The Right-to-Public-Services Laws

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Eleven state governments have enacted Right-to-Public-Services laws in the last couple of years without any pressure from the centre. All except one of these states are in the Hindi heartland which is known for its fractured polity. These enactments are perhaps an attempt to regain the faith of the middle class in the political and bureaucratic system. While there are limitations in their conceptualisation and implementation, the enthusiasm of the respective state bureaucracies in pushing for these laws is encouraging. A number of measures suggested herein could help reduce the shortcomings in the legislation.

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Irrespective of its nature, one of the accepted tasks of any government is to provide a variety of public services to its citizenry varying from issuing a passport to registering an autorickshaw. Therefore, assuring these services within a stipulated time and holding duty bearers accountable for it could be seen as renewing the pledge that a government makes to its citizenry, and is certainly laudable. However, the recent endeavour of a number of state governments to provide service guarantee is noticeable in a number of ways: this article attempts to look at it from the perspectives of politics and governance in India.

Following the initiatives of several state governments and the response, the central government too has now proposed the "Rights of Citizen for Time-bound Delivery of Goods & Services and Redressal of Their Grievances Bill 2011" drafted on similar lines. This is slated for introduction in Parliament. It intends to make the preparation of a citizen charter mandatory for local, state and central governments and their respective departments. The charter must include the name of the service and the officer responsible, the time period, and the redressal mechanism. It also details a grievance redressal mechanism in the form of first and second appeal and a policy cum regulatory body like the Grievance Redressal Commission at central and state levels on the lines of the Central and State Information Commission.

Initiated By State Governments

Starting with Madhya Pradesh in 2010, another 10 state governments (SGs) have so far enacted the Right-to-Public-Services (RTPS) Act, albeit under different names, with five declared intents: (a) assurance of the service, (b) service within a stipulated time frame, (c) holding designated officers accountable, (d) a system of grievance redressal by two stage appeal, and (e) a system of penalty and fine for delay/denial in service. These SGs are of Rajasthan, Delhi, Jammu and Kashmir (J&K), Bihar, Punjab, Uttar Pradesh, Himachal Pradesh, Uttarakhand, Karnataka and Jharkhand. More SGs are at various stages of enacting similar laws and Kerala and Haryana are very close to promulgation. The model for all these Acts has common characteristics. The departments are free to declare a few or all of their services to come under its purview. A department that wishes to declare that a service would come under the legislation must designate a responsible officer to provide the service, a first appeal officer and a second appeal officer for each declared service, determine the fine or penalty for failure to provide acknowledgement, delay in service or its denial. The citizen is required to submit applications with supporting documents and mandatorily get an acknowledgement. Only the J&K government has defined what is service deficiency and the case for imposing penalty.

Since the services that come under this Act are dependent on departmental

willingness, their number varies from as low as 15 in Uttar Pradesh to 124 in Rajasthan. Kerala's proposed legislation covers only 13 services. The services may include documents (certificates-licences-permits), cash (pension, stipends) and kind (electricity-water connections). The nature of these services can be classified as regulatory (trade licence), administrative (birth, caste certificate), basic (water, electricity), and welfare (pension, stipend) services.

What is most striking about these Acts is that they are all initiated by state governments. This is in stark contrast to the plethora of rights-based legislations in the last decade or more, which came primarily out of a large number of civil society organisations' advocacy efforts with the union government and Parliament. The Persons with Disabilities (PWD) Act 1995, Right to Information (RTI) Act 2005, Forest Rights Act (FRA) 2006, Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) 2005, Domestic Violence (DV) Act 2005, Child Labour (Abolition and Rehabilitation) Act 2006, and Right to Education (RTE) Act 2009, can all be classified as central legislations pushed for by civil society. The National Food Security Bill is one such legislation in the making. All of these rights-based legislations were enacted as central Acts with a clear mandate for the states to implement by framing appropriate rules. The states had no choice. In some notable cases, the central government is providing major financial resources to implement these Acts, the most celebrated of which is the MGNREGA and RTE. However, in the cases of the RTI, PWD, DV Acts, the states have the obligation to finance their implementation.

Yet to Make an Impact

The rights-based legislations enacted by the union government have a few features in common: in all cases, the citizen is given a legally justiciable entitlement, for which the state government (or panchayats/urban local bodies as the case may be) is accountable. None of these Acts make the union government accountable barring some exceptional cases. The second feature of these legislations is that almost all of these are making an attempt to address the constituency of the poor, excluded, vulnerable and marginalised. The RTI may intrinsically be an exception, though its genesis surely was the rural poor. The disabled, child labourers, women, tribals and other forest dwellers, the illiterate and hungry are all constituencies waiting to be included in the mainstream. The third feature is that the legislations by the very nature of their constituency focus on, expect and demand organised constituency action which can bring success in realising the rights.

The experience of actual implementation of these rights-based legislations tells us a different story. While these legislations have certainly raised public expectations, demand and organised constituency action, they have not translated into any internal churning within the public administration. Neither have they improved the internal efficiency, accountability or transparency of the system. It has also not improved downward accountability of the departments/authorities towards these constituencies. A case in point is the MGNREGA, where the programme of providing work on demand has had mixed results. However, the provisions of the Act like supply of work within 15 days of demand, unemployment allowance if work is not provided in that time, wage payment within 15 days, etc – (features that require improvement of internal efficiency and accountability) have not worked in any large measure. The implementation of the FRA remains abysmally poor across the country. Except perhaps the RTI, other such legislations have not really made the administration ordinarily accountable. A basic question can be legitimately raised now. Do such rights-based legislations that empower citizens with economic, social and civil rights have the potential to change the character and nature of the public administration and its structural accountability?

In contrast to these central legislations, the RTPS Acts have two distinctive characters. One, all of them are rights based legislations of the states, enacted solely due to the state governments' own initiatives, without any imposition from the union government. Two, none of these Acts in any state are the results of any constituency action. In that sense these are purely state-led legislations trying to make their own public administration

internally accountable as well as towards the citizenry. It may be inferred that from a purely civil society discourse via central legislations, rights-based legislations have now seeped into the discourse of the state legislature and state bureaucracy. However, in doing so, the concept of public services and rights have taken a reductionist, inequitable climb down.

Enthusiastic Bureaucracy

For example, public services in all these cases are defined as entitlement to documents, and cash and services in kind as explained above. Public services that are linked to enhancement of human capital (nutrition-food-health-education-security), financial capital (employment-wage-loan-relief) are not under the law's purview. Neither is the issue of equity addressed in the services. There is no guarantee that if a service is to be given in the stipulated time of 30 days, one may not get it by paying speed money. In fact, the Acts are surprisingly silent on the corruption issue. A majority of the services that are listed primarily address the requirements of the rural and urban middle and lower middle class, barring a few exceptions. For example, in case of Rajasthan which has notified 124 services only about 15-17 services are clearly meant for the poor, vulnerable and excluded sections. The exclusion of the poor in some services is remarkable. For example, in all these states, the services of the land revenue department come under the purview of this Act, where land records, drawing traces, conversions and other relevant documents are promised in a stipulated time period. However, land alienation is a problem faced mainly by the poor. Even if a poor family has the record of rights (ROR), it often does not have the possession or vice versa. Significantly, this is not promised to be regularised under the Acts. Most importantly, the legislations have not made it mandatory for all service providers to come under their purview, resulting in such a wide variation in the number of notified services among state governments. Another major inequity lies in the system of first and second appeal; in almost all legislations, the first appeal lies with an officer at the district level, and the second appeal with an officer at the state level thus limiting the ability of the poor to access the institutions of first and second appeal.

All these limitations notwithstanding, it is encouraging to note the enthusiasm of the state bureaucracy in pushing for its implementation. This is manifested in the fact that all these state governments are taking proactive steps to digitise parts or the whole of the service delivery system connected with these services, with clear internal control and transparency built in it. One good example is Bihar, where the designated monitor can track each application by name on her computer screen. Other software versions being piloted elsewhere even have the provision for the citizen to track her own application as it goes through the various stages of processing. The initial results are encouraging and Bihar has already received 99 lakh applications for various services, of which almost all have been attended to. The average rate of disposal seems to be 98%, an appreciable achievement indeed. Similarly, Madhya Pradesh has received more than 88 lakh requests and has attended to them all.

Attempt to Regenerate Faith?

What can explain the sudden spurt in such state legislations most of them enacted during mid to end 2011? Has it to do with rising public disgust over widespread corruption, lack of governance, decreasing faith in the bureaucracy particularly at the lower level? Interestingly, barring Karnataka, all the legislations have been enacted in the Hindi heartland, where lack of governance is noticeable in many aspects of social and economic indicators. A notable exception is Kerala. For over a decade and half now, it has already devolved many services to local governments (LGs) and almost in tandem, built a fruitful relationship between them and women's communitybased organisations through the Kudumbashree programme. Therefore, it is now proposing only 13 services to be brought under this Act. The other notable point about Kerala is that all the services devolved to LGs are meant to enhance human, social and financial capital. Another encouraging exception is Haryana which has taken almost all the actions conceived under the Act without actually enacting any legislation, and has achieved comparable results. Thereby it has raised a more basic question: are the RTPS required at all, if similar results can be achieved by executive action?

The enthusiasm of the state governments, at a time when the political class and bureaucracy are suffering from low public credibility, is probably an indicator of a conscious political attempt to regain the faith of the middle class in the political and bureaucratic system. The Hindi heartland is now well known for its fractured polity and search for stable political allegiance. These rights-based legislations are clearly an attempt to regenerate faith in public administration. To what extent they deliver is yet to be ascertained.

The RTPS laws have had another extremely important political and governance effect and that is a clear going back on the promise of local governance through panchayati raj and the Panchayats (Extension to Scheduled Areas) Act (PESA). Many of the services that fall under the Acts are clearly in the domain of the 29 subjects under Schedules 11 and 12 of the Constitution. It is interesting to

note that while many of the above state governments have devolved these 29 subjects to the LGs, the central sector schemes that mandated delivery through panchayats (like MGNREGA) and some state schemes have been devolved to the panchayats, but the bulk of essential, regulatory, administrative and welfare services still lie within the purview of state departments.

The RTPS Acts clearly reinforce the state and district bureaucracy's supremacy over the local governments. While the LGs are tied up in implementing central and state sector schemes that aim to enhance human and social capital, the same local governments are not given the responsibility of delivering the administrative, regulatory, welfare, and essential services. Interestingly enough, very few of the first or second appeals lie with the local governments in any of these Acts and nor do the e-solutions being created have any significant component of overview by the local governments. Therefore, delivery, grievance redressal, and oversight functions in all totality are consciously kept out of the local governments' purview.

How can we explain this phenomenon under a governance framework? India's three-tier local governments are plagued with the absence of policymaking power and very little devolution, thus becoming just an agency of the central and state governments. Most of the works that the LGs are engaged with are central sector schemes (CSSs) that aim to improve human, economic and social capital. This is a tall order considering that the LGs suffer from institutional incapacity, elite capture, and lack of legitimate governance space based on the principle of subsidiarity. In comparison, the challenge of providing the services mentioned here is relatively less complex as techno-managerial solutions in delivery process re-engineering can solve most challenges. So we see an interesting contrast here: LGs with substantial weaknesses are struggling to address more fundamental problems of development while the state bureaucracy promises the relatively easier delivery.

How do we improve the situation? First and foremost, it is essential that services of all types are clearly defined, and that cannot be the prerogative of state government departments. An umbrella legislation is needed to define these services through wide-ranging political and civil society consultations. Second, it is critical to define the nature of such services as to whether it is regulatory, administrative, basic or welfare. Third, if the promises of local governments made under 73rd, 74th amendments, PESA and 6th Scheduled Areas, are to be fulfilled then a large number of such services must clearly be devolved to local governments. And local governments must have a mandatory overview function of these services to ensure that service delivery does not subvert local democracy. Finally the services that aim to enhance human, economic and social capital must in all cases be included under one umbrella. Only then can the discourse of internal and downward accountability of public administration improve to a desirable degree.