

Failure to Press Forward with Right to Information Legislation Squelches Bengali Rights

Katherine Hayes

The committee charged with finding ways to make information more available to Bengalis is at a standstill and has been for nearly a year now. It is disappointing that responsibility for this lack of action appears to be the result of Chief Minister Buddhadeb Bhattacharjee's failure to provide the Committee with the clarifications necessary to continue their important inquiry. Entrenching the right to information should be a priority for any government which is seriously committed to transparency and accountability to the public. The Chief Minister should take action immediately to give the Committee whatever support and direction they need to take this important issue forward effectively.

The failure of the West Bengal Government to take action to enact right to information legislation denies Bengalis a basic human right. As far back as 1946, the United Nations recognized that "Freedom of information is a fundamental human right and the touchstone for all [other] freedoms." Since then, the Supreme Court of India has gone on to recognise the right to information as a constitutionally enshrined fundamental right arising out of the protection in Article 19 for freedom of expression and the recognition in Article 21 of the right to life and liberty.

The right of the public to access information is vital to make democratic participation more meaningful. Only when a democratic populace has access to information concerning the decisions its government makes can they truly use their democratic powers.

Access to information has also proven to be a very effective oversight tool, exposing corruption when citizens demand information on how government contracts are awarded and how money is spent. In India, citizens in states with right to information have become actively involved in their local development, policing their government's decisions and ensuring that development jobs are done correctly, on time and for the amounts specified. The people have direct oversight into the expenditure of their tax dollars. Perhaps this explains why many politicians are hesitant to enact right to information legislation.

In recognition of the value of the right to information to democracy and development, in December 2002, the Central Government passed the *Freedom of Information Act*. The Central Act received the President's assent in January 2003. Unfortunately, the Central Act contains a number of deficiencies. For example, it contradicts international best practice by failing to include independent appeals mechanisms where a requestor wants to challenge the Government's decision not to disclose information. Further, the Act provides no penalties for officers of the government who fail to provide information when requested. State acts in Karnataka, Madhya Pradesh, Assam and Delhi provide penalties designed to ensure proper enforcement. With these penalties, government information officials who fail to provide information, or provide incomplete or incorrect information will be punished. In any case, the Central Government has failed to draft the rules necessary to make the Act operational.

Where the central government has failed, Indians must rely on their states. This makes it more disheartening that the Bengali government is failing to protect the rights of its citizens. Several states

have already recognized the necessity of securing their citizens rights despite the central act. Maharashtra's Freedom of Information Act received Presidential assent despite the existence of a central act. Jammu and Kashmir and Madyha Pradesh also enacted Freedom of Information legislation after the Central Government passed its Act. The actions of these states make the West Bengal Government's failures even more disappointing.

In *Raj Narain v. State of U.P* the Supreme Court of India explained: "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every act; everything that is done is a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings."

Right to information legislation has the potential to open governance and democracy to people across India. Today, this potential is being ignored – and some would say obstructed - by a Government which has let the right to information fall to the bottom of its priority list. The people of Bengal deserve more from their elected representatives. Transparency and accountability provide the bedrock for a functioning democracy. An effective right to information law is a key mechanism for entrenching these principles and should be enacted and implemented in Bengal – and India as a whole – as soon as possible.

Katherine Hayes works for Commonwealth Human Rights Initiative's Right to Information Programme in Delhi which works to promote the right to information in the Commonwealth. For more information see www.humanrightsinitiative.org.