

The notion of transparency

SHEKHAR SINGH

SINCE the beginnings of time, human beings have tried to exercise power over each other by controlling access to information and knowledge. Historically, this was most often through access to information regarding medicinal plants and the incantations that prevented or cured diseases. By keeping such information within the family, 'medicine men and women' safeguarded their power over others. Priests and holy personages claimed privileged access to the gods and kept their conversations with God a secret, thereby setting themselves up as centres of reflected power.

However, as human beings increasingly used technology in their everyday lives, knowledge and skills from new areas became a source of power and patronage. Master builders, master craftspersons, breeders of seeds, makers of fine wines, master cooks – each zealously guarded their special talents (owing much to special skills and privileged information) and gained riches and influence.

There was, of course, the passing on of this knowledge to 'apprentices', but this was in most societies a highly controlled activity. In many cases, critical information was only passed on within the family and that

also at the last possible moment. For example, among the Warli tribals in Thane district of Maharashtra, there are many medicine men who have detailed knowledge about the medicinal properties of plants growing in the region. However, this knowledge is confided by the father only to the son, and that also at the former's death-bed.

Information was also mystified so that if it did fall in the hands of 'unauthorised' people, they would not know what to do with it. Many traditional cures require the mixing of various plants and other substances in complex ratios. It has been long suspected that many of the ingredients are actually 'benign', adding nothing to the medicinal qualities of the compound. However, they helped hide the identity of the critical ingredients and thereby protected the secret.

With the growth of centralised bureaucracies and the increasing complexity of statecraft, the focus of secrecy based power shifted to the area of governance. This became especially so as autocratic and essentially arbitrary governance was gradually replaced by rule-based and even democratic governments, where it became increasingly important for those in power to keep away from the common

people knowledge of how they used their power. Therefore, while kings and queens were the acknowledged owners of the land and its resources, with no limits on their wealth, there was little need to hide its extent or even its sources. But as these worthies were gradually replaced by appointed or elected leaders, who ruled only on behalf of the people and for their welfare, implicit and explicit limits were set to the wealth that such leaders could acquire, or the arbitrary favours and patronage they could dispense. This led to the need to hide what was actually happening.

Of course, secrecy did not flourish only because of individual interests. The advent of colonialism and slavery, the latter a variation of the former, created a political need to keep the ruled in ignorance of what the rulers were really up to. Small colonial nations could hardly contain the combined anger of its colonies if the real purpose of colonialism became obvious. Therefore, the white man (and woman) was presented as the saviour of the brown, the yellow and the black, for he brought them education, economic prosperity, development, non-barbaric religion and, above all, civilization itself. The fact that colonies were essentially a source of raw material, labour and markets for the colonisers was 'hidden' from public view and fervently denied by all loyalists.

But even within the colonising nations there were significant social differences. The bureaucracy, particularly the civil services, usually represented a class that thought it their birthright to govern, sincerely believing that the rest were incapable of understanding the complexities of statecraft and were too irresponsible to be given any part in the business of governance. Much of the bureaucracy

still thinks so, much of the time, in much of the world!

Independence in 1947, and the creation of a democratic state posed new challenges to what till then had essentially been a closed and secretive system of governance in India. There is evidence that liberal political leaders supported the idea of an open and transparent government. However, the challenges were many and human and financial resources in short supply. The government moved from one crisis to another and the 'experienced' civil service, with its typical conservatism, continued to run the state as if the systems set in place by the colonial masters were ideally suited for a free democratic nation.

Specifically, the Official Secrets Act and the Code of Conduct for Civil Servants essentially remained unchanged and ensured that the Indian government remained secretive and opaque. Concurrently, a new class of political leadership was evolving that also saw the confluence of its interests with those of the civil services, even if for somewhat different reasons, and became allies in ensuring that information and power remained in the hands of the few.

There were, of course, occasional outbursts where demands for information were stridently voiced. One such was after the Chinese occupation of various parts of NEFA and Ladakh, in the early 1960s, when the people of India in one voice demanded to know why the Indian armed forces had been so unprepared and who was responsible for this. Similar demands were articulated following serious train accidents or exposure of large scale corruption. In the 1960s there was also the growth of internal conflicts, especially armed conflicts in the eastern and northeastern parts of India. In the 1970s this shifted to North

and parts of South India. These raised issues of human rights and habeas corpus, which again became a focus for demands about transparency.

The urge for greater participation in the governance of India was growing rapidly within many segments of the society. People were beginning to realise what independence and democracy really meant. They were beginning to understand that the government really did belong to them, if only they were willing to acknowledge that ownership. People were also becoming educated and literacy was improving, especially among the class of people who were most desperately dependent on the government for their survival. There was also a growing and healthy irreverence of authority. There was a concurrent growth in the reach of mass media, especially radio and television.

Despite all this, nothing much changed till the 1980s. However, in 1984 there was a disastrous gas leak in the Union Carbide factory in Bhopal, which killed thousands of people. This was, soon after, followed by another gas leak, this time in Delhi, at the Sriram Food and Fertiliser factory. Though the oleum gas leak in Delhi did not affect as many people and no lives were lost, it highlighted what could happen, especially if there was ever the leak of a more toxic gas. This prompted environmental groups, specifically Kalpavriksha, to file interventions in ongoing cases in the Supreme Court, specifically asking for a right to information with regards to environmental threats.

Essentially, the Supreme Court was petitioned by environmental NGOs arguing that since a fundamental right to life was granted under the Constitution of India, this right must imply a right to know when one's life was being threatened, by whom, and

in what way. From this also follows the right to know what the government is doing to minimise such a threat, and what the individual can do. The Supreme Court was sympathetic and allowed access to various categories of information specific to the case, but no generic orders were passed.

Soon afterwards, the Bombay Environmental Action Group filed a case in the Bombay High Court demanding a right to know in advance, specifications relating to land use so as to ensure that bylaws related to land use were not being violated. They managed a favourable order from the court. However, it did not result in any systemic change.

It was only in the 1990s, when grassroots movements around the right to information sprung up in various parts of the country, that there appeared some hope of finally making systemic changes. The early 1990s saw the emergence of a grassroots movement in the state of Rajasthan, spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS). The MKSS evolved an innovative and effective strategy of organising *jan sunwais* (public hearings) around issues of public concern. Information was collected from the government in advance, for example about expenditure on development works in a particular village, and this information was publicly read out to all the inhabitants of that village. In this way a social audit was conducted that allowed even the illiterate to participate. The MKSS gave birth to a spate of efforts across the country.

In 1996 a group of people came together to form the National Campaign for People's Right to Information (NCPRI). Whereas the MKSS had spearheaded the RTI movement in Rajasthan, the NCPRI took up the task of formulating and having passed a national law on right to information.

The NCPRI drafted an RTI act which was further strengthened by the Press Council of India under the Chairmanship of Justice P.B. Sawant. This draft act was then sent to the Government of India for its consideration and the government referred it to another committee headed by H.D. Shourie. This committee came up with its own draft of the RTI act, which was again forwarded to the government. This time it was put before a parliamentary committee. It was only in 2002, and that also after some pressure from the Supreme Court, that a national Freedom of Information Bill (as it was then titled) was passed by Parliament. However, the bill specified that it would come into effect only when it was notified and, till December 2004 it was not notified. In December 2004, the UPA government introduced a new Right to Information Bill 2004 in Parliament, which sought to repeal the Freedom of Information Act of 2002.

The Right to Information Bill of 2004 was based on recommendations made by the newly set up National Advisory Council (NAC) headed by Sonia Gandhi and which had the mandate of monitoring the implementation of the Common Minimum Programme (CMP) of the UPA government. The CMP specifically stated that, 'The Right to Information Act will be made more progressive, participatory and meaningful.' It was in fulfilment of this undertaking that the NAC had undertaken the exercise to suggest amendments to the Freedom of Information Act of 2002 and sought help from the NCPRI. The recommendations finally sent by the NAC chairperson to the prime minister, in August 2004, were based on the recommendations of the NCPRI, which were in turn based on consultations with groups and individuals working on the

RTI. Therefore, the process of participatorily evolving a socially relevant law had been started.

Unfortunately, by the time the amendments to the Freedom of Information Act of 2002, as suggested by the NAC, were introduced in Parliament in December 2004 as a new act, they had been drastically watered down. There was, therefore, an immediate reaction from civil society groups across the country and the government was forced to set up a group of ministers and refer the bill to a parliamentary standing committee. Fortunately, after a long campaign, the revised bill has been passed by Parliament.

Even as these battles were going on at the national level, many of the states were enacting their own right to information laws and, in some cases, moving well beyond the Government of India. Unquestionably the best of the state acts is the Maharashtra Right to Information Act that was passed in 2003. The main moving force behind this act was the noted social activist Anna Hazare.

In the early 2000s, another strong grassroots movement for transparency led by Annaji was initiated in the state of Maharashtra. Using Gandhian tactics, he forced the Maharashtra state government to repeal an earlier weak act and pass a much stronger right to information act, and to secure presidential assent for this new act in contradiction to the stated Government of India policy. Movements have sprung up both in rural Maharashtra and in the cities of Mumbai and Pune, using the new Maharashtra act to expose corruption and malgovernance.

Using this act, various people in Mumbai and Pune have accessed information and exposed corruption within the bureaucracy and among elected representatives. Shailesh Gan-

dhi, an active RTI user in Mumbai, has recently unearthed a scandal of enormous proportions with far-reaching consequences. He used the RTI to discover that substantial public land in Mumbai continues to be occupied by private institutions many years after their lease had expired. In some cases, these lands are being used for commercial purposes, very different from those envisaged in the original lease.

Perhaps the next best state act is the one passed by the Delhi Government in 2001. Two of the groups that have effectively used this act in Delhi are Parivartan and Satark Nagrik Sangathan (SNS).

Parivartan has organised jan sunwais, in the fashion of MKSS, to expose rampant corruption in the municipal corporation and other departments of the Delhi Government. The SNS organised what was the first urban jan sunwai on issues related to the distribution of rations in Delhi. Parivartan has also helped the poor people to demand information about the supply of rations, especially against ration cards issued to families below the poverty line. This has resulted in many families, for the first time, getting their fair share of rations at the official price.

Rajasthan was one of the earlier states to enact a right to information law, mainly because of the pressure put by the MKSS. Here also, the RTI law is utilized to access information about corruption, about the distribution of rations and even about the provision of medical services.

There are RTI acts in Tamil Nadu, Karnataka, Assam, Goa, and Madhya Pradesh. In Goa, activists have used the act to expose violations of the coastal regulation zone and other environmental regulations. In Karnataka, some economists have

formed a group called PROOF, and are using the RTI law to access and analyse information about government budgets. Though Meghalaya does not have a RTI law as yet, it has a robust movement that is pushing its state government to enact such a law.

Though the RTI movement in India is well on its way to maturity and certainly transparency is an idea whose time has come, many hurdles still remain. Even where a good RTI law comes into effect, there are some critical backward and forward linkages that have to be factored in. The government must learn to maintain its records better if it is to efficiently service public requests for information. It needs to computerise and put more information *suo motu* in the public domain, thereby saving itself the time and costs of retrieving it each time it is asked for, and also facilitating easy and relatively safe access for the public.

Also, if the RTI is to mean anything, there must be a demystification of information. Government agencies must put out information in a form that is easily understandable. Information must be contextualised so that its significance is self-evident. But this runs counter to current trends where every discipline and each area is developing its private language and growth of technology and knowledge is thought to mean that more and more people will understand less and less.

As a forward linkage, it is important that the system provide quick relief and justice to those who have exposed wrongdoing by using RTI. If evidence of corruption, or apathy, or inefficiency piles up but no action is taken against those found guilty, an historic opportunity for empowering the common people and making the government answerable to them will be lost, perhaps forever.