were cited by Dr Manmohan Singh in his address to the Annual Convention of the Central Information Commission. But these are challenges not only before the Centre, but, as in the case of whistleblowers, of even more urgency confronting the State administrations

In this context it is important to dwell on the definition of "information" in the Act. Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and "information relating to any private body which can be accessed by a public authority under any other law for the time being in force" As PM mentioned in his address, this will clearly bring under the Act almost the entire scope of the economic firmament, which thanks to the heritage of our 'welfare state' is answerable to government in a wide host of sectors

Key concepts under the right to information, then, include the following:

- Transparency & Accountability in the working of every public authority
- The right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request, except the exempted information
- The duty of Govt. to pro-actively make available key information to all

Clearly then, this law places a responsibility not only on Central and State Administrations, but also on all sections of the national fabric: citizenry, NGOs and the media. The responsibility then is not that of government alone. This brings into context PM's call, on October 14, to all participants in the process to flag the challenges that government and the citizenry face in applying the law. What must follow then is the obligation so clearly enunciated in Sec 4 (1) of the Act.

“Every public authority shall¹- (a) maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated”

This then was the only law until its enactment, to capitalize on one of India's greatest assets; our revolution in information technology. And the National Informatics Centre has moved in designing systems to apply, appeal and get decisions on internet. The Right to Information includes the right to inspect works, documents, records, take notes, extracts or certified copies of documents or records, take certified samples of material, obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts. It does not extend to information not held in material form.

Moreover, the following is exempt from disclosure under Section.8 of the Act

¹ Underlined by me for emphasis

- information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence
- information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual; Infringes copyright, except of the state.
- Where practicable, part of record can be released.
- Intelligence and security agencies exempt-except cases of corruption and human rights violation
- Third party information to be released after giving notice to third party

It needs however to be noted that, under the Proviso contained in Section 8(2), notwithstanding any of these exemptions or indeed even India's Official Secrets Act, a colonial construct of 1923, a public authority may still allow access to information, if public interest in disclosure is deemed to outweigh the harm to the protected interests. And most exempt information is at any rate to be released after 20 years, with some exceptions, although also provided that the information, which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Unfortunately, on this provision there has been little endeavour by government, Central or State, despite pronouncements of the Central and State Information Commissions, to make such information readily accessible after the appointed time, thus making more complicated for itself government's responsibility in keeping information, that needs to be withheld in the public interest, secret.

What is noteworthy is that this law specifically seeks universal access, especially to the poor. It is of course open only to citizens of India, as per Sec. 3 but the fee is also required to be at a reasonable level, although the quantum is specified only by rule, and there is no fee for those below the poverty line. Assistant Public Information Officers are required at sub-district levels to facilitate filing of applications and appeals. Hence heads of post offices have been given this authority by the central government. There is no need to specify a reason for seeking information or indeed provide any other personal details. There is Provision that the PIO reduce oral requests into writing and for the PIO to provide all required assistance, including to disabled persons. Information is to be provided in local languages. There is provision for damages. This accounts for the fact that, in a study of 2008 spread over eight States, the Campaign for Promotion of Right to Information (CPRI) found that 40% of users were from among those without education.

While conceding that the responsibility for the successful implementation of the Act is shared, this cannot exempt government from its own responsibilities.

In fact, the Act places a host of responsibilities on Public Authorities, Central or State, who were required to appoint PIOs/Asst. PIOs within 100 days of enactment and to begin maintaining, cataloguing, and indexing, computerising and networking records in accordance with Section 4(1) (a). If this has not happened to the extent required, the government has only itself to blame. The authorities were further to publish, within 120 days of enactment a whole set of information and update it every year. This was to include publishing *suo moto* all relevant facts while formulating important policies or announcing the decisions which affect public, and also providing reasons for its administrative or *quasi judicial* decisions to all affected persons. Authorities were made primarily responsible for raising awareness, educating and training, not only to officials but to members of the public. For this every department was expected to develop and organize educational programmes to advance the understanding of the public, particularly the disadvantaged, to exercise right to information. Several gram panchayats, notably in Rajasthan, have in fact taken the lead in painting necessary information onto Panchayat walls to guide the public. Not having done so, government can hardly blame the public for misuse. But the law itself has helped generate a wider use of modern information technology, which will inevitably lead to computer facilities extending to every village. Already, the use of cellular phones is widespread, and it is only a matter of time before information will begin to be disseminated through this instrument

Government was thus to encourage public authorities to participate in programmes; promote timely and effective dissemination of accurate information on activities, train PIOs and also to produce relevant training materials, which would include user guides and related matter. To achieve this government has indeed developed a scheme for E-governance. It is agreed that for the success of this initiative, RTI is essential. But this will require computerisation of records, and their effective storage in a manner easily accessible. Here there has been limited progress, but only at the level of the central government, and it is mixed at the level of State governments

Key to the effective functioning of the Act is the Gram Panchayat, the village council, which can prove the repository for scheme information, citizen surveys, Fiscal information, Etc. While helping educate the public on benefits provided by government, they can educate government on the aspirations of residents of the villages. But this will happen only with the devolution of functions, funds and functionaries by State Administrations. Although clearly enunciated in policy, such devolution has not always been comprehensive, thus making panchayats not institutions of 'self-government' as envisioned by Article 243 of the Constitution, but organs of the State administration. Nevertheless, as the third level of representative government this body can become the service provider for over the counter services, certificates, taxation, billing, licences, ration cards, and a host of such services at the grass roots, working to keep the citizenry informed with .citizens as a group (Gram Sabhas) and citizens as individuals, whose concerns and questions can also be appropriately addressed by reference to the relevant authority. This would ensure efficiency and better feedback and accountability, a convenience both to the citizen and to government, ensuring a smooth devolution of administrative authority to include the citizen in the process of decision making.

In conclusion, any review of the enforcement of the RTI Act 2005, must to place such a review in perspective, bear in mind the remarks of Justice Mathew on behalf of the Bench, oft quoted in judicial circles in debating the law:

“In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries....to cover with veil of secrecy the common routine business, is not in the interest of public”- (State of UP v Raj Narain (1975)4 SCC 428)

This mirrors the observation of that great American apostle of democracy Justice Brandeis, when he observed that 'sunlight is the best disinfectant'. It is only when that sunlight can shine into every crevice of governance that we can

finally declare our RTI Act to have been a success. Till that day, we must persevere in our quest to make governance ever more participative, more inclusive, which is the essence of democratic governance.

ⁱ See Viceroy of India (1943-'47) Lord Wavell's undated Minute, "*None knows where the partition of India, once it starts, will end, short of Balkanisation;*" Turnbull Papers, MSS.EURO/D.714/72

ⁱⁱ *Foreign Affairs* March/April 2008, Council on Foreign Relations, NY