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Social Mobilisation and Transparency: The Indian Experience

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Task Force on Transparency

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1. Introduction

In India, as perhaps the world over, the battle for the right to information is a battle for political space. There are many elements in the Indian society and system of governance that make this a critical battle. For one, India is a robust democracy where the governments that get elected are invariably the governments that the largest group of people have chosen. This does not mean that it does not have all the problems that evolving democracies – or perhaps all democracies – have. More than a third of the electorate does not vote. The electoral system – first past the post – ensures that almost every government has less than the majority of votes cast in its favour. Very often, voters are faced with impossible choices, all bad candidates, or a good candidate from a bad party and a bad candidate from a good party. Considerations of caste, religion, or community, and even of “dynasty” and “stardom”, often sway the electorate or a part of it. Nevertheless, given these and other constraints, the people – for good or for bad - do elect the government they want.

India is the second most populous country in the world (after China) with a population of over one billion people. It is a little under 35 million square kilometres in area and has a multitude of religions, languages, races and cultures. As a civilisation, it predates most of the world and is as old as the Chinese and the Egyptian civilisations.

2. History of Transparency in India

Initial demands for transparency in the 1950s, after the installation of an independent Indian government, could be heard in relation to corruption², to reports regarding disasters (especially railway accidents) and increasingly about human rights. However, the euphoria created by the independence movement and the respect that the general public had for the government and its leaders, muted these demands.

Nevertheless, various factors were working towards making the Indian public increasingly restless to be included in the process of governance. For one, the rhetoric about independence and democracy, let loose after the British left, had started working. The general public had begun to believe that the government was theirs and that they had rights in relation to it. Even though there was little genuine empowerment, there was an increasing sense of empowerment. Along with this, education and literacy was spreading and more and more people could read and write. A new generation was coming up that had never known imperial rule and had, as a consequence, a healthy irreverence to those in authority. Besides, the domination of a single political party, the Congress party, was waning and other political formations were emerging and raising questions.

Perhaps most important was the spread of media. Apart from newspapers, the radio network rapidly spread to cover almost the whole country by the 1960s. Though the government controlled all the radio channels, at least their existence ensured that the horizons of the Indian public were significantly widened and they started getting interested in things happening hundreds, sometimes thousands, of miles away.

Equally important was the rapid growth of the Indian cinema – in Hindi and in many of the regional languages. The fact that many of the movies depicted social themes and highlighted social injustices and governmental corruption, further fuelled the interest of the Indian masses in the political process. The rapid extension of electricity, after independence, ensured that more and more people, including those in rural areas, got to see films.

Finally, the Chinese invasion of 1961 and the resultant collapse of the Indian defences for the first time burst the national bubble of trust and faith in the government and the simmering discontent broke through. There

² Detailed references will be added later

were strident demands for transparency and the whole nation wanted to know what happened, why and who was responsible. Even then, it has taken another nearly forty years for the acknowledgement of the people's right to information.

From the 1960s onwards there was the new phenomenon of "insurgencies" or civil unrest and armed rebellion in different parts of India. The north-eastern India, especially Mizoram and Nagaland, West Bengal and adjoining areas, Punjab, Jammu and Kashmir and parts of Andhra Pradesh were all affected. These unleashed a new level of police and military action and a consequent outcry against the violation of human rights. People disappeared or were kept in police or military custody without proper legal processes. This resulted in a renewed demand for transparency and a whole spate of *habeas corpus* litigations. The "internal emergency", imposed in 1975, resulted in the suspension of many civil rights and liberties and the imposition of an oppressive regime with little scope for dissent. However, the elections and change of government, in 1977, once again re-instated the democratic and political processes. The formation of the People's Union for Civil Liberties (PUCL) and the People's Union for Democratic Rights (PUDR) gave impetus to demands for various types of civil liberties and rights, including those of transparency.

3. Policies, Laws and Institutional Structures

Efforts to enact a national law on right to information have been going on for over a decade. In 1989, a non-congress government came to power at the centre with Mr. V.P Singh as the Prime Minister. Enacting a right to information law was a part of the electoral promises made by Mr. V.P Singh's government. Yet, the government came and went, albeit in under two years, without there being even the initial draft of the promised law. In conversations many years later, Mr. V.P. Singh revealed that though he had tried to get a suitable act drafted and introduced in Parliament, the bureaucracy had frustrated him at every step and, finally, his government had fallen without any significant progress being made.

In 1996 a meeting was convened at the Gandhi Peace Foundation where the National Campaign for People's Right to Information (NCPRI) was formed. It had, as members, activists, journalists, lawyers, professionals, retired civil servants and academics. One of the first tasks that the NCPRI addressed itself to was to draft a right to information law that could form the basis of the proposed national act.

The initial draft was formulated by a group from the NCPRI and this draft was then passed on to the Press Council of India, which formed a group involving the NCPRI, and came up with a fuller and more legally appropriate draft. A meeting was then convened which, apart from professionals, NGO representatives, activists and academics, senior members of all the major national political parties attended. The Press Council of India draft was presented and discussed in this meeting and then presented to the government. The government, as is its wont, set up another committee, which again went through a somewhat laborious exercise and came up with their own recommendations. These were then placed before the Cabinet which, promptly, set up a Cabinet Committee to look at the recommendations and finalise the draft act.

The Cabinet Committee went through the motions and finally came up with a very watered down version of the original draft, which was then approved by the Cabinet and placed in Parliament. At this point, the draft act was referred to a Select Committee of the Parliament which again looked at the Act and invited various experts and concerned persons to meet with it and to give their views. This committee came up with many suggestions for strengthening the act, most of which were finally not accepted and the act was passed with almost no amendments or changes, in December 2002. The process took over 5 years since the initial draft was prepared by the NCPRI. Also, it is possible that the passing of the act was finally more as a result of prodding by the Supreme Court of India, rather than any desire on the part of the government itself, as described below.³

³ This section is based on a note prepared by Advocate Prashant Bhushan

In 1999, the then union minister for urban development passed an administrative order that any citizen would be entitled to inspect and take photo copies of any file in the urban development ministry. In his order, the minister pointed out that the Supreme Court of India had in at least two Constitution Bench decisions⁴ held that the citizens have the right to get information about all aspects of government functioning, as the fundamental right to speech and expression could only be effectuated if the citizens had an effective right to access information available with the government. It was also pointed out by the Supreme Court, that in a democracy, all public servants exercise power only on behalf of the people and it would be an anathema if what they did were hidden from the people. After these judgments, there have been several other judgments of the Supreme Court where it has upheld the right to information as the fundamental right, including most recently the election reforms case where they had directed the Election Commission to compel disclosure by candidates of information regarding their criminal antecedents and their assets and liabilities.

Despite the fact that the government of India had already committed itself to enacting a right to information legislation, it restrained the minister from giving effect to his order. This prompted The Centre for Public Interest Litigation, and Common Cause to file a writ petition in the Supreme Court seeking effectively three reliefs. 1) That the government's restraint on the ministers order be declared unconstitutional and violative of the citizens right to information. 2) That section 5 of the Official Secrets Act, which makes it an offence for a public servant to disclose any information, which has come to his knowledge in his official capacity, be declared unconstitutional. and 3) That the government of India may be directed to frame and issue suitable administrative instructions on the lines of the Press Council's Right to Information Bill, to effectuate the citizens right to information, pending suitable legislation on the subject.

The government took repeated adjournments in response to this petition, saying that it was bringing a right to information legislation. The Bill was finally introduced in the year 2000, but soon thereafter referred to a select committee of Parliament. The government then took several adjournments to await the report of the select committee. Finally, in November 2002, when no legislation was forthcoming, many months after the report of the select committee had already come, the Supreme Court directed that if the legislation was not passed before the next date of hearing (in January 2003) the court would consider the matter on merits and pass orders. It was further directed that even if the legislation were passed, the court would examine whether the legislation was in conformity with the right to information as declared by the court.

The Bill, as passed, is at least a recognition by Parliament of the citizens' right to information. It is however a very weak Bill, weaker than most of the State Acts. For example, section 16 of the act exempts a large number of investigative, intelligence and security organisations specified in the schedule from the operation of the Act. Though information that might compromise national security can always be denied on the basis of the first exclusionary clause in section 8, section 16 makes it impossible to get information even about illegal acts committed by these organisations, or financial scams involving them.

Similarly, there are many other unnecessary and even illegitimate exemptions in the act.

Another serious weakness of the Central Act is that there is no provision for an appeal to an independent authority. Both the appeals under the Act are to the government itself. This would hardly provide any relief to the citizens in cases where top officials of the government are themselves interested in withholding information from disclosure, which is often the case.

⁴ 1. Indira Gandhi's election case where the court had rejected the government's claim of privilege on the blue book containing security instructions for the Prime Minister. 2. The judges appointment case where the court rejected the claim of privilege of the government on the correspondence between the Chief Justice of India and the Law Minister regarding the appointment of certain High Court judges

Another serious weakness of the Act is the fact that it does not provide any penalty for willful nondisclosure of information or for willfully incorrect disclosure of information by a government authority.

The Central Act however does have some salutary provisions for suo moto disclosure by public authorities. It also obliges public authorities to give reasons for the decisions. It also requires authorities to publish and communicate to the persons likely to be affected by any projects the relevant information available to it about the project, before initiating the project.

The national elections in 2004 have brought to power the Congress Party as the leader of a multi party alliance. The Congress Party had included, in its election manifesto, a pledge to strengthen the right to information law. It has also included this as a part of the Common Minimum Programme of the alliance of ruling parties. Therefore, there is now hope that sooner or later the Freedom of Information Law, as passed by the earlier government, will be revised, made more effective, and operationalised.

Transparency and the Law –State Acts

Much before the national act was passed, in December 2002, many states had already passed similar, and often better and stronger, acts. The states that have a right to information act include Delhi, Assam, Karnataka, Rajasthan, Goa, Tamil Nadu, Maharashtra, Andhra Pradesh and Madhya Pradesh.

4. Movements for Transparency

The RTI campaign has consistently recognised that its strength lies in its integral relationship with other movements. This symbiotic relationship will continue to provide it creativity and strength.

Today many other civic groups are using the right to information much like a weapon in their respective battles. The women's movement in Rajasthan, for example, has used it to track the progress on cases of atrocities against women, demanding that the women concerned be informed of the progress on their cases and the contents of various important medico-legal and forensic reports. Many civil liberties and human rights groups across the country are now also using RTI principles to ensure transparency and accountability of the police and custodial institutions.

People displaced by dams and factories, those denied their rights by the ration shop dealer, communities suffering from the effects of a polluting industrial unit, forest dwellers being evicted from their fields and homes – all these are examples of various people's movements wielding RTI provisions in order to score victories. In most cases, the information is still not being provided in the manner or time frame that it should be. In some cases, it is not being provided at all. But it has now become almost impossible to deny the people outright the information they seek. As movements and groups sharpen their questions and the establishment is forced to part with information, it can be expected that more and more citizens will use the right to know as a means of moulding democratic structures to make democracy meaningful for themselves.

There have already been several cases of individuals using the right to information as a means to ensure accountability from the power structures they have to deal with. These include a college lecturer in Bhilwara who was in charge of the women's study unit and wanted to see accounts of money spent by the principal from unit funds. Applicants aggrieved by the manner of selecting primary school teachers in Jawaja also used their right to information to demand copies of the interview sheets and basis for selection of other candidates. Even an independent member of the Rajasthan Legislative Assembly has followed the example set by the former leader of the opposition (now the chief minister) in Goa to use the RTI Act rather than assembly questions to seek information.

Clearly, the right to information has been established in the socio-political lexicon of the state, even as the contours of RTI are still being defined through the actions of people's movements and citizens' groups. It is thus only fair to say that the potential of the right to information is just beginning to be seen. The irony is that the solution to the problems now facing the movement lies in fighting for even more information.

4.1 Transparency and Rural Livelihoods

The real battle for transparency was destined to be fought in the villages of India, belying the expectations of many intellectuals. In retrospect, it was not, as many had thought, an issue that was too sophisticated to be grasped and operationalised by "illiterate" rural masses. It was not a concept that had to be refined in debates and seminars in the cities of India and then slowly disseminated to the rural areas. The energy for the full onslaught on political, bureaucratic and other vested interests safeguarding the age old traditions of secrecy finally came from the Indian "hinterland".

It was April 1996, and summer had just begun⁵. The heat was searing the busy market town of Beawar, in central Rajasthan, but the residents were trying to go about their daily chores and errands, even as many of them picked up a strange rumbling in the distance. It didn't take long, however, before the sound began to become more recognisable and the source of it visible: a thousand-strong group of men and women bearing banners were marching towards Beawar, shouting slogans and singing songs.

The marchers were from the rural hinterlands. The women, who made up more than half of the group, were dressed in colourful *lahengas* (long skirts) and most of the men wore traditional peasant dress. As the Beawar residents watched with growing curiosity, the long procession snaked its way through the town, stopping for a moment to hand a representative of the state government a sheaf of papers. Then the visitors made their way to the town centre, where they began setting up tents of flimsy material and making preparations for what would turn out to be a long *dharna* (sit in). While Beawar was no stranger to agitations, this was unfolding to be a rather extraordinary one.

In fact, what made it really unusual was the demand of the motley and fairly bedraggled group that arrived in Beawar. Instead of asking for the customary *roti, kapda* or *makan* (food, clothing or shelter), what the visitors wanted was, of all things, a right to information! What they had handed Beawar's sub-divisional officer was a memorandum asserting the people's right to information (RTI), with the specific demand for the right to obtain certified copies of details of development expenditure.

This demand had been whispered about in the surrounding villages a few years before. But for Beawar – and the rest of India – it was a surprising addition to the list of demands of rural people. Few could have also imagined that what they were witnessing that hot summer day would grow into a nationwide movement for the right to information.

It took a while for the people of Beawar to understand that what the protesters were asking for was nothing less than an effective tool to force open the doors of participation in governance. In time, the connection between asking questions and demanding accountability was slowly but surely worked out. It would help villagers sift through the layers of deceit, hypocrisy and half-truths that had become a part of governance throughout India. More importantly, the Beawar experience proved that informed citizens would assert their rights and break out of the prevailing sense of apathy and helplessness.

It is often said that the poor do not need esoteric things like freedom and democracy – they need food. That everyone needs food and other basics for survival is something the poor know better than anyone else. But they have also long been aware that they equally need a platform on which they can protest about the lack of

⁵ This section is mainly based on "Fighting for the Right to Know in India", by Aruna Roy and Nikhil Dey

these basics. In fact, it is the poor who really know and understand the critical importance of even the crude form of democracy we practice. They realise that the once-in-five-years vote gives them more political power than they have had for centuries. They are the ones who have fought for every freedom enshrined in the Constitution and have taken to the streets to fight against the repeated threats to democratic rights. They realise that while the elite may have a voice under any system, it is democracy that has allowed the impoverished such as themselves the little space they have to even express their distress.

Any understanding of India's condition today will have to begin with a recognition of this strong will to keep the democratic system alive. But as a reflection of the extraordinary complexity of the texture of Indian democracy, the people's faith in the democratic system is also accompanied by dismay, fear and a sense of hopelessness. Many despair of ever finding a way to sort out the contradictions, the corruption and the complete lack of ethics that appear to have taken root in public life in India.

A people's response

Most often, ordinary people stretch their ethics to make the system work for themselves. Or as they say in rural Rajasthan, "*Ya tho jack ho, ya cheque ho* (You must have contacts to use or money for bribes)." It is in the context of cynicism, apathy and despair that the story of the efforts for change of ordinary people in a small part of Rajasthan becomes remarkable and significant.

The right to information demand formulated initially by members of the Mazdoor Kisan Shakti Sangathan (MKSS) is indeed a story of the extraordinary efforts of ordinary people. A combination of their clarity of thought and purpose and their instinctive understanding of the problems they faced in their lives has led to simple and straightforward translations of their ideas into practice. An NGO, the MKSS consists of poor farmers and workers, men and women alike, many of whom have never been to school. Yet their organisation has not only raised the issue of RTI in such a potent manner, it has also changed the discourse on what had been seen for many years largely as an academic issue.

When the MKSS was formed in 1990, its stated objective was to use modes of struggle and constructive action to change the lives of its primary constituents: the rural poor. In the period leading up to the formulation of this objective, the group had taken up issues of land redistribution and minimum wages. These are seen traditionally as the two basic issues of the rural landless poor, and it was only natural that an organisation of peasants and workers would initiate struggles on minimum wages and land.

The MKSS staged two hunger strikes – one in 1990 and the other the following year – to push for just pay. But it was also in this fight for the payment of the statutory minimum wage under government-sponsored public works programmes that the group first understood the significance of transparency and the right to information. Every time the workers asked to be paid the minimum wage, they were told that they had not done the work, a claim that, they were also told, was based on records. When the MKSS demanded to see the records, the reply was that these were government accounts and therefore secret.

And so it was that a simple demand for minimum wages became a fight for the right to information. Those who descended upon Beawar in April 1996 were even astute enough to time the *dharna* with the campaign period of that year's national parliamentary election. Citizens were offered a small glimmer of hope to break out of the vicious cycle that was Indian politics, which forced them to choose among undeserving candidates. For a change, during that election campaign in Beawar, democracy was being debated and redefined.

Those on *dharna* began to drive home the point that by using the right to collectively and individually ask questions and demand answers, citizens could begin to shift controls from the ruling elite to the people. It was a first step towards participatory governance, where the disadvantaged and the dispossessed could establish their right to livelihood, and in a democracy, to effectively govern themselves. The poor started to see that they had to be involved to the RTI

campaign because it was an issue connected intrinsically to their livelihood and survival. One of the slogans born during the struggle is self-explanatory: “The Right to Know, The Right to Live”.

The first steps toward self-governance

The 1996 *dharna* in Rajasthan put forth an immediate demand for an amendment in the Panchayati Raj⁶ law to allow citizens to obtain certified photocopies of any document in local government offices. Particular focus was placed on records of expenditure like bills, vouchers and muster rolls.⁷ Simultaneously, a demand was made for a comprehensive law for the People’s Right to Information in all spheres of governance. This calibrated approach has characterised the right to information campaign, where partial success has been used as a wedge to extract greater and greater openness.

Resistance to the people’s efforts to ease access to public records has been strong. For example, it took over two years before the amendments to the Panchayati Raj rules were made. But the resistance to provide a legal entitlement only served to highlight the importance of such a provision and helped more people understand its great potential. In addition to agitational activities like *dharnas* and rallies, the continuous use of the mode of public hearings helped apply these concepts, even while the struggle was on.

It took another couple of years for the state of Rajasthan to pass a right to information law, albeit one that was toothless and full of loopholes. Yet its passage alone should be considered a victory for the people. After all, the same establishment that had repeatedly pronounced that acceding to the limited demand for information on public works was “impossible, impractical and inconceivable” now accepted a comprehensive legal entitlement as inevitable.

But there has been another aspect to the RTI struggle that has allowed for its organic growth. To be sure, the right to access government records was an assertion of many democratic principles and a claim on a share of governance. There was, however, a simultaneous search for a platform that could demonstrate its efficacy and help compel the process of institutionalising modes of self-governance. And what made it more a wonder was that these were ordinary people struggling against sophisticated forms of systemic control. Yet they came up with solutions that questioned the exclusive logic and indispensability of representation and its institutional structures.

One such solution was the public hearing or *Jan Sunwai*.⁸ Being an open platform where anyone could come and have their say on matters being examined, it acquired a kind of democratic legitimacy that agitations did not have. These *Jan Sunwais* were dramatic affairs where “information” and its analysis revealed the who, the how and the why of various misdeeds and gave courage to the exploited to bring their predicament out into the open. The records provided the proof and revealed the details, on a platform that saw new alignments take place. The RTI on its own caused a change in the power balance. The *Jan Sunwais* had a multiplier effect. The mode of the *Jan Sunwai* proved to be a complementary force in breaching the walls of control and exclusion. As a result, the conceptual, legal and practical search has continued along these multiple paths.

In Rajasthan, such *Jan Sunwais* not only demonstrated the importance of being able to access information but also the critical need to have a platform controlled by citizens where the information could be put to use.

⁶ Local Government Act and rules

⁷ Worker lists that are maintained at the government work sites and in which the rates to be paid to the labourer for each day of work put in are entered. Usually, these lists are for 15 days of work put in by each labourer, after which a new set of workers are employed.

⁸ Translates literally into people’s hearing

Thus, along with the institutionalisation of the right to information through a law, there was as well the successful struggle for the institutionalisation of public hearings. This was done through the legal sanctity provided to public audits (termed “social audit” in the Panchayat Raj Act). Implicit in this legal provision is the principle of the citizens’ right to audit all activities of their (local) government.

It is therefore not a coincidence that Rajasthan’s RTI law was passed on the same day as the amendments were made in the Panchayat Raj Act, giving the Ward Sabha (a group of 50 to 80 homes) legal status and the right to conduct social audits of works carried out in its area. This was an ideal size for planning, monitoring, implementing and auditing development efforts in a small community. The right to information struggle and its persistent use of the fast developing mode of public hearings has in fact provided a critical impetus to the wider struggle for participatory democracy. In concrete terms, at a local level, it has helped demonstrate the conceptual difference between decentralisation and self- governance.

The results so far

Throughout India, the impact of the Right to Information campaign has gone far beyond its immediate context. The public hearings, the institutionalisation of RTI through social audit, exemplary action taken in certain cases, the fact that the right to information gives any citizen even at a future point an opportunity to check the (mis)deeds of any authority by personally examining details – these have all had a dramatic and salutary effect on the prevalent modes of brazen corruption. In Rajasthan, for example, it has been universally acknowledged that the RTI campaign has contributed to the fact that for once, much of the Rs. 600 crores⁹ said to have been spent on drought relief last year really went to such and not to the pockets of corrupt officials.

The infamous case of Janawad Panchayat¹⁰ is another good illustration of the potential – as well as challenges – faced by the movement. It had taken the MKSS more than a year to obtain copies of this Panchayat’s records in Rajsamand District, even after an RTI law had been passed there. But the information was worth the wait. The public hearing was followed by a government report showing more than Rs.70 lakhs¹¹ of fraud in a six-year period in one single Panchayat. The report also revealed a complete breakdown of all supervisory and monitoring systems.

The report and public pressure led to a series of suspensions, arrests, recoveries and other actions, which in turn have had a serious effect on the Panchayats and their functionaries all over the state. Since any fraud in Janawad takes on huge proportions when multiplied by the 9,000 Panchayats in the state, even a conservative assessment of the impact of this high-profile case on Panchayat leaders and officials would probably translate into massive savings made because the numerous leakages and fraud that could have, but did not, happen.

The movement has also led to some serious introspection about the development establishment and its priorities. For the first time, policy anomalies in rural development and Panchayati Raj institutions are being addressed in a manner that can only result in the elimination of these anomalies, rather than their cultivation, which has made them a convenient excuse for corruption. For instance, the law requires that at least 60 percent of the funds for rural development works should go to employment, with no more than 40 percent being spent on materials. The unreasonable manner in which this has been implemented has meant that

⁹ A crore is Rs.10 million or approximately US\$200,000.

¹⁰ Janawad Panchayat is located near Gomti Churaha on the National Highway 8, between Jaipur and Udaipur in Rajsamand District, where the MKSS and the people of he village jointly organised a public hearing on the 3 April 2001.

¹¹ A lakh is a hundred thousand rupees or approximately US\$2,000.

Panchayat officials have had to fudge records just to maintain the ratio. At the same time, it has become an open secret that much more was being fudged so that money could be siphoned off.

Now that the public has access to the rural works records, however, the magnitude of this double scam has come out, and with concrete proof to boot. It has been revealed as well that not only were policy objectives of using money for labour being flouted, but those very objectives were being used as a screen for corrupt practices. The right to information has thus taken away the protection provided by secrecy to carry out such misdeeds in the name of development. These days, the Sarpanches¹² are swearing to do what they should have done all along: that they will not fudge any records. At the same time, the government has been forced to adopt a more pragmatic and committed approach to meet policy objectives. And as more citizens and civic groups strain to get copies of reports of investigations, audits and other data that were so hard to obtain before, national government agencies are beginning to face questions similar to the ones Panchayat Raj institutions faced six years ago.

The right to information, however, forces equal standards of transparency and accountability on the users of information. Thus, as the RTI siege intensified in Rajasthan, the political establishment through various spokespersons turned around to ask NGOs and citizens' groups to disclose their own accounts. This set in motion a very healthy trend that persists to this day: the holding of transparency meetings, during which NGOs place details of their accounts before the people of the area where they work. In the future, this could lead to NGOs being accountable to a wider community, through the Gram Sabhas¹³ and Ward Sabhas. The transparency meetings could also prompt the community to get more involved in the planning implementation and monitoring of all activities of funded and non-funded organisations.

4.2 Transparency and the Environmental Movement

One of the first organised movements in India to raise the issue of transparency was the environmental movement. Though the initial concerns centered around specific cases, these were quickly broadened to cover the larger environmental concerns.

In the last twenty years, environmental laws and procedures have progressively opened up in terms of access to information. All the major environmental laws enacted after 1984 have a provision where the people have a right to put the government on notice (usually giving them a 60 day period) within which time they have to remove the cause of complaint or face legal challenge. Many of the earlier laws have been amended to bring in such clauses. In addition, the principle of public hearings has become increasingly accepted in the process of carrying out environmental impact assessments. Many types of data, especially relating to pollution levels, are now routinely and *suo moto* made public. However, many bits of sensitive information are still difficult to come by, especially where powerful commercial or business interests are involved. Some of the environmental information that is sought to be brought into the public domain is listed in annex 1, 2, and 3. Two of the landmark cases fought for access of environmental information are described below.

The Sriram Food and Fertiliser Industries Case

In 1984, the leak of deadly gas from the Union Carbide factory in Bhopal suddenly made environmentalists and the public in India aware of how little they knew about the chemical and nuclear industry in India and the disasters that were waiting to happen. There were, consequently, a spate of cases filed by various individuals in exercise of their right to litigate in public interest¹⁴. One such case was filed in 1984 by M.C.

¹² The elected head of the Panchayat or village council.

¹³ The general assembly, consisting of all the voters of a village, or group of villages in a panchayat.

¹⁴ "Public Interest Litigation" is an Indian phenomenon where individuals and groups who would ordinarily have no *locus standi* in a court of law because they are not an affected party are permitted to file cases that take up matters of "public interest", even if these matters do not directly affect the litigant.

Mehta, a lawyer who subsequently became famous as a tireless campaigner for the environment, in the Supreme Court of India. His “public interest” case asked the court to close down the Sriram Food and Fertiliser Industry, located in the heart of Delhi, as it used and stored hazardous chemicals without maintaining the required safeguards and, therefore, was a grave public hazard.

Unfortunately, before the Supreme Court could hear the case, a gas leak occurred in the factory (in 1985). Though the gas that leaked was oleum, which is not highly toxic, and there were no casualties. However, the spread of the gas in congested areas of Delhi caused widespread panic and throat, eye and skin irritation. Consequently, the case was taken up for hearing on a priority basis.

During the hearing of the case it emerged that though the Delhi government had commissioned a study to look at the safety aspects of this industry and the report had been submitted to the government some months before the leak, the findings of the study were not made public and not even shared with the industry that was the subject of the study. This and other such absurdities made the Chief Justice of India, who was heading the bench, remark in open court that he wished someone would take up the issue of right to information.

Responding to the remarks of the Chief Justice, Kalpavriksh, one of the NGOs involved with the case, filed an intervention as a part of the ongoing case asking the court to lay down right to information as a fundamental right. Essentially, the petition argued that the right to life, guaranteed by the Constitution of India as a fundamental right, implied a right to know if one’s life was threatened (specifically due to the inappropriate handling or storage of toxic chemicals or other hazardous substances), for otherwise one could not fully exercise one’s right to life. The same right also gave the right to know who was threatening one’s life, in what manner, what action, if any, the government was taking to remove this threat, and what the citizens could do to safeguard their lives.

Though the Supreme Court did not pass any final orders on this petition, its contents were mentioned many times during the hearing and the court made it clear from time to time that they were not happy with the aura of secrecy that surrounds the government and the industry and the resultant lack of information to the public.

The Poona Cantonment Case

The Bombay Environmental Action Group (BEAG) filed, in 1986, a case in the Bombay (now Mumbai) High Court, seeking specific information from the Poona Cantonment Board. They felt that some buildings in Poona Cantonment were being constructed in violation of the building byelaws. They requested the Poona Cantonment Board repeatedly to let them inspect the relevant building plans and related documents. However, no satisfactory replies were received from the Cantonment Board.

After a few months, the BEAG filed a Writ Petition in the Bombay High Court seeking such inspection. This whole process took several months and some of the buildings were, in fact, constructed in the meantime. Though the BEAG lost this skirmish, they perhaps won a much larger battle since the Division Bench of the Bombay High Court permitted them this inspection. The Division Bench of the Bombay High Court, in their judgement dated 7th October 1986, made some telling observations as follows:

“Real democracy cannot be worked by men sitting at the top. It has to be worked from below by the people of every village and town. That sovereignty resides in and flows from the people. So said the Father of the nation in whose name we swear. Therefore, ‘who will watch the watchman’, is the vexed question before our democracy. For this, people’s participation at all levels is a must’.

“This High Court has referred to “the rights of recognised Social Action Groups whose activities deserve to be appreciated”. The Court has gone on to say. “It is high time that the Cantonment Board should start taking their assistance instead of looking at them askance and distrusting them. The vested interests will

undoubtedly be against such social action groups. However, their help might check sabotage of development plans by unscrupulous persons and corruption at all levels”.

This was a landmark judgment since the same principle of law would be applicable in the case of other local authorities as well. This High Court judgement was subsequently considerably widened by a Supreme Court Order dated 11th October 1986. This was a case where though the BEAG had succeeded on the point of law, they were unsuccessful in stopping the construction of a large building in Poona Cantonment on the ground of delay (and consequent creation of third party rights) in filing the Writ Petition. Here again, though the BEAG lost this important case, they perhaps gained a much larger victory. Their counsel pointed out that there was bound to be delay in filing such court cases, since the Cantonment Board was refusing to give inspection of building plans without which it would not be possible for the BEAG to approach the courts. The Supreme Court thereupon passed an order stating inter alia “We would also direct that any person residing within the area of a local authority or any social action group or interest group or pressure group shall be entitled to take inspection of any sanction, granted or plan approved by such local authority in construction of buildings along with the related papers and documents,. If such individual or social action group or interest group or pressure group wishes to take such inspection, except of course in cases where in the interest of security, such inspection cannot be permitted.”

This Supreme Court order has considerably widened the right to know. It gives great opportunities to, and places heavy responsibilities on the civic groups since now lack of disclosure will not be accepted and cannot be pleaded as a cause for inaction.

4.3 Transparency and Development Projects

The social, environmental and economic impacts of “development” projects, especially large dams, have been at the centre of major debates and vigorous people’s campaigns for the last twenty five years. There is a growing feeling among many people that a majority of these mega projects are neither economically viable nor environmentally sustainable. Besides, they have taken a heavy toll of rural populations that have been displaced or otherwise adversely affected by these projects. Recent estimates suggest that over 20 million people have been displaced since independence just by major dams, and most of them have not been properly rehabilitated, becoming even poorer and more disposed than they were before “development” hit them.

There is growing realisation that these projects would never have been built in the first place, if they were fairly and comprehensively assessed prior to initiation. The right to information movement decided to strat a series of public hearings around controversial state and national level projects to bring out into the open the details regarding these projects. Consequently, the Narmada Bachao Andolan (Movement for Saving the Narmada River) decided to enforce transparency on the government in relation to the projects being planned for the future. One such project is the Maheshwar Project, on the Narmada River. The NCPRI organised, in 2002, a public hearing around this project (see box)

Maheshwar Project

A Jan Sunwai (public hearing) was organized in Bhopal, Madhya Pradesh, by the National Campaign for People’s Right to Information (NCPRI) on the 8th of May, 2002 to discuss the Maheshwar dam project in the Narmada valley¹⁵. The NCPRI, being a forum that is active on the issue of people’s right to information, is also committed to focusing public attention on projects whose social costs and benefits have either not been adequately evaluated and or where public money is being irresponsibly invested. It

¹⁵ This report is based mainly on the press release issued by the NCPRI.

was in this context that the NCPRI had organized the Jan Sunwai on the Maheshwar dam that is under construction in the Narmada valley.¹⁶

Concerned officers of the Madhya Pradesh government, people from the affected villages, people's representatives and activists of the Narmada Bachao Andolan were invited to this Jan Sunwai. Nearly a thousand people affected by this Project were present during the hearing. Representatives of many organizations of Bhopal and the state were also present at the hearing.

Resolutions opposing the Maheshwar Project were presented to the panel from 23 of the 24 *panchayats* (village governments) in the submergence area. On the other hand, some representatives from one *panchayat* in the area expressed their support for the project and also stated that they had got jobs in this project.

At one point in the hearing, the affected people raised their hands to say in one voice that they have repeatedly asked the government to show agricultural land for rehabilitation, but the government has never been able to do so. Representatives from the affected area reiterated again and again that although they had asked the state to provide information about the project that is crucial to their lives and future, either they were given no information at all or they were misinformed about the Project. They described how their livelihoods based on fishing, sand quarrying, cultivation of watermelons and vegetables on the river bed Project would be destroyed by the Project. More than 50,000 people from 61 villages would be affected by this Project.

It was also argued that a large part of the electricity to be produced by this Project would be produced in the monsoon months, when the demand for electricity is low, and it would be very expensive. Regarding financial irregularities involved in the Maheshwar Project, it was stated that when the Maheshwar project was privatized and the concession for building the dam was given to the S.Kumars company, the justification was that adequate public funds were not available. However, after privatization, between the years 1992 and 2002, the cost of the project increased five times from Rs. 4,650 million to Rs. 22,310 million, and most of this money is being sought from public financial institutions.

Further, an appraisal done by a public financial institution has revealed that Rs. 1064 million of public funds released for the Maheshwar Project have been illegally diverted and spent in works unconnected with the Project.

On the other hand, a representative of the S. Kumars said that the work of land acquisition for the Project is proceeding very smoothly, with the cooperation of the affected people. He said that there were problems only where the people opposing the dam refused to allow the officials to conduct surveys.

Several villagers, especially women, complained of police harassment. They complained of being beaten up and their clothes being torn. After hearing the various speakers at the Jan Sunwai, the panel felt that there was an urgent need to seek answers from the government for the following questions:

Rehabilitation

- How many people will be adversely affected by the Project and in what manner ?
- For how many affected families have arrangements been made to provide alternate land in place of their land that is being submerged or acquired?
- Why has the government not given information to the people about the availability of agricultural land?
- What arrangements have been made for the rehabilitation of Kewats, Kahars and families dependent on fishing, sand quarrying and cultivation of melons and vegetables ?

Production and price of electricity

- What will be the cost of electricity to be produced by this Project ?
- If it is very high, what will be the impact on the Madhya Pradesh State Electricity Board of the agreement to compulsorily purchase power from this Project for the next 35 years?
- What will be the impact of this on farmers and other consumers of electricity ?
- Will a large part of the electricity to be produced by this Project be produced during the monsoons ?

Financial irregularities

- Is it true that the S.Kumars have defaulted on loans from public financial institutions, as a result of which recovery proceedings have been instituted against them through the attachment and sale of the properties of the Maheshwar Project ?
- Have the promoters used part of the public finance available for this project elsewhere in works unconnected with this Project ?
- If the above two allegations are true, then why is the state government continuing to support the Project financially, especially by recently extending a guarantee for an issue by the S.Kumars of Rs. 3300 million worth of bonds?

¹⁶ Well known social activist and Magsasay Award winner Aruna Roy from Mazdoor Kisan Shakti Sangathan, theatre activist Habib Tanvir, Economist Rampratap Gupta and journalist Bharat Dogra formed part of the panel. The panel was chaired by the environmentalist Shekhar Singh.

- Will such a guarantee not push the state government towards a financial crisis?

In May, 2004, another public hearing was organised around a proposed hydro-electric project in the Himalayas.

The Rajasthan Spinning and Weaving Mills Ltd. (RSWML), a private limited company incorporated in India, proposes to set up Allain – Duhangan Hydroelectric Project (ADHEP) of 2 x 96 MW (192 MW hydropower generation facility on Allain and Duhangan tributaries of Beas river in Himachal Pradesh. The project has an estimated capital cost of 9220 million Indian rupees. Its construction is expected to take about 66 months with a maximum of about 1500 people working at site. The project will employ 100 people during the operation phase. The International Finance Corporation of the World Bank is considering financially supporting this project. There is much local opposition to the project mainly because of apprehensions about the shortage of water for local use once the project comes up, about the social impact of the large labour force and about the adverse impacts to the environment.

At the request of the concerned stakeholders (the local people and the NGOs, the World Bank and the Company), two public hearings were organised in the two villages being most directly affected by the project. Prior to these hearings, the project documents, of over 500 pages, were translated into the local language (Hindi) and made available to the local people. Also, especially for those who might not be able to read, special focus group meetings were organised in advance of the public hearings and the project consultants, assisted by an independent NGO, explained the details and implications of the project.

The public hearings themselves were somewhat chaotic, primarily because in both the villages there were a lot of grievances against the project and the project authorities. In the first of the villages, where some of the agricultural land of the people was being acquired for the project, the main grievance seemed to be around the compensation being paid. In the second village, the people stated that they did not want the project at all.

4.4 Transparency and Elections

The distortions in the electoral system have long been seen as being behind much of the corruption and mal-governance in India. The fact that huge amounts of money is spent, in violation of the law, during elections and that a large number of candidates have serious criminal charges, or even prior convictions, against them, makes the quality of our legislators and parliamentarians suspect. Fortunately, in the last few years, both the Election Commission of India and the Supreme Court of India have taken cognizance of this problem. In March 2003, the Supreme Court of India passed an order making it mandatory for all candidates standing for either state or national elections to declare, on affidavit, filed along with their nomination forms, their educational qualifications, their criminal record (if any) and their financial assets.

Elections to four state assemblies were held in December 2003. The RTI movement in India decided to use the Supreme Court order to disseminate information about elections to the electorate in at least two of the states – Rajasthan and Delhi. In both states, the NCPRI along with the Centre of Equity Studies took up this work. In Rajasthan they worked in collaboration with the MKSS and in Delhi with Parivartan. In Delhi, there was also formed a Delhi Election Watch (DEW) that was a conglomeration of various NGOs and also took up similar work.

In both states, the transparency groups were first involved in trying to get the voters lists authenticated so that all genuine voters were included and spurious names were deleted. In Rajasthan, this was done by voters lists being read out in Gaon (village) and Ward Sabhas (gatherings). In these local forums, the population, many of whom were illiterate, were able to listen to the lists being read out and were able to help identify fictitious voters and vouch for those whose names had been left out.

In Delhi, a public hearing was organised for such verification. In addition, copies of lists were sent to Resident Welfare Associations, who then helped in the verification process for their colonies.

Once nominations were filed, copies of the affidavits filed by the various candidates were collected and their data analysed. This analysis was then widely disseminated (see box) and an interactive web site was created where all these data and analysis was put up and comments and reactions invited from the people (righttoinformation.info).

Analysis of Affidavits Submitted by Candidates from the BJP and the Congress (I) for the Delhi Assembly elections scheduled for December 1, 2003

The Supreme Court passed orders on March 13, 2003 in Civil Appeal No 490 of 2002 (*People's Union for Civil Liberties and another Vs. Union of India*) directing every candidate contesting elections to furnish full and complete information regarding pending cases against them, their assets, liabilities and educational qualifications. A compilation of affidavits filed in the 70 constituencies of Delhi by the BJP and the Congress (I) candidates for the Delhi Assembly elections was undertaken for the Campaign for Electoral Transparency, Delhi by Parivartan, National Campaign for People's Right to Information, and the Centre for Equity Studies.

An analysis of affidavits submitted by the candidates of the two parties shows that the average figure for the cash and deposits held by BJP candidates is Rs 12 lakhs and that for the Congress (I) candidates is Rs 24 lakhs. These holdings are of the candidate and his/her spouse and dependents and comprise cash in hand and bank and other deposits. The candidate owning the highest cash and deposits among the Congress (I) candidates is Dharam Vir Yadav, standing from Badli constituency, who has declared that he along with his spouse and dependents own Rs. 4 crores in cash and deposits alone. The corresponding candidate for the BJP is Shyam Lal Garg standing from the Shakur basti constituency who claims that he, his spouse and dependents own Rs. 1 crore in cash and deposits.

The average figure for the total net assets declared by Congress candidates works out to Rs 1 crore and the corresponding figure for the BJP candidates is Rs 63 lakhs. Dharam Vir Yadav standing from Badli constituency has valued his net assets at Rs. 10.7 crores - the highest net assets declared by any Congress candidate. The highest net assets among BJP candidates are held by Ravinder Singh standing from Adarsh Nagar constituency (Rs. 3.5 crores).

Approximately 68% candidates of the Congress and 82% candidates of the BJP declared that they have net assets less than Rs 1 crore. Approximately 30% candidates of the Congress declared that they have net assets between Rs 1 crore and Rs 5 crore, while the corresponding figure for the BJP candidates is 19%. About 4% candidates of the Congress declared that they have net assets above Rs 5 crores, whereas none of the BJP candidates claim to have assets exceeding Rs 5 crores.

An analysis of the educational qualifications of the Congress candidates reveals that the Congress and BJP have each fielded 4 candidates who have not passed school. 17 candidates from Congress and 21 from BJP have passed higher secondary/matric and 24 candidates from each party are graduates. Postgraduate degrees are held by 16 Congress and 11 BJP candidates whereas 6 candidates each from the congress and BJP have obtained professional degrees including LLB and MBBS.

The average age of Congress candidates is 48.3 years and of BJP candidates is 46.9 years with the largest number of candidates in both parties falling in the age group of 40-49 years.

A table detailing the comparative picture is given below.

**Compiled for the Campaign for Electoral Transparency, Delhi
by**

Parivartan, National Campaign for People's Right to Information, and the Centre for Equity Studies

Analysis of Affidavits Submitted by Candidates from the BJP and the Congress (I) for the Delhi Assembly elections scheduled for
1 December, 2003

Parameter	Congress	BJP	Remarks
<u>Age</u>			
Average age of	48.3 years	46.9 years	

Parameter	Congress	BJP	Remarks
candidate			
Youngest candidate	Azhar Shagufa standing from Matia Mahal (27 yrs)	Sanjay Kumar Jain s/f Seelampur (29 yrs)	
Oldest Candidate	Mahender Singh Sathi s/f Vishnu Gardens (72 yrs)	Puran Chand Yogi s/f Rajinder Nagar (68 yrs)	
Number of candidates			The age of one congress candidate was not available
under 30 yrs of age	2	1	
From 30 to 39	10	16	
From 40 to 49	27	24	
From 50 to 59	23	21	
From 60 to 69	6	8	
Above 70	1	0	
Assets (all figures are approximate and based on the affidavits filed by the candidates)			
Average cash and deposits	Rs. 24 lakhs	Rs. 12 lakhs	All cash holdings are of the candidate and his/her spouse and dependents. They comprise cash in hand and bank and other deposits. 1 lakh = 100,000 1 crore = 10 million
Highest cash and deposits of any candidate	Rs. 4 crores (Dharam Vir Yadav s/f Badli)	Rs. 1 crore (Shyam Lal Garg s/f Shakur basti)	
Lowest cash and deposits of any candidate	Rs. 29 thousand (V.S. Dhingan s/f Seemapuri)	Rs. 16 thousand (Sanjay Kumar Jain s/f Seelampur)	
Average Total net Assets of all candidates	Rs. 1 crore	Rs. 63 lakhs	Net assets are the sum total of all cash and deposits, the declared cash value of all declared assets (except motor vehicles), minus declared liabilities
Highest net assets of any candidate	Rs. 10.7 crores (Dharam Vir Yadav s/f Badli)	Rs. 3.5 crores (Ravinder Singh s/f Adarsh Nagar)	
Lowest net assets of any candidate	Rs. 2.5 thousand (Amrish Singh Gautam s/f Patpargunj)	Rs. (-) 45 thousand (K.C. Ravi s/f Baljeet Nagar)	
Number of candidates with net assets(in %)			
Less than Rs. 1,00,000 (1 lakh)	1%	6%	Percentages do not total to 100 as they have been rounded off
From over 1 lakh to 25 lakhs	26%	31%	
From over 25 lakhs to 50 lakhs	19%	16%	
From over 50 lakhs to 75 lakhs	13%	16%	
From over 75 lakhs to 1 crore	9%	13%	
From over 1 crore to 5 crores	30%	19%	
From over 5 crores to 10 crores	3%	0%	
Over 10 crores	1%	0%	
<u>Educational</u>			
Number of candidates who have			
PhDs	2	1	Professional degrees include LLB and

Parameter	Congress	BJP	Remarks
Post Graduate degrees	14	10	MBBS
Professional degrees	6	6	
Graduate degrees	24	24	
Passed higher secondary/matric	17	21	
Have not passed school	4	4	
No information	3	4	

4.5 Transparency and Urban Municipal Governance

Nearly 30% of India's population lives in urban areas, amounting to over 300 million people. The growth of population in the urban areas has been at a rate much faster than the overall rate of growth, as there is a large amount of immigration from rural areas. Consequently, the municipal infrastructure in most cities is stretched to the limit and there is not only a perpetual shortage of water and electricity, but transportation facilities are inadequate and sanitation conditions are poor. The fact that India is a relatively poor country and has serious constraints of investment, aggravates the situation.

However, it is also true that even those resources that are allocated for providing urban municipal services and infrastructure are often diverted into private funds or otherwise wasted. Therefore, things are much worse than they need to be, even with the current paucity of resources.

A group of citizens in Delhi decided to do something about this appalling state of affairs and to use the newly enacted Delhi Right to Information Law to attack the problem of wastage and corruption. Parivartan, alongwith the National Campaign for People's Right to Information (including its constituent members like MKSS), and with the help of local NGOs and residents of the area, organised a jan sunwai (public hearing) on the developmental works executed by Municipal Corporation of Delhi in New Seemapuri and Sundarnagri, on 14th December 2002.

Methodology

Jan Sunwais are organised in order to share, with the residents of a village/colony/area, details of public expenditure made and works carried out, as per the records of the government, in their village, colony or area. This enables them to verify the veracity of government records on expenditure and the status and quality of the works recorded as having been carried out. This involves first accessing the records of the government and getting the required details, compiling and analysing them and then presenting them to the public in an understandable form.

As a matter of principle, a jan sunwai is organised where the local population itself asks for it and actively participates in the access, compilation and analysis of the required information, as also in the organisation and proceedings of the jan sunwai.

At the sunwai, the details of bills and vouchers, of muster rolls (where relevant) and of the specifications of the works carried out are read out to the attending public. Any of the participants, including government officers and political representatives, are free to give evidence and/or testify regarding the stated expenditure and works and to comment on the veracity and legitimacy of the reported expenditure and on the status and quality of the works. Efforts are made to ensure that people restrict their remarks to those expenditures and works of which they have direct personal knowledge. Physical inspections are also done, where required, before, during and after the jan sunwai, along with the concerned officials, wherever they are willing.

An independent panel is invited to participate in the proceedings and to give their conclusions, on the basis of the jan sunwai, based on people's analysis of government records.

Preparation to the Jan Sunwai at Sundernagari

Given the high level of dissatisfaction among the local residents with the working of MCD, it was decided to do a social audit of works undertaken by the MCD in the past two years in New Seemapuri and Sundernagari. In June 2002, along with local residents, Parivartan's volunteers applied under the Delhi Right to Information Act for copies of contracts of all works undertaken by the Engineering Department of

<i>Status of Records</i>
<p>As per rules, the exact location where the work is carried out should be mentioned against each entry in the Measurement Book. However, in most of the cases, it was found that the location of work is hardly mentioned in the measurement book, which makes it difficult to pinpoint the exact location where the work took place.</p> <p>The sketch of the location, where the work takes place, is an integral part of any work and is required to be preserved as per rules. However, when the sketches were sought under Right to Information Act, the same were denied saying that the sketches are not required to be preserved. On persistence, the sketches were specially prepared for Parivartan. In a number of cases, the sketches provided do not reflect the true picture and are at variance with the measurement book.</p>

MCD between April 2000 and March 2002 in the resettlement colonies of New Seemapuri, and Sundernagari.

The following documents were sought:

1. Copies of work order registers.
2. Copies of measurement books including record entries and abstract entries
3. Copies of sketches
4. Copies of details of estimates
5. Copies of completion certificates.

Copies of a total of 153 contracts of works worth about Rs 35 million were obtained, after repeated efforts. Given the volume of information, it was felt that only those works pertaining to installation of hand pumps and

construction of lanes, roads and drains would be taken up in the first instance. There were 67 such contracts worth Rs 13.9 million.

After compiling the information on these 67 contracts, block wise for each of the areas, Parivartan held a series of street corner meetings to inform the people of the amount spent in their block, the works purported to have been carried out, amount spent on each of the works and the items of works supposed to have been done under each contract, as per government records. Parivartan volunteers, along with the residents, also visited each of the work sites and jointly verified the existence, status and quality of the work.

These street-corner meetings and site visits revealed that some of the works that had been sanctioned, paid for and completed, as per the government records, were actually "ghost works", only existing on paper. In

<i>Gandhi tere desh mein...</i>
<p>The volunteers of MKSS and Parivartan sang songs inspiring people to demand their rights such as the right to information and to participate actively in governance. Songs like 'Gandhi tere desh mein...' (Gandhi, in your country..)described the poor state of development in the country and the various problems being faced by the poor including the high level of corruption they have to contend with. Innovative use was made of the <i>muhphat</i> (puppet) to voice people's expectations and basic demands for clean water, sanitation and basic infrastructure. Other songs sung described the rights of citizens and urged them to take <i>hisab</i> (account) from the Government – the rational being '<i>hamara paisa hamara hisab</i>' (our/taxpayers money our accounts). The message demanding transparency and accountability in Government functioning rang loud and clear in the songs.</p>

others, the quantity of material used was nowhere near the amount mentioned in the contracts, as evident both from specific testing and from the poor state of some of these works, though they were only a year old.

The residents wanted a forum where they could themselves question the relevant government officials and also all this information could be discussed on a public platform. This is when the idea of a jan sunwai was mooted.

The Jan Sunwai

The Jan Sunwai took place on 14th December, 2002. It was attended by about 1000 people.

It was presided over by a panel chaired by Justice P.B. Sawant, retired judge of the Supreme Court of India and a former Chairman of the Press Council of India. Other panellists included Mrs Aruna Roy (from MKSS Rajasthan), Mr Prabhash Joshi (journalist), Mr Harsh Mander (from Action Aid India), Mr Bharat Dogra (journalist), and Mr Shekhar Singh (Member, State Council on Right to Information).

Some of the issues that were raised in jan sunwai are described below.

In the public hearing, the contracts were read out and local residents testified as to whether or not the work was undertaken, and if it was undertaken whether it was done fully or was left incomplete.

Out of the 68 works audited and discussed in the public hearing, calculations of estimated misappropriation of funds have been done for 64 works worth Rs 13 million. **In these 64 works, the total amount in question found on account of missing items/works is approximately Rs 7 million (i.e. items or works worth about Rs. 7 million do not physically exist at all in these 64 works).** This figure does not include the amount in question on account of quality issues like the quantity of cement used etc.

Some examples of missing items are as follows:

As informed by the people and proved through site visits:

- **Electric motors** were supposed to be installed on **29 handpumps**. **Not even a single motor** has been installed, as informed by the people. No motor was physically found during site visits.
- In **8 cases of road construction** analysed, against the **two layers of stone aggregate** that was reportedly put (and paid for) before bitumen mix was laid, according to the residents, **only one layer of stone aggregate was put in 6 cases and not even one layer was put in the remaining two cases.**
- **Kota Stone of thickness 5 cm** is supposed to be put in the construction of lanes. In **15 cases** of kota stone lanes analysed, payments had been made for 5 cm thickness, whereas, on site inspections revealed that **the thickness varied from 3 to 4 cm** and was never more than 4 cm.
- The thickness of cement concrete layer in the construction of a **cement concrete lane should be 10 cm**. In **22 such cases examined**, whereas payments were made for 10 cm thickness in all these cases, **the thickness was physically found to be less than 5 cm in 16 cases** and it was found to be **between 5 cm to 7.5 cm in 6 cases**. This is the most expensive item in the construction of such lanes.
- Whenever a new street is made, **the drains on both sides of the street are also supposed to be demolished and remade afresh**. In the **35 cases examined**, payments had been made by MCD for construction of fresh drains. However, according to the residents, **fresh drains were not made even in a single case**. In 19 cases, the level was raised by one brick while, in the rest of the cases, according to the residents, no work was done on the drains.
- In two cases, it was found that **payments had been made twice for the same work** i.e. the work was done once but the bills were raised twice.

As alleged by the people and may require further investigation:

- Of the **29 hand-pumps** shown as installed with electric motors under 10 contracts, people informed that only **14 hand-pumps were actually installed**.
- The layer of **red bajri** that was reportedly put (and paid for) while constructing roads, was **not put in any of the eight roads**, according to the people.
- The contracts given included the putting up of **new iron gratings** on the drains going across the street. However, out of a total of **253 iron gratings weighing 27,557 Kgs** that were supposed to be put

(and paid for) under the works scrutinized, **only 30 iron gratings weighing 3,136 Kgs** were found to have been actually put.

- There are **some roads and streets, which exist only on paper** and have not been made at all. In some cases, measurements have been shown in excess of the actual work done.

This social audit was done for works carried out by just one department of the Municipal Corporation of Delhi over only a two-year period in a geographical area, which is smaller than one ward. Delhi has 134 wards. The embezzlement of Rs 6.7million, thrown up by the social audit and the public hearing, is therefore a very small fraction of the total amount of funds misappropriated in the name of ‘development’ in Delhi. The *jan sunwai* at Sundernagari has demonstrated the proportion of embezzlement and the urgency with which, the issue needs to be tackled. It clearly demonstrates that most of the time, it is not the inadequacy of funds but leakages, which are responsible for poor development.

At the end of Jansunwai certain recommendations emerged to ensure better utilization of funds in future. It is important that public actively participates in deciding which works should be carried out in their area and they also monitor the execution of these works. It will go a long way in ensuring proper utilization of funds.

Participation of women in the *jan sunwai*

A very crucial role was played in the *jan sunwai* by the local women of Sundernagri and New Seemapuri. Over 500 women came to the *jan sunwai* venue at 10:30 am and stayed throughout the proceedings of the *jan sunwai*. They were not passive viewers in the process, instead they actively vocalized their concerns. When the names of works that were undertaken by the MCD in the previous two years were read out and people were invited to testify whether the works were indeed done or not and if they were done whether they were complete, the women without any fear or hesitation testified. The women said that they are the ones who stay at home the whole day and in the absence of facilities like toilets it is they and their daughters who suffer the most.

Effect of the Jan Sunwai on the local people and their reaction

The local people were very agitated when they heard in street corner meetings, which were held before jansunwai, that so much money had been spent on paper on the development of their block, whereas in practice, there was very little on ground. In many blocks, people had been running from pillar to post for the last so many years to get these works done and were aghast to learn that these works had already been done on paper. The campaign triggered a number of debates and discussions in the community. People discussed in amazement the amounts spent on ghost works or works half done. Everywhere, there was a demand for a platform where the people could raise their voice collectively.

The jansunwai has had tremendous impact on the psyche and morale of the people of Sundernagari and Seemapuri. They, for the first time, saw that the government could be held accountable in such a transparent manner in full public gaze. They also felt greatly empowered as jansunwai demonstrated that they are the real masters of the country and have a duty to demand accountability from the government. Before jansunwai, the public would hold the government officials like the Executive Engineer etc and the political representatives like the MLA in awe. But after the jansunwai, this awe was broken.

Mohalla Samitis (Local Area Committees) were formed in Sundernagari for each block. These contained representatives from each street in that block. The Samitis would monitor the execution of any civil work in their block. For the next few months, they did not allow any work to take place till the contents of that contract were made public.

Effect on local bureaucracy and its reaction

The MCD Engineers in local Division office put a number of obstacles in providing information sought under the Right to Information Act. It was after a great deal of perseverance for almost four months that

most of the information was obtained. Though they would always present themselves very politely and offer all cooperation verbally, but in practice, there was very little cooperation actually forthcoming before the jansunwai. A few days before jansunwai, Parivartan tried its level best to obtain comments of the MCD Engineers on the deficiencies found in works. They kept promising that they would go for a joint inspection of works, but they did not do that.

During jansunwai, the local engineer (EXEN) alleged that Parivartan was making false allegations against their Department. He said that Parivartan never told them about the deficiencies in works and were now creating a scene in public. However, in later stages of jansunwai, he simply kept saying that he would not like to comment without visiting the sites.

After jansunwai, a number of sites were jointly inspected by a team of Parivartan workers and MCD Engineers. The Engineers offered complete cooperation in these inspections. However, they offered flimsy explanations to most of the deficiencies.

There is a marked difference in their attitude towards public after jansunwai. The officials are far more responsive and courteous in their dealings with the public of this area now. For the next few months after jansunwai, whenever any person from Sundernagari or New Seemapuri would call them up, they would listen to his or her grievance and also make efforts to act on it. Wherever required and demanded by the public, the EXEN would himself visit the spot. Whenever the public stopped any work and demanded to know the contents of that contract, he would invariably send his officials to the site, who would then publicly read out all the contents of that contract.

Effects on the Delhi Administration and senior MCD officials and their reaction

Jansunwai was attended by representatives from both MCD and Delhi administration. It is learnt from various sources that after the jansunwai, a number of MLAs met the Chief Minister and requested her to take steps to prevent such jansunwais from taking place in future as such jansunwais could adversely affect their electoral prospects. They also fed the Chief Minister with wrong information about jansunwai like, jansunwai was not attended by local people but people from other states were brought in trucks, people who spoke at jansunwai were the people belonging to opposition political formations, etc. But later Parivartan workers met the CM and cleared all these notions. The CM reacted very positively. She promised an enquiry into the discrepancies. She also promised that she would study the recommendations made by Parivartan for systemic changes and implement whichever were possible. Since then, the following five recommendations have been accepted by MCD and orders have been issued for the same.:

1. A board displaying basic information would be displayed at the site of every work.
2. The list of all works completed in last one month will be displayed on the notice boards of all division offices.
3. The details of all ongoing works in an area will be pasted on the walls of the MCD store in that area. (Parivartan had demanded that copies of contracts should be made available to the local Resident Welfare Associations, however, this step of pasting it on the walls of the store is also welcome)
4. The files containing old contracts would be placed in MCD stores, where the public can come any time and inspect.
5. List of all works carried out by MCD in an area in the previous year would be displayed on a prominent wall in that area.

Effect on the local political establishment and its reaction:

When Parivartan was holding street corner meetings, the local MLA started holding parallel meetings in this area. Parivartan was strongly criticized by him in these meetings. He alleged that Parivartan had demanded Rs 300,000 from him and when he could not meet their demand, they were tarnishing his image. This was a blatant lie. Not only had Parivartan never met MLA in person till then, Parivartan had never even criticized him or his party in any public meeting. Slowly, these allegations started taking the shape of threats. Some people informed Parivartan that plans were afoot to get Parivartan workers kidnapped or to get them hauled up by the police on some false charges etc. However, God willing, nothing happened. Pressures were also brought about on local people, who had openly come out in support of Parivartan, not to associate themselves with Parivartan. Some people, who were hitherto strong supporters of different political parties, joined this campaign and started distancing themselves from their respective parties. They also received threats that they would not be spared if they did not disassociate themselves from Parivartan activities. Some local people used to actively organize public meetings in some blocks for Parivartan. Pressures were brought about on such people and they were forced to cancel such meetings. A number of such meetings had to be cancelled.

Two days before jansunwai, Parivartan workers went to invite the local MLA. This was their first face to face meeting with the MLA. MLA immediately started shouting saying that Parivartan was an organization of touts who extort money from officials in Electricity department, food department etc. He also questioned the source of funds of Parivartan. He challenged that he would not allow the jansunwai to take place in his area. Parivartan workers politely told him that holding jansunwai was their democratic right and jansunwai would be held, but if he had any questions about the working of Parivartan or its sources of funding, Parivartan was open to any kind of public scrutiny at any time. Ultimately, he agreed to come for the jansunwai.

At jansunwai, he came with about 40 of his men, who tried to disrupt meeting thrice. But the public support to the process was so overwhelming that when they tried to disrupt the meeting third time, the entire public got up from its place. Before anything untoward could happen, the MLA left the place with all his supporters.

For the next few months after jansunwai, almost every work was stopped by the people of Sundernagari, till the details of works were made public by the officials. In the last week of March, MLA's brother came to Parivartan office and agreed to make contracts public. But he said that the contents would be read out in public and copies of contracts would be made available to the public by MLA's workers and it should not be done by Parivartan's workers. To this, Parivartan had no objections. Ultimately, the Delhi Government passed orders for the whole of Delhi that copies of contracts would be displayed on the notice boards in that area before any work started.

Effect on local contractors and their reaction:

Before jansunwai, when Parivartan was doing site verifications and holding street corner meetings, Parivartan workers were threatened by some contractors. In one such incident, one contractor physically held one Parivartan worker by the collar in marketplace and warned him of dire consequences. But nothing actually happened.

Interestingly, one contractor spilled all the beans on camera. He confessed how he had swindled money on various works executed by him. He gave specific information on the deficiencies in the works executed by him and the amounts of bribes paid by him in each case. He said that his motive was to get these unscrupulous officials sent behind bars, who force the honest contractors also to turn corrupt.

In all the contracts obtained for the jansunwai, it was observed that the contractors were indulging in massive under bidding to get contracts. A number of works were awarded at prices, at which, it would be impossible to carry out that work. This was done by the contractors because all this while, they knew that they would not need to actually execute the work and they would simply share the money with the officers by raising false bills. In order to study the impact on this trend after jansunwai, Parivartan has sought copies of all works carried out after jansunwai. However, recently, the Executive Engineer of this Division informed Parivartan that not only has there been a marked improvement in quality of works, but the trend of underbidding has also stopped.

4.6 *Transparency and Arbitrary Governance*

Apart from dramatic cases of corruption, RTI is also being effectively used to check arbitrary governance. The best examples of this come from Maharashtra, which not only has the most progressive RTI law but also a very active community of middle and upper middle class RTI activists. They maintain a very active email list and discussion group (mahadhikar) and are perpetually asking the government to explain their actions. The interesting thing about this Maharashtra model is that it is not very labour intensive and does not necessarily involve the organizing of large public meetings (the activists of maharashtra recently has a convention in Lonavala, near Mumbai, which was reportedly a great success. For some examples of the sorts of issues they take up, see box below.

In Pune, Maj Gen SCN Jatar (retd), President of Nagrik Chetna Manch, demanded the details of official cars used by elected representatives like Mayor etc. He was shocked to learn that in 10 months, they spent half a crore rupees on their official cars. The mayor spent more than seven lakh rupees on the official cars between January and October 2003.

The SDM of one of the districts in Mumbai was transferred out within a few months of his assuming charge. He is a very honest and efficient officer and had become quite popular with the people. According to the rules, an officer cannot be transferred before three years. Kewal Semrani demanded to know the reasons and circumstances in which he was transferred out and whether the transfer was done in violation of the rules. Within a few days, the transfer orders were revoked.

4.7 *Transparency and the Right to Food*

In India, as in many other countries of the South, access to food is one of the most pressing social problems. The Government of India, in order to ensure that the poor people get basic food at affordable rates, has run for many years a public distribution system. Under this system, poor families (below poverty line – BPL families) and very poor families (Antyodaya families) are each given a ration card. On the basis of this card, they can access rice, wheat and kerosene oil at very subsidised rates (much below the market rates), from designated shops called ration shops and kerosene oil depots (KODs). The Government of India spends a whopping nearly 300 billion rupees a year on distributing subsidised food. However, as there are huge leakages in this system and a large proportion of this subsidy, some have even calculated it as 70%, does not reach the intended beneficiaries.

To ensure that the beneficiaries actually receive these grains and oil, the government has a double entry system where each beneficiary, when he/she goes to collect their grains/oil, have to get an entry made in their ration book, which is kept with them. The ration shop/KOD owner has to, in addition, make a corresponding entry in the sale register kept with him and also issue a money receipt for the payment made by the beneficiary, where the beneficiaries signature is affixed. One of the common ways of siphoning off this subsidy is to make false entry into the sales register and sell the ration/oil in the market for a much higher price. When the beneficiaries come to claim their share, they are told that there was no supply or that the supply has been exhausted. In some cases the shops remain closed so that the beneficiaries stop visiting the shops after a while.

RTI activists in Delhi and in Rajasthan started using the RTI law to access information about the distribution of subsidised food grains and kerosene. Having accessed this information, they then organised public meetings (in Rajasthan) or group meetings (in Delhi) to confront the shop owners and the officials with the rampant corruption in the system. Given below are some of the interesting case studies in this regard.

Triveni Shows The Way

Triveni is a very poor woman living in Sundernagari, a slum colony in East Delhi. She holds an Antyodaya card and is entitled to get wheat at Rs 2 per Kg and rice at Rs 3 per Kg. Triveni's shopkeeper used to give her wheat at Rs 5 per Kg and rice at Rs 10 per Kg. This is almost equal to the market price. So, she didn't take any grains from Sept 2002 to Feb 2003. Till then, she did not even know the subsidized rates prescribed by the Government at which she should be getting the food. In February 2003, she came to know the actual rates from a local NGO. She was shocked because she had never received grains at such cheap rates and none had told her so. She, therefore, filed an application under the Right to Information Act, asking for the details of ration issued to her as per records and also copies of cash memos purported to have been issued to her. To her utter surprise, she received a reply in which she was told that she had been issued 25 Kgs of wheat @ Rs 2 per Kg and 10 Kgs of rice @ Rs 3 per Kg every month in the last three months. The cash memos showed thumb impressions having been made in her name. She is a literate woman. She never puts a thumb impression but always signs. Naturally, the thumb impressions were fakes. But now she was equipped with foolproof evidence to proceed against the shopkeeper.

She, therefore, filed a complaint. But it appears that the officials passed on her complaint to the concerned shopkeeper because the local shopkeepers started threatening her and terrorizing her. First they tried to offer her money to the extent of Rs 20,000 if she agreed to withdraw her complaint. Though her financial condition is very bad, she refused to accept the money. Then she was threatened of dire consequences. The ration dealers even threatened her family members and pressurized them to sign on a blank paper, but her family members did not yield. One Sunday evening, two inspectors from the Food Department came to her house and asked her to withdraw her complaint. People residing in the whole street gathered and protested how could the inspectors come to someone's house for an enquiry on a Sunday evening. Seeing the public turning hostile, the inspectors left the place.

Later on, she got summons from the office of the Deputy Commissioner. When she appeared before him, he was quite sympathetic to the shopkeeper present there and was quite hostile to her as if she had committed a crime by making a complaint. He tried his best to persuade her to withdraw her complaint by saying that nothing worthwhile will come out of the case as the case will go on for years together. But she insisted to continue with her case.

Later, the Food Department also recorded the statement of her mother-in-law. Though no action has been taken yet by the Food Department against anyone, however, she is getting correct quantity of ration at right prices. The threats from the shopkeepers have also stopped.

5. Contemporary Issues and Debates

Indian democracy is not only robust but (and perhaps consequentially) also progressive. Its stated and explicit objectives and positions are most often progressive and unexceptionable to all except the most radical. It has policy, law and institutional structures that support the rights of women, of the "lower" castes, of minorities, of the poor and otherwise repressed, and that seek to protect the environment or prevent corruption. Of the modern liberal causes, perhaps the only ones not adequately responded to might be for gay (or MSM) rights, rights of challenged (or differently abled) people and perhaps those relating to soft drugs (like marijuana). Some would argue that there is conservatism regarding sexual matters in society, especially in terms of censorship of explicit sexual content in films and in attitudes towards sex workers, but this might more be a reflection of the hypocritical ("fig leaf on the mouth" – a la Huxley) social morality

rather than a deep rooted political conspiracy. Also, in recent years, “globalisation” and “liberalisation” have taken their toll and some of the more explicit policies propagating social justice have been toned down. But this is similar to what is happening in much of the world.

The problem, then, is not that the Indian democracy is regressive; the problem is in the implementation of the liberal policy and law that this democracy has showcased. The government says one thing but does another. Or, to put it more charitably, the government is unable to transform its good intentions into reality because of the very powerful vested interests within and outside the government.

It is in this context that the political space promised by the right to information becomes significant. The state is historically geared to function with institutional duplicity, to promise one thing and to deliver another. It has mastered the art of discrediting all dissenting voices, questioning their “facts” and sources, suspecting their motives and accusing them of misleading people, of seeking publicity by sensationalising isolated incidents, of being self serving and even of being in cahoots with anti-national forces. However, when the state is confronted with its own facts and figures, accessed by using the right to information, then it does not know how to react. It can no longer credibly question the facts, or the source, nor can it ignore the gap between what is being claimed and what is actually happening.

Of course, there is always the danger that the state, anticipating the publication of its “data”, starts cooking up even the raw data so that it supports its claims. But this means deepening and broadening the conspiracy many times over and bringing in to the fold the thousands of inspectors and statisticians and host of other civil servants that populate its secretariats. At the very least, this means sharing the ill gotten gains with all of them, but there is also the concomitant danger that all of them might not be willing partners in crime and some of them might cry foul or let the cat out of the bag.

This political space becomes all the more significant because there are people and institutions at all levels of the Indian society that are sincere, concerned and often pro-active. To draw all of them into a conspiracy of silence or disinformation is impossible. These individuals and institutions will not keep silent if data are falsified, nor will they ignore the stark reality that government statistics and facts reveal, when these are at variance with the policy or law, or even with what is being claimed.

But finally, and perhaps most important, the truth empowers people. It does this in at least three ways. First, the very fact that people, every one, can now as a matter of right demand information about and from the government, gives them a sense of power. The obvious discomfort of the government servants in sharing the information, their fear of being exposed and the extraordinary lengths they go to try and prevent the information from becoming public, or to persuade the people not to ask for this information, further strengthens the sense of power that the common person feels, perhaps for the first time, over the bureaucracy.

Second, it empowers because of the outrage that people feel, once the truth is revealed. For long, a lack of resources has been blamed for the lack of facilities and infrastructure. A lack of jobs has been blamed for the lack of employment and opportunity. The anger of the people has been diverted to seeming systemic failures and, without any real options, for all governments seem to perform similarly, the anger has been muted, dissipated and converted into a fatalistic sense of helplessness. However, when access to government records starts revealing that actually the resources were there to provide the much needed facilities and infrastructure, but were diverted into the pockets of the powerful and false records submitted, or that the jobs were there but were given to the relatives and friends of the influential, or sold to those willing and able to pay, then a sense of outrage builds up in society. This sense of outrage empowers people, for they now have a tangible and reachable villain and the laws and institutions supposedly designed to protect them must be forced to act.

But, finally, it empowers because communities across regions, across nations and across the world start seeing, perhaps for the first time, “official” evidence of the duplicity of the state. They start to realise that all the stories and excuses they have been fed, for years, are all an alibi to allow the few rich and powerful people to appropriate society’s resources, at their cost. This forges a new solidarity, which in its togetherness significantly empowers all the communities.

The battle for transparency is not without its ups and downs, nor without actual or imagined pitfalls. It would be unrealistic to expect the state to willingly give up its stranglehold on information, if transparency is really as powerful a tool for people’s empowerment as it is made out to be. Perhaps the Indian predicament, where the national Freedom of Information Act has been passed by both houses of Parliament and has also got the Presidential assent, and yet not been notified by the bureaucracy for over a year, best illustrates this. The liberal, progressive face of the democratic state forces it to introduce the law in Parliament, but the vested interests in the government and elsewhere attempt to scuttle its enforcement or, if that is not possible, at least delay it.

In fact, in the very process of finalising the act, it has been significantly whittled down from the original draft prepared by civil society groups, both in scope and effectiveness. Many sceptics, both well meaning and mischievous, continue to articulate their reservations. For starters it is argued, the right/freedom to information law will be misused to harass officials. Whatever the actual fears, the enunciated concern is that it is usually impossible for civil servants to work strictly within the law as there are so many laws, many of them contradicting others, and some of them outdated or inappropriate. The right to information (RTI) would expose many well meaning officers who are trying to help the public by “bending” rules and laws.

Another concern is that members of the public who have themselves violated the law might use the RTI against those civil servants who try and book them (see box below).

Reported by VIVEK DESHPANDE in Indian Express, 18 January 2004, Mumbai

AKOLA (Maharashtra), January 17. If you want to know why bureaucrats at the Centre are blocking a national Right to Information Act—even though it has received Presidential sanction—look to Akola in

Maharashtra. Here, a state Act was passed last year and two incidents show how the citizen has been empowered at the expense of babus, literally. In the non-descript town of Akot, a cloth merchant—who has studied only up to Class XII—has used the Maharashtra Right to Information (MRTI) Act to ask for information on alleged corruption by Maharashtra State Electricity Board staffers. When that information wasn’t given, he used the punitive clause of the Act to make an Assistant Engineer pay a fine. The amount by itself, Rs 250 per day for 13 days, isn’t much but it has sent shock waves throughout the MSEB.

The case, in brief:

- Ravindra Tardeja was harassed by two MSEB engineers over alleged faulty meters at his home and shop.
- He went to the Assistant Electricity Inspector (AEI) who cleared him of all charges but neither informed him nor the MSEB.
- Last September, Tardeja procured copies of the Act from Mumbai. After studying it, he decided to probe the alleged corruption by MSEB engineers in various cases of permanent disconnection since 1986.
- With a copy of the Act, he asked Assistant Engineer K.M. Ingole for the information.
- The AE sat on the file and Tardeja reported the matter to Executive Engineer B S Jaiswal at Akola.
- Citing MRTI provisions, Jaiswal asked Ingole to pay a fine of Rs 250 per day on Ingole for 13 days of delay.

“If I hadn’t done it to Ingole, my superiors would have done it to me,” says Jaiswal. “I think this will lead to officers promptly providing information. But I am afraid that this will lead to their arm-twisting by dubious complainants.” Jaiswal, who has become the first appellate authority to act under MRTI, has been since flooded with inquiries.

So is Ingole, due to retire on March 31. “I have admitted my fault. But nobody knows I gave Tardeja information for the past many months. This was the first time I failed to deliver as he had asked for information of the last seven years. I think I should have been excused,” he says. Tardeja, however, says he went to Jaiswal as Ingole didn’t deliver in time not once, but several

times. Jaiswal's fears aren't unfounded. As was evident when members of social activist Anna Hazare's Bhrashtachar Virodhi Jan Andolan ransacked the office of Akola District Deputy Registrar (DDR) of Co-operative Societies on January 7 for, among other reasons, not furnishing the list of "errant" directors of a bankrupt credit society.

Office Superintendent S.P. Pohare says Hazare's men asked for the list of 39 directors of the defunct Vidarbha Credit Society, which owes about Rs 2 crore to investors. "I showed them one and asked them to write down the names. They wanted a copy. I said you'll have to apply for it. But they went off in a huff and the next day, they did this," he says. Hazare's men, however, say they sent many "representations," but couldn't produce one to substantiate their claim. The list, anyway, was only the immediate provocation. The main demand has been action against "errant" bank directors and return of investors' money.

As for Tardeja, he's firm on asking for more. "MRTI is my strength and I will use it to uncover corruption in Akot MSEB," he says. Be it Tardejas or the so-called anti-corruption crusaders, babudom is in for a long haul - at least in a state which can claim credit for giving its citizens power of information.

There is also the fear that, once RTI catches on, the government will be inundated by requests and normal work will come to a stand still. However, the option of putting most of the information, *suo moto*, in public, especially through the internet, also finds little support. Why make public something that has not been asked for?

There are the well-known concerns that excessive transparency can compromise national security and the strength of the state. Though there is the well-accepted principle that certain matters, especially those concerning vital defence and security interests, need to be kept secret, the urge of the bureaucracy is to perpetually expand this list, while civil society pulls in the opposite direction. To agree on what needs to be excluded and what included, is an ongoing debate.

RTI is also seen to pose a threat to law and order and to promote civil strife and tension. Ironically, this thesis is based on the assumption that what people do not know does not hurt them. However, as they are made aware of the way in which the government, the politicians and certain commercial interests have been exploiting them, then this is likely to create tensions and possible result in violence.

Civil servants also express resentment on having to become answerable to the common man and woman. According to them, they are answerable to their bosses, to the government, to the Legislative Assembly and Parliament. And the government is answerable to the people through the legislature and parliament. Why, then, should they be directly answerable to the people? A classic argument from representative democracy!

However, it is not only the civil servants who have to come to terms with the RTI, many civil society groups also have to learn how to use it. Though the use of RTI might not pose the sort of threat to peace and harmony as is suggested by certain sections of the bureaucracy, it does have elements of threat for those using it to fight powerful vested interests. Recent experience in India has shown that as soon as an application is made to access sensitive information, threats are received by many of the applicants. If these threats are not heeded then, when the applicants go to collect the information they had sought, in some cases they are physically attacked (see boxes below).

National Campaign for People's Right to Information : Press Release: 24 September 2003

DARE TO ASK

People seeking ration related records beaten up by ration shop keepers

On the afternoon of 23 September, 2003, Panini Anand and Rajiv Kumar, volunteers of Parivartan who had gone to assist people who were seeking records in the Assistant Commissioner's office of the Food and Supplies Department, North East Delhi, were abused and attacked in his office premises by local leader and ration shop owner, Jagatpal Singh, along with some other ration shop owners of the area. The volunteers were severely beaten up in the office premises and one of them was, later, hit by a brick while he was on the way to the Nand Nagari police station to file a complaint. An FIR (No. 548/2003) has been filed.

Subsequently, some ration shop owners surrounded the Nand Nagari police station and threatened the Parivartan volunteers with dire consequences. It was only on the intervention of the Deputy Commissioner that the volunteers, including four women, were evacuated by a police vehicle and driven to safety.

Based on the threats issued by the ration shop owners, it is clear that this attack was in retaliation to Parivartan's role in helping the people of Delhi to file applications under the Delhi Right to Information Act, seeking to inspect records of ration shops. Obviously the attack was an effort to create insecurity and a sense of fear among the people, especially as many of the applicants have also reported receiving verbal threats and have been asked to withdraw their applications for information.

It is worth noting that, fed up with the problems of corruption plaguing the public distribution system, several residents of resettlement colonies across Delhi have been asking for access to information, related to records of ration shops, under the 'Delhi Right to Information Act'. In fact, a meeting attended by over 300 resettlement colony residents was organised by Parivartan and other groups, on 29 August, 2003, at the Gandhi Peace Foundation, to discuss and highlight the problems that these people were having with ration shops in their areas. The participants also went in a delegation to meet the Commissioner, Food and Civil Supplies, Delhi Government and over 150 applications were filed for inspecting records concerning the distribution of rations.

It was in this connection that on 23rd September, records of ration shops of Circle 46 were to be shown to the applicants in the office of the Food and Supplies Officer. However, when people reached the office of the Food and Supplies Officer to inspect the records the local ration shopkeepers were already present there and seemed determined to prevent public access to the records, in order to hide discrepancies in the distribution of ration and kerosene oil, and the modus operandi and quantum of corruption. Even before this attack, they had tried to threaten and bribe the applicants to prevent them from applying for information.

The National Campaign for People's Right to Information strongly condemns this action of the ration shop owners. Although the ration shop owners are obviously trying to intimidate the people, their resorting to violence reveals their desperation and further confirms our conviction that empowering the people of Delhi through the Right to Information Act is an important, and perhaps the best, way of fighting entrenched vested interests.

Recently, there was a shameful attack on a RTI activist in Mahabaleshwar, near Mumbai (Bombay). Maharashtra boasts of one of the most progressive RTI acts in the country, and perhaps in the World. However, that by itself does not change the social and administrative reality (see box below).

The fine art of silencing a whistleblower, the Maharashtra way

From the Express initiatives page, Pune Newslines, The Indian Express, Pune, June 09, 2004:

Taking irony to an all time high, or rather low, was this deplorable incident that took place in Mahabaleshwar where a dedicated environmentalist's house was attacked and ransacked on World Environment Day and his years of work reduced to ashes. Later, he was persuaded to not just drop the idea of lodging a police complaint but actually tender an affidavit waiving all complaints against the ones who had destroyed his house and even apologise to them for causing any inconvenience. Vested interests called it a move "in the interest of the hill station." Everyone knows the truth, but why is it not being allowed to prevail?

This is what happened at Mahabaleshwar, the prime hill station of Maharashtra, on Saturday. House of a lone crusader who had been campaigning against illegal, indiscriminate felling of trees, against unauthorized concretization was attacked by a mob and all the documents he had meticulously collected over the past eight years for his campaign were reduced to ashes.

Mahabaleshwar is a small town. Everyone in the town knew what happened. The police knew. Yet, the poor police could do nothing against the persons responsible for the riot and arson because the terrified victim would not agree to recording a formal complaint, despite their persuasion.

Could the police not have taken the initiative themselves and begun investigations in absence of what is called 'first information report' by anyone - either by the victim or by any witnesses? The police acted only after the victim gathered some courage by Monday, thanks to the solidarity expressed by several other citizen activists from other places, and formally recorded his 'first information report'? The incident was known to everyone in Mahabaleshwar. The police knew it well? Did they have to wait for the so-called 'first information' being recorded by the aggrieved person two days after the incident? Was it really the 'first information' for them, by then?

If the police cannot act unless the victim complains, you are in serious trouble. Anyone can commit an offence against you and terrorise you into not lodging a formal complaint. They police, as the law enforcing arm of the benevolent State that is expected to protect your interest, will do nothing.

In case of Mahabaleshwar, the victim, Balu Panchal, did go to the police station to lodge a complaint. He was encouraged by the police to do so. But came the intervention of the local leaders. They warned the police and the victim that if any complaint was lodged and the police acted against the rioters, tranquility of the hill station would be jeopardized. Did they have the right to

intervene the process of recording of a series of crimes, which should have been an affair strictly between the police and the complainant?

Victim Panchal stood alone. The only people he could fall back upon for some support were his terrified family members. To aggravate the matter, the mob that had broken into his house, indulged in rampant ransacking and burning of documents had reached the police station, menacingly watching the developments inside the police station, presided over by a inspector and conducted virtually by a group of politicians more than apparently sympathetic to them.

Panchal caved in. Decided not to proceed with the complaint. But what happened next is something that should make everyone start wondering if there is any rule of law left. Then began the careful process of compounding the offences, which were, anyway, never recorded by the police.

Panchal was persuaded to sign an affidavit in front of the tehsildar admitting that he had no complaint whatsoever against the people who broke into his house and robbed him of his years of meticulous work. Leaders of those who led the rioters gave another generous undertaking, again in an affidavit, declaring that they had no grievance left against Panchal and that he would not be troubled again!

The tehsildar executes the affidavit on a Saturday evening without raising an eyebrow - all in the interest of the tranquility of the town.

Enter the police again. Armed with the affidavits, they now serve notices on the conflicting parties - the aggressors and the aggrieved - warning them to behave themselves in future and not to allow recurrence of a situation that would disturb the peace and tranquility.

What did Panchal do in the first case? Did he pick up a fight with anyone even in self-defence? Why was the warning served on him?

In progressive Maharashtra, we surely have a sophisticated way of silencing a whistleblower!

Leaders warned me lodging a complaint would disturb tranquility

Let us hear it from the aggrieved activist, Balu Panchal, on the sequence of events since Saturday:

“One of the several issues I had taken up in recent years which, I sincerely felt, threatened the environment of Mahabaleshwar, was the case of two cooperative housing societies, formed by local residents. Both the societies are still unregistered, yet constructions have already taken place, right at the source of the famous Chinaman waterfall. More than 150 dwellings have been built on agricultural land. According to the information collected by me, permission for non-agricultural use of the land was not obtained before undertaking these constructions.

“About a month ago, I wrote to the collector of Satara, demanding an inquiry. The collector accordingly directed the Mahabaleshwar municipal council to probe.

“On June 5, ironically, on the World Environment Day, about 200 people mobbed my house towards the noon. I was watching the national geographic channel on television. Sensing trouble, I hid myself in the kitchen as part of the mob broke open the wooden panel of the front door and entered, roughed up my mother and my younger brother, ransacked the house, and stormed into my study room.

“The house breakers removed all the documents in my possession kept on a wooden shelf, took these out and made a bonfire. Every bit of document collected by me since 1996 and archived in about 30 files, were reduced to ashes. Six of the files pertained to matters in which I had collected substantial information and documents by using the Maharashtra Right to Information Act. Also destroyed were about a thousand photographs of unauthorized constructions and other instances of environmental degradation.”

In other cases, they are attacked when they seek to verify the information that they had got from the government. This happened in the public hearing organised by Parivartan, a Delhi based NGO, in December 2002. Local political leaders, whose complicity in the corruption taking place in the locality under scrutiny was being exposed in the public hearing, tried to disrupt the public hearing. Fortunately, the presence of a large number of people and of the police prevented any violence. However, almost a year later, volunteers from Parivartan were not so fortunate and got physically attacked while verifying records in a resettlement

colony in East Delhi. Apart from the volunteers, one of whom was a woman, being beaten up and manhandled, many of their records were burnt and they were severely threatened.

Therefore, the issue in front of civil society groups is: how to protect themselves and protect the members of the community who have sought information under the RTI laws.

Another problem facing civil society groups is how to get action initiated against those who have been exposed by using the RTI. The Kukurkheda story from Rajasthan (see box below), or the experience in Maharashtra or Delhi, suggests that even when the misdeeds of government functionaries are exposed conclusively, using the RTI laws, there is no provision in these laws to ensure that these people are consequently punished. If the state continues to drag its feet about taking cognisance of these exposes, then people might very well become cynical of the RTI process.

The Kukurkheda Story

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 Officer (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. (From Mander, Harsh. Movement for Right to Information in India)

Action against the guilty: The Delhi Experience

After the public hearing in Sundernagari (see section 4.5 above), various concerned persons met the top political and administrative functionaries of Delhi, and demanded that the guilty should be punished. A detailed report of allegations of corruption in each contract was submitted to each of these government functionaries. The police was also contacted for filing a complaint. But no action was taken.

In May 2004, on a petition filed by Parivartan, the Delhi High Court directed the Delhi police to investigate into all the allegations of corruption made by Parivartan and file its report before the metropolitan magistrate within 6 months. During the hearing, the Municipal Corporation of Delhi (against whom the charges had been made) said that they had already carried out investigations and have found all of them baseless. But the court observed how could the "accused" be made to investigate against himself.

This order of the High Court caused panic amongst the officials and contractors of this area. One of the engineers went on long leave. At the time this report is being written, two engineers are said to be under severe depression and are not attending to their duties properly. The contractors of this area are refusing to work. In order to find a solution, the municipal councillor of the area approached local activists in the first week of June and offered total transparency in the execution of all civil works carried out in this area. He said that he had directed the Executive Engineer of this area to provide copies of estimates and sketches before any work starts to the local NGO. After the completion of work, he would offer each work for inspection by public. The objections to

the work would be immediately rectified and only then, the payment for the work would be made. According to the councillor, the contractors and engineers are afraid of their works being subjected to postmortem later on by the public, in the form of a *jan sunwai*. A postmortem also leaves little scope for improvement of work.

A similar predicament confronts those who are faced by an impasse where the government refuses to supply information in violation of the RTI law, despite orders of the appellate authority. In most cases, no penalty is imposed (the earlier mentioned case from Maharashtra being an exception) and the concerned officers face no adverse consequences. Though the Government of Delhi has recently issues an order reiterating their resolve to impose penalty on erring officers, it is too soon to tell whether the order will actually make a difference. If this state of affairs is not checked soon, there is again the danger that the RTI system would break down.

Many other issues exercise the minds of individuals and groups concerned with RTI. Why should the corporate sector or NGOs be not covered under the RTI laws? Why should we not get access to the process of decision making, especially what was the rationale behind any particular decision, instead of getting access only to the final decision, as is the case currently? Whereas the government cannot be asked to do research for us, should they not start collecting and disseminating the sorts of information for which there is popular public demand? Should not the government make public, on its own, all that information that the people should in any case know, whether they ask for it or not? Given the concern that governments express about the public cost in processing RTI demands, are not the savings from corruption and misuse prevented because of RTI far greater than the possible costs of servicing the system?