

The fading colours of watchdogs

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September 8, 2023

The Digital Personal Data Protection Act, notified on August 11, 2023, has been a long-awaited legal shield for the people of India in these difficult times of the rapidly increasing misuse of personal information. It is a neatly drafted legislation, mainly following a principle-based approach (hence durable) backed by several illustrations, with only 44 Sections and one Schedule—it is altogether a crisp 21-page document.

Several expert commentaries, fine-combing some Sections and provisions of the law, are already available in the public domain. One major limitation of the law, according to most critics, is the amendment to the RTI Act, 2005, removing the obligation to disclose personal information. According to them, this amendment dilutes the RTI Act, an important tool in the hands of the citizens to make governance of public authorities transparent and accountable. A big battle won by people in 2005 is lost!

The RTI Act has travelled a distance of 18 years. Though still a teenager, it has had an initial active phase, which, by many yardsticks, has not been that pleasant for many stakeholders. There have been reports of some using the tool for unintended purposes and some others getting harassed for using it. Several issues, including primacy of the security of personal information, may be contributing to the alleged dilution of the RTI watchdog.

Most agencies of public governance or watchdogs are created by the legislature. All of them are established by the executive. Then, why are some of them not on the 'right' side of the governments of any day, and why are some others always on the right side of every government? The simple answer is that watchdogs in general are not that high in priority for the executive at all times, for multiple reasons.

Watchdogs are constituted for improving the governance of other agencies. They do not aid the agencies/their officials, but only question them on their alleged 'failure'. No one likes criticism, even constructive criticism. The bureaucracy is least known for appreciating criticism. Therefore, the assumption that asking tough questions or imposing small fines would improve governance is misplaced, particularly when ground-level governance is trapped in low-level equilibrium.

A hierarchical approach, even amongst equals, is ingrained in India's administrative philosophy and practice. No two ministries/departments are equal, and hence their ministers and secretaries, too, are 'unequal'. There are super-ministries and departments. It got officially legitimised about two decades ago when four secretaries to the Government of India were given fixed two-year tenures even if they crossed the normal retirement age of 60. Appointment of these 'super' secretaries would never get delayed. So is the case with heads of investigative agencies, though technically they are only equivalent to secretaries to the Government.

The same is the case with regulatory agencies as well as tribunals, the watchdogs of markets. Some of them do not take off while others fly high. Some remain headless for years, while for others, appointments could be done overnight. The resources made available to them, including infra-facilities, speak much about their relative status. It is comical that the office building of one such regulator has been overshadowed by a public restroom for more than a decade now. Many others functioned/function in the premises rented out by their regulated entities.

Frictions and inter-institutional bargaining are part of all large systems. State/government apparatus, historically being the largest, had always been in the throes of such internal 'power struggles'. Stories of how great rulers managed such 'palace intrigues' are still being told/sold by writers and moviemakers with great élan. Great administrators of modern times also try to balance the inter-institutional power equation, but mainly based on their direct usefulness to the system. That explains why administrative organisations usually get priority over advisory structures or revenue-generating ones over spending ones. Interestingly, an agency is considered more useful if it has powers over others, which often gets reflected in its office ambience.

Soon after the RTI Act was passed, the Central Information Commission was established and commissioners were appointed, there were high expectations. Still, there were Doubting Thomases' on the efficacy of having such legal-centric umbrella structures as watchdogs for promoting transparency when it is the ground-level agencies that needed to be efficient, empowering citizens as the first step. Transplanting the experiment in Scandinavia, where administrative efficiency is at its peak, to a situation of serious governance issues, was not considered a panacea at least by some who thought such moves would create more white elephants.

That is exactly what happened to the CIC/SICs, the Lokpal/Lokayuktas, NHRC/SHRCs, and the like. Currently, the Central information Commission has five members out of the sanctioned 11. It rarely makes any headlines, unlike in its initial years. The RTI twin, Lokpal, is no better. Though the Lokpal Act is only 10 years old and the Lokpal was set up initially with the maximum permissible strength of nine (Chair plus eight), it now comprises an Acting Chair and four members. The conditions of the SICs and Lokayuktas are no better, with many of them hardly functional. Thus, the issue is not about the political party in power or even the individual heading the watchdog. It is a systemic bias against watchdogs.

Socio-political pressures may succeed in getting legal-centric watchdogs set up, but given their roles/functions, their survival needs lots of luck. Ironically, greater efficiency of the ground-level organisations may improve the acceptability of such watchdogs like in well-governed countries, where complaints are few and far between.

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