The Need for National Social Audit Legislation

(The immediate need to ensure an inclusive and effective Social Audit framework within the MGNREGA through amending Section 13 B of the MGNREGA Schedule)

Background – The Challenge of ensuring effective delivery systems

One of the important concerns of all policy makers in independent India who have applied themselves to social sector issues, has been to ensure that delivery systems in India actually serve the poor and marginalized, and do not get captured by vested interests, and inefficient and unaccountable bureaucracies. In fact the concerted effort to empower ordinary people through a set of basic development rights has been inspired by the constitutional right to development, and the democratic right to participation. In this context, the Right to Information Act 2005, when combined with laws like the Mahatma Gandhi National Rural Employment Guarantee Act, the Rights of Forest Dwellers Act, and programmes like the NRHM have potentially provided the people of India- in particular the poor an opportunity to try and become active participants in planning and implementation, rather than the passive recipients they have been forced to be.

Social Audits so far

The MGNREGA has in fact convincingly demonstrated across the country how much ordinary people will do to make the system work as it should- provided they are given the platform and opportunity to do so. The simple but powerful combination of providing people with all the relevant information, **and** a platform to act on the basis of the information, has been used effectively in non formal public hearings, and institutionalized social audits. In fact India has become the pioneer in Social Audits, being studied, and drawing appreciation around the world. Within the country, the CAG has also taken a keen interest in the emerging lessons, and set up a task force headed by the Deputy CAG to look into the possibilities of synergies, and Social Audits being dovetailed with the formal audit process. The limited experience so far has already demonstrated the potential that social audits have, as also the forces they will have to contend with before they become properly institutionalized. The provision of statutory social audit within the MGNREGA has been the first instance of public audits being incorporated into a legislative framework, so it is very much an evolving discipline, with India at the forefront.

Social Audits, conducted without compromising its essential principles, have already shown how much the mode has succeeded in disturbing entrenched vested interests. In States like AP where the government has shown political will and determination, it has provided an example of how a programme can be turned around into a credible initiative by harnessing the help support, energy, and basic democratic rights of people. In States like Rajasthan, where the fundamentals were worked out by people themselves, there has been unprecedented sharp resistance, which has only indicated how much 'genuine' public audits threaten vested interests. Within the MGNREGA, the vast majority of states have done no more than pay lip service to the statutory requirement, by reporting completion of social audits, but meeting none of its essential prerequisites. Genuine efforts by some citizens groups, bureaucrats, and politicians have been undermined by the lack of real commitment to this essential arm of participatory governance. It can be strongly argued that no social sector initiative can be expected to overcome the delivery divide, without significantly expanding and strengthening, these tentative but pioneering efforts of social (public) audit. These will also become important issues as the NAC discusses other draft social sector legislation like the proposed National Food Security Act.

Current Challenges

Social Audits are difficult to carry out. But the experience of AP and Rajasthan has shown that the challenges are not insurmountable. They undoubtedly need handholding, facilitation and strong political/ legal support. Ironically, some of the bottlenecks have in fact been created by the government. An amendment in 13 (b) of the schedule I of the MGNREGA in Dec 2008, has given elected representatives in Rajasthan a chance to obtain stays from the high court with the assertion that social audits by definition have to carried out by the panchayats to the exclusion of all others. The Government of Rajasthan has written to the Government of India asking that this anomaly be removed, as has the Central Employment Guarantee Councils working group mandated to examine the matter, but no change has been made. The correspondence, and the recommendation of the CEGC working group is annexed.

Immediate suggestions

Part of the resistance has come from elected representatives of Panchayat Raj Institutions objecting to being singled out for such threadbare examination. Their contention that line departments and other sectors of governance should also face the same degree of public scrutiny is completely valid. The short point to be made is that there is a need to

a) Strengthen the existing social audit efforts within the MGNREGA by making it open, inclusive, and effective, backed by national political support. It needs to be a legal requirement much like the RTI Act – to be followed in letter and spirit at the State and Central levels. An immediate requirement would be to remove the constraining legal provisions that have been inserted in the MGNREGA schedule section 13 (b) through amendments as suggested by the CEGC working group.

b) There needs to be a National Social Audit legislation, that would potentially cover all spheres of governance that could and do affect peoples lives. If the NAC approves, an open debate and consultative process could be initiated so that the potential of section 4 of the Right to Information Act could be properly implemented , and combined with a public audit process that would help institutionalize peoples scrutiny, monitoring and participation across all spheres of government in a genuine and effective manner.