

## **RTI : Without Fear or Favour**

By Dr. RS Tolia

### **RTI and the NGOs**

In my maiden article reflecting on the possible Uses and Abuses of the RTI I had singled out as many as 'nine segments of our society' which we would be examining during the course of our analysis. I should have taken the Legislatures in this one, both Central and the States, but I have fast-forwarded RTI's interface with the Non Governmental Organizations ( NGOs) ahead of our Legislatures, as the Information Commission has presently taken up this interface in its on-going consultations with the state Departments and Directorates and it would facilitate everybody's comprehension, both the NGOs and the Departments, if they happen to be readers of the **Garhwal Post**.

### **RTI a Child of the Activists**

It is common knowledge that the RTI came out of a persistent and dogged determination of some of our country's eminent activists like Aruna Roy and her comrade-in-arms in the MKSS of Rajasthan etc.. Our country is indeed proud of the fact that as many as two activists from our country have been conferred Magsaysay Award for their efforts in this field alone. A few months ago I participated in a workshop, at Jaipur, jointly organized by the Majdoor Kisan Sangharsh Sangathan (MKSS) and the National Institute of Rural Development ( NIRD), Hyderabad. This gave me an opportunity to meet up again my friend Lalit Mathur, the DG of NIRD, in whose room I had first met Aruna Roy and Bunkar Roy ( her husband) way back in 1983. Those days Lalit and the author worked in the Ministry of Home Affairs, looking after the welfare of Scheduled Castes and Tribes, and Aruna Roy being a former batch-mate of Lalit Mathur, had come calling on him. This recent Jaipur meeting on the RTI, which I attended, shared with the participants how in Rajasthan the NGOs have successfully exposed bunglings in muster-rolls, maintained by the panchayati raj institutions. The demand for copies of muster-rolls is also on the rise in Uttarakhand and this is bound to result in quite a few red-faces and criminal prosecutions. Already, a few gram pradhans are facing criminal enquiries and administrative actions.

### **NGOs and NGOs**

This writer has always been a very strong and open votary of supporting innovative and poor and people-centered initiatives, coming from any direction and coming from any institution or organization, NGOs not-excluded. This fact, as now the writer recalls his 30 odd years in public service, apparently has not gone down well with some of those who

are inimical to any innovation which is pro-poor and pro-people. So much so, that even some NGOs whose own integrity is proving to be quite questionable, went to the extent of certain actions bordering on libel and defamation ! Such acts only helped this writer in resolving further and taking decisions which would help cleanse the society of such frauds and exposing such institutions, including some NGOs, through strictly legal and constitutional measures. This writer's joining the Information Commission and saying no to a Secretary-ship in the Government of India, is but a small step in the same direction. The Uttarakhand Information Commission is going to go full distance in bringing in transparency and accountability in all public transactions, of that all readers can be rest assured. We all owe this new mountain state at least this much of assurance.

Definitionally and historically, the public sector and government is perceived as a status-quo ist and a laid-back mechanism and therefore if one is looking for an innovative initiative it has to be outside the government. Traditionally there have been three broad sectors; (i) the government, (ii) the private sector, and (iii) the third or non-government sector. At times, a fourth, the co-operatives, have also been added, but of late, this sector seems to have lost its steam and band of supporters. It appears that the co-operatives in the former colonial countries have to re-invent, re-discover and rejuvenate themselves. A hard look at the respect strengths and weaknesses of the three sectors would suggest that each sector must concentrate on its respective strengths, and that is how we actually commenced our journey on the so-called mixed-economy route ( the Nehruvian model of economic development). The NGOs have a definitive space cut out for them which is not occupied either by the government/public or the private sector. So, it is no wonder that the real thrust for transparency and accountability in public transactions and delivery of public services came from the NGO activists and ultimately gave birth first to the Freedom for Information Act, and now in its new avatar, the Right to Information Act, 2005 (the RTI).

### **NGOs as Public Authority themselves**

Our public sector organizations, both the regular departments and their extended arms like the directorates and field set ups, can out-reach but only up to a point, as beyond a point it becomes cost-inefficient. Moreover, when it comes to activities like awareness generation, social activism, reaching out to the last person, going by their over-all framework and culture the government servants present a very sorry picture. This brought in institutions like the CAPART, a grant-extending arm of the Ministry of Rural Development for NGOs, Mother Unit of the Ministry of Health and Family Planning. As the state concern in various facets of rural and social development expanded the space of activity for NGOs sky-rocketed. Partly due to very dismal performance of the public sector and partly due to the strength of the third sector, the NGOs, one witnessed an unprecedented expansion of the NGO sector. In due course, it was but natural that the sector attracted those who were there simply to make a 'fast-buck', as an enterprise.

One fact which surprisingly never attracts any informed discussion is the fact that the so-called public /government sector not only continues to exist, even expand ( ! ) notwithstanding the withdrawal of the main activity from the public to the NGO field,

and now even private sector and the panchayati raj institutions, resulting in unbearable and unaffordable burden on the public exchequer as non-plan expenditure ! Curtailing, non-plan expenditure on salaries and pensions and resulting right-sizing of the government department functionaries, is no one's agenda, and like right-sizing the family size, in this all political parties are in total agreement.

The crux of criticism against the NGOs is the public funds they use and to the extent they utilize public funds they become amenable to public disclosure, just like any government department. What is surprising is the fact ever since the RTI has come into existence the NGOs have not come forward and informed the public, or for that matter even the administrative departments from whom they have received budgetary funds for various activities, as to what extent they have notified their public information officers and complied with the provisions related to what is termed the 'duty to publish', section 4(1)(b), the 17 manuals incorporating various kinds of information relating to their functioning and management.

### **Initiative of the Commission and suo-moto action:**

This has constrained the Information Commission to use the powers of Monitoring and Reporting, given in section 25 of the Act, and direct all administrative state level departments and directorates to enlist all NGOs who qualify to be categorised as a public authority and nominate their PIOs and publish the 17 manuals prescribed by section 4(1)(b). All departments have now been directed to complete lists of all NGOs who have received public funds either directly from the state government departments or through the departments of government of India, on the recommendation of the state government, under any scheme of central or state government, for the monitoring of which the state government is responsible, pass this information to the Registrar, Firms and Societies, who in turn will pass it on to all departments and also upload it on the various official web-sites. The Commission expects to complete this exercise within a month or so and thereafter follow-it up to its logical conclusion, namely transparency and accountability in the expenditure of public funds, expended through the NGOs.

Recently the Commission has also taken suo-moto notice of certain NGOs who have been recipient of public funds but failed to comply with the provisions of the RTI Act, ever after 18 months of its existence.

### **The Number Game :**

This drive should hopefully resolve the ever-elusive question about the real size of the NGOs operating in the state. To begin with the public would soon very precisely come to know the exact number of NGOs, district-wise and year-wise, who have received government assistance, either from the state budget or the budget of the Centre if routed through the state government agency, from the year of the inception of this state in November 2000. This number alone should be taken into consideration, when it comes to probity in use of public funds. How and why should any one be concerned about institutions, formed by individuals under the Registration of the Societies Act, who have

never ever used public funds for their activities. They are just like any private sector entity, exempt from the operations of the RTI Act. It has also been observed that the departments themselves have very indiscriminately formed and registered various groups and association under the Societies Registration Act ( SR Act), which need to be re-considered at each department's level.

It has been observed that the infrastructure available with the Registration department is woefully inadequate to handle even the existing flow of work, not to mention the increased intake of work under the RTI. It certainly calls for a wholesale re-visiting of the SR Act and the various attendant issues, emerging out of the application of the RTI Act. The Commission expects to take this on, as the work in-hand gathers momentum.

### **Are the Newspapers a Public Authority ?**

Detailed discussions, stretching over 3 days on the NGOs and the applicability of the RTI provisions on any registered body, registered under any national or state law, and receiving public funds for 'whatever purpose' brought to focus a very interesting question, namely, are the newspapers registered both under the Newspaper Registration Act and the Press Act, which receive public funds a 'public authority', just as the NGOs registered under the SR Act and receiving 'public funds' are ? And, Information department chipped in with the fact that more than 50% of the Information department's annual budget gets expended through the registered newspapers alone ! The three estates of the State, namely, the Executive, the Legislature and the Judiciary have been made amenable to the RTI Act, as the Competent Authorities. Is the Fourth Estate, the Press and the Media, also amenable to the RTI Act, to the extent they use the public funds as registered bodies ? One can surely trust the NGO activists only to raise such thought-provoking questions and all this writer can do, at this stage of reflection, is to leave this very interesting and absolutely legal poser for the readers to vigorously chew on, and on.

**Article ends.....**