Theory of Transparency: The Right to Know

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SHORT ARTICLE ON:

THEORY OF TRANSPARENCY: THE RIGHT TO KNOW

Sub-Topic: TRANSPARENCY OF GOVERNMENT AND ACCESSIBILITY OF INFORMATION: A COMPARATIVE ANALYSIS OF “RIGHT TO KNOW” IN AUSTRALIA, CANADA, SWEDEN AND INDIA.

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Any governments’ functioning and merit is determined by the extent of faith and trust imposed by the governed citizens. It follows a rule of proportionality. The faith imposed in the government increases as its functioning becomes clearer. Advancing towards globalization this has been in always in question that can the government be lucrative in being trusted and transparent. This can be acquired using various tools which include “Right to know”. Literally speaking, right to know is a subjective concept. It cannot be entertained in each and every situation. But with an ever-advancing social welfare world, mass curiosity is to be taken into consideration. The public mistrusts government because all too often they don't have insights into how decisions are being made, or who is responsible for making them - so they naturally believe the worst. In this new age of transparency and accountability, governments need access to the right information to make sound decisions.¹

This can be achieved by passing various legislations. These legislations are a cause of mutual development, for both the state and the citizens. Practically, it empowers people. It gives them a strong arm to understand and analyze government’s decision-making procedure. They do not want to get affected by any law unless and until they dig into its merits (a merit of having an educated population). As we know, the true sense of democracy lies in empowering people as it is people’s rule. They elect and select by whom they want to get governed. Thus, if we are to understand democracy, we need to understand the government. And more importantly, its decision-making procedure. Transparency is decisive factor to analyze the accountability of the government. The rational aspect of this is that, accountability is an indispensable aspect of democratic stability. Without accountability, stability cannot exist. Stability and accountability are relative terms. Accountability is an essential for democratic stability. Being accountable does not only mean to take responsibility but also to reprimand for

¹ Making government more transparent. Last accessed at: 23-4-15
the mistakes once committed. Many people believe that the presence of elections alone is not sufficient for a country to be considered democratic and that transparency must be included as part of the definition of political regime. We agree that contestability of elections and transparency of policymaking are analytically distinct concepts. Adopting minimalist approaches to democracy and transparency, we ask a basic question: do electoral politics provide incentives for governments to disseminate data? We thus investigate theoretically the relationship between regime type and the willingness of policy makers to provide credible announcements on policy-relevant variables.²

Democracy is same way related to people as is transparency. Transparency is a tool to drive democracy effectively. If a democracy is not transparent it is no different from a monarch’s rule. The vesting of mutual trusts is necessary in a democracy. And if this doesn’t happen then it gives rise to an unstable democracy. Democracy is not about rule by people, but it is about people’s participation. Their involvement in the procedure of governing. And those are the ideals of democracy. The basis of democracy revolves around public participation and public opinion. Right from its initiation by John Locke, public opinion has been a term of subjective interpretation. Through centuries of evolution, public opinion has been equally related to public policy too. Both complement each other to conform mutually.³

The project largely depends and deals with the same specification- how transparency is in consonance with public policy and public opinion.

Last accessed at: 22-4-2015
URL: http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=8454991
³ Stanford encyclopedia of philosophy, John Locke.
This publication deals with an insight into John Locke’s life and theories propounded by him. It also deals with the relation he proposed between public opinion and policy. Contrary to many of his works which include philosophical interpretation, Limits of Human Understanding, this work is more tilted towards pragmatic analysis. It talks about changes taking place after waves of democratization were taking place and many non-democracies turned into democracies or followed some ideals of democracy.
Last accessed at: 22-4-2015
URL: http://plato.stanford.edu/entries/locke/
TRANSPARENCY, ACCOUNTABILITY AND DEMOCRACY

2.1 Definition of Transparency and Accountability

Transparency is a process or a mechanism of knowing. Transparency in its literal meaning refers to the state of being easily visible throughout. Politically speaking, it is a developing phenomenon of ascending trust. It is a passage of increasing infidelity on the government by citizens and by government on citizens. It is a process of prolonged sharing of thoughts necessary in governing the state. Transparency, as we understand in laymen language is that it is a way to see through the working of government. This is in itself a way of empowering people and living by ideals of democracy. Most of the times, transparency is seen as one sided process. The government or the ruler has access to the citizen’s activities. But the government is much reluctant to share allow the same when citizens demand. This gives rise to loss in trust in governments’ working and raises questions in all lengths and breadths.

Accountability is a concept of varied interpretations. In literal meaning it decipherers to be responsible. Accountability in political terms explains as morale. Accountability refers to responsibility taken by a government to not only guard its citizens and their rights but also to be accountable or responsible for the actions taken by the state. It expands its ambit to non-citizens as a protector of their interests in the working of the government.

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4 What is transparency? , Transparency & accountability initiative. Last accessed at: 24-4-2015 URL: http://www.transparency-initiative.org/about/definitions

As a principle, public officials, civil servants, managers and directors of companies and organizations and board trustees have a duty to act visibly, predictably and understandably to promote participation and accountability. Simply making information available is not sufficient to achieve transparency. Large amounts of raw information in the public domain may breed opacity rather than transparency.

5 Accountability in governance, World Bank resources. Last accessed at: 23-4-2015 URL: http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf . The Accountability ensures actions and decisions taken by public officials are subject to oversight so as to guarantee that government initiatives meet their stated objectives and respond to the needs of the community they are meant to be benefiting, thereby contributing to better governance and poverty reduction. Accountability is one of the cornerstones of good governance; however, it can be difficult for scholars and practitioners alike to
2.2 Democracy: Its relation with Transparency & Accountability.

Democracy, as we know, is an ideology that has developed and evolved since centuries. It is, in simple terms, known as people’s rule. A government where people rule and have their interests vested in the center. The democratic principles are built on the fact that people are the soul exponent of the sovereign. Government by people implies that the public decisions should be taken with the approval of all the people. In practice, it would be a far cry. In the first place, all people cannot be made to think alike. There are added chances of conflict of interests. So people’s representatives have to be elected by a majority vote. Then public decisions by these representatives have also to be taken by a majority vote as they could be rarely unanimous. So the strength of the people who actually approve of a particular decision is further diluted. The interests of minority cannot be given a hit here. They too are to be considered as they also form a part of the state, however small.

The true essence of democracy is giving power in people’s hand. It is on their discretion to take decisions and implement laws according to their convenience. But with growing population, models of democracy or particularly direct democracy cannot be followed or conformed. Thus indirect democracy or representative democracy is to be considered. It is here that the exponents of transparency or accountability come into scene. The risks of opacity and secrecy of information increase with power being concentrated to lesser hands. One can easily understand that as lesser people have control in their hands, it is much easier to keep information from the citizens.\(^6\)

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Navigate the myriad of different types of accountability. Recently, there has been a growing discussion within both the academic and development communities about the different accountability typologies. This Note outlines the present debate focusing on the definition and substance of different forms of accountability and considers the key role that legislatures play in ensuring accountability.

\(^6\) Cf. James R. Hollyer, NYU Publication. Last accessed at: 23-4-2015
URL: https://files.nyu.edu/bpr1/public/papers/HRVIOP.pdf

Both transparency and democracy are complicated, multidimensional concepts. There may be more to democracy than the ballot box and more to transparency than the dissemination of data. By narrowing the focus to these particular attributes of democracy and transparency, we can generate clear theoretical predications amenable to empirical investigation. Moreover, our narrow definitions may act as proxies for broader concepts. The presence/absence of elections may proxy for the “representativeness” of the polity; and data dissemination may proxy for the “availability” of information.
Democracy is one of the most unstable forms of government. The reason being the concentration of powers in several hands. Several people share powers, interests and authority. Democracy is way too different from other forms explaining the reason as it is different in its application. To understand democracy, we need to understand and interpret the extent of transparency a government has towards its citizens. This transparency and accountability is majorly important as it acts as a tool to understand and analyze democracy.\(^7\)

Information should be managed and published so that it is relevant and accessible. Information should be presented in plain and readily comprehensible language and formats appropriate for different stakeholders. It should retain the detail and disaggregation necessary for analysis, evaluation and participation. Information should be made available in ways appropriate to different audiences. Timely and accurate information should be made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders. This means that information needs to be provided while planning as well as during and after the implementation of policies and programs. Information should be managed so that it is up-to-date, accurate, and complete.\(^8\)

Democracy in order to be understood has to be measured on scales of transparency. Transparency is an inevitable tool to study democracy of a country. The extent of transparency has always been a burning question to answer. The implementation of ideals of democracy out and out depends on people’s participation and this can only be achieved by transparent government. Accountability is about who is ultimately answerable for an action or — in some cases — inaction, and for the consequences ensuing from either. Accountability can denote responsibility in a positive context, or in another sense, culpability.

\(^7\) Id. at p. 1192

The study of transparency and its relationship with democracy is fraught with difficulties, one of which is the possibility of tautology. While we are concerned in our study with the transparency of policymaking and, more specifically, with the dissemination of information, the broad concept of transparency also applies to a full range of factors that affect information flow within a society. Transparency thus pertains to questions of who rules, how governments might be replaced, and, indeed, how elections are contested in countries that fill key offices through an electoral process. In other words, transparency may pertain to the very question of whether one can call a political regime “democratic.”

\(^8\) Supra at n. 4
Then there is the question of to whom our elected officials are accountable. One would presume the obvious answer is the electorate; at least, that would be the ideal. However, there are times elected officials must transcend accountability to those they directly represent for the greater ideal of benefiting the country as a whole. It is clear from above statements that a democracy cannot exist without transparency. Some extent of accountability is a compulsion and necessity to make a democracy survive. And the higher rate of transparency gives birth to an even better democracy.

2.3 Parallelism between transparency and accountability in democratic context

In its democratic political aspect, decentralization as currently conceived and increasingly practiced in the international development community has two principal components: participation and accountability. Participation is chiefly concerned with increasing the role of citizens in choosing their local leaders and in telling those leaders what to do—in other words, providing inputs into local governance. Accountability constitutes the other side of the process; it is the degree to which local governments have to explain or justify what they have done or failed to do. Improved information about local needs and preferences is one of the theoretical advantages of decentralization, but there is no guarantee that leaders will actually act on these preferences unless they feel some sort of accountability to citizens. Local elections are the most common and powerful form of accountability, but other mechanisms such as citizen councils can have limited influence.

Accountability can be seen as the validation of participation, in that the test of whether attempts to increase participation prove successful is the extent to which people can use participation to hold a local government responsible for its

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actions. Accountability is a channel to reach better amount of transparency. Accountability and transparency go hand in hand as they are tools of decoding the complications of democracy. If everything is clear in the eyes of the people, then administration would be much easy and smooth. Transparency and accountability are cornerstones of democracy. They can only be manifold increased to make democracy better. Transparency is the key to open up complications of democracy. Democracy dies behind closed doors.  

Transparency and accountability are mutually beneficial to each other. Transparency encourages accountability and accountability demands transparency. One cannot survive without other as they are complimentary to each other. Transparency and accountability are also related to a term “public opinion” which is an essential part of democratic ideas. Public opinion generated is a major point in shaping a democracy. They are the pillars of democratic regimes and make them stronger. Openness and transparency are key ingredients to build accountability and trust, which are necessary for the functioning of democracies and market economies. Transparency and Accountability are two of the central pillars of good governance. Transparency is also a necessary precondition for the exercise of accountability since without access to clear, accurate and up-to-date information, it is impossible to judge whether the standard promised has been met. Transparency is a necessary part of accountability but - as suggested in the 'levels' just above - it is not the same as accountability. To hold a public servant accountable, you must first find out information about that public servant's decisions and actions (transparency), but you then must go further if you are actually to hold them to account for their decisions and actions. That further step - accountability - involves more than just information.

10 Judge Damon J. Keith in a federal court of appeals decision in 2002 condemning secret deportation hearings
2.4 Can non-democracies have transparency?

Democracy cannot exist without transparency. Transparency is a necessary pre-requisite to make a democracy survive. Its survival and growth towards a better counterpart is only possible by means of more transparency. So one can easily decipher that democracies have transparency and transparency is an essential in a democracy. But as advancements take place in politics, sociology and ideologies, this has been a burning question whether non-democracies have transparency? If yes, then at what extent do they administer and support transparency. Can the transparency pose a threat to their stability, existence and survival? Adding further, these forms of non-democracies namely quasi democracies, indirect or representative democracies, are administered better or worse by administering transparency. All this can be explained by undertaking pragmatic and contemporary examples of China, Israel or Korea.

Being extreme examples of anti-democratic ideas, these territories have been an abode of murdering democratic ideas, even the indirect democratic ones. These geographically and economically gigantic entities have been a living example that even non-democracies have transparency as their own constitutions (non-democratic) provide for provision of freedom of information and right to know. It is much interesting to know that these countries did not collapse or degrade by disseminating information to its citizens. They were indeed on the nail-head when it came to sharing information with the non-rulers. They shared information but with precise care and channelized it in such a way that it could not pose any threat, even in the remotest sense, to their “reign”. Even if it did, they had precautionary measures, of course violent, to suppress any such outrage.

Contrary to this, there have been examples of failure of non-channelized freedom of information. Italy, Syria and many others who followed non-democratic principles widely collapsed with the very instance of sharing information. Or as happened in case of Italy, as the information of corruption disseminated to the people it resulted in outrageous outbreak of opposition.
It is thus understandable that even non-democracies have transparency. It only depends on the way they administer the flow of information.

Transparency is a highly regarded value, a precept used for ideological purposes, and a subject of academic study. The following critical analysis attempts to show that transparency is overvalued. Moreover, its ideological usages cannot be justified, because a social science analysis shows that transparency cannot fulfill the functions its advocates assign to it, although it can play a limited role in their service. But only to add further, the need of transparency cannot be excluded. It has become a necessity of not only the democracies but of the non-democracies too.

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The paper extensively deals with critical analysis of transparency of government. It also explains why transparency has been made a hyped term and why its manifestation cannot yield the pre-requisite desired, as the ideology explains.

THEORY OF TRANSPARENCY

3.1 Background and Assumption.

Theories are ideologies which have developed or evolved through a period of time. They help in understanding a phenomenon which has occurred or is taking place, yet misses an outline of how things take place. The theory of transparency is just that. Transparency has existed in the global democratic regimes for decades. Earlier from USA to present-day non-democracies say Cuba. All has been administering transparency yet a theory to provide for the provisions of the same has been in void since long.

The theory of transparency assumes:

In general, for this theory to prevail and exist, a country can be democratic or a non-democratic regime.

Earlier it was believed that only democracies can have and administer transparency. Transparency can only be a part of democracies and a democracy can only exist with democracy in place. But with political advancement and sociological awareness ascendance, it is observed that many non-democratic regimes too have accepted transparency to administer better governance. Today, there are numerous examples which have been encouraging more transparency in their political territory so as to have an even more stable government.

The assumption of this theory, as it states, is inclusive of non-democracies. To further specify, non-democracies mentioned here include of the electoral or representative democracies which even most of the so-called democracies include. Democracy and its ideals include the peoples’ participation. It enables the citizens to have control and authority of the government, but with factors like increasing population and trans-migration in consideration, it can be deciphered that even definitions or notions of democracy have been changing. The concept or models of indirect or representative democracy have been in the most favored lines of politics.
3.2 Statement.

The theory advances with the assumption of transparency in politics taking place in both democratic and non-democratic regimes. This can be easily traced by the progression of various examples of non-democracies adhering to transparency.

This theory professes with the statement that:

A democratic or non-democratic regime can have transparency. The higher level of transparency involves even higher level of accountability. This increased level of transparency and accountability can lead to instability, but this can be curbed by means of channelizing dissemination of information via correct and filtered channels. The government should control the sharing of information and extent of transparency. This whole phenomenon revolves around the principle of “trust but verify”.

3.3 Analyzing statement in accordance with the assumption.

The theory can be analyzed with the assumption and the statement. It is observed that transparency is administrable with democracies and non-democracies. The theory can be proved by using non-doctrinal means.

Freedom of Information (FOI) can be defined as the right to access information held by public bodies. It is an integral part of the fundamental right of freedom of expression, as recognized by Resolution 59 of the UN General Assembly adopted in 1946, as well as by Article 19 of the Universal Declaration of Human Rights (1948), which states that the fundamental right of freedom of expression encompasses the freedom to “to seek, receive and impart information and ideas through any media and regardless of frontiers”\(^\text{13}\). The fact that transparency can and has to co-exist with non-democracies as well. Looking further, it becomes sole responsibility of the government to handle the dissemination of information. The information requested and further shared should be in proper consonance with reasonable terms, meaning, the information shall not be anything which could

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\(^{13}\) Freedom of information. Last accessed at: 24-4-2015
create instability in the political structure of the country. Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer people increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.\(^{14}\) The linkage of democracy with people’s participation is self-explanatory. The people’s participation and people’s opinion is an inseparable part of democracy. Generating public opinion is a part where most governments fail. They have the trust of the people but public opinion is verified trust, which can only be achieved by means of transparency and thus becoming more accountable and responsible. The concept of public opinion and its role in working of a government is one of the most significant as well as controversial subjects. As we know, democracy is regarded as based on the ideal that it is the voice of the people. It is people’s government. The certain principles on which the public opinion is manifested are that the public is interested in the governmental policy, the public is not only informed but well-informed, that the public would deliberate and reach rational conclusions, also the rationally held opinions by the public would be logical and be uniform throughout the social order, a continued surveillance be conducted which shall manifest regular maintenance of public opinion.

The country is promising to improve its information transparency by holding routine briefings every week next year to introduce major decisions, plans and economic and social policies of the Communist Party of China Central Committee and the State Council. The State Council Information Office also updated its

\(^{14}\) Transparency and open government, Daily kos. 
Last accessed at: 24-4-2015 
directory of spokespeople from different levels of government bodies, with specific names, titles and contact information. Included is information about the Ministry of Public Security and the Ministry of Housing and Urban-Rural Development, which didn't release the information last year.\textsuperscript{15} Transparency International’s report 'Corruption in Local Government: The Mounting Risks' warns that an unintended consequence of recent changes, such as those made in the Localism Act and the Local Audit and Accountability Act, may be the creation of an enabling environment for corruption. The report notes that experts hold widely different views about the scale and prevalence of corruption in local government, but there was general consensus that recent changes would increase the risk of corruption happening in future.\textsuperscript{16} Similarly, there are numerous examples which point out that the nature of government is an indicative factor to determine the transparency and accountability.

The theory with its assumption and statement stands on the fact that transparency and accountability is irrespective of nature of government. But the extent of transparency varies in huge proportions. These proportions can be minimalized by means of proper channelization of dissemination of information. This can be best understood by looking into the example of Italy and Syria. The reason for collapse of prevailing form of government can be seen as the free flow of information to the public through unorganized channels of outsource. Although the information that came out was of such nature that it brought outrage and opposition. But is not deniable that this theory will hold good with its assumptions and statement only if there is any dissemination of information through proper channels and organized passage.

\textsuperscript{15} Government vows more transparency, CHINA DAILY, (18-12-2014).
Last accessed at: 24-4-2015
URL: http://www.chinadaily.com.cn/china/2014-12/18/content_19115996.htm

But see China’s Transparency Reform: Is It for Real?, THE ATLANTIC.
Last accessed at: 24-4-2015
URL: http://www.theatlantic.com/international/archive/2012/11/chinas-transparency-reform-is-it-for-real/264609/

\textsuperscript{16} Corruption in UK local government, Transparency International.
Last accessed at: 24-4-2015
Comparison of Australia, Sweden and Canada.

The democracies are an outcome of the constitutional provisions provided. The basics of transparency are explained in the constitutions of various countries. Transparency, as explained, is a phenomenon of being visible to the people and generating public opinion. This can be seen as a method of gaining responsibility and accountability. While comparing the extent of transparency administered by these countries, it is noticeable that they have been in proper consonance with the ongoing processes of democratic ideals.

The provisions of transparency vary by manifold measures in many countries. Although the counties are part of democratic regimes, yet they have different extents of transparency in them. They have not been an overnight turnout, rather an evolution.

4.1Australia:

Freedom of information (FOI), or the statutory right of access to government documents, is justified on the grounds that it encourages transparency and political accountability and promotes public participation in government and representative democracy. In the 1970s Australia was a leading nation in introducing FOI laws into a Westminster-style democracy. However over time there was a general view that those 1970s reforms were not successful—that there was minimum cultural change and that a presumption in favor of disclosure was not practiced across government. It was felt that government agencies could exploit restrictions and gaps in FOI laws to make it harder for the public to gain access to government information, especially information that might be embarrassing to the government or agency.

The Rudd Labor Government introduced major FOI changes with the principal objects of promoting a pro-disclosure culture across the Government and building a stronger foundation for more openness in government. These reforms, the bulk
of which commence on 1 November 2010, are comprehensive with all aspects of the FOI laws being reformed—access procedures, FOI charges, exemption criteria, FOI objectives, the procedure for review of disputed decisions, publication of information by agencies, and FOI reporting by agencies. A major part of the FOI reforms is the creation of an Information Commissioner position. It is an independent statutory position, with a range of functions that include investigation of complaints about FOI administration, merit review of access denial decisions, publication of FOI guidelines, and providing advice to government on information policy. The Information Commissioner Designate, John McMillan, is enthusiastic about the new position noting that the range of functions conferred is extensive and go beyond the traditional review role of settling individual disputes about document access. He foresees that agency heads and Ministers will need to heed the work of the Information Commissioner and take a greater involvement in FOI administration. He also notes that the budget allocated to the new office of $12.2 million over four years is more generous than perhaps was expected.

Another change that is likely to enhance the right to access is that agencies are being encouraged as part of a new scheme to make documents public independently of an FOI request. This information publication scheme is due to commence in May 2011 and again, the Information Commissioner will play a large role in providing guidance and a stimulus to agencies. The new FOI scheme has been welcomed. It has been described as the biggest shake-up in the FOI Act’s history which hopefully will be effective in causing a permanent cultural shift of openness within public administration. Parliament, however, may see calls for further, more radical reform, particularly in the area relating to those exemptions that continue to apply to certain types of documents and certain agencies. For example, the Greens and some independents are on the record as wanting to ensure that all government agencies, including intelligence agencies, are fully open to scrutiny and are accessible under FOI laws, whilst safeguarding national security.
Whistleblower protections—proposals for reform

Whistleblower protection is ultimately about disclosure of information. The thrust of a whistleblower protection scheme is to protect workers who draw attention to problems they see in the workplace, ranging from corruption and threats to public health and safety, to mismanagement and public wastage. A worker who follows a designated procedure in disclosing information about workplace wrongdoing will receive protection against criminal and disciplinary sanctions and receive assistance aimed at safeguarding their employment and career.

Australia’s federal laws currently offer very few protections for public interest disclosures. The Rudd Labor Government had plans to address this gap. It had accepted most of the recommendations for legislative reform made in a 2009 House of Representatives Legal and Constitutional Affairs Committee report on whistleblower protection and was planning to introduce legislation later this year. The proposed scheme would facilitate public interest disclosures in the Australian public sector being made by public officials where there had been an honest and reasonable belief that the public interest disclosure should be reported. The range of matters that could be protected include amongst others: illegal activity, maladministration, wastage of public funds, dangers to public health or safety, dangers to the environment; and official misconduct. Responsibility would be assigned to the Commonwealth Ombudsman and the Inspector-General of Intelligence and Security for receiving whistleblower complaints, monitoring the investigation and handling of those complaints by government agencies, and ensuring that whistleblowers are properly protected. On one matter, the Government’s response went further than the Standing Committee report, in expanding the circumstances in which a person can make a public interest disclosure to a third party, such as the media. With the Greens and some independents also making strong calls for the introduction of whistleblower protection laws and for more protection of journalists’ sources, the promised
reforms of the previous Labor Government are likely again to be on the political agenda during this Parliament.\textsuperscript{17}

4.2 Canada:

The Government of Canada is making more data and information available to Canadians than ever before. Canadians are also being offered more opportunities to participate in discussions on government policies and priorities. As a regulator, Health Canada plays an important role in protecting the health and safety of Canadians and is committed to greater transparency and openness to further strengthen trust in our regulatory decisions.

We have launched the Regulatory Transparency and Openness Framework to support this commitment and the Government of Canada’s Next link will take you to another Web site Open Government initiative. The Framework outlines concrete steps we are taking to improve access to timely, useful and relevant health and safety information. Every year, we will list the actions we will undertake to enhance regulatory transparency and openness. And every year we will report on what has been achieved.

This Framework will:

- Help Canadians to better understand how and why our decisions are made. They can use this information to make well-informed decisions on their health and the health of their families.
- Assist industry to be better positioned to comply with current regulatory requirements and plan for upcoming regulatory changes.

In Canada, the Access to Information Act allows citizens to demand records from federal bodies. The act came into force in 1983, under the Pierre Trudeau government, permitting Canadians to retrieve information from government files, establishing what information could be accessed, mandating timelines for response.\textsuperscript{[5]} Any exceptions to that right of access (i.e.

\textsuperscript{17} Mary Anne Neilsen, \textit{Law and Bills Digest Section}. Last accessed at: 24-4-2015. URL: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook43p/publicsectoraccountability
information that is not disclosed) is limited and specific. That means that
government departments cannot simply refuse to disclose whole documents
or series of documents. This is enforced by the Information Commissioner of
Canada.

In general, the types of information that can be exempted from disclosure
include: information that could affect federal - provincial relations;
information provided to the federal government in confidence by other
governments; information affecting the safety and security of individuals;
information that belongs to third party private sector companies; solicitor -
client privilege and information that, if disclosed, could undermine the
operations of government. This is not an exhaustive list.

There is also a complementary Privacy Act, introduced in 1983. The purpose of
the Privacy Act is to extend the present laws of Canada that protect the
privacy of individuals with respect to personal information about themselves
held by a federal government institution and that provide individuals with a
right of access to that information. Complaints for possible violations of the
Act may be reported to the Privacy Commissioner of Canada.

Canadian access to information laws distinguish between access to records
generally and access to records that contain personal information about the
person making the request. Subject to exceptions, individuals have a right of
access to records that contain their own personal information under the
Privacy Act but the general public does not have a right of access to records
that contain personal information about others under the Access to
Information Act. From 1989 to 2008, requests made to the federal
government were catalogued in the Coordination of Access to Information
Requests System. The federal legislations do not apply to the provinces or
territories however; these levels of government also have access and privacy
legislations.18

4.3 Sweden:

The right in Sweden of access to the public documents of authorities has a long history. Although the regulations have changed a great deal over time, the basic principle is the same, that is within public administration the basic assumption is that a document is public. The basic right of access to so-called official documents does not mean that there is free access to all documents within the authority. For a document to be regarded as official it has to fulfill certain criteria, namely that the document is kept by the authority, and has been submitted to or has been drawn up by it.

A submitted document becomes official when it has arrived at the authority. This means that post that is sent to the university becomes public the moment it arrives. If a document is not sent directly to the central address of the authority (delivered in person, sent to a home address, etc.) it is regarded as submitted when it has been received by an employee. A document which in any way concerns university operations is thus submitted and therefore official no matter how it has been delivered.

Documents produced at the university become official at different times, depending on what kind of documents they are. A document that is dispatched, that is, is sent or in any other way transferred to a receiver outside the university will as a rule become an official document. If the produced document is part of a case it becomes official when it has been dispatched or else when the case is concluded. Documents that do not belong to a particular case become official when they are completed. This means that documents produced within research and teaching – operations with few cases – become official when they are finished. Official registers, journals or databases become official as soon as they are taken into use (have been “made ready for entry”). Our registers at the university, for example the official register and registers of information about students are therefore official documents. If the criteria stated above are fulfilled, the document is public, and should as a rule be made available to anyone who requests it. However, it should only be made available if there is no bar due to secrecy in accordance with the Secrecy Act (2009:400; in Swedish). It is thus
important to be aware of and understand the difference between “official” and “public”. Official documents are as a rule accessible to anyone (public) but can in some cases be classified (objects of confidentiality).\textsuperscript{19}

The right of access to official documents is not affected by the medium with which these have been created. The deciding factor is the contents – not the way in which the information has been created, distributed or stored. The rules for the official register apply even if the documents are in digital form.

The right of access to official documents is extended to both Swedish and foreign citizens. An authority does not have the right to investigate who is seeking and requesting material, or what it is to be used for. The authority can only collect information concerning name and purpose if this is needed to determine whether the rules of secrecy apply.\textsuperscript{20}

If you want to access an official document, you turn to the person who keeps the document. You have the right to read the document in situ. No fee can be charged. A document can also be copied, photographed or recorded. You also have the right to a transcript or copy of the document, for a fee. If it is an ADP-recording the authority does not need to supply it in any other form than a printout. You do not need to give a detailed description of an official document when requesting it, for example date or registration number, but if that is the case, the authority is not under any obligation to make extensive searches to find it. A request to access an official document should be dealt with speedily. If the official who is in charge of keeping the document refuses to supply it, the authority makes a central decision regarding access, if the person making the request so wishes.\textsuperscript{21}

\textsuperscript{19} Public Access to Information and Secrecy Act (2009) . Last accessed at: 24-4-2015. URL: http://www.legislationline.org/topics/country/1/topic/3
SUGGESTIVE MEASURES

5.1 What can India do to administer more transparency?

Improving Governance in India

It is commonly recognized that corruption, which has become a universal phenomenon, unless kept in check, can undermine the finest of systems. It eats into the very vitals of the civic society and directly vitiates the relationship between the citizen and the state, which in modern times must conform to the status of a welfare state. However, the common man feels that there is lack of political accountability – its criminalization and ‘compulsions’ of coalition politics, and systemic weaknesses in corruption/grievance Redressal machinery are the most important reasons for sustaining corruption in the country. Further, it is perceived more as a result of monstrous greed allowed sanction by corrupt politicians and a weak, apathetic and unaccountable government machinery – all these elements reinforcing each other. The existing anti-corruption institutions are also not very effective as they are under the control of the politicians, lacking real teeth and powers, and not having the strength of officers with impeccable integrity. Besides, these institutions face problems with regard to paucity of staff and non-filling up of the vacancies, etc.

Service Delivery Excellence

Improving Governance is a part of a development process. It is argued that corruption can be curbed by systematic changes in governance through introducing participation, transparency, accountability and probity in administration. The right to good governance is also considered as an essential part of the citizen’s rights that one can expect from the government. Accordingly, a number of initiatives have been taken by the government to incorporate citizen’s concerns as inputs in the formulation of policy as well as in the quality and reliability of services. These can be brought through various tools, including the Citizens’ Charters, Right to Information, e-Governance, Report Cards and
Social Audits. Besides, each department have now developed its public grievance redress mechanism by appointing a senior officer as Director of Grievances’ with the powers to call for files/papers relating to grievance. The public can approach him/her for the redress of its grievances. He/she is supposed to be available on every Wednesday between 1000 and 1300 hours.

The Right to Information Act 2005 empowers the common man to know his entitlement to avail a particular public service, and redress the grievance, if any. It also includes the ‘Right to be Heard and Consumer Education’, i.e., educating the consumer about his rights. It is based on the rationale of “participatory, transparent and accountable governance”. Under the Right to Information Act, public servants can also be questioned on their conduct and, thus, made them accountable.

Electronic governance or e-Governance is to ensure better transparency and services to the public. It disseminates information through an efficient, speedy and transparent process to the public and other agencies, and performs government administration activities. E-Governance can effectively be introduced through -

Computerization of all the public dealing Departments, including the Police, Judiciary, transportation, and registration of properties. Introduction of e-Procurement (preferably on the lines of KONEPS) in all public procurements and contracts. Introduction of ‘Touch Screen System’ showing pictures to avail particular service. Replication of ‘Lok Vani’ software for redress of public grievances. Strengthening the infrastructure of e-governance and enhancing the awareness about e-governance. Thus, e-Governance is considered an effective tool of improving governance accountable.

Transparency in governance refers to the absence of secrecy and mystery between the Government and those being governed. It implies that the Government shares as much information with the citizenry as possible. The information shared should not be ambiguous or selective, but complete and correct. A transparent Government does not just inform the people about decisions that affect them, but also lets them know the grounds on which such decisions have been taken. Transparency also implies that all rules and
regulations regarding the functioning of the various arms of the government and
the powers and duties of its officers are in the public domain. While transparency
offers great advantages to the people, it also has many benefits for the
Government. For one, people have much greater sense of trust in governments
they deem to be transparent and they are more likely to understand if the
country is placed in a difficult situation. For example, during the runaway inflation
in the middle of last year, the perceived anger against the Government was much
less, compared to similar periods of price rise in the past, especially the onion
crisis of 1998. One reason for this is that in recent years Governments have
become aware of the difficult international situation over which the Indian
Government has no control. 22

Transparency in governance in India has certainly improved in recent years, but a
lot is still to be desired. The transparency international report in 2008 puts India
at No.85 among 180 countries for corruption – which is the direct result of lack of
transparency. Even as the country ranks right behind the developed nations in
terms of economic development, it is still far behind in terms of transparency. The
two most important recent developments regarding transparency in governance
in India have been the passing of the Right to information Act and the emergence
of the concept of e-Governance. The passage of the Right to information act in
2005 has been a truly revolutionary event, in the sense that it has empowered
citizens to seek information on all public matters without asking for justification,
sets a time-frame within which officials must provide information, and also
provides for punishments for those officers who wrongfully, or with mal-intent,
deny information to the public. The RTI Act also states that an officer who denies
any information to the applicant has to justify his reasoning for doing so, and also
allows petitioners to appeal against his decision.

The RTI Act has indeed become a powerful tool in the hands of activists against
corruption, who have used its empowering features for unearthing corruption in
projects like road constructions to award to tenders by individual in Government’s

22 Supra at n. 9
claims regarding development.\textsuperscript{23} The democratic local governance initiatives currently under way in many countries hold much promise for developing effective systems of public accountability that will ensure that government servants are responsible to elected officials, and that the latter are in turn responsible to the public that elected them in the first place. In the process these systems of accountability should increase the pressure for more transparent local governance, in which corruption will be easier to bring to light and thus to curtail. But just as it took many decades for such efforts to make much headway in the industrial countries, so too quick results cannot be expected elsewhere.

5.2 Is transparency creating political and administerial instability?

Political Instability is a qualitative assessment of political instability in a country, forming a response to the question: “Are political institutions sufficiently stable to support the needs of businesses and investors?” This is derived from five sub-indicators, measuring the likelihood of social unrest, the strength of constitutional mechanisms, accountability, international disputes and the likelihood of an antagonistic opposition.\textsuperscript{24} The political and administerial instability largely depends on the accountability and responsibility of the government. The extent of accountability of the government is a decisive factor as to how much stable a government is. The notion of accountability is an amorphous concept that is difficult to define in precise terms. However, broadly speaking, accountability exists when there is a relationship where an individual or body, and the performance of tasks or functions by that individual or body, are subject to another’s oversight, direction or request that they provide information or justification for their actions. Parliaments are key actors in what has been termed the ‘chain of accountability’. They are, along with the judiciary, the key institution of horizontal accountability, not only in their own right but also as the institution to which many autonomous accountability institutions report. They are the

\textsuperscript{23} Improving governance features of e-governance. Last accessed at: 25-4-2015. URL: http://www.transparencyindia.org/improving_governance.php

\textsuperscript{24} Vision of Humanity, GLOBAL PEACE INDEX. Last accessed at: 25-4-2015. URL: http://www.visionofhumanity.org/#page/news/937
vehicle through which political accountability is exercised. Along with civil society organizations and the mass media, they are also important institutions in vertical accountability.\textsuperscript{25} Newer concepts of accountability have emerged: social accountability and diagonal accountability. The former, defined as ‘society driven horizontal accountability’ seeks to provide direct answerability from government to citizens; parliaments and elected representatives are important vehicles through which citizens and civic groups can also extract enforcement. And – no matter how defined – parliaments are one of the institutions through which diagonal accountability can be exercised.

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