

Brief report on the National Workshop on Right to information held on 10th and 11th December 1999, alongwith recommendations for the expected legislation.

Background

The *Right to Information* is an issue which has gained considerable importance in recent years. The need for more access to information which has till now been in the exclusive possession of the government even though it relates to the well being of the individual or the public at large is being expressed by varied groups. Civil action such as promotion of social audit by grassroots groups, the activities of the Consumer movement, the decentralisation of power to the gram panchayats, has led to the realisation that government needs to be made more transparent and accountable in order to make democracy meaningful.

The right to information is being seen as the basis for effective participation in governance as well as a potentially powerful tool for countering corruption. While in the West the developments on this issue were largely related to Freedom of Speech and Expression and were impacted by the Press's and media's struggle against repressive state control, the movement in India has taken a different colour with the importance of the right to information being tied up directly with the very right to survival. This has been amply illustrated by the struggle of the landless labourers and farmers of Rajasthan through the public hearings or *jan sunwais* organised by the MKSS.

Unquestioned and untrammled resort to outdated legislation like the Official Secrets Act, 1923, has long been identified as one of the main reasons for promoting the culture of secrecy in India and efforts have been on even since independence for its repeal and amendment. These efforts, conducted mainly through governmental Committees have borne little fruit and the situation has remained the same- in fact, it has worsened and the statute has been used time and again as it suited the government, to suppress information.

Over the last decade or so, there has been moves to have a distinct legislation on the right to information, in recognition of the fact 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 recognising the rights of people to get information from the government.

These developments gave rise to a few initiatives for proposing draft laws to the government. Over the last few years, governments and various political parties started committing to the making of such a law- through their manifestoes and through statements made while in power. The most effective of the initiatives to set the ball rolling has been the setting up of the Working Group on Right to Information and Promotion of Open and Transparent Government in 1997 by the United Front Government. The Group gave its report in May-June 1997, but thereafter there was a change of Government at the Centre and no further developments took place besides a few statements of the next Prime Minister (Mr.A.B.Vajpayee) that the government was considering passing a Right to Information law. After national politics being in a flux for about two years, there is again a coalition government at the Centre and there are moves again for legislating on the right to Information.

It appears that a cabinet committee has drafted a new Freedom of Information Bill, primarily based on the draft given by the Shourie Committee which is to be introduced at an early date, probably the next session of Parliament in February 2000.

It was in this background that the National Workshop was held, to share the experiences of different people from civil society, bureaucrats, lawyers, media persons who have been campaigning for the right to information and to cull out the essential requisites of the law on right to information.

The workshop was attended by about 75 people over two days and, briefly, the following discussions took place:

On the importance of the Right to information

There was an unequivocal commitment to the fact that there was an urgent need to enforce the right to information from people. Grassroots workers recounted instance after instance how the lack of information has been the main reason for disempowering and disadvantaging people whether it be in relation to basic needs like food, minimum wages, water, health care, or in areas like the environment, development through large projects, custodial violence and police repression, etc. These are areas where people's very existence is threatened because of lack of information, refusal to give timely and sufficient information. Besides these are the woes of the media itself which while being the effective and strong vehicle for preserving democracy, is itself subject to lack of information or the ability to verify information.

On the government's role in providing information

Although the general trend at all levels of government still appears to be the traditional reluctance to give information to the people the participants lauded different governmental efforts to open up the system and to make it more friendly to the public. Some of the initiatives have been from the Centre as in the guidelines issued to the Chief Secretaries after the Chief Ministers' Conference in 1997. These guidelines themselves and their impact are little known to people. The Madhya Pradesh Government's executive orders to about 45 departments for disclosure of information are well received but are again faced with the same problem of lack of awareness and implementation. The overall culture, however, still needs a sea change as government still seems to regard withholding or disclosure of information as its prerogative rather than a right of the people.

On the solution

The workshop felt that a law on the right to information was urgently needed to shift the onus of giving information to the government. Although the right to information has received recognition as a fundamental right from the Supreme Court itself, it has not percolated down to the masses due to lack of awareness and lack of systems for implementation. This can be remedied only by a specific law with clear provisions for giving information.

In order to be effective, the law must be complemented by a movement for creating awareness of the right as well as developing mechanisms like Social Audit to enable people to use the information, having received it.

On the nature of the law required

The workshop discussed in some detail the workings of different laws where they have been passed and in particular draft Right to Information Bills which could be used as models for a national legislation. The question was also discussed whether it was preferable to have a bad law which could be worked on and amended gradually than having no law at all. The workshop was

divided on this question. Participants from Tamil Nadu, having experienced the highly restrictive legislation were strongly against having any kind of legislation which does not conform to some basic standards and were supported by the majority. On the other hand, a section of the participants felt that a basic law, even though not the ideal one, would assist in shifting the onus from the citizen to the government. This law could then be gradually changed to meet the changing culture and a wider right could be incorporated.

The draft Freedom of Information Bill, obtained unofficially, was circulated at the workshop and was examined clause by clause. The main objections to the Bill, amongst others, were:

- **Complete lack of accountability provisions and provisions for penalties.**
- **Lack of independent forum of appeal .**
- **Blanket exclusions**
- **Loose time frames for giving information.**

In the light of experiences from different parts of India in different areas of work, the following consensus was arrived at as to what standards a Right to Information legislation should conform to.

1. Minimal Exemptions- Most information should be in the public domain and narrow areas should be carved out for exclusion.
2. Include the Judiciary to come under the purview of this Act - both at the administrative and the judicial level.
3. A provision of money should be provided by the Central Government within the Act for training officials in the new procedures to be followed, and for computerization of the records, upgrading of information systems, record-keeping, etc.
4. Provisions for accountability and penalties for unjustified or wrong refusal must be provided. There must be explicit penalties both for withholding information, and most importantly, even for refusing to acknowledge a request for information. The provision for oral requests must be supported by a system for their accurate recording.
5. Along with up-gradation of systems, there must be dissemination by radio, television and other media on how to access information. Also, there must be a campaign to disseminate this information by traditional means.
6. Time limits have to be reasonable. When it applies to custody, time limits cannot exceed 48 hours. Life and death situations require information to be released even sooner.
7. Personal information given to the government is exempt from release unless the public interest in releasing the information outweighs the privacy of an individual. There should be distinctions made between the privacy of a public person and a private individual.
8. Regarding obligations on public authorities, Section 4 of the Press Council- NIRD Bill (supported by the National Campaign for People's Right to Information) is preferable, which reads as under:

“Section 4. Obligations on Public Authorities

(1) Each public authority shall publish periodically, and keep updated information indicating:

- (i) particulars of its organisation, functions and responsibilities;*
- (ii) description of its decision making processes in terms of procedures and powers and responsibilities of its officers and employees;*

- (iii) *norms for performance of activities such as prescribed periods for their processing and completion of physical and financial targets etc., and the actual achievements with reference to such norms;*
 - (iv) *classes of records under its control including the rules, regulations, instructions and list of manuals etc. used by its employees for carrying out activities*
 - (v) *the facilities provided for access to information; and*
 - (vi) *the name, designation and other relevant particulars of the Public Information Officer, to whom requests for information should be addressed.*
- (2) *It shall also be the duty of the concerned officers of a public authority to give reasons for decisions- whether administrative or adjudicative- to those affected and to disclose the relevant facts and analysis when major policy or decisions are announced.*
 - (3) *Nothing in the foregoing provisions of this section shall preclude the right of any person to obtain such information as would affect the life or liberty of any person in whom he is interested.*
 - (4) *It shall be mandatory for each custodial establishment such as a police lock up, jail, mental asylum, remand house, women's home, beggars home, etc., to appoint a visitors' committee comprising independent citizens which shall have full access to them at all hours of the day and night and to their records and inmates."*
9. Protection of whistle-blowers - Proactive disclosure by public servants should be permissible in the public interest. After such disclosure, the matter should be subject to judicial review.
 10. Regarding information that is related to nuclear energy, security issues, and other exemptions, there should be a clause for severability with a duty on the government to release the information that is not under exemption.
 11. A mechanism must be put in place along the lines of the Sunshine Act of the USA, wherein any decision the government takes which affects the public, has to be shared with the public in special forums.
 12. The title of the Act must be changed to "Right to Information Act".

Plan of Action

In order to get the views of this workshop into the committees and effecting on the legislation, members would need to do the following things in the next few months:

1. Provide a list of the members of the cabinet committee.
2. Each should take responsibility for initiating something with our respective organizations and contacts back in our states, based on the recommendations mentioned here.
3. A smaller committee in Delhi, consisting of people who have led the campaigns in their respective states, can take an initiative as a delegation to meet the members of the cabinet in person. The experiences, stories and case-studies are very important for the cabinet members to hear.
4. Another small committee formed of those who are working on this issue, to mandate the larger group of all of us spread out across the state, and to write to the cabinet members. We should not only make demands, but speak in terms of case-studies, concrete examples from across all the states of India.
5. Meet our MPs and educate them about this in simple language. Make a hand-out with the intent of reaching the MPs.

6. Bring specific recommendations before the standing committee. Simultaneously, friends in the media should be encouraged to begin writing.
7. We need to focus on public action. We should meet at least once in Delhi and go out onto the streets to give a show of strength, and at the same time through other types of actions that Delhi-based groups can keep doing throughout their respective states.
8. Start a signature petition to take on board more and more lawyers, judges, bureaucrats to say that they are part of the National Campaign for the Right to Information.
9. Circulate the draft along with these Recommendations in both English and Hindi.
10. Try and generate a debate in the media- television talkshows, etc.
11. CHRI can help organize a workshop in Bihar with prominent MPs and the press, as they need to be made aware of this.
12. A coordinated effort is needed combining the efforts of individuals working on this issue throughout the country and the members of the National Campaign. A coordinated effort may be combined if there is correspondence exchanged between these individuals and members on the recommendations herein and on planning ways to go forward. A letter, the draft bill and the activities to be undertaken, sent to all the individuals involved in the campaign, interested people, etc.
13. Networking amongst all the campaigners can be done through Transparency, , as they already have their own mailing list.
14. ll-rti@ilban.ernet.in - is a discussion group that has been running for the last thirteen months on Right to Information. It is easy to register, by simply sending your email number to the number above and you can get regular information and post your own things there.
15. **The major step at hand is to influence the Bill that is about to be passed in Parliament. The decision-makers are in Delhi, and so we need to decide how to launch a concerted campaign in Delhi for the next two months, so that the desirable elements of a Right to Information legislation are incorporated in the law that is going to be passed in Parliament.**

Meetings can be held in each state capital with local people, and make a list of non-negotiables from each state and put them to the MPs. This will add force to our voice. At least one round of meetings for people to evolve their own round of processes with respect to each state, in the next one month. And then come with one set of non-negotiables which we can then bring to the MPs. The MKSS followed this approach and that is why they got to take part in drafting the legislation in Rajasthan, because they held consultations in the villages and towns and cities across Rajasthan, so when they finally went with a draft to Jaipur, everyone knew that these non-negotiables were coming from the people across the state. The media coverage was also there. So a similar programme and process across all the states of India will add a lot of weight to our recommendations. If we could do the same sort of concerted 'public action' involving citizens from all social groups at the national level, then it will be very effective. Media must have some action to report. Sustained pressure from the media will come if we provide enough actions for the media to report on, otherwise not.