

# Have the Public Service Delivery Laws Actually Delivered?

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## CONTENTS

1. CONTEXT AND ORIGIN OF PUBLIC SERVICE DELIVERY ACTS	02
2. NATIONAL CONTEXT	03
3. NEED FOR ASSESSMENT	06
4. COMPARING BIHAR AND JHARKHAND	07
5. CITIZEN RIGHTS	09
6. IMPLICATIONS ON GOVERNANCE	10
7. WAY FORWARD	11
ANNEXURE	12

# 1. CONTEXT AND ORIGIN OF PUBLIC SERVICE DELIVERY ACTS

In 2011, India had a lively national debate on anti-corruption measures, centered on two prospective legislations, the 'Lokpal and Lokayukts Bill' and the 'Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of Grievances Bill.' India Against Corruption (IAC) and the National Campaign for Peoples Right to Information (NCPRI) led these debates going into the minutiae of public administration, as well as raising more philosophical issues on the nature of corruption in Indian society. Even as this became a high voltage media issue, behind the glare of primetime cameras, a slew of major State Governments, starting with Madhya Pradesh, Bihar, Jharkhand, Chhattisgarh, Delhi, Rajasthan and Uttar Pradesh passed Right to Public Service Delivery Acts (PSDAs).

The first interesting thing to note is that they were all passed on the initiative of the State Governments themselves, of varying political dispositions, in and around 2011, with no push from the Central Government or from any visible local constituency. They also all have a similar statutory structure. Intended to streamline delivery systems, they set modest goals such as providing certain limited public services within a time frame. These laws provide a structure where designated authorities are to deliver these services within a time frame. Failing which, citizens can appeal to internal appellate authorities. There are also provisions for the imposition of penalties on erring officials. The services largely relate to the administrative aspect of that service, such as applications and documents, rather than quality checks or financial resources related to it.

Even at the time of their passage, there was skepticism on what they would actually accomplish and the varying intentions of State Governments. One argument is that these laws responded to the low public credibility of the political class and bureaucracy and this was an attempt to regenerate faith in public administration (Sircar, 2012)<sup>1</sup>. This implied the checking of a box on good governance, without conceding to the higher order demands of the national level agitation. Another argument is that framing these legislations as “rights” to public services, apart from citizens also empowers politicians and senior bureaucrats much greater scrutiny over the lower bureaucracy (Robinson, 2012)<sup>2</sup>. This increases administrative control and brings new legibility of senior administration over field functionaries. Bussell (2014)<sup>3</sup> probes the interstate variation of the rollout of these acts and the digitization that accompanied it. She argues that contrary to popular perception of administrative reform as a “public good” enjoyed by all citizens, given the discretion of notification of services under the PSDAs, benefits can be highly targeted to specific constituents groups, for example building licenses for business elites, or application for welfare benefits for the rural poor. Thus it can be strategically implemented for electoral benefits.

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<sup>1</sup> The Right-to-Public-Services Laws, Ashok Kumar Sircar, Economic and Political Weekly, Vol. 47, No. 18 pp. 23-26

<sup>2</sup> Right to Public Service Acts in India: The Experience from Bihar and Madhya Pradesh, Nick Robinson, Accountability Initiative Policy Briefs, November 2012

<sup>3</sup> Corruption and Reform in India, Jennifer Bussell, Cambridge University Press, 2012

## 2. NATIONAL CONTEXT

At present, 22 States have passed Right to Public Service Delivery Acts, with varying nomenclature (see Annexure 1). As noted above, the basic architecture of these laws is similar. State Governments notify certain services to be covered under the Act, along with timelines and designated officers. To take a closer look at the interstate variation, six aspects can be examined; the definition of the Right to Public Service, the number and type of services covered, the definition of Public Authority, timelines, penalties and compensation, Transparency in functioning and Appeals and Public Service Commission.

### 2.1. Definition of the Right to Public Services

When it comes to defining the Right to Public Services, nineteen State Acts apply only to “eligible persons” for notified services. This implies that the Act does not even entertain applications of those persons who may be erroneously left out. Considering that eligibility of government schemes is still a fiercely contested issue with documented inclusion and exclusion errors, this has some bearing. One three States, Chhattisgarh, Delhi, Gujarat, apply to all citizens. The widest definition is put forward by Arunachal Pradesh and Goa, as follows:

- 1) Right to access the public service
- 2) Right to receive the service within a specified time period
- 3) Right to receive the public service in a transparent manner
- 4) Right to demand performance of duties and functions by the designated officer in accordance with the provisions of this Act
- 5) Right to hold concerned designated officer accountable for any service deficiency in the public service
- 6) Right to claim compensation from the concerned designated officer for failure or provide, or delay in providing public service)

Further most States only cover the definition related to timelines and delays, whereas other aspects of service delivery such as quality, efficiency, satisfaction etc. could also be covered. Can the Right to Public Service definition be expanded to cover all persons, i.e. can it review and supersede existing “eligibility” norms to access services?

### 2.2. Number and Type of Schemes Covered

There is a common theme of notified services across States. These relate to Municipal Affairs (water tanker, garbage cleaning, drains, certificates - domicile, caste, income etc.), Urban Development (death mutation, occupancy, water connection), Licenses related to Agriculture (seed, fertilizer, warehouse etc.), Registration of Societies, Transport (registration of vehicles, driving license), Education (degrees, migration certificate), Licenses related to industry (boiler plans, factory plan, fire

safety) and so on. It basically relates to the core regulation and administrative work of government. This raises the question on the basis on which schemes and services are selected to be part of the Act. Following a pre-legislative consultative policy to do so would be a welcome measure, including all stakeholders such as citizens, parent departments, common service centres and so on.

### **2.3. Definition of Public Authority**

The definition of Public Authority varies widely across States. The states with a limited definition are Bihar, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Kerala, Madhya Pradesh, Odisha, Punjab, Uttar Pradesh and Uttarakhand. These States define public authorities generically as belonging to the State Government or local self-government.

However, some States such as Arunachal Pradesh, Chhattisgarh, Goa, Gujarat, Karnataka, Maharashtra, Mizoram, Rajasthan and West Bengal have a wider definition.

For example, Chhattisgarh adopts the definition of Public Authority as detailed in the Right to Information Act which states, and body or institution of self-government established or constituted under the constitution, by any other law made by Parliament, by any other law made by the state legislature, including non-Government organisations substantially financed, directly or indirectly by funds provided by the appropriate Government.

However, two States, Delhi and Assam specifically mention that those employed on a casual basis (which is a growing trend with front line bureaucrats) will not be included in the purview of this Act.

### **2.4. Timelines, Penalties and Compensation**

All State Acts have the provision of notifying timelines for different services. The enforcement of timelines is linked to providing receipts, charging penalties for delays and providing compensation to citizens. Nineteen out of twenty-two State Acts explicitly mention acknowledgements or receipts. Three out of twenty-two State Acts (Odisha, Punjab, Uttarakhand) make no mention of receipts. The most expansive definition is from Maharashtra as follows;

“The receipt of an application shall be duly acknowledged, and the applicant shall be intimated in writing or through electronic means, specifying date and place of receipt of application, unique application number along with stipulated time limit for the disposal of such application.”

All the State Acts have the provision of penalty for delay of service. The amount of penalties ranges from Rs. 10 to Rs. 10,000. Delhi has the lowest amount, at Rs 10 per day of delay up to a total of Rs. 200, while Gujarat has the highest, from Rs. 1000 up to Rs. 10,000. Only two States have the provision of penalty for a “deficiency” of service (Goa and Jammu and Kashmir).

Encouragingly, seven out of twenty-two states have the provision of paying compensation to citizens. However, in all cases it is linked to the recovery of penalty. Thus, it is made very individual centric, with one officer being penalized to pay one citizen. The compensation amount also ranges from 50% of penalty charged to entire amount of penalty (but not exceeding it).

## 2.5. Transparency

Eight out of twenty-two State Acts explicitly mention “display” of services/timelines/designated authorities. These States are Chhattisgarh, Goa, Karnataka, Maharashtra, Odisha, Punjab, Uttarakhand and West Bengal. The best definition is from Maharashtra as follows:

“The Public Authority shall display or cause to be displayed on the notice board of the office and also on its website or portal, if any, the list of the public services rendered by it along with the details of the stipulated time limit, form or fee, if any, Designated Officers, First Appellate Authorities and Second Appellate Authorities.”

Eight out of twenty-two State Acts mention some kind of monitoring or online system or maintaining and updating of status of applications. These States are Arunachal Pradesh, Delhi, Goa, Gujarat, Karnataka, Maharashtra, Punjab and Uttarakhand. The most expansive definition is from Goa as follows;

“Every Authority which is required, under this Act to provide the public services, shall maintain the status of all the applications received by its designated officer/s and it shall be also duty bound to update the status of the same as per the prescribed procedure.”

## 2.6. Appeals and Accountability

All States notify designated first and second appellate authorities, within the Department responsible for delivering the service. Only Seven out of Twenty-Two States have the provision of a State Public Service Commission. These States are Gujarat, Haryana, Jharkhand, Maharashtra, Punjab, Uttarakhand and West Bengal. The scope of such a commission is defined as follows:

- 1) Entertain and dispose revision petitions
- 2) Take suo motu notice of failure to deliver service in accordance with this Act and refer such cases for disposal as may be appropriate
- 3) Carry out inspections of offices/appellate authorities entrusted with the delivery of services
- 4) Recommend departmental action against officer/employee has failed in due discharge of functions
- 5) Recommend changes in procedures for delivery of services which will make the delivery more transparent and easier

### 3. NEED FOR ASSESSMENT

Leaving aside the premise of their passage, six years after their implementation, it is worth examining if they have held up to their promise, however limited. These six years have seen the change of national and state governments, and acceleration on government policy for digitization and information technology. At present, there is no comprehensive assessment of the functioning the PSDAs. Since the launch of the pioneering state, Madhya Pradesh, the general self reporting on progress has been on the following normative parameters – number of services covered, number of authorities notified, time frames adhered to, penalties for non-compliance and so on.<sup>4</sup> However, an inter state comparative assessment based on these parameters is yet to be done, let alone other perspectives such as citizen experience. The discourse, if any, is primarily driven by the State Governments themselves and their own reports on performance thus making it difficult to get a true picture.

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<sup>4</sup> Report on National Consultation on Strengthening Delivery and Accountability Frameworks for Public Services, United Nations Development Programme, 8-9 December 2011, Bhopal, Madhya Pradesh



## 4. COMPARING BIHAR AND JHARKHAND

To get a deeper sense of the actual functioning and effectiveness of these laws, a closer look at two states was undertaken – Bihar and Jharkhand. These were amongst the first two states to have passed a PSDA legislation. They are neighboring states, with comparable contexts but varying administrative structures and priorities. Three methods were used for assessment - an analysis of the comparative provisions in the legislation, filing the same Right to Information application on the nature of implementation with both governments and the citizen experience in using these laws.

**Table 1: Comparison of Implementation**

Parameter	Bihar	Jharkhand
Implementing Department	General Administration Department (GAD)	Jharkhand Agency for Promotion of Information Technology (JAP-IT)
Public MIS	No	Yes
PPP mode for Service Centres	No	Yes
Free Services	Yes	No

### 4.1. Design of Legislations

The text of the legislations of these two states is very similar to the point of being almost identical. Both the laws define the Right to Service as the right to a notified service within a period of time. Both are applicable only to such persons who are already eligible for these services. Both enable the State Government to notify designated officers from time to time, and appellate authorities within the internal department structure. Both make provisions for penalty to be charged from erring officials, between Rs. 500 to Rs. 5,000. The only major difference is that Jharkhand has an enabling provision for the constitution of a Public Service Delivery Commission (which has as yet not been formed).

### 4.2. Frameworks of Implementation

Notwithstanding the almost identical pieces of legislation, there is substantial difference in its manner of implementation. The Jharkhand Rajya Sewa Dene Ki Guarantee Act 2011 (RTGS) though passed in 2011 was inaugurated only on 15th September 2015. The nodal department for its implementation is the Jharkhand Agency for Promotion of Information Technology (JAP-IT). There is a rudimentary public Management Information System (MIS) on the disbursement of services under this law. The actual mode of delivery has been outsourced to Pragya Kendras or Common Service Centres under a Public-Private partnership mode. Moreover, the services within this law are all chargeable, with nominal fees from citizens.

The Bihar Right to Public Service Act (RTPS) passed in 2011 and implemented soon after with the support of United Kingdom's Department for International Development (DFID). The nodal department is the General Administration Department (GAD). There is no public Management Information System (MIS). However, applications for certain services can be filed online for free. The government has set up its own centres, in which certain major services (such as certificates) are free of charge.

#### **4.3. Response to RTIs**

The same Right to Information application was filed with both State Governments asking a set of questions related to implementation. These included, for FY 2016-17, the number of services applied for and delivered on time, the number of appeals received and disposed and the total penalties charged. The Government of Jharkhand forwarded the application to every public authority dispensing services under this Act. Replies were received from 34 public authorities including Factory Inspectors, Nagar Panchayats, various Directorates, Labour Commissioners, Chief Engineers and so on making the total number who didn't respond unclear. The information provided in them is largely unusable with no enlightenment on the actual functioning. For example, for number of services and appeals filed and disposed some have answered in absolute numbers, others have answered in percentages, and some have simply said "yes." Similarly with quantum of penalties charged, half of the authorities have answered "zero" and the other half as "not applicable."

The Government of Bihar denied providing this information on the grounds that they were not obligated to provide information if it is required to be collected and collated. Even though the rules of the RTPS clearly state that the "the State Government shall introduce a system for centralized monitoring of the timely delivery of notified services including service delivery through use of Information and Communication Technologies and for monitoring provisions of the Act."

## 5. CITIZEN RIGHTS

Through observations of service delivery at the service counters in several districts of Bihar and Jharkhand, there are some noticeable distinctions in the citizen experience. This has to do with costs and reliability of the service. The main services dispensed through PSDAs are certificates related to caste, income and domicile. People need these at various stages such as applying to educational institutes, applying for competitive exams, for jobs and so on. There is usually an urgency associated with these documents, as there is a specific purpose for which they are being acquired.

In general, citizens in Bihar commented favorably on the reliability of the RTPS counters, which adhere to timelines, and on the fact that it is free of charge. On the contrary, citizens in Jharkhand complained about being asked to pay “speed money” to have their certificates delivered within time. Given that the Bihar RTPS counters are government run and within government office compounds there is generally less of a chance of over charging for services, as compared to Jharkhand where the RTPS services are delivered through private Village Level Entrepreneurs or Pragya Kendras. Even though these entrepreneurs are to operate from designated Gram Panchayats they generally operate from the market or their homes, making them far less scrutinized. Even though the Jharkhand PSDA has a rudimentary Public Management Information System, there is no information available on the charges from citizens nor the commissions accrued to the private companies and entrepreneurs. These are essential pieces of information from a citizen point of view.

## 6. IMPLICATIONS ON GOVERNANCE

For cases of overcharging such as this, there is little that can be done except approach the appellate mechanisms within the bureaucracy. There is little or no oversight by the Gram Panchayats (Local Governments) or platforms for citizen monitoring. Sircar (2012) takes this point further by arguing that PSDAs reinforce the state and district bureaucracy's supremacy over the local governments. He points out that the Gram Panchayats have been accorded responsibility for implementing various central and state sector schemes, which aim to enhance human and social capital, but without adequate decentralisation and capacities. In contrast, the State bureaucracy has delineated a much simpler task for itself, for legibility of citizens via documents, where it is the sole provider and in whose interest it is to have citizens made legible to the State. In comparison, the challenge of providing these services, such as certificates, through techno-managerial solutions is much simpler, than Gram Panchayats tasked with addressing say, chronic malnourishment. It is also then able to “take credit” for better service delivery.

## 7. WAY FORWARD

Even for the limited tasks that these laws aim to tackle, there appears to be resistance to looking any closer at the actual functioning, as demonstrated by the lack of effective public MIS's and the response to the RTIs. A system that is delivering public services needs to, in and unto itself be transparent. This is essential for empowering the citizen in its relationship with the State, which is at the crux of 'good governance.' Even if it something as small as knowing that the RTPS counter operator that you are approaching has thirty pending applications and will only get to yours after those have been processed. Or for example, if you have got an unsatisfactory response and know that ten others are in the same situation as you, this provides confidence to appeal to higher authorities.

The more information there is in the public domain, the more citizens will get invested in monitoring the system for themselves. If indeed these laws give politicians and higher bureaucracy greater control over lower bureaucracies, then it sorely falls short of extending the same legibility to citizens. Rather than just vertical bureaucratic reviews, the system will benefit if perspectives from a citizen point of view are also incorporated.

As hypothesized earlier, if these laws were passed to diffuse the growing demands for better governance and anti-corruption measures, then it is clear that this is just a toe in water. The PSDAs do nothing to change the power imbalance between the citizen and the State. The lack of transparency in their functioning is counterintuitive to their stated goals of improved governance. The defunct legal check of penalties on officials points to little or no accountability. Real questions of power sharing, participatory policy making, better administration of programs related to enhancing human capabilities are all beyond the purview of these legislations. At best they streamline existing processes; there is nothing new or novel about getting a birth certificate on time. Thus, the demand for a legal framework for genuine accountability of administrative structures is only gaining strength.<sup>5</sup>

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<sup>5</sup> <https://scroll.in/article/841231/activist-nikhil-dey-to-make-rti-really-effective-we-need-an-accountability-law-for-public-servants>

## ANNEXURE 1: STATES THAT PASSED PUBLIC SERVICE DELIVERY ACTS

S No	State	PSDA
1	Andra Pradesh	N
2	Arunachal Pradesh	Y
3	Assam	Y
4	Bihar	Y
5	Chhattisgarh	Y
6	National Capital Territory of Delhi	Y
7	Goa	Y
8	Gujarat	Y
9	Haryana	Y
10	Himachal Pradesh	Y
11	Jammu and Kashmir	Y
12	Jharkhand	Y
13	Karnataka	Y
14	Kerala	Y
15	Madhya Pradesh	Y
16	Maharashtra	Y
17	Manipur	N
18	Meghalaya	N
19	Mizoram	Y
20	Nagaland	N
21	Odisha	Y
22	Punjab	Y
23	Rajasthan	Y
24	Sikkim	N
25	Tamil Nadu	N
26	Telangana	N
27	Tripura	N
28	Uttar Pradesh	Y
29	Uttarakhand	Y
30	West Bengal	Y



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