PROACTIVE DISCLOSURE UNDER

THE RIGHT TO INFORMATION ACT 2005

*[An Evaluation of Select Public Authorities of Karnataka]*

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**for**



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**Introduction**

Free and open access to information to citizens is an essential pre-requisite of democracy. A democratic process of participatory decision-making can be ensured with full transparency and information sharing. Citizen’s participation in governance does not embody a deepening of democracy alone; it reflects a complete shift in the hitherto existing paradigm of development – a shift from viewing people as recipients of development to active participants in the development process. The mechanisms for citizens’ participation in governance have been conceptualized in the form of citizens seeking information, expressing their opinion, holding the government and service providers accountable and participating in administration and decision making processes. Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on ‘access’ the greater the feelings of ‘powerlessness’ and alienation. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices.

Right to information is considered as a human right. Every citizen of a nation has a right to be informed of the important aspects of governance affecting his life. The litmus test of the advancement of a nation is what, when how and how much information having a direct bearing on the lives of the citizens is actually shared with them. In this context the Right to Information [RTI] Act, 2005 enacted by the Government of India which has come into force from October 2005, has laid down adequate groundwork for the same. In his Valedictory Address at the National Convention on RTI on 15th October 2006, Dr.Manmohan Singh, the Prime Minister of India rightly pointed out that ‘We live in an age of information, in which the free flow of information and ideas determines the pace of development and well-being of the people. The implementation of the RTI Act is, therefore, an important milestone in our quest for building an enlightened and, at the same time, a prosperous society. Therefore, the exercise of the Right to Information cannot be the privilege of only a few’. The RTI is a critical factor that is needed for moving from a representative to a participatory democracy.

The RTI Act outlines as a specific objective setting out a practical regime for citizens to secure access to information relating to public activities, to provide transparency and accountability in the working of every public activity. It is a milestone in the history of social legislation and public governance to impart information to citizens of India regarding working of government. It provides an effective legal framework for effectuating the right to information – a fundamental right recognized under Article 19 of the Constitution of India. A cursory look at the framework of the RTI Act will reveal that at every stage the RTI Act tries to promote transparency, fix accountability and curtail the incidences of corruption. The RTI Act rightly believes that sharing information enhances transparency in the working of the public authority.

There are two methods through which information is shared by public authorities, i.e., Proactive and Reactive. Proactive disclosure is a system wherein it is obligatory on the part of every public authority to publish certain information on its own. Under Reactive method, citizens have to follow certain procedures, for example, submitting applications, remitting requisite fees, etc. to obtain information. Under Reactive method the public authority is required to publish information ***suo motu.***

**The Need for Proactive Disclosure**

The obligation to disclose information proactively has been the practice in all nations, where transparency laws are in place. The reasons are many. Proactive disclosure ensures that the public is informed about the laws and decisions that affect them and contributes to the rule of law. Secondly, it encourages better information management, improves a public authority’s internal information flows, and thereby contributes to increased efficiency. Thirdly, information when proactively disclosed makes the public authorities accountable. It becomes difficult for them to deny the existence of, or to manipulate, the information.

There are other benefits, which flow from proactive disclosure. The first is **sustainable development**. Many governments, including India, spend huge resources for development and welfare of the citizens. Yet many of these programmes do not lead to development, because they are designed and implemented in a closed environment – between governments, bureaucrats, donors, etc., and without the active involvement of the pubic. There are instances wherein the elected representatives have complained that they are kept out of the policy loop and struggle to access information about development plans and budgets. If governments promote the provision of development information to the public – for example, information about proposed new projects, an explanation of how programmes are being designed and implemented, details of anticipated beneficiaries, and/or information about implementation of current activities – citizens can more effectively engage with their own development. With more information, affected communities can meaningfully participate with governments to develop targeted, sustainable programmes, which are genuinely owned by local beneficiaries.

Secondly, in many developing countries, it is found that proactive disclosure of information by the government has supported **equitable economic growth**. In other words, the linkage between free flow of information and economic growth has been established. Joseph Stiglitz, the Nobel Prize winning economist, has been arguing that greater transparency and information-sharing between governments, business and citizens produces improvement in market efficiencies and public policy. For example in India, the rate of growth of Foreign Direct Investment [FDI] is partly related to the quality of information available in the public domain. Easy access to information that is not mired in bureaucratic processes encourages long-term investor confidence.

Thirdly, proactive disclosure of information **supports decentralization efforts**. India has embarked upon decentralization by virtue of 73rd and 74th Amendment to the Constitution. However the experiment has not been successful in terms of service delivery and elimination of leakages. Along with decentralization of political power, corruption has also been decentralized. This is due to lack of free flow of information. If information about the budget allocated, subsidies granted, details of works undertaken, user entitlements, etc. are proactively disclosed, the citizens will be able to demand better service.

Fourth, the **efficiency of public administration** hinges on the quantity and quality of information that is proactively disclosed by public authorities. A good information regime often operates to make administrative procedures more transparent at all levels of government. This can make implementing agencies to be more efficient because they will be aware that monitoring agencies and even the public can review their activities and will be able to find out about poor planning or implementation of activities.

Fifth, one of the objectives of the RTI Act is to encourage the public to participate in governance. In other words the present form of representative democracy needs to be escalated to participatory democracy. Proactive disclosure is said to improve the **quality of democracy** by providing the voters with information about the candidates standing for elections. Democracy is enhanced when people meaningfully engage with their institutions of governance and forms their judgments on the basis of facts and evidence, rather than just empty promises and political slogans.

Realizing the benefits of proactive disclosure of information, many nations across the globe have emphasized the need for institutionalizing proactive disclosure. The President of India in her address to the Parliament in 2009 said that there will be “a public data policy to place all information covering non-strategic areas in the public domain. It would help citizens to challenge the data and engage directly in governance reform”. President Barack Obama on his first day in office issued a memorandum on the Freedom of Information Act, which shifted the approach of the US Administration from one of presumption of secrecy to one of disclosure in response to FOI requests. He said “*the presumption of disclosure also means that agencies should take affirmative steps to make information public. They should not wait for specific requests from the public. All agencies should use modern technology to inform citizens about what is known and done by their government. Disclosure should be timely”.*

**Essentials of a Proactive Disclosure Scheme**

What should the proactive disclosure contain? This is difficult to answer. What needs to be disclosed varies depending on the country’s political system, ideology, informational needs of the citizens, nature of social and economic policies etc. For example, in a democratic form of government where free flow of information is the foundation of governance, a liberal approach is required. Nations, which are just coming out of authoritarian rule, may find it difficult to switch-over easily. A number of national and international declarations have identified these principles. However the core principles on which the proactive disclosure should be built has been identified.

***Maximum Disclosure***

* It is important to make a clear statement that as much information as possible will be released to the public.
* Any denial of information is based on proving that disclosure would cause serious harm to a legitimate interest and that denial is in the overall pubic interest. Information which is of general relevance to constituents is routinely published and disseminated.
* Information is published and released in a form and language which makes it practically accessible by all members of the public

***Simple, cost-effective, timely access processes***

* A key test of an access policy’s effectiveness is the ease, cost and promptness with which people seeking information are able to obtain it
* An official is nominated as a key contact point for information disclosure
* The special needs of the poor, illiterate or marginalized groups need to be addressed

***Complaints***

* The public needs to be able to complain to someone if they believe the policy has not been implemented or misapplied
* Mechanisms need to be available to deal with cases of wrongdoing
* Monitoring, public education and training are necessary
* A body or person needs to be responsible for monitoring and promoting information disclosure
* Officials need to be given specific training on information disclosure principles and processes

**The Drivers of Proactive Disclosure**

The benefits of a proactive disclosure of information scheme has compelled governments to make it compulsory for public agencies to evolve a scheme of providing maximum information without the citizen seeking such information. A World Bank Paper ‘*Proactive Transparency: The future of right to information’?, [Delen Darbishire, The World Bank, Access to Information Programme]* has identified four main driving forces that have shaped the development of proactive disclosure, namely, (a) the government’s need to inform the public of laws and decisions – and the public’s right to be informed; (b) the demand for information to hold governments accountable at and between elections; (c) the evolution of public participation in decision-making, which depends on information being available; and (d) fourth is ensuring that the public is informed about how to access government services.

From the implementation point of view proactive disclosure should at the first instance be available. Citizens should not run from pillar to post to get a copy of the document containing the proactive disclosure information. Public authorities should use multiple channels of communication to ensure that the proactive disclosure is put in the hands of the public. Secondly, the information proactively disclosed should be so organized that a citizen can find it without much difficulty. Thirdly, the proactively disclosed information should be relevant and organized so that the citizen can make use of it for his benefit. Raw data will be of no use. The available information and data are to be interpreted meaningfully. The citizen should be able to arrive at some logical conclusions after using the information.

**Key Principles of Proactive Disclosure**

The information that is disclosed by the public bodies should be in full form and in regional language as well. It is essential that proactively disclosed information should be available free of cost. If that is not possible, the fee or cost should be minimum and should not deter an information-seeker from turning away due to high cost. Finally the information should be timely and correct. No citizen will be benefited by information that is old, stale and outdated. Hence the proactively disclosed information needs to be updated often.

An effective access to information regime can be a vital tool in promoting more participatory development and more effective governance. Openness underpins the good governance principles of transparency and accountability. At the heart of any information disclosure regime are **four key principles\*:**

1. The duty of the government to disclose maximum information to the public – both in response to requests and by regularly publishing key information – unless specific, defined exemptions apply;
2. The need to ensure that access processes are user-friendly, timely, affordable and promote maximum accessibility for people throughout the country, including people in rural areas and from marginalized groups of the community;
3. The need to ensure that requesters have access to a complaints process if access is not being properly provided, which will permit investigations by an independent review mechanism with strong powers to promote access and to ensure that any non-compliance or wrong-doing is dealt with appropriately;
4. The need to ensure implementation of an access policy is effective, most notably by monitoring and reporting on access in practice, providing training to officials and undertaking public education programmes to ensure people are aware of their right to access information.

*[Source: Information Disclosure Policy – A Toolkit for Pacific Governments, Commissioned by the Pacific Media and Communication Facility, Government of Australia, July 2006]*

###### What an ideal Proactive Disclosure should contain

A proactive disclosure document should contain [a] Institutional information [b] Organizational information [c] Operational information [d] Decisions and acts [e] Public services information [f] Budget information [g] Open meetings information [h] Decision-making and public participation [i] Subsidies Information [j] Public procurement information [k] Lists, registers, databases [l] Information about information held [m] Publications information [n] Information about the right to information.

The Information & Privacy Commissioner, Ontario, Canada, has formulated ‘Access by Design’ **[*www.ipc.on.ca*]** which sets out the ‘Seven Fundamental Principles’ of proactive disclosure. These seven principles include the following:

1. **Proactive,** not Reactive – Many public institutions are still reactive and wait until a request for information is received before deciding to release it; this can be a slow, cumbersome process, easily used as a mechanism to deny access to information. With ***Access by Design***, government institutions can take a proactive approach to promote full transparency, while at the same time achieving cost-savings by eliminating a costly and cumbersome disclosure process.
2. Access **Embedded** into Design – When access is embedded into the design of public programmes from the outset, it delivers the maximum degree of access to government-held information by making proactive disclosure the default. The benefits are twofold: the public can access information more directly; and government institutions can save significant resources by making their information available on a routine basis – ***by default.***
3. **Accountability –** Whengovernment proactively provides routine access to government-held information, it creates a ‘culture of accountability’.
4. **Foster’s Collaboration –** The Internet has given impetus to a new phenomenon where more and more community groups are coming together on-line with the power to engage government policy-makers directly. Government institutions need to embrace this new culture by making data readily available to these groups as part of the social contract to serve their citizens.
5. Enhances **efficient Government –**The demand for government services continually increases, while governments constantly face the need for cost reduction measures. By embracing ‘Access by Design’, public institutions can improve their information management practices by eliminating the inefficient process of ‘reactive’ disclosure, and yet provide more streamlined access to public information.
6. Makes Access **Accessible** – Simply releasing more data is not enough. ‘Access by Design’ also requires that public information be easily found, indexed and presented in user-friendly formats.
7. Increases **Quality** of Information – Not only is it essential for government institutions to place public data on public databases, they must also ensure that the information is accurate, reliable and up-to date.

**Chapter – 2**

Proactive Disclosure under the Right to Information Act, 2005

One of the most important obligations of the Public Authority (PA] under the RTI Act is publication of certain categories of information on its own. The RTI Act not only requires governments to provide information upon request, it also imposes a responsibility on public authorities to actively disclose, disseminate and publish information, as widely as possible. The law makers have done a good job in introducing proactive disclosure as an obligation of the PA. Section 4(1)(b) of the RTI Act, which has come into force from 15th June 2005, requires every PA to publish (within 120 days) 17 categories of information suo motu to the public, at regular intervals, through various means including the internet, so that the public have minimum need to resort to the use the RTI Act.

The requirement of self-disclosure of information under this Section is comprehensive and takes into account the best practices found across the globe. Most of the issues discussed in the introductory section of this report relating to the requirements of proactive disclosure scheme have been fairly included under the RTI Act. It recognizes that some information is useful and important to the public at large, that it should be given out regularly, without anyone specifically requesting for it. The different types of information to be published by PAs are discussed below:

**Section 4(1)(a) – Indexing and cataloguing of documents held by the public authority**

The public authority should, in his own interest, prepare a catalogue containing the list of documents under each category (A,B,C, D & E), its file/document number, subject of file/document, its location (room number, cupboard and shelf numbers) and its custodian (designation), date on which it was opened and when it can be destroyed, the number of pages in the file/document, the number of sheets of file notings. This will assist the PA/PIO in locating any document any time.

**Section 4(1)(b)(i) - The particulars of its organization, functions and duties**

The PA should give a brief history of the evolution of the organization, its growth, distribution of work and such other information as gives a fair idea about the organization. Since the nature and functions of the PAs differ, a fixed template cannot be prescribed. However information that needs to be published under this category includes the following:

* Objective/purpose of public authority
* Mission/Vision statement of the public authority
* Brief history of the public authority and context of its formation
* Duties of the public authority
* Main activities/functions of the public authority
* List of services being provided by the public authority with a brief write-up on them
* Organizational structure diagram at various levels, namely state, directorates, region, district, block, etc.
* Expectation of the pubic authority from the public for enhancing its effectiveness and efficiency
* Arrangements and methods made for seeking public participation/contribution
* Mechanism available for monitoring the service delivery and public grievance resolution
* Addresses of the main office and other offices at different levels
* Working hours of the office

In addition to the above, the PA can mention the contents of its Citizens’ Charter, if they have prepared one. Besides, all important Government Orders, notifications, circulars, etc., related to the organization’s functions and duties can be included or appended as attachments.

An applicant sought information about the sanctioned posts of engineers and other related information from the Municipal Corporation of Delhi. When the information was denied the applicant filed an appeal in the Central Information Commission (CIC). The CIC held that the nature of information sought by the appellant was such that it was required to be furnished as suo moto information by a public authority, under pro-active disclosure requirements of Section 4 (1) (b) of the Act.

*(Appeal No.CIC/WB/A/2006/00377 dated 20.11.2006 – Seema Bhattacharya vs. Deputy Commissioner, Shahdara, MCD*)

**Section 4(1)(b)(ii) - Powers and duties of officers and employees**

The powers, duties and responsibilities of the officers and employees of the organization should be mentioned in detail. The powers may be grouped as administrative, financial and others. In case the powers and duties are part of any Government Order, circular or notification, the same must be mentioned or enclosed to this manual. Anybody who uses this information should be able to make out the distribution of work, duties and powers of each of the officials in the public authority. For example, in the case of the Secretariat, distribution of work starts with the one between the Minister-in-charge and the Principal Secretary/Secretariat, and thereafter within the Secretariat, then between the Secretariat and the Director, within the Directorate and finally in each field functionary.

**Section 4(1)(b)(iii) - The procedure followed in the decision-making process, including the channels of supervision and accountability**

The transparency in the functioning of the PA as well as the usefulness of the RTI Act depends on the quality of the information provided to the public under this category. The procedure followed in the decision-making process and channels of supervision are the hallmarks of a modern government. Hence utmost importance should be given for preparation of this manual. Besides, the information about the decision-making process will be useful both for outsiders and the insiders.

As rightly observed by R.S.Tolia in his book ‘Handbook for Public Information Officers’ most of the aberrations existing within organizations are due to (i) non-availability of information with regard to the procedure to be followed in making a decision, and (ii) compared to the procedure prescribed, the actual procedure which was followed in a decision taken often varied. Now the benchmark, as well as the action taken, both being available, any citizen can quickly find out whether a departure from the prescribed procedure took place, and if so who was or were responsible for such departure. In his own interest, the PIO should keep track of the changes that may occur in the decision-making process.

Information about important matters on which the decision is taken should be provided in the following format

* Subject on which the decision is to be taken
* Guideline/direction, if any
* Process of execution
* Designation of the officers involved in decision making
* Contact information of above-mentioned officers
* If not satisfied by the decision, where & how to appeal

**Section 4(1)(b)(iv) - The norms set by the public authority for the discharge of its functions**

Under this category the public authority is supposed to publish information relating to the norms/standards set for the authority for execution of various activities and functions.

1. Services available
2. Quality of the service
3. Quantity of the service
4. Frequency of the service
5. Personnel responsible for the service
6. Cost of the service
7. Whether service is without cost
8. Process of availing the service (Ex: How to apply for a service, where to apply, when to apply, how to pay the fees, to whom and where, etc.,)
9. Timelines in availing service (Ex: In how many days the service will be provided, if the application is not in order by how many days the applicant would get a reply from the concerned officer, etc.,)
10. Grievance redressal mechanism adopted, kinds of grievances and timelines for solving them, responsible officers etc.,

In addition, the annual physical and financial targets can also reflect these norms. The Government of Karnataka has introduced the Monthly Programme Implementation Calendar (MPIC) which requires each of the public authorities to prepare the monthly budget, financial and physical progress for each of the schemes. It also reveals the performance or non-performance of the public authority. More information about MPIC is available at: <http://www.kar.nic.in/finance/mpic/planmon.htm>. The MPIC should also be hosted on the website.

Of late concepts like Output or Outcome Budgeting, Performance Budget are being introduced. In a way these tools reflect the norms and its actual achievement by the public authority.

**Section 4(1)(b)(v)** - **Rules, Regulations, Instructions, Manual and Records, for discharging functions**

Until the RTI Act came into force many public officials were not aware of the various rules, regulations and manuals they were supposed to follow in discharging their functions. In fact most of these documents were not available in the office of the public authority. The RTI Act has provided an opportunity for the officials and employees to know about these documents. Particularly it is the responsibility of the PIO to be fully conversant with the rules, regulations, manuals, circulars, GOs and other documents held by the public authority which he represents. In his own interest the PIO should collect the required information and copies of these documents. A statement containing a brief write-up of the gist of the sections of the applicable document (relevant Acts, circulars, orders, manuals) and its availability should be prepared by the PIO. Ideally these documents should be included in the website of the public authority or links provided to them.

**Section 4(1)(b)(vi) - A statement of categories of documents that are held by it or under its control**

Public authorities hold a large number of documents under their control. Some of the records may be permanent and some temporary. There may be records which are destroyed. The public authority should list out the categories of these documents and publish it for the use of the public.

**Section 4(1)(b)(vii) - Particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof.**

Several public authorities have institutionalised platforms for citizens to enable them to participate in the decision-making on plans and programmes, in their implementation, in monitoring them, in grievance redressal and auditing of the services. Some examples are the vigilance committees attached to each ration shop, the school development & monitoring committees attached to each school, the Arogya Raksha Samithis (Rogi Kalyan Samithis) attached to each hospital, the water users’ committees in rural areas, etc. Details of such platforms, their structure and mode of constitution, their roles and responsibilities, list of the current members, their telephone and contact addresses, need to be given under this section.

The following information can be provided:

* Name of the council/committee/fund
* Authority under which it is constituted
* Eligibility criteria for becoming a member
* Duties and responsibilities/functions of the members
* Whether elected or nominated
* Whether the public has the right to participate in the meetings
* Whether the minutes of the meeting are accessible by the public

Certain public authorities have a mechanism of consulting with the public before a policy is formulated and implemented. In some public authorities such consultation may be mandatory under an Act, Rules or Regulations. The public authority has to publish the details of the arrangement that exist for such consultation giving the details of arrangements for seeking public participation. For instance, the Karnataka Local Fund Authorities Fiscal Responsibility Act requires a citizens’ forum to be consulted before the local authority prepares its budget.

**Section 4(1)(b)(viii) - Statement of boards, council, committees and other bodies constituted as its part**

Public authorities may have within their control a number of boards, councils and such other committees. For instance, the Standing Committees of the urban local bodies are an example of this. The statement prepared under this category should contain the details of such boards, councils etc. Details like the name and address of the affiliated body, brief introduction to the body, structure and composition, address and frequency of meetings, their roles and responsibilities, etc. should be mentioned. The minutes of their meetings could also be uploaded on the website It is important to include information about the rights of the public to participate in the meetings and their access to minutes of the meetings.

The following information can be provided:

* Name of the council/committee/fund
* Authority under which it is constituted
* Eligibility criteria for becoming a member
* Duties and responsibilities/functions of the members
* Whether elected or nominated
* Whether the public has the right to participate in the meetings
* Whether the minutes of the meeting is accessible by the public

**Section 4(1)(b)(ix) - A directory of its officers and employees**

Perhaps this is the simplest information that can be collected and disseminated to the public. The public authority does not need to take too much effort to list out the names, designations, etc., of its officers and employees. However the sheer volume of the information may pose some problems. There are public authorities like the state road transport corporations, mahanagara palika, and development authorities, etc., which have a large number of employees. Besides transfers and changes due to promotion, retirement, death, etc., necessitate frequent changes in the statement. The best way is to publish this manual as an annexure. In case a citizen requires a copy of the manual he need not be burdened with the big list of employees. The manual should contain the name, designation, telephone number, email ID and office address of the officials .

**Section 4(1)(b)(x) - Monthly remuneration received by each of its officers and employees, including the system of compensation as provided in the regulations**

Like the previous manual, it is not difficult for the public authority to provide the monthly remuneration received by the officers and employees of the public authority. However difficulty arises when describing the system of compensation as provided in the regulations. Most of the public authorities have just mentioned the category of the employees and the total remuneration received. If the public authorities have a Personnel Manual the task of preparing this manual becomes easier. **This section may be merged with Section 4(1)(b)(ix) by merely adding another column to give the remuneration of the employees.**

**Section 4(1)(b)(xi) - The budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made**

Under this category the public authority has to give full details of budget and actual expenditure for the previous year, its budget and proposed expenditure for the current year, . The information to be provided should include the following:

* Name of the scheme/head
* Activity
* Date of commencement of the activity
* Date of completion as per plans and actual date of completion
* Amount proposed and sanctioned
* Amount released
* Amount actually spent

**Section 4(1)(b)(xii) - The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes**

This is one of the most important sections to be published in the Manual under the RTI Act. The public authority will have to put in lot of efforts in collecting information for this section. The success of achieving transparency in the working of public authority hinges on the information provided under this section. Besides, the quality of service delivery depends on the information included under this category. The following are the types of information to be included in this section:

* Name of the programme/scheme
* Duration of the programme
* Physical and financial targets of the programme (for the previous year)
* Eligibility of beneficiary
* Pre-requisites for the benefit
* Procedure to avail the benefits of the programme
* Criteria for deciding eligibility
* Details of the benefits given in the programme including the subsidy amount given
* Procedure for the distribution of the subsidy
* Where to apply or whom to contact in the office for applying
* Application fee, if any
* Other fees, if any
* Application format (where applicable. If the application is made on plain paper please mention it along with what the applicant should mention in the application
* List of attachments (certificates/documents)
* Format of attachments
* Where to contact in case of process-related complaints
* Details of the available fund (At various levels like district, block, etc.)

In addition to the above this section should also contain the names of beneficiaries, amount of subsidy, criteria of selection, and their addresses. **Very importantly, it also needs to publicise the lists of applicants for the various subsidy schemes and services and the status of the applications. Non-transparency in this regard with especially poor people not knowing the status of their applications forcing them to run from pillar to post and become victims of corruption, which they can ill afford. They often end up spending more money chasing benefits than the value of the benefit itself.**

**Section 4(1)(b)(xiii) -** **Particulars of recipients of concessions, permits or authorizations granted by it**

An important area where there is lack of transparency is in the agreements that public authorities enter into with private or other governmental or international bodies, contractors, etc. but about which the public has a right to know as public money is involved in these transactions. ‘Authorisation’ can be understood to mean any licence, lease, contract, MoU, PPP, etc. Details of MoUs entered into with national and international bodies, and public-private-partnerships (PPPs), licenses, contracts, leases, etc., issued by the Public Authority, their objectives, terms and conditions, the amounts involved, the outcomes expected, the list of awardees, etc. should also be provided under this section.

The information to be provided under concessions granted is similar to the one relating to the manner of execution of subsidy programmes. Details like eligibility criteria, procedure to avail the benefits, time limits for the concession, application fee, etc., are to be provided. In case of concessions the details of the benefit given and distribution of benefits are to be provided.

**Section 4(1)(b)(xiv) - Details in respect of information, available to or held by it, reduced in an electronic form**

As the name indicates, the public authority has to list out all the documents and records which are available on the computer. The public authority should ensure that as much information as possible is reduced to electronic form so that applications can be attended to quickly as mandated under the RTI Act.

**Section 4(1)(b)(xv) - The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use**

A public authority may have several other facilities for providing information to the public. For instance information facilitation counters, public relations office, single-window counters, etc., which act as information kiosks. The details of these facilities, their timings and the list of information material available, for eg., posters, pamphlets, brochures, booklets, guides, citizens’ charters, etc., and where and how citizens can access theseshould be mentioned in this manual.

In case the public authority has a library or reading room the details like working hours, the magazines and newspapers available, whether the reading room or library is open for public, etc., are to be mentioned in this manual.

**Section 4(1)(b)(xvi) - The names, designations and other particulars of the Public Information Officers**

This manual should contain the name, designation and other details about the Public Information Officers, Assistant Public Information Officers and the Appellate Authority designated under the RTI Act. The telephone number, email ID, and addresses of these officers should be provided. Besides, their names, designation, location, etc., should be displayed prominently on the notice boards of the public authority.

The Government of Karnataka, Department of Personnel & Administrative Reforms (AR) has issued a circular wherein it has directed all public authorities to display the details of public information officers on the notice boards of their offices. Further it has observed that ‘during a recent inspection of the Secretariat departments, it was noticed that some departments have not displayed the same on the notice board. It is requested that those departments should take immediate action to publish the same on their notice boards’ *(Circular No.DPAR 52 RTI 2007 dated 14.5.2007)*

**Section 4(1)(b)(xvii) - Such other information as may be prescribed**

This section should contain information which is not covered in the other 16 sections and those that may be prescribed. This is an omnibus section where all such information is to be maintained, which a public authority may wish to prescribe.

It is important to note that it is not sufficient that the above manuals are published once. The Act requires the public authority to review and update the contents of the above manuals. Para 19 of The Guide for Public Authorities published by the DOPT, Government of India says that ‘*it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time’.*

The CIC has held that Section 4(2) & 4(3) of the RTI Act calls for continuous improvement of publication of voluntary disclosures in keeping with the resources available. A citizen can complain because the Department has not updated their information, thus causing damage and risk.

*(CIC/WB/C/2006/00081 dated 13th July 2006)*

The fact that the RTI Act requires the public authority to publish various manuals does not mean that it should stop or discontinue the publication methods presently being followed. For example public authorities may be publishing newsletters, periodicals, reports, guides etc. The above manuals are in addition to what public authorities are already publishing.

**Section 4(1)(c) and (d)** - There are two other sub-sections under Section 4 (1) of the RTI Act, which the public authorities have to implement with all seriousness. Section 4(1)(c) requires that every public authority shall publish all relevant facts ***while*** formulating important policies or announcing the decisions which affect the public. Section 4 (1) (d) requires that it shall provide reasons for administrative or quasi-judicial decisions to affected persons.

Currently, no information on new laws, policies, programmes, projects are put in public domain ***while*** these are being framed. This results in laws, policies, etc. being framed with no input from citizens or their grassroots experiences. The laws, etc. are publicized only after the Cabinet approves these measures and the matter is placed before the Assembly, almost as *fait accompli*. It is believed that drafts are exempt from disclosure under RTI as these are papers meant for the Cabinet or because the privilege of the legislators is involved. The drafts are publicized and citizens objections sought only after these are placed before the legislature. The time for public discussion and response and filing of objections is often restricted to 15 to 30 days which is too short for meaningful responses to emerge. Also, the changes that can be effected at this stage are only cosmetic in nature.

Noting this inadequacy, a Central Information Commission ruling on this has stated that drafts which are not yet meant for the Cabinet should be placed before the public under Section 4(1)(c) of the RTI Act and even public consultations held on these before submission to the Cabinet or approving authority. The ruling has further stated that the drafts become Cabinet papers only when they assume final shape just before being placed before the Cabinet.

When these laws, policies, projects, etc., are framed without transparency and without their rationale being explained to the public, they often result in massive opposition and protests against these measures from the public once these are approved. Involving the citizens and consulting them at the stage of formulating the measures itself would get the buy-in of the citizens. Plans formulated with their inputs would also find their ready acceptance of the same.

In another landmark decision, the CIC has awarded compensation to an applicant who suffered loss due to non-publication of information under Section 4(1)(d). The Old-Age Stipend Scheme was in operation in June 2005 and was discontinued. Yet this was not published to date. This clearly establishes that the complainants had suffered loss as a result of not being provided the information suo moto, as required under Section 4(1)(c) of the Act. The CIC said that ‘for this we find that the demand for compensation is reasonable’. Further the CIC directed the Deputy Commissioner (public authority) to pay an ad hoc amount of Rs.1000 to each of the complainants under Section 19(8)(b), within one month of the date of issue of this decision. (CIC/WB/C/2007/00803 & 00887 dated 3.3.2008).

**Efforts to put proactive disclosure in place**

Six years after the enforcement of the RTI Act the implementation of the provisions relating to proactive disclosure has not been satisfactory. It has been observed that the disclosure is patchy and of poor quality. In many instances, it is total non-disclosure and in some partial disclosure. Very few PAs have taken steps to update the information. As a result, the number of rulings by the Central Information Commission (CIC) and State Information Commission (SIC) directing the PAs to comply with the provisions relating to proactive disclosure is increasing by day.

In November 2010 the CIC went to the extent of issuing a direction [CIC/AT/D/10/000111 dated 15.11.2010] to all PAs under Section 19(8)(a) of the RTI Act. The directions require PAs to designate a Transparency Officer [TO] to liaison with the CIC about the implementation of the directives. To address these issues, there is need for regular audit of the quality of proactive disclosure. Such an audit will foster better compliance with the provisions of the RTI Act and help identify information gaps in the proactive disclosure of public authorities.

In May 2011 (Notification No.1/6/2011-IR) the Department of Personnel and Training in Ministry of Personnel, Public Grievances & Pensions, Government of India, constituted a Task Force for effective implementation of Sec 4 of the RTI Act. The Terms of Reference of the Task Force were:

1. To examine the provisions of Section 4(1)(b) and to recommend guidelines for disclosure to be made at various levels of administration;
2. To recommend other items which may be included for suo motu disclosure, as provided in Section 4(1)(b)(xvii);
3. To explore the possibility of prescribing simple templates for disclosing a specific category of information in order to facilitate disclosure;
4. To recommend mediums through which such disclosure is to be made at various levels, which would include disclosure through electronic means also;
5. To recommend guidelines for complying with the provisions under Section 4(1)(b)(vii) and Section 4 (1)(c) and Section 4(1)(d);
6. To give recommendations as to how compliance with the provisions of Section 4(1)(b)(c)(d) and Sections 4(2) to 4(4) may be better enforced;
7. To recommend measures for protection of persons seeking information under the RTI Act;
8. Any other issue incidental to the above.

The Task Force consisting of Government officials and representatives of Non-Governmental Organisations involved in RTI activities have since submitted their recommendations which is under the consideration of the Government of India.

Keeping the above benchmarks, recommendations and other parameters in view, the proactive disclosure of the following PAs of Government of Karnataka have been evaluated.

1. Bangalore Development Authority [BDA]
2. Bangalore Water Supply and Sewerage Board [BWSSB]
3. Department of Food, Civil Supplies & Consumer Affairs [DFCSC]
4. Department of Health & Family Welfare [DOHFW]
5. Women and Child Development Department [WCDD]
6. Office of the Commissioner of Social Welfare [DOSW]
7. Karnataka State Pollution Control Board [KSPCB]

**Chapter –3**

**Evaluation Methodology**

The methodology adopted for auditing the proactive disclosure of the selected PAs is broadly based on the ‘Audit of Proactive Disclosure under the RTI Act, 2005 – A Tool Kit‘, published by the Centre for Good Governance, Hyderabad. The procedure adopted for evaluating the proactive disclosure is highlighted below.

The items required to be proactively disclosed under the RTI Act are segregated into three basic categories. Based on the relative importance of the three categories, different weightages have been accorded to the different categories as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sl.  No. | Category | Importance | Reasons why | Weightage |
| 1 | A | High | Information on these parameters has high relevance for the public | 0.5 |
| 2 | B | Medium | Information on these parameters may have reasonable importance for the public | 0.3 |
| 3 | C | Low | Information on these parameters has relatively low or limited relevance for the public (or both) | 0.2 |

* The methodology involves assessment of quality of proactive disclosure on 25 parameters consisting of 10 under A category, 8 under B category and 7 under C category. [ see page 19]
* For each of the parameters, a 3-point quantitative rating scale (0:1:2) has been evolved to assess quality/extent of compliance on that parameter. A higher score indicates better compliance on that parameter and vice-versa.
* The scores across all parameters within a particular category are added to get the Category Score.
* The Maximum Possible Category Score for the category of parameters is calculated. If any parameter is not applicable for a public authority, then the maximum possible score to be considered is reduced by an amount of 2 times the number of parameters not applicable.
* The Category Percentage for each category of parameters is calculated. This is the category score as a proportion of maximum possible category score. For example, if the Category Score on A Category parameters is 14 and the maximum possible category score is 20 (ie. All parameters apply) then the Category Percentage is 14/20 (X 100)=70%.
* Lastly the weightages (ie 0.5 for A category, 0.3 for Category B and 0.2 for Category C) to the respective category percentages are given to generate the weighted Category Percentages.
* The weightages are applied to respective category percentages to generate the Weighted Category Percentages.
* After getting the Weighted Category Percentages, the Final Score is obtained based on which the Grade is identified. The table below provides the grading methodology

**Grading Methodology**

|  |  |  |
| --- | --- | --- |
| GRADES | FINAL SCORE | WHAT DOES IT MEAN |
| A | 81% - 100% of  Maximum possible | Highly transparent and RTI Complaint |
| B | 61% - 80%  of Maximum possible | Reasonably transparent and RTI Complaint |
| C | 41% - 60%  of Maximum possible | Limited transparency and compliance with RTI |
| D | 0-40% of  Maximum possible | Poor levels of transparency and compliance with RTI |

**Evaluation Parameters**

|  |  |  |
| --- | --- | --- |
| **A Category Indicators**  **[High Importance]** | **B Category Indicators**  **[Medium Importance]** | **C Category Indicators**  **[Low Importance]** |
| 1. Language in which Information Manual/Handbook available | 1. Form of accessibility of Information Manual / Handbook under Sec 4(1)(b) | 1. Particulars of its organisation, functions and duties. [Sec 4(1)(b)(i)] |
| 1. When was the Information Manual /Handbook last updated | 1. Whether Information Manual/Handbook is available free of cost | 1. Powers and duties of its officers and employees. [Sec. 4(1)(b)(ii)] |
| 1. Dissemination of information widely and in such form and manner which is easily accessible to the public [Sec 4(3)] | 1. Rules, regulations, instructions, manuals and records for discharging functions. [Sec 4(1)(b)(v)] | 1. Particulars of any arrangement for consultation with or representation by the members of the public in relation to the formulation of policy or implementation thereof.   [Sec 4(1)(b)(vii)] |
| 1. Procedure followed in decision making process [Sec 4(1)(b)(iii)] | 1. Categories of documents held by the authority under its control. [Sec 4(1)(b) (vi)] | 1. Boards, councils, committees and other bodies constituted as part of the public authority   [Sec 4(1)(b)(viii)] |
| 1. Norms for discharge of functions [Sec 4(1)(b)(iv)] | 1. Information available in electronic form. [Sec 4(1)(b) (xiv)] | 1. Directory of officers and employees |
| 1. Budget allocated to each agency including all plans, proposed expenditure and reports on disbursements made etc. [Sec 4(1)(b)(xi)] | 1. Particulars of facilities available to citizens for obtaining information. [Sec 4(1)(b)(xvii)] | Monthly remuneration received by officers and employees including system of compensation.[Sec 4(1)(b)(x)] |
| 1. Manner of execution of subsidy programmes. Sec [4(1)(b)(xii)] | 1. Such other information as may be prescribed under Section 4(1)(b) (xvii) | Names, designations and other particulars of public information officers [Sec. 4(1)(b)(xvi)] |
| 1. Particulars of recipients of concessions, permits or authorizations granted by the public authority [Sec 4(1)(b)(xiii)] | 1. Details regarding receipt and disposal of RTI applications |  |
| 1. Are important policies or decisions which affect public informed to them? [Sec 4(1)(c)] |  |  |
| 1. Are reasons for administrative or quasi-judicial decisions taken, communicated to affected persons [Sec 4(1)(d)] |  |  |