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Significance and Relevance of Proactive Disclosure in the Implementation of RTI Act

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Abstract- The freedom of information is essential for the development of country. The constitution of India has given the Freedom of Expression of Speech & Right to Liberty and RTI act. It help strengthen democracy and promote efficiency and effectiveness in government. Access to Information is an essential step in ensuring transparency and accountability in government systems and processes. When a government is transparent, the chances for corruption are less and there is more room for accountability. The Right to Information generally understood as the .right to access information held by public authorities. is not just a necessity of the citizens; it is a precondition to good governance. Good governance demands that there should be transparency, accountability, responsiveness, equity and inclusiveness. & RTI act is the step towards it in absolutely in right direction. But to get the fruits of the Act, it is necessary to implement the act in true letter & intention, and mind set of bureaucrats need to be changed. For this it becomes incumbent on the part of public authority to publish PAD on website as well as in print form in regional languages. From these observation & experience it is induced that proactive disclosure is to be complied consolidated & published by taking decisions at the upper level that is policy designing while wherever PIO & FAA are there from lower rank of hierarchy, wide gap is found in implementation of RTI Act in general and of section 4(1)(B) proactive disclosure.

I. Introduction

Freedom of Information (FOI) is a human right. Right to Information is treated on par with fundamental rights as it has been derived from Freedom of Expression of Speech & Right to Liberty under article 19 & 21 respectively of the Constitution of India. Simultaneously it has become an Integral part of public administration. Information is power. The secreting or hoarding of information may be an act of tyranny camouflaged as humility (Robin Morgan).

To quote Nobel Laureate Niels Bohr , “The best weapon of a dictatorship is secrecy, but the best weapon of a democracy should be the weapon of openness”.

Openness helps strengthen democracy and promote efficiency and effectiveness in government. Citizens, Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. When a government is transparent, the chances for corruption are less and there is more room for accountability. The Right to Information generally understood as the .right to access information held by public authorities. is not just a necessity of the citizens; it is a precondition to good governance. ATI makes democracy more vibrant and meaningful and allows citizens to participate in the

governance process of the county. In particular, it empowers ordinary citizens (http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf)

The roots of the FOI principle date back to the 18th Century, the Age of Enlightenment. Sweden was the first country to adopt freedom of information legislation in 1766. The number of countries with freedom of information laws or similar administrative regulations stands at 93, according to most experts. (<http://www.freedominfo.org/2012/10/93-countries-have-foi-regimes-most-tallies-agree/>)

As per transparency international report in 2012 India is amongst last 90 least corrupt countries out of 178, while India is amongst last 50 nations out of 178 in human development index. Illiteracy rate is 38% while 36% below poverty line population is projected. As per Hongkong based agency's survey in 2011 Indian bureaucracy is worst in Asia & least efficient and is ranked 9 out of 10.

This indicates that benefits of budgetary allocations and welfare schemes do not reach to the real beneficiaries. This indicates the extent of corruption prevalent in India.

Hence to promote transparency and accountability in the working of every public authority India passed the Right to Information Act in 2005.

The Act states that the Constitution of India has established a democratic Republic. And democracy requires an informed citizenry and transparency of information. These are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

Simultaneously the preamble of the Act categorically states that:

Revelation of information may conflict with: Public interests, efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. But it is necessary to harmonize this conflicting interest and to provide certain information and preserve paramountcy of democratic ideals.

One of the important feature of the Act is the statutory provision of pro active disclosure under section 4 of RTI Act . The section provides Every public authority shall—

a) maintain all its records duly catalogued and indexed in a manner and the 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;

b) Publish within one hundred and twenty days from the enactment of this

1. Particulars of organization/ functions and duties
2. Powers and duties of officers / employees
3. Procedure followed for decision making
4. Norms set for discharge of functions
5. Rules/regulations/instructions/manuals/records held, Categories of documents held by it
6. a statement of the categories of documents
7. Arrangements for citizen consultations
8. Details of boards, Councils, Committees, etc.
9. Directory of officers and employees
10. Monthly remuneration received by officers and employees
11. Budget, Plan and expenditure details
12. Manner of execution of subsidy programs
13. Concession details
14. Details of material in electronic form held by the office,

15. Facilities available to citizens,
16. Details of PIOs,
17. Such other information as prescribed

c) Publish all relevant facts while formulating important policies or announcing the decisions which affect public;

d) Provide reasons for its administrative or quasi-judicial

(2) It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

The Act also under section 19 (8) empowers Information Commission to

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

- (i) by providing access to information, if so requested, in a particular form;
- (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records.

Simultaneously the Act also provides under section 25(g) to prepare and submit annual report consisting of,:

(g) Recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

Looking to the 17 manuals under Section 4 of the Act it is clear that except very few almost majority of the details is required to be published under proactive disclosure. This is exemplary but not exhaustive. It covers almost all the information & details required in the functioning of public authority. So to say that the proactive discloser under section 4(1) (b) of the RTI Act is the heart of the Act will not be an exaggeration. If properly implemented in spirit the number of cases filed under the RTI Act could be considerably reduced. For if the information is available on the net people will not approach the authority to seek information for the same thing. But the fact is that the public authorities have not fully implemented Section 4.

Here, in this paper effort has been made to study the implementation of RTI Act by Surat Municipal Corporation and to find out the reasons for filing the applications and some of the reasons which lead to filing more cases. Reasons why pro active disclosure still need to strengthen. Suggestions to improve the situation have also been made.

II. Surat Municipal Corporation

The table given below shows the Status of RTI applications received & dealt by SMC as per the website details.

YEAR	PIO	Appellate Authority	No. of requests accepted	Request disposed	No. first appeals	Disposal
05 -07	18	1	974	775	103	85
08-09	25	3	2934	2288	427	412
09-10	28	3	6366	4903	463	463
10-11	35	3	6798	6190	429	429
11-12	35	3	8321	5938	715	572
12-13	149	51	9594	7677	1364	1285
13-14	173	52	13521	11997	1888	1792
Total			50103	41051	5598	5280

Thus, on an average 521 application are filed p/m s and first appeal 59 p/m. First appeals were on an average 8% of total applications up to 09-10, while in 10-11 this figure was 6.3% In 11-12 8.6% against which it is 14.21 & 13.96% respectively in 12-13 and 13-14. Until now almost more than 610 second appeals are reported which comes to less than 11 % of first appeals while 1.13% of total applications so far. If compared with the data of Information Commission of Gujarat, SMC constitutes almost 10% or more of total RTI applications received across state looking two years total volume of 70000 to 72000 respectively for 09-10 & 10-11.

The kind of applications filed in SMC during 09-10 as per dissertation report-Applications received & disposed during 09-10, out of 6366 applications 1036 were pending on 31st march 10. On an average, looking to that ratio, normally if 1000 applications are pending it is just a month's backlog.

The table given below gives the bifurcation of the kind of applications filed

Kind of applications	Numbers	% of total applications
Illegal construction plan permission	1919	30
Property tax assessment	309	5
Birth & death registration	95	1.5
shop registration & food license	302	5
civic services related	328	5
Officers & employees related	397	6
Resolutions, proposals, circulars	152	2.5
Miscellaneous	2864	45

Miscellaneous applications include external transfer to other public authorities like surat urban development authority, collector, police authorities, regional transport, pollution control, district panchayat etc. and internal applications of SMC like, post mortem report, purchase of equipment in hospital & medical

college, details of tenders, land non agriculture, vaccination insecticide purchase, cattle pound & slaughter house, personal documents or deed, details of vehicle & use of fuel in SMC, contractual computer operators,, gardening, log book of vehicles, slum shifting or allotment, school leaving certificates, details of private schools, use of cement & steel in project, other project details, data of rain, seeking copies of other applicants under RTI, high tension line of GEB,, list of BPL, guardian meetings & education to all i.e. sarva shiksha abhian etc.

In Surat Municipal Corporation in first 6.5 years there were 35 P.I.O. and 3 appellate officers . Total 26988 applications were filed, 2346 first appeal & 334 second appeals were reported up to 2011-12. The details are given in the table

year	application	first appeal	second appeal
2005 to 2007	974	103	06
2007-2008	1505	209	15
2008-2009	2934	427	20
2009-2010	6366	463	38
2010-2011	6798	429	50
2011-2012	8321	715	205
total	27988	2346	334

In 12-13 number of P.I.Os were increased from 35 to 173 & FAA from 3 to 52. The performance in 12-13 & 13-14 shows 23115 applications, 3252 first appeal & 276 second appeal.

year	application	first appeal	second appeal
2012-13	9594	1364	117
2013-14	13521	1888	159
total	23115	3252	276

After going through the applications some of the reasons for filing the applications that were found were:

- Lack of proactive disclosure
- Lack of citizen charter
- Indifference in record classification & poor maintenance of record
- Equality before law Article 14 of constitution not maintained
- First in First out procedure not followed
- Grievance redressal not quick
- Public duty not performed scrupulously

III. Analysis

Analyzing the annual reports published by the Gujarat Information Commission the major departments against whom second appeal is preferred are: Revenue, urban development,& Panchayat constituted 7.03%, 15.06% & 13.04% of the appeals respectively in 2009-10, 22.52%, 13.17% & 14.53% respectively in 2010-11 19.16%,13.36% & 11.60% respectively in 2011-12..

From the analysis of the data it was further revealed that there was also a link between the number of applications and appeals filed and the hierarchical level to which the PIO and first appellant belonged. A person lower in hierarchy as a P.I.O & FAA led to increase in applications & appeals. Regular review of RTI applications and appeals, evaluation of the same and enhancing PAD in consultation with upper management in the area of frequent RTI use by applicants is one of remedy need to resort, found lacking in such cases.

Monthly average of applications in pervious arrangement (persons belonging to higher level) comes out to be 321 while in 1/3 rd of the period in a new arrangement(persons Lower in hierarchy) comes to 963 that is almost 3 times more having lower rank PIO.

Similar is the case with 1st appeals. Against the monthly average of 28 during upper hierarchy persons as PIO & FAA, during less the 1/3rd of the period in the later part it comes out 136 almost 4 times more. Thus 1st appeal shows rise of 4.85% in new arrangement of lower hierarchy PIO and FAA. During previous arrangement, the ratio of 1st appeals to RTI application was less then 8.7% while it is 14.21% & 13.96% respectively in 12-13 & 13-14 that is new arrangement having lower level hierarchy P.I.O. & FAA.

Though proactive disclosure of SMC is comparatively good except need to make more sound few manuals and enhancing the scope of PAD in proportion to increasing RTI application, But communication gap is found between lower hierarchy PIO/FAA and upper management in this regard.

It is also of paramount importance that as far as possible if single FAA is there in public authority having multiple PIO of different branches or departments, uniformity will be maintained in quasi judicial process of 1st appeal while it has been found that wherever there were different appellate officers of the same public authority ,RTI application found varied 1st appeal orders in identical or similar matter. Not only this puts the public authority in awkward situation but also brings disrepute to the organization in the eyes of information commission which increases the burden of commission also.

As pointed out in various surveys, if proactive disclosure is strengthened & scope is enhanced to cover maximum information on website & in the form of print, obviously not only RTI application will be reduced but corresponding positive impact will be there on the efficiency of the employee to provide public services to the citizen. Further by implementing section 4(1) c& d which provides that Public authority shall publish all relevant facts while formulating important policies or announcing the decisions which affect public, and provide reasons for its administrative or quasi- judicial decisions to affected persons respectively will also reduce the number of applications filed. Thus implementation of section 4 (1)(a) to (d) in true letter and spirit is possible only when percolation of reasons of RTI applications is transpired by PIO and FAA to upper management to strengthen & enhance proactive disclosure. This is easily possible where in PIO and FAA are from senior level.

IV. Problems found in Implementing Proactive Disclosure

- Resistance from staff & system to adopt reform, new technology & innovative ways.
- Gap in aim & objectives of policy & policy implementation in true spirit.
- Wrong person on job having no interest, no experience or in depth knowledge.
- Lack of consistency & sustainability of right policy like frequent changes in persons dealing with pro active disclosure, public Information officer & first appellate officer, single or multiple appellate officer etc.
- No time bound proper evaluation of existing policy & announcing new one. Indifference towards system & in maintain consistently technology once adopted e.g. bio metric time attendance, e-reporting, e-record maintenance & reporting system
- Lack of Record maintenance, preservation & compilation etc
- Lack of Infrastructures like computer, scanner, internet connectivity, hardware & software technical personnel like web designer, programmer, computer literate staff etc
- Financial constraints to establish & maintain sustainable e-system.
- Administrative problems like inter departmental coordination & lack of communication

Last but not the least, as per statutory provision it is incumbent on the part of public authority to publish & update proactive disclosure regularly under section 4(1)b while punitive provisions are silent in case of failure by public authority to do so under section 20 or provisions of awarding compensation under section19(8).

V. Efforts to overcome problems in publishing PAD at SMC

Continuity & sustainability of senior level officers, as public information officers & Single Appellate officer for almost more than first six years.

Review of applications received by PIO & FAA in general every quarter.

Work assigned to select Head of Departments to prepare & get approval of 17 manuals in consonance with provisions of Act.

Weekly review of PAD, in the beginning at CEO level consisting of senior officials.

Regular review & analysis by RTI CELL of PAD & application -first & second appeals by RTI CELL
Constant efforts by RTI CELL to get prepared the RTI application, appeals programme from information system department.

Regular monitoring by RTI cell of application & appeal entries made by different PIO & FAA
When single FAA was to conduct appeal under RTI, cross verification of reply procedure adopted and entries made by PIO & FAA in to programme.

Regular supervision & monitoring of yearly updating of details on web & enforcing regional language print copy.

Regular guidance & coordination by RTI CELL in enhancing the scope of PAD gradually.

VI. Conclusion & Suggestions

- (1) Though RTI Act is silent about cadre, level or class of public information officer looking to spirit & provisions under section 25 of the Act, as far as possible & practical head of office or custodian of the record may be designated as PIO & next immediate to them Upper level officer of them may be designated as FAA
- (2) All public authorities must develop RTI software program to enter all entries of application from receipt to second appeal level and it should be design in such manner to fetch required data for first and second appeals from application or FAA entries respectively to extract managerial information system reports. Suggested reforms will not only streamline arranging RTI Act implementation but also be catalyst/ stimulator for right to public service at implementation.
- (3) Regular review of RTI application & appeals by PIO & FAA as well as CEO under MIS to incorporate maximum information under section 4(1)(B) of PAD.
- (4) PIO or FAA whose performance found poor excellence or very good in implementation of the act in true letter & spirit should be appreciated & recorded into service book also.
- (5) The performance of PIO & FAA found below standard in term of delay, denial of information without reasonable ground compelling applicants to pay exorbitant fees & compelling the public authorities to provide information free of cost due to delay, incurring the loss to the public exchequer should be prosecuted under departmental rules for negligence and inefficiency apart from causing pecuniary loss to the organization.
- (6) Soul searching by functionaries to act as per conscious.
- (7) To go with the content of the act not intent.
- (8) Have positive attitude & treat applications under RTI to evaluate/introspect to improve

- (9) RTI to be treated as third party inspection, rather than complex towards it.
- (10) Facts came to notice under RTI act to the authority should always be treated as public evaluation of functioning of authority & public authority should sportingly snatch the opportunity to introspect.
- (11) People should use the act with sporting spirit & not with any ulterior motive. This kind of negativity from the mind of people should also need to change. Practice of such applicants should be discouraged by RTI activists & NGO too to maintain morale of administrators.

. Good governance demands that there should be transparency, accountability, responsiveness, equity and inclusiveness. & RTI act is the step towards it in absolutely in right direction. But to get the fruits of the Act, it is necessary to implement the act in true letter & intention, and mind set of bureaucrats need to be changed. For this it becomes incumbent on the part of public authority to publish PAD on website as well as in print form in regional languages. From these observation & experience it is induced that proactive disclosure is to be complied consolidated & published by taking decisions at the upper level that is policy designing while wherever PIO & FAA are there from lower rank of hierarchy, wide gap is found in implementation of RTI Act in general and of section 4(1)(B) proactive disclosure.

It is also pertinent to note that application & appeals received under RTI should be treated as an introspection. All statistics & data should be enrolled & updated regularly and should be reviewed by upper level management for better performance in future by publishing more & more information under PAD looking to the tendency of applicants seeking information under RTI which is of public domain.

As quoted

"When we are no longer to change the situation we are challenged to change ourselves."

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