

COMMONWEALTH HUMAN RIGHTS INITIATIVE

REPORT OF NATIONAL WORKSHOP ON RIGHT TO INFORMATION

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Introduction and Background

The issue of Right to Information has gained considerable importance in recent years and all the more so now as the possibilities of it becoming a legislated right is very real. Through, civil action such as social audit by grassroots groups, the movement of the consumer groups, and the de-centralization of power to the gram panchayats, the realization that government need to be more transparent and accountable in order to make democracy meaningful has taken firm ground. The right to information is the basis for effective participation in governance as well as a potentially powerful tool for countering corruption by increasing transparency.

In India, the importance of the right to information is being tied up directly with the very right to survival as illustrated by the struggle of the landless labourers and farmers of Rajasthan through the public hearings (*Jan sunwais*) organized by the Mazdoor Kisan Shakti Sangathna (MKSS). This linkage is not surprising at all since there is a clear need of information about developmental and related programmes and their implementation essential for the survival of the poor and deprived of the country. The issues of good governance (through participation), accountability, checking corruption and transparency in the government exist at such basic as well as higher level and are essential for a strong democracy.

Further, the continuation of colonial legislation like the Official Information Act 1923 and frequent resort to it has contributed majorly to promote the culture of secrecy in the government. Efforts to change this regime have been made mostly by governmental Committees and have not been successful.

It is now recognized that given the facts of illiteracy and poverty in India, government needs to play a more positive role in the giving of information. Therefore, besides the removal of impediments like the Official Secrets Act, there must be an independent law recognizing the rights of people to get information from the government.

In the given situation, initiative has been taken at the state level to enact a specific legislation to provide for a right to information or freedom of information. States like Goa, Tamil Nadu, Rajasthan have legislation and efforts are on in Karnataka and Maharashtra to enact a law. The legislations are not uniform and in themselves not comprehensive in covering all the aspects of a people's right to information. A central Freedom of Information Bill was drafted in 1997 by the Working Group set up by the United Front

Government. But this disappeared after the government fell. Now another Bill based on this has been drafted and was due to be tabled in the Parliament during the planning for the National workshop (and it was introduced just a few days prior to the workshop, i.e., 25th July). This Bill has many infirmities that deny an effective right to information to the people. Civil societies, right to information activists, lawyers, academics etc., all voiced their protest against the adoption of the Bill.

It is at this crucial juncture that this national workshop was held to bring together the experiences of different people from civil society, bureaucrats, lawyers, media persons who have been campaigning for the right to information and to examine the draft of the Bill as available in the light of the requirement of a healthy democracy and the people. Also, to reiterate the essential requisites of the law on right to information and to devise strategies to lobby for the desired amendments to the Bill.

About sixty-five (65) participants attended the workshop from eleven (11) states over two days and, briefly, the following discussions took place:

On the Existing Culture of Secrecy

Emphasis was laid on the prevailing culture of secrecy in the government, more specifically, the bureaucracy of the country. The consequence is the denial of the right to information – the government itself does not release information about important and basic issues like water, food, health, shelter etc. and when it is requested for information it is refused. A clear link was drawn between secrecy and corruption. The fact brought out through instances¹ was that due to this culture of secrecy. Corrupt politicians, bureaucrats and businessmen were able to work together and in collusion to benefit at the expense of the public, specifically the underprivileged. There are examples to show that information can be used as an effective tool against the menace of corruption. The Central Vigilance Commission's innovative use of information as a deterrent by seeking to break in the link between secrecy and corruption² and the MKSS public hearing exercises using bills and vouchers for the money spent on development projects in particular villages in Rajasthan are cases in point.

The culture of secrecy can be traced back to the administration system established in India by the British and legislations like the Official Secrets Act meant to keep information inaccessible to enable administration to control everything. Post-independence we live in a

¹ For example, more than 30 percent of material is going from the PDS into the black market through this collusion (N. Vittal).

² It has put up the names of charge-sheeted government officials on its web-site. Such information dissemination helps in the following ways;

- 1) Provide knowledge to the people, especially in the context that even the high and mighty of bureaucracy are not beyond departmental inquiry and action (It is a common perception that bureaucrats at the top of the hierarchy cannot be touched at all)
- 2) With the knowledge of the people comes pressure of the people to see that the guilty are brought to the book, and
- 3) With the pressure building on the bureaucracy, it acts as a deterrent on the bureaucrats not to indulge in corrupt activities.

democracy with a government of the people, by the people and for the people. But the colonial legacy still continues with the culture of secrecy deeply entrenched in the fabric of administration. Not surprisingly, information is not kept secret from the privileged in the society. In fact, the wealthy people can satisfy their need for information as soon as the relevant information is generated. It is the poor and deprived who are denied their democratic right to know and participate at the grassroots in governance. Even the ordinary urban middle class people in the cities are deprived of their fundamental right to information. Today, the culture of secrecy is so ingrained that the government feels averse to even allow information provided by others, much less gather, assimilate and provided it itself.³ It is the need of such people that is not fulfilled by the Bill, which purports to bring in transparency and accountability in the administration.

There was unanimous agreement in the workshop that an effective right to information is instrumental in checking and reducing corruption by breaking the culture of secrecy. But the Bill in the Parliament is not strong enough to ensure that this process actually takes place in the government. Wide discretionary exemption clauses are incorporated in the Bill that will enable the concerned official to refuse disclosure at will. Therefore, there is no means, in the Bill, to ensure that it will make the functioning of the government more transparent than is now. To the contrary it may further curb information accessible by the public. Though it was suggested that the formulation of the Bill itself was a good sign and it should be pushed for quick adoption as it is, it was accepted that appropriate amendments in the Bill should be pressed for to get a better law in the first place.

On the Obligation of the Government

Probably the toughest challenge is getting information in an easy to understand manner to the overwhelming number of people who are poor and illiterate. Adding to this is the problem of lack of information to begin with. There is lack of information at two levels, first at the information formation / generation level and secondly at the distribution and dissemination level. For example, most government regulations and policies are published in the Official Gazette, but there is almost no information about the Gazette themselves. No one knows where or how to access the gazette. For all practical purposes the Official Gazette does not exist for the urban poor and rural communities.

A proper and effective right to information demands that the information held by the government is available to the people and is easily accessible. Creating such an onerous obligation on the government, it is generally argued by the bureaucracy, can lead to over-burdening of the government's administrative mechanism which is already under a lot of pressure. It was felt that this argument cannot be considered seriously in the light of the importance of the fundamental right to information, especially in the context of basic issues such as food, water, livelihood, development, public health and safety, liberty etc. Clearly, it is the obligation of the state to protect this fundamental right of the people keeping in mind the needs of the public.

³ For example, it was mentioned during the discussions that the government had prohibited a movie made in the Tragedy focussing on the victims and their plight made by Muzaffar Ali. In fact, the means of movie censorship is a reflection of the prevalence of the culture of secrecy of the government.

Within the issue of general obligation on the government there is deeper obligation on the government to proactively produce and provide information related to public safety, health and life. This is in the context of industrial accidents that can jeopardize lives, like of the Bhopal Gas Tragedy. In the case of such developmental activities undertaken by any industry, it was felt that there must be some enforceable mechanism whereby, the government will have access to the details of project and its possible repercussions and make such information available to the public in the vicinity of the project without the public having to ask for the information, and provide the public a chance to air views. Open meetings are a good mechanism to provide information to the public in a transparent manner. Such laws exist in the US in the Sunshine Act and Advisory Committee Act⁴. These Acts are empowering for the public. These initiatives also entail an obligation on the private bodies to open up in some respects to the public.

On the Provisions of the Bill

The above discussions set the undertone for the discussions on the various provisions of the Bill. Any law on the right to information must be capable of addressing the hurdles arising out of any combination of the above factors in a meaningful and effective manner. The workshop was planned at a crucial point where the Freedom of Information Bill 2000 was due to be introduced in the Parliament and certain states in India already had enacted laws (Goa, Tamil Nadu, Rajasthan, etc.) or enforced administrative orders (Madhya Pradesh) on providing information to the public.

The Bill, formulated without substantial inputs from public interactions, was found wanting on all the major aspects of an effective and people friendly right to information law. Even the title of the Bill – Freedom of Information Bill 2000 – was also criticised for not reflecting the right's aspect of the issue. Comparative inputs about the FOI legislation in the various states in India along with inputs on initiative at an official level (administrative/executive orders) were provided.⁵

From the above discussions, common aspects were found lacking in the various laws, though the degree varies. These aspects form a part of the non-negotiables that are considered to be absolutely essential for an effective right to information law and therefore cannot be diluted in any respect. The non-negotiables have emerged as a result of previous workshops conducted by CHRI and the National Workshop last year in 1999. The important aspects are:

- Minimum, clear and specific exemptions;
- clear process for making request (written / oral);
- reasonableness of the time period for compliance with the request;
- clear fees structure;

⁴ Prof. Manubhai Shah, CERC.

⁵ Generally speaking, the bureaucracy plays a dominant role in the drafting in our country. Jayaprakash Narayan, Lok Sabha cited instances, about politicians in Andhra Pradesh taking the initiative to draft and frame meaningful laws. But due to the lack of proper balance between authority and accountability in our system and the political stability, these initiatives never saw the light of day.

- clear obligation on the government to provide certain information including information about developmental activities bearing public safety, health and environment costs;
- independent monitoring mechanism / agency;
- independent appeal process and appellate authority;
- inclusion of private bodies;
- adequate penalties;
- protection of whistleblowers.

The idea of a central law is to remove the disparity of the standards on the freedom of information provided to the citizens under these different legislations. But some feared that the Bill was in many respects weaker and would, if enforced as law, have the effect of diluting the higher standards set by some of the state initiatives.

More concentrated debate on the Bill uncovered the weakness of the proposed law in addressing the factors as mentioned above and pave the path towards a more open, accountable and friendly government because of the infirmities contained in its provisions. More specifically it was found that:

- The Bill is too sketchy and sacrifices to brevity the important details (as enumerated above) which would be imperative at the point of implementation.
- The generality of the provisions leaves much room for confusion. Likewise it leaves too much room for administrative discretion, defying its very purpose. This is true particularly for the exemption provisions of the Bill.
- The Bill is not designed to address the specific needs of the Indian masses, as it completely ignores important aspects of voluntary and mandatory disclosure by public authorities. Moreover, it ignores the need for simplification of the rules, procedures and official language and does not stress on effective communication of information to common people.
- Likewise, it ignores the growing trend of privatisation and its impact on the common person. It is lacking in provisions for disclosure from private parties either on their own or through governmental channels.
- The Bill is completely lacking in the aspect of fixing accountability for people responsible for delaying or refusing information. It will not effect any change in the existing culture of routinely refusing information. While the Bill gives a time consuming and tiring process for requesting information and appealing its refusal, there is no system for holding anyone responsible for unreasonable delays or unwarranted refusals. This puts the entire burden on the person seeking information with no consequences on the person whose dereliction causes delay and possible resultant damage.
- The Bill does not mention allocation of costs for setting systems for enforcing the Right to Information. Without this important aspect, giving a right in a vacuum will be meaningless.
- The Bill does not provide for correction of personal or private information in public records.
- The Bill by its nature of being loosely worded is likely to put the common man to unnecessary hardship in terms of running from pillar to post for accessing simple information.

- The Bill does not have a provision for a regulatory body that will oversee the working of the Act and ensure its compliance. Experience shows that the objects of the law will be met only by enforcing a change in the culture of sharing information. This can be done only by constant monitoring of the application and implementation of the law, and effecting systems where necessary. Most of the state laws have councils for right to information that will oversee the working of the Act.

An atmosphere of optimism appeared amidst hopes of a better law on right to information upon stepping up the campaign for the same with the decision makers, Parliamentarians, policy framers etc. It was felt that due to these reasons the Bill falls short of expectations of a progressive piece of drafting designed to address the basic issues of accountability, openness and governance. From this emerged a need for pursuing/seeking amendments in the Bill through a defined strategy.

Strategy and Conclusion

There was unanimous agreement that the FOI Bill fails to convince as a progressive piece of drafting which will be effective in addressing the issues of right to information from the perspective of the people of the country. Strong discussions took place with regard to the action plan, especially considering the fact that the Bill was about to be introduced in the Parliament

The Action Plan

The following emerged as concrete paths that can be followed in the future:

- Each should take responsibility for initiating demand for information with our respective organizations and contacts back in our states, based on the discussions here.
- Start and sustain lobby with Parliamentarians and bureaucrats open to the idea of right to information for ensuring that the Bill gets passed only after adequate debate and to press for amendments of the non-negotiables. To this end, each network or group should approach the person most open/available to them in their region.
- CHRI and networks working closely with it should start on a more intensified capacity building and education exercise for activists or organisations working on the field to enable them to understand and contribute in their way to the cause for right to information.
- Sustained use of the media, local and national, to keep the issue alive and current in the context of the Bill, so that interest of the public (readers) is generated and retained.