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### **Right to Public Service Acts in India: The Experience from Bihar and Madhya Pradesh**

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## **Right to Public Service Acts in India: The Experience from Bihar and Madhya Pradesh**

### **1. Introduction**

The gap between the ‘law on the books’ and the ‘law on the ground’ is notoriously wide in India. Certificate based public services are no exception to this phenomenon. Whether you are poor and need to be on the Below Poverty Line list, or wealthy and want a driver’s license, there is too often a bribe to be paid, apathetic government officials to navigate, and seemingly arbitrary results.

During the last two years, over ten Indian states have passed public service guarantee acts, also known as Right to Service acts. The idea is simple: Mandate how many days a government official has to approve or reject an application for a public service (like an income certificate or ration card), and then if that deadline is not met, or the application wrongly rejected, allow for an appeal. Upon appeal, the bureaucrat can be ordered to provide the service and/or fined for not providing the service in a timely manner or for wrongly rejecting an application.

These Right to Service acts are part of a broader rights-based approach to social policy that has rippled through India over the past decade and a half. The Supreme Court has declared rights to food, health, housing, as well as several other social and economic rights. The Right to Information Act (2005) allows citizens sweeping rights to demand information about the government’s activities. The National Rural Employment Guarantee Act mandates a right to one hundred days of government-sponsored employment for every rural family in India. The Right to Education Act guarantees all children from 6 to 14 years an education in a local school meeting basic minimum standards. The proposed National Food Security Act also adopts a rights based framework.

Many policymakers and activists are attracted to a rights based strategy in part because they see it as a useful way to reorient the language of governance- from

ideas of patronage towards the duties of the state and the justified claims of citizens. Some of these proponents of a rights-based strategy have also increasingly grown to distrust other forms of accountability. They view both politicians and bureaucrats as part of a corrupt nexus that either will not or cannot exercise control over the lower tiers of the bureaucracy. As a result, they desire to supplement or even replace political or managerial forms of accountability with more legal, and less discretion-based, mechanisms. Rights are seen to fit this goal.

The government has also been an active supporter of rights-based strategies, although sometimes for different reasons. Rights have grown to be rhetorically synonymous with good governance and so political and bureaucratic efforts to improve administration are often defined in these terms. Further, rights not only theoretically empower citizens against the government, but also politicians and senior bureaucrats against the lower bureaucracy. Rights are an administrative tool that helps the government bring new legibility and control over its officials. When citizens see their right being violated (such as work not being given or a service not being provided), they can make a claim against the government, alerting higher officials to errant behavior of an official, which can then be sanctioned. Similarly, the right to information allows citizens to more closely monitor government officials, alerting society – including the upper tiers of government – when there are breakdowns in the administration. In this way, a rights framework empowers citizens to act as an ally of policymakers against errant lower level officials.

This paper examines the implementation of Right to Public Service Acts in Madhya Pradesh and Bihar. It is based on interviews and other information collected during visits to the two states between January and April of 2012. It first assesses the implementation of these acts, before evaluating their impact within the broader context of reforms needed for greater administrative accountability in these states.

## 2. Background of Right to Public Service Acts

The recent spate of Right to Public Service Acts can trace their genealogy to the Citizen's Charter movement of the late 1990's and early 2000's, which saw hundreds of charters promulgated by government departments at the national and state level. These charters detailed what citizens could expect from the government.<sup>a</sup> However, many felt these charters lacked the precision necessary to be effective. As a 2008 Administrative Reforms Commission sponsored survey of these charters found, "Almost 41% of the Charters under consideration did not indicate any timeframe for redress of public grievances. 61% of them did not indicate any timeframe for acknowledging the receipt of public grievances and nearly 43% of them did not have the timeframe for responding to the petitioners. None of the Charters reviewed specified whether a petitioner would be conveyed the reasons for rejection of his grievance."<sup>b</sup> Nor did these charters mandate any penalties against the government or its officials if they were violated.

To address these perceived failures, the Right to Public Service Acts mandate that covered services are clearly stated and must either be completed or denied (with explanation) within a specific timeframe. They also set a monetary fine to be levied against the responsible officer if they do not complete the service within the timeframe.<sup>c</sup>

In crafting a triggered monetary penalty against officials the Right to Service Acts drew inspiration from the Right to Information Act. Many viewed the Right to Information Act's threat of a triggered monetary penalty (for not providing requested information) as a vital part of its perceived success. It forced officials to respond to legitimate citizen demands or face personal financial consequences.

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<sup>a</sup> Indian Institute of Public Administration. Citizen's Charters in India: Formulation, Implementation, and Evaluation (GOI, 2008)

<sup>b</sup> Indian Institute of Public Administration. Citizen's Charters in India: Formulation, Implementation, and Evaluation (GOI, 2008) 12

<sup>c</sup> In Delhi, no "fine" is imposed, instead "compensation" is given by the official to the aggrieved citizen.

Right to Public Service Acts in the states have largely been promoted by politicians, especially Chief Ministers, and some top bureaucrats. Civil society, except for at the centre, has largely played a minor role in proposing or pushing for these acts. This pattern is striking. It may be that state Chief Ministers are simply trying to score quick political points. However, this trend may also provide further evidence that many of these acts are best understood not so much as an empowerment of citizens over lower officials, but rather as a tool by which top level officials and politicians can regain control over the lower tiers of the bureaucracy. Hierarchical government control in many Indian states has broken down and these acts are seen as one method to attempt to regain it.

### **3. An Overview of the Acts Implementation**

#### ***Madhya Pradesh***

Madhya Pradesh was the first state to implement a right to public service act, passing its Public Service Guarantee Act in August 2010. Many of the later acts passed in other states were modeled on Madhya Pradesh's Act which covers 52 services from applications for ration cards to income certificates. A designated public servant is required to either provide the service or deny it with a written explanation within the designated time period (ranging from 3 to 60 days depending on the service). If they fail to do so, the applicant can appeal to an appeal officer (usually a mid-level official such as a sub-divisional officer, and sometimes a higher level official like the district collector) who must decide the appeal within a stipulated time period and can order the public official to provide the service. The decision of the appeal officer can be further appealed to a second appeal officer (usually a higher level official such as a district collector or, if the first appeal was to the district collector, then to a divisional commissioner). The second appeal officer may fine the designated public official between 500 and 5000 Rs if they feel that they failed to provide the service without "sufficient or reasonable cause." They may also fine the first appeal officer if they failed to decide the case within the stipulated time period without a "sufficient or reasonable cause."

As part of the push around the Act, Madhya Pradesh has worked to simplify application procedures. For example, they have created centers in district collector's offices where one can apply for a whole set of services in one location. (Although, at least in Bhopal, one must visit several counters at the center to complete the process: a counter to receive the application, another to pay the required fee, and another where documents are verified and a receipt given. At another counter one picks up the completed application at a later date.) There is a somewhat controversial plan to eventually outsource these application centers to small and medium-sized companies. The companies would charge a small fee for processing each application.

The Public Service Management Department oversees the implementation of the Public Service Guarantee Act in Madhya Pradesh. Under this department the government has appointed in each district a district manager and an assistant. These officials, who are hired on contract, are generally either young Management or IT graduates, or retired state civil servants. The government has been implementing a computer database that will eventually track all applications under the Public Service Guarantee Act, and give computer generated receipts at the time of the application. At the time of research for this paper, in some places, applications were still recorded manually and the district manager or their assistant must collect this information from different offices and then enter it into the centralized computer database. The goal is to eventually computerize the entire process everywhere in the state.

The District Manager and their assistant perform quality control: checking in with officials if from their records they see that a service has not been given in the designated time period or the deadline is imminent. They often hear about complications that might have created the delay. As one district manager in Madhya Pradesh said, "If the computer shows that a service was given after the time limit it might be because of a typo or that the official was out of town so couldn't complete the service."

Penalization is rare. Interviews suggested about fifty officials had been fined under the act during its first 18 months (it was unclear how many appeals there had been under the act). Details about those who had been fined proved difficult to obtain.

### ***Bihar***

Bihar's Right to Public Service Act began to be implemented in August 2011. It covers 50 services, including many of the same as Madhya Pradesh. Unlike Madhya Pradesh, it covers land mutation certificates (i.e. proof of the transfer of title from one party to another). This service has proved the most controversial addition in a state where land records have historically been poorly kept and are a source of much litigation. Some have claimed this service should not be included under the Act as it often requires investigation and bureaucratic judgment making it unlike other services that involve far less discretion.

Like Madhya Pradesh, under the Act, one may appeal to an appellate authority (often the District Collector) if one has not received the service within the stipulated time or feels one has been wrongly denied a service. One can appeal that decision to a reviewing authority (often the divisional commissioner).

Bihar's Act has been implemented by the state government's General Administration Department with funding assistance from the United Kingdom's Department for International Development (DFID). With the help of this funding the Bihar program was both far better staffed and more computerized than Madhya Pradesh's from its initiation. In each block, centres have been created where two to four contract employees with an IT degree have been hired to accept applications for services covered under the Right to Public Service Act and give applicants computer generated receipts. The receipt confirms in how many days the service must be completed. The applications are then taken by these DFID funded state employees and given to officials who process them. Unlike Madhya Pradesh there are not multiple counters to go to, but instead a single window where applications

are deposited during the morning and picked up upon their completion during the afternoon. Officials in the district headquarters or in Patna can track the acceptance and disposal of applications in real-time.

In Bihar, appeal and penalization are also rare and have tended to be initiated '*suo moto*' by District Collectors or other high ranking officials who observed that deadlines for service delivery had been missed. Interviews indicated there had been about 170 appeals in the Act's first six months. Again, it was difficult to ascertain exact information about the number of appeals or any subsequent fines, and which officials were involved.

#### 4. Assessment

Given the relative newness of these states' Right to Service Acts, their impact is still under debate. There are reports, particularly in Madhya Pradesh, of applications not being accepted by officials and of receipts not being given (both of which undermine the Act's triggered penalties). A study in Madhya Pradesh from the summer of 2011 (about a year after it was enacted) found that less than 2% of applicants for covered services even knew about the Act. As such, almost none were aware about available appeal mechanisms. Likely the level of awareness is now higher in Madhya Pradesh, but appeals in both, Madhya Pradesh and Bihar, as well as fines, are still relatively uncommon. As one civil society advocate in Madhya Pradesh put it, "It seems like the act is more about administrative relationships – who is going to deliver a service and systematizing things at the government level. It hasn't become part of the people."

Still, most observers believe that the package of changes that has come along with these acts in these two states – such as receipts for applications, computerization, and clearer requirements and deadlines – has helped improve services by creating simpler and more legible processes for applying for services. In Bihar, a government sponsored survey that is yet to be released to the public has reportedly found fewer touts after the implementation of the act. A finding reaffirmed through



interviews for this paper. And there is the potential for these acts to have a lasting institutional culture affect; empowering citizens to make demands on their “public servants.”

That does not mean these acts are without criticism or drawbacks. Some in civil society are distrustful of the acts’ appeal mechanisms, which they do not see as independent. They point to the rarity of penalties as a sign that bureaucrats are simply looking out for each other, and are hesitant to penalize lower officials, essentially undercutting the acts’ principal feature (a pattern that has been lamented in the enforcement of the Right to Information Act as well).

Interviewed politicians in both states complained that even if services were now more reliably given they could now take longer to receive, as officials often waited until towards the end of the maximum allotted time period to complete a service. It is unclear why this occurs. It could be that officials are creating a new opportunity for bribes, taking money to speed the service up (especially for time sensitive services like caste certificates that may be required for a job or university application). It may simply be that the extended timeline given under the act makes officials feel validated if they take more time to deliver the service.

Lower officials themselves say they are very aware of the acts. As one Tehsildar in Madhya Pradesh recounted: “The Act has created accountability and responsibility towards the people. There is the time limit now. It has changed attitudes.” However, lower officials did express concern about Right to Service Acts being implemented unfairly or being distracting. For example, some said that if there was to be a time limit for processing applications then there should also be a limit on how many applications can be accepted. During peak periods officials can be overwhelmed, especially given that they have other demands on their time. They also felt that the fear of a penalty did make them prioritize processing these applications, but sometimes at the expense of their other work. As such, these Right to Service Acts may have unintended adverse consequences on other government functioning.

Top officials expressed the fear that if these acts are perceived as a success, their scope will be expanded by politicians to services that are not as easy to quantify or track. They made clear that these acts cannot be seen as a one-size-fits-all approach to service delivery. Some in civil society point to the limited coverage of the acts in a slightly different way, complaining that although the acts are broadly termed to cover “service delivery” that the more difficult challenges in service delivery are usually left out. For example, the acts generally do not cover health or education services. Instead, they mostly just involve the issuing of certificates, licenses, or other relatively straightforward “paperwork” type services.

Indeed, some question if the perceived improvement in service delivery in these two states is really related at all to the right to service acts, and their triggered penalties. Any improvements may be the result of related efforts to make service delivery systems simpler and more legible and robust. For example, as one Madhya Pradesh official stated, “I process lots of income certificates and domicile certificates. Before the Act we would have spot checks and required electric bills and other records. Now we just take affidavits so almost everyone gets these certificates. They can lie, but if they get caught they can be fined.” In other words, improvement in the delivery of these certificates may not be because of the Act, but because it is now far simpler to process applications after changes in the rules regarding requirements for these certificates.

The same may be said for the increased legibility of the system. In both Bihar and Madhya Pradesh applicants are now given receipts and their applications tracked through a computer system. These innovations arguably have a larger impact on service delivery than the threat of penalization against officials. Normal bureaucratic sanctioning, such as adverse remarks on one’s record, could be just as effective as triggered monetary penalization once a system is in place to make legible to top officials where failures in the system lie and who is responsible.

In Bihar in particular, but also Madhya Pradesh, improvements in performance may not be linked as much to the Act itself as increased resources. Under the DFID

funded assistance scheme, each block in Bihar essentially received funding for at least two more personnel who are solely devoted to processing applications. Some blocks received up to five additional staff. The addition of these generally young and well educated personnel may be having a far greater impact than the actual Act. It may be it really was just more resources and personnel that was needed for improvement rather than any triggered penalty in a Right to Service Act.

All of this raises the question of the cost of these reforms. This is particularly important in Bihar where the government has committed to funding the DFID program after DFID withdraws support, but it is unclear for how long and at what level. Further, the costs of running these programs could increase. The contract employees tasked with overseeing the implementation of services under the right to service acts in Bihar and Madhya Pradesh report taking their jobs for different reasons, from idealism to a lack of other employment opportunities. Their relatively low pay compared to other opportunities and uncertain job stability has led many of them to express resentment or concern about their position. This makes it uncertain how long these states can expect to continue to recruit relatively talented young contract workers for these programs at the same salary level.

### ***Lessons***

Although much emphasis has been placed on the need to monetarily penalize officials for not delivering services in order to stop a perceived cycle of impunity and unaccountability, it is not clear how effective such penalization is. Not only is such triggered penalization rare so far in Madhya Pradesh and Bihar, but almost no other country uses such a strategy, nor do most Indian states (like Kerala or Gujarat) with far more success with public service implementation. This does not mean that triggered monetary penalization against bureaucrats is not effective, but at least tells us it is not necessary for a successful service delivery system. Such a strategy even has the potential to demoralize officials and, if the act's scope is expanded too far, counter-productively limit their discretion.

The problems involved with service delivery are deeper than any triggered monetary penalty can solve, and the solutions need to be more diverse without overemphasizing any one tactic. Looking back on right to public service acts years from now, we may remember them less as promoting a new kind of right for citizens than a first step in civil service employment reform. The triggered monetary fine gives top civil servants a new tool with which to penalize bureaucrats, who are notoriously well insulated from bureaucratic control. That both Bihar and Madhya Pradesh have hired contract workers to oversee implementation of their acts points to a desire to bypass what is often perceived as counterproductive civil service employment rules. Where there has been a breakdown in the normal bureaucratic chain of command as there arguably has been in these states a right to service act can be understood as sideways administrative reform.

These acts' effectiveness depends on a broad range of measures involving political and managerial accountability. Both Madhya Pradesh and Bihar have attempted to reassert authority over officials through public hearings for citizens with grievances with their Chief Ministers and district collectors. Bihar has appointed grievance redress officers to follow up on complaints received during these hearings and otherwise. The Chief Ministers in both Bihar and Madhya Pradesh have toured their states inspecting the implementation of schemes and making clear to both officials and citizens that officials should be viewed as "public servants" of the people, not rulers. These types of initiatives and reforms will likely prove as, or more, effective as tools to help solve the implementation gap than any right to public service act.

## 5. Conclusion

The Right to Public Service Acts being passed and implemented in different Indian states deserve attention. Their existence points to a crisis in the implementation of laws and policies by the bureaucracy in India. These acts can be part of a combination of measures to overcome such implementation failures. Their shock value and high-profile nature might make them an effective mechanism for jolting the bureaucracy out of the status quo or focusing public attention on service

delivery reform. However, these acts are likely neither a necessary measure to improve public service implementation, nor that effective in the long-term. Possible adverse consequences, such as demoralization of officials and overemphasizing some government tasks over others, need to be weighed when reflecting upon whether to adopt such an act.

Attention largely needs to be focused elsewhere. This may be a narrower focus on improving certificate based services through providing receipts and making clear and efficient interfaces with the public – increasing legibility and control over these systems. More broadly, serious reform is needed within the bureaucracy to improve incentive structures, control, and resourcing. Political reform also needs to be considered so that local politicians have mechanisms whereby they can help hold local officials accountable, and in turn be held accountable by citizens.

Finally, lawmakers and officials should consider how policy design affects public service delivery. For example, the poor design of the Below Poverty Line system means many people who should be on the BPL list are denied placement because of arbitrary quotas imposed from above. This is the source of many complaints at local administrative offices taking away time and energy from service delivery.

We need more reforms directed at the institutions that implement public services and those that hold them in check. Not necessarily more rights that attempt to micro-manage the bureaucracy.

## 6. Policy Recommendations

- Do not expand covered services in Right to Public Service Acts beyond those that can be easily quantified and designated.
- Use Right to Public Service Acts as part of a broader strategy of public service reform. Such reforms for certificate-based public services could include providing single window counters for multiple similar services or requiring the giving of receipts with a timeline for the completion of a service.
- Properly staff public service centres, if possible separating those who accept the applications from those who process them.
- Truly independent appeal bodies designated solely for right to public service acts will likely prove too expensive to be cost-effective, especially if the number of appeals under these acts continues to be minimal. Instead, the government should consider creating independent administrative courts or tribunals that can take appeals concerning compliance not only with right to service acts, but a wider range of government programs from the implementation of the National Rural Employment Guarantee Act to the Integrated Child Development System. These tribunals should have the power to both grant awards to claimants, as well as levy penalties against officials.
- Invest in other grievance redress and accountability mechanisms such as public hearings by top level officials, grievance redress officers, auditors, and anti-corruption prosecutors. The credible threat of sanction by a combination of these actors is likely to be the most effective tool to improve implementation.
- Encourage politicians and top-level officials to make regular site visits and train them about how to spot-check whether a program is operating correctly or not.
- All proposed rules and regulations should have a public comment period. When proposing a new rule, the concerned department should write a memo a short cost-benefit analysis of adopting the rule. For example, several

certificates require ID with notarization. However, notaries are often middlemen for corruption and do little to actually prove the validity of documents. Doing away with such requirements for services can save applicants time and money, while reducing the chances for bribery and corruption.

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