

## **Commonwealth Human Rights Initiative**

### **National Workshop on Media and the Right to Information**

October 7, 2004,  
Vishwa Yuvak Kendra, Chanakyapuri, New Delhi.

#### **Workshop Report**

##### **Objectives of the workshop:**

- to sensitise participants about the provisions of the Central *Freedom of Information Act, 2002* and the existing RTI regime in various states.
- to apprise participants about the possibilities of using RTI provisions to secure information related to their work areas by showcasing examples from abroad.
- to sufficiently sensitise participants about the value of the right to information so that they may take part in the subsequent National Convention in a more informed manner
- to create a nation-wide network of media persons who will work on RTI issues.

##### **Profile of Participants:**

About 25 media persons working with the print and the electronic media at the national and regional level attended the day long workshop. Along with Delhi based media persons, participants belonging to Assam, Uttar Pradesh, Haryana, Madhya Pradesh, Chhattisgarh, Orissa, Bihar and Jharkhand attended the workshop. Representatives of the Friedrich Naumann Foundation and the Ford Foundation also attended some sessions. A few social activists from Orissa and Uttar Pradesh who were residing at Vishwa Yuvak Kendra were also allowed to attend the workshop as they expressed a keen interest in the subject. In order to meet the expectations of participants who were from a mixed linguistic background the workshop was bilingual (English and Hindi).

##### **Resource Persons\*:**

- **Ajit Bhattacharjee, Former Director Press Institute of India.**
- **Ms. Abha Singhal Joshi, Advocate, New Delhi.**
- **Arvind Kejriwal, Parivartan, Delhi.**
- **Prakash Kardaley, Sr. Editor, Express Initiatives, Pune.**
- **Harivansh, Editor, Prabhat Khabar, Ranchi.**
- **Ms. Aruna Roy, Mazdoor Kisan Shakti Sangathan**
- **Nikhil Dey, Mazdoor Kisan Shakti Sangathan**

\* Prabhash Joshi could not attend the panel discussion due to an unavoidable emergent situation of a personal nature.

##### **Session Summaries**

###### **Session 1: Setting out Objectives of the Workshop**

Presenter: Ajit Bhattacharjee, Former Director, Press Institute of India

**Summary:** Mr. Bhattacharjea congratulated CHRI for holding the event at a time when Right to Information is being seen as a potential tool to stem out corruption from society. RTI has taken over a range of dimensions vis-à-vis public activism and is being discussed in every issue of social importance, which emphasizes the importance of RTI in today's democratic structure. Mr. Bhattacharjea explained that the RTI movement in India was unique as it began at the grassroots level starting first in Rajasthan and spreading to other parts of India. No other country has witnessed a people's movement geared around the demand for a properly legislated and implemented fundamental right to information. Mr. Bhattacharjea reiterated that the role of the media should not be restricted to just using RTI but should extend itself to raising awareness among people about their other rights as well because right to information is key to the realization of all other civil, political, social and economic rights.

#### **Introduction to CHRI**

Presenter: Venkatesh Nayak, Project Coordinator, CHRI

Summary: Venkatesh presented to the participants a brief profile of the Commonwealth Human Rights Initiative (CHRI) as an independent, non-partisan, international non-governmental organization working on access to information and access to justice issues in the Commonwealth. Noting that the workshop was an attempt to educate media professionals about the importance of using RTI to avail of information, Venkatesh informed them that the media abroad was using RTI laws extensively to collect information from public authorities to base their news reporting and article writing on issues of public importance. He hoped that during the course of this workshop participants could apprise themselves of the value of using RTI laws in their own work.

The workshop was a good opportunity for journalists to also start actively reporting on RTI issues. CHRI hopes to build a network of committed journalists who will, in their respective spheres of work, focus on transparency and accountability issues by using RTI as a tool in addition to their existing sources of information. It was hoped that all participants would arrive at a reasonable understanding of RTI laws and how they can be used to monitor the working of government and the implementation of welfare schemes.

#### **A Short film on RTI**

Summary: Radhika Kaul Batra's film *Accounts and Accountability* produced by PSBT, Delhi was screened to educate participants about the living people's movement on RTI in Rajasthan. This documentary was screened to deliver the message that citizens and groups could effectively use RTI laws to conduct social audits of public works and programmes and make sure that corrupt officials and people's representatives are caught and punished for their misdeeds.

#### **Session 2**

##### **Panel Discussion: RTI – Citizens and Groups in Action**

##### **Case Study 1: Maharashtra**

Presenter: Prakash Kardaley, Sr. Editor, Express Initiatives, Pune.

Summary: Mr. Kardaley observed that the RTI movement in Maharashtra was the result of a mass awakening brought about by Anna Hazare- who pressurized the government to root out corruption and put in place mechanisms for ensuring transparent and accountable governance. The Maharashtra RTI law was the outcome of this long struggle.

Mr. Kardaley illustrated the history of the movement launched to secure the passing of the *Maharashtra Right to Information Act*. In the year 2000, a sustained advocacy campaign by social activist Anna Hazare forced the Maharashtra Government to pass the Maharashtra Right to Information Ordinance 2000. However, civil society groups were unhappy with the law, criticising it for being too weak and demanding that it be replaced with better legislation.

Public pressure to enact a law on right to information continued over the years. Consequently, in March 2003, the Maharashtra Government passed the Maharashtra Right to Information Act, which it then sent to the President of India for assent. The document was put on the back burner and no action was taken for months.

Sri Hazare warned he would commence a fast unto death if the Bill was not signed by the President. Again no action was taken. So on 9 August 2003 Anna Hazare started his fast. Within one day, the Government responded. On 10 August 2003, the President of India gave his assent to the Maharashtra Right to Information Act 2002 and on 11 August 2003 the Maharashtra Government notified the Act in the Government Gazette. This example shows the leverage a mobilized people's movement possesses when led by a mass leader of impeccable reputation.

Mr. Kardaley highlighted the importance of using the RTI Act in three basic ways –

1. In Maharashtra because of this mass movement initiated by Anna Hazare and taken up by other activists, people now know that there is an information access legislation, which can be used by them to garner information about issues that affect them and demand better public service delivery as well as better value for the tax-payer's money in terms of the administration's performance.
2. The law-making process itself was inclusive. A Committee of genuine experts formulated the draft Bill, which was endorsed by the Government, which gives it the legitimacy that an Act like this requires and therefore can be used by the public to get their rightful information.
3. The Act is the result of a grassroots movement thereby making its presence felt across all sections of the society, both the urban as well as the rural. He pointed out that it is the rural population, which generally makes more use of the Act to force accountability of officials. Their success stories highlighted through the media have led to greater realization of the potential of the Act among the urban masses. Mr. Kardaley pointed out that this Act was used as a tool to fight corruption in the villages, whereas in the urban areas, it has been used to enforce transparency and open government.

Mr. Kardaley raised concerns about the misuse of such an Act by vested interests such as people using the provisions of the Act to blackmail officers by securing confidential information. Initially the bureaucracy in Maharashtra was hesitant and skeptical about the Act. However when the rationale behind the Act was explained to them they opened up to the idea. Also, with civil society

groups like the Yashwantrao Chavan Academy of Development and Administration (YASHADA) engaged in training and sensitizing bureaucrats through workshops, there has been some change in attitudes and the government has now started playing a more proactive role in implementing the RTI Act.

The Act now needs to be taken to the next stage of making it more accessible to the marginalized sections of the society and it is in this aspect that the press can make tremendous impact in spreading awareness about the provisions and possibilities of civil action under this Act. This is the all important first step towards bringing about social transformation in a society plagued by unequal distribution of power and resources.

#### **RTI in India: Constitutional and Legal Developments**

Presenter: Ms. Abha Singhal Joshi, Advocate New Delhi.

This presentation was advanced because participants felt that they would be in a position to understand the case studies better when they were sufficiently knowledgeable about the basic provisions of an RTI law. (The printout of the power point presentation is attached.)

Summary: Ms. Joshi pointed out in the beginning of her presentation that information sharing and accessibility to information are very important for the implementation of basic human rights in a democratic society. Most people are not even aware of the Constitution and the laws of the land. All the fundamental rights that individuals are entitled to are laid down in the Constitution. The Constitution provides for a system whereby a government is brought to power on the basis of people's votes and functions on public money, in the interest of the public. Therefore, it is our right to demand the information that is recorded in the course of this functioning.

Our right to information flows from our right to equality before the law and lack of arbitrariness (Article 14), our freedom to express opinion (Article 19 (1) (a)) and our right to life and liberty (Article 21). This position has been made clear in a slew of Supreme Court judgements. The importance of having a right to information in a democracy is that it increases people's participation in governance, compels transparency and open government, and establishes a means of securing accountability of government agencies and bureaucrats to its citizens.

Ms. Joshi highlighted four basic reasons for having an RTI Act in place. They are:

- People can use the RTI Act to get information, which would otherwise be categorized as classified information under the Official Secrets Act by the bureaucracy.
- The Press can use the Act to get information, which can be verified and attributed to a source thereby making it more authentic than the sources of information on which it depends traditionally.
- It cuts down on time and expenses in getting information and is a much easier way of obtaining information without having to knock on the doors of the Courts complaining about infringement of one's fundamental right every time officials deny access to information.
- RTI laws are a useful tool to unearth murky links between big businesses and ordinary citizens. Examples like the BALCO sellout and leasing of tribal lands to private contractors and

companies are beyond public scrutiny because of lack of information access laws. A vigilant media can use RTI laws to uncover shady deals and tradeoffs between government and big business.

**Salient features of the Freedom of Information Act 2002:**

**Information** is defined as any material in any form relating to the administration, operations or decisions of a public authority.

**Public Authorities** are those authorities established by or under the Constitution or under any law made by the State Legislatures or Parliament. The phrase also includes all institutions that are substantially funded by the State or Central Government or are controlled by these governments.

**The legal mechanism in place to access information:** There is a Public Information Officer for every public authority to whom a written application can be made by a requestor. The PIO must assist in recording oral requests if the requestor is unable to write down an application for any reason. The Act lays down that a fee should be paid for making this request, and information must be given as soon as possible, but not later than 30 days. Also, information relating to life and liberty is to be given within 48 hours as the request is of an emergent nature.

**Exemptions:** The government can deny giving information that would prejudicially affect the sovereignty and integrity of the nation. Also, cabinet papers and discussions, records of opinions and advice in the decision-making process, trade and commercial secrets protected by law, certain information related to Parliament are exempted. There are also some institutions such as intelligence agencies that are completely out of the reach of this law which are mentioned in the Schedule given at the end of the legal provisions.

Information may also be denied when the request is of a general nature which would demand too much of administrative time and resources, is already published or is to be published within 30 days, or is of a personal nature.

**The appeals process:** Appeals can be made to an authority appointed by the government under FOIA. A second appeal can be made to the State or Central government (in Delhi, the Public Grievances Commission plays this role) against the decision of the first Appellate Authority. However, the FOIA 2002 denies the right to approach any court for settling any disputed matter.

**“Suo motu” disclosure:** Government must give certain information *suo motu*, i.e., on its own. It must make public from time to time: information about its powers, functions and way of working. Also, information about important decisions must be communicated to people. Information about projects which would affect the public must be communicated to those likely to be affected.

Abha explained the legislative jurisdiction of the Central and State governments. Once the Central Act becomes effective, it will have overriding effect on the States RTI laws if there are conflicting provisions. This is a cause for concern for civil society groups who believe that if a watered down Central Act is enforced, it would be a set back for the cause of the right to information. This in turn would mean a bigger struggle for improving the Central law.

**Interventions:**

- The issue of the Act denying the right to approach any court for settling any disputed matter brought about grave concerns from all the participants. This Act only gives an Administrative Forum but no judicial recourse. The Court can only give rulings under Articles 19 and 20. However, Mr. Kardaley intervened here to say that once the second appeal is rejected, no law can take away the right of the individual to appeal in Court. As this is a matter relating to the fundamental right of a citizen the jurisdiction of the High Court and the Supreme Court recognized in the Constitution remains and no law can take away this option from the citizen
- On being asked who decides what information can be classified as general, Abha Joshi replied that the law vests a lot of discretionary power in the hands of government officials. Officials are likely to interpret the exemption clauses in such a manner as to narrow the scope of information access to applicants. Several cases of this kind have occurred in Karnataka, Maharashtra, Rajasthan and Delhi. This is something which needs to be challenged through appeals both at the government level and before the judiciary.
- On the issue of what to do once corruption is exposed, Abha Joshi said that RTI is only a tool to expose corruption. Once exposed, the individual may choose to file an FIR or go about some alternative way of getting some redressal. Mechanisms like Public Grievances Commissions, Lok Ayuktas, the Central Vigilance Commission etc. will have to be moved to secure punishment for culprits.

**Case Study 2: Delhi**

Speaker: Arvind Kejriwal, Parivartan, New Delhi

Summary: Mr. Kejriwal highlighted several case studies in his presentation where public authorities that have misused their power have been hauled up. The common person has used the RTI Act to question these public authorities on matters such as the Public Distribution System and hold them accountable for denying the rightful entitlements of the poorest of the poor who hold BPL ration cards (BPL= Below the Poverty Line).

The RTI law redefines the relationship between the government and the common person. It brings to light the nexus between government officials, police personnel and other public authorities that contrive together to misuse funds meant for the deprived sections of society. The RTI Act is invaluable in the sense that it gives the right to the people to demand information from the government on every single issue of public concern.

Mr. Kejriwal emphasized on the right of citizens to inspect public works – a provision contained in the Delhi RTI law. He noted that it was always better to check a public works project that is underway rather than after it has been completed. In this way wastage of public funds can be detected in a timely manner and action can be taken to prevent further damage. A public audit of an ongoing work will help check corruption, whereas doing the same after the work is completed would only help expose corruption.

Parivartan has now started a *Soochna Evam Sahayata Kendra* (Information and Assistance Centre) in Sundernagari because officials have begun to take RTI complaints quite seriously. Hence, it would

be helps to have a centre that would help more people file requisitions in a manner that would elicit more information from the concerned departments rather than result in denials or partial information.

Mr. Kejriwal pointed out that there is a big vacuum that exists in the law. Once corruption is exposed using the RTI Act there is nothing much that can be done if the concerned authority refuses to address it as the law cant be legally challenged. He pointed to the refusal of the officials of the Food department as well as the Police in Delhi to file cases against corrupt ration dealers. This despite the fact that cheating and fraud (unearthed by Parivartan) are cognizable offences under the Indian Penal Code.

The media needs to address this issue to give more teeth to the RTI Act. Mr. Kejriwal pointed out that initially the media reported on the RTI Act out of curiosity but now there is a greater consciousness within the media about the positive impact of the RTI Act in promoting transparency and greater accountability. The Indian Express and Parivartan tie up in bringing about a greater consciousness among people about the RTI Act by publishing articles on it is a case in point. Arvind spoke about the community initiative that was launched over a month-long period when Parivartan and the Indian Express visited Residents' Welfare Associations in different neighbourhoods to sensitise people about the Delhi RTI law and help them file applications relating to non-functional or malfunctioning public services.

#### **Interventions:**

Participants sought more information about the procedure for seeking information. Mr. Kejriwal explained that every department has its own set of administrative mechanisms and therefore applications should be addressed to the Competent Authority of the specific department. The question then remained as to who is the Competent Authority of a department. Arvind Kejriwal replied that the Delhi government has already displayed a list of Competent Authorities on its official website. The RTI law makes it mandatory for every department to have a board outside its office displaying information about the RTI Act, including the name of the Competent Authority.

Prakash Kardaley intervened by saying that even if the government does not take the initiative, citizen's activists can make the public more aware about various aspects of the RTI Act of the State. (CHRI is already doing this dissemination of information through its User Guides.)

#### **Session 3: Media's Use of RTI Laws to Access Information: Case Studies**

Presenters: Ms. Aditi Datta (CHRI) & Venkatesh Nayak (CHRI)

**Summary:** The focus of this session was to bring out the importance of media using the RTI laws as a tool to access information relating to public affairs. CHRI's presentation focused on contextualising case studies of the media's use of RTI laws abroad to expose some form of corruption, misdemeanour or to overcome undue secrecy on the part of public authorities. The cases chosen not only resonated with issues that interest the media in India but also demonstrated the kinds of difficulties and obstacles they may encounter while accessing government information through the RTI channel.

Under reporting of crimes- As a result of political pressure to show improvement in the law and order situation, FIRs are simply not lodged - Gujarat of 2002 being a case in point. Police records are not subject to public scrutiny except when called for by a court of law. Even after a case is completed with a successful prosecution or acquittal, getting case documents is not easy although they are supposed to be public documents. If FOIA can be used to obtain these documents then the media can review the investigation and prosecution process.

Custodial deaths: These occur with sickening frequency all over the country, but are often called suicides and the case closed after long inquiries. Video recording of postmortems, which is a must in such cases, is rarely done. Records relating to investigation and trial in custodial death cases are not made public even after the cases are closed. With a strong FOIA law one can access these records to bring law-keepers under the scanner and compel accountability.

Using public information: Government collects a lot of information on a variety of variables. This is public information collected using taxpayer's money. One obstacle in the public's way is huge amounts charged for photocopying documents. In major cases, one will have to go all the way to the court in order to secure release of information without paying astronomically high fees. But it may be worthwhile as it is in the larger good of society.

**(Only three issues have been highlighted here for the sake of illustration. The case studies presented and the related speaking notes are attached to this report.)**

**Points highlighted:**

Exemptions and exceptions to releasing information are not sacrosanct all the time. Government agencies have a tendency to hide behind exemption clauses to escape public scrutiny of their work. So it is not enough to just have a progressive law. If it is in public interest, information must be released.

**Interventions:**

- One of the participants from Maharashtra spoke about her experience of using RTI law to access public information. She used the RTI Act to demand information regarding the deaths of construction workers working at high-rise construction sites. She received the information within 15 days and discovered that in the last 10 months some 45 labourers had died. It is interesting to note that when she asked for the same information without using the Act, the Collectorate refused it saying the said information was too cumbersome to collect.
- A journalist from Chhattisgarh pointed out that the RTI Act could present a problem in states like Chhattisgarh where corruption is rampant. Whenever information is demanded from officials they defend themselves while denying information by saying that majority of the districts are Naxal infested. Such broad interpretation of the exemption clauses undermines the spirit of the law.

**Engendering the Rights-based Approach – the Experience from Jharkand**

Speaker: Harivansh, Prabhat Khabar, Ranchi



Summary: Mr. Harivansh spoke about how his paper managed to increase its circulation from 600 to 3 lakhs solely by covering socially relevant issues and despite the government withdrawing its advertisements from his paper at some points of time.

Mr. Harivansh presented some examples of investigative journalism initiated by Prabhat Khabar. When Jharkhand was formed in the year 2000, it was hoped that there would be more employment for the people, less food scarcity etc. However, even today, many people from Jharkhand migrate to other states for economic reasons. A court affidavit was filed by a villager of Palamu because 3 people in his village had died of starvation. Prabhat Khabar got hold of the affidavit and exposed the State government's complacency in not fulfilling its obligations to an area notified as drought affected. Deogarh, another district in Jharkhand is an area, which is rich in resources and also attracts tourists because it is a pilgrimage centre. However, children in its villages suffer from diarrhoea, TB and polio. Kota, which is the district headquarters, has hospitals where patients lie unattended. Graphic pictures showing malnourished babies, deformed villagers affected by diseases and patients lying unattended in hospitals while dogs strayed around were printed on the front page. The paper surveyed government departments and published stories on the bribery and extra-legal commission collected by bureaucrats and touts. It also published stories on incomplete government projects and non-performing assets (more than 250 stories).

This not only sensitized people about social issues but it stimulated their thinking in ways different from what the infotainment driven newspapers strive at. The circulation of the paper picked up without having to depend on advertisements from the government or private agencies. At times the government stopped giving advertisement contracts to the paper as a result of stories exposing high-level corruption but the paper survived as they have stuck to their position of being committed agents of social reform. The readers appreciate this and help sustain the survival of the newspaper. More than two-thirds of the papers revenue come from subscription and sales.

He pointed out that it is important to be objective while reporting on social issues. He said that his paper published not only their investigative stories but also the explanations and statements given by the public authorities on the same issue. He emphasized the need for following up on investigative stories at regular intervals after the initial euphoria subsides. If this is not done in a regular manner it is not possible to monitor government performance after an issue has been brought to public view.

In this way, Prabhat Khabar exposed the State government's failure in delivering basic services to the people despite the absence of an RTI law in Jharkhand. Thus, in the conflict between entertaining people and informing them about socially relevant issues, it is the latter that has worked for Prabhat Khabar. He finished his presentation with a quote, "entertaining people is not the job of newspapers, improving their lives is."

#### **Session 4**

##### **Panel Discussion: Value of Right to Information to the Media**

Speakers: Ms. Aruna Roy & Nikhil Dey (Mazdoor Kisan Shakti Sangathan)

Summary: In her presentation Ms. Aruna Roy opined that India is divided into citizens versus subjects (i.e., those who have information versus those who don't), those who know and understand the Constitution versus those who have no law at all. Aruna Roy emphasized that it is

the masses who led MKSS to understand the significance of all the documents they weren't allowed to see, but which they had every right to. For Aruna Roy, RTI revolves around the following theme: "The right to know is the right to live". She cited the example of Gujarat to explain her theme- in Gujarat there was arbitrary use of power to destroy the lives of those who had no power. She also pointed out that MNC's find it easy to enter any country especially in the third world because it is very easy to buy people, especially the bureaucracy- and the ordinary masses pay the price. But due to the high level of ignorance, people are unaware that their rights are being encroached. A good right to information law is an invaluable tool for the common citizen to secure their rights and accountability of the bureaucrats tasked with making it happen. A good RTI law is necessary for establishing ethics in public life.

Ms. Roy emphasised that the Central FOIA is no longer an academic issue but has to be practically realized. This is only possible when the democratic framework of our country is made stronger by enforcing the fundamental rights and the directive principles of state policy more strictly.

She also pointed out that among the 9 states that have passed RTI legislation, 8 are Congress ruled which is something that must be analysed in terms of the willingness of other political parties and coalitions to institutionalise transparency mechanisms.

Nikhil Dey brought out three issues regarding the media and RTI:

- (a) It is the poor, illiterate, uneducated villagers who brought RTI to the doorstep of the media. The movement to secure a properly legislated right to information was launched by the people. The media took note of it only when the movement began exposing corruption in public works.
- (b) Media persons often request MKSS to raise corruption issues for which the media have proof. This is an ironical situation because if the media say that their hands are tied due to political pressure, then the situation of the unlettered is even worse because they get the least priority in the government's practical scheme of things. He urged the participants to use RTI laws more and more in their work.
- (c) He stated that for all purposes public hearings (Jan sunwais) have become marketable. They have caught the public imagination and are being replicated on a variety of social issues in different parts of the country. Their newsworthiness has attracted a lot of media attention.

**Interventions:**

When asked about the strategy that is likely to be adopted to amend the FOIA, Mrs. Aruna Roy said that the draft amendments sent by the National Campaign for People's Right to Information were discussed by the National Advisory Council of which she is a member. She emphasized that the amendments drafting exercise has shown that drafting legislation is not the reserve of specialist bureaucrats. Ordinary citizens also have the capability of drafting a good piece of legislation once they put their minds together. Nikhil stated that the recommendations of the NAC on the FOIA have been forwarded to the Prime Minister's Office which has sent it to the Department of Personnel and Training for suitable action. The draft amendments are likely to be introduced in the Winter 2004 session of Parliament.

One of the participants demanded that campaigns be launched to bring private agencies performing public services within the ambit of RTI laws. Another participant observed that Bihar had not passed an RTI law despite a civil society draft being presented to the government. The resource persons advised that civil society should get together to press for its enactment.

Subsequently Nikhil Dey announced some information regarding the venue and programme of the 2<sup>nd</sup> national RTI Convention. The workshop ended with a vote of thanks proposed by Venkatesh Nayak (CHRI).

**Expected Outcomes of the workshop:**

CHRI will keep in touch with participants and collect information about their interventions made using RTI laws. It is hoped that through this workshop CHRI has been able to start the process of building a team of media-persons committed to the cause of RTI who will use information access laws regularly and also highlight RTI related issues through their newspapers and TV channels.

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