

THE MOVEMENT FOR RIGHT TO INFORMATION IN INDIA

People's Power for the Control of Corruption

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In the space of less than a decade, the burgeoning movement for the right to information in India has significantly sought to expand democratic space, and empower the ordinary citizen to exercise far greater control over the corrupt and arbitrary exercise of state power.

The right to information is implicit in the Constitution of India, even so the dominant culture of the executive has been one of secrecy and resolute denial of access of information to the citizen. Citizens groups have long battled for the exercise of these rights in courts. The movement for the right to information received a fresh impetus from a courageous and powerful grassroots struggle of the rural poor for the right to information, to combat rampant corruption in famine relief works. This struggle was led by a people's organisation, the Mazdoor Kisaan Shakti Sangathan (which literally means 'organisation for the empowerment of workers and peasants'). The reverberations of this struggle led to a nationwide demand for a law to guarantee the right to information to every citizen, with widespread support from social activists, professionals, lawyers, and persons within the bureaucracy, politics and the media, who are committed to transparent and accountable governance and people's empowerment. Three successive federal governments in quick succession have committed themselves to the passage of a law to guarantee the people's right to information and some state governments have actually passed such laws and administrative instructions.

This paper will attempt to outline firstly the significance of the right to information, particularly in empowering ordinary citizens to combat state corruption. It will describe in some detail the most important grassroots struggle for the right to information, which has succeeded in linking the entire movement in the country to the struggles for survival and justice of the most poor. It would then delineate the constitutional history of the right, and attempts through the courts to breach the culture of secrecy of the executive, and initiatives from persons within the government. It will in the end describe efforts at the national level to legislate this right.

Section 1

IMPORTANCE OF THE RIGHT TO INFORMATION TO COMBAT CORRUPTION

In India today, the state has spread its tentacles to virtually every aspect of public life. The person on the street is condemned to grapple hopelessly with corruption in almost every aspect of daily work and living. Most government offices typically present a picture of a client public bewildered and harassed by opaque rules and procedures and inordinate delays, constantly vulnerable to exploitation by employees and touts.

In the quest for systemic answers to this chronic malaise, it is important to identify the sources of corruption inherent within the character of the state machine. These include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to real results of public welfare.

In this section, we will argue that information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and *pro-active* dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Ultimately the most effective systemic check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability.

It is in this context that the movement for right to information is so important. A statutory right to information would be in many ways the most significant reform in public administration in India in the last 50 years. This is because it would secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It would promote openness, transparency and accountability in administration, by making government more open to continuing public scrutiny.

Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices. Government information is a national resource. Neither the particular government of the day nor public officials create information for their own benefit. This information is generated for purposes related to the legitimate discharge of their duties of office, and for the service of the public for whose benefit the institutions of government exist, and who ultimately (through one kind of import or another) fund the institutions of government and the salaries of officials. It follows that government and officials are 'trustees' of this information for the people. The proposed legislation would enable members of the public to obtain access under the law to documents that may otherwise be available only at the discretion of government.

There are numerous ways in which government information is at least in theory already accessible to members of the public. The parliamentary system promotes the transfer of information from government to parliament and the legislatures, and from these to the people. Members of the public can seek information from their elected members. Annual reporting requirements, committee reports, publication of information and administrative law requirements increase the flow of information from government to the citizen. Recent technological advances have the potential to reduce further the existing gap between the 'information rich' and the 'information poor'.

However, in practice the overwhelming culture of the bureaucracy remains one of secrecy, distance and mystification, not fundamentally different from colonial times. In fact, this preponderance of bureaucratic secrecy is usually legitimised by a colonial law, the Official Secrets Act, 1923, which makes the disclosure of official information by public servants an offence.

The right to information is expected to improve the quality of decision making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision making process. It would enable groups and individuals to be kept informed about the functioning of the decision making process as it affects them, and to know the kinds of criteria that are to be applied by government agencies in making these decisions. It is hoped that this would enhance the quality of participatory political democracy by giving all citizens further opportunity to participate in a more full and informed way in the political process. By securing access to relevant information and knowledge, the citizens would be enabled to assess government performance and to participate in and influence the process of government decision-making and policy formulation on any issue of concern to them.

The cumulative impact on control of corruption and the arbitrary exercise of power, of the availability of such information to the citizen, would be momentous. This information would include, for example in the context of maximum interface of the ordinary citizen with government, the following:

- All estimates, sanctions, bills, vouchers and muster rolls (statements indicating attendance and wages paid to all daily wage workers) for all public works.
- Criterion and procedure for selection of beneficiaries for any government programme, list of applicants and list of persons selected.
- Per capita food eligibility and allotments under nutrition supplementation programmes, in hospitals, welfare and custodial institutions.
- Allotments and purchase of drugs and consumable in hospitals
- Rules related to award of permits, licences, house allotments, gas, water and electricity connections, contracts, etc., list of applicants with relevant details of applications, and list of those selected, conditions of award if any
- Rules related to imposition of taxes such as property tax, stamp duty, sales tax, income tax, etc., copies of tax returns, and reasons for imposition of a particular level of tax in any specific case.
- Copies of all land records.

- Statements of revenue, civil and criminal case work disposal
- Details of afforestation works, including, details of land/sites, species and numbers of plants, expenditure on protection
- List of children enrolled and attending school, availing of scholarships and other facilities
- Rules related to criterion and procedure for selection of persons for appointment in government, local bodies or public undertakings, copy of advertisement and/or references to employment exchange, list of applicants with relevant details, and list of beneficiaries elected.
- Prescribed procedures for sending names from employment exchanges, relevant details of demands from prospective employers, list of candidates registered and list referred to specific employers.
- Rules related to criterion and procedure for college admission, list of applicants with relevant details, and list of persons selected.
- Copies of monthly crime report.
- Details of registration and disposal of crimes against women, tribals and dalits (literally the oppressed, groups traditionally subjected to severe social disabilities) and other vulnerable groups, crimes committed during sectarian riots and corruption cases.
- Number and list of persons in police custody, period of and reasons for custody.
- Number and list of persons in custodial institutions including jails, reasons for and length of custody, details of presentation before courts etc.
- Mandatory appointment of visitors committees to every custodial institution, with full access and quasi-judicial authority to enquire into complaints.
- Air and water emission levels and content with regard to all manufacturing units, coupled with the right of citizens' committees to check the veracity of these figures; copies also of levels declared safe by government authorities, to be published and made available on demand.

Even a short random listing such as this would demonstrate the enormous potential power of information, if it be placed in the hands of citizens, to combat corruption that they experience in their daily lives.

Section 2

RIGHT TO INFORMATION: THE GRASSROOTS STRUGGLES IN RAJASTHAN

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of most disadvantaged rural people. The reason for this special character to the entire movement is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor. This inspiring struggle in the large desert state of Rajasthan was led by the Mazdoor Kisan Shakti Sangathan (MKSS), as part of a people's movement for justice in wages, livelihoods and land.

In this section, we will recount in some detail the story of the MKSS, because it would enable a deeper understanding of why the movement for the people's right to information in India has developed as part of a larger movement for people's empowerment and justice.

History of the MKSS

It was eleven years ago, in the summer of 1987, that the three founding activists of MKSS chose a humble hut in a small and impoverished village Devdungri in the arid state of Rajasthan, as their base to share the life and struggles of the rural poor. The oldest member of the group was Aruna Roy, who had resigned from the elite Indian Administrative Service over a decade earlier. She had worked in a pioneer developmental NGO, the Social Work and Research Centre, Tilonia, and gained important grassroots experience and contact with ordinary rural people, but now sought work which went beyond the delivery of services to greater empowerment of the poor. She was accompanied by Shankar Singh, a resident of a

village not far from Devdungri, whose talent was in rural communication with a rare sense of humour and irony. He drifted through seventeen jobs - working mostly with his hands or his wits in a range of small factories and establishments - before he reached Tilonia, to help establish its rural communication unit. With him was his wife Anshi and three small children. The third activist of the group was Nikhil Dey, a young man who abandoned his studies in the USA in search for meaningful rural social activism.

Together they had come to the village Devdungri, with only a general idea of their goal of work, to build an organisation for the rural poor. They were much clearer about what they did not want to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs, they would not set up the usual delivery systems of services, they would accept not more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends, they would not accept international or government funding for their work, and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

They lived in a hut no different from that inhabited by the poor of the village, with no electricity or running water, and they ate the same sparse food of thick coarse grain *rotis* as the working class villager. They had no vehicle, and used trucks and buses for transport. They continue to live in this way even today.

The region which they had chosen for their life and work was environmentally degraded and chronically drought prone. The land-holdings were too small to be viable even if the rains came. There were few alternate sources of rural livelihood, and distress migration in the lean summer months was high. Government interventions mainly took the form of famine relief works, like construction of roads and tanks, with extremely high levels of corruption and extremely poor durability. Wages, even on government relief works, were low and payment too erratic to provide any real social security cover. Literacy levels were abysmally low, especially for women (1.4%) and even for men (26%). The average debt burden was colossal, at over 3,200 rupees per household.

In their initial years, the MKSS got drawn in as partners in important local struggles of the poor, relating mainly to land and wages, but also women's rights, prices and sectarian violence. On May Day, 1990, the organisation was formally registered under the name Mazdoor Kisan Shakti Sangathan. Its ranks grew as MKSS built a strong cadre drawn from marginal peasants and landless workers, mainly from the lower socio-economic groupings. Locally the organisation gained recognition for its uncompromising but non-violent resistance to injustice such as an epic struggle to secure the payment of minimum wages to landless farm workers, and also for integrity and ethical consistency of the life-styles and the means adopted by its activists.

The battle against corruption: the new instrument of public hearings

In the winter of 1994, their work entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of *jan sunwais* or public hearings. This movement, despite its local character, has had state-wide reverberations and has shaken the very foundations of the traditional monopoly, the arbitrariness and corruption of the state bureaucracy. In fact the movement contains the seeds for growth of a highly significant new dimension to empowerment of the poor, and the momentous enlargement of their space and strength in relation to structures of the state.

As with most great ideas, the concept and methodology of public hearings or *jan sunwais* fashioned by the MKSS is disarmingly simple. For years, indeed centuries, the people have been in their daily lives habitual victims of an unremitting tradition of acts of corruption by state authorities - graft, extortion, nepotism, arbitrariness, to name only a few - but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous individuals - political leaders, officials, social activists - have attempted to fight this scourge and bring relief to the people. But in most such efforts, the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event and died down as suddenly or has been sustained critically dependent on a charismatic leadership. Consequently the results of campaigns against corruption have been temporary and unsustainable.

The mode of public hearings initiated by MKSS, by contrast, commences with the premise of the fundamental right of people to information, about all acts and decisions of the state apparatus. In the specific context of development and relief public works, with which MKSS had been deeply involved for so many years, this right to information translates itself into a demand that copies of all documents related to public works are made available to the people, for a people's audit. The important documents related to public works are the muster roll, which lists the attendance of the workers and the wages due and paid, and bills and vouchers which relate to purchase and transportation of materials.

These are then read out and explained to the people, in open public meetings. The people thus have gained unprecedented access to information about, for instance, whose names were listed as workers in the muster rolls, the amounts of money stated to have been paid to them as wages, the details of various materials claimed to have used in the construction, and so on. They have learnt that a large number of persons, some long dead or migrated or non-existent, were listed as workers and shown to be paid wages which were siphoned away, that as many bags of cement were said to have used in the 'repair' of a primary school building as would be adequate for a new building, and innumerable other such stunning facts of the duplicity and fraud of the local officials and elected representatives.

It is not as if they were unaware in the past that muster rolls are forged, that records are fudged, that materials are misappropriated, and so on. But these were general fears and doubts, and in the absence of access to hard facts and evidence, they were unable to take any preventive or remedial action. The public hearings dramatically changed this, and ordinary people spoke out fearlessly and gave convincing evidence against corruption, and public officials were invited to defend themselves.

It is interesting and educative to see how officials and public representatives at various levels of the hierarchy have reacted to this unprecedented movement for people's empowerment. For a public hearing organised last year, for instance, the head of the district administration, known as the Collector, initially acceded to the demands of the MKSS

activists, and issued instructions for copies of the muster rolls, bills and vouchers to be given to the activists. The village development officers however refused to comply with the written instructions of the Collector, and went on strike against the Collector's order, insisting that they would submit themselves to an audit only by government, and that they would refuse to share copies of documents with any non-officials. The agitation spread to the entire state of Rajasthan.

The village *panchayat*¹ elections were then in progress and the Collector requested the withholding of the documents until the elections were over so that the village officials' strike does not obstruct the election process. MKSS organised the public hearing in the absence of documents, but were still able to gather evidence for prima facie cases of corruption in works and delays in payment. These were presented to the Collector, who promised an enquiry.

In compliance with this assurance, the official arrived at village Bagmal for an enquiry. The villagers had gathered, and the official commenced his examination in an open space under the shade of a spreading tree. However, 24 *sarpanches*² or elected village heads of surrounding villages who had nothing to do with the enquiry in progress, arrived at the spot and raised an uproar. A woman *sarpanch* tore the shirt of a villager giving evidence. The official remained silent, but shifted his enquiry indoors. Threats and assaults on the villagers and activists continued subsequently.

It is significant that the local administration in the four districts in which public hearings were organised by MKSS refused to register criminal cases or institute recovery proceedings against the officials and elected representatives against whom incontrovertible evidence of corruption had been gathered in the course of the public hearings and their follow-up.

The enormous significance of this struggle has been its fundamental premise that ordinary people should not be condemned to remain dependent on the chance good fortune

¹ The elected local body for a village or a small group of villages

² Elected head of the village panchayat

of an honest and courageous official, or political or social leader, to release them from time to time from the oppressive stranglehold of corruption. The people must be empowered to control and fight this corruption directly. For this, firstly they require a cast-iron right to information. Concretely, this means that the citizen must have the right to obtain documents such as bills, vouchers and muster rolls, connected with expenditures on all local development works.

Equipped with such information, as we have seen, the people would be empowered to place this before and explain these documents to the concerned village communities, in a series of 'public hearings'. In these hearings, concrete evidence of corruption such as false muster rolls, diversion of building materials etc. would come to light. Armed with such evidence, the people would now be empowered to demand action against the corrupt, and recovery of diverted development expenditures.

From public hearings to the movement for an enforceable right to information

The public hearings organised by MKSS evoked widespread hope among the underprivileged people locally, as well as among progressive elements within and outside government. In October, 1995, the Lal Bahadur Shastri National Academy of Administration, Mussoorie, which is responsible for training all senior civil service recruits, took the unusual step of organising a national workshop of officials and activists to focus attention on the right to information.

Meanwhile, responding to the public opinion that coalesced around the issue, the Chief Minister of Rajasthan on 5 April, 1995 announced in the state legislature that his government would be the first in the country to confer to every citizen the right to obtain for a fee photo-copies of all official documents related to local development works.

However, a full year later, this assurance to the legislature was not followed up by any administrative order. This lapse of faith was presumably under pressure both from elected representatives and officials connected with such works, who regard as their birthright the illegal siphoning off of major portions of such expenditure.

Exactly one year after the aborted assurance of the Chief Minister, and to coincide with an election campaign shrill in its hypocrisy regarding corruption, the MKSS decided to launch at a small town Beawar a *dharna*³. The demand was to press for the issue of administrative orders to enforce the right to information of ordinary citizens regarding local development expenditure.

The state government responded by issuing an order on the first day of the *dharna*, allowing citizens the right to inspect such documents for a fee, but not to obtain certified copies or photo-copies. The MKSS rejected this order as toothless and diversionary, because in the absence of a legally valid copy, no action such as filing a police case can be undertaken by a citizen who detects defalcation. Further no time-limits and penalties were prescribed for compliance and non-compliance respectively with these orders.

In order to press for a more cast-iron government circular, the MKSS continued its *dharna*. A delegation met the Chief Minister during an election meeting at the village Jawaja, and he verbally conceded to the demand but refused to issue written instructions until the elections were over. The stalemate continued.

Each day since the launching of the *dharna* meanwhile witnessed an unprecedented upsurge of homespun idealism in the small town of Beawar and the surrounding countryside. Donations in cash and kind poured in daily from ordinary local people, including vegetables and milk from small vendors, sacks of wheat from farmers in surrounding villages, tents, voluntary services of cooking, serving cold water, photography and so on, and cash donations from even the poorest.

Even more significant was the daily assembly of over 500 people in the heat of the tent, listening to speeches and joining in for slogans, songs and rallies. Active support cut across all class and political barriers. Rich shopkeepers and professionals to daily wage labourers, and the entire political spectrum from the right wing fringe to communist trade unions extended vocal and enthusiastic support.

Speaking at random to people both in the *dharna* and in shops and streets of the crowded and dusty marketplace, we found surprisingly high awareness of the issues involved. 'Why cannot the government give us information regarding expenditures made in our name?' passionately demanded a waiter in a tea-stall. 'It is a fight for justice for the poor' affirmed the owner of a pavement shop selling rubber footwear. Everyone we spoke to was unanimous that there was no other agitation since Independence to which women and men from all backgrounds extended such unstinted support and in which they saw so much hope. They praised the MKSS activists for their discipline, courtesy, the simplicity of their lifestyles, their lack of political ambitions and the authenticity of their motives.

The *dharna* continued without resolution, but with continuously growing manifest public support, overshadowing locally the more familiar drama associated with the rough and tumble of the election schedule. Behind the scenes, intermediaries and sympathisers including some from within government attempted to re-establish dialogue between the activists and government and reach a compromise.

However, no assurance from government was forthcoming, and therefore after completion of polling on 2 May, 1996, while the *dharna* continued in Beawar, it spread also to state capital of Jaipur. In Jaipur, in an unprecedented gesture, over 70 people's organisations and several respected citizens came forward to extend support to the MKSS demand. The mainstream press was also openly sympathetic.

In the end, an official press-note was issued in Jaipur on 14 May, 1996 on behalf of the Rajasthan state government. It stated firstly that the state government had taken a decision on the issue not because of the pressure of people's organisations, but because of the government's own commitment to transparency and controlling corruption. It went on to announce the establishment of a committee which within two months would work out the logistics to give practical shape to the assurance made by the Chief Minister to the legislature, regarding making available photo-copies of documents relating to local development works.

³ Sit- in agitation

The MKSS and other people's organisations who were involved in the struggle decided to take this assurance of the state government on face value and call off the *dharna*. It was a highly significant victory, even if reluctantly conceded, in the on-going movement for people's empowerment. But clearly several battles remained to be fought before the state would concede genuine space to real accountability to the poor.

Another year passed and despite repeated meetings with the Chief Minister and senior cabinet members and state officials, no order was issued and shared with the activists, although again there were repeated assurances. In the end, on a hot summer morning in May, 1997, began another epic *dharna*, this time in the state capital of Jaipur close to the State Secretariat. The struggle saw the same outpourings of public support as had been seen in Beawar a year earlier.

At the end of 52 days of the *dharna*, the Deputy Chief Minister made an astonishing announcement, that six months earlier, the state government had already notified the right to receive photo-copies of documents related to *panchayat* or village local government institutions. Why such an order, ironically related to transparency, had been kept a secret, even during the 52-day *dharna*, remained a mystery.

Nevertheless, the order of the state government was welcomed as a major milestone, because for the first time, it recognised the legal entitlement of ordinary citizens to obtain copies of government held documents.

The MKSS and other organisations set about organising people to use this important entitlement. However, they continued to face in a majority of cases an obstinate bureaucracy and recalcitrant local government representatives who still refused to supply copies of documents.

The MKSS has responded to such problems by complaints to authorities, from local levels to the state government, highlighting the illegal withholding of information in the press, and organising and mobilising people to mount peaceful democratic agitational

pressure on the authorities. To take a case study, the *sarpanch* or elected head of the village *panchayat* of Harmara refused to give copies of muster rolls, bills and vouchers for works conducted in his *panchayat*. MKSS workers made repeated visits to the *sarpanch*, and kept a meticulous record of the number of times they unsuccessfully contacted the *sarpanch* for these documents. At the time of writing, 65 such visits and appeals to the *sarpanch* had been made, but with very limited success. After a while, the *sarpanch* and *panchayat* secretary stopped visiting the *panchayat* office altogether. The MKSS workers then visited his home, but were manhandled and pushed out. The *sarpanch* followed this up by registering a false complaint against the MKSS workers in the police station, who responded with their own police complaint. The Rajasthan State Campaign Committee on Right to Information held a *dharna*, in collaboration with the state People's Union for Civil Liberties, but the *sarpanch* remained recalcitrant. Eventually, MKSS gave notice for a *dharna* at the sub-divisional headquarters of Kishengarh, with backing from the National Campaign for Right to Information. The *sarpanch* finally responded with documents for only 3 works out of the 20 sought, and these were also incomplete and unreliable with extensive over-writing. The Block Office gave copies of muster rolls for 13 works the night before the *dharna*, but no bills and vouchers. The Collector ordered a special audit and seizure of the documents, but this was also not implemented.

By contrast, for Kukurkheda *panchayat*, MKSS workers demanded documents in a meeting of the village *panchayat*, but were refused. They complained to superior authorities but without avail. They then mounted agitations, including *dharnas* and picketing at the office of the *sarpanch*. He relented within 2 weeks, and gave documents relating to all works in his *panchayat*.

Section 3

LESSONS FROM THE GRASSROOTS EXPERIENCE OF MKSS: TOWARDS DEVELOPING A METHODOLOGY FOR PEOPLE'S AUDIT OF PUBLIC AUTHORITIES

We have seen how the exercise of the people's right to information can potentially powerfully empower ordinary citizens or people's groups in relation to the state. In practice, however, the exercise of this right is hampered substantially because there is little awareness about the methodologies that citizens and people's groups may adopt to effectively apply the right to information to enforce transparent and accountable governance. This section attempts to abstract from available grassroots experience some initial principles, which may assist in developing a methodology of people's audit of public authorities.

As we have seen, no public authority functions in ways that are in theory unaccountable. There are extensive checks and balances built into the functioning of all public bodies, but traditionally these have been based on supervision by superiors within the hierarchy, audit by specialised bodies within government, judicial scrutiny and accountability to the legislature.

However for the first time the movement for the right to information has paved the way for audit and supervision also directly by the people, of which the major steps are as follows.

Identification of problems

The first step in any exercise of people's audit of public authorities would be to identify the specific problems faced by the people in their interface with the public authority in question. The problems would be specifically in relation to the corrupt, arbitrary or unaccountable exercise of power by a public authority. These may be of many kinds, which would include:

- Corruption, or the misuse of one's official position for private benefit, at the expense of public interest. For example in the context of rural development works, use of less materials in construction than shown in the estimates or in the bills and vouchers, payment to fictitious workers listed in muster rolls, etc.
- Wrongful or arbitrary exercise of patronage or power, for example, selection of beneficiaries for government programmes in contravention of established rules.
- Exploitation, or exercise of official in favour of the powerful in the contravention of law or established principles of justice, for example failure to implement social legislation such as those related to minimum wages, gender and protection of disadvantaged groups.
- Exercise of power in contravention of the rights and dignity of the individual, for example confinement of people in sub-human conditions in mental hospitals, jails or remand homes for children and women.
- Taking decisions that critically and adversely affect people without consulting them, for example establishment of large development projects without informing local populations about its impacts on displacement and on the environment; and
- Failure to perform duties effectively; for example public health authorities who fail to improve Infant Mortality Rate and Maternal Mortality Rate, rural development authorities who fail to reduce poverty, and educational authorities who fail to increase enrolment and literacy.

Identification of relevant information

Our premise here is that people who are victims of corrupt, arbitrary or unaccountable exercise of state power would be better equipped to ensure accountability, probity and performance of public authorities if they are equipped with the necessary information.

The first question that we would ask is: what are the norms, rules, procedures and laws governing the discharge of responsibilities and exercise of power by the public authorities in question?

The next question that we must ask is: what information would strengthen people in relation to the state, with regard to each specific problem that is experienced by people as they interact with the said public authority? In other words, what must individuals or groups know if they are to effectively address the problems with which they are confronted when they interact with the government? We may, for example conclude that people would be able to reduce arbitrariness and corruption in the public distribution system⁴(PDS) if they had information about the quantities of food grain allotments to the shop and who this has been distributed to. Likewise, they may be able to audit and control corruption in public works if they have information about the quantity of the materials required and those actually used.

The next task would be to identify within the system whether and where, and in what form, are these categories of information being generated, recorded and stored. For example, the information identified in the examples listed in the earlier paragraph would be recorded in the food-grain allotment and distribution registers; and the measurement books, bills and vouchers respectively. It would frequently be the case that most citizens would have very little knowledge about the nature of documents generated in the course of functioning of a public authority, for example many persons would not know about the allotment and distribution registers in a public distribution outlet. Therefore in a state committed to enforcing a regime of accountability and transparency, public authorities themselves should actively disseminate information regarding the procedures governing internal functioning of such organisations. This also underlines the necessity of citizens and groups who wish to use the right to information to first make a close study of the internal procedures, including documents and reporting procedures, within the public authority.

We now need to ask what are the rules, procedures and precedents, if any, for public access to or retrieval of such documents? We may find, to carry forward our earlier

examples, that the allotment and distribution registers for PDS shops are not legally accessible to the consumer. On the other hand, the Government of India has directed that copies of muster rolls, bills, measurement books and vouchers for all rural development works must be read out in all *gram sabha*⁵ meetings, and copies must be made available on demand. An enabling legislation to guarantee the right to information would render most such documents legally accessible to people. Some would have to be made available on the suo-moto initiative of the public authority, copies of others would be available on demand.

Accessing of documents

For documents required by the law or administrative instructions to be suo-moto made available to the citizens, access should at least in theory not pose any problem. If, however, the instructions are not being complied with, relief prescribed under the same law or instructions may be resorted to, such as appeal to the designated authority.

For documents available to the citizen on demand, the first step would be a systematic and focussed inspection of documents, to zero in on those particular documents, which may be relevant for the subsequent social audit. If documents are bulky, such as muster rolls (there may be hundreds of muster rolls for a particular work), it may be useful to precede the inspection with a field study so that one is aided in identifying documents of doubtful veracity in advance. If the documents are not bulky, such as the measurement book, bills and vouchers, all documents related to the work being audited may be inspected. It would also be useful for persons with intimate knowledge, both of local specifics as well as technical details, to form part of a team which is deputed to inspect the documents, so that identification of specific documents related to the problem in question is possible.

Once such documents are identified, the next step would be to apply for certified copies of such documents. Legal entitlements, backed by necessary administrative instructions, should ensure that certified copies are supplied within the prescribed time limits. However, as we have seen, the experience of the MKSS has been that frequently

⁴ Distribution of subsidised foodgrain for food security through government controlled outlets

⁵ **assembly comprising all adult residents of the village**

government orders are flagrantly flouted to withhold copies of documents, which would establish malfeasance.

Scrutiny of documents

In order to facilitate the scrutiny and use of these documents by individuals, organisations and the village community, it is important that information contained in the documents is organised and collated in a manner that enables easy comprehension and verification.

Let us take the example of muster rolls or wage employment registers. The information contained in these may be collated in a simple aggregated table of 4 columns. The first column would list the names of the workers, the second the fortnight (or week) in which they worked, the third the number of days worked, and the fourth the payment received. The veracity of this aggregated information would then be confirmed with a field visit, in small informal groups of residents. For instance, one could check whether all the persons listed (a) exist at all; (b) worked on the specified days; (c) were paid as recorded; (d) actually signed the muster rolls; and (e) were also listed simultaneously for the same days in other *panchayats*. If resources permit, the process of field verification may be video-recorded.

To take another example, bills and vouchers of works may be collated and scrutinised as follows: Begin with listing of materials used as recorded, indicating type of material used, cost per unit, quantity used, place of purchase or extraction, and total cost of the material. Discuss with technical staff about the norms of prescribed ratios in combining various materials during construction. In field verification, it would be useful to speak to the people on work-sites, again in groups. It would especially be useful to talk the *mistry* or mason. Some of the enquiries may be as follows: Was the quantity of material indicated actually used on site? Was it transported from the location indicated? Were the ratios as prescribed? If local evidence establishes that a certain ratio was applied, does it tally with the quantities of materials indicated in the measurement book?

It may be stressed that these are only cursory illustrations. For each specific issue and type of document, a thorough understanding would have to be attained in advance, of the content of the documents, the kinds of malpractices that can occur, and how these involve manipulation of the records. Based on this, a specific methodology could be developed in each instance, to collate and professionally scrutinise the documents, to detect specific *prima facie* instances of corruption and malfeasance.

Facilitating Audit of Information for Grievance Redressal

Having arrived at a situation in which the individual or group has *prima-facie* evidence, including certified copies of relevant documents, of corruption or misuse of official power, there are three broad options open for grievance redressal:

- Firstly, the individual or group may want to address conventional grievance mechanisms of public authorities, mainly applying to supervisory or corruption control authorities with copies of relevant documents. Since this does not involve any mechanism of social audit, it does not fall within the purview of this paper.
- The second recourse open to the individuals or groups would be to access fora that have been established under the law, with the express purpose of facilitating people's audit. A typical example of this is the institutional arrangements like the *gram sabha* or village assembly in India, which is specifically empowered under the law, to conduct a social audit into all rural development programmes. However, in most cases, the citizen or group is likely to encounter passive, even defunct institutions, in which members are unaware or cynical about their rights. For instance, rarely have *gram sabhas* actually functioned as vehicles for social audit. The individual or group would therefore have to mobilise the members of the *gram sabha* to participate in the *gram sabha* meetings as a duty akin to the vote. It would inform them about their rights, encourage the victims of injustice and disadvantaged groups to speak out in such meetings, ensure that information is placed before the participants in a comprehensible manner, that decisions taken are legally recorded, and follow-up ensured. In many ways, an empowered *gram*

sabha would function not dissimilarly to a *jan sunwai* or public hearing, which is described in the next sub-section.

- The third recourse available to the individual or group is to resort to organised community action for people's audit, based on inherent democratic rights and the right to information. One highly successful pathbreaking example of this has been the *jan sunwais* or public hearings organised by the MKSS in Rajasthan. We will elaborate here the methodology followed for *jan sunwais* by MKSS, while stressing that each group should experiment with its own methodologies which are best suited to the local people, the group's own strengths, the response of public authorities and the specifics of the issues involved.

Organising *jan sunwais* or public hearings

The remaining part of this section elaborates the methodology of organising *jan sunwais* based on a further documentation of the experience of the MKSS. The initial preparation for a *jan sunwai* would involve precisely the same steps outlined earlier, of identifying people's problems and relevant information, and accessing and scrutinising documents. Having arrived at *prima facie* cases of corruption, and armed with the necessary documentary evidence, one may fix the date for a *jan sunwai* or public hearing.

Mobilising for the *jan sunwai* includes sharing the information in each place in which the public work was undertaken, with small groups of affected people. In these small group meetings, earlier inferences would also be verified, and participants invited to the *jan sunwai*. Mobilisation may also be through wall writing and pamphlets, which would also include details of some *prima-facie* cases, but in generic terms without laying blame in advance.

It is important to note that the other side also mobilises simultaneously in a variety of ways, through persuasion, appeals to class, caste and clan loyalties, threats and covert or overt violence. In many cases, payments withheld in the past from workers are clandestinely paid, for example the *sarpanch* of Harmara referred to earlier made payments of 150,000 rupees to workers since the process of people's audit began. The other side may

also come forward to negotiate with the facilitators, and such negotiations should be conducted with full transparency.

In the face of this counter mobilisation, the facilitators of people's audit need to remain calm and resolute. Also, as agents of hitherto exclusive information, they gain a sense of power, therefore they must be trained in advance to resist exercising personal power, and instead to regard themselves only as custodians of people's information for facilitating the exercise of people's power.

Government officials and *panchayat* members, of the district, block and village levels are also invited to the *jan sunwais*. MKSS also invites a panel of impartial observers, comprising persons of eminence from public life, the press and the professions. It has been experience of the MKSS that local government officials, and *panchayat* members, including those likely to be indicted, attend the *jan sunwais*, despite the fact that these have no legal sanction. This is also linked to the inclusive nature of *jan sunwais*, the fact that care is taken that the proceedings must be conducted with forthrightness and courage, but there must be no personal rancour or irresponsible mud slinging. The local officials and public representatives are also given places of respect on the dais, along side the members of the panel.

At the start of the *jan sunwai*, the rules of the meeting are laid out. Everyone present is entitled to speak, except persons under the influence of liquor. They must speak only on the theme, and be restrained in their language, strictly abjuring swearwords and phrases, which assault the dignity of any individual. It is also made clear that MKSS activists themselves would speak only on issues on which people from the village community are prepared to speak, because they are only facilitators.

Then identified cases are taken up one by one. The documents, and the relevant rules and technical details are not merely read out, but paraphrased and demystified for the assembly. People speak out, and verbal evidence is gathered. Members of the panel intervene wherever they desire. The government and *panchayat* authorities are also encouraged to clarify or defend themselves on any issue.

Follow-up Action

Whether people's audit is conducted through statutory bodies for social audit, like *gram sabhas*, or innovative democratic institutions for people's audit like the *jan sunwai*, one major question still remains to be resolved. This is: how does an empowered and informed village community, armed with evidence of the mala fide exercise of authority by public bodies, ensure that the guilty are punished and public interest restored?

In order to understand the complexity of the issues involved, we may return to the case-study of the Kukurkheda *panchayat*. In a *jan sunwai* organised by the MKSS, the woman *sarpanch* publicly accepted her guilt in a charge of corruption in public works to the tune of 100,000 rupees, and during the *jan sunwai* itself returned the first instalment of Rs 50,000/= . This amount was deposited in the *panchayat* fund. This was perceived as a major victory by both the village community and the MKSS, although questions were raised whether mere refund of the amount misappropriated constituted adequate penalty and deterrence, or whether criminal charges should also have been registered.

Two days after the *jan sunwai*, the Block Development Officer⁶ (BDO) organised a special audit into the works of Kukurkheda *panchayat*, and established several prima facie cases of corruption. After this, instead of taking legal action against the *sarpanch* and *panchayat* secretary, the BDO called an informal meeting of *sarpanches* of the Block, and they jointly persuaded the *sarpanch* of Kukurkheda to retract. Cornered, she illegally withdrew from the *panchayat* fund the Rs 50,000/= she had paid into it. Neither district nor block officials have taken any action against her.

By contrast, in Ajmer district, two *sarpanches* also returned misappropriated money detected during the *jan sunwai*. The Collector ordered a special audit, recovery of misappropriated money as arrears of land revenue, as well as filed police complaints against the guilty. The two *sarpanches* are presently held in judicial custody.

The two contrasting examples help raise the basic question, that if guilt of a public authority is established in a people's audit, but despite this no action is taken against the authority, what are the remedies available to the individual citizen or group? There are no ready answers, because people's audit of public authorities is a new avenue of people's action, and clearer answers would emerge only after more experience is gathered by diverse groups working in different regions on varied issues. However, recourse to some kind of organised peaceful protest seems inevitable, if state authorities remain recalcitrant.

Section 4

SOME INITIATIVES OF THE BUREAUCRACY

In India, some of the most practical moves for enforcing the right to information have arisen surprisingly from the much-maligned quarters - from members of the bureaucracy and the politicians. This has been possible despite the consistent hostility of the executive in general to transparency, and the fact that the bureaucracy as a whole is deeply corroded by corruption and nepotism.

In India, the few progressive elements in the bureaucracy have often been marginalised. Bureaucrats who attempted to change things and took firm stands against corrupt practices have been routinely transferred out to 'punishment postings' and disempowered. Some attempted to change things in innocuous ways like setting right the system of records, but these exercises were centred around individuals and lasted only until the new entrant. The public remained at the mercy of chance benevolent administrators in the absence of institutionalisation of accountability mechanisms.

⁶ Official responsible for development works in a group of villages called a Block

Some experiments that bear mentioning are the ones using Information Technology to revamp the system of recording information. As far back as 1985, the District Collector of Karwar District in Karnataka, one of the Southern states, diverted funds meant for a jeep in order to purchase a microcomputer which was successfully used as an analytical tool. In the first year after adopting this system, the district went up from being the 18th to the 3rd in the success rate for implementing development programmes. The success of this programme was in its replication to other districts as a formal Programme named CRISP (Computerised Rural Information Systems Project)⁷

Likewise, in Ahmednagar District of the state of Maharashtra, a Collector revamped the whole records system, allowing the public to get copies of documents and to inspect records easily. This system resulted both in speedy disposal of public grievances as well as a far more professional work environment for the office clerks.

With the wildfire growth of Information Technology, these ideas for accessing information are being given much stress and huge programmes for networking rural districts to enable people to access information are being carried out. The most notable among these is the one taken on by Chief Minister⁸ of Andhra Pradesh, another Indian state, by linking through computers all the rural regions. This is being done by setting up information kiosks at the *taluka*⁹ level where anybody can have access to desired information from the government. Of course, these experiments in using information technology will pose their own problems in terms of the quality of information made available. For these could well boil down to furtherance of government propaganda and as much can be hidden as revealed. Advocates of the right to information need to keep an eye on all these aspects and ensure that transparency is carried to its logical conclusion and the sources of the information and the generation of information is made equally transparent.

⁷ (India's Information Revolution_ Singhal and Rogers, sage,1989.)

⁸ the head of the state government

⁹ A sub-District administrative unit

While these experiments were hailed as experiments in good administration, the really dynamic experiment in recent years has been one carried out in one of the Divisions¹⁰ of India's largest state, Madhya Pradesh. This process, as we shall see was not a mere exercise in logistics, but contained strong conceptual and ideological elements which helped later to spur a movement in the entire state, resulting in wide-ranging administrative reforms for openness.

The Commissioner sought to systematically introduce transparency in certain key departments like the Public Distribution System, the Employment Exchange, and the Pollution Control Board.

The Public Distribution System in rural India is one of the most corrupt networks, beset with hoarding, supply of sub-standard foodgrains to the public, illegal sale of the allotted quotas in the open market, and almost always manned by rude and unresponsive persons who make people queue for hours for days on end to receive their share of the basic necessities. Into this cesspool of corruption which daily threatened the food entitlements of the most poor, a system was put into place whereby each outlet was required to send certified copies of the Stock Register, the Sale Register and the Ration Card Register and to these to the *Tehsil*¹¹ office. From this office, any person could secure certified copies on demand within 24 hours to personally investigate what grains had come, and to whom these were distributed. Installing photocopiers at the *tehsil* offices was made mandatory. This was made cost-effective by buying photocopiers for handicapped persons through a governmental scheme, thereby generating employment as well as adding to administrative efficiency. A deadline was laid down for adherence to this system and a system of fines was established at all levels for delay in following the system.

Likewise, the Employment Exchange was required to give details about the criterion and procedure for selection to any government position, and the detailed merit list, on demand by any person.

¹⁰ Several Districts form a Division, which are under the administrative control of the Divisional Commissioner.

Bilaspur Division is also home to Korba, one of the most polluted areas in the country due to multiple and uncontrolled industrialisation. The administration realised that pollution levels could not be brought down without the active participation of the public. The Pollution Control Board of this area was therefore required to collect and publish daily in the local newspapers, details of the various pollutants in the area, along with the levels of pollution, and a citizens committee was trained and authorised to check the veracity of the readings.

Predictably, this whole exercise soon ran into trouble with the local power groups, and the officer whose brainchild it was, was transferred out of the area. To briefly enumerate the fallout of this exercise: Although the experiment has often been referred to as a “failure” by some quarters in that the number of information seekers was negligible and in that the system collapsed with the exit of the Commissioner, in the duration that the orders for right to information were in operation, the deterrent effect of transparency to corruption and inefficiency became only too apparent. The foodgrain shops recorded unprecedented excess stocks, as the distributors could no longer oblige local politicians and goons by diverting the stocks to them and to the black market. They even remarked, “the people’s right to know has become our right to “no”! Pollution levels showed a marked decline and the daily publication of pollution levels encouraged the public to take an interest in their environment and to question the levels of pollution.

While cynics had a field day criticising the experiment on all fronts ranging from the standard charge of it being ‘impractical’ to ‘not feasible financially,’ the ground had been well prepared and the seeds sown for sweeping acceptance of the right to information in principle in the entire state of Madhya Pradesh

Since this was an experiment carried out *pro bono*, it found many supporters who could look beyond the teething troubles and sense that here was an answer to many ills to which many cures had earlier failed. It was this realisation that spurred the Chief Minister of the state, himself a professed crusader for decentralisation of power and transparency and accountability, to attempt an enactment for enforcing the right to information. The attempt

¹¹ A sub-district administrative unit

was, however, axed by his cabinet. There are unofficial and amusing reports of the horror and dismay of the ministers at the very idea of complete transparency in the working of government. The whole attitude was one of “either this law remains or we remain”. Political considerations obviously warranted a backtracking on the move. However, the next move of the State government demonstrates how political will can push reforms through even in adverse circumstances and how spaces can be created starting from a tiny wedge.

While in a neighbouring state the people were fighting tooth and nail (the MKSS campaign, elaborated in an earlier section) for a governmental order to get photocopying rights in *one* sphere of government, that of the *Panchayats*, the government of Madhya Pradesh surprised all campaigners for the right to information by handing out a veritable bouquet of rights of access to government records in the form of executive orders to 37 departments of the state government. These broadly included the departments of Public Works, Panchayats and Rural Development, Urban Development, Dairy Development, the Public Distribution System, Jails, Social Welfare, Co-operatives, Tribal Welfare Forests, to name a few. The Chief Minister declared his commitment to transparency saying “transparency is essential because it is the basis of Democracy...This will go a long way in establishing a vibrant administration, a vibrant society and a vibrant nation. That is why we are telling people before they start asking.”¹²

The process followed by the government was strategic in that it attempted to follow the line of least resistance and thereby got through much more than it could have hoped to by forcing it on a reluctant and hostile bureaucracy. “We asked the officials to enumerate all those categories of information which were easily available with them and which could be given without any extra burden on the administration. This has enabled us to give the reforms a practical shape. Gradually, we expect a change in the mindset as people get used to the idea and then we can always expand the areas for giving information. We felt that it was better to give something rather than deny everything”.¹³

¹² Government of Madhya Pradesh publication “Jaanane ka Haq”

¹³ G.S.Shukla, Principal Secretary, General Administration, Govt.of Madhya Pradesh, India, in a workshop organised by CHRI.

The whole process was moderated by the department of General Administration which, as the name suggests, is responsible for the overall efficiency and functioning of the administrative structure and also for reforms of this structure. The broad pattern of the orders is a directive to provide photocopies or rights of inspection for certain categories of documents enumerated in the order itself, “for a mass campaign against corruption through the right to information”¹⁴. The orders prescribe a minimum fee for inspecting the documents and formats for requests for inspection and photocopies. While most of the fee structures seem reasonable, there are some departments where the fee structure suggests that it would act as a deterrent to information seekers, who may most likely be from disadvantaged classes such as those living under the poverty line.

These orders were not issued because of any apparent public pressure or movement, though it is likely that developments in other parts of the country, particularly pervasive public revulsion at corruption in high places, egged on the political masters and the bureaucracy to take pre-emptive measures.

CHRI¹⁵ and the Right to Information Movement

The apparent paradigm in the above example was stated to be a genuine desire to bring about a change in the culture of governance and in the absence of evidence to the contrary, this was accepted at face value by the CHRI which proceeded to attempt to create spaces using these openings.

The CHRI’s work on the right to information in the state of Madhya Pradesh coincided with the passing of these orders and other developments on the issue in 1997. This gave CHRI a strategic entry point and they used the orders to peg discussion and advocacy around the issue through a series of workshops in the state. Although a year and a half of the operation is, in all fairness, not sufficient to judge the success of the exercise, their findings brought out certain inherent failings which if not addressed soon would nullify the whole exercise or result in the availability of avenues of information to be hijacked by the few to feed their own vested interests.

¹⁴ Government of Madhya Pradesh publication “Jaanane ka Haq”

¹⁵ Commonwealth Human Rights Initiative

While the government's orders were enabling for the common person to access much of the information required for everyday concerns, CHRI found that the orders were not backed by any mechanism for publicising the same to the public. A government publication (*Jaanane ka Haq*) containing the texts of the orders was printed and circulated to the press and whenever the government required political mileage out of it. This publication, even a year and a half later is not freely available, leaving the lay public unaware of the orders. The government claims to have given "press statements" regarding these orders, but these have also been sporadic and no sustained campaign through the press or the electronic media has been planned or executed. Even otherwise, with a literacy rate as low as 43.45% , and many of the areas being tribal belts with poor accessibility to any means of communication, these efforts are hardly likely to be effective.

There is no concrete plan to sensitise or orient bureaucrats and public servants at all levels to the new regime of transparency. There ought to be immediate and forceful introduction of the issue of right to information at all orientation and training programmes carried out by the state academy for administration which conducts programmes for government officials. Interaction with some of the lower bureaucracy revealed that to them the implications of the directives on right to information had no relevance to public dealing and some even considered that these were meant to allow them access to their own service and leave records, etc.

The second drawback detected was the lack of accountability mechanism for enforcement of the orders. While many of the orders stipulate mandatory putting up of notice- boards and periodical mandatory release of information, reports from different parts of the state suggest that this has not been done. While the government in the state capital has devised a system of monitoring the implementation of the orders through a format which the District Collectors are required to submit every month, after compiling the information on implementation . Reporting is poor and out of the 61 Districts, only 33 are reporting. Others are being given reminders. This is an obvious indication of the lack of teeth in the orders. Senior officials say that this can be remedied only by a law on the subject which will bring the errant officials to book.

A law was, in fact passed by the state assembly, but is pending notification in the absence of the President of India's assent. This law is again not an ideal manifestation of the right to information since it only allows access to information in an enumerated list and is not a general right of access which should be the hallmark of a genuine right to information legislation.

Civil society groups brought together by CHRI have initiated a campaign to educate people about the operation of the right and to activate the orders by filing applications for information. Their experiences have so far not been pleasant and have ranged from dogged refusals to threats of physical harm. The campaign however, aims at increasing interaction between civil society members, media and government and these experiences are now being highlighted through frequent workshops at various levels including the state capital and villages.

A few lessons from the campaign are mentioned here in brief:

- The campaign gained considerably from material published and disseminated by CHRI. This was in the form of simple booklets explaining the issues involved. Pictorial representations and explanation of the issues in the context of the problems and experiences of common people encouraged wide-spread interest in the issue.
- In the efforts to generate partnerships in advocacy, diverse groups were brought together and encouraged to see the issue of right to information within the framework of their own work. For instance, activists working on health issues could see the importance of having a right to governmental information regarding health schemes like immunisation, Maternal Mortality Rate, etc. Organisations working in the area of education could see the connection between information as to the funds, etc, of schools and community participation in the proper running of schools. Environmental activists could identify strongly with the need for information on environment issues, which are directly concerned with sheer survival.
- Constant networking and a continuous flow of information on the issue were very important. Authentic and updated information on any subject is not easily available to people and activists in far- flung areas, with little access to papers and journals. Through constant communication, their interest in the issue can be kept alive.
- Frequent interactions at workshops helped to bring the issue in focus. It also helped to reach the ground-level experiences of the people to government and the media, who

could either then address the grievances or highlight them. Interaction at all levels ranging from academics, media persons, lawyers and bureaucrats to small-time farmers and activists working on diverse issues helped to zero down on the essentials of the issue which need to be addressed whenever the law is made operational. This feedback is simultaneously compiled and fed to the policy makers.

Section 5

THE CONSTITUTIONAL DEVELOPMENT OF THE RIGHT TO INFORMATION

At the outset, it must be stressed that the movement in India does not aim at *creating* a right to information. Rather, it is aimed at generating conditions favourable to an effective exercise of the right. While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees which are a part of the Chapter on Fundamental Rights. The Indian Constitution has an impressive array of basic and inalienable rights contained in Chapter Three of the Constitution. These include the Right to Equal Protection of the Laws and the Right to Equality Before the Law (Article 14), the Right to Freedom of Speech and Expression (Article 19(1)(a)) and the Right to Life and Personal Liberty (Article 21). These are backed by the Right to Constitutional Remedies in Article 32, that is, the Right to approach the Supreme Court, the highest court in the land, in case of infringement of any of these rights.

These rights have received dynamic interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India. As pointed out by H.M. Seervai¹⁶, “Corruption, nepotism and favouritism have led to the gross abuse of power by the Executive, which abuse has increasingly come to light partly as a result of investigative journalism and partly as a result of litigation in the Courts”.

¹⁶ Foremost Constitutional expert

The legal position with regard to the right to information has developed through several Supreme Court decisions given in the context of all of the above rights, but more specifically in the context of the Right to Freedom of Speech and Expression, which has been said to be the obverse side of the Right to Know, and one cannot be exercised without the other. The interesting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in society.

The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint, bans on distribution of papers, etc. It was through these cases that the concept of the public's right to know developed.

The landmark case in freedom of the press in India was *Bennett Coleman & Co. vs. Union Of India*¹⁷ in which the petitioners, a publishing house bringing out one of the leading dailies challenged the government's newsprint policy which put restrictions on acquisition, sale and consumption of newsprint. This was challenged as restricting the Petitioner's rights to freedom of speech and expression. The court struck down the newsprint control order saying that it directly affected the Petitioners right to freely publish and circulate their paper. In that, it violated their right to freedom of speech and expression. The judges also remarked, "It is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views" and "Freedom of speech and expression includes within its compass the right of all citizens to read and be informed." The dissenting judgement of Justice K.K.Mathew also noted, "The freedom of speech protects two kinds of interests. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way. Now in the method of political government the point of ultimate interest is not in the words of the speakers but in the hearts of the hearers". This principle was even more clearly enunciated in a later case¹⁸

¹⁷ AIR 1973 SC 783

¹⁸ Indian Express Newspapers(Bombay) Pvt. Ltd.vs India (1985) 1 SCC 641

where the court remarked, “ The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is *the people’s right to know.*” (emphasis added).

Another development on this front was through a subsequent case¹⁹ in which it was held that if an official media or channel was made available to one party to express its views or criticism, the same should also be made available to another contradictory view. The facts of this case, briefly, were: One Mr. Shah who was also a Director of a voluntary consumer rights organisation and had , incidentally, worked extensively on the right to information, including drafting a model Bill, wrote a paper highlighting discriminatory practices by the Life Insurance Corporation which is a government controlled body. The Corporation published a critique of this paper in its institutional publication, to which Mr. Shah wrote a rejoinder which the LIC refused to publish. The Court held that a state instrumentality having monopolistic control over any publication could not refuse to publish any views contrary to its own.

In the area of civil liberties, the courts have built up the right to have a transparent criminal justice system free from arbitrariness. In *Prabha Dutt Vs. Union of India*²⁰ the Court held that there excepting clear evidence that the prisoners had refused to be interviewed, there could be no reason for refusing permission to the media to interview prisoners in death row.

Repeated violations of civil rights by the police and other law enforcement agencies have compelled the courts to give, time and again, directions to the concerned agencies for ensuring transparency in their functioning in order to avoid violations like illegal arrests and detention, torture in custody and the like.

In cases concerning the right to life and liberty under Article 21 of the Constitution the Courts have stressed the need for free legal aid to the poor and needy who are not either not aware of the procedures or not in a position to afford lawyers, and therefore unable to

¹⁹ **Manubhai D. Shah vs Life insurance Corporation AIR 1981 Guj 15**

²⁰ **AIR 1982 SC 6**

avail of the constitutional guarantees of legal help and bail. The Courts have said, that it is the legal obligation of the judge or the magistrate before whom the accused is produced to inform him of the that if he is unable to engage a lawyer on account of poverty or indigence, he is entitled to free legal aid.

The most recent judgement enumerating in detail the procedural safeguards for arrest and custody were given in a recent case²¹ Most of these directions translate into the right of the accused or his kin to have access to information regarding his arrest and detention such as preparation of a memo of arrest to be counter-signed by the arrestee and a relative or neighbour, preparation of a report of the physical condition of the arrestee, recording of the place of detention in appropriate registers at the police station, display of details of detained persons at a prominent place at the police station and at the district headquarters, etc.

Developments in administrative law further strengthened the right. In *State of U.P Vs. Raj Narain*²² the respondent had summoned documents pertaining to the security arrangements and the expenses thereof of the then Prime Minister. The Supreme Court, in examining a claim for privilege of certain documents summoned the kept to itself the power to decide whether disclosure of certain privileged documents was in the public interest or not. The Court said, “ While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. Once considerations of national security are left out *there are few matters of public interest which cannot be safely discussed in public*”.(emphasis added) Justice K.K.Mathew went further to say, “ In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when

²¹D.K.Basu vs State of West Bengal

²² AIR 1975 SC 865

secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. *The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption*". (emphasis supplied)

There have been numerous cases favouring disclosure of governmental information and transparency, but this was easily one of the strongest formulations of the right in all its manifestations. However, legislative action was not quick or willing enough to give teeth to these important fundamental principles for governance. As a result of a lack of clear legislation on this, people continue to knock at the doors of the courts every time they want to enforce this right. While the courts have almost always responded positively, this is obviously not the ideal way for securing such a right to the common man. This course at best restricts enforcement to the aware and the literate for their own limited concerns. The common citizen neither has the means nor the time and inclination to get into convoluted legal processes and even public interest litigation is a tool which can reach only a few. Advocacy on this issue using the legal process has become more focussed with citizens' petitions for directly enforcing the right to information being filed more and more frequently. Environmental groups have sought the right to know from government crucial facts concerning the environmental details of development projects. Recently, one of the central ministers sought to enforce this right in his ministry, but the cabinet secretary refused to process the files containing the order. The possibility of facing embarrassing disclosures by one of their own colleagues forced the government otherwise quick to offer homilies on transparency, to maintain a stony silence. The The National Campaign for the Right to Information was quick to take this opportunity, and have filed a petition seeking enforcement of the minister's directions. While the disposal of the petition will take some time, it has helped to get media attention to the issue and bring it in the public notice.

These developments have won half the battle for the right to information, as the basic principle that the right to information is a fundamental right has been so firmly entrenched that the likelihood of its complete subversion by government is today practically

nil. Advocates for the right in India, have therefore concentrated their energies towards the practical operationalising of the right, the main thrust of which has been to mobilise people to use this right and to get a legislation giving it a workable shape. The legal developments also indicate how the right to information can be merged with other issues to get accountability and transparency for a variety of governmental actions.

Section 6

LEGISLATING THE RIGHT TO INFORMATION

Attempts to Breach the Official Secrets Act

The battle for appropriate legislation for the right to information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second, which we will look at in the next sub-section, is the campaign for an early and effective law on the right to information.

The Official Secrets Act, 1923, is a replica of the erstwhile British Official Secrets Act and deals with espionage on the one hand, but has the damaging “catch all” Section 5 which makes it an offence to part with any information received in the course of official duty, to non-officials.

Objections to this provision have been raised ever since 1948, when the Press Laws Enquiry Committee said that “the application of the Act must be confined, as the recent Geneva Conference on Freedom of Information has recommended, only to matters which must remain secret in the interests of national security.” This was sound advice which went unheeded and many seminars, academic debates and political promises later (election manifestoes of almost all major political parties have, at least in the last decade been promising transparency and administrative reform) the position has not changed much.

In fact, the Act has been used time and again to suit the purposes of the government. Two infamous cases come to mind in the present context . One was the imposition of the Official Secrets Act being used to prohibit entry of journalists into an area where massive displacement is taking place due to construction of a large dam, one of the world's largest dams displacing hundreds of thousands, the Sardar Sarovar Project. A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of survival rights of the marginalised as well as the cost to the environment of such large “developmental projects”. Public debate and dissent was sought to be suppressed by the use of this law.

Another dramatic instance which has been in the eye of international attention during the last few years is the Bhopal Gas Tragedy, in which leakage of Methyl Isocyanate gas from the Union Carbide factory in Bhopal, the capital of the largest state in India, claimed several thousand lives and maimed and handicapped at least the next three generations. Not only did the government refuse to make public details of the monetary settlements between the government and the Union Carbide, but several participants at a workshop on the medical aspects of the victims were arrested for taking notes under the provisions of the Official Secrets Act!

Both the above instances have, however, been used as active pegs by activists for furthering the cause of Right to Information. In the case of the Sardar Sarovar Dam, activists discovered that the potential oustees had little or no knowledge of how their lives were going to be affected, no knowledge of the time or extent of displacement, nor any idea of the plans for re-location and rehabilitation. Whenever activists tried to educate people on these issues, the local administration came down heavily on them. Besides using the Official Secrets Act, illegal arrests, false cases and physical threats became the order of the day. Judicial interventions from time to time have become the last recourse to activists working in this area.

In the Bhopal gas tragedy case are strong seeds for the demand for mandatory provisions to be made in a law, binding government as well as private companies to give information voluntarily on issues affecting the health and environment .

The present government has recently made statements to the effect that major changes are going to be brought about in the Official Secrets Act but it remains to be seen whether this is going to happen and to what extent. There have been, in the past, several attempts to amend the Official Secrets Act but in the absence of genuine political and administrative will, and popular pressure, all these initiatives have come to nought.

A Working Group was formed by the Government of India in 1977 to look into required amendments to the Official Secrets Act to enable greater dissemination of information to the public. This group recommended that no change was required in the Act as it pertained only to protect national safety and not to prevent legitimate release of information to the public. In practice, however, using the fig leaf of this Act, the executive predictably continued to revel in this protective shroud of secrecy.

In 1989, yet another Committee was set up, which recommended restriction of the areas where governmental information could be hidden, and opening up of all other spheres of information. No legislation followed these recommendations. In 1991 sections of the press²³ reported the recommendations of a task force on the modification of the Official Secrets Act and the enactment of a Freedom of Information Act, but again, no legislative action followed. The most recent of these exercises has been a Working Group which gave its report in 1997. The Working Group made some recommendations for changes in some statutes which protect secrecy such as the Official Secrets Act and also recommended a draft law. The development of public awareness and interest in the issue of right to information is evident from the fact that this Report was much more widely discussed by academia and the media than those in the past. However, this did not alter the fact that this report too seems to have gone into cold storage.

The one point which marks all these exercises and which civil society groups need to be strongly aware of is that these processes contain their own seeds of failure. For instance, in India, none of the above exercises were done openly, rarely were any public or wide consultations done on the questions under consideration and neither were the

recommendations ever sufficiently publicised. The latest Working group in India, for instance, consisted of ten persons, all male, eight of whom were senior bureaucrats from the Central government. This made the Group highly urban-centric as well as government-centric. Practically no consultations were made by the Group. The group did not think fit to seek recommendations from any other relevant groups, whether it be civil society groups, representatives of the rural poor, the media, bar associations, etc. By contrast, the process of drafting of South Africa's Open Democracy Bill is one which we would all do well to follow. This Bill is being drafted in consultation with various departments, institutions and persons such as Ministries and government departments/offices (including the premiers of provinces, the Public Prosecutor, Attorney General, South African Police services, South African Defence forces and the national intelligence agency, the Chief justice and judge President of the Supreme Court, the Open Democracy Advisory Forum.

During the present decade, the focus of citizens' groups has shifted from demanding merely an amendment to the Official Secrets Act, to the demand for its outright repeal, and its replacement by a comprehensive legislation which would make disclosure the duty and secrecy the offence. As we have seen, even a powerful grassroots organisation like the MKSS continues to experience enormous difficulties in securing access to and copies of government documents, despite clear administrative instructions that certified copies of such documents should be available to the citizen on demand. This highlighted to citizens groups how important it is that the people's right to information should be enforceable by law.

Efforts for a Law for the People's Right to Information

The first major draft legislation right to information in the country that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. Interestingly, this in turn derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October, 1995. This is the institute for training all recruits to the elite higher civil services, and it is interesting that some serving officials of this institute

²³The Hindu, 13th December, 1991

took the initiative to convene this meeting, which became a kind of a watershed in the national movement for the right to information.

One important feature of the Press Council draft legislation was that it affirmed in its preamble the constitutional position that the right to information already exists under the Constitution, as the natural corollary to the fundamental right to free speech and expression under Article 19(1) of the Constitution. It stated that the legislation merely seeks to make explicit provisions for securing to the citizen this right to information. Incidentally, as we have seen earlier, this position that the right to information flows from the fundamental right to freedom of speech and expression had even earlier been affirmed in a number of rulings of the Supreme Court.

The draft legislation affirmed the right of every citizen to information from any public body. Information was defined as any fact relating to the affairs of the public body and included any of the records relating to its affairs. The right to information included inspection, taking notes and extracts and receiving certified copies of the documents. Significantly, the term 'public body' included not only the state as defined in Article 12 of the Constitution of India for the purposes of enforcing Fundamental Rights. It also incorporated all undertakings and non-statutory authorities, and most significantly a company, corporation, society, trust, firm or a co-operative society, owned or controlled by private individuals and institutions whose activities affect the public interest. In effect, both the corporate sector and NGOs were sought to be brought under the purview of this proposed legislation.

The few restrictions that were placed on the right to information were similar to those under other Fundamental Rights. The draft legislation allowed withholding of information the disclosure or contents of which 'prejudicially affect the sovereignty and integrity of India; the security of the State and friendly relations with foreign States; public order; investigation of an offence or which leads to incitement to an offence'. This is substantially on the lines of Article 19(2) of the Constitution. Other exemptions were on bonafide grounds of individual privacy and trade and commercial interests.

However, the most significant saving provision was that information which cannot be denied to the Parliament or the State Legislature shall not be denied to a citizen. This would have been the most powerful defence against wanton withholding of information by public bodies, because the agency withholding information would have to commit itself to the position that it would withhold the same from Parliament or State Assemblies as well.

The draft legislation laid down penalties for default in providing information, in the form of fines as personal liability on the person responsible for supplying the information. It also provided for appeals to the local civil judiciary against failure or refusal to supply the desired information.

The Government of India then constituted a working group chaired by consumer activist H.D. Shourie to draft a legislation for consideration of government. This committee, which submitted its report in May 1997, advanced on the Press Council Legislation in one respect, by explicitly bringing the judiciary and legislatures under the purview of the proposed legislation. We have already made reference to the limitations of this Committee.

Many of the positive aspects of the Press Council legislation were excluded or diluted in the Shourie draft. Most importantly, it widened the scope of exclusions to enable public authorities to withhold 'information the disclosure of which would not subserve any public interest'. This single clause broke the back of the entire legislation, because in effect public authorities would then be empowered to withhold disclosure of incriminating information in the name of public interest. The powerful clause referred to earlier, which provided that only such information that can be denied to parliament or the legislature can be withheld from the citizen, was not included.

The Shourie draft also made no provisions for penalties in the event of default, rendering the right to information toothless. Appeals were allowed to consumer courts. The Act defined public authorities more narrowly to exclude the private sector and all NGOs which are not 'substantially funded or controlled' by government. Some analysts, including the writer, believe that it is the government, which should be made explicitly

responsible to provide to the citizen information on demand related to the private sector and NGOs.

However, with the demise in quick succession of two left-leaning United Front governments, this draft also went into cold storage. The right-wing BJP led alliance also promised a legislation for right to information in its national agenda, but there has been little open debate about the contents of the proposed legislation.

The first indications of what is possibly contained in the draft legislation being considered by the union government are recent reports in the media. According to these reports, the government is now contemplating only to amend a few sections of the Official Secrets Act, and to list a dozen items on which it would become mandatory for government to give information on demand. Items not covered by this list would continue to be covered by the Official Secrets Act. This is completely in contradiction of the basic principle of transparent and accountable governance, that the enforceable right of the citizen to government held information must be the rule, with only a few exceptions for genuine considerations of national security and individual privacy. No legislation for the right to information should be allowed to make this principle stand on its head, making disclosure the exception rather than the rule.

In summary, there is wide consensus among supporters of the right to information campaign that it is of paramount importance that comprehensive and early legislation is passed that guarantees the right to information. Such a law must secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decision, to ensure that these are consistent with the principles of public interest, probity and justice. It must bring within its purview the judiciary and legislature, while making government explicitly responsible to supply information to the citizen on demand related to the corporate sector and NGOs. It must also contain powerful provisions for penalties and autonomous appeal mechanism. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with the highly significant proviso that no information can be denied to the citizen which cannot be denied to Parliament and

the legislatures. It would then truly be the most significant reform in public administration, legally empowering the citizen for the first time to enforce transparent and accountable governance.

Formation of a National Campaign for the Right to Information

The movement for the right to information has caught the imagination of disparate sets of people. It has touched the middle classes as well as the poor, because of the despair of their unending interface with a corrupt and unaccountable bureaucracy. It has also reached the middle classes through the consumer and environmental movements. The media have a major professional stake in the right to information because it would greatly aid the investigation of executive action.

For sustained, informed and vigilant advocacy for the passage of such a legislation, a National Campaign Committee for the People's Right to Information was constituted. The initiative for this initially came from the grassroots activists from Rajasthan, particularly the MKSS, who acutely felt the need both for powerful support at the national level both for the local movement and for wider legislative backing. The initial group that came together comprised senior activists, press persons, academics and serving and retired civil servants, who were actively committed to transparent, accountable and pro-people governance.

Their major contribution as a group has been firstly to assist in preparing the Press Council draft various versions of the proposed legislation for right to information (which has been referred to earlier in this sub-section) and the detailed blueprint for its operationalisation. In this in particular serving civil servants and activist lawyers played a central role. Senior press persons such as retired editors of national dailies who continue to write and who are read and heard with considerable respect, played a major role in building public opinion in the media around the issue and the local movement. Academics analysed the issue and placed it in the wider perspective of expanding democratic space. All of these varied groups helped in extending support for the grassroots movements, particularly of the MKSS, around the right to information.

It is difficult to predict whether India is at last at the verge of the passage of a landmark law which would explicitly guarantee the people's right to information. However an even greater challenge is to continue anchor the movement and the application of this right in the struggles for survival and justice of the most dispossessed and wretched of the Indian earth, as an important part of a larger movement for equity and people's empowerment.