

A Difficult Law to Implement

The Right to Public Services Act, 2015

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To make public service delivery mechanism more accountable, transparent and responsive, the Government of Maharashtra enacted the Right to Public Services Act, 2015 in August this year. Given the state bureaucracy's reluctance to implement laws to improve governance in the past, especially its track record in enforcing the Transfers and Delays Act 21, 2006, it is unlikely that this act will empower the common man and make the administration more sensitive to her needs.

The Maharashtra Guarantee of Public Services Act, 2015 was enacted by the Maharashtra Government in August 2015, replacing the ordinance which it had passed on the public services bill earlier this year in April. Popularly known as the "Right to Public Services (RTS) Act," the legislation has raised great hopes amongst citizens that they will now get services on time and without bribing officials. The government appears to believe that this act would be as powerful as the Right to Information (RTI) Act and will ensure good governance. In its statement of objects and reasons, the act states:

The three essential elements of good governance are transparency, accountability and responsiveness of the administration. To improve and strengthen the relationship between the people and the administration, the Government of Maharashtra considers it expedient to make a law to provide for delivery of efficient and timely public services so as to bring accountability, responsibility and transparency in the administration.

It would be interesting to see how far this act will serve the purpose it has been enacted for and the way the state government implements it. There are some serious flaws in this law, which I will subsequently point out. But first let us take a look at another act that is really quite powerful, if it is implemented.

Transfers and Delays Act 21, 2006

This law has a cumbersome name—"Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005." It is commonly known as, "Transfers and Delays Act 21, 2006." The bureaucracy having understood the enormous power the act would put in the hands of citizens delayed the framing of its rules. An act can become functional only when its rules are made; and for the above-mentioned act, these were made only in November 2013. There are three important aspects of this law.

According to Chapter 2 of the act (Sections 3 and 4), government servants must have a tenure of three years and transfer orders should be ideally issued in April and May. If these rules are not followed, proper reasons should be furnished. In the case of all senior officers, the chief minister must record reasons in writing when transferring an officer before the completion of his or her tenure. Frequent transfers result in gross underperformance and affect the morale of officers. Besides, the threat of early transfers is often used as a tool to punish good officers.

Chapter 3 mandates (Section 8) that every office or department of the state government must prepare and publish "Citizen's Charter" within six months of the act coming into force. Section 2 (a) of the act defines "Citizen's Charter" as "a list of facilities or services rendered by the office or Department, together with the time limit for providing such facility or services to the general public." In case the time limit is violated, responsibility must be fixed and action should be taken against responsible officers.

Section 10 of the act clearly states that no decision on any file can take more than 45 days if a matter has to be decided within a department. If other departments have to be consulted, then the time period should not exceed 90 days. Rule 10(3) states that in case of delay, the competent authority must fix responsibility on the officers concerned and take disciplinary action if any officer is guilty of negligence. The rules of the act require the competent authority to conduct a preliminary investigation within 15 working days and take disciplinary action if negligence is established. Section 12 of the act mandates an administrative audit to ensure that the provisions of the act are being followed.

Thus all services or facilities to be rendered by any department or office must be covered by citizens' charters which are to be prepared by each office and department in the given time frame. For any other matter, where a representation, complaint or application has been made, a decision has to be conveyed within 45 to 90 days. Failure to deliver the facility or service, or to respond to a representation,

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complaint or an application is a violation of this law. When such an eventuality is brought to the attention of the head of a office or department, she has to conduct a preliminary enquiry within 15 days. If she finds that “any or intentional delay or negligence” has taken place, then she must recommend disciplinary action against the errant officer.

Most citizens are unaware about the powerful provisions of this law. The few who are aware and have tried to invoke its provisions have generally met with arrogant indifference and a pompous disdain. In gross violation of the act, senior secretaries and even the chief secretary have refused to even acknowledge the receipt of letters pointing out violations. Even proposals from one department to another are neglected, and the working continues in a haphazard manner. One example of this is that even when sanction to prosecute officers guilty of corruption is sought by the Anti-Corruption Bureau, it languishes for years without any response. Reasonable efficiency in government working, which this law tries to ensure, is being subverted by the bureaucracy’s reluctance to implement it.

Shortcomings of the RTS Act

A government, which refuses to follow an existing law, now wants citizens to believe that a new lollipop—the RTS Act—will lead to better governance! The argument is that the act has provisions of penalty and a system for appeals and hence it will work better. According to this law, certain services will be notified and the time limit in which they have to be provided will be specified. If this timeline is not adhered to, the “designated officer” may be penalised a maximum of Rs 5,000.

When the first draft of the bill was put in public domain, citizens had pointed out some defects in the draft and sought public hearings before steps were taken to finalise it. A few changes were made, but critical defects were left intact, and it is unlikely that the RTS Act will make a significant dent in governance of the state. Unfortunately, instead of holding consultations with citizens, the bill was hastily introduced as an ordinance in

April 2015 and has now been made an act. The law has some serious flaws.

Under this law, an applicant has been given the right to appeal against the designated officer to the first and subsequently the second appellate authority in the case of rejection of his application or delay in getting a service. If the matter is not resolved by the second appellate authority, the applicant can appeal to the Maharashtra State Right to Service Commission. Since the designated officer can also file appeals—first, second and third—it could wear out most applicants [Section 8(2)]. The government officer will be filing the appeals and attending hearings at government cost, whereas the applicant will have to do this at his own expense. The appellate authority is the designated officer’s superior and his or her administrative order must be complied with. There is no reason to provide the designated officer the right to appeal. In the RTI Act, only two appeals can be filed, and the public information officer cannot file appeals. Only the citizen who has filed the RTI application can file an appeal.

The first and second appellate authorities under this act assume the powers of a civil court and can issue summons to applicants for hearings [Section 9(5)]. If they do not appear before the authority, arrest warrants could be issued against them. Such wide powers could be misused to harass a persistent applicant. In the RTI Act, the power to summon is vested only in the commissioner.

Another issue is that the actual realisation of the meagre penalty—Rs 500 to Rs 5,000—can prove to be difficult. According to the RTS Act, the penalty has to be paid by an errant officer within 30 days of it being imposed by the competent authority. If the official does not comply with the order, then the penalty would be automatically deducted from his or her salary [Section 10(1) (a)]. Whereas in the RTI Act, the penalty order is sent to the competent authority with a direction to straightaway deduct the penalty from the salary of the defaulting officer. In the case of the RTS Act, the penalised officer is expected to pay and if he or she does not, then the competent authority must act. It is unlikely that

someone will keep track of whether the penalty has been paid or not. Another point to note is that if some other officer who is not a designated officer is responsible for the delay, there is no provision in this law for any action against him.

Section 5 (2) of the act states that

The Designated Officer shall, on receipt of an application under subsection (1), either directly provide or sanction the public service within the stipulated time limit or reject the application after recording the reasons in writing for such rejection.

This provision could be interpreted to mean that the mere sanctioning of a service on paper would meet the requirement of this new law.

There is some apprehension and concern among people regarding the clause on penal action against an applicant, which states that a person who “deliberately gives false or frivolous information in the application or submits false documents along with the application and obtain the public services under this Act on the basis of such information or documents” can be punished “under the relevant provisions of the penal law in force” (Section 23). Needless to say, the law of the land is sacrosanct and an illegal act has to be punished. But such a provision, warning the applicant, is unwarranted. Provisions of most laws can be misused by people, but they do not carry such statutory warnings.

Another major problem is that the services covered by the RTS Act are those which will be specifically “notified” by the government. This is a cause for concern, because if a service is not “notified” it is not covered. The citizen’s charter has to cover all services and facilities offered by the department or office as stipulated by the Transfers and Delays Act 21, 2006. But if there is a divergence in what is listed in the citizen’s charter and the “notified” services, the issue will be difficult to resolve. It would be better if instead of just making the act apply to “notified services,” it is applied to “notified services and those mentioned in citizen charters.”

The RTS Act is unlikely to make significant difference to the responsiveness in providing services and facilities to citizens. The provisions have been crafted in a

manner that they will be fairly difficult to enforce. Instead, citizens will be better served if they pressurise the government to deliver on the provisions of the Transfers and Delays Act 21, 2006. Some claims have been made that the RTS Act is better since it imposes financial penalties on defaulting officers. The truth is that a government servant fears disciplinary action more than a financial penalty. The RTS Act also mentions the prospect

of disciplinary action if there is repeated default by an officer in Section 20(3). The RTI Act also provides for a recommendation of disciplinary action against a public information officer for persistent default of the law.

Since it is clear that disciplinary action is feared more than financial penalties, a conscious attempt is being made to sideline the Transfers and Delays Act 21, 2006. A law which is on the statute

books has to be followed both by citizens and the government. The government by not following the provisions of this act is guilty of breaking the law. No government or citizen has the right to break a law. If citizens invoke this law regularly, the government would be forced to implement it. This is the duty and responsibility of the citizens of Maharashtra, and it is up to them to make the governance more responsive.