

NOTE FOR DISCUSSION

**TOWARDS AN ACCOUNTABLE AND
TRANSPARENT GOVERNMENT**

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1. It is well recognised that transparency in government is essential not only to ensure governmental accountability to the citizens, in whose name governance is done, but also to allow the citizens to have the information they require in order to meaningfully operationalise a democratic process.
2. In many democracies across the world, Parliaments have legislated laws that gives the citizens various rights relating to information about and with the government. Unfortunately, so far in India we have no such right and, in fact, are overly influenced by the Official Secrets Act and other laws and procedures that make the sharing of information not only difficult but often downright impossible.
3. As an outcome of various people's movements, legal pronouncements and the government's own pathetic failure at checking rampant corruption and mis-governance, there is now a possibility that the Indian Parliament will also pass a law, in the near future, which while not giving the citizen's the 'right to information' will at least provide for them 'freedom of information'.
4. In the meanwhile various state governments have already got passed legislations on the freedom/right to information. These include Goa (1997), Tamil Nadu (1997), Madhya Pradesh (1998), Rajasthan (2000), Maharashtra (2000) and Karnataka (ordinance 2000). In Madhya Pradesh, despite the bill being passed by the State Assemble, it is not in force. This is reportedly because when it was referred for Presidential assent the Government of India took the view that this was a Central Subject and could not be legislated upon by the State!
5. Fortunately, the other States that have passed such a bill did not seek Presidential assent.
6. Another interesting feature is that all the states that have passed such an Act are non-BJP ruled states and, when the Act was passed, were also non-NDA partners ruled states. Perhaps there is some significance to this!
7. The Government of India 'Freedom of Information' Act is currently, as we understand it, with a Parliamentary Committee. It has been in active offing for the last five years and even the current 'official' version has

been doing the rounds for the last nearly two years. Reportedly, senior politicians and civil servants are opposed to it for various reasons.

8. In this brief discussion note we propose to raise and briefly discuss some of the main issues regarding two aspects of the right to information: the proposed law and the measures required to operationalise it, once it comes into force.

The Law

9. The proposed 'Freedom of Information Bill' has evoked and continues to evoke fierce controversy. Apart from the name itself – where the very important notion of a 'right' has not been acknowledged-there are many other issues of inclusion and exclusion. Some of them are described below.
10. First, there is the all important issue of what types of information will be excluded from the purview of the bill. Earlier draft acts had the omnibus provision that 'whatever information was not in public interest to release would be with held'. However, the term 'public interest' is vague and can be used to block any information whatsoever. The current formulation of the act is more specific, however, even then various problem areas exist. For example, it exempts from disclosure any information that is 'exchanged in confidence between the Central and State Governments or any of their authorities or agencies'. It is generally felt that this is too wide a clause and could cover a lot of information which should be available to the public.
11. Another exemption relates to "recommendations made by an officer of a public authority during the decision making process". This effectively excludes all 'notings' in files. The popular perception is that unless the rationale for a decision is also made available to the public, it is not possible for the public to assess the decision in any meaningful way.
12. There is a debate on whether this right to information should only be vis-à-vis a government institution or whether a citizen should have such a right with regards to the corporate sector and other institutions outside the government. While there is, among the citizen's, broad consensus that corporations and NGOs should also function transparently, there are disagreements on how this should be

achieved. One view is that the government should be responsible to collect and make available pertinent information from the corporate and non-governmental sectors. Another view is that citizens should have the legal right to directly approach these bodies for information.

13. One of the major problems with the currently proposed act is that there is no provision for punishing officers who, in violation of the law, either refuse to provide information or provide false, misleading or incomplete information.
14. The system of appeal provided in the proposed act allows appeals only within the system. There are misgivings that this is not adequate. A suggestion that the Government has not yet accepted is that final appeal should lie with an independent body and not with the government itself.

Operationalising the Law

15. Once the law is enacted, it is not self evident that it will be enforced or become effective.
16. Perhaps a history of some aspects of the struggle (See box below) will give us clues about the difficulties that confront efforts at establishing transparency.

Sometimes the best solutions to social problems emerge from the society itself. This is what happened in Rajasthan where the villagers fed up with corruption in the Panchayat system, decided to do something about it. Under the banner of the *Mazdoor Kisan Shakti Sangathan (MKSS)* they started demanding copies of bills, vouchers and musterrolls relating to expenditure incurred by the panchayats. Because of a sympathetic bureaucrat, the vouchers and musterrolls for the few village panchayats were made available to the villagers. The MKSS then organised *jan sunwais* (public hearings) between December 1994 and April, 1995, where these musterrolls and vouchers were read out to the whole village. The results were startling. In village after village they discovered that many of the works that were supposed to have been undertaken in the village and for which vouchers existed, had in reality never been carried out. They also discovered that many of the names on the musterrolls were false, some even belonging to fictitious characters or to individuals long dead¹.

The news of this spread rapidly and more and more villagers started demanding access to musterrolls and vouchers. There was, understandably, panic among the panchayat functionaries who protested and the Gram Sevaks of Ajmer District even went on strike. However, this only strengthened the determination of the local people to demand and get a right to information about their money. The slogan they adopted was: *Hamare Paise, Hamara Hisab* (our money, our accounts).

¹ Much of the information on the Rajasthan experience has been gleaned from The Right to Know : The Right to Live, MKSS, 1996 (mimeo) and other letters and pamphlets of the MKSS.

Finally, this mass expression of the people's will and petitions from the MKSS succeeded and the Chief Minister of Rajasthan announced on the floor of the Rajasthan Assembly, in April 1995, that he would issue necessary orders to provide the required information. Though there was jubilation among the people and the activists, unfortunately, the battle had not yet been won.

Despite the assurance of the Chief Minister on the floor of the House, the State government refused to issue the necessary orders and instructions.

The movement spread rapidly to neighboring areas, but as there was no response from the government the MKSS activists decided to organise a public dharna in the town of Beawar. The dharna started on 6/4/96 was a success beyond everybody's expectations. Not only did hundreds of people participate but there was wide support from the press, from representatives of almost all political parties, from dignitaries within and outside Rajasthan, and most important from the common citizens. The citizens of Bewar and neighbouring areas not only contributed money and food to support those participating in the dharna, but also exhorted them, when occasionally their spirits flagged, not to give up the battle. It was clear that the demand for the right to information had captured the imagination of the masses.

After a month long sitting in Beawar, a simultaneous dharna was started in Jaipur and the State government was repeatedly petitioned to accept the people's demand for a right to information.

There were protracted negotiations between the activists and the government, with support from prominent personalities within and outside the state. The government finally issued a press statement reiterating its commitment to the CMs announcement cut and a time frame within which it would give such an entitlement. It also set up a committee to go into the feasibility of providing the demanded right to information. This committee deliberated for months and then came out with a report which was itself kept secret. However, information did leak out that the committee's recommendations were favorable to the demands made by the people.

As there was still no action by the government, the people once again decided to launch a movement and to have a dharna in Jaipur. Again this dharna, launched on 26 May, 1997, received widespread support from the people and coverage by the press. After the dharna had lasted for almost two months the government produced a notification, dated 30 December 1996, conceding almost all the demands of the people. It was surprising that this six months old Gazette Notification granting the right to information was itself a well kept secret.

In light of the notification, the MKSS and their supporters raised the dharna and went back to the villages to start using this new found right. However, till recently, most of the district and panchayat offices have not yet received a copy of the 30 December notification, and consequently expressed their inability to provide the required information to the people. The people are still struggling to get the bureaucracy informed about their right to information.

The Bilaspur Experience

Another significant step towards universal right to information took place in the Bilaspur division of Madhya Pradesh. Here, it was the bureaucracy, especially the Divisional Commissioner, who decided to provide to the people the right to information about the public distribution system and other government programmes. Instructions were issued, within the existing rules, that every individual would have a right to examine and get photocopies of allotment and distribution register in a ration shop. This, again, created a panic among the ration shop owners and independent observers confirm that perhaps for the first time since the PDS became operational one could observe the availability of food grains and other ration items in the shops.

It also led to savings in the PDS, confirming that leakages were blocked. However, though one year has passed since this order is issued on October 2, 1996, there is another type of problem that has emerged. Perhaps, because this right to information was not given as a consequence of mass public pressure, the people did not take cognisance of it. As a result, there has reportedly been very few demands for information in the last one year. Clearly, if the people do not use this right then its deterrent value, which initially led to a spurt in the availability of grains in the PDS shops, will cease to be effective. Things will go back to what they were before the right was notified.

The lesson to be learnt from these two cases is that you need combined action between the people and the government. Where the people recognise the need for, and have a commitment to, using the right to information, you also need the bureaucracy to be sympathetic and willing to accommodate and even encourage the provision and exercise of such a right. Unfortunately, so far we have seen the reluctant bureaucracy in Rajasthan and the disinterested populus in Madhya Pradesh. But there is hope that lessons would be learnt and even in these two states the apathy of the public and of the bureaucracy would be broken down.

17. Clearly, in order for the act to be effective not only does the government have to co-operate but the people and their organisations must push for enforcement and must use the provisions of the Act to access information so that the deterrence value transparency is not lost. The Act will serve the people of India only if it deters mal-governance. If the people of India have to perpetually use the Act to prosecute the Government, then there are no victors.
18. Fortunately, access to information is a need that cuts across sectors and levels and is critical to all sectors and levels. In fact, it is as critical to people outside the government as it is to people within the government. It is not only from the common citizen that the government withholds essential information, it often does this with its own employees.
19. A methodology that is currently being used to make different segments of the society recognise the value of information and motivate them to spend the required time and energy accessing it, is briefly described below. It might be worth replicating by government departments and by NGOs and other groups and bodies.
20. A discussion is initiated with people working in any sector, and they are asked to list the major problems and constraints they face in pursuing their work. From this list, by further discussion those problems and constraints are shortlisted that could be partly or fully removed if

appropriate information was available. It is then determined what type of information is required, who has this information and how it can be made accessible. It is also determined whether access to this information is currently restricted, or is it open. Also, whether rules and procedures already demand that this information be made accessible.

21. Following such a procedure, not only the details of the types of information required, the procedures that can be used to make it accessible and the location of the information are determined, for each sector and level, but there is also a heightened awareness about how thw access to information can facilitate our work. Examples of some of the analysis done in this way are being circulated separately.