

The pressure for accountability

It would be good if the State's right to information law co-exists with the Centre's freedom of information law

BY SUBRAMANIAM VINCENT

Imagine a situation where central and state government departments in the country make regular public disclosures, at least one every year, of their budgets, funds disbursed, subsidies implemented, beneficiaries, licenses and permits granted, contracts awarded and so on. Imagine that a set of Information Commissioners is around for enforcement. If this alone were to come to pass, it could result in a sea change in transparency in the country.

Amidst myriad other specifics, this is precisely what the National Advisory Council to the Central Government (Chairperson: Sonia Gandhi) has put together by way of amendments to the languishing Central Freedom of Information Act (FOIA). The Act received Presidential assent in 2003, but was not notified and hence has not been in force. At the NAC's second meeting last week, its eminent members including leading civil society campaigner Aruna Roy and economist Jean Dreze finalised several forward-looking amendments to the Act for the UPA government's consent. Input for the NAC's changes were received through consultations with citizens' groups nationwide.

Classic timing

This could not have come at a better time. Hearing a PIL (unrelated to the NAC proceedings) on the inoperative status of the FOIA, the Supreme Court asked the Government to complete its consultation with the states on the Central law by September 15 and either effectuate the Central FOIA or formulate interim administrative rules to give citizens access to government files. The NAC itself had recently been constituted with civil society leaders and experts to monitor and provide inputs into the UPA government's Common Minimum Programme. Undoubtedly, both developments put transparency reforms on a faster track. But even as these processes are showing promise, the Karnataka government has silently decided to repeal the state's own Right to Information (RTI) law, partly in response to a request the Central government made to all nine states with RTI laws.

The Centre's opinion is reportedly based on the view that the Central RTI law (FOIA) was enacted using power vested with the Centre on the Union List (a default entry called residuary power), and therefore its coming into force will make the state RTI laws liable for repeal; the states can only legislate on matters found in the State and Concurrent Lists. The Karnataka government chose to agree, and has already taken an in-principle decision in favour of repeal.

The GoK's eagerness notwithstanding, not all legal luminaries agree. Supreme Court lawyer Prashant Bhushan points out that there is no specific entry in the Union, State or Concurrent Lists dealing with the Right to Information. "It would be open to any legislative body to provide for access to information on any subject on which it has legislative competence," he clarifies. His view is that "the Central Act will override

the State Acts, where there is a conflict between the two". In short, no real need for repeal, not by Karnataka, nor any other state.

What significance?

Still, why is this relatively lofty federal matter of any significance to the citizen, especially if an overriding and progressive Central law may soon come our way? If the UPA government does not accept the progressive provisions of the NAC's draft, the much weaker and unamended Central law may come through. The law has several weaknesses, such as no independent appellate provision and no penalties for errant officials. Karnataka's law at least allows an independent appellate authority and penalties in theory, though neither has seen serious enforcement.

If Karnataka repeals its somewhat better RTI law in favour of an even weaker Central law, transparency is the loser. The top bureaucrat responsible for catalysing RTI in the state, Mr Muniyellappa of the Department of Personnel and Administrative Reforms, admits this candidly. The DPAR also reports that it had recently taken several steps to notify officials state-wide for handling RTI requests as well as training officials at Mysore.

Aware of this tricky issue, the NAC acted. One of the council's revision recommendations for the Central law explicitly allows the Central and State RTI laws to co-exist. If New Delhi accepts this and Parliament gives it a green-light, the Union List argument could get unhinged and Karnataka's law may remain after all. But time and citizen pressure will tell whether the NAC's recommendations will survive or fall through the many cracks of our polity. Still, while the forward push at the national level is encouraging, transparency remains best assessed by outcomes where the rubber really meets the road — plugging leakages on health, education, food supplies, poverty alleviation, and infrastructure. Efficient internal work processes are equally essential to systematise regular disclosures and likewise increase responsiveness to RTI requests. In the meantime, progressive laws are a welcome foundation.