

Information Society, Right to Information, and the Challenge of Digital Preservation in India

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Abstract. Operation of the Central and State laws on right to information in India is integrally related to effective management of government records and information. This article makes a critical analysis of public records management in India, especially digital preservation, in the context of execution of central law on right to information in India—the Right to Information Act (2005). In particular, it makes a case for turning the gaze of all the stakeholders in the right to information movement to one of most significant, but neglected, legislation dealing with preservation, management, and organization of the records(including digital records) of the Central Government, the Public Records Act (1993). It emphasizes that in spite of a growing realization about the vital importance of the digital records and the imperative need for their management, the ground reality in government office shows the stark contrast between principle and practice. In the context of multi-disciplinary nature of the problem this paper seeks to address the vital problem of long term digital preservation of records in India. Digital preservation is a pioneering area of research in archival science and in India only a few researchers have taken cognizance of this although India boasts of the best collection of archival and documentary heritage. If the documentary and archival heritage of India is not preserved then there is a fear that we may pass into a 'digital dark age' and entire heritage will be lost to posterity. This issue becomes even more significant in the context of 'Digital India' initiative of the Government whereby the digital technology is slated to be the pivot of Good Governance. As such, it is argued that the concern must shift from paper based records to 'born' digital and born digital records

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INTRODUCTION

All public offices generate information in the course of daily transactions and the pace of generation of this information has seen a quantum jump with the use of Information and Communication Technology (ICT). In addition to this all states acquire comprehensive information on population, vital statistics, the functioning of economy and social welfare programs etc. In this whole gamut of activities and transactions records are a basic tool and, as such, almost all the information generated by the state is in the form of records. Records often take the form of documents on paper, but they are now increasingly on electronic media. Those records (whether paper or electronic) which become non-current and are found to be of permanent retention value after appraisal constitute the archives-- archives are the last stage in the life cycle of the records [1]. Therefore, both the records and archive constitute the basic and most reliable source of information as well as constitute the collective institutional memory of the modern nation-state [2]. Naturally, in developing countries records and archives contribute significantly to economic and social development because they are a unique source of information on earlier development initiatives. In India the since British times the state has treated information generation and information gathering as a *sine qua non* for achieving its various imperatives. *A fortiori* in the post-colonial period as the role of the state expanded to include welfare imperatives the state has seen unprecedented scale of information generation and collection. Yet, in the context of development of the information society the post-colonial state in India the greatest landmark, apart from adoption of ICT in public office, was not so much the quantitative expansion of information but, rather, the decision to establish a regime for data governance and to liberalize access to public information. This was done initially by the enactment of the Public Record Act (PRA), 1993. Subsequently it was fortified by enactment of the Right to Information Act (RTI), 2005. Apart from the Information Technology (IT) Act, 2000, these two acts should be regarded as vital legislative tools which enjoin the state to ensure that the public authorities take unto themselves their pivotal role in the emergence of information society.

Public Record Act 1993: The Statutory Framework for Access to Public Information and Record Management Regime

PRA [3] was enacted by the Indian parliament on 21 December 1993 with the main in order to regulate the management, administration, and preservation of public records of the Central Government, Union territory Administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union territory Administration. Many of the provisions of the Act were presaged by the recommendations of the Committee on Archival Legislation which was constituted by the Government of India in 1959 under the chairmanship of Professor Tara Chand [4]. The Act was an advancement over the Archival Policy Resolution (APR) of the Government of India of 1972 which had created a regime for the management and access of the public records. Unlike the APR, which primarily dealt with the Ministries and Departments of the Central Government only, the PRA was much broader in scope and included Public Sector Undertakings (PSUs), Statutory bodies and Corporation, Commissions and Committees constituted by the Central Government in its ambit of implementation. Undoubtedly, by its sheer novelty, the Act generated a lot of euphoria [5] and was looked upon as the final score of the long

innings played by the Indian academia and archivists. The following were the chief provisions of the Act:

- (1) It deals with management of the public records through their complete record continuum [6] i.e their life cycle from their creation by record creating agency to their preservation in the archival repositories. That is why it has been named as Public Record Act and not Archival Act as it done in some other countries. Thus, it was underpinned by an integrated view of the record and archives management.
- (2) Although it includes in the purview of the definition of 'records' the material produced by computer or other devices (section 2(e)) it did not provided any detailed and workable basis for management of electronic records. Perhaps it was not envisaged at the time of enactment of the act that specific provisions were required to deal with the governance of such records.
- (3) It provides that the Director General of NAI under authorization of the Central Government for various management and acquisition activities vis-à-vis different type of records such as ensuring proper maintenance of records by record creating agencies of the state and by the NAI, survey and inspection of records with the agencies, accepting records from private source, obtaining on lease any document of historical or national importance, disposal of public records etc (section 3(2)).
- (4) It provided that a Record Officer(DRO) in each record creating agency/public office should be appointed and should be entrusted with the management of the records in his unit(department) in consultation with the NAI for appraisal, preparation of retention schedule, downgrading of classified files, compilation of organizational history of the agency, transferring records of any defunct agency to NAI, etc(sections 5 and 6). In the offices of central government DRO of is required to carry out functions associated with records management in his department under the direction of the DG NAI(section 6(2)).
- (5) There is a zero tolerance policy for any unauthorized export or destruction of public records as prison term of five years or a fine of ten thousand rupees could be imposed in such cases (sections 4,8, and 9). However, no mechanism for implementing the penal provisions was indicated of prescribed in the PRA or Public Record Rules(PRR),1997. This was perhaps the gravest lacuna in the PRA.
- (6) It provided for setting up of an Archival Advisory Board chaired by the Secretary, Government of India dealing with culture. This Board is apex body to advise the government on record management and direction to the government on acquisition of records from private custody(sections 13 and 14) .
- (7) As regards access to information contained in the records in public office it provided that any records creating agency(i.e. public office) may grant to any person access to any public record (other than records bearing security classification) in its custody in such manner and subject to such conditions as may be prescribed by it(section 12(2)). However, for the access to archival

records which were more than 30 years old and in the custody of NAI only the bona fide research scholars were to be given this privilege(section 12(1)).

- (8) The government was to frame rules on the basis of these provisions and principle to implement the Act. Accordingly, on 9 January 1997 the Department of Culture promulgated the Public Record Rules and with this the Act came into effect.

RIGHT TO INFORMATION ACT(2005) AND MANAGEMENT OF RECORDS BY PUBLIC AUTHORITIES

One of the key policy initiatives of the Indian state vis-a-vis the ushering of information society in India is the recognition and declaration that the Right to Information (RTI) is the central to strengthening ideals of informed citizenry, participatory democracy, and rights-based approach to human development. Access to information, it has been realized, ensures good governance as it empowers the citizens to demand and get information about public policies and actions. Right to information opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable. Transparency in government organizations makes them function more objectively thereby enhancing predictability. Information about functioning of government also enables citizens to participate in the governance process effectively. In a fundamental sense, right to information is a basic necessity of good governance. In pursuance of these objectives Right to Information Act was enacted in 2005.

It is often overlooked in the academic discourse on the working of RTI Act that its main imperative is voluntary or proactive disclosure of information by public authorities so that the citizen make least resort to filing of application to access information. The section 4(1)(b) of the Act enjoins the public authorities to publish, within 120 days of its gazette notification, all the information which should be published subject to the exception mentioned in the Act and section 4(2) declares that it shall be a constant endeavour of every public *authority to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information'*(emphasis added). For achieving the key imperatives of RTI section 4(1)(b) enjoins the public authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated. Thus, the framers of the Act were conscious of the fact that at the core of the establishing a practical regime for the right to information is management of public records or the private records in the custody of public repositories such as record rooms, archives, and libraries. They realized that without an effective system for creating, managing, storing and archiving records, implementation of RTI laws will

always be more difficult. It is harder to reply to applications within the time limits set by the law, if the information requested cannot be located in a timely manner. It also undermines the law if information has been stored so badly that the records are no longer in a fit state to be inspected or copied. One of the most significant problem is unauthorized or willful destruction of public records or their unauthorized transfer to a foreign nations. Indeed, the very first report of the Second Administrative Reforms Commission (ARC) that was submitted to the Government in June 2006, examined the role of records management in the light of the RTI Act and stated that right to information opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable. An elaborate system of records helps in pin-pointing responsibility for each decision made in a Government Department. [7] Best practice requires that records are created and managed in accordance with clear, well-understood filing, classification and retrieval methods established by a public office as part of an efficient records management programme.

The annual reports of the CIC on the working of the RTI Act mirror the working of the record management activities of the state but also initiate a discussion on the necessary steps to be taken in this regard. The very first report on the working of the RTI Act emphasized that there should be a separate budgetary provision for the creating a framework for to advance towards an efficient records management system [8]. In fact, it took the record management reforms so seriously that it contained a significant discussion on the management of electronic records even though there is an utter lack about any awareness of the PRA. The report suggested that in order to streamline the record keeping practices the following steps[9] need to be taken by public authorities:

- 1.Be transparent about the weeding out process they follow within their organisation by uploading the rules regarding the same on their website.
- 2.Scan, store and index all papers, for end users, i.e. the public, beginning with those that are mandatory to be disclosed under Section 4.
- 3.Create a built-in system for electronically storing, indexing, searching ,referencing information so that records can be retrieved after any period of time, with ease.
- 4.Manage e-mails, as they are a record of the day-to-day activities of an organisation.
- 5.Ensure that records management policies and procedures are compatible with the RTI Act. Records managers should create an inventory of existing records in the, both electronic and paper-based, and identify documents on a priority-basis for gradually incorporating into the records management system. A framework must be created for the introduction and smooth transition from a paper-based system to an electronically managed system of keeping and preserving records.
- 6.Test a newly created system on a pilot basis, before deciding whether to replicate it or not, depending on the success or failure of the experiment.
- 7.Set a target to convert existing and newly created public records to electronic records. Milestones may be decided for different stages of transition.

8.Re-evaluate existing office norms that govern the discharge of functions in an organisation and change these norms to meet the requirements of a transition towards the electronic management of records.

Taking cue from the section 4 of the RTI Act and the detailed discussion on the blueprint for reforms for establishment of digitization of information in the first annual report of the CIC the subsequent reports have also emphasized on transition to new records management regime. Accordingly the second annual report places emphasis on proper indexing and computerization of records for regular and consistent publishing on the website of the public authority is required so that members of the public do not need to personally file an application or visit the officials to seek information.[10]

The Challenge of Long-term Digital Preservation

While for realizing the goals of the Right to Information, in practical terms, short term and intermediate term management of the digital records are vital, for the purpose of realizing the goals of Information Society in a true sense the long term digital preservation is a necessary pre-condition. In other words, the preservation of born digital records and born digital records for historical purposes is a necessary pillar for a sustainable growth of an information society and India is no exception to this. As already mentioned, the Public Records Act of (1993) took special care to legally fortify the digital preservation regime in the offices of the Central Government by emphasizing the care and management of electronic records. In tune with the explosion in use of digital technology in the official transactions in the last three decades the Central Secretariat (Manual of Office Procedure) which is a guiding tool for records management in the office of Central Government has been dedicating special chapters to proper management and disposal of electronic records. More recently, the Government has brought out for the first time a manual of e-office procedure which specifically deals with the manner in which the digital records should to be managed in their current state before being transferred to a digital archive/ repository for a long term preservation.

According to the Central Secretariat Manual of e-office Procedure,2012 (Ministry of Personnel, Public Grievances and Pensions Department of Administrative Reforms and Public Grievances) there will only be 2 categories of e-files: Category I which will contain such e-files which qualify for permanent preservation for administrative purpose or which are of historical importance, and Category II which will include e-files of secondary importance and having reference value for a limited period not exceeding 20 years. Further, the CSMOP Category 'I' e-files will be reviewed on attaining the 20th year of their life in consultation with the National Archives of India. In these reviews, the need for downgrading the original categorization of category 'I' may also be considered .The Category I e-files, after such a review , will be transferred to National Archives of India.

In the recent years the central government in India, apart from introducing above tools, has also made efforts to develop a comprehensive regime of long term digital

preservation. In 2009 the Government constituted a National Study Report on Digital Preservation Requirements in Indian(NSRDPR) under Dinesh Katre which was finally produced in 2010. As recommended by the NSRDPR, as a major project under the Indian National Digital Preservation Programme (NDPP), Department of Electronics and Information Technology (DeitY) set up the Centre of Excellence for Digital Preservation(CEDP) under C-DAC Pune in 2011 with the following objectives[11]:

- Conduct research and development in digital preservation to produce the required tools, technologies, guidelines and best practices.
- Develop the pilot digital preservation repositories and provide help in nurturing the network of Trustworthy Digital Repositories (national digital preservation infrastructure) as a long-term goal
- Define the digital preservation standards by involving the experts from stakeholder organizations, consolidate and disseminate the digital preservation best practices generated through various projects under National Digital Preservation Programme, being the nodal point for pan-India digital preservation initiatives.
- Provide inputs to Department of Information Technology in the formation of national digital preservation policy and strategy by identifying and selecting the activities for the National Digital Preservation Programme.
- Spread awareness about the potential threats and risks due to digital obsolescence and the digital preservation best practices.

In pursuance of its objectives the CEDP has produced several tools and benchmarks for long term digital preservation. The most significant of these tools, which was made public in 2013, is Best Practices and Guidelines for Production of Preservable Electronic Records(BPG- PROPER). This document provides a set of best practices and guidelines for production of preservable electronic records and its management in the context of e-governance. It is applicable for those e-records that need to be retained for long durations (e..g 10 years, 25 years, 50 years and beyond) and the e-records that need to be preserved permanently. Its core concepts of 'preservability' are based on requirements specified in IT ACT, ISO/TR 15489-1 and 2 Information Documentation- Records Management and ISO 14721 Open Archival Information Systems (OAIS) Reference Model. Best practices and guidelines specified in this document are to be used in conjunction with another tool called e-Governance Standard for Preservation Information Documentation (eGov-PID)for Electronic Records. The eGov-PID [12] provides best practices and guidelines for production of preservable electronic records and its management in the context of e-governance. It is applicable for those e-records that need to be retained for long durations (e.g. 10 years, 25 years, 50 years and beyond) and the e-records that need to be preserved permanently. The core concepts of 'preservability' are based on the requirements specified in IT ACT, ISO/TR 15489-1 and 2 Information Documentation - Records Management and ISO 14721 Open Archival Information Systems (OAIS) Reference Model. It introduces 5 distinct steps of e-record management i.e. e-record

making, e-record capturing, e-record keeping, e-record transfer to trusted digital repository and e-record preservation which need to be adopted in all e-governance projects. In addition, the C-DAC has also signed MoU with the nodal agency for archival preservation under the Central Government, the National Archives of India, to strengthen latter's capacities in the area of long term digital preservation as well as to develop a pilot digital repository in NAI.

CONCLUSION

The Central Government in India has taken steps in the right direction. However, it has still to formulate a digital preservation policy which is a *sine qua non* for a systematic approach to digital reservation[13]. Also, in general the archival discourse in India is still to change from centrality given to paper based records to those of digital records. This is amply clear from the approach of the National Archives of India(NAI). The preservation of digital records does not figure as a priority area in the annual reports on the working of the Public Records Act issued by the Director General of the NAI ; there is not even a mention of status of digital preservation initiatives of the Central Government. The general concern of the discussion in the in-house journal of NAI *Indian Archivist* still remains the management of paper based records. The social scientist especially the historians among them also seem oblivious to these issues[14]. However, the annual reports of the CIC on working of RTI act have taken cognizance of poor practices of digital record preservation and management though even here the concern is shown only for digitization of existing paper records without even taking due cognizance of the born digital records. Therefore, there is a need to achieve a lot more in order to realize the long term imperatives of an information society.

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