

Social Mobilization and Transparency: The Indian Experience*

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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 political parties and candidates have to work very hard to influence voters. Increasingly, the people of India have been demanding better governance, and are no longer willing to rely solely on elections to hold officials accountable. The right to information has given them an opportunity to call their government, and its functionaries, to account not only once in five years, when they cast their vote, but every day of the year.

Also, transparency is an issue that cuts across all of the traditional areas of concern and action. The fact that the RTI movement in India has recognized this and has, consequently, made a conscious effort to integrate with other movements, has ensured that the campaign for increased transparency is diverse, creative, and strong.

Today many civil society groups are using the right to information in their struggles. The women's movement in the state of Rajasthan, for example, has used it to demand that the women against whom atrocities have been committed are kept informed of the progress in their case and the details of various medico-legal and forensic reports. Many civil liberties and human rights groups across the country are now using the RTI to ensure transparency and accountability of the police and custodial institutions. Activists in the state of Maharashtra are exposing the use of influence in the transfer of government officials and in the giving out of public land on lease to private parties.

The use of the RTI is becoming widespread among movements working with people displaced by dams and factories, those denied their share of food by the ration shop dealer, communities affected by polluting industrial units, or forest dwellers evicted from their homes. In many cases, the information asked for is not provided appropriately, or not at all. However, it is becoming increasingly difficult to outright deny to the people the information they seek. As movements and groups sharpen their questions and develop their skills, the government and other institutions are being forced to reveal more and more. Clearly, the notion of a right to information has become a part of the language of socio-political discourse. The nature of the right is every day being defined by the actions of mass movements and of individuals, who are matching their own resolve to access information with the inherent hesitation that established systems of governance and influence have to opening themselves for public scrutiny.

This chapter tells the story of how the common people of India, in villages and cities, have started demanding accountability of their bureaucracy and their elected representatives. The

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first part briefly traces the evolution of the notion of transparency in India. It then discusses in detail some of the various people's movements that typify the Indian experience, including the pioneering movements in the Indian states of Rajasthan, Delhi and Maharashtra, and the focus on transparency in the environment movement and in the movement for cleaner elections. The paper goes on to describe the process of formulating the right to information laws in India and ends with a discussion on contemporary issues and debates relating to transparency, including possible future directions.

The Evolution of the Notion 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 corruption, to reports regarding disasters (especially railway accidents) and increasingly about human rights. Also, debates about transparency in public life were a part of the debates among political parties and even among the ruling Congress party, as the following passage will illustrate.

"Prime Minister Nehru has asked Congressmen not to close their eyes to the fact that a lot of "impurities" do exist in the Congress organisation from which even some of the "highest people in the party hierarchy are not immune." At the Congress Subjects Committee meeting at Satyamurthinagar (Avadi) on January 20 [1955], Mr. Nehru was intervening in the debate on the resolution moved by Mr. Morarji Desai on purity and strengthening the organisation. Referring to the point made earlier by Mr. Algurai Shastri that the resolution should not publicise the malpractices that had crept into the Congress, Mr. Nehru said this approach was completely wrong. "I have heard the speeches made by delegates. Mr. Algurai Shastri has said that in one paragraph of the resolution we have criticised ourselves and thereby put the noose round our necks which other people might use to drag us with. But this has no relation to the resolution. I say that the resolution is appropriate, full sixteen annas in the rupee. I say, and say it with a challenge, that the atmosphere in the Congress is not good and pure. After all what is the yardstick with which we are going to measure our work and ourselves? I have been President of the Congress and I know from personal experience that there is a lot of impurity in the Congress and even some of the biggest Congressmen are a party to it. Why should we hide these things? Are we to live behind purdah and wear a veil?..."{2}

Concurrently, various factors were working at 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 alternate political formations were emerging and raising questions.

Perhaps most important was the spread of media. Apart from newspapers, the radio network rapidly grew 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, facilitated by the electrification of most of India. The fact that many of the movies depicted social themes and highlighted social injustice and corruption in government, further fuelled the interest of the Indian masses in the political process.

The Chinese invasion of 1962 and the resultant collapse of the Indian defences led to an unprecedented, and often strident, demand for transparency. The whole nation wanted to know what had gone wrong and who was responsible. During the 1960s there was also the escalation of “insurgencies” or civil unrest and armed rebellion in different parts of India. In the next twenty to thirty years north-east India, especially Mizoram and Nagaland, West Bengal and adjoining areas, Punjab, Jammu and Kashmir and parts of Andhra Pradesh were all affected. These resulted in the unleashing of a new level of police and military action and a consequent outcry against the violation of human rights and in a renewed demand for transparency. There was also 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. The formation of the People’s Union for Civil Liberties and Democratic Rights (PUCLDR), in 1976, gave impetus to demands for various types of civil liberties and rights, including those of transparency. In the elections of 1977 the regime was defeated and the new government once again reinstated democratic processes. However, this government did not last long.

Meanwhile, in 1975, the Supreme Court ruled (*State of UP v. Raj Narain*) that: ‘In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.’

Then, again, in 1982 the Supreme Court of India, hearing a matter relating to the transfer of judges, held that the right to information was a fundamental right under the Indian Constitution. The judges stated that: ‘The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest. (*SP Gupta & others vs. The President of India and others, 1982, AIR (SC) 149, p. 234*).’ However, despite the progressive judgements and pronouncements by the Supreme Court of India, the government was unmoved and no serious effort was made to enact a transparency law.

In 1984, the disastrous gas leak in the Union Carbide plant in Bhopal led environmentalists to make renewed demands for transparency in environmental matters. Though at least two court cases were filed and some progressive judgements got (see section on the environment), not much else happened.

The year 1989 saw a change of government at the national level, the ruling Congress party once again losing the elections. The new ruling coalition promised to quickly bring in a right to information law, but the early collapse of this government and reported resistance by the bureaucracy resulted in status quo.

The early 1990s saw the emergence of a grassroots movement in the state of Rajasthan, spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS). {3} This movement,

described below, struggled to get a Right to Information law passed in Rajasthan and joined hands with other movements and activists to collectively form a national platform called the National Campaign for People's Right to Information (NCPRI), in 1996.

In the early 2000s, another strong grassroots movement for transparency was initiated in the state of Maharashtra, led by the noted social activist Anna Hazare. Using Gandhian tactics, he not only forced the Maharashtra state government to repeal an earlier weak act and pass a much stronger right to information act, but also ensured that the President of India to give assent to this new act, in contradiction to the stated Government of India policy. Movements have sprung up both in rural Maharashtra and in the cities of Mumbai (Bombay) and Pune, using the new Maharashtra RTI act to expose corruption and mal-governance.

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

People's Movements for Transparency

Perhaps the most critical component of the Indian journey towards operationalizing people's right to information has been the grass roots struggles for transparency. The fact that this journey has not been abandoned, despite numerous hurdles and setbacks, owes much to the fact that it has been fuelled by the commitment and the energy of those for whom the right to information is essential if they are to survive, and to live with dignity. The fact that the demand for transparency in public affairs had come most vocally from the grassroots, both in the rural and urban areas, also makes the Indian experience somewhat different to experiences in most other parts of the world.

Transparency and Rural Livelihoods: the Story of MKSS

In 1990, Aruna Roy, Nikhil Dey and Shankar Singh, three people from diverse backgrounds together with a number of peasants and workers from villages around Devdungri in Rajsamand District of Rajasthan formed the Mazdoor Kisan Shakti Sangathan (MKSS). {4} A non government organization, in fact more correctly a grassroots people's movement, the MKSS consists of poor farmers and workers, men and women alike, many of whom have never been to school. Yet their organization raised the issue of RTI in such a potent manner that it changed the discourse on what had been seen for many years largely as an academic issue. When the MKSS was formed, 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, seen traditionally as the two basic issues of the rural landless poor.

During the hunger strikes organized by the MKSS, in 1990 and 1991, to demand statutory minimum wages, the group began to realize the significance of the right to information. Workers demanding minimum wages were invariably told that there was no record of their having worked at all. The demand to examine the records was denied on the plea that these were secret government records. But now the MKSS started demanding copies of the records of works done in the name of the people. This demand was accompanied by determined public action, which captured the imagination of the people and shocked a bureaucracy that had for years been using the cover of secrecy to avoid democratic accountability.

Thus, 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 operationalized 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 tradition of secrecy finally came from the Indian “hinterland”.

A decision by the MKSS, in late 1994, to use the mode of village-based public hearings (*jansunwais*) to conduct social audits based on information gathered from the government, revolutionized the use of RTI in India and energized the rural people. Using dramatic slogans like “*hamara paisa- hamara hisaab*” (our money, our accounts), the public hearings became platforms to publicly audit government spending. However, it took a forty-day *dharna* (sit-in), and the efforts of the poor people, struggling for their livelihoods and survival, to finally establish that the right to information was central to democratic activism.

The Beawar Dharna (sit-in)

By December 1994, it had become clear that, given the powerful and entrenched opposition to the demand for information, there was a need for people’s legal entitlement if information was to be accessed. Accordingly, the MKSS decided to broaden the struggle to include the demand for a right to information law. As a first step, it organised a *dharna*, preparing to sit in for a long period. Over a hundred villages provided wheat, hundreds of people agreed to give two to three days of their time, and a core group was formed to sustain the *dharna* for at least a month.

The location selected for the *dharna* was the town of Beawar, with a population of around a hundred thousand people. Though an intense RTI campaign had been underway in the villages around Beawar for over two years, the people of Beawar knew little of this struggle. So, when in April 1996, over a thousand men and women marched into Beawar, bearing banners, shouting slogans and singing songs, they drew attention. It was obvious that 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 a traditional peasant dress. As the residents of Beawar watched with growing curiosity, the long procession snaked its way through the town, stopping for a moment to hand over a sheaf of papers to a representative of the state government. 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 stay. While Beawar was no stranger to agitations, this was unfolding to be a rather extraordinary one.

What made this *dharna* really unusual was that instead of asking for the customary *roti, kapda* and *makan* (food, clothing and shelter), what the visitors wanted was, of all things, a right to information. What they had handed over to the government representative in Beawar 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 made in their villages.

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 astutely timed the *dharna* with the campaign period of that year’s national parliamentary elections. 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 power 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 to effectively govern themselves. The poor started to see that they had to be involved in the RTI campaign because, as one of the slogans proclaimed, “the right to know (is) the right to live.”

Jansunwais or Public Hearings

The *jansunwais* (public hearings) soon became a powerful and imaginative mode popularly used on a range of issues by different kinds of groups all over the country. These village based public hearings provide an open platform where anyone can come and have their say on matters being examined. They have acquired a kind of democratic legitimacy that agitations do not have. The *jansunwais* are dramatic affairs where “information” and its analysis reveals the who, the how and the why of various misdeeds and gives courage to the exploited to bring their predicament out into the open.

An elaborate preparation process precedes a *jansunwai*. For example, the details of expenditure made in the last couple of years, in a panchayat{5} (covering a village or group of villages), are accessed from the government. These records are then examined and compiled into easily understandable heads like date, item, expenditure, beneficiary (if any), and remarks (if any). A preliminary assessment (including discussion with villagers and field verification) is done to assess how authentic these records are. Then the date, time and location of the *jansunwai* are fixed and announced. During the *jansunwai*, the details of the purported expenditure are read out, one by one, and the people are asked to publicly authenticate the items listed, and the expenditure incurred.

The first *jansunwai* in Kot Kirana Panchayat (Dec. 1994) was held in front of an incomplete building with no roof. As the list of purported expenses was being read out, an item on which thirty thousand rupees had been spent last year in constructing the roof of a government office, came up for verification. Every one burst out into spontaneous laughter for the roofless building nearby was the concerned government office. In another case, the name of a villager was read out as the recipient of hire charges for his bullock cart. The agitated villager protested loudly saying that he was never given any money and, in any case, he did not own a bullock cart. He added, for good measure, that if they still insisted that they had hired his bullock cart, then could they please return it to him, for he had never got it back. The muster rolls revealed a number of ghosts. A large number of people, long dead and gone, had been resurrected and shown to have worked as labourers. There were places where the same people were recorded as present and working on different work sites on the same dates and at the same time.

The *Jansunwais* uncovered not just ghosts of people, but even “ghost works”. To take one example, in the case of Janawad Panchayat (April 2001), the massive revelations of fraud in the *jansunwai* forced the government to order its own investigation. The report of this investigation admitted that more than seven million rupees were defrauded in a six-year period, in one single Panchayat. Given the fact that in Rajasthan alone there are nine thousand panchayats, the total amount defrauded in the state, if this case was typical, would run into billions of rupees annually. The report also revealed a complete breakdown of all supervisory and monitoring systems.

The *jansunwais* have also led to some breakthroughs in the even more complex area of accountability. In Kukerkhera panchayat (January 1998), the evening before the *jansunwai* was scheduled, the sarpanch (head of the panchayat) came to see the MKSS volunteers. She

admitted to them that last year she had pocketed a hundred thousand rupees of the panchayat money and offered to return half of it immediately and the remaining half in the next couple of months. She wanted to be saved the humiliation of being exposed in the public hearing. The matter was raised in the *jansunwai* next day and the village people decided to accept her apology and to use the money that she was returning to build a school in the village, especially as this money could be shown as the villager's contribution and would attract a matching amount from the government. Eventually in 2000, perhaps as a result of such hearings, the Rajasthan Panchayati Raj Act was amended and social audits, where all the villagers publicly examine records and audit the work done in their area, were made mandatory.

The Impact

The use of the RTI to conduct social audits has acted as a deterrent on corrupt officials. For example, in 2004, much of the six thousand million rupees sanctioned for drought relief in Rajasthan, were actually spent on drought relief and not pocketed by corrupt politicians, contractors and officials. However, apart from specific impacts like this, the RTI campaign has also had a profound impact on the nature of governance and the interface between the government and the people.

One very important outcome of the RTI campaign in Rajasthan has been the enactment of a state RTI law. The RTI movement drafted the law after open public discussions in seminar rooms and in street-corner meetings, in every part of the state. Though the law that was eventually passed by the legislature was a watered down version that was a far cry from the "peoples draft", this process has led to a growing demand for peoples participation in law making, not just for the right to information, but in all areas. The incorporation of mandatory social audits in the law has also opened up possibilities for creating the institutions required for participatory democracy. As right to information begins to provide access to documents, a second generation of questions relating to accountability are appearing, and it is modes like public audits that will have to be found to provide some of the answers.

The RTI campaign in Rajasthan continues to be fashioned primarily by organizations working with the poor and by questions framed by the poor themselves. Public hearings have now spread to different parts of the state conducted by different organizations on not just the local government expenditure, but also on the public distribution system, the health system, the watershed program, human rights violations, and land rights issues. In each of these areas the campaign has not only managed to raise issues related to corruption and the arbitrary exercise of power, but also found a means of engaging with the government on issues of policy formulation and implementation. In fact, even NGOs and civil society groups have started placing the details of their accounts before the people of the area where they work.

Transparency and the Environmental Movement

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

In the last twenty years, environmental laws have progressively allowed *locus standi* to individuals. All the major environmental laws enacted after 1984 have a provision where the people have a right to put the government on notice, usually of 60 days, by which time they have to remove the cause of complaint or face a legal challenge. Many of the earlier laws have been amended to bring in such clauses. In addition, the holding of a public hearing 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* (without being asked for) made public. However, a lot of the sensitive information is still difficult to come by, especially where powerful commercial or business interests are involved. Two of the landmark cases fought for access to environmental information are described below.

The Sriram Food and Fertiliser Industries Case

In 1984, the leak of a 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 was, consequently, a spate of cases filed by various individuals in exercise of their right to litigate in public interest.^{6} In 1984, M.C. Mehta, a lawyer who subsequently became famous as a tireless campaigner for the environment, filed one such case 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, an oleum gas leak occurred in the factory (in 1985). Though the gas that leaked was not highly toxic, and there were no casualties, 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 then 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, Kalpvriksh, one of the NGOs involved in 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 possible leak 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 ones 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 industry.

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 (now Pune) Cantonment were being constructed in violation of the building byelaws. They repeatedly requested the Poona Cantonment Board to

let them inspect the relevant building plans and related documents. However, no satisfactory replies were received from the Cantonment Board.

Consequently, the BEAG filed a Writ Petition in the Bombay High Court seeking such inspection. However, as this process took several months, some of the buildings under scrutiny were, in fact, completed before the case was heard. Though the BEAG could not prevent these buildings from coming up, they won a larger battle as the High Court not only permitted inspection of the plans but also made some telling observations. In their order they said:

“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”.{7}

The Supreme Court subsequently considerably widened this High Court judgement.

“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.”{8}

Transparency and Development Projects

The social, environmental and economic impacts of “development” projects, especially large dams, have been at the center of major debates for the last twenty five years. Vigorous people’s campaignshave contended that a majority of these mega projects are neither economically viable nor environmentally sustainable, and that 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 disempowered than they were before “development” hit them.

These projects might 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 start 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 organized, in 2002, a public hearing around this project.

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 *jansunwai*. 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.

During the public hearing, critical questions about the economic and social viability of this project were raised. Women, who had allegedly been subjected to violence by the police, also spoke up. So did villagers who claimed that, despite assurances given by the government and the project proponents, they had not been compensated for the loss of their homes and their livelihoods. Other public hearings around development projects have also since been held.

Transparency and Elections

The huge amount of money spent during elections, in violation of electoral laws, and the criminal background of some of the legislators and parliamentarians have often been seen as some of the factors inhibiting good governance in India. Recently, both the Election Commission 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 widely disseminate information regarding electoral candidates, filed in pursuance of the Supreme Court order. The NCPRI took up this work in Rajasthan and Delhi. In Rajasthan, they worked in collaboration with the MKSS and in Delhi with the Centre for Equity Studies and Parivartan, an RTI group working in Delhi.

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, the voter's lists were read out in Gaon (village) and Ward Sabhas (gatherings) allowing the local people to help identify fictitious voters and vouch for those genuine ones whose names had been left out.

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

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

Transparency and Urban Municipal Governance: The Story of Parivartan

Nearly a third of India's population, about 300 million people, live in urban areas. 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 financial constraints aggravates the situation. However, it is also true that even those resources that are allocated for providing municipal services and infrastructure are often misappropriated or otherwise wasted. Therefore, things are much worse than they need to be, even with the current paucity of resources.

A group of Delhi citizens decided to use the newly enacted Delhi Right to Information (RTI) Act to attack the problem of wastage and corruption. A young civil servant, Arvind Kejriwal,

took the lead and formed a group called Parivartan. Parivartan started working in two resettlement{9} colonies in Delhi, New Seemapuri, and Sundarnagri. They started focusing on the status of civic amenities and services provided by the Municipal Corporation of Delhi (MCD). In this process they discovered that there were many problems with the functioning of the MCD in that area.

The jansunwai

Consequently, in December 2002 Parivartan, along with the NCPRI, and with the help of local NGOs and residents of the area, organized a *jansunwai* on the amenities and facilities reportedly provided by the MCD. The *jansunwai* was attended by about a thousand people and was presided over by a panel chaired by a retired judge of the Supreme Court of India. In the public hearing, the various contracts given for constructing civic amenities 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.

Based on these public testimonies by the local people, it emerged that of the Rs 13 million officially spent on providing civic amenities in the area (and corresponding to 64 works and contracts), items or works worth about Rs. 7 million did not physically exist. This figure did not include the amount in question on account of quality issues like the quantity of cement used or the depth of bitumen on the road.

Effect of the jansunwai on the local people and their reaction

The local people were understandably agitated when they realized that officials and contractors had pocketed the funds sanctioned for many of the sorely needed civic amenities. Their anger was aggravated by the fact that for years they had been pleading with the local officials to provide these amenities but were constantly told that the money was not available. The RTI campaign triggered off a number of debates and discussions in the community. People were amazed at the size of the fraud and demanded a platform where the people could raise their voices collectively.

The *jansunwai* made people realize for the first time that the government can be held accountable in full public gaze. They felt empowered and recognized their right and obligation to demand accountability from the government. Before the *jansunwai*, the public were in awe of the local government officials and political representatives. However, the *jansunwai* once and for all changed all this.

As a result of the public hearing, each block in Sundernagari has formed a *mohalla samiti* (local area committee), comprising representatives from each street in that block. The *samitis* monitor the execution of civil work in their block and insist on making public the contents of each contract, before it can be executed.

Reaction of the local bureaucracy

Prior to the *jansunwai*, the local MCD engineers, though pretending to be cooperative, tried their best to ensure that information was not made available. They also refused to cooperate and alleged that false allegations were being made against their department.

After the *jansunwai*, a team of Parivartan workers and MCD engineers jointly inspected a number of sites. However, the engineers insisted on giving flimsy explanations for most of the deficiencies. Nevertheless, there was a marked difference in their attitude towards members of the public. The officials are now far more responsive and courteous in their

dealings with the public and whenever any person from Sundernagar or New Seemapuri calls them, they listen to the grievance, make an effort to redress it and invariably make public the details of contracts. Whenever demanded by the public, the engineers themselves visit the site.

Effect on the Political Leadership of Delhi

While Parivartan was holding street corner meetings, in preparation for the *jansunwai*, the local MLA{10} started holding parallel meetings in the same area. He publicly criticised Parivartan and alleged that Parivartan representatives had demanded three hundred thousand rupees from him and, as he could not meet their demand, they were tarnishing his image. Slowly, these allegations started taking the shape of threats. Some people informed Parivartan that plans were afoot to get their workers kidnapped or hauled up by the police on some false charges. Some of the local supporters were pressured to disassociate with Parivartan.

When Parivartan workers went to invite the local MLA for the *jansunwai*, he accused Parivartan of being an organization of touts who extort money from government officials. He also questioned Parivartan's source of funding and warned them that he would not allow the *jansunwai* to take place in his area. Parivartan workers politely told him that holding a *jansunwai* was their democratic right and so it would be held. However, if he had any questions about the funding or working of Parivartan, they would be happy to publicly answer them. Ultimately, he came to the *jansunwai*, accompanied by about forty of his supporters. He and his supporters repeatedly tried to disrupt the meeting, but could not succeed.

Reportedly, after the *jansunwai*, a number of MLAs met the Chief Minister{11} (CM) and requested her to prevent such *jansunwais* from taking place in future, as they could adversely affect the electoral prospect of the ruling political party. They also fed the CM wrong information about the *jansunwai*, alleging that it was attended by outsiders especially brought from neighbouring states, and that the people who gave evidence at the *jansunwai* were from opposition political parties. However, at a subsequent meeting of Parivartan representatives with the CM, these issues were cleared up and the CM reacted very positively. She promised an enquiry into the alleged discrepancies and also promised to study the recommendations for systemic changes made by Parivartan, and to implement those that were found feasible. Since then, the following five recommendations have been accepted by the MCD:

1. A board displaying basic information would be displayed at the site of every work.
2. The list of all completed works will be displayed on notice boards of all division offices for at least a month after completion.
3. The details of all ongoing works in an area will be pasted on the walls of the MCD store in that area.
4. The files containing old contracts would be placed in MCD stores, where the public can come and inspect them at any time.
5. The list of all works carried out by the MCD in an area, in the previous year, would be displayed on a prominent wall in that area.

The reaction of local contractors

Before the *jansunwai*, during site verifications and street corner meetings, Parivartan workers were threatened by some of the contractors with dire consequences, if they pursued their inquiries. However, at the same time another contractor willingly confessed, on camera, 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 for confessing was to get the unscrupulous officials sent behind bars, as they forced even the honest contractors to become corrupt!

In all the contracts whose copies were obtained before the *jansunwai*, the contractors appeared to be under bidding in order to get the contracts. A number of contracts were awarded at prices at which it would be impossible to carry out the contracted work. This was possible only because the contractors already had an agreement with the supervising officials that they need not actually do the work but could raise false bills and share the earnings. However, after the *jansunwai*, the local engineer confirmed that not only has there been a marked improvement in the quality of works being implemented, but underbidding has also stopped.

Transparency and Arbitrary Governance: RTI Activism in Maharashtra

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 (*HumJanenge* meaning “we will know”), and are perpetually asking the government to explain its actions. The interesting thing about this Maharashtra model is that it is not very labor intensive and does not necessarily involve the organizing of large public meetings.

In December 2004, sixteen of the citizens who had successfully used the RTI Act for eliciting information, were invited to display to the public, in Pune, their records relating to the requisitions for information successfully filed under the Maharashtra Right to Information (MRTI). The citizen users were also available for discussions with members of the public. Some of the issues taken up by these citizen's are listed below: {12}

- In Pune, Maj Gen SCN Jatar (retd), president of Nagrik Chetna Manch (an NGO), demanded the details of official cars used by the city's elected officials, like the mayor. He was shocked to learn that in 10 months, they spent five million rupees on their official cars. The mayor spent more than seven hundred thousand rupees on the official cars between January and October 2003. Apparently the concerned officials had been going for joy rides and holidays at public expense.
- A local magistrate at one of the districts in Mumbai was transferred within a few months of his assuming charge, despite the rules specifying a minimum tenure of three years. He was known to be a very honest and efficient officer and had become quite popular with the local people. Kewal Semlani demanded to know the reasons why he was transferred out and was not the transfer a violation of the rules. Within a few days of the request for information being filed, the transfer orders were revoked.
- Shailesh Gandhi of Mumbai effectively used the Act in eliciting names of members of parliament, members of the legislative assembly, and ministers who recommended transfers of police officers in Mumbai. This was significant because the law says that if there is any request for the transfer of a police officer from any outside source, then unless the police officer can prove that he was not behind that request, disciplinary action will be taken against him or her. Shailesh Gandhi finally received the information only after he approached the Lokayukta{13} in a second appeal. As he suspected, the information revealed that a large number of officials were in violation of the law but no action had been taken against them. Subsequent to this information becoming public, action has been initiated against a large number of the erring officials.
- Another query by Gandhi on the lease of land by the Bombay Municipal Corporation to the Royal Western India Turf Club (RWITC), a horse racing course in the heart of

Mumbai (Bombay), revealed some curious facts. The first lease deed was signed in 1914 for a 60-year period. Another lease came in to force in 1994 and remains in force up to 2013. But does this mean that no lease existed between the civic body of Mumbai and the Turf Club for two decades, after the first expired in 1974? And if so, what is the revenue lost by the people of Mumbai on this count, and who is responsible for this? Subsequently, Gandhi accessed information on a large number of leases and discovered that leases covering over 3 million square meters in the heart of Mumbai (where real estate is among the costliest in the world) had lapsed and no action had been taken.

- Sunetra Dolas, a 62-year-old grandmother living in Thane, Maharashtra, got two civic officials fined for withholding information. Dolas's fight began in July, when officials stonewalled her questions about the dubious constructions on a 3.5-acre plot given to a co-operative housing society. The plot was handed over to the society in 1950 to provide houses for people belonging to certain disadvantaged groups. However, some of the members of the society began building houses for themselves on this land. Dolas made 32 applications seeking details of the area, type of buildings being built and whether they had the required sanctions. The replies were very disappointing. The Municipal Corporation of Thane said that she was interfering in civic affairs and that they knew their job. The corporation also stated that this information could not be divulged as it was a "state secret"! She was subsequently told by the corporation that they do not give the sanctions but some other department does. When she approached that department, they sent her back to the corporation. Finally, fed up with the run around, she appealed and her appeal was allowed. The two officers who were stonewalling her and giving her the run around were fined forty seven thousand rupees.{14} They were also ordered to give her the information sought, which revealed that most of the constructions were illegal.

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 one hundred and fifty billion rupees a year on distributing subsidised food.

However, there are huge leakages in this system and a large proportion of this subsidy, some have even calculated it as 50%, 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 beneficiary's signature is affixed. One of the common ways of siphoning off this subsidy is to make a 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 organized public meetings to confront the shop owners and the officials with the rampant corruption in the system. A group called Satark Nagrik Sangathan{15} (SNS), was the first to organize a public hearing on the issue of ration shops and their malfunctioning in South Delhi. Parivartan, which was active in East Delhi, also took up this issue. Given below is one of the interesting case studies of using the right to information to procure one's basic right to food:

Triveni Shows The Way

Triveni is a poor woman from Delhi, who has an Antyodaya{16} ration card, which entitles her to get wheat at Rs 2 per Kg. and rice at Rs 3 per Kg. The ration-shop keeper, however, always charged her Rs 5 for wheat and Rs 10 for rice. As the quality of the rice and wheat in the ration shop was poor and the price charged almost equal to the market price, Triveni stopped getting wheat and rice on her card. In February 2003 she learned for the first time, from a local NGO, that she was actually entitled to get rice and wheat at a much cheaper price. This shocked her, because she had never received grains at such cheap rates and no one had told her of her rights. She, therefore, filed an application under the Delhi Right to Information Act, asking for the details of ration issued to her as per official records, and for copies of the cash memos purportedly issued to her. To her utter surprise, the official records showed that she had been issued, every month for the last many months, wheat at Rs 2 per Kg and rice at Rs 3 per Kg. The cash memos showed thumb impressions under her name though she, being literate, always signed her name. As the thumb impressions were obviously fake, she now had foolproof evidence against the shopkeeper.

She, therefore, filed a complaint against the shopkeeper. However, the moment her complaint was received at the food department, the concerned shopkeeper got to know and he first offered her Rs 20,000 to withdraw her complaint. Though her financial condition was very bad, she refused to accept the money. When this did not work, the local shopkeepers started threatening her and terrorizing her. The ration dealers even threatened her family members and tried to get them to sign on a blank paper, but her family members did not yield. Finally, on a Sunday, 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 the presence of the inspectors for an enquiry on Sunday. Seeing the public turning hostile, the inspectors left the place.

Later on, she got summons from the office of the deputy commissioner, food and supplies. When she appeared before him, he was quite sympathetic to the shopkeeper and 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 on continuing 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, Triveni has started getting the correct quantity of ration at the right prices. The threats from the shopkeepers have also stopped.

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 in New Delhi where the National Campaign for People's Right to Information (NCPRI) was formed.^{17} 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 NCPRI and the Press Council of India formulated the initial draft, under the guidance of Justice P.B. Sawant, retired judge of the Supreme Court of India and Chairman of the Council. This draft was discussed at a meeting, in 1996, attended by many concerned people, including representatives of the major political parties. The draft was then presented to the Government of India which, as is its wont, set up another committee, under the chairmanship of Shri H.D. Shourie. This committee came up with a somewhat watered-down version of the act in 1997. This draft was further amended and introduced in Parliament, in 2000, as the Freedom of Information Bill.

At this point, the Bill was referred to a Select Committee of the Parliament, which invited comments from the public. The Bill was passed by Parliament, with almost no amendments or changes, in December 2002. The process took nearly six years from the submission of the NCPRI/Press Council draft bill in 1996. Also, it is possible that the Bill passed more because of prodding by the Supreme Court of India, rather than any desire on the part of the government itself. Interestingly, till the elections and the advent of a new government, in May 2004, even this weak act had not been notified and made operative.

Amending the RTI Act of 2002

Essentially, the four indicators of a strong transparency law can be seen to be *minimum exclusions, independent appeals, stringent penalties* and *universal accessibility*. The 2002 Act failed on all these counts. It excluded a large number of intelligence and security agencies from the ambit of the act, it had no mechanism for independent appeals, it prescribed no penalties for violation of the act and it restricted the access only to "citizens" and did not put a cap on the fees chargeable under the act.

In May, 2004, the United Progressive Alliance (UPA), led by the Congress Party, came to power at the national level, displacing the BJP led National Democratic Alliance government. The UPA government brought out a Common Minimum Programme (CMP) which promised, among other things, "to provide a government that is corruption-free, transparent and accountable at all times..." and to make the Right to Information Act "more progressive, participatory and meaningful". The UPA government also set up a National Advisory Council (NAC), to monitor the implementation of the CMP. This council has leaders of various mass movements, including the right to information movement, as members.

In August 2004, the National Campaign for People's Right to Information (NCPRI), formulated a set of suggested amendments to the 2002 Freedom of Information Act. These amendments, designed to strengthen and make more effective the 2002 Act, were based on extensive discussions with civil society groups working on transparency and other related issues. These suggested amendments were forwarded to the NAC, which endorsed most of them and forwarded them to the Prime Minister of India for further action.

Based on these recommendations of the NAC, the Government of India introduced a revised Right to Information Bill in Parliament on 22 December, 2004. Although this RTI Bill was

considerably stronger than the 2002 Act, some of the critical clauses recommended by the NCPRI and endorsed by the NAC had been deleted or amended. Most significantly, the 2004 Bill was applicable only to the central (federal) government, and not to the states, and had almost no penalty provisions.

Consequently, there was a sharp reaction from the civil society groups and the government was forced to set up a group of ministers to review these changes, and to refer the proposed act to a Standing Committee of the Parliament. Meanwhile, the NAC has also met and expressed, in a letter to the Prime Minister, their unanimous support to their original recommendations. Representatives of the NCPRI and of various other civil society groups, and other concerned citizens, sent in written submissions to the Parliamentary Committee and were invited to give oral evidence.

These efforts were mostly successful, and the Parliamentary Committee and Group of Ministers recommended the restitution of most of the provisions that had been deleted, including applicability to states, and strengthened penalty provisions. The Right to Information Bill, as amended, was passed by both houses of the Indian Parliament in May 2005, got Presidential assent on 15 June 2005, and came into force from 13 October 2005.

Thereafter, the focus shifted to implementation issues. As of this writing, government departments are either appointing no Public Information Officers (PIOs), as required under the law to receive requisitions, or appointing too many, so that people do not know which one to approach. Information is being routinely denied, forcing more and more people to appeal to the information commissions. But, in many states, information commissions have not been constituted, or not given the facilities to become functional.

The civil society coalition behind the law objected in particular to the tendency of appointing serving and retired civil servants to the information commissions. These commissions are not only the final appellate authorities under the RTI Act but also responsible for overseeing the proper implementation of the Act. The NCPRI, in a hard hitting press release on 11 October 2005, stated that:

“Being the appellate authority under the RTI Act, the Information Commission would be called upon to objectively adjudicate on disputes over access to information between the citizen and the government. The disputed information could often be about matters that were directly or indirectly under the charge of the retired civil servants, when they were in service. There would also be many occasions where the Commission would need to decide on releasing information that might embarrass the erstwhile colleagues and subordinates of such retired civil servants. In these circumstances, both being objective and appearing to be objective would be difficult.

The Information Commission, through its orders and judgements, is expected to initiate a change in the mindset of the bureaucracy. Not only must the bureaucracy recognise and accept that the right to information is a fundamental right of the citizen, but they must also be prepared to justify their actions and decisions before the public. This is essential in a participatory democracy. Whether a Commission exclusively or overwhelmingly populated with former civil servants can provide such leadership is doubtful.”

Perhaps because the process of getting the law was so participatory, there continues to be widespread concern and protest against all seeming weaknesses and deviations. There is some perceptible movement - age-old bureaucratic institutions are beginning to rub their eyes awake in response to the din.

Contemporary Issues and Debates

RTI and Empowerment

The Indian democracy is not only robust but also (and perhaps consequently) progressive in its stated positions. The problem is in the implementation of the progressive policies and laws 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 provided 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.

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.

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.

Second, it empowers because of the outrage that people feel, once the truth is revealed. hen 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.

But, finally, it empowers because communities across regions, across nations and across the world start seeing “official” evidence of the duplicity of the state. This forges a new solidarity among the oppressed, which, in its togetherness, significantly empowers them all.

The Challenges Before the RTI Movements

The battle for transparency is not without its ups and downs, nor without actual or imagined pitfalls. If transparency is really as powerful a tool for people’s empowerment as it is made out to be, it would be unrealistic to expect the state to willingly give up its stranglehold on information. Nor would the powerful interests, who stand to get exposed, allow this to happen without a fight. Consequently, many challenges confront the RTI movement.

Many sceptics, both well meaning and mischievous, continue to articulate their reservations about the right to information. For starters, it is argued that right to information laws 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 each other, and some of them outdated or inappropriate. The right to information (RTI) would threaten 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.

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 possibly result in violence.

Civil servants sometimes resent 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!

Perhaps the most unusual of the arguments is that transparency will result in inaction, with civil servants refusing to take decisions or spend public resources, as they would constantly be in fear of prosecution. The fact that they can only be prosecuted if they do illegal and dishonest acts is lost sight of. Or, is this a subtle acceptance of the fact that what motivates a lot of government action is illegal gratification and once there is a real danger of being exposed, the main motivation to act disappears.

It is not only the civil servants who have to come to terms with RTI. Civil society groups and non-government organizations also need to be transparent and publicly accountable. The public also has to learn how to use RTI. 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 often poses a threat to those using it to expose powerful interests. Recent experiences in India have shown that often when applications are made to access sensitive information, the applicants are subjected to threats and in some cases to physical violence.

Protecting RTI activists

In September 2003, local leaders and ration shop owners attacked volunteers of Parivartan, while they were helping people to access their ration records from a government office. The volunteers were severely beaten up and it was only on the intervention of senior officials that the volunteers, including four women, were evacuated by a police vehicle and driven to safety.

In November 2004, Santosh, a woman activist of Delhi, working with people trying to get information about their subsidised rations, was attacked with a blade and her throat slit.

Fortunately, she survived this murderous attack. This was not the first attack on her and she had earlier also been attacked but had managed to escape.

In June, 2004, there was an attack on an RTI activist in Mahabaleshwar, near Mumbai (Bombay). The house of Balu Panchal, an environmentalist, was attacked and ransacked on World Environment Day and years of work reduced to ashes. Panchal had been campaigning against illegal felling of trees and against unauthorized construction, using RTI to access the incriminating information. This was the provocation that led to the attack and the destruction of all the records that could have taken the case forward.

Therefore, to protect the seekers of information from harm, especially at the hands of those who run the risk of being exposed, is a major challenge before the RTI movement. Perhaps the immediate answer is to progressively make information available *suo moto*, in a manner such (say on the web) that any one can access it without being identified.

Punishing the Guilty

To ensure that corruption (or other misdeeds) of officials, exposed using RTI, do not go unpunished, is another major challenge. If no action is taken, it emboldens the corrupt officials and demoralises the citizen. In fact, it makes things worse than before, for it removes fear from the mind of the official and hope from the mind of the citizen. There is the danger of sinking into even more profound cynicism, from “only if people knew” to “nothing happens, even when everyone knows”.

Yet, RTI laws rarely, if ever, provide for speedy and effective prosecution of those who have been exposed by the use of that law. Therefore, the matter is left to the usual processes of the government and the courts. However, in India as in many other countries of the South, the courts and the related investigative agencies are horribly over burdened and it takes years to get an investigation completed, and much longer to get a conviction. Besides, having failed to prevent incriminating information from becoming public, the bureaucracy focuses on damage control and in trying to prevent further action. The Kukurkheda story from Rajasthan, or the experiences in Maharashtra and Delhi, are cases in point.

In a *jansunwai* organized by the MKSS, in Kukurkheda *panchayat*, (described earlier), the *sarpanch* publicly accepted her guilt in a charge of corruption in public works to the tune of a hundred thousand rupees, and during the *jansunwai* itself returned the first instalment of fifty thousand rupees, which was deposited in the *panchayat* fund. The village community and the MKSS saw this as a major victory, although questions were raised whether mere refund of the amount misappropriated was adequate penalty and deterrence, or whether criminal charges should also have been registered.

Some days after the *jansunwai*, the Block Development Officer (BDO) called an informal meeting of *sarpanches* of the block, and they jointly persuaded the *sarpanch* of Kukurkheda to retract her confession and get back the money that she had returned. Subsequently, she illegally withdrew from the *panchayat* fund the fifty thousand rupees she had paid into it. Neither district nor block officials have taken any action against her.

By contrast, in Ajmer district, two *sarpanches* who had also returned misappropriated money detected during the *jansunwai*, and refused to retract their confession or reclaim the money, had recovery orders and police complaints filed against them and were put behind bars.

In Delhi, after the public hearing in Sundernagari, in December 2002 (described earlier), various concerned persons met the top political and administrative functionaries of Delhi, and

demanded that the guilty should be punished. A detailed report of discrepancies found in each contract was submitted to each of these government functionaries and the police was also contacted, but there was no response.

When all efforts failed, Parivartan filed a petition, In May 2004, in the Delhi High Court, which then directed the Delhi police to investigate 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 investigated the charges and found all of them baseless. However, the court observed that it was not proper for the “accused” to also be the jury and judge.

This order of the High Court caused panic amongst the concerned officials and contractors. Two of the engineers reportedly sunk into severe depression and many of the contractors refused to do any more work. In order to find a solution, the municipal councillor of the area approached local activists and offered to ensure total transparency in the execution of all civil works carried out in the area. He said that he had directed the executive engineer of this area to provide copies of estimates and sketches to the local NGOs before any work starts. The public could inspect each work as soon as it was completed and any deficiencies would be immediately rectified. The contractors would be paid only after this was done. According to the councillor, the contractors and engineers were afraid of their works being subjected to a public post-mortem, in the form of a *jansunwai*, as this was often much after the work was completed and did not leave any scope for the rectification of faults. Meanwhile, the High Court case drags on. At the last hearing as of this writing, the Delhi Police had not yet collected evidence from the field, though nearly four years had passed since the work in question was allegedly executed.

What, then, are the options available to the individual or to civil society groups, if no action is taken against government functionaries indicted in a public audit? There are no ready answers, because public audits of government authorities is a new phenomenon, and answers would perhaps emerge as more experience is gathered by diverse groups working in different regions on varied issues. However, recourse to some kind of organized peaceful protest seems inevitable, if state authorities remain recalcitrant.

Future Directions

Having an RTI law enacted, even a good law, is only the beginning of the struggle. As already mentioned, the next important step is to ensure that the misdeeds discovered by the use of transparency laws are effectively and speedily investigated and punished. Along with this, a creative debate needs to be conducted on the legitimate limits to transparency. We must not let governments convince us that governance essentially involves secrecy. We must oppose the doctrine that national and individual security can only be ensured if the right to information is suspended, or substantially inhibited. We must not only demonstrate that there is no good evidence in support of these contentions, we must also assert that public access to information is the bedrock of progressive democracy and, if this inhibits governance as we know it today, then it is governance that must change.

We live in an era of specialization. These are also times when knowledge, or at least information, is growing at a rate faster than ever before. But this rapid growth is also leading to more and more people knowing less and less of what is known. And the culture of specialization is resulting in information being packaged in ways that allow fewer and fewer people to understand it. If transparency is to be meaningful, then that which is revealed must also be understandable. Therefore, we have to evolve new methods of demystifying information and of ensuring that all of humanity is in a position to comprehend the information and ideas that affect their lives.

The challenges are many, but there is also much energy across the country. Perhaps not since the idea of democracy itself was first mooted, has any idea so caught the imagination of the people of India and so threatens to revolutionize the way in which they will allow themselves to be governed.

NOTES

- {1} Former Convenor, National Campaign for People's Right to Information (NCPRI), India.
- {2} The Hindu, 1955. Nehru Warns Partymen. *The Hindu*, 21 January.
- {3} The name, roughly translated, means a collective of the energy and strength of workers and peasants.
- {4} Loosely translated, the name means “coalition of workers and peasants”.
- {5} Panchayats are local self government institutions in most of rural India. The term panchayat is also used, as here, to cover the village or group of villages forming one unit of administration under the panchayat system.
- {6} ‘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.
- {7} Order of the Division Bench of the Bombay High Court, 7 October 1986, as quoted in the BEAG booklet on the case. *Bombay Environmental Action Group v. Pune Cantonment Board, A.S. Writ Petition No.2733 of 1986*
- {8} Order of the Supreme Court, 11 October 1986, *ibid. Bombay Environmental Action Group v. Pune Cantonment Board, SLP (Civil) No. 11291 of 1986*. The Supreme Court
- {9} Resettlement colonies are so known because they are formed of people who had earlier ‘illegally’ encroached on public land and subsequently evicted and resettled by the government. These colonies are primarily populated by the very poor people who have emigrated from rural areas in search of livelihood.
- {10} Members of the Legislative Assembly, being elected representatives to the state legislature.
- {11} The elected head of the state government.
- {12} From Prakash Kardaley, via email dated November 30, 2004. KARDALEY, P.M. (pmk1504@gmail.com).
30 November 2004. RTI Experiences. E-mail to S. SINGH (shekarsingh@gmail.com).
- {13} The appellate authority under the Maharashtra Right to Information (MRTI) Act.
- {14} Over a thousand US dollars – which would be more than two months salary for a middle level civil servant.
- {15} Loosely translated means ‘vigilant citizen’s group.’
- {16} A ration card, given to the poorest of the poor and entitling them to a fixed quantity of food grains every month, at a subsidized rate, to be got from a designated ration shop.
- {17} The founding members were Ajit Bhattacharjea, Aruna Roy, Bharat Dogra, K.G. Kannabiran, M.P. Parmeshwaram, Prabhash Joshi, Prashant Bhushan, Renuka Mishra, S.R. Sankaran, and Shekhar Singh.