Opacity in the banking sector

The Nirav Modi case, of bank fraud, has once again brought into focus the deficiencies in procedures and supervisory and regulatory controls in the banking sector. However, an equally important aspect that warrants a closer look is the opacity around the functioning of our banks that keeps the public in the dark about the extent and details of wrongdoing.

In 2011-12, the Central Information Commission (CIC) considered appeals from applicants concerning bank regulatory functions after they had been denied information, under the Right to Information (RTI) Act, by the Reserve Bank of India (RBI) and the National Bank for Agriculture and Rural Development (NABARD) about these functions. The information sought comprised copies of their inspection reports on banks, details of action taken against banks in breach of the relevant laws and regulations, and advisory notes issued by the RBI to banks and non-performing asset accounts. The denial of information was on the ground that disclosure would prejudicially affect the economic interests of the state by causing loss of public faith in some banks, and that it had been received from the banks concerned in a fiduciary capacity and could not be disclosed to third parties. Overruling this, the CIC ordered the disclosure of a good deal of information. However, its decisions were stayed by High Courts.

These decisions by the CIC were considered and upheld by the Supreme Court on the basis of transfer petitions filed by the RBI and NABARD, in its landmark judgment in *Reserve Bank of India v. Jayantilal N. Mistry* and 10 other cases, which was delivered in December 2015. The court ruled that the regulatory bodies were not in a fiduciary relationship with the banks that had provided the information to them and that by attaching a “fiduciary” label to the statutory duty, they had “intentionally or unintentionally created an in terrorem effect”. The Supreme Court also rejected the ground of information disclosure hurting the economic interest of the country and observed, “RBI’s argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country’s economic security would be endangered, is not only absurd but is equally misconceived and baseless.”

The judgment has guided subsequent decisions of the CIC in such matters. The CIC has also directed disclosure of information (amount disbursed, grounds underlying the decision, rate of interest, collaterals obtained, the outstanding amount and steps taken for recovery, etc.) in respect of wilful defaulters and absconders, overriding the ground of the fiduciary relationship of banks with their customers, which is one of the grounds for denial of information under the RTI Act. These decisions are based on Section 8(2) of the Act, which provides that notwithstanding the exemptions from disclosure provided in it, the information can be disclosed if public interest in disclosure outweighs the harm to the protected interest.

Once a fraud on a financial institution has been established or a borrower declared a wilful defaulter (one who fails to honour his repayment commitments despite having the capacity to do so), or absconds, complete transparency concerning the amount involved as well as the factors and persons responsible for the loss become a matter of larger public interest. Institutions that take the responsibility of managing public funds have to be answerable to the people. The argument that information concerning such matters is the exclusive preserve of those in the government and regulatory bodies, and that people do not have the ability to comprehend and appraise it smacks of elitism. It could not be anyone’s case that the confidence of people in financial institutions should be sustained by hiding information concerning their wrongdoings. On the contrary, people ought to have all the information, good or bad, concerning such institutions so that they can make informed decisions about dealing with them. Above all, well-informed people

can discharge the role of a watchdog far more effectively than all the regulatory bodies put together. Opacity deprives them of that role.

Notwithstanding the gains mentioned, transparency in the banking sector is still work in progress. While submitting a list of defaulters who owe more than 500 crore each in the course of hearing in the Supreme Court in *Centre for Public Interest Litigation v. Housing and Urban Development Corporation Ltd.*, the RBI's counsel argued that it need not be made public for the present as it was likely to affect third parties and claimed certain amount of confidentiality about the information under the RBI Act.

The law on the issue would be clarified further as a result of future judicial pronouncements. However, the goal should be complete transparency in such matters. If there are indeed any legal provisions that prevent disclosure of full details of loans of wilful defaulters and absconders, they ought to be suitably modified.

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Positive developments are taking place with regard to female genital mutilation

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