



Transparency Review

Journal of Transparency Studies

Countering the Meltdown Urban Employment Guarantee

2009 begins with all financial indicators confirming that it will be a year in which the livelihood of millions is under threat

Despite the trillions of dollars being poured into banking and other credit institutions throughout the world, the future remains bleak. The need to re-examine the essentials of a system poised so delicately that it is vulnerable to the greed of a few is evident. Even those trying to prop it up provide no hope that the incalculable suffering for which it is responsible will not increase.

Although some optimists suggest the India will not be hit as hard as the West, in no other country will so many people suffer so much. Our media has tended to focus on the pink slips handed to those in management, information technology and similar well-paid jobs. They face difficult problems in paying the next instalment due for a flat or new car. Their life-style is threatened. But they do not face starvation.

Millions do. They crowd into urban slums, working from day to day in miserable conditions because the alternative is for them and their families to starve. And they are the first to be laid off. They belong to the unorganised sector, with no unions to back them and no social security. At this time of crisis, they should be first on the government's efforts to ameliorate the aftershocks of the financial meltdown.



The government can take the credit for fashioning a tool suited to the purpose. The National Rural Employment Guarantee Act has brought a measure of hope to the unemployed in village India, as brought out in articles in this issue. Some of the huge sums it plans to spend on untried efforts to revive the economy would be better spent on evolving a matching urban employment guarantee scheme.

Editor: Ajit Bhattacharjea

CONTENTS

RIGHT TO EMPLOYMENT

Urban Employment Mounts
Santanu Guha Roy

Glimpses of the misery of those thrust into unemployment

Social Audit Essential for NREGS
Justice K.G. Balakrishnan

The Chief Justice of India emphasises the need for community audit

Employment a Right
C.P Chandrasekha
Jayati Ghosh

A mixed picture of the implementation of NREGS in the States

Focus on Creating Assets

A CSE study urges creation of assets more than jobs

Widening the Scope

A report on broadening the menu of NREGS projects

RIGHT TO INFORMATION

The Greatest Changemaker
Srinivas Madhav

A detailed account of the achievements of the Act and the road ahead

RTI and the Right to Privacy
B.K. Chakraborty

The Chief Information Commissioner of Tripura on misuse of privacy provisions

Towards an Informed Choice
Aruna Roy
Nikhil Dey

Avoiding arbitrary appointment of Central Information Commissioners

Plagued by Weak Infrastructure

Study finds ignorant PIOs and heavy load on appeals hamper success

Letters To The Editor

Thanks for the Transparency Review, November-December 2008 received yesterday. I am glad this issue has focused on elections. While the Election Commission is doing its best, most of the contestants do their worst for winning votes. Hunger for power makes them stoop too low and use all means fair and foul; mostly foul. Political parties promise electoral reforms in their manifestos to lure the voters but will not effectuate reforms. The voter is starved of empowerment. He has to choose, very often, one among the numerous undesirable contesting candidates and suffer him or her till the next election. Everyone of us has to raise his or her voice in favour of urgent electoral reforms. You are doing the right thing.

P.P.RAO, Senior Advocate, Supreme Court

What a lovely issue on Transparency Review. Congratulations for the issue. It is informative and I enjoyed going through it.

Mohini Giri

Thank-you for sharing the journal. The articles are really good. I will share its contents with people who would be interested.

Meera Mitra Ph.D.

New Delhi

Many thanks for remembering me but I was hoping to see your review of recent results as well. In many ways they are significant as some analysts feel that the theory of anti-incumbency vote is under challenge!

M.C.Verma, IAS, Retd.

URBAN WORKERS SUFFER

Shantanu Guha Ray

Throughout the country, thousands of workers are being laid off, or forced to accept reduced wages as factories and household workshops close down. Orders have fallen sharply due to the financial meltdown. Unlike those able to secure media notice, like airline and information technology workers, their plight has gained relatively little notice, though it is far more serious. However, Tehelka weekly provided a sample of the personal suffering and family disruption undergone. These are extracts

MOHAMMED RAFIQ, 54 has pulled his three children out of school: he's lost his job as a binder in a carpet factory in Bhadohi, Uttar Pradesh. He's hardly unique – some 10 lakh workers are out of work.

Once dubbed the dollar belt, godowns of 2,000-odd units in Bhadohi-Mirzapur are full of carpets that should have been shipped abroad. "Over 50 percent of our export orders have been cancelled or put on hold. No new orders are coming our way," says Ravi Patodia, president, All India Carpet Manufacturers' Association. In the last six months, export orders worth over Rs 1,000 crore have unraveled.

Bhadohi alone exports about 75 percent of the Rs 4,400 total carpet exports from India. In 2007, Q4 exports.

Were worth Rs 2,000 crore; the figure during the same period in 2008 has come down to a meager Rs 800 crore.

Bhadohi's handmade carpet weaving, a tradition that dates back to Akbar's time, is world-famous. But the 100 percent export-oriented industry which employs 22 lakh rural artisans, is now in turmoil. Looms are silent and processing halls deserted. There are no trucks queuing up at export houses and buyers are missing in the shops selling raw materials.

A year ago, carpets could be seen in field, on rooftops of every house-hold in this tiny district which may lack basic infrastructure, proper roads and amenities but boasts of having maximum number of Mercedes in the state.

Today it's a ghost town. "I have been working in the industry for the past 34 years. Where will I go now?" Asks Sayeed Khan, 57.

Ehsan, a contractor for polishing carpets, has brought down his workforce from 60 to four;

Santosh Kumar now pulls a rickshaw, even business owners are suffering. "We have taken huge loans on orders from the US. I don't know how to repay them," says Ashok Kumar. "The government showed immense concern for 1,900 jet Airways and 50,000 Satyam employees, but is not worried about 10 lakh artisans," says another exporter.

A MAJOR CRISES IS unfolding at Tiruppur, the small town near Coimbatore that is India's knitwear capital. The cluster of garment export units and their ancillaries employ some four lakh workers and in 2006-07, exports touched a high of Rs 11,000 crore.

The downturn come soon after. In 2007-08, exports dropped to Rs 9,950 crore: this fiscal, the industry is struggling to meet its reduced target of Rs 8,950 crore, battling both global recession and some tough competition from China, Bangladesh, Vietnam, and Pakistan. Many companies are working at less than 50 percent capacity. Factories that worked three (eight-hour) shifts are pulling along with single shifts. Some have work only for five days a week.

As export units plan to layoff workers they themselves are quitting in droves. Since they get paid based on the number of days and shifts they work, the slowdown has meant lower wages. "Many workers have returned to their hometowns, unable to maintain their families with the low wages they earned. While salaries are falling, the cost of living in Tiruppur continues to be quite high," says M Ravi, an activist of the All India Trade Union Congress.

M. Baskar worked in a packing company for five years before quitting. "There was a time when I had done three continuous shifts and earned a lot. But in recent months, orders from the export units

(Continued on page 3)

NREGS

SOCIAL AUDIT ESSENTIAL

Justice K.G. Balakrishanan, Chief Justice of India

The National Rural Employment Guarantee Scheme (NREGS) is one of the most progressive social welfare measures undertaken in our country in recent years. This scheme indeed is intended to tackle the problem of chronic rural poverty. Over the last three years or so, this scheme has been implemented in scores of backward districts and presently plans are in motion to extend its application to most parts of the country.

The origins of the scheme of course lie in the efforts of some leading voluntary sector organizations which demanded comprehensive programme for government-assured employment in rural areas. These efforts bore fruit with the enactment of the National Rural Employment Guarantee Act, 2005 whose objective is to ensure the creation of one-hundred days of employment for one adult from each rural household, in selected districts. This scheme seeks to ensure livelihood security and improve the purchasing power of rural households through the payment of statutory minimum wages for the work undertaken. In the process, the NREGS also seeks to check rural-urban migration and deploy rural labour for building public works such as bridges, water-flow channels, wells, rain-water harvesting units, roads, schools, health centers and granaries among others. Several State Governments have adopted innovative strategies like relying on the NREGS to find personnel to run programmes such as the 'mid-day meal' schemes in government-run schools.

However, at the present juncture the potential of the NREGS can only be described as partially fulfilled. Though there have been several favourable reports its success in limiting distress migration in some districts, there are several systemic problem which can only be addressed through the persistent

efforts of the implementing agencies, civil society institutions as well as the legal system. The primary problem is that of corruption and lack of transparency in the maintenance of 'muster-rolls' and records of payment of wages, the unholy nexus between local contractors and governmental officials is further complicated by social realities such as the exploitation of illiterate workers, especially those of a vulnerable profile such as scheduled castes, scheduled tribes and women. It is not uncommon to come across accounts by the press and those by



several NGO'S working in the field which describe instances of falsification of records. In some cases the records indicate that a particular individual has worked only for a few days on a site, while the reality would be that the same person had been engaged there for a much longer period than what is recorded. Similarly, there are frequent reports about falsification of wage payment records wherein illiterate workers are compelled to assign their thumb impressions to acknowledge payments that were never actually received. There is also a tendency on the part of local contractors to not

allow access to 'muster rolls' on the demand of workers and social activists. In this regards, the Right to Information Act (RTI) confers an effective remedy in order to ensure transparency in matters such as the allocation of employment and payment of wages.

The long-term success of a scheme like the NREGS necessarily relies on the initiative and efforts of the local community in question. It is important for individuals to be aware of their entitlements under the scheme and also collectively participate in the 'Social Audits' concerned with the implementation of the same. 'Social Audits' are not only a method to gauge the effective implementation of the

NREGS in a specified local area, but also provide a forum for the local population to interact with personnel from the implementing agencies and shapes decisions about the working conditions as well as the nature of projects to be undertaken in the future. In this way, the government's role of guaranteeing employment can act as the precursor to wholesome rural development.

In this regards, the State Legal Services Authorities can play the crucial role of generating awareness about the employment guarantee scheme through legal literacy camps and also provide grievance-redressal mechanisms in the form of 'Lok Adalats' to hear and decide complaints related to the NREGA. Especially in instances where local contractors or officials may have engaged in

wrongdoing, the presence of a judicial officer will lend the necessary credibility for the effective redressal of these complaints. A draft has been circulated on behalf of the National Legal Service Authority (NALSA), which lays down a proposal for the widespread involvement of Legal Service Authorities in improving awareness about the NREGS at the grassroots level. Besides touching on the issue of budgetary requirements, the proposal also contemplates the involvement of several stakeholders such as lawyers, local government officials, social workers and educationists in the mass-awareness campaign. I hope that this proposal has been duly considered and that all those present here will actively reflect on the modalities for proceeding with the implementation of the same.

URBAN UNEMPLOYEMENT

(Continued from Page 1)

came down and as a result we got less work. When I decided to quit, there were just 2,000 people in the company where once 4,000 people had worked," he said. When export companies don't get orders, all the ancillaries suffer as well. There are about 4,000 ancillary units dependent on the nearly 2,500 garments units in Tiruppur. They include 1,500 knitting units, 700 bleaching and dyeing units, 500 fabric-printing units, and 250 embroidery units.

Work in these "job work" units has suffered. Not only do they have fewer orders, they have been forced to work at lower prices as well. T. Moorthy of the Tiruppur computer Embroidery Association says export units are presently paying 60 to 70 paise per 1000 stitches for embroidery work, instead of the Re 1 they'd paid last year.

Exporters say the worst is yet to come. "Fifty percent of the exporters don't have orders after February. Lay offs are inevitable in this situation," says Tiruppur Exporters Association (TEA) president A. Sakthivel. The industry is reportedly proposing layoffs at the rate of about 4,000 workers a week over the next few months.

THE ONLY way a labourer in Ludhiana might retain his job is if he can do the work of two, at the minimum wage for one. In Ludhiana's industrial

area, factories that once worked flat out, are now working at a third of their capacity. The global recession has come to Ludhiana, and though for industrialists it might mean lower profits, for the workers, it's about their very livelihood.

Far north, the snow covered slopes of Gulmarg and placid waters of Dal Lake in Srinagar in Kashmir are equally abandoned. The shikaras are empty, the faces of the boatmen desperate. The meadows of Pahalgam are brimming with flowers, but of tourists there is barely a sign.

Hoteliers are offering up to 70 percent discount on tariffs, but no one has been turning up to avail of them. For hotel and restaurant owners, struggling to recoup the losses from an economic agitation, first in Kashmir and then in Jammu, this is a severe blow. The layoffs have begun.

Abdul Majeed, once the proud owner of four hotels in Srinagar's posh area of Zero Bridge, close to Rajbagh, was forced to close down three. He's trying to survive on the business from the fourth, but for his laid-off employees, there is no such cushion. "After I recorded zero percent occupancy for several months, I had no choice but to close down my hotels," says Majid.

EMPLOYEMENT A RIGHT

C. P. Chandrasekhar
Jayati Ghosh

The National Rural Employment Guarantee Act has now been in operation for more than two years, even though it is still being extended to all the rural areas of the country.

In that relatively short time, it has already become one of the most avidly studied programmes of the Central Government, with many independent evaluations in different States as well as government audit of its performance thus far.

It is increasingly recognised that the NREGA has the potential not only to generate more employment directly and indirectly, but also to transform rural economic and social relations at many levels.

But there is also no doubt that this enormous potential is still incipient and requires to be substantially supported in many different ways.

This is because the way that the NREGA has been framed, and the desired mode of implementation, amount to no less than asking for a social and political revolution. The programme reverses the way the Indian state has traditionally dealt with the citizenry, and envisages a complete change in the manner of interaction of the state, the local power elites and the local working classes in rural India.

Thus, the NREGA is completely different in conception from earlier government employment schemes that tended to be in the form of paternalistic provision, since it treats employment as a right and the programme is intended to be demand-driven.

Furthermore, the Act and Guidelines anticipate very substantial participation of the local people in the planning and monitoring of the specific schemes, to a degree which has not been at all common.

The very notion of employment as a right of citizens (even if it is limited to 100 days per household in the Act); of the obligation of the government to meet the demand for work within a specified time period, and to have developed a shelf of public works that can be drawn upon to meet this demand; of

panchayat participation in planning and monitoring; and the provision for social audit, are all very new concepts.

For this to work, it requires, at the minimum, two things: the ability and willingness of local government and panchayats to plan works and run the programme effectively; and the dissemination about the programme and its guidelines to local people who can make use of it to register, demand work and run social audits.

Obviously, all this will take time to permeate down to the local levels.

So to start with, an uneven record of implementation is only to be expected. So is the presence of a large number of problems that require correction.

There are bound to be difficulties and time lags in making local officials and others responsive to this very different approach. And of course, both this different rights-based approach and the implications of the programme in improving the bargaining power of rural workers would necessarily challenge the prevailing power structures, in some cases quite substantially.

Therefore attempts to oppose or subvert the correct and full implementation of the scheme in rural areas are only to be expected.

Required conditions

It is increasingly clear that effective implementation of the NREGS requires at least the following conditions:

The capacity (including technical and administrative) and willingness of local government and panchayats to plan works and run the programme effectively.

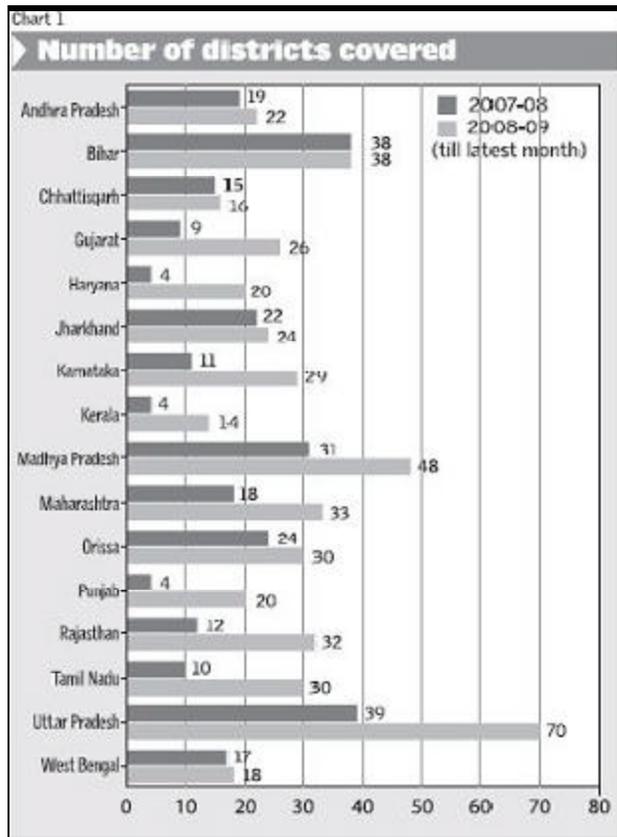
Dissemination about the programme and its guidelines to local people who can make use of it to register and demand work.

Mobilisation to create ability to run social audits without fear of repression. expansion of the official coverage of the NREGS in several States in the current year, including Gujarat, Karnataka, Madhya Pradesh, Rajasthan, Tamil Nadu and Uttar Pradesh.

The willingness of local authorities to respond to problems and criticisms, and to change their behaviour accordingly, as well as effective redressal mechanisms for those whose rights have not been met.

Of course, the programme is still very young, and is only just being started in many districts.

Chart 1 shows that there has been significant



However, as field reports have shown, the mere expansion to more districts often does not actually mean that the scheme is implemented on the ground, as the local officialdom may not be prepared to take it on or to fulfil all the conditions of transparency and accountability that are stated in the Act.

	Per cent of households with job cards		Per cent of households that have received some work		Per cent that received 100 days of employment
	2007-08	2008-09*	2007-08	2008-09*	2008-09*
Andhra Pradesh	58.32	70.70	31.65	32.87	2.85
Bihar	52.91	57.52	25.56	12.01	0.35
Chhattisgarh	83.12	92.98	66.04	34.58	7.40
Gujarat	13.63	32.51	4.58	5.50	0.18
Haryana	5.35	8.46	2.35	1.51	0.25
Jharkhand	69.13	73.94	39.25	19.90	1.16
Karnataka	19.50	28.55	7.04	3.62	0.30
Kerala	8.45	16.34	3.27	3.23	1.05
Madhya Pradesh	78.17	119.67	46.94	35.92	9.96
Maharashtra	25.01	31.90	3.79	2.66	0.07
Orissa	55.78	65.91	14.95	7.42	0.52
Punjab	3.11	8.19	1.58	0.72	0.08
Rajasthan	32.53	87.01	24.61	52.70	10.33
Tamil Nadu	24.98	55.84	14.02	27.48	0.87
Uttar Pradesh	29.50	39.21	16.52	8.21	1.76
West Bengal	65.13	65.51	29.18	15.15	0.24

* (till latest month)

Table 1 provides a summary of the official evidence on implementation, based on the data from the NREGA website.

It calculates the proportion of households that have received job cards or employment by estimating total rural households in each State (dividing the projections of rural population from the Census of India with the average household size estimated by the NSSO).

Regional variations

It is immediately clear that even based on the official data there are very wide regional variations in implementation. In fact, there are also big intra-State variations, across districts and even blocks, which cannot be captured here.

As Table 1 shows, most States have improved on the provision of job cards in the past two years, and in some States such as Chhattisgarh, Andhra Pradesh, Jharkhand, Rajasthan, Orissa and West Bengal, a majority of rural households have received job cards. An extreme case is Madhya Pradesh, where the number of job cards issued exceeds the estimated number of rural households!

However, the northern States of Punjab, Haryana and to a lesser extent Uttar Pradesh are clearly lagging behind even in the distribution of job cards.

However, the percentage of households that have received some work under the scheme is significantly lower. Only in Chhattisgarh in 2007-08 and in Rajasthan in the current year, has it crossed half of estimated rural households. In most States the gap between job card distribution and actual provision of employment remains huge. Even in MP, where more job cards have been distributed than the number of households, only 35 per cent of rural households actually received some employment under the scheme.

Another surprise is Maharashtra, where the proportion of households that has received work remains abysmally low despite the State's earlier experience of employment guarantee scheme.

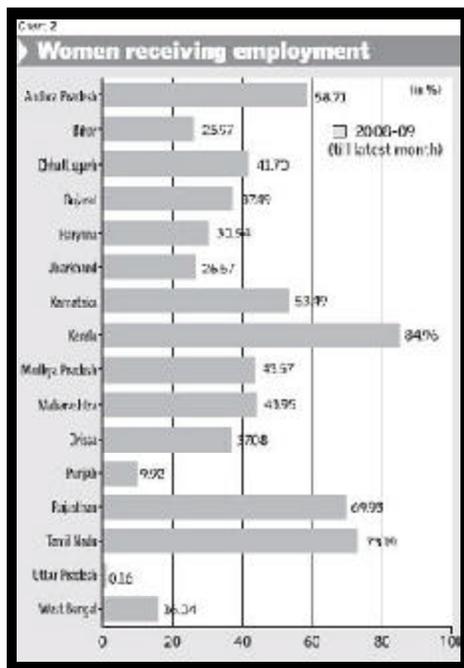
This has been possible despite the provisions of the Act, because most States collapsed the distinction between demanding and receiving work, which is a major aspect designed to ensure the accountability of government.

	2007-08			2008-09 (till latest month)		
	Households that demanded work	Households that received work	Shortfall	Households that demanded work	Households that received work	Shortfall
Andhra Pradesh	4803892	4803892	0	5041648	5041648	0
Bihar	3975545	3859630	115915	1936239	1843390	92849
Chhattisgarh	2297042	2284963	12079	1228045	1210200	17845
Gujarat	290691	290691	0	368359	353359	15000
Haryana	70869	70869	0	46433	46080	353
Jharkhand	1679978	1679868	110	863756	863454	302
Karnataka	554002	549994	4008	687113	284890	402223
Kerala	259275	185392	73883	189106	184817	4289
Madhya Pradesh	4347079	4346916	163	3388456	3383754	4702
Maharashtra	474695	474695	0	335918	335639	279
Orissa	1138432	1100497	37935	579130	546105	33025
Punjab	49690	49690	0	29188	22676	6512
Rajasthan	2173122	2170460	2662	4742390	4732561	9829
Tamil Nadu	1234818	1234818	0	2391103	2391103	0
Uttar Pradesh	4104283	4096408	7875	2115548	2070578	44970
West Bengal	3919996	3843335	76661	2033171	2016868	16303

As Table 2 shows, the gap between the number of households that demanded work and those that received it is very small, often zero, suggesting that either workers are not made aware that they need to separately demand work or that States and local authorities are simply allowing workers to fill in their demand for work when the work is already being provided. This is a major lacuna that needs to be addressed.

Despite this and several other gaps, there is already some evidence of success. Field reports suggest that there has been some improvement in consumption of the poor, reduction of distress migration and slight increases in lean season wage rates (especially for women) in the areas where the programme has functioned successfully.

More women workers

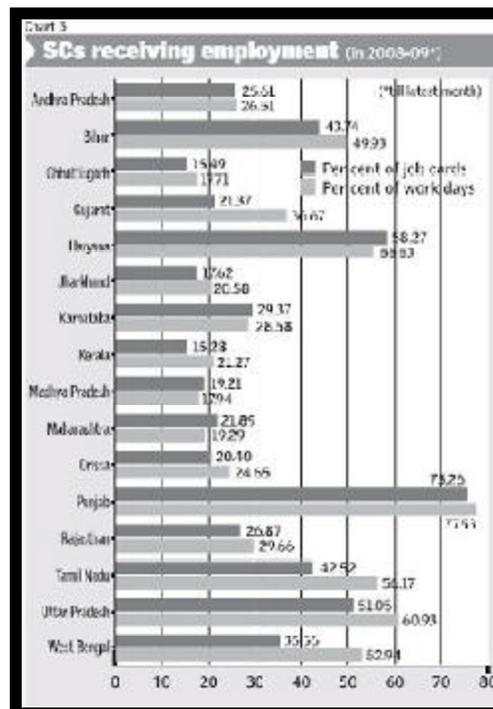


Also, the NREGS has led to the disproportionate involvement of women workers, far above expectation. As Chart 2 shows, in Kerala women account for as much as 85 per cent of the total employment under the scheme. This proportion is also high in the other southern States and in Rajasthan.

While the other southern States have had high rural workforce participation of women already, Kerala and Rajasthan had had very low rates, so this greater involvement of women in the NREGS must also be leading to social changes.

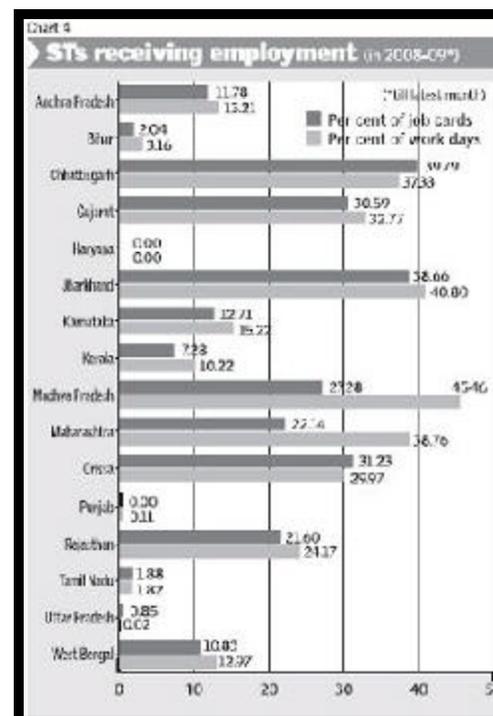
Similarly, Charts 3 and 4 show significantly higher participation of SCs and STs than their shares of rural population in many States. While this may reflect the fact that they are also more likely to be represented among rural workers, even so it is a sign that the NREGS has succeeded in targeting the more socially disadvantaged sections.

(Courtesy: Hindu Business Line)



Obviously, these successes have to be sustained, replicated and expanded. And in other areas the weaknesses of the programme that have been identified by many observers have to be addressed, including through local mobilisation.

But this cannot happen overnight — it is necessarily a long process. The important thing is to create a socio-political momentum whereby the programme will actually work as intended across the country.



MUST FOCUS ON CREATING ASSETS: CASE STUDY

According to a comprehensive new report by the Centre for Science and Environment, the National Rural Employment Guarantee Scheme must be strengthened and revamped to provide not just wages for work done but work that will make ecological regeneration possible

A comprehensive assessment of the National Rural Employment Guarantee Scheme (NREGS) by the Centre for Science and Environment (CSE), Delhi, says that the scheme has huge potential for regenerating the village economy in India, but only if its focus remains on the creation of productive assets.

The National Rural Employment Guarantee Act (NREGA) was implemented in select districts in the country two years ago, and is slated to cover all districts from April 1, 2008. The CSE study, 'NREGA: Opportunities and Challenges' looks at the Act's implementation across nine states and 12 districts. The objectives of the study were to find out whether the NREGA was being used for productive asset-creation, to gauge the development potential of the Act, and to examine the village planning process crucial to the Act's success.

Over the two years that it has been in existence, the NREGS has already created half-a-million assets and provided jobs to around 3% of India's population, according to the study.

More than 10,000 villages are implementing the NREGA. During 2006-07, each village spent an average of Rs 900,000 to create productive assets like water conservation structures. In the last two years, each district has spent around Rs 44 crore.

However, the report says, if it is to reach its potential of changing the lives of 45 million rural households, it must be 'strengthened and revamped to provide

not just wages for work done but "work" that will make ecological regeneration possible'.

Key findings

Creating productive assets

Though the focus of the scheme is on job-creation, there is a drop in demand for employment under it. The report attributes this to imperfections in the scheme itself, not to the fact that people in rural India do not need jobs.

Crucially, governments have failed to articulate the Act's development potential, it says. The focus should have been more on the real impact of the scheme on local development through productive asset-creation, not so much on job-creation.

Most NREGS money, the survey found, has gone towards road construction projects instead of works related to water conservation and harvesting that are listed as priorities under the NREGA. Of the 27 states where the NREGA has been implemented, only five have made substantial allocations to water conservation. During 2006-07, Andhra Pradesh alone accounted for around 67% of the country's total water conservation works under the NREGS.

The report gives the example of Hiware Bazar village in Maharashtra which has used the state's Employment Guarantee Scheme (EGS), predecessor to the NREGA, over the past 14 years to increase per capita income by 16 times. It gave top priority to water conservation structures and reforestation and



the village has since become a water-surplus one from a water-scarce one. It now witnesses reverse migration from urban areas for better economic opportunities.

The emphasis on road construction rather than water conservation, the study says, is because irrational wage calculations have made water conservation projects less lucrative. Under the 'task rate wage payment', a worker gets paid based on the task completed. This leads to anomalies such as the case of Sakhi Soren, a daily wage earner in Surma village, Pakur, who worked on digging a pond for 13 days and should have got Rs 996.84 (basic minimum wage). But he only got Rs 750 because payment was done according to the amount of earth he dug, which was less than the stipulated 100 cubic feet per day. Going by the wage calculation, he would have got the basic minimum wage constructing a road, as road construction has a different wage rate based on per day wage payment without the attached task rate conditionality.

Bad planning, no maintenance

The scheme is also plagued by incomplete and abandoned works, and lack of maintenance of completed works.

Out of a total of 769,582 works under progress, only 158,277 (20.56%) have been completed. Till August 2007, only about 14% of water conservation works under the NREGS had been completed.

The study found that bad planning in the case of water conservation structures puts a large number of created assets into disuse. For instance, water harvesting structures are built without any provision for catchment protection. In Kanchanpur village in Sidhi district, three huge tanks were built under the NREGS but their catchments are in forest areas. Most catchments are degraded and the forest department doesn't allow anyone to treat them, a social worker told the CSE team. So, in two years, the tanks silt up.

On top of this, 'maintenance work' is not a permissible activity under the NREGA. 'This alone has the potential to undo whatever has been achieved,' says the report. It also points to how it

becomes a problem for districts that already have several water harvesting structures and want to use NREGS money for maintenance, but cannot do so.

Village communities are being bypassed

Most states have not devolved the necessary function, funds and functionaries to panchayats for effective implementation of the NREGA.

Though panchayats are nodal bodies in the NREGA, they are fast turning into implementing agencies without any say in planning. The complex and cumbersome implementation procedure, which takes up to four months for a project to be approved and funds released, causes huge delays. There is also a shortage of technical staff at the panchayat level to evaluate works. All these difficulties lead to district line departments taking over the role of the panchayat for faster plan approval and completion; as a result, panchayats end up merely maintaining records.

Recommendations

The CSE study's recommendations include:

- Measure not just the wage provided but also the asset created and its effectiveness. This will make village development, through productive asset-creation, the primary objective.
- Make wage payment people- and development-friendly; provide a premium wage for development programmes that will ensure that the work done is completed and is useful.
- Continue emphasising water conservation works under the NREGS by providing additional incentives.
- Make the completion and maintenance of works under the NREGA mandatory.
- Give importance to forestation under the NREGA by linking it to other forestry programmes.
- Do more to strengthen village-level planning and decision-making by revamping current operational structures.
- Equip panchayats with the necessary personnel and funds for effective implementation of the scheme

InfoChange News & Features, April 2008

WIDENING THE SCOPE

An immediate benefit of NREGA is the social security it provides in a country in which income distribution has been growing steadily worse and there is no unemployment insurance. It has reduced hunger and distress migration, and raised agricultural wages through the alternative it provides to farm labour. Because work norms under NREGA are structured to encourage the engagement of women and the elderly, 44% of the employment provided in 2007-08 has gone to women. These are very real benefits. This article deals with the question of paying for their costs.

The fiscal costs of NREGA have been estimated by Mihir Shah and his colleagues (EPW, February 23, 2008) at about Rs 50,000 crore, assuming that 80% of all rural labour households demand work for the full 100 days permissible at present. This assumption may be an overestimate for the states, and some regions even in relatively poor states, such as western UP and coastal Andhra, where the demand for work under NREGA has been low. On the other hand there are other regions where a high proportion of participating households have hit the ceiling of 100 days (such as drought prone southern Rajasthan) and are clamouring for more work. Thus

if the ceiling is removed in a couple of years, and the programme eschews targets as it is supposed to, being an open-ended demand driven programme that is allowed to find its own level, the estimate of Rs 50,000 crore may not be far off. Leaving aside the consideration that since many workers are unemployed during the slack season when the bulk of NREGA work is done, and therefore the wage component of expenditure on the programme is not a real “resource” cost (since the opportunity cost of their wages in terms of work forgone elsewhere is zero, unlike expenditure on the materials component) but is more in the nature of a transfer payment, how is this cost to be met?

The answer is indirectly, through the enhanced rural productivity engendered by the programme itself. NREGA seeks not only to provide guaranteed employment, but to do so through works that will enhance the productive base of agriculture and of the rural economy generally through water harvesting and soil conservation, improved rural connectivity, forestry and pasture development, drainage and flood control works, and so on. It is essential, therefore, that the works be productive. Surveys show that by and large villagers perceive



NREGA works to be useful. This is not surprising since they are chosen mostly by the gram sabhas themselves. In the undulating arid and semi-arid parts of the country where a large part of the poor population is concentrated there would appear to be almost limitless scope for watershed development through check dams, contour bunding, contour trenches, land levelling, fodder and fuel tree plantation and other useful works.

HOWEVER, in the intensively cultivated, irrigated, and mostly plains areas of the country where there is little scope for watershed development and forestry, and where a great deal of rural infrastructure such as roads, irrigation canals and drains have already been constructed, there are increasing reports from the field that the scope for further works is getting “exhausted”. After all, rural works programmes have been running for a couple of decades by now. This, coupled with the pressure imposed by the requirement that work must be provided within 14 days and within 5 km, leads often to the taking up of works in inappropriate locations (tanks on high ground which cannot fill up in the monsoons) or of a repetitive or nature (throwing earth on the same road again and again).

In these areas there is a need to broaden the menu of permissible works, including social infrastructure works such as schools, anganwadis, village lanes, panchayat offices and so on. Moreover, there is a need to take up larger projects, and integrate them into more comprehensive schemes (as in horticulture schemes, with the pits being dug under NREGA, and fencing, drip irrigation, and fertilisers being provided through other schemes, as Andhra Pradesh is doing). NREGA allows work to be taken up on the private land of BPL families (such as land levelling, or the construction of dug wells and

irrigation channels). This provision needs to be broadened in these areas to land belonging to marginal and small farmers.

An even more serious problem affecting the quality of works is the serious technical deficit opening up in the design and supervision of works. The guidelines allow the states to spend not more than 4% of total programme costs on extra staff. However, this is woefully inadequate to hire and train the large number of technical assistants (diploma holding civil engineers) required to provide the technical inputs that are essential even in seemingly simple works. Thus roads have to be properly aligned, sluices and weirs and retaining walls properly designed and constructed, anicuts and contour bunds and trenches properly located, and so on. The TAs who have been appointed so far spend all their time processing muster rolls for payment of wages based on the quantity of work done, leaving them little time for technical work. Moreover, given their lack of experience, regular engineers are required to train and supervise them. More generally, NREGA and rural development generally call out for a much greater degree of professionalisation, for which we must be willing to pay.

The panchayats, which have to implement 50% of NREGA works, also suffer from serious shortages of staff and staff capacity. NREGA places a huge additional organisational burden on them in terms of registering households, identifying works, monitoring their implementation, organising timely wage payments and so on. Most programmes allow up to 10% to be spent on administrative and management costs. It is a false economy not to do so in the case of NREGA, and it could affect the whole cost-benefit calculus of the programme.

(Courtesy: The Times of India)



THE GREATEST CHANGEMAKER

Srinivas Madhav

Looking back over the past three years is it possible to conclude that implementation of the Right to information Act has been satisfactory? The Act mandates two ways of information sharing: proactive dissemination and reactive disclosure of information. Though proactive dissemination by many public authorities is not up to the mark, people have been testing reactive disclosure by filing requests and tasting some success.

Nine year old Pranav forced Delhi police to register an First Information Report (F.I.R.) to trace his lost bicycle by filing an application under the Right to Information Act. 70 year old Kaniram got his entitlements of food grain under Public Distribution System (PDS) that was denied to him for one year.

Krishna Devi got her passport extended. Nannu got his duplicate ration card, Ashok Gupta got a new electricity connection, Prem Sharma obtained new passport and Triveni her PDS entitlements. Many people found Right to Information useful in obtaining ration cards, passports, driving licenses, water connections, copies of F.I.R.s and so on, without paying bribes! But Indians are not going to stop there.

Right to Information is a fundamental human right and a prerequisite for the realization of other human rights: economic, social and cultural rights such as right to water, right to adequate food, right to highest attainable standard of health, right to education and right to an adequate standard of living and civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law. Right to Information has become a friend in need, making life easier and honorable for common people.

Krishak Mukti Sangram Samiti in Assam used Right to Information to expose diversion of food grains from PDS allotted to the poor. Women in a small

village, Banakhandi, in West Bengal filed more than 100 Right to Information applications to force the administration to start work on supply of drinking water.

It is not enough if you get water. It should be of good quality. Recently, National Consumer Disputes Redressal Commission ordered a Municipal Corporation to publish reports on water quality. The Commission stated "As per the Statement of Objects and Reasons of the Consumer Protection Act and also Objects of the Consumer Protection Councils, contemplated under the Act, a consumer has the right to be informed about the quality, quantity, purity of goods including water or services which are rendered by the Statutory Authorities or in this particular case by the Ahmedabad Municipal Corporation (AMC) so that it is not hazardous to life or health".

A Right to Information application has forced Guru Teg Bahadur Hospital in the capital to provide free treatment to an old woman who couldn't afford her surgery. Her son Ali alleged that the hospital had earlier sought medicines worth Rs.30,000 for the operation. Ali filed an Right to Information application asking details of drug stocks and bills. When Ali approached the Delhi High Court, the hospital pledged, before the Court, to operate her free of cost.

Students forced Union Public Service Commission (UPSC) to disclose cut-off marks, scaling method and model answers. A recent Decision pronounced by the Central Information Commission (CIC) gives access to, not just your answer sheets, but also your class mates answer sheets, after evaluation.

When Rohit Prajapati filed an Right to Information application asking the Gujarat state government

details about Internal Complaints Committees to deal with cases of sexual harassment at workplace, in its departments as directed by the Supreme Court in *Vishakha and Others vs State of Rajasthan and Others* (1997), the officials in many departments woke up and formed the committees. A 15-year-old rape victim in Umapada in Gujarat used Right to Information to force police to lodge an FIR and take action against the accused.

Intellectuals led by SEZ Virodhi Manch and Goa Bachao Abhiyan in Goa sensibly used Right to Information and obtained crucial documents to launch a successful battle against Special Economic Zones (SEZs) while people lost their lives fighting a similar battle in other states. In the first incident of a reversal of a central policy, eight SEZ proposals in Goa were scrapped by the inter-ministerial Board of Approvals in February this year.

About 300 Right to Information applications filed by Burning Brain Society about the implementation and enforcement of tobacco control laws and the name of the person responsible for non-implementation made Chandigarh the first smoke-free city not only in India but also in any developing country.

Environment seems to be the main beneficiary! Environmental activist Divya Raghunandan fought for more than 20 months for toxicity, allergenicity data that determine the safety of Genetically Modified Organisms Genetically Engineered (GE) rice, GE mustard, GE okra and GE brinjal from MNCs obsessed with secrecy she was even asked to personally inspect documents in the presence of a representative. After CIC had decided in favor of disclosure, the company dragged CIC to the courts. However, the Supreme Court interfered and ordered disclosure of the safety data. Finally, the Genetic Engineering Approval Committee (GEAC) has published voluminous data on biosafety studies of GE brinjal on its website.

The National Environment Appellate Authority quashed environmental clearance accorded to the Polavaram interstate irrigation project, in December last year as the executive summary of the project was not made available to the affected persons in their language.

One cannot withhold records simply saying that one lost them. Ministry of Environment & Forests was asked to lodge an FIR to initiate criminal action

against those responsible for the alleged loss of documents regarding environmental clearance and other parameters of the Maheshwar Hydro Electric Project, Madhya Pradesh.

People had complained maximum penalty under the Right to Information Act - Rs. 25,000 was not a figure to deter. But the CIC thought differently. CIC imposed penalty of Rs.125,000 on Public Information Officer (PIO) of Daulat Ram College, Delhi for delay in supply of information in connection with five separate Right to Information applications by Prof. Pramila Sharma.

In a landmark Decision, compensation was awarded to an old woman by the CIC for non-publication of information of beneficiaries on the Old Age Pension Scheme under the mandatory proactive publication.

CIC directed the Benaras Hindu University to admit Dhananjay into post graduate course, who was earlier denied admission because he filed a Right to Information application, to ensure that an applicant seeking information from the University under the Right to Information Act is not victimized in future.

Another student used Right to Information to get her degree successfully from a university in Tamil Nadu. Though she had appeared in an examination along with other students a few years ago, she did not get her results as her answer sheet sent for valuation to a professor of an outside university had been misplaced.

When Tamil Nadu Information Commission directed it to pay a few lakhs as compensation, the university authorities immediately conducted an examination for the student and awarded her degree after evaluation of her answer paper.

Culture of Secrecy?... What is it?

Experts would argue that it is very difficult to break the culture of secrecy and create a culture of openness. It is said that Canada and Australia, which enacted the Freedom of Information laws more than 20 years ago, continue to struggle with this major problem. But that is not the case with India!

In earlier days, employees feared that Right to Information might overburden them. But now none is surprised to find more number applications being filed by the employees themselves. Recently, Directorate of Education (GNCT of Delhi) was asked to pay compensation of Rs. 50,000 to a teacher suspended on false evidence.

Evaluated answer sheets, Departmental Promotion Committee minutes, Annual Confidential Reports, transfer guidelines, arrears and what not Right to Information has become an efficient in-house grievance redressal mechanism. Heather Brooke, FOI activist in U.K, points out, "The current system only rewards the corrupt and inefficient. If you are hard working, it is to your benefit to have transparency."

The Prime Minister, Dr. Manmohan Singh

Beyond the Right to Information Act

The Right to Information Act is not the only law that gives a right of access to information. Beyond the Right to Information Act, there are some stronger provisions in other laws which promote transparency:

The PDS (Control) (Amendment) Order, 2004, which entered into force on 29 June 2004, enables citizens to directly seek information from a fair price shop owner. Punishment for withholding information may extend up to three months imprisonment. This Order is stronger than the Right to Information Act itself.

For getting financial assistance under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) states should enact a Public Disclosure Law and a Community Participation Law to strengthen peoples Right to Know. Last year, Reserve Bank of India advised banks to convey in writing the reasons for rejection of loan applications.

The National Rural Employment Guarantee Act 2005(NREGA) Operational Guidelines 2006, prescribed by the Ministry of Rural Development Department goes one step ahead in facilitating transparency by reducing time limit for disclosure of the records requested under the Right to Information Act to just seven days and further fees for obtaining information to actual photocopying costs.

The Road Ahead

Ever since the U.N. General Assembly recognized freedom of information as a fundamental human right in 1946, many nations started adopting laws assuring right to access information held by public authorities. So far more than 80 countries have enacted freedom of information laws, about 70 of which were enacted during the last two decades.(Just 12 countries had FOI laws in 1990.)

Though India took its first step in creating openness by bringing into force the historic Right to information Act on 12 October 2005, a strong regime of transparency needs the following elements in addition to Right to Information law:

Data Protection law

We do not have a separate law to obtain personal information related to the requester himself. Right to Information Act is being used for both purposes, i.e. to obtain personal information as well as non-personal information, which sometimes creates confusion.

In USA, Privacy Act is used to obtain personal information and Freedom of Information (FOI) Act is used for obtaining other information. Similarly in UK, Data Protection Act is used to obtain personal information and FOI Act is used for obtaining other information.

Separate Data Protection or Privacy law is necessary to obtain personal information related to the requester herself and at the same time to protect unnecessary disclosure to others.

Environmental Right to information laws

Environmental Right to information laws provide access to environmental information with fewer exceptions, subject to public interest test covering private bodies. Environmental Information Regulations 2004 are in force in U.K.

USA and Canada have mandatory Pollutant Release and Transfer Registers (PRTR) requiring industries to measure and report toxic chemical releases to air, water, and land, and transfers off-site. The United States PRTR is the Toxics Release Inventory (TRI) which was associated with a 44 percent reduction (1.6 billion pounds) in reported releases of listed chemicals over the first eight years of reporting.

Sunshine/Open Meetings law

A law which enables the citizens to attend the meetings of public authorities will realize the dream of participatory democracy. [e.g. Sunshine Act 1976 of USA]

Whistleblowers Protection law

Though the Government of India has authorized the Central Vigilance Commission as the Designated Agency to receive written complaints for disclosure

on any allegation of corruption or misuse of office, we need a stronger law to provide protection for whistleblowers. Public Interest Disclosure Act 1998 of UK is an example.

Public Records law

Though the Central Government enacted the law on public records, applicable to central authorities, implementation is not satisfactory. State governments have to enact similar law for state authorities. Records officers are to be nominated to discharge the functions under this Act and set up record rooms and place each record room under the charge of a records officer.

National Archives of India, the nodal agency for the implementation of the law opines that records management ensures that Right to Information works well, besides saving time. But very few departments recognized that its implementation is critical to the success of the Right to Information Act.

Waiver of initial application fee

Initial application fee should be totally abolished. Such fee is not charged in other countries such as U.S.A. and U.K. Though requesters in Australia and Ireland are required to pay application fee for access to non-personal information or combination of personal and non-personal information, there is no application fee for personal information.

Twenty fifth Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Demands for Grants has recommended that the application under Right to Information Act should not be rejected for nonpayment of fee at the initial stage and the fee may be added at the time of providing information in such cases.

Spending openly

How about having a website, where citizens can see where their money goes?

This will be an accessible database of Government spending in a simple, easy-to-use interface to provide the public with information about how their taxes are spent honoring their right and need to understand where taxes are spent. The ability to look at Government expenditures, in whatever form, in greater detail builds public trust in government.

US Federal government recently launched the website, as mandated by the Federal Funding,

Accountability, and Transparency Act of 2006, initiated by Mr. Barack Obama.

Spending for awareness and infostructure

Awareness about the Act is the key to the success of the one of the main objects mentioned in the Statement of objects and reasons of the Right to Information Bill to make the Act more participatory.

A few annual reports with statistics on the number of requests are now available. CIC Annual Report 2005-2006 states that the 837 monitored central public authorities received a total of 33,688 Right to Information requests during 2005-2006 (from 12 October 2005 to 31 March 2006).

Shri Suresh Pachauri, the Minister of Personnel, Public Grievances and Pensions in the Rajya Sabha, stated, "As per information furnished by the Central Information Commission, 207,860 applications were received under the Right to information Act by various public authorities under the jurisdiction of the Central Government during the period from October, 2005 to March, 2007".

Maharashtra Chief Information Commissioner Dr. Suresh Joshi has said the state leads in use of the Right to information Act. "Maharashtra leads in use of the Right to Information Act, as in 2007, 3,16,000 Right to Information applications were received from the state." Dr. Joshi said at a press conference. This is 150% increase on the 1,23,571 applications received in the previous year (from 12 October 2005 to 31 December 2006).

Kerala State received a total number of 113,187 requests, out of which 105,126 were disposed of, during 2007-2008. Andhra Pradesh State public authorities received 31,964 requests during 2007 (1.1.2007 - 31.12.2007), the second year of the Acts operation. This is 260% increase on the 8,864 applications received in the previous year (from 12 October 2005 to 31 December 2006).

The total number of Freedom of Information Act/ Privacy Act access requests received by US federal departments and agencies during Fiscal Year 2007 was 21,758,651. This is 346,080 more than the number of requests received during Fiscal Year 2006, an increase of 2%. UK central government bodies received a total of 32,978 nonroutine FOI and EIR requests during 2007, with a 2% reduction over the previous year. They received 33,688 requests in 2006, with a 12% reduction over the previous year. 38108 requests were received in 2005, the first year of the FOI Acts operation.

(Courtesy: RTI Network)

RTI AND THE RIGHT TO PRIVACY

B.K. Chakraborty

State Chief Information Commissioner, Tripura

The Literal meaning of privacy is the freedom from intrusion by the public, specially as a right. Right to privacy is a part of Article 21 of the Indian Constitution, which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The safeguards are, therefore, provided that though the right to privacy is part of fundamental right guaranteed under the Constitution, but specific laws can over ride this where larger public interest is involved.

Privacy primarily concerns the individual. It, therefore, relates to overlap with the concept of liberty. When there is a competition between the privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves the larger public interest.

The preamble of the RTI Act sets out that the citizens shall have the right to secure access to the information under the control of the public authorities, to promote transparency of information which are vital in the functioning of the public authorities, to contain corruption, to hold governments and their instrumentalities accountable to the governed and thereby develop the participatory governance. However, a few provisions have been incorporated in the Act exempting disclosure of certain categories of information with the mandate that whatever may be the provisions in the Official Secrets Act, 1923 or even the exemptions permissible under the Act, the authorities may allow disclosure of such information if they are satisfied that the larger public interest justifies the disclosure of such information and such disclosure weight over the harm to the protected interests and further that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Many public authorities tend to deny disclosure of information taking the shelter of the exemption provisions provided under the Act. In most of the cases, such denials were due to wrong interpretation of the exemptions permissible under the Act. The

exemptions allowed under sections 8(1)(d), 8(1)(e), 8(1)(g), 8(1)(j), and Section 11 which deals with the third party information are also found to be mis-utilized with malafide intention to deny disclosure of information. Many public authorities are in the habit to deny disclosure of information if these are related to third party information without proper application of mind. Section 11(1) of the Act provides that if a SPIO intends to disclose any information or record or part thereof on a request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the SPIO, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the SPIO intends to disclose the information or record or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed such submission of the third party shall be kept in view while taking a decision about disclosure of information provided that, except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. This means that a public authority should not straightway reject a written request for information simply on the ground that it is related to a third party. If the public authority is satisfied that the information sought for should be disclosed, he may obtain the submission of the third party and should take a decision keeping such submission in view.

A written request made by a candidate seeking inspection and certified copies of her evaluated answer scripts of the Joint Entrance Examination, including inspection of the tabulation sheets containing marks obtained by the candidates, placed above her in the merit list was denied by the concerned public authority on the plea that such disclosure is exempted under section 8(1)(j) of the Act, which provides that the personal information disclosure of which has no relationship of any public activity or interest, or which would cause

unwarranted invasion of the privacy of the individual shall not be disclosed unless the SPIO is satisfied that the larger public interest justifies the disclosure of such information. This exemption clause has protected the unwarranted invasion of privacy of an individual by disclosure of personal information.

Therefore, the request of a candidate who has asked for inspection of her own evaluated answer scripts and the tabulation sheets cannot be treated as personal information of any other person, which could cause unwarranted invasion of privacy of that person, and therefore, should not have been denied by the concerned public authority taking the shelter of Section 8(1)(j) of the Act.

The Tripura Information Commission, therefore, held that such information should be disclosed in order to serve the larger public interest and, therefore, directed the concerned public authority for disclosure.

Similarly, a written request of an IAS officer seeking inspection of his ACRs was also denied by the concerned public authority with the observation that such disclosure was not covered under the provisions of the RTI Act. Although, the decision of the public authority did not disclose the specific provisions of the Act, but in course of hearing, the SPIO submitted that the information could not be disclosed since exempted under section 8(1)(j) of the Act. However, explanations offered by the SPIO were not found inconsonance with the provisions of the Act and the Tripura Right to Information Rules, 2008.

As regards inspection of ACRs-dossiers, the matter is regulated by the All India Service (Confidential Rolls) Rules, 1970 which provides that where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report. The Department of Personnel and Training, Government of India has clarified that it would meet the requirements of the AIS (Confidential Rolls) Rules, 1970 if the gist of the good points and the entire adverse remarks are communicated to the officer reported upon.

The service records of a public servant are maintained for his services rendered for the public administration in public interest and, therefore, cannot be termed to be in personal interest. The Supreme Court in a judgment passed in the case of Babu Ram Verma vs State of Uttar Pradesh (1971) 2 Serv. L.R.659 has interpreted that the expression "public interest" in common parlance means an act beneficial to the general public and an action taken for public purpose writing and maintenance of ACRs is a part of normal functioning of the Government. These records are created by the Government to be used for promotion, gradation, deputation, premature retirement etc. of Government servants, which are done in public interest only. Therefore, the records of service including the ACRs, must be regarded as falling within the scope of the expression of public interest. So, the contention that the inspection of the ACR-dossiers could not be allowed for the sake of the larger public interest could not be accepted. On the contrary, it was held that the records pertaining to maintenance of ACRs are not personal in nature and, therefore, an employee has the right to inspect his ACRS-dossiers.

The Supreme Court has held that when the entries in the Annual Confidential Report are communicated to the public servant, he should have a right to make a representation against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period. It also held that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar.

To know the antecedents of a candidate is the fundamental right of a voter under Article 19(1)(a) of the Constitution of India. The reason to have the right to information with regards to the antecedents of the candidate is that the voter can judge and decide in whose favour he should cast his vote. It is voter's discretion whether to vote in favour of illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. Disclosure of such information would help a voter to exercise his right.

TOWARDS AN INFORMED CHOICE

Aruna Roy & Nikhil Dey

To convert the controversy over the selection of Central Information Commissioners into an opportunity for change, we must shift our focus from individual names to the process of appointment.

The controversy over the ongoing selection and imminent announcement of five Central Information Commissioners raises issues that extend beyond their calibre, qualifications and selection. Right to Information (RTI) activists wrote to the Prime Minister and the UPA Chairperson demanding their voice be heard. Leader of the Opposition in the Lok Sabha L.K. Advani refused to go to the selection committee meeting on the ground that he was not properly consulted in advance. This controversy mirrors similar debates in various States at the time of selection of State Information Commissioners. The selection committee meeting has been postponed. While the government decides on another date, and perhaps another panel, the debate on the selection and appointment has got livelier and richer.

For some time, we have been collectively grappling with the challenge of ensuring that these autonomous bodies and their functionaries meet the high standards and expectations of commitment, ethics, fearlessness and autonomy. These challenges exist for the selection and appointment of important functionaries such as the Comptroller and Auditor-General, the Election Commissioners, the Human Rights Commissioners, the Women's Commissioners, the SC/ST Commissioners, the Chief Vigilance Commissioner and judges of the High Court and the Supreme Court.

The debate on the Information Commissioners illustrates the main issue: should the focus be on the individuals on the panel, their qualification, or the process of selection? Who decides? Does one define the other?

When the RTI Act was being drafted, the need for a powerful and independent Information Commission was acknowledged as a key component of strong and effective legislation. The

Act created the post of up to 10 Commissioners at the State and Central levels with the State Commissioners equal in seniority to the Chief Secretary, and the Chief Information Commissioner senior to the highest official in the State. A Commissioner can be removed only by the Governor or the President after making a reference to the Supreme Court and getting an enquiry report from it. When you create a powerful and independent post, how do you choose the person? What should his or her qualification be? Who would be involved in the selection process? How open and transparent is it?

The RTI Act states the Information Commissioners "shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media, or administration and governance." It makes ineligible anyone who has connections with a political party or holds an office of profit or carries on a business. It sets up an Appointment Committee consisting of the Prime Minister or the Chief Minister, the Leader of the Opposition, and a Cabinet Minister nominated by the Prime Minister or the Chief Minister.

At first glance, this seems a fairly good set of criteria. However, experience in the States and at the Centre has shown that there has been strident criticism, and fairly widespread dissatisfaction with the appointments and the selection process. The major change made from the people's draft of the RTI to the Bill and the law passed by Parliament was replacement of the proposed membership of the Chief Justice of the Supreme Court on the Committee by a Cabinet Minister. This has certainly created an imbalance in favour of the ruling party. However, even if this change had not been made, it is unlikely that public satisfaction with the appointments would have been greatly enhanced.

In fact, there is a lot of criticism about the lack of transparency and accountability in appointment of judges to the High Courts and the Supreme Court.

So what is the solution for all these watchdog Commissions which, taken together, represent the conscience of governance? The truth is there are many suggestions but very few tried, tested or obvious solutions. We might be able to lay down criteria but qualification and experience for these posts are not as important as commitment, autonomy and ethics. These are qualities that can rarely be measured or projected into the future.

So far, it has been a fairly arbitrary hit and miss process of selection. Some people with a fairly poor track record have done very well when they are given the guarantee of tenure and no future that can be ruined. There are others with an impeccable record, who have failed to display the confidence, daring and creative application that would convert these posts into the lynchpins that would make the lofty provisions of law and its rights actually work.

If we really want to convert this controversy into an opportunity for change, we must move our focus from individual names to the process of appointment. We must take some of the very valuable suggestions that have been made, and try and put some of them to use. We must use the space the law gives us, and involve people in the selection process. If it is tough to be removed from the post, it should be even tougher to get appointed. People being considered for these posts should be willing to subject themselves to intense public scrutiny before they are appointed, and be prepared for even more scrutiny of every act in office. We must open up this debate. The government must ask for suggestions, hold open hearings, use its website to communicate and elicit suggestions, draw from the process of parliamentary committee hearings, and try and ensure that our huge pool of public-spirited citizens is used for our collective good. Eventually, no one can guarantee the performance of someone else. But we can ensure that the people feel confident that they have had a chance to be heard.

(Courtesy - The Hindu)

PMO BACKTRACKS

If the Supreme Court is on a refusal mode as far as disclosing the assets of its judges are concerned, the Prime Minister's Office (PMO) seems to be faring hardly any better.

In a turn of events drawing parallel to the higher judiciary's denial to provide information about the declaration of assets, the PMO is reportedly keen to keep the assets of "Union Ministers, their spouses and dependent children" under wraps.

Worse still, the PMO is alleged to have done a virtual U-turn while acting on a Right to Information (RTI) query by initially forwarding the information on the ministers' "updated assets till May 14, 2008", but later backtracking on its response claiming RTI exemption for "documents held in fiduciary relationship" — a star argument earlier made by the Supreme Court for refusing to comply with RTI.

The turn of events came on an RTI petition filed by Subhash Agarwal, a textile businessman from Delhi, on April 28 last year to the Cabinet Secretariat, seeking details of "assets, wealth, income with Union ministers, spouses and their dependent children for the last two years or as is available". The Cabinet Secretariat forwarded the request to the PMO on May 5 stating that the information sought was "more closely connected with the functions" of the latter public authority.

"The PMO had reacted by sending an office memo to the Secretariat on May 19, enclosing an updated list of assets enjoyed by Union ministers till May 14, 2008," Agarwal said. Receiving no communication for the next five months, Agarwal decided

to follow up his request by shooting off a letter to the Secretariat on October 4. "The letter was plainly ignored," he claimed.

RTI PLAGUED BY WEAK INFRASTRUCTURE

Although the Right to Information Act is being effectively used by hundreds of citizens, an ongoing survey shows that the government is struggling to keep up with significant public awareness and use of the transparency law in the three years of its existence

According to the preliminary findings of a study that was released and discussed in the presence of Chief Information Commissioner Wajahat Habibullah in New Delhi on October 13, 2008, the Right to Information Act suffers from the problems of a weak infrastructure and public information officers (PIOs) who are unaware of their exact role. “Almost half the PIOs interviewed in rural India said they were not aware that they were PIOs,” notes the study, a participatory exercise undertaken by the Right to Information Assessment and Analysis Group (RAAG) and the National Campaign for People’s Right to Information (NCPRI) in partnership with a number of academic institutions and voluntary agencies, across five states and 120 villages.

In the study, an overwhelming number of PIOs — nodal officers who receive and dispense with RTI applications — cite lack of training and unfamiliarity with the law as key hurdles in their ability to effectively service RTI requests. “Over half said they had received no RTI training, and many complained of unavailability of guides or manuals to understand the law better. Over one third said they do not even have a copy of the RTI Act,” says the study.

This, when RTI activists and citizens feel the Act has been a runaway success since its enactment by the Union government on October 11, 2005. “The RTI Act has made a positive impact on the lives of people like no other Act has done before. More and more people are filing RTI queries to procure information, which was earlier denied by government officials,” says activist Shailesh Gandhi, now an information commissioner with the Central Information Commission, Delhi.

The study adds: “The government responds, though sometimes slowly. Of the total applications filed, nearly two-thirds got a response from the public authorities. However, only a third of these applications were responded to within the stipulated 30 days.”

It states that Meghalaya was “the worst performer” with no PIOs found at the village level, while Rajasthan was “the best performer” with nearly all PIOs available and interviewed. The other major finding of the study was that more men than women were using RTI across the country. “Rural applicants were overwhelmingly male. And the same goes for Delhi, where over three-fourths of 162 randomly selected applicants surveyed were male,” says the study.

In Maharashtra, the Act has been a success with around 3.7 lakh citizens filing RTI queries in the last three years. RTI activists and citizens, however, say the growing pendency of second appeals is cause for concern. An applicant is forced to file a second appeal when both the PIO and first appellate authority deny information on flimsy grounds. “The high pendency of appeals is slowly killing the Act. Applicants have to wait for more than a year for a hearing of their second appeal,” says Bhaskar Prabhu of Mahiti Adhikar Manch, an NGO dealing with RTI-related issues. The six information commissions in Maharashtra had 16,866 appeals pending till the end of June this year; Mumbai alone had 4,818 pleas.

It’s the same story in neighbouring Karnataka. Commissioner of the Karnataka Information Commission K A Thippeswamy said his office was receiving 1,600 applications every month from citizens seeking data and information on various issues. The commission has recommended that the government enact a Karnataka Records Act to manage and maintain records.

Thippeswamy also urged government officials to be more forthcoming in providing information to applicants. A press release stated that several surveys and studies done by civil society organisations such as Consumer Rights Education and Awareness Trust (CREAT) and Public Affairs Centre have found that public authorities have not given the details of officers in charge of the RTI Act. Besides, knowledge among officials about the RTI Act itself was under question.

(Courtesy - The Indian Express)

RURAL INDIA OUT OF LOOP

People in rural India have a tough time in accessing information under the Right to Information (RTI) Act from government departments and some even face retribution, a study released on January 29 said.

The study conducted by Participatory Research in Asia (Priya), a civil society group, in eight states last year, found that 75% of the respondents say that no directories of Public Information Officers (PIOs) are available in their district.

According to the study, 50% applicants found that due to official apathy, they could not know where to submit their applications.

The study took into account data of eight states like Haryana, Uttar Pradesh, Andhra Pradesh, Bihar and Jharkhand.

“The attitude of PIOs is extremely apathetic and hostile to the applicants as 60% respondents say that they are either harassed or denied information,” said Vikas Jha, a coordinator of Priya.

“In large number of instances, the applicants are facing retribution when they file RTI applications. We found it in the Sitapur district (Uttar Pradesh), where the names of citizens who asked for information under RTI were struck off the below poverty line list,” Jha said.

The study found that many information commissioners are in favour of PIOs and thus deny required information to common people.

Nearly 32% of the respondents say that the first appellate authority is not concerned and does not admit the appeal.

The State Information Commission (SIC), the final appellate authority, has been able to provide some solace to the applicants. Nearly 44% of respondents feel that the SIC has been cooperative.

In such a scenario, only the middle or rich class and educated sections of the society can approach the government offices and the appellate authorities for the information.

The study concludes that accessibility to information under RTI Act is restricted to educated and middle class people. A large section of the poor and marginalised lack energy, courage and time to struggle for information at several levels of government institutions.

It said 58% of information commissioners are from administration and governance sector. Of the 60 information commissioners profile, 27 were found as retired IAS officers.

(Courtesy – News Post India)

DOPT VIOLATING ACT

Department of Personnel and Training, which is the nodal agency for the implementation of RTI Act, is itself violating the Act by publishing misleading information on its website, the CIC has held.

The department on its website has excluded file notings from the definition of ‘information’ which implies that there is no obligation on it to reveal these under the RTI Act.

“Because it is already clear that the entry of file noting with regard to exempted information on the website of DoPT is misleading, we find the DoPT is in violation of the RTI Act,” said Chief Information Commissioner Wajahat Habibullah.

The Commission ordered the department to delete the definition of information which says that file notings were not included in RTI Act and replace it with the new definition as given in the Act.

In an earlier hearing of the plea filed by one RTI applicant S C Agrawal, the CIC had directed “It is clear that CPIO (of DoPT) has simply acted in accordance with a circular issued by the DoPT.”

“If we are to construe malafide in the denial of information in such cases, it is necessary that the source of such malafide denial be identified and further action considered accordingly. From the above it is clear that the impugned order was issued with the approval of then secretary

(Courtesy – The Hindu)

TRANSPARENCY STUDIES

The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the CMS has set up a Transparency Studies wing to document, examine and publicise the interrelation between governance and society in all its aspects. It facilitates dissemination of relevant material, confers with experts and field workers and networks with the media to promote implementation and awareness.

The functions of Transparency Studies include:

- Publishing and distribution by electronic mail of Transparency Review, a journal designed to publicise news, articles and documentation concerning developments in Right to Information and the overall interface between governance and society. Priority is given to right to education, especially of children; right to work; right to justice and associated human and social rights, especially at the grassroots.
- Operating Transparency Features to disseminate articles and information on the above.
- Linking with civil society groups to further common objectives like exposing corruption, monitoring elections, improving civic services.
- Arranging discussions on emerging issues and problems between specialists and mediapersons.



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