



**Discussion Paper Series - 4**

**People's Right to Information  
Movement:  
Lessons from Rajasthan**

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The analysis and policy recommendations of this Paper do not necessarily reflect the views of the United Nations Development Programme, its Executive Board or its Member States.

## PROLOGUE

Human Development Resource Centre (HDRC) of the India Country Office and South Asia Poverty Alleviation Programme (SAPAP) took the lead in having this paper prepared as a part of research and advocacy to Right to Information.

Current debates on effectiveness of development interventions focus increasingly on transparency and accountability of public expenditure. The Indian experience where community demands to know the details of usage of public funds is instructive. The work of Mazdoor Kisan Shakti Sangathan (MKSS) and the subsequent enactment of legislations pertaining to Right to Information in number of Indian States is a good example of a vibrant grassroots democracy at work.

This paper is an independent account of the process of people's demand to know how funds are expended and also an evaluation of the legislative procedure across Indian states. We hope that this narrative, which is from an activist's viewpoint, could be of interest to all development practitioners as we grapple with the complexities of good governance in South Asia.

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## Introduction

The human lie or falsehood was alien to the wise race of horses, the *Honhybums*, in Jonathan Swift's *Gulliver's Travels*. In the absence of any word for lie or falsehood in their language that recognised only the truth, the Honhyhums called it 'The Thing Which is Not'. Had they made a voyage of discovery through the mazes of government paperwork in contemporary India and seen them in the light of the material reality around, they would have been amazed by the most telling instance of what approximates 'The Thing Which is Not' - the so called 'Development'.

The ordinary villagers of central Rajasthan afflicted nearly mortally by the great lie, could not like the *Honhybums* merely afford to contemplate and be amazed by it from a distance. It is more than eight years now, since late 1994, that they have been holding up to the light of stark reality the manufactured myth of development and 'poverty alleviation'. Eight long years, since the poor in the villages of central Rajasthan have been taking on headlong the question of accountability and transparency in development expenditure.

Account for our money, they have asked, which we give as taxes for our collective material development. Or the money that comes for us from all over the world as aid. Show up in quality and

quantity the assets you have built for us on the ground, not on paper, they have asked. They are angry, not amazed, at what they have found. And what have they found?

Ghost entries in muster rolls of famine relief or other rural development work gobbling up wages of real residents in the village who are too poor to buy themselves two square meals and are without any other job. School rooms non-existent in reality but entered in the records as complete. Wells dug only in documents while women fetch water from miles away. Stones never supplied to build a small path bridge, roads never repaired, sums never loaned out to the poor for self-employment but embezzled by petty village officials and the rural rich, and so on and so forth - all forming perfect entries in government records. The great lie of development is certainly not harmless 'Fiction' as in literature and art, to regale and enlighten (though it does that in an ironic sense), but a cover-up for the greed of a few at the cost of the collective good.

How do the poor know what happened to the minimum wage that would have made them survive one more day? By demanding information contained in the official documents. Only after exercising their right to know can the poor strive to get back the many minimum

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wage days snatched from them. The many days of their lives snatched from them, in fact.

By exercising their Right to Know - or the Right to Information - collectively through a long series of *Jan Sunwais* or Public Hearings on development expenditure in their villages, the poor peasants and workers have taken a step towards shifting the local power balance in their favour. They have made corrupt people return the embezzled money in many cases and instilled a sense of fear in the permanent and elected local government functionaries. Through these Public Hearings, the poor have sought to fight corruption, demand accountability from those who rule in their name, reclaim development done in their name and exercise their sovereignty over a government run in their name.

Apart from taking a step toward a shift in the power balance in their favour, the poor of central Rajasthan, helped by the Mazdoor Kisan Shakti Sangathan (MKSS), an organisation of peasants and workers active in that area - by their Public Hearings and a historic agitation in 1996-97 for a Right to Information Legislation in the State of Rajasthan - also effected a significant shift in the discourse on this subject in India. Hitherto in India, the middle class liberal opinion and the Courts too, in the wake of this country's experience with pre-censorship during the emergency of 1975-77, had defined the Right to Information as inherent in the fundamental right to freedom of speech and expression. The Supreme Court of India best summed it up in the following pronouncement:

*"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."*

*"The people of this country have a right to know every public act, everything, that is done in a public way, by their functionaries. They are entitled to know the particulars of every public transaction in all its bearing."*

*"The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19(1)(a)."*

*"It has, therefore, been held since long before Conway v. Rimmer (1968 AC 910) (supra) was decided in England and since the decision in Sodhi Sukhdev Singh's case (AIR 1961 SC 493) (supra) in India that a claim for immunity against disclosure should be made by the minister who is the political head of the department concerned or failing him, by the secretary of the department and the claim should always be made in the form of an affidavit."*

*"It is only under the severest compulsion of the requirement of public interest that the court may extend the immunity to any other class or classes of documents and in the context of our commitment to an open government with the concomitant right of the citizen to know what is happening in the government, the court should be reluctant to expand the classes of documents to which immunity may be granted. The court must on the contrary move in the direction of attenuating the protected class or classes of documents, because by and large secrecy is the badge of an authoritarian government".*

(SP Gupta vs. Union of India, 1981 Supp. SCC 87).

Beyond this, the MKSS experience has brought home the fact that the people's Right to Information is essential to the basic human right to survival and livelihood, which, the Supreme Court holds, is inherent in the Right to Life and Liberty contained in Article 21 of the Constitution. This is the essential linkage we will explore in the course of this paper through the MKSS experience.

Triggered by this shift in the discourse and practice of the people's Right to Information by the Rajasthan movement, the National Campaign for People's Right to Information (NCPRI) was formed in 1996 following the 40 day long historic sit-in strike in Beawar, a small town in Ajmer District of

Rajasthan. The NCPRI intends to extend the Rajasthan vision across the country into other areas of governance and policy, also all public spheres including areas abdicated by governments in favour of the Corporate Sector and NGOs in this era of economic liberalisation.

A campaign of advocacy by the NCPRI and other groups has effected the passage of right to information laws in many states and also a national law on the subject - even though in nearly all cases, the powers that be have succeeded in diluting these enactments through deliberately left loopholes and have even sought to restrict the Right to Freedom of Speech and Expression guaranteed in the Constitution.

*The Mazdoor Kisan Shakti Sangathan experience has brought home the fact that the people's Right to Information is essential to the basic human right to survival and livelihood*



## Genesis

*This chapter describes the circumstances which led to the formation of the Mazdoor Kisan Shakti Sangathan, its early successes and how this led it to review the development package in rural India as a whole.*

*Formally constituted on May Day, 1990, the Mazdoor Kisan Shakti Sangathan was born out of a land struggle against a feudal landowner in central Rajasthan*

Formally constituted on May Day, 1990, the Mazdoor Kisan Shakti Sangathan was born out of a land struggle against a feudal landowner of village Sohargarh in Deogarh Tehsil of Rajsamand District in central Rajasthan. Fought indomitably by the villagers, the struggle made a close team of activists out of a motley group of persons who had recently come in contact with each other. It was around this nucleus of activists that the Sangathan (meaning organisation), owned by a large number of people in the area, was formed. Of these, three, namely Aruna Roy, Nikhil Dey and Shankar Singh knew each other for slightly longer. They had met in the Social Work and Research Centre (SWRC), Tilonia in Ajmer District of central Rajasthan where Aruna Roy and Shankar Singh worked.

Aruna Roy was a former officer of the elite Indian Administrative Service, 1968 batch, who quit her job in 1975 to work with SWRC, a voluntary organisation founded three years earlier by her husband Sanjit Roy, better known as Bunker Roy. Shankar Singh was a local young man and SWRC's ace home-spun communicator – barefoot, in SWRC terminology. In the mid 1980s

while they were looking for a path to Social Change beyond the road of rural Development taken by SWRC – heavily subsidised by institutional donors, Nikhil Dey, a young man educated in America came and met them. Bound by a common quest, they came to live in the hamlet called Devdoongri, near the small highway town of Bhim in Rajsamand District in 1987 on a small fellowship grant of Rs. 30,000 from the Union Government's Ministry of Human Resource Development, to study issues related to the participation of the poor in the government's poverty alleviation programmes. Shankar Singh's wife Anshi, along with the couple's children, also joined them, living on a piece of household land that belonged to a relative of Shankar's.

This group of three soon established contacts in the village and the area around Devdoongri. Among others, the contacts included RN Mishra, an English teacher at a government school in Bhim and local peasants and rural labourers like Mot Singh, Chunni Bai, Lal Singh, his mother Bhuriya, Bhanwar Singh, Tej Singh, Chunni Singh and several others. It was through Lal Singh, a former police constable dismissed for his

participation in a strike protesting against the practice of deploying constables as domestic servants in the homes of their officers, that the opportunity of a common struggle over land came their way. Lal Singh belonged to Sohargarh, a village nearly 12 kms from Bhim and across the highway from Devdoongri.

Sohargarh lived in terror of Hari Singh, ex *Jagirdar* or feudal Lord of the village who, despite ceiling laws, still controlled over 1,500 acres of land. He levied a personal fine on the villagers for trespassing if they grazed their cattle or collected firewood from the village commons illegally controlled by him. Lal Singh, whose grandfather had supplied milk to Gandhi's Ashram in Sabarmati, was no stranger to the idea and practice of common struggle and organisation. He found kindred souls in Aruna, Nikhil and Shankar. The villagers were gradually persuaded into challenging Hari Singh's sway.

Though the list of Hari Singh's misdemeanours was long, it was decided to corner him on a firm basis by identifying a piece of land in his illegal possession and getting it out of his control. A window of opportunity opened up in the winter of 1988 when news came that the Sub Divisional Magistrate of the area would hold a court in the Panchayat of Tal as part of the Prashashan Gaon Ki Ore (village oriented administration) programme of the State government. A 25 hectare patch of the village grazing land was identified for the purpose. But they also needed the *Khasra*, i.e. the plot number, and other relevant details of the land from the Patwari. This is not usually easy, but fortunately an exceptional Patwari

obliged and parted with the information. The theme of access to information contained in government records to help people attain other entitlements (or the right to information enabling other entitlements) was thus innocuously set in motion at Sohargarh for the group's other future struggles.

Equipped with relevant information regarding this patch of the village common and, probably, Aruna Roy's familiarity with administrative procedures, some people from Sohargarh petitioned the SDM during his session at the Tal Panchayat. The SDM ruled that the land did not belong to Hari Singh. This helped in significantly breaching the former Jagirdar's hold on the village, but to bring the land directly under the possession of the local people and not 'via the state', as Rajni Bakshi calls it in her book *Bapu Kutir*, required another manoeuvre. There was also the need to take care of the divide in Sohargarh between Hari Singh loyalists and those vying to liberate themselves from his feudal grasp. Formation of a women's cooperative in the village and getting the land allotted to it for forestation took care of this. Of course, Hari Singh's henchmen tried to intimidate the villagers with guns and swords, but they stood their ground and finally got possession of the land through the cooperative. A small forest stands within an enclosure of barbed wire on that piece of cooperative land and another adjoining part of the village common under the possession of, and jointly managed by, the forest department. The two adjoining forests together bear testimony to the success of the Sohargarh struggle.

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*With drought-prone, non-fertile small holdings, agriculture is unable to sustain livelihoods in the central Rajasthan Districts and the population is mainly dependent for survival on the famine relief works and other rural development works of the government, carried out mainly by the Panchayats*

The successful Sohangarh struggle and later, a struggle for minimum wages at the Dadi Rapat, formed the nucleus for the formation of the MKSS on May 1, 1990 during a rally of around 1000 people gathered from 27 villages, around Bhim, belonging to Pali, Rajsamand, Bhilwara and Ajmer Districts. The Sohangarh experience and the mass contact programme by the core group behind it had convinced people of the area of the need to organise their struggles against injustice in a formal way.

With drought-prone, non-fertile small holdings, agriculture is unable to sustain livelihoods in the central Rajasthan Districts of Ajmer, Bhilwara, Pali and Rajsamand and the population is mainly dependent for survival on the famine relief works and other rural development works of the government, carried out mainly by the Panchayats. Complaints of non-payment of stipulated minimum wages on these works had started reaching the Devdoongri group even while the Sohangarh struggle was still on. What happened was that while the labourers working these sites were allotted work individually, wages were paid to them collectively. The labourers on these sites would never get their full minimum wage for the day's work even though they spent the whole day at the work sites. Against a minimum wage of Rs.11 per day in 1987-88, men usually got Rs.7 or 8 per day and women Rs.5 or 6.

One such wage complaint concerned Dadi Rapat, a State irrigation department worksite, where most of the workers employed were from Sohangarh.

When the Devdoongri team started to investigate the matter, it seemed at first that there was a problem with the way the work was measured, for which the junior engineer was the sole authority. The labourers had no say in the matter. So it was decided that all 140 workers employed on the site should work diligently, ensure completion of the work and also carry out their own measurements. Even though the Junior Engineer acknowledged the work was completed to measure, the wage offered was still Rs.6 per day and not Rs.11. In protest, all 140 workers initially refused to accept this wage and two among them, Chunni Bai and Bhanwar Singh, stuck it out to the very end.

This non-cooperation and subsequent protests and petitions by workers rattled the local administration till the State Famine Commissioner and an Executive Engineer visited the Dadi Rapat site in April, 1989. The Famine Commissioner acknowledged that the work had been done to measure and assured the payment of Rs.11. Yet, despite the Famine Commissioner's directive, the Irrigation Department ordered a payment of only Rs.9 per day. The link between corruption (ghost entries in muster rolls) and non-payment of minimum wages has been explained later on in this paper. It was clear at that time itself that the workers' wage entitlement was an issue that would not be resolved without a collective struggle. So a struggle for minimum wage and against corruption was uppermost in the mind of people who gathered for the formation of MKSS on May Day of 1990.

A little later, the MKSS organised a *Dharna* ( a sit in strike) followed by a hunger strike in front of the SDM's office. The number of hunger strikers swelled to 17 in six days. It was lifted only after the District Collector assured payment of proper wages. When this remained a mere assurance on nearly all famine work sites in the area, another agitation was launched the next year (1991). For this fight, the experience of 12 labourers of Barar Panchayat was used as a symbol. They diligently completed the work and kept accurate measurement. Still denied appropriate wages, they submitted petitions through proper channels and sent notices.

When all else failed, an indefinite hunger strike was begun in front of the Sub Divisional Magistrate's office in Bhim, with five persons respectively representing the five districts of Rajsamand, Pali, Ajmer, Jaipur and Baran. The police cracked down on the hunger strike with full force in the dead of night after five days. The next day another hunger strike began against police repression. The strikers finally won a victory

of sorts when the then Rural Development Secretary to the Union Government made it clear to the Rajasthan government that it would not get central assistance for the Jawahar Rozgar Yojana for violating the Minimum Wages Act of 1948. The State government relented and ordered payment of minimum wage to the 12 Barar workers. The victory had an impact on government wages all around the area, which rose even though minimum wages continued to be denied.

It was clear to the MKSS from its struggle on minimum wages that the question of wage and employment entitlement could not be tackled sporadically. The lessons of the first two minimum wage struggles pointed to the need for a composite look at the whole rural development package on offer in rural India. It also pointed out the necessity of a novel approach to mass mobilisation we witness in the form of *Jan Sunwais* or Public Hearings. How this led to the Right to Information movement and a fight against corruption, has been dealt with in the next chapter.

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## The Struggle for Entitlement

*This chapter traces the growth of the RTI movement in Rajasthan between 1994, when the Public Hearings began, and 1997, when the entitlement was won in Panchayati Raj Act. It includes the historic dharnas at Beawar and Jaipur, and formation of the NCPRI.*

*A peep by MKSS activists into officially maintained measurement books and muster rolls revealed that corrupt local officials and Sarpanches did not fully disburse to the workers the amount they billed the government as their wages. They pocketed a neat portion of what they billed the government as wages for the labourers*

The struggle for ensuring payment of statutory minimum wage on government employment works by the Mazdoor Kisan Shakti Sangathan (MKSS) since its inception in 1990 led directly to the next higher stage in the struggle of the poor in central Rajasthan. The task-based mode of determining a rural worker's wage had necessitated a peep by MKSS activists into officially maintained measurement books and muster rolls that respectively recorded the task performed by each worker and the wage paid to her. The examination of these records revealed that corrupt local officials and Sarpanches did not fully disburse to the workers the amount they billed the government as their wages. They pocketed a neat portion of what they billed the government as wages for the labourers. There were ghost entries in the muster rolls that meant total wage bill of a particular rural development work was to be divided among more heads than were actually employed for that work. This in turn meant under measurement of each labourer's work and hence under payment of her wage.

It was in this context that an underpaid villager came to the MKSS in August

1994 complaining of manipulation of muster rolls and corruption in development works in Kot Kirana Panchayat of Raipur Block in Pali District. The MKSS approached the Block Development Officer (BDO) Nirmal Wadhvani, a young probationer of the Indian Administrative Service with his complaint. The BDO conducted an extensive enquiry. He went from village to village and got people of the area to look into muster rolls. He crosschecked the vouchers of the construction work that had been undertaken in the Panchayat with them. The enquiry exposed the corruption of the Gram Sewak (Panchayat Secretary) and the Junior Engineer who had misappropriated the funds of the centrally sponsored Desert Development Programme. Some evidence of their corruption he found was:

- In the construction of the Patwar Bhawan (revenue building) at Kirana (of Kot Kirana Panchayat), no stones were bought. Instead, old stones were used from a government building that had been pulled down. Yet, bills showing the purchase of stones worth Rs. 7,100 were submitted. Similarly, false bills worth Rs. 26,510 were shown in Bagri village of Kalaliya Panchayat.

- Several irregularities were committed in the payment of wages in the construction of Anicuts, Dharam Nadi at Bagri and Kharli Nadi at Kirana. Many persons against whom payments were shown or collected by the Gram Sewak and Junior Engineer either did not live in the village or were employed elsewhere. For instance, the Anganwadi worker, the owner of the Public Distribution system shop and the Roadways booking clerk were shown as having worked as labourers on development works in the village.
- The muster roll for the Bagri anicut also showed payment to workers for eight days while they had actually been paid for five days only.

The BDO's inquiry indicted Junior Engineer Girdhari Singh and the Gram Sewak Sardar Singh of Kot Kirana for corruption. The BDO filed a First Information Report (no. 1619/94-95) on 28.9.94 against the two in Sendra Police Station for forging false accounts worth fifty eight thousand rupees. The accused sought to cover up the case with the help of the local MLA, Hira Singh Chauhan, who was also a former Deputy Speaker of the State Assembly. These three used money and force to silence some of the people who had provided evidence. They also made some of them sign false affidavits *backtracking* on their earlier statements.

For instance, Kaluram Suthar was one such person who gave a false affidavit contradicting his earlier statement. Seized by the BDO, his diary did not show delivery of stones on his tractor trolley to the work sites. But later in the

affidavit, he said he had forgotten to make entries in his diary as he had probably made extra trips in the night to deliver stones.

Then there were three women, Muli, Baji and Dhau of village Kot, who were enticed with money to give an affidavit falsifying their earlier statement. They had worked on Bagri anicut and were paid for five days of work. They were promised extra money to give affidavits saying they had worked for eight days. The women were taken to Barar, a little distance away place and brought back to their village late in the night after signing false affidavits. This angered the villagers as they had left without the permission of their family members.

The people of Kot Kirana Panchayat became very angry at this campaign to suppress evidence and cover up corruption. To take the steam out of their anger, the two accused, with the help of Hira Singh Chauhan, approached the Jati Panchas (Caste Chieftains) of the villages in the Panchayat. The Jati Panchas called a Jati Panchayat (caste assembly) where the accused confessed to the misuse of public funds and begged forgiveness. The Jati Panchas fined them a paltry sum of Rs. 1100 as contribution for the repair of the village temple. This was an attempt by the accused to escape lightly.

As far as official and legal proceedings are concerned, the police did not take any action against either the Junior Engineer or the Gram Sewak. Though the district administration suspended the Gram Sewak, the Junior Engineer was merely transferred to the neighbouring Jawaja Panchayat Samiti.

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It was to counter such blatant attempts at cover-up that the MKSS and the people of the area thought of a Jan Sunwai or a Public Hearing as a mode of bringing the matter out into the open or public domain, so to speak. The Public hearing was visualised as a form of Social Audit – the ‘best form’, as the MKSS press note called it – and of public debate with and among the local villagers on the ‘development’ being carried out for them. The following considerations went into this visualisation of the Public Hearing:

- The Gram Sabha was non-functional and in any case would relate to only one Gram Panchayat or Village Council. But the impact of development works affected adjoining Panchayats too and relevant information could only be collected through collective sharing across these adjoining villages.
- Most of the information pertaining to development work in villages was zealously guarded by government officials at the Panchayat, Block and District levels. The disclosure of even the smallest amount of such information to the villagers would result in laying bare the true detailed account of money spent as shown by the MKSS campaign preceding the Jan Sunwai. Since people in a village have a firsthand knowledge and understanding of all development activities in the village, even a little information shared would generate a plethora of data.

### **Kot Kirana: The First Public Hearing**

Held on the 2<sup>nd</sup> of Dec. 1994, the first Jan Sunwai looked at small development

works executed in 1993-94 in Kot Kirana and Bagdi Kalaliya Gram Panchayats of Raipur Panchayat Samiti in Pali District. It was attended mainly by people from Kot, Samel, Kirana, Rokabaria, Pipla Khera, Sirma and Dhukulpura villages in Kirana Gram Panchayat and Bagdi, Kalaliya, Khandabhaga and Belapana villages and Road Havli, Bhundap, Nahi, Mulyakheda, Samli, Chaukhat, Bhjathala, Banatiya and Bada hamlets in Kalaliya Gram Panchayat. Presided over by Social Worker Renuka Pamecha, who teaches political science at Kanodiya College in Jaipur, the Public Hearing was attended by Bunker Roy of Social Work and Research Centre, Tilonia and Sawai Singh of Samagra Sewa Sangh, Jaipur. Unlike some later Jan Sunwais, no government official was present to put forward the official point of view.

The moment was electric as names of a hundred people on the muster roll (the official record of names, and payments made to them, of those employed on a particular site) were read out in public before hundreds of people. As an MKSS write-up records, “...outraged people came and testified that they had never gone to those work sites, that false signatures had been used and that there were names on the muster rolls of people dead and gone, and others unheard of. The finger was pointed at the retired teacher Moti Singh who had entered the names, the Gram Sewak who made the payment and the Junior Engineer who had certified that the work was done and payments made in his presence. The people fearlessly spoke against the former Deputy Speaker of the Rajasthan

Vidhan Sabha, who had camped in the village prior to the hearings, intimidating the villagers to change their statements against the accused. When bills and vouchers of the unfinished Patwar Ghar were read out, the people learnt that they had a 'complete' Patwar Ghar—at least on paper. The bills of roofing material, doors and windows, when read out elicited a great deal of laughter for there was no roof and there were only holes for doors and windows. When the laughter died down, there was consternation, anger and eventually an official First Information Report (FIR).” The exposure of the role of the retired school master’s son resulted in his losing the election for the Sarpanch’s post a month later. He had earlier been considered a strong candidate.

## **A Pattern Unfolds**

The corruption revealed in the first public hearing by juxtaposing government records and facts available with the people and actual work on the ground established itself as a firm pattern in the four Jan Sunwais that followed soon after. In fact, taken together, the five Jan Sunwais, especially the first four, formed a quick campaign of Social Audit in the four Central Rajasthan districts of Pali, Rajsamand, Ajmer and Bhilwara. The first four public hearings were held between the short period of Dec. 1994-Jan.1995. The fifth one followed soon after in April, 1995 and provided a welcome contrast.

## **Bhim: The Second Public Hearing**

The Bhim Jan Sunwai followed within a week of the first public hearing – on

Dec. 7, 1994 - and was presided over by a noted progressive poet of Rajasthan: Harish Bhadani. This Jan Sunwai too followed the same process of reading out details from government records, like bills, vouchers and muster rolls, relating to rural development work and getting people’s feedback on them. A lot of preparation went into the Jan Sunwai with MKSS activists, along with the local people, inspecting work sites.

Among the cases of corruption discovered in the Bhim Jan Sunwai, one that took the cake related to a fraudulent company that had taken payment for false bills. Owned by wives and family members of Block officials, the company called Bhairunath and Sons was formed purely for the purpose of graft. In one Block alone, it collected illegal payments worth Rs. 36 lakh. People spoke out freely in the Jan Sunwai, undeterred by the fact that it was held in front of the Block Office. Like the Kot Kirana Jan Sunwai, the Collector and other government officials honoured their invitation by their absence, except for the Tehsildar, who stayed for just an hour.

The Jan Sunwai examined development works in Bhim and Kaladeh Panchayats of Bhim Panchayat Samiti in Rajsamand District. These included works under Jawahar Rozgar Yojana, Apna Gaon Apna Kaam, Tees Zila Tees Kaam, Untied Fund, Indira Awas Yojana, Jeewan Dhara, Famine Relief Works and Training Rural Youth for Self Employment schemes. Though situated close to the Sub Divisional town of Bhim, the two Panchayats did not lag behind in corruption. Apart from the

*The corruption revealed in the first public hearing by juxtaposing government records and facts available with the people and actual work on the ground established itself as a firm pattern in the four Jan Sunwais that followed soon after*

huge graft by the fraudulent company, some of the other cases of corruption exposed in the Jan Sunwai were:

- In violation of rules, 15 works in Kaladeh Panchayat were given out on contract. The contractors employed their own kith and kin on these works. Even amongst them, many were cheated of their wages. Muster rolls were fraudulently maintained. Physical verification showed many works to be incomplete and others, even though complete, were ready to fall apart. An examination of bills and material used in the works revealed them to be false and sub-standard respectively.
- In the Indira Awas Yojana, out of 52 houses sanctioned for the Bhim Panchayat Samiti, 45 went to just one Panchayat – Kaladeh. In this Panchayat, many relatively well-to-do villagers managed to corner many of these houses and every poor allottee had to pay a bribe for allotment. A man called Ratna testified that he received only Rs. 1800 out of Rs. 7800 shown as payment to him.
- Different muster rolls in Bhim and Kaladeh showed the same names on same days.

A First Information Report regarding the irregularities detected in the Jan Sunwai was lodged with the Bhim police.

Following an agitation launched by the MKSS in June, 1994 the Rajasamand Collector had ordered an enquiry by the Chief Executive Officer of the District into the affairs of the fraudulent company. The result of the CEO's enquiry

formed the basis of an FIR against the false company with the Anti-Corruption department. But no action was taken on any of the other complaints of irregularities in the two Panchayats, nor was any supervisory responsibility fixed on the Assistant Engineer and the District Rural Development Authority. The Public Hearing was held with a view to expose the fraud to the public.

### **Vijayapura: The Third Jan Sunwai**

Nearly 500 villagers from the seven local Panchayats of Vijayapura, Tal, Lasani, Aldas Ka Guda, Swadari, Miyala and Diwer were all attention as Anganwadi workers of the Integrated Child Development Scheme narrated a scam involving their two supervisors. These two, the Anganwadi workers said, had taken bribes, stolen rations, pilfered cotton, buckets, chairs, tables, dhurries and even the paracetamol tablets meant for the villagers. The villagers made a quick calculation and estimated the graft to total around Rs. 14 lakhs during a four year period.

Held on Dec, 17, 1994, the third Jan Sunwai at Vijayapura in Deogarh Block of Rajsamand District also exposed a fraudulent public auction where the Panchayat pasture worth over Rs. 70 lakhs had been auctioned off dirt cheap. The villagers testified that none of the 800 people supposed to have attended the public auction had actually done so although many of their signatures had been forged to show attendance. None of the government officials concerned were present to offer their viewpoint although Aditi Mehta, a Rajasthan cadre

*Physical verification showed many works to be incomplete and others, even though complete, were ready to fall apart*

IAS officer attended in her personal capacity. Lokayan Editor and socialist activist Vijay Pratap presided. Apart from the villagers of seven nearby Panchayats, people from as far as Bhim, Raipur and Kukra in Rajsamand District and Jawaja and Silora from Ajmer District also attended the Public Hearing. After the Jan Sunwai, an FIR was lodged in the land auction scam. An administrative inquiry into the Anganwadi irregularities was also conducted indicting the supervisors.

### **Jawaja Jan Sunwai: Battle Lines for Right to Information**

A qualitative change occurred between the third Jan Sunwai on Dec.17, 1994 at Vijayapura and the fourth Jan Sunwai at Jawaja in Ajmer District on Jan. 7, 1995. What had started out as a quick campaign of Social Audit of Development Expenditure at the Panchayat level through four planned Public hearings, began etching the battle lines for a prolonged fight for people's right to information during the run-up to the fourth Jan Sunwai.

As MKSS activists, armed with the orders of the Ajmer District Collector to make available to them copies of documents relating to development expenditure, went around seeking records of development works in the Panchayats of the area, the Gram Sewaks or Panchayat Secretaries got alarmed. They had already got wind of the three preceding Jan Sunwais, the electric effect they had on the people of the area and the portent of this process for the future of a system of scams that rural development had become. As a key cog in

this system, the Gram Sewaks could not simply let the things go the way they were heading. When the Block Development Officer of Masuda issued a letter to make copies of Panchayat records available to MKSS activists on asking, the Gram Sewaks struck swiftly and refused to comply with it. The Gram Sewaks of Ajmer District organised a delegation to meet the Collector on Dec. 22, within six days of the third Jan Sunwai. They gave him a memorandum demanding to be exempted from sharing with the people information and records related to development works and affairs of the Panchayat. They pressed hard with this demand by a staging a Dharna or a sit-in strike in front of the Ajmer District Collector's office on Jan. 2, 1995. Rather than share copies of bills, vouchers and muster rolls maintained by Panchayats of rural development works, the Gram Sewaks – keepers of these records – of Ajmer District decided to go on strike. They said they were prepared only to submit these records for government audit.

As the Gram Sewaks hardened their stand, people of the area began saying that by doing this the petty Panchayat officials were merely confirming their complicity in corruption. Reading these grassroots signals, the Gram Sewaks became even more alarmed – not only in Ajmer District, but from one end of the State to the other. So much so, that a delegation of the Gram Sewak Sangh or the association of the Gram Sewaks in the State met the Development Commissioner of Rajasthan to protest against being asked to share information, even though the Jawaja Public

*What had started out as a quick campaign of Social Audit of Development Expenditure at the Panchayat level through four planned Public hearings, began etching the battle lines for a prolonged fight for people's right to information during the run-up to the fourth Jan Sunwai*

*On April 6, 1995, a prominent regional daily of the State, Dainik Navjyoti, carried the report of the then Chief Minister Bhairon Singh Shekhawat's announcement in the State Assembly, made the previous day, promising give to the people of the State Right to Information with respect to all the affairs of the Panchayati Raj Institutions*

Hearing was meant to cover only seven Panchayats of one Block. More than the people's action, therefore, in holding local Jan Sunwais in central Rajasthan, it was the reaction of Panchayat Secretaries that transformed the demand for transparency of development expenditure at the local level into a statewide issue of people's Right to Information.

Even though people's access to official records relating to rural development expenditure was effectively blocked, the Jawaja Public Hearing did take place on Jan. 7. The people from seven Panchayats came up with a plethora of information. The sheer authenticity of the people's information proved so strong that within two days of the hearing, pilfered money began to be returned to individuals and the community who had been cheated squarely by the Panchayat functionaries. For instance, five Dalit families of Jalia Peethawas, who had testified in the Jawaja Public Hearing that their Gram Sewak had taken a cut of Rs.1500 from each of them from their Indira Awas housing grant of Rs.9800 each, got the amount back within 48 hours of the hearing. The Gram Sewak visited them at home to return the money.

Attended by a panel of three senior lawyers – Marudhar Mridul and Mahesh Bora from Jodhpur and Ramesh Nandwana from Udaipur – and a theatre person, Tripurari Sharma from National School of Drama in Delhi, the Jan Sunwai also resolved to launch a mass agitation for access to copies of bills, vouchers and muster rolls of rural development expenditure as part of the people's Right to Information. Pressurised on one side

by the Gram Sewak Sangh and on the other by the MKSS, the Ajmer District Collector referred the matter to the State Government for a decision. By this act, he unwittingly brought to a head for the Rajasthan Government the twin issues of People's Right to Information and the Social Audit of development expenditure – something to be fought out and debated between the people and the three tiers of government at the local, State and national level in the next few years.

### **Populist But Catalytic Announcement**

Soon after the Jawaja Jan Sunwai, the MKSS wrote to the government demanding that information should be available to everyone. In its letter, the MKSS also threatened to launch a statewide agitation if the government succumbed to the pressure of the Gram Sewaks and accepted their demand of being exempted from showing records pertaining to rural development expenditure. The MKSS did not receive an official reply.

Yet, on April 6, 1995, a prominent regional daily of the State, Dainik Navjyoti carried the report of the then Chief Minister Bhairon Singh Shekhawat's announcement in the State Assembly, made the previous day. The announcement promised to give to the people of the State Right to Information with respect to all the affairs of the Panchayati Raj Institutions. The announcement promised

- Transparency regarding development works carried out by Panchayati Raj Institutions since 1990

- Access to photocopies of bills, vouchers and muster rolls and other records related to rural development expenditure on payment of photocopying charges
- Instituting an enquiry wherever fraud was detected.
- Punishment to the guilty and recovery of embezzled funds.

It was only a year later, on the eve of their 40 day sit-in strike in April, 1996 that the MKSS could obtain a copy of the Chief Minister's announcement. In fact, it was Shekhawat's announcement in the State Assembly that spurred the MKSS on to a campaign that finally led to the Passage of the Right to Information Act in the State nearly five years later. It started with the MKSS submitting a host of petitions to the State government and its delegations meeting several secretaries of the Rajasthan government for translation of the Chief Minister's announcement into something concrete – a legislation or executive orders. Despite these efforts, though, the announcement remained merely on paper. MKSS activists found government officials and elected representatives stalling all their efforts. It remained impossible for citizens to obtain information at the District, Block and Village levels. For the MKSS, this resulted in the realisation that it was absolutely essential to obtain the Right to Information for citizens rather than depend on favours from one or two well-intentioned officials if the people wanted to monitor and exercise control over development expenditure incurred in their name.

## Thana Public Hearing: A Welcome Contrast

Not forming part of the quick campaign of four preceding Public Hearings, the context of the Jan Sunwai at Thana in Mandel Block of Bhilwara District was different. Held on April 25, 1995, it was separated from the four preceding Public Hearings by the Panchayat elections and the Chief Minister's announcement on the Right to Information that took place in the meantime. In fact, Chief Minister Shekhawat's announcement too probably had a political motive: it was accompanied by a threat to the previous Congress Sarpanchs that the government would make all efforts to recover embezzled funds if charges of corruption were proved against them. The unsaid message seemed clear: play ball or face the music.

It was against this background that the Thana Jan Sunwai became the first public hearing to be conducted with the active support of the elected Panchayat functionaries – in this case the newly elected Sarpanch and the other elected Panchayat representatives. An active member of the MKSS till then, the newly elected Sarpanch of Thana, Ladu Singh conducted the Hearing. Despite the Constitutional mandate of the 73<sup>rd</sup> Amendment, the newly made Right to Information announcement of the Chief Minister and the order given, pertaining to this intent, by the Bhilwara collector to the Mandel Block office, Ladu Singh still had difficulty in getting hold of the records relating to development expenditure in his Panchayat during the past five years. It was only because of persistent pressure applied

*It remained impossible for citizens to obtain information at the District, Block and Village levels. For the MKSS, this resulted in the realisation that it was absolutely essential to obtain the Right to Information for citizens*

*Without fearing the consequences, even government employees like the village school teacher, the dispensary peon and the Patwari spoke out openly in the presence of the Block Development Officer to validate the facts showing misuse and misappropriation of development funds*

by the MKSS that the Mandel Block office agreed to part with some information in its possession on the night before the hearing.

The Public Hearing on April 25, 1995 revealed the reasons for the administration's reluctance to share information with the people. For the first time the government officials were present in a Public Hearing. Some villagers present in the Hearing, who were also beneficiaries of some development programme, asked the Junior Engineer and the Gram Sewak, who came on stage, pointedly about the bribes they had taken from them. In the records of various construction works executed in the Gram Panchayat in the previous years, people caught false bills and vouchers of the material used. Without fearing the consequences, even government employees like the village school teacher, the dispensary peon and the Patwari spoke out openly in the presence of the Block Development Officer to validate the facts showing misuse and misappropriation of development funds.

An interesting debate relating to the so called 'adjustment' in development expenditure records ensued in the Thana Public Hearing and became a dominant theme in bureaucratic arguments at the highest level in the State in the course of the Right to Information Campaign in the next few years as the main argument against complete transparency in development expenditure. The Officials present in the Jan Sunwai justified the documented instances of corruption on the ground that the norms

of labour-material ratio set by the government (60:40) with regard to development works carried out under the various poverty alleviation programmes had to be met, necessitating fudging of records as these norms no longer remained practical. It took the people present in the Jan Sunwai only a single testimony to expose the fallacy of the argument. As a speaker in the Public Hearing pointed out, the false bills in question related to material and not labour which would have needed 'adjustment'. Inflated material bills, villagers pointed out, would only further destroy the government norms.

When cornered thus and in many other ways in the Thana Jan Sunwai, the Gram Sewak admitted that the 'adjustments' were made to pilfer money. He also admitted his own guilt in the matter and offered to return whatever he had taken. This aspect of the Thana Public Hearing also confirmed and established a theme witnessed in the earlier Jan Sunwais and to be found in the later Jan Sunwais too: the popular demand for the return of the money stolen from the village community or individuals and the public shame that sometimes forced public functionaries, elected or permanent, to bow to it. But time revealed an irony at Thana: the MKSS was forced to disown the Sarpanch Ladu Singh later for his association with some organisation workers who were found to have pilfered money from a shop that the MKSS ran under the Public Distribution System of the government.

## First Phase of Hearings: Pattern and Pointers

The average attendance in each Public Hearing was between 500 and 800, of which half were women. The MKSS mobilisation efforts for Public Hearings succeeded to this extent possibly because of two factors:

- Wages - their non-payment or under-payment - are vital issues for the village poor. Poverty Alleviation and Drought Relief Programmes of the government are the main sources of employment in the villages of central Rajasthan. These programmes and Panchayati Raj Institutions did not provide effective fora for the poor to seek redress of wage-related grievances, hence the idea of a public forum for voicing complaints aroused their enthusiasm. Since women form the major part of the work force in these programmes and wage-related grievances were as much theirs, they too were equally enthusiastic about the hearings.
- The rural middle class, who are not direct beneficiaries of government delivery schemes, were able to see the link between corruption in development works and the absence or low quality of infrastructure in their villages. A little persuasion made them acknowledge their responsibility in ensuring that development funds were properly spent and that there was need for them to play an active role in the development of their village.

An important characteristic of these hearings was that they derived their

power, legitimacy and sanctity from the villagers themselves and not the distinction of the panel. The panel, consisting of lawyers, jurists, writers, intellectuals and other such people, merely provided a link, like the press, with the enlightened urban intelligentsia and lent seriousness to the Jan Sunwai proceedings - for the local community and the outside world. Yet it is important to remember that these Jan Sunwais were not Courts or Tribunals nor a public rally to agitate for a set of demands.

These events drew their name from the Public Hearings held in other parts of the country in the recent past, but differed from them in an important way. The other Public Hearings had mostly been held in urban settings and were modeled on the parameters of a court. They drew their legitimacy and sanctity from the distinction of the panel and aimed at eliciting a cross-section of intellectual responses on a topic of common concern.

The MKSS Public hearings expressly aimed at a Social Audit of development resources and expenditure. They were organised around a cluster of four to five Panchayats in this phase because development work in one Panchayat had an impact on others and a collective sharing of information in such a cluster was required to reach fruitful conclusions. Certain aspects of mobilisation were inherent in the nature of these Jan Sunwais. Since persons identified as pilferers were often neighbours or relatives of residents in any village, it was important to have each testimony collectively verified. For this, it was necessary to have large groups of people attend from each

*The MKSS Public hearings expressly aimed at a Social Audit of development resources and expenditure*

nearby village rather than a scattered population from a vast area.

In selecting villages for Public Hearings, the MKSS insisted that the initiative came from a persistent group of people from the village. As a run-up to the Public Hearing, though, the MKSS made extensive contacts in the villages concerned for collecting and sharing information, identifying issues, and motivating people to come. Before each Public Hearing, the MKSS circulated a leaflet explaining the idea behind it and encapsulating its key concerns.

A Social Audit requires details of information pertaining to the expenditure on, and use of, resources. The preparatory work for a Public Hearing includes organising this information and sharing it with the village people. This process has an electrifying effect on the community. As the MKSS activists went around villages sharing copies of the bills, vouchers and muster rolls of construction works, people were seized with instant curiosity and flocked around them. Word of the fraud revealed through these documents would spread quickly. The local vested interests would move quickly to try and contain the damage and prevent the Hearing. Yet, as the information spread, it would become increasingly clear that people from a cross-section of society were ready to attend the Public Hearing, come what may, in certain cases even when some state level political leader was backing the group hostile to the Hearing.

It was the same story in every Public Hearing: it “transferred meaningless figures into actual reality,” says an MKSS document, “as two types of information

began to be compared. The records and the reality.” The MKSS document further says, “As the story of the gap between the two unfolded at the hearing, the people began to understand the need and value of tools for increasing their control over processes.”

The Public Hearing proceedings were meticulously documented on video. This served the twin purposes of undeniability and safety against misrepresentation. The process of recording also put each speaker in the Hearings under a sort of oath as they knew this material could be referred to later. The state of development works referred to in the Hearing was recorded, verifying the personal testimonies of the people.

The local, regional and metropolitan newspapers widely reported these Hearings. This resulted in the advocacy of the issues concerned on a far wider scale. And it also gave the village people a sense of being significant players in the struggle for justice. Between the four Hearings, three meetings were held with concerned citizens in Udaipur, Jaipur and Bhim respectively. By sharing experiences in these meetings, the MKSS networked to build a support group in cities that would provide help in the case of any problem. The question of transparency in administration and corruption appealed to the urban intelligentsia and helped establish issues of people’s Right to Information and Social Audit. As the results of the Public Hearings concerned the implementation of the government poverty alleviation programmes, the findings were presented to the senior State and central government

*As the MKSS activists went around villages sharing copies of the bills, vouchers and muster rolls of construction works, people were seized with instant curiosity and flocked around them. Word of the fraud revealed through these documents would spread quickly*

officials and action demanded in cases of fraud and other misdemeanour.

The Jan Sunwais gave shape to certain demands relating to transparency in rural development programmes:

- The administration should print documents like the Below Poverty Line lists and make them available to the public at a price.
- The District Rural Development Authority should make available to the public computer print-outs of quarterly, half yearly and annual sanctions and expenditure related to Poverty Alleviation programmes.
- Photocopies of bills, vouchers and muster rolls of rural development works should be made available on demand to citizens on payment of fees.
- Printed copies of allotment lists of Panchayat and Revenue land should be made available to citizens on payment of a fee.

The Jan Sunwai showed that a Gram Sabha/Ward Sabha (statutory village assembly) could be an ideal forum for Social Audit of rural development expenditure and, through this, a tool of fighting corruption at the grassroots level. For this Social Audit function of a Gram Sabha or village assembly to be effective, these initial Jan Sunwais showed that

- The accounts must be read out to the assembly in a detailed and systematic manner,
- The procedure of the social audit should be clearly laid down, including

who will present the accounts and what factors would be examined, and

- The Gram Sabha/Ward Sabha must have the power to enforce corrective action in case of corruption and fraud.

If transparency was one important issue raised by these Public Hearings, accountability was another. In the context of accountability, the initial Public Hearings threw up certain important requirements:

- It should be clearly indicated which official is accountable to provide the beneficiaries of Poverty Alleviation Programmes with their entitlements.
- There should be an appellate authority for complaints related to development works in villages.
- Recovery of funds must be a part of the punitive action against those responsible for embezzlement.
- Grievances should be addressed and disposed of in a specific time period.
- A grievance cell should be set up, consisting of eminent and concerned citizens of the area to oversee all such complaints.

These initial Public Hearings were premised on the formulation, and also succeeded in establishing it, that any money, meant for development, taken away by graft denied the village people their right to development. In this way the hearings became an attempt to reclaim development. This was instrumental in forging a convergence of interests, which gave a Public Hearing “a sense of power beyond its immediate attendance,” says an MKSS document. The strong demand

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for ethics in public expenditure generated a great deal of energy in an otherwise cynical environment.

The idea born in these Hearings that people had a right to monitor public expenditure and development work in their area was simple, but revolutionary. It was far-reaching in its promise of a more democratic form of governance than people were hitherto used to. The idea of public monitoring that emerged, even though confined only to the specific and limited area of public spending, had the potential to encompass all areas of governance and development.

The concept of the people's Right to Information as a basic democratic right, including aspects of transparency, social audit and accountability, had for a long time been discussed in urban seminar rooms, but this new initiative by ordinary people at the grassroots energised the discourse and also energised the people into an unprecedented public action in the direction of realising this right.

### **Follow Up of the Jan Sunwais and the Backlash**

Following the end of the campaign of Jan Sunwais, the MKSS pressed for accountability in the cases of corruption highlighted in them. Alarmed by the response of the Jan Sunwais and the MKSS determination to follow things through till the end and see those responsible for corruption held accountable and punished, the vested interests in the region cemented their nexus - especially the lower level government bureaucracy and elected representatives of the people. A backlash inevitably followed.

In the Jawaja Jan Sunwai, Kesar Singh of Baghmal village had raised the matter of corruption in Asan, Badakhaan and Badakheera Gram Panchayats of Jawaja Block in Ajmer District. He had supplied material for nine construction works during 1991-93 in these three Panchayats, but had received only part payments. As the MKSS put pressure for the records of these construction works to be made public and an inquiry conducted to determine the extent of corruption in them, the Gram Sewak, the Junior Engineer and the newly elected Sarpanches and Panchayat Samiti members got together and tried to pressurise the Ajmer District administration into not giving in to these demands. They also tried to tempt Kesar Singh with money and pressurise him through a caste panchayat into withdrawing his complaint. Despite all this, and because of the public agitation on the issue, the Ajmer Collector ordered an inquiry by the Sub Divisional Magistrate of Beawar into all the nine construction works.

The SDM came to Asan on June 6, 1995. In an unprecedented show of solidarity, 25 newly elected Sarpanches and ex-Sarpanches led by the Jawaja Block Pradhan Shankar Singh Rawat also descended on the village in droves of Maruti cars and motorbikes to intimidate the villagers from giving testimony and thwart the inquiry. As soon as the SDM arrived, they surrounded the 250 strong gathering. When Chunni Singh, an MKSS activist, of Badkochra Panchayat started speaking about the Jawaja Block administration being insensitive to the grievances of the villagers, Narbada Bai, the woman

*The idea of public monitoring that emerged, even though confined only to the specific and limited area of public spending, had the potential to encompass all areas of governance and development*

Sarpanch of Asan, brandished her slippers gesturing him to keep quiet. When this did not silence him, she attacked him and tore his shirt. The meeting was disrupted for a while, but the SDM moved from the open into the Panchayat Bhawan nearby and completed the day's proceedings.

The elected Panchayati Raj representatives who had gathered in Asan in solidarity had nothing to do with the matter at hand. Yet the subtle shift in power that the MKSS campaign was engineering in favour of the ordinary citizens in villages, had scared them into this sort of desperate action. All of them and the President of the District Gram Sewak Sangh hung around outside the Panchayat Bhawan till the inquiry was over and handed a memorandum to the SDM refusing share information with the people and threatening to stop development work if the administration conducted such probes.

Share in the loot for everybody involved and kinship were important elements in the operative nexus witnessed in this case. Sarpanch Narbada Bai's husband, the ex-Sarpanch of Asan, was the brother-in-law of the Gram Sewak Jeth Singh and the supplier of material in the nine construction works in question.

Undeterred by all this, the Beawar SDM continued the inquiry, which he conducted in two phases. He returned to Asan after a while to collect more evidence. But the Jawaja Block officials too kept up the pressure on the District administration to scuttle the probe, enlisting the support of the Zila Pramukh, the

then member of the State Assembly from Beawar and the Member of Parliament from Ajmer, Ugamraj Mehta and Rasa Singh Rawat respectively and several ministers of the State government. In a meeting of the 20 point programme committee in the Ajmer collectorate on August 20, 1995, they lashed out at the MKSS, the concept of transparency and the inquiry being conducted. The Zila Pramukh even said that he was issuing orders that no documents relating to Panchayati Raj work be shown to anyone. The Beawar MLA and the Rajasthan Panchayati Raj minister alleged that the MKSS was collecting people by distributing money and was forcibly snatching muster rolls from government functionaries.

A couple of days later, on August 7, about 50 people from Asan went to provide further evidence in the inquiry. Angered by this, one Kalla Ram, a 'mate' (a person who heads a team of labourers) whose name had figured in corruption, attacked, with the help of two accomplices, three young Dalit men, Mangi Lal, Purna Ram and Bher Ram, who had deposed against him and beat them up with lathis. When the villagers reached the place, Kalla Ram locked them up in his house. On the basis of a complaint from the MKSS an FIR was lodged with the Todgarh police station and the two attackers finally arrested. Needless to say in this background, the SDM's inquiry report went on the back burner. No action was taken on it till April 5, 1996 on the eve of the Beawar Dharna when the SDM lodged an FIR against the Sarpanch in this case.

*Share in the loot for everybody involved and kinship were important elements in the operative nexus*

## Stepping Up the Campaign for Right to Information

With the backlash against the MKSS campaign in the area gathering strength, the need to step up the campaign to counter it effectively became quite clear. In the meantime, the campaign, though focused locally had attracted attention at the state and central levels. This was also because of the active networking efforts of the MKSS.

It was a mass meeting in Beawar on September 25, 1995 that publicly marked the stepping up of the campaign to make the right to information a legal entitlement of the people. For the first time in the course of the campaign, more than two thousand people, mostly poor peasants and workers from villages all over Rajasthan, gathered and made this demand. More than 30 speakers, speaking on behalf of workers, representatives of mass organisations and voluntary organisations, ex-bureaucrats, journalists, doctors, intellectuals, trade unionists, and elected representatives of Panchayati Raj Institutions lent their support to the demand.

From transparency in development expenditure, the meeting widened the articulation to include various other aspects. Many speakers referred to the need for transparency in fields like health services provided by the State, contraceptive technologies, the role of transnational corporations in the era of a liberalised economy and its impact on the poor, the impact of large projects on oustees, land records, matters related to the government as employer and bigger matters of State policy. As far as the

issue engaging everybody's attention locally in central Rajasthan was concerned – that of transparency in development expenditure – many elected representatives of Panchayati Raj Institutions who had come from other parts of Rajasthan, said that even they did not have full access to such information.

In the meantime, the articulation of the Right to Information issue by the MKSS through its Jan Sunwais had galvanised its network of friends elsewhere. The main MKSS spokesperson Aruna Roy, a former officer of the Indian Administrative Service, had once passed through the portals of the Lal Bahadur Shastri Academy of Administration in Mussoorie on her way to becoming an administrator. Now, during the course of the Public Hearings she helped organise in central Rajasthan as a citizen activist, the same Academy invited her and her colleagues, along with other individuals from different professional backgrounds, to deliberate on operationalising people's Right to Information. These deliberations culminated in the framing of the first draft of a bill on the subject, produced non-officially, following a meeting in the Academy in Oct., 1995.

### Beawar Dharna

Despite ground level noises by the MKSS and the attendant lobbying and networking at the macro level, there was little movement in the Rajasthan government towards operationalising Shekhawat's announcement of 5<sup>th</sup> April, 1995. On 6<sup>th</sup> April 1996 – a year and a day after the Chief Minister's announcement in the State Assembly – the MKSS

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started an indefinite dharna or sit-in strike in Beawar to press for its implementation. The Dharna was preceded by the MKSS issuing a notice to the State government on April 2. With the parliamentary elections at hand, the Shekhawat government tried to show a swift response. It issued an order on the first day of the Dharna itself, giving citizens the right to inspect all documents relating to development works executed by the Panchayat bodies. Not fully satisfied with the order as it did not meet the demand for granting the right to obtain photocopies of such documents, the MKSS continued with the Dharna.

It was a Dharna quite unlike those that the small town of Beawar had so far witnessed. Here was a big group of poor villagers not raising any sectarian demands but demanding a right for the society as a whole. More than half of the 250 people whom the town saw on the streets for the first four days of the Dharna at Chang Gate were women, some with babies in their laps. These poor people came with bags of grain donated for the Dharna by people in various villages of the area. People in the Dharna did not just sit around idly. The Dharna was alive with songs, puppet shows, street plays or talks, continuously communicating the message of the agitation. The vitality of the Dharna soon embraced the whole town and the magnitude, relevance and simplicity of the issue struck the local citizens. Beawar too, then, extended its wholehearted support and solidarity to the Dharna.

The people of Beawar started thronging the Dharna site. They made small cash contributions of Rs.5 and Rs.11.

The vegetable vendors gave vegetables free and flower sellers contributed their small earnings. A retired sweeper came unfailingly every morning at 5.30 to offer his services to keep the Dharna canopy clean and make his daily contribution of Rs. 5. A disabled young man came every day to contribute Rs.10. These small donations amounted to Rs.46,000 in 40 days of the Dharna. The surrounding villages gave 20 quintals of wheat. The people donated six quintals of vegetables and several trolleys of fuel wood. And there was the occasional donation supply of free milk, jaggery, rice, dal and spices. The tent house lowered its rent by half and the photographers charged nothing for their services. Doctors volunteered their services and towards the end even policemen began donating small amounts individually.

The town of Beawar offered more than mere material support. A professional Bhajan Mandali (group of devotional singers) would come regularly to sing bhajan (devotional song) parodies lending support to the dharna cause and taunting the State government for ignoring the voice of the people. Bagpipers came to play their bagpipes in support of the Dharna, local poets came to recite poems they had composed in support of the agitation, sign painters painted banners free and almost every social, political and cultural organisation of the town wrote to the Chief Minister in support of the Dharna demands. The Beawar citizenry actively participated in the public meetings addressed at the Dharna site by eminent guest speakers and townsfolk marched with the villagers whenever a procession was taken out

*The vitality of the Dharna soon embraced the whole town and the magnitude, relevance and simplicity of the issue struck the local citizens*

from the Dharna site to present a memorandum to the local administration. The Dharna also became Beawar's own.

The local cadres of various trade unions, except the Bhartiya Mazdoor Sangh that was affiliated to the then ruling party in the State, gave unstinted support to the MKSS agitation. Local units of All India Trade Union Congress and Centre for Indian Trade Unions, the two left Trade Unions, even held a rally against the government's silence on the MKSS demands. That year the MKSS celebrated May Day in Beawar jointly with the non BMS trade unions.

Except for the BJP, the party that ruled the State at that time, all other major political parties voiced public support locally to the Dharna demands. It was the run-up to the parliamentary elections that year and local Lok Sabha candidates of all political parties but the BJP committed themselves publicly in support of the MKSS demands.

With widespread media coverage, the Beawar Dharna soon attracted a host of eminent personalities from other parts of the country who came to extend their solidarity. They included grand old men of Indian journalism like Nikhil Chakravarty, Kuldip Nayyar, Ajit Bhattacharjee and Prabhash Joshi, activists like Medha Patkar, Swami Agnivesh, Vijay Pratap, Bhanwari Devi and Anil Prakash, and eminent personalities from the varied realms of economics, theatre and even administration, including the redoubtable GR Khairnar, the municipal administrator from Mumbai. The outsiders were greatly impressed. Here were poor villagers fighting for an entitlement

hitherto considered to be the concern mainly of the urban intelligentsia.

The way the agitation articulated the Right to Information caught the imagination of the outside world. It was the enabling nature of this right for the realisation of the socio-economic rights of the community and for fighting corruption that the Beawar Dharna eloquently articulated. The Jansatta editor Prabhas Joshi summed it up beautifully in a signed article, "Janana Jine Ke Liye (The Right to Know is the Right to Live)". The Mainstream Editor Nikhil Chakravarty saw in this movement of the ordinary villagers in central Rajasthan the seeds of another national liberation struggle. Thanks to the national Hawala Scam and various other big scams in many states, it was the year of cynicism in Indian politics.

The Beawar Dharna drew widespread support from various Non Government Organisations and mass based struggle groups in Rajasthan. To add more punch to its campaign, the MKSS began a simultaneous Dharna near the Secretariat in the State capital of Jaipur at the end of 30 days of the Beawar sit-in. This brought the campaign knocking at the gates of the State government even as the election process for the Lok Sabha inched to a close. Finally, the State government had to relent somewhat. After more than five weeks of relentless agitation by the MKSS, the State government announced that it would set up a five member committee under the then Additional Chief Secretary Arun Kumar to suggest ways to implement the Chief Minister's announcement on the Right to Information made in the State

*With widespread media coverage, the Beawar Dharna soon attracted a host of eminent personalities from other parts of the country who came to extend their solidarity*

Assembly more than a year earlier. The State government's announcement made through a press release issued on 14<sup>th</sup> May 1996 also set a deadline of two months for the committee to submit its report. After running for 40 days in Beawar and 10 days in Jaipur, the Dharna was lifted on 16<sup>th</sup> May.

## Secrecy of the Report on Right to Information

It took two months for the State government to constitute the Arun Kumar Committee, which finally submitted its report on 31<sup>st</sup> August 1996. One of the terms of reference of the Committee was to look into the feasibility of providing photocopies of documents to the public on payment of fees, as, during the course of the Dharna, the State government had publicly questioned the practicality of providing photocopies of documents in 9000 Gram Panchayats of Rajasthan.

Ironically, the report of the Committee was made secret as soon as it was submitted: copies were not even left with its members for fear of leakage to the press. This happened with a report that unequivocally recommended transparency and endorsed the people's right to information. The MKSS later obtained a copy through informal channels. The report recommended the following:

- The certified photocopies of muster rolls, bills and vouchers of completed public works should be made available to the citizens in the Panchayat Samitis (blocks) and Gram Panchayat offices where photocopying facilities are available.

- Where no photocopying facilities are available in Panchayat Samitis and Gram Panchayat offices, handwritten certified true copies of the above mentioned documents should be provided.
- The photocopy machines should be installed by the government or by the private sector. This should be accorded priority at the Panchayat Samiti level.
- The person entitled to obtain certified photocopies, or handwritten certified true copies, of the muster rolls, bills and vouchers related to public works at the Panchayat Samitis and the Gram Panchayat levels should be any one of the following:
  - A resident of the area concerned.
  - An elected representative of the Panchayati Raj bodies.
  - A Member of Legislative Assembly or a Member of Parliament of that area.
- A copy of the record could be obtained of the works completed three years prior to the date of application.
- The copy of the record would be made available on payment of a fee of at least Rs.5 per page.

The Arun Kumar Committee endorsed another important demand of the movement. It felt that NGOs taking funds for development activities directly from the State or central governments and their bodies should also share information about their activities. For this purpose, the committee felt,

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the funds of the NGOs should be regularly audited and information regarding their activities be made available to the people and the public representatives of the area.

### **Formation of NCPRI**

While the MKSS continued with its agitational activities at the grassroots level in the form of demonstrations and dharnas at Panchayat Samiti headquarters in its area after lifting the Beawar and Jaipur Dharnas, the Rajasthan Right to Information Movement took another major turn. With the national body politic reeking of various corruption scams in the past decade and the Bofors, the Securities, the Fodder and the Hawala scandals tainting nearly all major political formations, the novelty of the grassroots MKSS experiments in Social Audit using Right to Information as a tool to fight corruption had a unique appeal for various enlightened intellectuals and activists in the country. The 40 day Dharna in Rajasthan and the collateral linkages it articulated between the Right to Information, the fight against corruption and realisation of various other economic-developmental entitlements of the people galvanised this varied group of intellectuals and activists across the country into a concerted campaign of advocacy and action at their level on the issue of the people's Right to Information.

A major happening in this connection was the involvement of the Press Council of India, (a statutory body under the then Chairman Justice PV Sawant) with these efforts. On July 20 and 21, 1996, the MKSS and the Press Council of India held a joint meeting in the Rajasthan

capital of Jaipur wherein prominent persons from the city intelligentsia, various Non Government Organisations and grassroots level activists of the State and senior members of the Rajasthan government participated – including Chief Minister Bhairon Singh Shekhawat. Under the chairmanship of Justice Sawant, the meeting addressed to various conceptual and practical questions related to the people's Right to Information. There was much drama on the first day with the government members, led by the Chief Minister, and the rest of the gathering taking adversarial positions a number of times. On the second day, the meeting devoted itself to attending the details of the draft Right to Information bill prepared at the LBS Academy, Mussoorie workshop the previous year with a view to improving it and submitting a viable draft bill to the central government for enacting a legislation to operationalise this important constitutional entitlement of the citizens.

The Press Council followed this up with a similar but bigger meeting it called in Delhi on July 31 and August 1, 1996 which was also attended by various prominent political leaders like former Prime Ministers Chadrashankar and VP Singh, Union minister George Fernandes and several parliamentarians. All of them pledged their commitment to passing a law on the Right to Information. The then Leader of the Opposition, Atal Behari Vajpayee, sent a letter to the Press Council, which was read out in the meeting, pledging his support to the cause. The meeting launched the National Campaign for People's Right to Information with activists, intellectuals

and professionals from various states, which then set up a small group to finalise the draft bill. To run the campaign too, a small working group of prominent people was formed.

By the end of the year, the NCPRI and the Press Council of India managed to prepare and submit to the Union Government a comprehensive draft Right to Information Bill. This was called the Press Council draft bill on the Right to Information. It was later revised at a workshop hosted by the National Institute of Rural Development and was thereafter called the Press Council-NIRD bill. Intensive advocacy by the NCPRI helped forge an atmosphere that made various political formations in the country pledge support to the idea of a Right to Information law at the central level and in various states. It resulted in the United Front Government at the centre appointing the HD Shourie Committee, which included senior secretaries of the Government of India apart from the chairperson who is a well-known consumer rights activist. The government referred the Press Council-NIRD draft to the Shourie Committee, which finally produced its own draft Freedom of Information Bill. This was revised by the Union Government and passed by the Parliament as the Freedom of Information Act, 2002. The atmosphere created by NCPRI advocacy also provided the context wherein several State governments, beginning with Tamilnadu and Goa in 1996-97, produced their own Right to Information Laws, Orders and Acts. An evaluation of these various has been attempted later on in this paper.

## Agitation Again and Jaipur Dharna

As the Arun Kumar Committee Report was made secret by the Rajasthan government and its implementation remained blocked despite all the networking and advocacy efforts and negotiations at the state and at the national levels, the MKSS decided to launch a fresh agitation in February, 1997. Meanwhile, a Jan Sunwai at Beawar held jointly by the MKSS and the Press Council in September, 1996, and Dharnas at Panchayat Samiti headquarters in MKSS areas and widespread media coverage of these events had kept up the heat in the State.

A run-up to this phase of agitation saw Dharnas, lasting several days, in all the five Divisional towns of the State, mobilising support for the as yet unrealised demands of the 40 day long Dharna of the previous year. These were not token Dharnas but live agitational affairs with street plays, puppet shows, group songs, marches and meetings communicating the message of the movement and mobilising support and resources for it. The Divisional Dharnas culminated in the indefinite Dharna before the State secretariat at the Statue Circle in Jaipur.

Beginning on May 26, 1997, exactly a year after the Dharna was lifted in 1996, the Jaipur Dharna lasted for 53 days – ending on July 14, 1997. True to form, the State government came up with a trick on the eve of this Dharna too. In a conference of Chief Ministers held in New Delhi on May 24, 1997, Bhairon Singh Shekhawat of Rajasthan announced that his government had

*Intensive advocacy by the NCPRI helped forge an atmosphere that made various political formations in the country to pledge support the idea of a Right to Information law at the central level and in various states*

*On the basis of the evidence of corruption per Panchayat unearthed by the few Jan Sunwais that had occurred till then, Nayyar calculated that this rural development scam in Rajasthan would surpass the Rs. 900 crore fodder scam in Bihar*

already ensured transparency in administration by passing orders enabling the public to obtain photocopies at the Panchayat level, of records relating to the various State government departments. The next day an MKSS delegation met the Chief Minister to ask for the orders. But they did not exist. The Chief Minister gave the assurance that the orders would be issued on May 26, the day the Dharna was going to begin. When an NCPRI delegation met him under the leadership of veteran journalist and Rajya Sabha member Kuldip Nayyar on May 26, the day the Dharna began, the Chief Minister said that these orders would be passed by June 3, 1997 and asked the MKSS to lift the Dharna. Taken in by Chief Minister Shekhawat's assurance, Nayyar requested the MKSS to do so. But knowing better, the MKSS continued with the Dharna. And on June 3, instead of passing the transparency orders, the State government constituted a sub-committee to look into the matter.

In the face of the State government's overt hostility, this Dharna too was a live point of agitation from which various kinds of agitational activities and aggressive advocacy efforts emanated that drew the attention and support of enlightened opinion across the country. During the course of the Dharna, Kuldip Nayyar, a veteran columnist and Member of Parliament, wrote a letter to the then Prime Minister IK Gujral pointing out the scale of corruption scams in rural development works in 9000 village Panchayats on the basis of the evidence of corruption per Panchayat unearthed by the few MKSS

Jan Sunwais that had till then occurred in central Rajasthan. Nayyar calculated that this rural development scam in Rajasthan would surpass the Rs. 900 crore fodder scam in Bihar.

During the Dharna, the MKSS also took out a Ghotala Rath Yatra (scam chariot trip) in Jaipur and Delhi, listing all the major corruption scams in independent India, mocking the BJP leader LK Advani's so called Rath Yatra (chariot trip) against hunger, fear and corruption even as his party's government in Rajasthan turned a deaf year to the people's demands for the Right to Information that had been demonstrated as an effective tool against corruption. The NCPRI organised a great deal of support for the Dharna in Delhi where a delegation of eminent persons submitted a memorandum in support of Dharna demands addressed to the Chief Minister to the Rajasthan Resident Commissioner.

The lifting of the Dharna, after the State government conceded its major demand of making available on demand to citizens photocopies of all records of Panchayati Raj bodies, including bills, vouchers and muster rolls of rural development works carried out by them, was preceded by an extraordinary drama. At a press conference on the 14<sup>th</sup> of July, Rajasthan Deputy Chief Minister Harishankar Bhabhra pulled out a copy of the Rajasthan Gazette, dated 30<sup>th</sup> December 1996 and classified as extraordinary, notifying the Panchayati Raj Act rules gave the citizens the right to inspect and obtain copies of all records kept by the Panchayati Raj bodies, including bills, vouchers and muster rolls

of development works carried out by them. This fulfilled the demands made by the MKSS. The gazette proved extraordinary in the sense that no one, not even the government that had issued it, seemed to be aware of its existence for more than six months – from Dec. 30, 1996 to July 14, 1997.

Treating the gazette as if it were approved on July 14, the MKSS lifted the Dharna after taking out a victory parade on the streets of Jaipur. The gazette gave to MKSS even more than it had asked, including *suo moto*

display by the government at Panchayats/Panchayat Samitis and work sites details of sanction and expenditure of construction works carried out by Panchayat bodies. Being in the rules of the Rajasthan Panchayati Raj Act, these provisions had the legal status no executive order of the State government could have. The farce of the Cabinet sub committee appointed to go into the feasibility of providing certified copies of Panchayati Raj documents was also rendered meaningless now.



## Maturing Methodology

*This chapter tells the story of the five Jan Sunwais of the second phase, after the RTI entitlement was won with respect to Panchayati Raj, and analyses the maturity of methodology and growth they register over the first phase.*

*The latter phase is distinguished from the former in terms of a new found confidence, the degree and intensity of mobilisation, the tangibility of impact, the tenacity of follow-up on Jan Sunwais and a maturing of methodology.*

The success of the Jaipur Dharna in 1997 and the victory in getting the RTI entitlement in Panchayati Raj did make a difference in the area covered by direct MKSS activity. In fact, the Jan Sunwai campaign of the organisation has two distinct phases: pre Jaipur Dharna and post Jaipur Dharna. The latter phase is distinguished from the former in terms of a new found confidence, the degree and intensity of mobilisation, the tangibility of impact, the tenacity of follow-up on Jan Sunwais and a maturing of methodology.

After the end of the Jaipur Dharna in July 1997, the MKSS set about trying to test the newly introduced RTI provisions in the Panchayati Raj Act in the State. As a first step, the organisation listed out 10 village Panchayats from whom to obtain copies of records relating to the total expenditure incurred by them on rural development work since 1995. The Sarpanches and the Gram Sewaks or Panchayat Secretaries were hesitant in honouring the Rajasthan government gazette notification and providing information until pressure was put on them by the local people or until district authorities intervened under popular pressure. Even after a notional acceptance of providing information, it took more

than ten visits to a panchayat before the bills, vouchers and muster rolls of the works were handed over to the people for inspection and photocopying. Finally, with sufficient records in hand, Panchayats of Kukarkheda, Barar and Kushalpura were chosen for the first Jan Sunwai of the second phase at Kukarkheda in Rajsamand District on Jan. 9, 1998.

### **Kukarkheda Jan Sunwai: Power of Public Shame**

Nothing in the first phase of Jan Sunwais could surpass the drama of this Jan Sunwai. Villager after villager came forward to testify to the falsity of the Panchayat records and give the real picture of the work actually carried out by the Kukarkheda Gram Panchayat. The collective murmur of disapproval rising from a gathering of more than a thousand became too much for the Sarpanch who sat with the panelists. Finally, proving the power of public shame, and showing courage at the same time, Basanta Devi got up to accept her responsibility for the instances of corruption that came out, announcing her decision to return the embezzled amount. The Sarpanch of Kukarkheda announced she would return Rs. 1 lakh,

the amount she confessed having embezzled. Out of this, she said, she would immediately return Rs. 50,000 to the Panchayat account and return the other Rs. 50,000 a little later.

The major frauds detected in Kukarkheda Gram Panchayat were:

- Fraud in the construction of a canal
- Fraudulent billing of the cement used, 125 bags in excess of what was actually used
- Fraudulent bills for carting material, and
- Fraud in muster rolls.

The approximate misappropriation of funds in Kukarkheda Panchayat was a little over a lakh of Rupees. Dramatic though it was in the midst of the Jan Sunwai, Sarpanch Basanta Devi's announcement did not come as a surprise to the MKSS activists. As MKSS activists went about physically verifying each expenditure and the work done in the Panchayat during the run-up to the Jan Sunwai, Basanta Devi gradually gave in. She had also not resisted giving photocopies of documents the MKSS activists had asked for.

In this Jan Sunwai, the Barar Panchayat experience provided a contrast to the Kukarkheda experience. Sarpanch Asha Devi of Barar did not cooperate at all in providing bills, vouchers and muster rolls related to works in her Panchayat. Rather, she had a ward member threaten Laxman Singh, who was involved in trying to access these documents. There were two major frauds in this Panchayat, mostly related to construction of an anicut: fraudulent bills

for the sand and stones supplied and fraud in muster rolls. The total scam amounted to Rs. 1.50 lakhs approximately – 40 percent of the total expenditure, compared to 30 percent of the expenditure in Kukarkheda.

This Jan Sunwai exposed the lie of the argument justifying fudging of accounts on the grounds of so called 'adjustment' to maintain the 60:40 ratio in employment intensive rural development works as per the requirement of the central government. This argument had been often heard from the Panchayat to the topmost bureaucratic levels in the State in the course of the anti-corruption campaign of the MKSS over the years. It was made clear in the Jan Sunwai by economist Prof. VS Vyas and junior engineer Girish, who helped MKSS out for the Jan Sunwai, that the central government requirement was with respect to all works taken together in the district and not all individual works. Moreover, the Jan Sunwai clearly demonstrated that the material bills were the first to be fudged as they were easier to fudge, and then the labour bills were further fudged to meet the ratio. For corruption, in fact, any excuse and opportunity would do.

Economist Prof. VS Vyas from Jaipur, Neuro Psychiatrist Prof. Srinivas Murthy from Bangalore and Prof. Shekhar Singh from Indian Institute of Public Administration, Delhi were among those who constituted the panel for the Public Hearing.

But more dramatic was what happened after the event. The Jan Sunwai had exposed the corruption of various people apart from Basanta Devi – the Barar Sarpanch, the Gram Sewak, the junior

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*A high point in the public profile of Jan Sunwais was the arrival of, and address by, former Prime Minister Vishwanath Pratap Singh in the Surajpura Jan Sunwai*

engineer etc. A little while later, the District Administration singled out Basanta Devi for an investigation into charges of corruption, intimidated her with this threat and forced her to take back the amount she had returned to the Panchayat coffers.

### **Surajpura Public Hearing: The Way Forward**

Going a step ahead of Kukarkheda, the Surajpura Jan Sunwai in Jawaja Tehsil of Ajmer District, held on Jan. 19, 1998 saw two Sarpanches owning responsibility for corruption in development works and agreeing to return the money that was misappropriated. Chhagan Singh of Rawatmal Panchayat and Om Prakash Solanki of Surajpura agreed to return Rs.1.47 lakh and Rs.1.15 lakh respectively. The presence of five Sarpanches in the Jan Sunwai – Bhanwar Singh of Jawaja, Kanku Devi of Badkochra, another Kanku Devi of Lotiyana, Omprakash Solanki of Surajpura and Chhagan Singh of Rawatmal – testified to the sea change that had come about due to the MKSS campaign in the area since the days of the first phase of Jan Sunwais in 1994-95 when no Sarpanch cared to attend a Public Hearing. Obviously, the big public mobilisation in a MKSS Jan Sunwai was not something that could be ignored by any public representative in the area. A high point in the public profile of Jan Sunwais was the arrival of, and address by, former Prime Minister Vishwanath Pratap Singh in the Surajpura Jan Sunwai. A gathering of around 2000 villagers was the most important participant in, and witness to, this morality play.

This Jan Sunwai mostly examined development works in the three Panchayats of Surajpura, Rawatmal and Lotiyana. The most dramatic case of corruption came from Rawatmal where a non-existent water channel was shown in the records as completed. Fraud was also detected in the construction of an anicut in Surajpura Panchayat and digging of a pond in Lotiyana Panchayat. Some prominent instances of frauds in Surajpura and Lotiyana Panchayats were:

- Surajpura – fraud bills for 99 trollies of stone and 260 bags of cement
- Lotiyana – manipulation in muster roll, showing 40 workers worked for 10 days against the actual figure of 7 workers working for a week

Apart from VP Singh, the panelists in the Surajpura Jan Sunwai included Ajit Bhattacharjee, veteran journalist and the Director of Press Institute of India in Delhi, Harsh Mander, then in the Madhya Pradesh cadre of the Indian Administrative Service, Santosh Mathew from the Bihar cadre of the IAS, Pushpa Bhawe, Marathi writer from Mumbai, Ved Vyas, a Hindi writer and journalist from Jaipur and Prem Krishan Sharma, prominent High Court lawyer from Jaipur and President of the Rajasthan unit of the People's Union for Civil Liberties.

The two Sarpanches, Chhagan Singh of Rawatmal and Omprakash Solanki of Surajpura, who took moral responsibility for defalcation of development money, were true to their word and returned the amount promised to their respective panchayat funds. Unlike its

Rajsamand counterpart, which forced Basanta Devi of Kukarkheda to take back the embezzled amount she had returned, the Ajmer district administration did not try to influence Chhagan Singh and Solanki in such a way. In fact, the Ajmer district administration, again unlike the Rajsamand one, was quite cooperative in making information for the three panchayats in Jawaja Tehsil covered by the Surajpura Jan Sunwai, accessible to the MKSS activists.

### **Bori Public Hearing: Fighting A Feudal Grip**

Occurring as it did when the exercise of framing the Rajasthan Right to Information law was still on, the Bori Jan Sunwai marked a real turning point in the MKSS operations in central Rajasthan. Held on December 18, 1999 outside of the usual area of MKSS operations till then, the Jan Sunwai at Bori village in Umarwas Panchayat of Rajsamand District was the first to be held after the change of government in the State. It was held a whole year after the Congress government under Chief Minister Ashok Gehlot took over in the State, a year that saw both the government and the MKSS interacting to get a new RTI law across in Rajasthan.

With both the District Collector and the Superintendent of Police present in the Jan Sunwai, the new turn in the administrative orientation was amply evident, as it was for the first time the administration at such a senior level actually became part of a Jan Sunwai. But more than that, the Jan Sunwai was a watershed in the course of public hearings in

central Rajasthan in that for the first time it hit at the point where India's traditional feudal inequities converge with the pathologies of its modern development and democratic machinery – to the advantage of the former.

As pointed out, the MKSS till then had operated in an area where the caste and class inequities in the villages were not as pronounced as elsewhere in Rajasthan. But the magic of the Jan Sunwais had gradually caught on, and with it the profile and name of the Sangathan. So it was that Pyarchand Khatik, the Sarpanch of Umarwas (and that was another of the unique things or 'firsts' to happen with this Jan Sunwai), had been after the MKSS for nearly two years to hold a Jan Sunwai in his Gram Panchayat – much before he was suspended and eventually dismissed, with the government ordering a recovery of Rs.1.5 lakh from him.

A Dalit Sarpanch, Pyarchand had approached the MKSS when he realised that he was being taken for a ride by a small upper caste coterie of Nain Singh Solanki, the Thakur of the village, Laxman Das and Bhanwarlal Sewak, who had him elected to the reserved post in order to manipulate him for their own benefit. In his four years of office, Pyarchand never knew what he was signing. And with each piece of paper he signed, he filled the coffers of this coterie and its henchmen and in effect signed his own eventual dismissal in early 1999.

The administration's quick action against Pyarchand was based on an anonymous complaint, which came

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*The Bori Public Hearing has important lessons to offer. First, complete transparency is the best defence against blackmail and manipulation. Second, reservation as a means of empowerment is inadequate without a corresponding support structure*

soon after he had approached MKSS. But Pyarchand persisted with his pleadings to hold a Jan Sunwai in Umarwas. Here also the Bori Public Hearing has important lessons to offer. First, complete transparency is the best defence against blackmail and manipulation. Second, reservation as a means of empowerment is inadequate without a corresponding support structure.

The Bori Jan Sunwai seemed to sow the seeds of such a support structure, however elementary, among the Dalits of Umarwas Panchayat as they spoke out publicly for the first time against those who controlled their lives. Till just 15 days before the Jan Sunwai, there was a pall of fear in the Panchayat, preventing anyone from speaking out – a fear torn to shreds during the run-up to the Jan Sunwai as MKSS activists began confronting the falsehood contained in government records with physical verification of things on the ground. Before and during the Jan Sunwai, Pyarchand was honest enough to confess that he too got crumbs from the loot which was all taken back from him in the name of recovering election expenses made on his behalf by the same coterie. This confession, showing that he was not at all concerned with the consequences, was a proof of Pyarchand's innocence. Some examples, highlighted in the Jan Sunwai, of the way the dominant coterie in the village pocketed development and Panchayati Raj through Pyarchand are:

- A new building constructed with Panchayat funds and shown as the community centre in Data Niwas village actually served as the annexe to Thakur Nain Singh's Ravla or manor.

- Free houses under Indira Awas scheme went not to the poor of the Panchayat but to Nain Singh, who was also the Ward Panch, five of his relatives and three other Ward Panches, all well off, against all norms.
- The community centre in Asan village actually became a part of Panchayat Samiti member Kamala Nath's house.
- A water channel drawn by the Panchayat to water fields of Bansa villagers actually irrigated only the fields of Nain Singh and relatives.
- Ghost wages were paid and pocketed by the coterie on the basis of false entries in muster rolls.
- Thousands of rupees were embezzled in the name of building *Hathbais* or traditional public platforms that already existed.

The atmosphere in the gathering of between 2000 and 3000 became more charged as this outrageous list grew. The coterie tried to lay all the blame on the dismissed Sarpanch Pyarchand through whose signature all the works were executed. But Pyarchand's pleas that he had been manipulated and forced to submit carried weight as he seemed to be the beneficiary of none of the misdemeanours. In fact, what was revealed in the Bori Jan Sunwai was not only the manipulation of Pyarchand, but also Panchayati Raj, the system of reservations, rural development schemes – in fact, our modern democracy itself. Never before had a MKSS Jan Sunwai unraveled layers of such feudal hold over our modern system.

The Bori Jan Sunwai, with writer Arundhati Roy and feminist activist and writer Madhu Kishwar among the panelists, threw a fresh plea to the administration for real justice. While the beneficiaries of corruption in the Panchayat roamed free, Pyarchand, the victim of manipulation had been punished. Moreover, two government servants suspended with Pyarchand were reinstated two months later while Pyarchand's Sarpanchship was terminated.

The District Collector and the Superintendent of Police participated and did some smooth talking in the public hearing. But how did the system react later? On Jan.7,2000, the Block Development Officer of Kumbhalgarh filed a First Information Report at Gadbor police station. It referred to the Bori Jan Sunwai, but gave a short shrift to the main instances of corruption and the evidence unearthed there. Instead, it again made Pyarchand the main accused by a selective use of evidence. As the MKSS persisted with petitions and meetings over the next many months to get real justice in the case, an out-of-court settlement was arrived at with the administration. Recoveries were made by the administration through civil proceedings from Nain Singh and his gang who had benefited from corruption as criminal proceedings had been dropped against Pyarchand – and against the coterie as well.

### **Bhim Jan Sunwai: Knocking at the System's Gate**

The fourth in the second phase of Jan Sunwais, the one at Bhim was intended to feed into the Ward Sabha social

audit proceedings. This Jan Sunwai was held in the wake of the Rajasthan government ordinance, later made into an Act, devolving widespread powers further down the line from Gram Sabhas to Ward Sabhas, an assembly of all adults living in a Panchayat ward. Two of the most important powers given to a Ward Sabha included Social Audit and Development Planning. The first Social Audit Ward Sabhas were slated to be held between May 1 and May 15, 2000.

The MKSS planned the Bhim Jan Sunwai in April 2000 with the intention of going with its results to the Ward Sabhas, when they were held, and presenting these results for Social Audit. This would test on the ground the new ordinance that looked so progressive on paper. Bhim being one of the biggest village Panchayats in Rajasthan, with 29 wards and a population of more than 20,000, seemed a natural choice for the purpose.

Held on 3<sup>rd</sup> April 2000, the Jan Sunwai was attended by a representative of the district administration in the person of Rajiv Thakur, the Project Director of the District Rural Development Authority. Apart from him, the panel included Justice Vinod Shankar Dave, a former judge of the Rajasthan High Court, Ram-sharan Joshi, the Director of Makhanlal Chaturvedi University of Journalism in Bhopal and a team from Kerala Shashtra Sahitya Parishad, the organisation that made a name for itself with the implementation of the People's Plan exercise in Kerala.

Some startling instances of corruption were exposed in the Jan Sunwai, of

*The Bori Jan Sunwai threw a fresh plea to the administration for real justice. While the beneficiaries of corruption in the Panchayat roamed free, Pyarchand, the victim of manipulation had been punished*

*The Jan Sunwai at Janawad came at the end of a one year long battle for obtaining information. This year long battle is a testimony to how opposition to the idea of transparency is so entrenched in the system that it will do anything to thwart the sharing of information with the people*

which a case of non-payment of minimum wages grabbed most of the attention. Women workers on a work site were paid as little as Rs.8 per day. Stone was supplied for this construction from the private stone quarry of a henchman of the Sarpanch Sohanlal Mewara. This quarry owner had employed some women in his quarry and did not want to pay them from his pocket. The Sarpanch showed them in the muster roll as having worked on the Panchayat work site where some other women had actually been employed. So what happened was that the money, which had come for wage payment for the Panchayat work, was divided among more labourers than stipulated. Both the Panchayat work site women and the quarry women workers suffered as a result of this and had to make do with low wages.

Interestingly, one case of corruption was revealed through a diary maintained by a ward member. It revealed that the construction of a village road was overbilled to the tune of Rs. 1 lakh approximately. In another instance of corruption, an extra floor, (the first floor) was added to an existing Kisan Vikas Kendra building but payment against bills was received for digging the foundation as well. In another case, earth dug up from one Panchayat work site was used as filling at another in the same Panchayat, but this filling was billed and charged as having been brought from elsewhere.

The more than 2000 strong gathering at the Jan Sunwai held Sarpanch Mewara, the Gram Sewak and the Junior Engineer responsible for this

scandal. None of them attended the Public Hearing, even though the Sarpanch sat within hearing distance all through at a tea shop nearby.

All the cases of corruption unearthed in the Jan Sunwai were put up for Social Audit in their respective Ward Sabha meetings in May. The Ward Sabhas also took resolutions recording these cases of corruption and forwarded them to the State government for action, but in vain. Nothing happened.

### **Janawad Jan Sunwai: A Long Road**

The long road to Janawad Jan Sunwai and after traverses the constraints and potential of the MKSS experience of public hearings since Dec. 1994. Held on April 3, 2001 as a part of the chain of events commemorating five years of the Beawar Dharna, the Jan Sunwai at Janawad came at the end of a one year long battle for obtaining information. This year long battle is a testimony to how opposition to the idea of transparency is so entrenched in the system that it will do anything to thwart the sharing of information with the people. The reason for this came out clearly in the Jan Sunwai, which demonstrated how sharp a tool information is to expose the dark ways of corruption leading to control over resources and lives of human beings under the cover of secrecy.

Janawad in Rajsamand District, like Umarwas, was also way out of the MKSS' usual area of operations. As in the case of MKSS Jan Sunwais in other villages, it was the people of Janawad who took the initiative of following up the complaints regarding cases of

corruption, presided over by ex-Sarpanch Ramlal during his tenure from 1994 to 1999. With a lot of high level political backing, he still had a strangle-hold over the new Panchayat, which was now headed by a woman, Bhuri Bai. The clout of Ramlal is evident from the fact that out of the Rs.10 crore allotted to the 37 Gram Panchayats of Kumbhalgarh Panchayat Samiti for construction works in five years, around Rs.1.25 crore went to Janawad alone. More than anything else, the year long travails of MKSS activists and people of the village in trying to access official Panchayat records pertaining to development work in Janawad, under the provisions of the Panchayati Raj Act rules of Rajasthan, are themselves a testimony to Ramlal's clout with the politics and administration of the area – and also his mastery of the judicial mechanism. Therefore a quick look at this pre-Public Hearing tale is instructive.

Inspired by the Public Hearing in Umarwas in Dec. 1999 and having seen the information board in Janawad, the people of the Panchayat applied for information relating to works executed in 1995-2000, on Feb.16, 2000 under the PR Act. As per rules, they should have got the information in four days, but they were refused. After a month, on 30<sup>th</sup> March, they applied to the District Collector of Rajsamand for the same information. It took more than a month for the district administration to respond, albeit in a dilatory way. On May 17, the Chief Executive Officer of Rajsamand District wrote to the Block Development Officer of Kumbhalgarh to give the information asked for.

As suggested by the administration, the MKSS and the local villagers resubmitted their application in a Panchayat meeting on the 6<sup>th</sup> of June. The Gram Sewak promised to give them the information between the 5<sup>th</sup> and 7<sup>th</sup> of July. But no one was there during that period to give information. On the 24<sup>th</sup> of July when people presented themselves again in the Panchayat meeting to get the information, it was refused on the ground that the Accounts had gone for Audit and would be returned in Aug. 2000. On Aug.14, the MKSS and Janawad residents again wrote a letter to the CEO Rajsamand. On Sept. 9, the MKSS got to know that the Sarpanch and the Gram Sewak of Janawad had written to the CEO saying they could not give the information asked for as the Gram Sabha had passed a resolution to this effect on 15<sup>th</sup> May and the Gram Panchayat general meeting had taken a similar resolution on 24<sup>th</sup> July. On the 15<sup>th</sup> of September, the MKSS wrote a letter to the Minister and Secretary of the Panchayati Raj department of Rajasthan about the illegality of the so-called Gram Sabha and Gram Panchayat resolutions.

A month later, on the 16<sup>th</sup> of October, the Secretary Panchayati Raj and the State government ordered the BDO of Kumbhalgarh to furnish the information. On 23<sup>rd</sup> October, the State government's Panchayati Raj department also set aside the so-called Gram Sabha and Gram Panchayat resolutions and asked for an explanation by the Sarpanch and the Gram Sewak within 15 days. On 2<sup>nd</sup> November, the Kumbhalgarh Panchayat Samiti Pradhan

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took possession of the records and ordered evaluation of the Janawad works executed in 1995-2000 by a committee consisting of the BDO of Kumbhalgarh, the Junior Engineer and the Junior Accountant within two months. He refused information to the MKSS and the people of the village on the ground that it would result in disturbing the peace. The next day, Nov. 3, he also informed the Rajsamand Collector and Secretary of the Panchayati Raj department of his decision and said that the denial of information to the MKSS was in public interest. After a fortnight, on Nov. 18, the Panchayati Raj Secretary ordered the Sarpanch and the Gram Sewak of Janawad to bring all records to him in three days.

When this did not happen, the MKSS organised a Dharna of over a 1000 residents of Bhim, Devgarh, Kumbhalgarh, Jawaja and Kishangarh Panchayat Samitis outside the Rajsamand collectorate, demanding the implementation of Panchayati Raj Act rules as amended in 1996. The Collector came out and assured the people in the presence of the Kumbhalgarh BDO that information related to the Janawad works would be provided by the Panchayat by Nov. 25. But on 25<sup>th</sup> Nov., the Gram Sewak again refused to provide information, saying, through a letter, that under Section 323 of the Panchayati Raj Act rules he could only permit scrutiny, and not furnish copies, of the documents. Protesting against this, the MKSS wrote to the BDO and Gram Sewak that Section 324 of the same Rules allowed furnishing of authenticated photocopies.

On Nov. 26, the NCPRI shot off a letter to the Rajasthan Panchayati Raj Minister demanding the immediate furnishing of information, the suspension of the Janawad Gram Sewak, action against the BDO, CEO and the Collector Nirmal Wadhvani (ironically the same young BDO of yesteryears who had so diligently provided information and conducted an inquiry in the initial days of the MKSS journey ) for collusion in not implementing the law and refusing to give information, and action against the Kumbhalgarh Pradhan and Janawad Sarpanch.

But the great drama happened on Nov. 28, when the Gram Sewak disappeared with all original records and copies and reappeared a few days later with a stay order of the Jodhpur High Court on the orders of the State government. It was more than two and a half months later, on 20<sup>th</sup> Feb., 2001 that the High Court vacated the stay and ordered that the information asked for be given to the MKSS and the residents of Janawad. Finally on 24<sup>th</sup> Feb., 2001, the people of Janawad got the information, even though the records received were still incomplete with several papers gone missing.

However, whatever records were available and the subsequent Jan Sunwai revealed corruption on an unprecedented scale and explained why there was so much resistance in the system to parting with these records. Copies of records relating to 98 works in the course of five years (worth more than Rs.1.25 crore) were made available, of which many documents were incomplete - with measurement books and utilisation

certificates of many works missing. The Jan Sunwai examined works worth Rs.65 lakh and established embezzlement of approximately Rs.45 lakh. This figure went up to nearly Rs.70 lakh subsequent to a government enquiry by the Bannalal committee.

The story of the arduous Janawad struggle for the Right to Information had become such a legend in the area, as well as outside, that the grounds for the Jan Sunwai were backed with more than 3000 people on April 3, 2001. The panel was presided over by the Press Council Chairperson, Justice PB Sawant, and the panelists included the retired Chief Justice of Delhi High Court, Justice Rajinder Sachhar, retired Judge of Rajasthan High Court Justice VS Dave, Press Institute of India Director, Ajit Bhattacharjee, journalist Kalpana Sharma and activists from other parts of the country like Vandana Shiva, Baba Adhav, MP Parameswaran, Surendra Mohan and Nelson Fernandez. Though the local Collector and the Superintendent of Police chose to abstain from the Jan Sunwai (the district administration was represented by officers lower in rank), a high ranking government of India official, Sudha Pillai, Joint Secretary in the Rural Development Ministry was on the panel. The tone of the Jan Sunwai was set by the Sarpanch, Bhuri Bai, who testified to the hold of the ex-Sarpanch Ramlal and said that the Gram Sewak, Baburam Saini, had got her to sign several sheets of blank paper.

To cut a long story short, under pressure from the unprecedented mobilisation for the Jan Sunwai, the high profile

of the case and the widespread national media coverage, the police arrested former Janawad Sarpanch Ramlal Gurjar, ex-Panchayat Secretary Atta Mohammed and the Junior Engineer Sanwarchand Chandel on April 10 under a First Information Report lodged during the run-up to the Jan Sunwai. The next day the BDO lodged another FIR and added the name of another Junior Engineer, Vinod Kumar Arora.

But these FIRs did not cover the whole extent of the fraud in Janawad. And soon enough an attempt at cover-up started. A district administration inquiry gave a clean chit with reference to most of the Janawad works. Meanwhile, in response to a MKSS representation to the Chief Minister demanding a thorough government enquiry into the complete range of Janawad works by someone from outside the area and with a high level of integrity, the State government constituted an inquiry committee. The committee was headed by Bannalal, a Deputy Secretary in the Audit department and known for his integrity. The committee also included two technical officers, an executive engineer and an accounts officer of the Panchayati Raj department.

Formed on April 27, the committee submitted its report on 24<sup>th</sup> July and did a thorough job of it. It conducted a participatory and transparent probe ensuring full involvement of the MKSS activists and the residents of Janawad. More than 400 pages long, the Bannalal committee's is a historic report based on the physical verification of all 141 development works executed in Janawad Panchayat in the six years

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*The committee's findings include nearly every kind of corruption that is possible in development works in a Panchayat*

between 1994 and 2001 and the testimony of everybody concerned. And the committee's findings include nearly every kind of corruption that is possible in development works in a Panchayat. Salient findings of the Janawad Jan Sunwai and the Bannalal Committee report are:

- Out of a development expenditure of Rs.1.25 crore in 6 years, Rs.70 lakh were misappropriated.
- Out of a total of 141 development works, the number of ghost works was 49 – only on paper, not on the ground.
- Embezzlement took place in 105 works.
- The ghost works included anicut, wells, primary school, sub health centre, veterinary hospital, roads, inn, bridges and community centre – all of which could have been valuable community assets in a drought prone, poor and backward area.
- The poor were robbed of their housing entitlement under the Indira Awas scheme, while the relatively better off benefited.
- One anicut was measured and billed four times. Similarly, the Panchayat building was also measured and billed as the veterinary hospital and sub health centre.
- Community construction was taken under personal possession and for personal use.
- Ghost entries in muster rolls.
- Four water storage tanks were constructed, which are unusable.
- The works violated all norms and were without effective supervision.
- Even while under suspension, the Junior Engineer kept filling measurement books, on the basis of which the Panchayat Samiti kept sanctioning funds.
- The employees concerned were given voluntary retirement despite police cases against them.
- The Chief Minister was misinformed by the district administration through its probe report – a fact accepted by the administration.
- A crucial measurement was found missing during the probe.

The Bannalal Committee held government functionaries responsible in each instance of corruption that it established. It recommended that these people should be prosecuted by the special cell of the anti-corruption department under 105 different FIRs one for each work involving embezzlement. It also recommended recovery of the embezzled amount from these 15 people and departmental action against them. Only one of these, the former Sarpanch is an elected functionary, the rest of them are administrative officials, government engineers and government accountants. On the basis of this report, the State government has till now filed 11 First Information Reports with the anti-corruption department against those found guilty by the Bannalal committee.

## **Analysing the Growth**

The second phase of Public Hearings registered a definite growth over the first

and campaign was more mature. These Public Hearings showed a dramatic increase in the participation and mobilisation of people. The prolonged and high profile mass movement for the people's Right to Information in the State and its success in getting the entitlement first in the Panchayati Raj Act rules and then as a general law did help in creating widespread awareness of the issues involved and their significance. This became a major factor in the popularity of the Jan Sunwai. And with the success of each Jan Sunwai, the attendance, the participation, the involvement and the mobilisation kept increasing.

The success of the movement in finally obtaining the entitlement also effected a sea change in another respect. Even if people at various levels of administration continued exposing themselves by thwarting efforts at accessing information, the legal entitlement made it impossible beyond a point to sustain such stonewalling in the face of the singularity of purpose and tenacity of the people or organisation pursuing information.

The major achievement of the second phase of Jan Sunwais was in terms of the scale of corruption and the complex operations and nexus behind it that they unearthed. Corruption at the village level affects the people directly by robbing them of their various other entitlements. Therefore, the success of each Jan Sunwai in exposing such

corruption and its ways kept on driving home the efficacy of the method and hence increasing its popularity.

The change in the circumstances between the first phase and the second phase was such that the Jan Sunwais could no longer be ignored by either the elected Panchayat functionaries or the administration. While the first phase of Jan Sunwais was assiduously boycotted by the Sarpanches and the local administration, this was not the case in the second phase. The presence of the administration in the Jan Sunwais gave more focus to the follow-up of the findings of a Hearing despite all hurdles.

The second phase of Jan Sunwais was also far more dramatic in impact than the first phase. Though an obdurate administrative machinery kept on thwarting justice in established cases of corruption, the Jan Sunwais did establish the power of public shame as witnessed in the return of the embezzled amount by some Sarpanches. The second phase of Jan Sunwais are also marked by the worsting of powerful vested interests by the collective strength of the people. Each such success made a breach in the wall of feudal fear that characterises a typical Rajasthan village, helped put the finger on the convergence between feudal inequities and the pathologies of contemporary practices of development and politics and thus helped make the Jan Sunwai a continuously growing mass movement.

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*As the MKSS movement gathered momentum, the question of transparency in non-government organisations (NGOs) and citizens' bodies working with the community also came to the fore*

## Fallout

*This chapter deals with the fallout of the MKSS movement in Rajasthan: the question of transparency in civil society, RTI movement elsewhere in Rajasthan and the lateral impact of the movement in the Right to Food agitation and the women's movement.*

### The Question of Transparency in Civil Society

As the MKSS movement gathered momentum, the question of transparency in non-government organisations (NGOs) and citizens' bodies working with the community also came to the fore. This was partly as a logical theoretical extension of the demand for transparency in discharge of public duties, and partly as a result of the government and local backlash which started questioning the bona fides of those institutionally funded organisations that came out in support of the MKSS movement.

It began during the peak of the MKSS Dharna in Jaipur. Some BJP politicians, led by one Ramakant Sharma, an MLA from Alwar district and a former bureaucrat, made certain allegations against SWRC, Tilonia, the organisation founded by Aruna Roy's husband Bunker Roy. It was alleged that the SWRC was diverting funds provided for education and rural development by donor institutions to the MKSS agitation and other ends. In any case, as an active supporter of the Transparency cause, the SWRC was already thinking of a Transparency Meeting to open up its accounts and works to

public scrutiny. It did so soon in 1997. This set an example of sorts for voluntary organisations in the State. There followed a small series of Transparency meetings organised by Praytna, Dudu in 1999 and SARA, Sikar and Social Work and Research Centre, Jawaja in 2000. But all these organisations belong to the SWRC family and it is a pity that many of the other big NGOs in Rajasthan and the country did not buy the idea, though the URMUL family active in Western Rajasthan had transparency, including its own transparency, and the Right to Information as the theme of its annual conference in the year 2000.

### RTI Agitation Elsewhere in Rajasthan

Apart from the MKSS area, exercise of RTI by the people elsewhere in Rajasthan has been slow to grow and is picking up only now. In the initial phase of the movement in 1996-97, two Jan Sunwais were held at Sare Khurd in Alwar district and Bisalpur in Tonk district on the question of eviction from land and homes because of industrialisation and construction of a dam respectively. These Jan Sunwais, held under the aegis of the Bharat Gyan Vigyan Samiti and Bisalpur Bandh

Samanway Samiti respectively, differed with each other in experience. The first was not persistently followed at various levels and its failure to make an impact is a pointer to the constraints witnessed in the exercise of RTI without appropriate organisational and mobilisational backup. The experience of the Rajasthan Mazdoor Kisan Morcha in Kishangarh district in 1997-98 in being persistently denied information by obdurate public officials is also illustrative of similar constraints.

The Bisalpur Jan Sunwai was a more substantial affair in terms of the history of protest by the Dam oustees in the area and the organisational backup and follow-up by the Bisalpur Bandh Samanway Samiti. The Bisalpur agitation for the relief and rehabilitation of Dam oustees still continues, but a series of follow-up Jan Sunwais in the area and corresponding civil society networking could have had better impact.

It was during the drought year, 2001, that the Right to Information movement was picked up in right earnest outside of the MKSS area in western Rajasthan by the URMUL network of NGOs, though not in the Jan Sunwai mode. The URMUL campaign was successful in many ways in curtailing corruption in the government food for work programme for famine relief. Though the initiative was largely activist dependent and fell short on mass mobilisation, for the first time an RTI agitation has shown real promise outside of the MKSS area.

### **Lateral Impact**

A significant fallout of the Right to Information movement in Rajasthan is the

way it has influenced interaction between the state machinery, at the upper level at least, and citizens' bodies in certain other aspects resulting in a lateral impact not thought of before.

### **Right to Food Agitation**

The most important example of this is the recent citizens' campaign on the Right to Food and Food Security in the State in 2001 in the context of the third successive year of drought in Rajasthan. It made the State part with disaggregated information at various levels with respect to famine relief works, food for work programmes and various other state and central schemes related to employment and food security. The information thus obtained helped people to wrest, through mass agitation, several concessions from the government with respect to their food and employment entitlements and forced the government to rectify gaps in implementation. In fact, the Right to Information law in the State and the willingness of the State government machinery to share information during the drought created an atmosphere in the State wherein the general level of corruption in drought relief work in Rajasthan in the years 2001 and 2002 seemed to have come down. In Nokha Tehsil of Bikaner District, the Sarpanches tried to shirk off the ever vigilant monitoring by a citizens' group, the Jagruk Nagrik Manch, by refusing to take up the drought relief work in the area. Thankfully, this tactic did not succeed.

To its credit, the government machinery in the State did not hesitate to share records and documents with the

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agitating citizens' network, the Akal Sangharsh Samiti, Rajasthan, despite the adversarial positions they had on several counts. In fact, the information obtained from the Rajasthan administration provided a valuable part of the foundation for the Right to Food writ filed by the People's Union for Civil Liberties, Rajasthan that has recently succeeded in getting a Supreme Court order converting various food security schemes of the central government into legal entitlements for the people of India.

### **Atrocities against Women and Human Rights Violations**

There is another interesting experience in Rajasthan on transparency with regard to cases of atrocities against women and general human rights violations. The Government of Rajasthan suffered from an attitude of public denial on the issue of increasing crimes against women. Women's rights and human rights groups found it very difficult to prove that there were often delays or irregularities by the police in taking action relating to arrests and filing of charge sheets in serious crimes like rape, sexual assault, battering, domestic violence etc. There was no accountability on the part of the police towards the people, including the complainant. The complainant also had no right to know what was happening to her case. Human rights and women's activists had no facts to establish either the increasing vulnerability of women to violence or the role of police in manipulating investigations. The police and the Home Department were not at all willing to have any dialogue on this issue.

Organisations working towards justice for women came under the banner of Mahila Atyachar Virodhi Jan Andolan, Rajasthan in 1996. After much public agitation against its (government's) attitude, the State government set up a forum of dialogue and information sharing with the women's rights and human rights group under the Chairmanship of the Home Secretary. This forum met on a monthly basis. Police personnel right from the Additional Director General of Police and the Superintendent of Police (women atrocities) to lower officials would sit with activists and kin of the complainant and scrutinise irregularities or negligence at the police station level in the State on a case by case basis. The fact that this forum provided for openness and that any case could be subjected to public scrutiny led the police to become more accountable. An order was also issued by the Home Department that information regarding crimes against women would be collated at the district level on a fortnightly basis and at the State level on a monthly basis. Apart from the fact that it resulted in each police station incharge and each District Superintendent of Police working hard to show that they were swift in responding to cases, it also got the activists information from the Home Commissioner's office and the SP's office on a regular basis. The success of this forum resulted in similar fora being set up at the district level. Today the message is clear that the police and police stations have to be transparent, accountable and provide information to the people. This has had a good impact and has resulted in improved police accountability even with regard to cases of general human rights violation and custodial crimes.

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## Granting the Entitlement

*This chapter deals with the State initiatives on the Right to Information, including the passage of the Rajasthan Act and a comparative analysis of the various State Acts and the Freedom of Information Act, passed by the Parliament in Dec. 2002.*

### The Rajasthan Act: Through a Transparent Process

Between 1994 and 1998 in Rajasthan, even as the then government resisted the idea of a Right to Information Act, the opposition adopted the MKSS programme. The opposition Congress party promised a RTI legislation in the State in its election manifesto in 1998. Coming to power in 1998, the new Chief minister, Ashok Gehlot, appointed a committee of bureaucrats, under PN Bhandari, a secretary to the State government, to draft a RTI bill to be presented in the State Assembly. When objections were raised by the MKSS and the NCPRI, Rajasthan, on the absence of any citizens' representative in the committee, the State government and the committee it had set up invited assistance from these two organisations to prepare the draft bill. The MKSS and NCPRI held public consultations in each divisional headquarters of Rajasthan and formulated a draft bill on the basis of these consultations. This draft bill was submitted to the government committee, which invited the NCPRI and MKSS for several rounds of discussions. The government committee drew heavily

from the citizens' draft for its recommendations even though they shied away from accepting the citizens' draft *in toto*. The Rajasthan Act, as it was finally adopted, retained many of the suggestions of the RTI movement, but diluted others. The Rajasthan Act is somewhat stronger than some state Acts like those of Tamilnadu and Maharashtra but lags behind some other State Acts like those of Goa, Karnataka and Delhi. But the process that was followed in enacting the Rajasthan legislation was transparent and participatory to some extent and followed the spirit of the Right to Information movement. The Act came into force only on Jan 26, 2001 - after the rules were framed. Possibly, the first ever exercise of this Act was by the MKSS when it obtained the copy of the Bannalal Committee Enquiry report on corruption in Janawad Panchayat (referred to earlier in this paper). It is still too early to offer a comprehensive evaluation of the effect of this Act in Rajasthan.

Apart from the Act, as stated earlier in this paper, Rajasthan also has Right to Information provisions in the Rules of its Panchayati Raj Act granted by the

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previous State government after a long struggle. While the power of information unshackled in Public Hearings forced many Sarpanches to concede fraud and return the embezzled money to the panchayat fund, it also exposed the fraud committed by the entire chain of development administration from the Panchayat Secretary to Junior Engineer, the Block Development Officer, the Pradhan and the District Administration. Not surprisingly, the system has shown such entrenched opposition to information sharing with the public, underlining the lesson that any loophole would be exploited to deny people this basic entitlement. Hence, the need for a strong enactment if the legislation is to be made meaningful on the ground.

While attempts by the administrative machinery to block information abound in Rajasthan, one case really stands out as being representative of the phenomenon. Members of the Rajasthan Mazdoor Kisan Morcha, an ally of the MKSS and active in Kishangarh Tehsil of Ajmer District sought information related to development works of Harmara Panchayat. They had to undergo the ordeal of visiting various offices – from the Panchayat to the District Collector’s – sixty five times between September 1997 and June 1998 in their quest for the information. Then threatening a statewide agitation, the RMKM announced a big rally on the eve of which partial information was released to them. Fearing that this information would establish irregularities, the Sarpanch of Harmara Panchayat disbursed to the entitled people, money

meant for, but not spent on, construction of houses under the Indira Awaas Yojana, construction of latrines, payment of wages for work under Jawahar Rojgar Yojana and other schemes.

The present State government has tried to institutionalise the experiment of Jan Sunwais by granting Social Audit powers to the Ward Sabhas, the general assembly of all adult members of a village ward and potentially (though not in practice) the most powerful institution of self governance. But this is still largely an exercise only on paper as holding Ward Sabhas still remains a mere formality in most of the States without much effort at mobilising public participation.

### **Towards RTI as Law: the States and the Nation**

It is oft repeated that Courts hold the Right to Information as being inherent in the Fundamental Right to Freedom of Speech and Expression granted in the Constitution under Article 19(1) (a). (S.P. Gupta v. Union of India, 1981 Supp. SCC 87, Secretary, Ministry of I&B v. Cricket Association, Bengal, AIR 1995 SC 1411, State of U.P. v. Raj Narain, AIR 1975 SC 865). But the greater part of the citizens’ experience in more than half a century of our republic would testify that secrecy has been the norm and transparency the exception for our governments and administrators. With public opinion becoming more and more vocal in demanding full operation-alisation of the Right to Information in recent years, a process assisted nationally by the NCPRI and various other groups, various State governments have responded by passing laws

or issuing orders to operationalise this important constitutional right. So far, Tamilnadu, Goa, Rajasthan, Karnataka, Maharashtra, Assam and Delhi have RTI Acts in place. The Madhya Pradesh Assembly also passed a RTI bill, but it did not get Presidential assent and hence could not become a law. Nevertheless, Madhya Pradesh was the first State to pass Right to Information orders with respect to a number of areas of governance. Like Rajasthan, Kerala has the Right to Information provisions in its Panchayati Raj Act. The climactic point in the State initiatives in this regard is the passage of Freedom of Information Act, 2002 by the Indian Parliament in Dec. 2002. The President of India gave his assent to this on Jan.11, 2003.

This series of welcome initiatives denote recognition by the Indian State of a significant entitlement and inalienable right that the Constitution has granted to every Indian citizen. But at the same time it would not be uncharitable to say, in the light of grassroot democratic experience and rational expectations, that the various State Acts and the central Freedom of Information Act, 2002 seek to impose unreasonable restrictions on a Fundamental Right granted by the Constitution. It would be pertinent to examine them in the light of certain criteria for a good RTI law evolved by the NCPRI through widespread debate and grassroots experience. But before going ahead with this analysis, it would be useful to take a summary look at the salient features of the various Right to Information laws passed by the states and the

Centre so far. Assam's Act, passed in 2002 is being excluded from this as the English translation was not available at the time of writing this paper.

### **The Tamilnadu Right to Information Act, 1997**

Though Tamilnadu is credited to be the first State in India to pass a Right to Information Act, it did not win much plaudit from the NCPRI on account of its various perceived weaknesses. Passed by the Legislative Assembly in the first half of 1997, it received the assent of the governor on 4<sup>th</sup> May, 1997 and was notified the next day.

The 'information' to which the Tamilnadu Act gives people access is defined as including "copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act for the time being in force or a statutory authority or a company, corporation or a co-operative society or any organisation owned or controlled by the Government". This definition gives people the right to information pertaining to all activities of the State government, panchayats and municipal bodies of Tamilnadu and all autonomous bodies, indulging in business or other activity, owned or controlled by the State government. This definition excludes not only private bodies independent of the government from the Act's purview but bodies receiving government aid and not technically owned or controlled by the State government.

Under the Tamilnadu Act, information is not necessarily accessible at the point where it is generated or stored, but at

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the level of a government official not below the rank of a deputy collector who is defined as the “competent authority” in the Act. This means to obtain any information relating to the affairs of a village panchayat, a person will have to come to the district headquarters – a daunting prospect for a person constrained by time and means. By referring to the ‘bona fide’ of the person seeking information (3 (1) of the Act), the Tamilnadu law puts a sweeping instrument in the hands of the official concerned for rejecting any request for information. It leaves it to the subjective opinion of an individual officer to decide the bona fides or mala fides of a petitioner and is violative of the principle of the absoluteness of a human right which can only be limited by reasonable restrictions.

In fact, the Tamilnadu Act goes into meticulous detail while listing areas where information is made inaccessible or enumerating grounds on which it can be withheld. The information made inaccessible includes that relating to defence security; that which will prejudice the security, integrity and sovereignty of the Nation and the State; that which would harm the conduct of international relations or affairs; that which is received in confidence from foreign governments, foreign courts or international organisations; and that which would harm the frankness and candour of internal discussion. This last point includes proceedings of cabinet and cabinet committees; internal opinion, advice, recommendations, consultation and deliberation; projections and assumptions relating to internal policy analysis;

analysis of alternative policy options and information relating to rejected policy options; and confidential communications between departments, public bodies and regulatory bodies.

Information relating to confidential communications between ministers and the Governor; and information whose disclosure would prejudice the administration of justice, including fair trial and the enforcement and proper administration of the law are also exempted from disclosure. As if the point about administration of justice was not enough, the Act goes on to exempt “information whose disclosure would prejudice legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation .....”. In fact the Act covers as many exemptions related to legal proceedings, safety and security and order as it can: for instance, information covered by legal professional privilege; information whose disclosure would prejudice the prevention, investigation or detection of crime and the apprehension of offenders; information whose disclosure would harm public safety or public order; and information whose disclosure would endanger the life and physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

Other exemptions in the Act pertain to likelihood of damage to the environment of rare and endangered species and their habitats; the ability of the government to manage the economy etc.; and the assessment and collection of taxes, duties etc.; “commercial confidences, trade secrets or intellectual property. The

exemptions also include information whose disclosure could lead to improper gain or advantage or would prejudice the competitive position of a department or other public body and the negotiation or the effective conduct of personnel management or commercial or contractual activities. Information supplied in confidence by a person is also excluded from disclosure as is information whose disclosure is prohibited under any enactment, regulation and international agreement, and information that will constitute a breach of parliament/assembly/legislative council privilege. The exceptions include documents referred in section 123 and 124 of the Indian Evidence Act, 1872 and any matter which is likely to help the commission of offence, help or facilitate escape from legal custody or affect prison security or impede the process of investigation or apprehension or prosecution of offenders. This last point sounds very much like a repetition of similar provisions related to the administration of justice. In fact, many exemptions are merely finer repetitions of the others in this long list.

Not satisfied with this long list of exceptions, the Tamilnadu Act provides further grounds for the rejection of a right to information request. A request may be rejected if the competent authority thinks that the disclosure “is likely to cause violence, or disharmony among a section of the people on the basis of religion, language, caste, creed, community or if it is prejudicial to public interest”. It may also be rejected if the disclosure “would be prejudicial to the maintenance of public order or maintenance of

essential services and supplies”. The invocation of blanket terms like ‘public interest’ and ‘public order’ leave the granting of a right to information request purely at the subjective mercy of the competent authority. As a matter of fact, with the long list of exemptions and grounds of refusal, the Tamilnadu Act reads more like a prohibitive Official Secrets Act rather than a law that makes information accessible.

Another feature of the Tamilnadu Right to Information Act that drew adverse public attention is an omission. The Act does not prescribe any penalty for willfully withholding or delaying information. The Tamilnadu Act is thus rendered toothless and sounds more like an expression of good intent than an effective law. As far as the time period for providing information is concerned, there is again a bit of sabotage in the fine print of the Act. It prescribes a limit of 30 working days from the receipt of application for passing “orders either granting or refusing the request” and not for actually making available the document asked for. As for the provision for a *suo moto* or proactive information sharing by the government, it is too much to expect from such an Act. The Tamilnadu Act, however, does provide for an appeal if any request is rejected. But the appeal prescribed is only an internal one to a higher authority within the government and not outside it.

### **The Goa Right to Information Act, 1997**

As it stands, the Goa Right to Information law was notified on Dec. 2, 1997 after the Governor’s assent on Oct. 29,

*The Tamilnadu Right to Information Act does not prescribe any penalty for willfully withholding or delaying information. The Tamilnadu Act is thus rendered toothless and sounds more like an expression of good intent than an effective law*

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1997. It was passed as it exists now by the Goa Assembly on July 31, 1997. In its previous avatar earlier that year, the Goa Act had stringent provisions to punish what it called the mala fide use of information, which was perceived as anti-freedom of press by the Goa journalists. In the face of a stiff agitation by them, that Act was amended to its present form.

Drawing heavily from the draft bill prepared by the Press Council of India with inputs from the NCPRI, the Goa Right to Information Act was a great improvement on Tamilnadu's. It defined information in such a way as to expand the scope of the Act beyond Tamilnadu's to also include - apart from State government departments, local bodies, government controlled and owned organisations – any other organisation executing any public work or service on behalf of, or authorised by, the government. So this would also include private bodies engaged in public work. The Goa Act also has a wider definition of the Right to Information that includes the right to inspect and obtain copies of any document or record and even “taking samples of material”.

As compared to Tamilnadu, the Goa Act also shortens the list of restrictions on the Right to Information. It prohibits the disclosure of information prejudicially affecting the sovereignty and integrity of India or security of the State or International relations or Public Order or administration of justice or Investigation of an offence or which leads to incitement to an offence. But another provision does leave scope for the subjective proclivity of a competent authority

to withhold information, which will not subserve any ‘public interest’. Information relating to an individual's affairs or personal privacy is rightfully exempted from disclosure as is information that would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes or in public interest. The restrictions also include papers submitted to the Governor for discharge of his constitutional function; disclosure prejudicially affecting centre-state relations; trade and commercial secrets and other information protected by law; and information that would constitute a breach of parliamentary or legislative privilege.

To lessen misuse of the exemptions provisions, the Goa Act introduced a proviso that was subsequently emulated by some other states. It says, “information which cannot be denied to the State Legislature shall not be denied to any person.”

A major improvement in the Goa law over that of Tamilnadu is that there is a provision for penalties in case of deliberate withholding of information or delay in making it available. The penalty provision in the Goa Act provides for disciplinary departmental action against the erring official and also levy of a personal fine of Rs.100 per day for every day of delay beyond the stipulated 30 working day period. In another improvement over Tamilnadu, Goa has an external appeal to the Administrative Tribunal against the former's provision of an internal appeal. Again, in the Goa Act, there is no restriction for a ‘competent authority’ to be above the rank

of a deputy collector. The Goa Act also prescribes a fee for making copies of documents available. The fee includes the cost of processing and reproduction. With reports of exorbitant fees in the name of processing cost, a ceiling of Rs.100 as processing fee was imposed by a subsequent amendment.

A very significant feature of the Goa Act is the provision for a State Council for the Right to Information. Headed by the Minister in charge of the Administrative Reforms department and with official and non-official members, the Council is supposed to promote right to information in the State. For this, it would review the operation of the Act and its rules; review the administrative arrangements and procedures to operationalise the Act; conduct research and documentation for the management of information with a view to improve its extent and accuracy; and to advise the government on training, development and orientation of its employees to bring in the culture of openness and transparency.

A very significant provision in the Goa Act stipulates giving information relating to the life and liberty of a person within 48 hours even though the normal time limit is 30 working days from the date of the receipt of application.

### **The Rajasthan Right to Information Act, 2000**

The process behind the passage of the Rajasthan Act has already been dealt with earlier in this chapter. The Act itself falls somewhere between the Tamilnadu and Goa Acts, but is a big improvement over the former and

nearer to the latter in letter and spirit. The Act does not extend to all the public activities of the private sector and NGOs, as advocated by the Press Council draft bill and the national campaign. And unlike the Goa Act, it also does not cover private bodies executing public works either on behalf of the government or under its authorisation. But the definition of 'public body' in the Act does extend its scope to a body "receiving substantial financial assistance from the State government". In fact, in this matter, the provisions of the Rajasthan Act are closer to that of Tamilnadu than Goa.

In defining the right to information, the Rajasthan Act closely follows the Goa one and includes within its purview obtaining certified copies of documents or records; inspection of accessible records and documents and taking notes and extracts from them; inspection of public works; and taking samples of material from public works. In the system of appeal, the Rajasthan law incorporates features of both the Tamilnadu and the Goa Acts in that it provides for an internal as well as external appeal. The appeal system in the Rajasthan Act is in fact multi-layered. The first appeal is to the next higher authority in the government and second appeal is external, but to different bodies at the district and state levels. For any denial of information up to the district level, the second appeal would be made to the District Public Grievances cum Vigilance Committee with official and non-official members and chaired by the district collector. In cases going beyond the district level, the Rajasthan Civil Services

*A very significant feature of the Goa Act is the provision for a State Council for the Right to Information*

*The Rajasthan Act also has an insidious ground for refusing an information request. Information can be withheld on the ground that the request is too general and the volume of information required would involve disproportionate diversion of resources of a public authority or would adversely interfere with the functioning of such authority*

Appellate Tribunal would deal with the second appeal. By imposing the penal provision of disciplinary departmental action for willfully denying information, the Rajasthan Act is an improvement on Tamilnadu's but falls short of the Goa provision for simultaneously levying a personal fine on the errant official for a delay in making information available.

The exemptions and grounds for refusal in the Rajasthan Act are fewer in number and less sweeping than the Tamilnadu Act, but more than Goa's. They total 10 in Rajasthan compared to Tamilnadu's 24 and Goa's 10. Over and above that of Goa's in substance, Rajasthan has provisions prohibiting disclosures that would harm the candour of internal discussions like cabinet papers, departmental notes etc., disclosures which would prejudice the government's ability to manage the economy, information referred to in the Indian Evidence Act, and some more information related to the administration of justice and law and order matters. Besides, the Rajasthan Act also has an additional insidious ground for refusing an information request. Information can be withheld on the ground that the request is too general and the volume of information required would involve disproportionate diversion of resources of a public authority or would adversely interfere with the functioning of such authority. The exemption provisions in Rajasthan do not have the redeeming Goa proviso that guarantees access to information which cannot be denied to the State legislature.

The Rajasthan Act too levies a fee for providing information, but leaves its

quantum to be prescribed by the government from time to time. And improving on the Tamilnadu and Goa laws, the Rajasthan Act directs the State government for proactive or *suo moto* sharing of information vital to the public interest. The Rajasthan Act shortens the time limit for providing information by making it 30 days, instead of '30 working days', from the date of receipt of the application. Similarly, the disposal of appeal is also time bound with 30 days as the limit.

### **The Maharashtra Right to Information Act, 2000**

Passed on the 18<sup>th</sup> of July, 2000, the Maharashtra Act rivaled Tamilnadu's in public criticism. As originally passed, the list of exemptions in the Act, 22 in number, were nearly as prohibitive and exhaustive as in Tamilnadu's, and so it is unnecessary to enumerate them here. The Maharashtra Act too did not provide for any penalty for willfully withholding information or delaying making it available, and was as toothless as the Tamilnadu Act in this regard. The question of internal or external appeal was left vague in the Maharashtra Act by providing for an appeal to the government or an authority to be prescribed by it.

As far as the time lime limit was concerned, the Maharashtra Act followed Goa and Tamilnadu in making it 30 working days. It also did not have any provisions for a *suo moto* or proactive information sharing by the government. In the scope of the Act and the definition of the competent authority, the Maharashtra Act literally followed the Tamilnadu provisions. It excluded

private bodies completely from its purview and prohibited getting information from anyone below the rank of deputy collector.

In the light of severe public criticism led by the well-known anti-corruption campaigner and social worker Anna Hazare, Maharashtra passed an amended Right to Information Act in the second half of 2002 which introduced *suo moto* information sharing by the government in certain respects and made some other minor changes. Since the amended Act was not yet notified and an English copy of it was not yet available at the time of writing this paper, its summary is not being offered here.

### **The Karnataka Right to Information Act, 2000**

The Karnataka Act could be placed close to Rajasthan's in terms of civil society approval. It is certainly much better than Tamilnadu and Maharashtra. The exceptions list is shorter than these two states and is closer to Rajasthan's though a bit longer than Goa's. The Karnataka Act has 8 exemptions plus four additional grounds of refusal compared to Rajasthan's 10. But unlike Rajasthan, it does not extend access of information to the inspection of public works and obtaining samples of material from a public works site. It, however, extends it another direction (in keeping with its techno-savvy image) to all sorts of electronically stored information. There is no prescription of rank for the competent authority - unlike the Tamilnadu and the Maharashtra Acts.

The Karnataka Act too, like Rajasthan, provides for *suo moto* or proactive sharing of information of which one particular provision is particularly significant: "before sanctioning or initiating or causing to sanction or initiate any project, scheme or activity as may be specified by the State government, publish or communicate to the public generally or to the persons affected or likely to be affected by the project, scheme or activity in particular in such manner as may be prescribed, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of maintenance of democratic principles."

Compared even to Rajasthan and Goa, the Karnataka Act shortens the normal time limit to 15 working days for providing information. But unlike Goa's provision of giving information in matters of life and liberty, Karnataka does not have any stipulation of meeting requests urgent in nature. The time limit for the disposal of appeals is 30 days. Penalty provisions in the Karnataka Act are more stringent than Rajasthan. For an unreasonable rejection of request or delay in meeting it, Karnataka has a provision of imposition of personal fine on the errant official not exceeding Rs. 2000, apart from departmental disciplinary action. The Karnataka Act too provides, like Rajasthan, two layers of appeal. The first appeal would be within the government and the second one would be made to the Karnataka Appellate Tribunal. Unlike Goa, the Karnataka Act has no provision for a State Council for the Right to Information. The fee in Karnataka is not exorbitant and is not

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to exceed the actual cost of supplying information.

### **The Delhi Right to Information Act, 2001**

Delhi is the newest entrant to the club of states with a Right to Information law. Its Act too is in the same league as the Rajasthan and Karnataka Acts. With 8 exemptions, the exceptions list is a bit shorter than Rajasthan and Karnataka but slightly longer than Goa. The penalty provision of disciplinary action against the errant official is akin to Rajasthan and less stringent than Goa and Karnataka.

The appeal provision is similar to Goa's with a single external appeal to the Public Grievances Committee. The time limit for making information available is 30 days, though it is stipulated that normally it should be 15 days. The time limit for the disposal of appeal in the Delhi Act is also 30 days. The provisions for the *suo moto* or proactive sharing of information by the government in the Delhi Act is akin to Karnataka's.

As far as access to information is concerned, the Delhi Act combines the best features of the Rajasthan, Goa and the Karnataka Acts to extend access to samples of material of public works and electronically stored information. Like Rajasthan, the Delhi Act covers private bodies to the extent that they are substantially funded by the government, but it goes beyond Rajasthan to cover constitutional bodies (which would include the courts, Lokayukta's office etc.). In the matter of fees, the Delhi Act follows the Goa provision of including the cost of processing and making it

available. But in the absence of an upper ceiling like Goa, the Delhi Act is vulnerable to abuse.

### **The Central Enactment: Freedom of Information Act, 2002**

The central enactment on the subject took long in coming. It took more than five years between the appointment of the HD Shourie Committee and the passage of the final Act by both Houses of the Parliament in Dec. 2002. The main stages in the formulation of the Act were: recommendations of the Shourie Committee; based on these recommendations (but diluting them in the process), formulation and tabling of the Draft Freedom of Information Bill, 2000; reference of the Bill to the Parliamentary Standing committee on Home Affairs that invited depositions from several stakeholders; and tabling and passage of the revised Freedom of Information Bill, 2002. Instead of going into details of each stage, it would be relevant only to take a quick look at the final product, i.e., the Freedom of Information Act, 2002.

The first significant departure that the central Act makes from that of all the seven states is in the nomenclature itself. Here we have a *Freedom* of Information Act instead of the *Right* to Information Acts passed by the states (emphasis ours). Even though Freedom of Information has been defined as the 'right to obtain Information' in section 2(C) of the Act, the difference in the nomenclature is significant in that it suggests that though one is free to access information, it is not a natural right i.e. a right a human being is born with. In keeping with this subtle

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shift, the central Act has a short preamble, setting a limit to this freedom ('consistent with public interest') even as it proclaims its purpose: 'in order to promote openness, transparency and accountability in administration'.

The Freedom of Information Act, 2002 covers only the organs of the State which include, apart from the executive, the legislature and the judiciary and leaves out the whole of private sector, including the corporate world and the non-profit non-government organisations. The Act applies to all three tiers of the government – the centre, the state and the local government – and its various agencies and bodies. Even though information about non-state actors like the corporate sector and the NGOs is theoretically accessible under its provisions through the regulatory, monitoring and enforcement agencies of the government, the Act goes to great lengths to protect non-state players, which would be covered by the term 'third party' used in the Act along with State agencies that are not recipients of information requests but about whom information is being sought, by laying down a lengthy and cumbersome process for obtaining information from them.

The Act explicitly states that no information given in confidence by a third party can be disclosed unless there is an overriding public interest angle that is to be determined by the competent authority. Moreover, for any information sought regarding a third party, the latter would be given a reasonable hearing before any decision is taken. The time limit for notice to the third

party is 20 days. Even though the deadline for disclosing information under the Act is 30 days from the day of receipt of a request in normal circumstances, it extends to 60 days where the information sought is regarding a third party. If the period of two appeals available to the third party is counted, it could well be five months before one can obtain information regarding a third party, if one can obtain it at all.

The Act enjoins 'public authority', (a term that encompasses all bodies covered by the Act), to maintain records properly, duly catalogued and indexed, and provides for the appointment of Public Information Officers for dissemination of information. Significantly, the Act provides for proactive or *suo moto* disclosure of certain kinds of information by a public authority like:

- the particulars of its organisation, functions and duties.
- the powers and duties of its officers and employees and the procedure followed by them in the decision making process.
- the norms set by the public authority for the discharge of its functions.
- rules, regulations, instructions, manual and other categories of records under its control used by its employees for discharging its functions.
- the details of facilities available to citizens for obtaining information, and
- the name, designation and other particulars of the Public Information Officer;

*The Freedom of Information Act, 2002 covers only the organs of the State which include, apart from the executive, the legislature and the judiciary and leaves out the whole of private sector, including the corporate world and the non-profit non-government organisations*

*Any law is significant, and hence is evaluated, with regard to two aspects: what it allows or enables and what it restricts. And the list of restrictions or exemptions is fairly long in the Freedom of Information Act, 2002*

But the most important kinds of proactive or *suo moto* information that Freedom of Information Act, 2002 provides for in its section 4 are contained in the following clauses:

(c) Publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies;

(d) Give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions;

(e) Before initiating any project, publish or communicate to the public generally or to the persons affected, or likely to be affected, by the project in particular, the facts available to it or to which it has reasonable access and which, in its opinion, should be known to them in the best interest of natural justice and promotion of democratic principles.

Even though the deadline for providing information on request is 30 days, the Act provides for disclosure of information within 48 hours of asking in matters where the life and liberty of a person is at stake. But quite significantly, the Act does not prescribe for any penalty in the case of willful non-compliance. It does provide for two tiers of appeal where the aggrieved person thinks (s)he has been wrongly denied information, but both appeals are within the system i.e. within the government.

Any law is significant, and hence is evaluated, with regard to two aspects: what it allows or enables and what it restricts. And the list of restrictions or exemptions is fairly long in the Freedom of Information Act, 2002. Some would say it outweighs the areas opened up for

information. The restrictions in the Act can be put into three categories: theme or subject restrictions wherein certain thematic areas or subjects have been made inaccessible for information; institutional restrictions wherein certain institutions, agencies or departments have been exempted; and procedural restrictions wherein information is restricted on grounds of procedure.

The Freedom of Information Act, 2002 keeps a whole lot of subjects out of bounds for citizens seeking information. For instance, information, the disclosure of which would prejudicially affect:

- the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India or conduct of international relations;
- public safety and order, detection and investigation of an offence or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case;
- the conduct of Centre-State relations, including information exchanged in confidence between the Central and State Governments or any of their authorities or agencies.

Other subjects out of bounds to citizens are:

- cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other officers;
- minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision

making process prior to the executive decision or policy formulation;

- trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority, or would cause unfair gain or loss to any person; and
- information, the disclosure of which may result in the breach of privileges of Parliament or the Legislature of a State, or contravention of a lawful order of a court.

To its credit, however, the Act does provide for declassification of information related to the above mentioned subjects after a period of 25 years. Another subject restriction, provided elsewhere in the Act, is any information, the disclosure of which would cause the unwarranted invasion of the privacy of a person.

As far as institutional restrictions go, a significant exemption, of course, is the whole of the private sector, including the corporate world and the non-profit non-governmental organisations. But more significant is the blanket exclusion of security and intelligence organisations and any information provided by them to the government, which also covers their non-security and non-intelligence functions and possible abuse of their powers. The Schedule in the Act, which lists some 19 such agencies of the central government and the Union Territories, also cleverly includes vigilance and anti-corruption bureaus and revenue enforcement agencies. Moreover, the

Act empowers the State governments to add, by a notification, their own security and intelligence organisations, similar to those of the central government, to this list. The central government also by a notification can add any other security organisation to this Schedule at a future date, if it so desires. Among procedural restrictions, the significant one is one which says that a public information officer may reject a request for information “where such request is too general in nature or is of such a nature that, having regard to the volume of information required to be retrieved or processed would involve unreasonable diversion of the resources of a public authority or would adversely interfere with the functioning of such (public) authority”. This has a qualifier as follows: “provided that where such request is rejected on the ground that the request is too general, it would be the duty of the Public Information Officer to render help as far as possible to the person making request to reframe his request in such a manner as may facilitate compliance with it.” But this qualifier does not cover the grounds of unreasonable diversion of resources and adverse interference with the functioning of the public authority as reasons for denying information. Another example of procedural restriction is the great lengths to which the Act goes to protect ‘third party’ interest.

### **Campaign Criteria for Strong Legal Provisions**

With this summary of state laws and the central Act, it is time to measure them and other draft legislations against the

*As far as institutional restrictions go, a significant exemption is the whole of the private sector, including the corporate world and the non-profit non governmental organisations. But more significant is the blanket exclusion of security and intelligence organisations and any information provided by them to the government*

criteria evolved by the public campaign on the Right to Information.

### **Unreasonable Restrictions: Case for Minimal Exemptions**

As interpreted by the Supreme Court, right to information flows from Article 19(1)(a) of the Constitution. Hence any restriction on this right has to be justified only on the exceptions allowed by the Constitution itself in Article 19(2). This Article allows only “reasonable restrictions” and only on the grounds of “sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement of an offence”. The burden to prove that the restrictions are within the constitutional limits lies on the Government (*Secretary, Ministry of I&B v. Cricket Association, Bengal, AIR 1995 SC 1236*). If the government fails to do this, the Judiciary would be perfectly justified in striking down those portions of the Act which prove to be unreasonable or are based on grounds not allowed by the Constitution.

The Freedom of Information Act, 2002 and all the state laws mentioned above envisage numerous exemptions, which are restrictions on the right to information. The Tamilnadu Act takes the cake with a total of 23 exemptions. Many are not justifiable on the grounds of Article 19(2) and hence are unconstitutional. No Act can take away or restrict what is already provided under the Constitution. An Act is only there to operationalise a constitutional right, not to restrict it beyond the Constitution.

The most blatant of these exemptions in the FOI Act, 2002 is the Schedule of security and intelligence organisations that keeps them out of the purview of the proposed law. Even the states have been given the option of adding their own security and police organisations to this list. It is an irony that while the Bill provides for giving information in 48 hours where the life and liberty of a person is concerned, it exempts those organisations that are most often accused of illegally violating civil liberties and human rights, including the right to life, from the purview of the proposed law. Moreover, excluding such organisations as vigilance and anti-corruption bureaus and revenue enforcement agencies from the purview of the Act would only put the course of various corruption cases under a shroud of secrecy. This is a negation of the essential lesson learnt from the grassroots public audit campaign in Rajasthan.

An exemption clause which can prove quite restrictive in the FOI Act, 2002, in a blanket way so to say, is the one allowing the competent authority to withhold any information on the ground that it interferes with the work of a government office or involves a disproportionate expenditure in collecting it.

### **Covering Private Bodies**

Another point relates to exclusion of private bodies like companies, NGOs, etc. in the Freedom of Information Act, 2002 from the obligation to provide information pertaining to the public sphere. It would be pertinent to point out in this context that the language of Article 19(1) - ‘All citizens shall have

*No Act can take away or restrict what is already provided under the Constitution. An Act is only there to operationalise a constitutional right, not to restrict it beyond the Constitution*

the right ...’ – makes it clear that this is a right of general import and universal applicability. In contrast are Articles like Article 14, which are a negative right available only against State action and are worded like: ‘The State shall not deny.....’. So, rights that do not restrict explicitly their application against the State only are available universally against the entire world, including the private sector. This was clarified in *Peoples Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 Supreme Court. Other Articles of like wording are, *inter alia*, Article 17, 23 and 24. Since the right to information flows from Article 19(1) that has such a wide sweep as to include the private sector also, a legislation cannot legally exclude private parties from its purview. This would also in a way amount to imposing an unreasonable, and hence unconstitutional, restriction on a constitutional right. It is relevant to recall that the Goa Act, taking its cue from the Press Council-NIRD draft, does cover the private sector and the NGOs within its ambit.

For the Freedom of Information Act, 2002 to conform to the Constitution and empower the citizen in the light of the letter and spirit of the Constitution, our argument is that it should have had minimal exemptions, not more than those contained in Article 19(2), and should have included within its purview all private organisations operating in the public sphere. Another argument for inclusion of companies, trusts, societies, associations etc. is that the state is withdrawing more and more from the public arenas which affect the lives of the

citizens and handing these arenas over to private organisations. And it would be in the fitness of things that private organisations too be made transparent and accountable to the public they serve. The Bhopal gas tragedy of 1984, which killed thousands, is a grim reminder that leaving the private sector out of the transparency and public accountability net could lead to unmitigated disaster. With regard to the inclusion of private sector operating in the public sphere within the purview of any meaningful Right to Information legislation, we advocate the excellent provision contained in the draft Press Council-NIRD Bill on the Subject, which defines “public authority” as including-

- the Government and Parliament of India and the Government and Legislature of each of the States and local or other authorities within the territory of India or under the control of the Government of India; and
- the Administrative Offices of the Courts; and
- a company, corporation, trust, firm, society, a co-operative society, or association whether owned or controlled by the Government or by private individuals and institutions;

The expressions company, corporation, trust, firm, society, cooperative society and association shall have the same meaning as assigned to them in the respective Acts under which they are registered. This is quite comprehensive, but another blanket clause can be added to it, taking from the South African Constitution, so that any oversight is taken care of:

*It would be in the fitness of things that private organisations too be made transparent and accountable to the public they serve. The Bhopal gas tragedy of 1984, which killed thousands, is a grim reminder that leaving the private sector out of the transparency and public accountability net could lead to unmitigated disaster*

- and any other person information from whom is required for the exercise or protection of any right.

The Goa Right to Information Act, 1997 also echoes the same spirit in different words in its definition of Information. The South African Constitution which grants the Right to Information as a Fundamental Right, gives it an explicit universal sweep. Section 32 of the South African Constitution says:

“(1) Everyone has the right of access to –

- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.”

The Nepali Constitution (s.16) enshrines the right to information as a fundamental right and provides that ‘every citizen shall have the right to demand and receive information of any matter of public importance’.

### **The Question of Penalties**

Apart from the factors of exemptions and applicability, the Freedom of Information Act, 2002 falters on the significant counts of penalties for non-compliance and an independent appeal mechanism. The grassroots experience in seeking information under the Rajasthan Panchayati Raj Act Rules, 1996 (recounted earlier in this note) convinces one that a law without penalty provisions for non-compliance and an independent appeal mechanism outside of the government/bureaucratic apparatus would not have enough teeth

to ensure compliance from an obstinate system. It is a pity that like the Tamilnadu State Right to Information Act, the Central Act provides no penalty at all for non-compliance by errant government officials. Other State Acts, like those of Goa, Karnataka and Rajasthan, provide for some penalty. The Rajasthan RTI Act provides for disciplinary action under service rules whereas Goa and Karnataka subject the erring official to discretionary monetary fines apart from disciplinary action under service rules. We submit that mere disciplinary action under service rules would not be effective enough against an erring official as demonstrated repeatedly in the case of other kinds of routine dereliction of duty by the government staff. And we suggest that fines too should not be a fixed sum but a portion of the erring person’s salary, say half a day’s salary for each day of delay in giving information beyond the stipulated limit. This is because a fixed amount would lose its value after some time as money tends to lose value over a period of time. Besides, a fixed amount as fine would mean an uneven burden for officials drawing different levels of salary.

As far as provisions of penalty for non-compliance are concerned, it would be interesting to take a look at the South African Access to Information Act (s.90) that provides for imprisonment for a period not exceeding two years or fine for destroying, damaging, altering, concealing, or falsifying a record.

It is again a pity that the FOI Act, 2002 does not provide for an independent appeal outside of the government. In

*As far as provisions of penalty for non-compliance are concerned, it would be interesting to take a look at the South African Access to Information Act (s.90) that provides for imprisonment for a period not exceeding two years or fine for destroying, damaging, altering, concealing, or falsifying a record*

this respect, it is regressive compared to some State Acts like those of Goa, Rajasthan and Karnataka which provide for external appeals outside of the system – to the administrative tribunal. Though the Central Act provides for two tiers of appeal, even the second appeal is to the government. It is ‘an appeal from Caesar to Caesar’ so to speak. To make things worse, courts have been barred from intervening. Thankfully, the courts have struck down such a clause as invalid with respect to other Acts and would be most likely to do in this case also. But then why have such a clause at all, except to dissuade ordinary people from taking judicial recourse when aggrieved by the working of the Act.

Like Rajasthan and Karnataka, we contend that the central legislation should have had an internal first appeal and an external second appeal. For more independence, we suggest that the second appeal should have been made to the Lokpal to be constituted under the proposed Lokpal Bill. A look at some international precedents would be relevant in this regard.

The Australian Freedom of Information Act, 1982 provides for one internal appeal and a second appeal to the administrative tribunal. An option to this mechanism under the Australian Act is an appeal to the Ombudsman (Lokpal in the Indian context). The Canadian Act provides for the Information Commissioner, who is independent of the government, for receiving complaints, conducting investigations, and issuing recommendations.

### ***Suo Moto* or Proactive Information Sharing**

It is heartening to see that the FOI Act, 2002 provides for *suo moto* publication of certain information in Chapter II called Freedom of Information and Obligations of Public Authorities. A government sharing information proactively without being asked for it is a true indication of a democratic and transparent society. It marks a paradigm shift from the culture of secrecy to one of transparency. This proactive role of the State is of special significance to a society like ours, where due to social and educational reasons, many people are not able to exercise a right provided to them, which leads to the right existing on paper alone.

But there are two improvements that would make the Central Act better. The Central Act is silent on the manner of publication of the information. Unless the publication is understandable and communicable, the entire purpose is lost. The Madhya Pradesh Right to Information Bill, passed by the Assembly, but not assented to by the President, provided for *suo moto* publication of information by ‘electronic or printed media or by beat of drum or any other suitable method’ (s. 3(2)). Again as the Supreme Court said in another context, one of the languages of publication must be the regional language of the State (State of Orissa v. Sridhar Kumar Malik, AIR 1985 SC 1411). Secondly, the Central Act should have provided a more extensive illustrative, not exhaustive, list of items expected to be published *suo moto*. Also,

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*The nomenclature of the Act should also be changed from the Freedom of Information Act to the Right to Information Act because it would mean recognising that information is an entitlement and not a favour*

as far as the life or liberty of a person are concerned, the Act should have incorporated the Supreme Court guidelines given in *D.K. Basu v. State of West Bengal*, AIR 1997 SC 608.

In addition, the time frame for providing any information required by the FOI Act, 2002 is 30 days and gets unduly delayed in case of information related to a third party. The third party delay could have been avoided. And with respect to life and liberty of a citizen, the time limit for providing information should have been 24 hours and not 48 hours, in consonance with the spirit of Article 22 of the Constitution and various judgements of the Supreme Court.

### **What Should a Strong Law Have?**

Based on widespread consultations, a study of the various State laws, the Press Council-NIRD draft Bill and lessons from the ground, such as from the MKSS experience, one can make certain suggestions for revising and improving the Freedom of Information Act, 2002 and making it a strong central law. This includes a set of non-negotiables and incorporation of certain procedural provisions.

First of all, the preamble should clearly enunciate that the Act seeks to operationalise the constitutional Right to Information implicit in the Fundamental Right to Freedom of Speech and Expression. Correspondingly, the nomenclature of the Act should also be changed from the Freedom of Information Act to the Right to Information Act because it would mean recognising that information is an entitlement

and not a favour. The set of non-negotiables that emerges for a strong central law is as follows:

- There should be minimal exemptions. The restrictions should not be beyond those contained in Article 19(2) of the Constitution.
- The law should apply to the Private and Voluntary Sectors too.
- There should be penalties for non-compliance.
- The appeal mechanism should be independent of the government set up.
- The State should *suo moto* share information vital to public interest.
- Information relating to the life and liberty of a person should be made available within 24 hours.

Then there are certain procedural details that need attention for the central law to be more effective and helpful for the ordinary citizens:

- Apart from information stored on paper and electronically, the definition of ‘record’ must include, as in the Rajasthan Act, materials and samples (for example, of food grains), even though this can be taken care of in the rules even now by a creative interpretation of the definition of information provided in the central Act which “means any material in any form relating to the administration, operations or decisions of a public authority.
- A set format for applying for information must be provided. All possible assistance must be provided to

the people to apply for specific information.

- All applications should be recorded in a specified register.
- An acknowledgement of the receipt of application/request for information should be made mandatory.
- Fees for providing information must not exceed the cost of reproducing/supplying the record.
- If information is not provided within the specified time frame, it must be deemed to be a refusal and appeal

must be allowed, even if the request is not explicitly rejected.

- The senior officer of the department from which the information is demanded must also be made vicariously liable for not providing the requested information.
- No information that is available to the Members of Parliament or State legislatures should be denied to any citizen.

Many of these can be taken care of while framing the rules of the present Central Act.



*In the challenge to expand the available democratic spaces in every field, the Beawar Resolution recognises the significance of the Right to Information as an important weapon*

## Conclusion

### A Need to Open Up

On April 5 and 6 2001, the NCPRI observed the fifth anniversary of the Beawar agitation for the RTI launched by the MKSS on the same day in 1996. A convention was held to mark this occasion. It reviewed the entire movement and the government response so far. The deliberations of the convention finally concluded with a Beawar declaration that calls for the exercise of RTI by the people not only to access rural development entitlements but to access their entitlements in various other key areas like health, food security, human rights, gender, education, environment and pollution, employment, national security etc.

The moot question the Beawar Resolution addresses is this: How do the people exercise their sovereignty over the State and other Institutions on a continuous basis, and not just periodically when they vote? The resolution observes with dismay the veil of secrecy that the vested interests weave to surround the Institutions, which a sovereign people created to serve as instruments for their own betterment. In the challenge to expand the available democratic spaces in every field, the Beawar Resolution recognises the significance of the Right to Information as an important weapon.

The surreal context of hunger amidst plenty - a stock of 50 million tonnes of grain in government godowns and starvation deaths in many parts of the country - lent to the Beawar Resolution a tone of urgency. As the Resolution observes, it is through an insistent inquiry into the details of policy and implementation which create this irony, that the people can ensure that the State does not abdicate its responsibility towards ensuring people their basic Right to life which includes their right to food. The Resolution recognised that the Right to life demands the democratisation of health and medical services and the need to rid them of their elitist and gender bias. This also requires persistent inquiry by the people to breach the veil of secrecy surrounding the health and medical policies and processes, often controlled by pharmaceutical cartels.

A similar insistent inquiry is also needed into the politics of displacement - into the logic of the mega projects that oust people from their homes, livelihoods and cultural habitats, into an explanation of the 'national interest' that is supposed to take precedence over the people who constitute the nation and into the mundane details of land acquisition and rehabilitation that actualise the robbery. Along with these, the Beawar resolution sought to take the battle for transparency to the realms of educational

rights, custodial and law enforcement institutions of the State like the police and the jails and the way they affect the civil liberties of the people, the electoral system (for instance transparency in electoral expenditure, assets and income of the candidates and their criminal records, if any), judicial appointments and functioning, the media (including the linkages media groups and individuals have with politics and business) and also voluntary agencies and citizens' associations who claim to serve the people selflessly.

Interests and processes controlling the lives of the people are becoming more and more remote from those in decision making seats - be they international regimes or transnational businesses and the political interests that shape them. Recognising this, the Beawar Resolution sought to take the battle for transparency into all aspects of globalisation and economic liberalisation and the international regimes they have engendered.

As in other countries, the Defence and Nuclear Establishments are most resistant to the idea of transparency and democratic accountability. They feed and grow on disinformation and chauvinism. The Beawar Resolution recognised that subjecting these establishments to a close public scrutiny is even more necessary. For the people must ensure that their lives and real security are not hijacked in the name of security.

As far as a declaration can go, the Beawar resolution makes significant linkages between the Right to Information and its collateral applications, i.e., its application as an enabling right in

realising other entitlements - not only civil and political rights, but the whole range of human rights, including socio, cultural and economic rights. It is yet to be seen how far into action does the NCPRI take the process.

## Looking Ahead

Drawing from the MKSS experience in Rajasthan, the Beawar Resolution made an attempt to look ahead and into additional vistas. These additional vistas have become possible because of the collateral linkages of the Right to Information with other entitlements of the people that the MKSS experience firmly established with reference to rural development and Panchayati Raj. Any attempt to look ahead requires summing up of the quintessential MKSS experience and the way it has established the significance of the Right to Information for realising the whole range of human rights - economic, social, political, and cultural. This paper has tried to show that Jan Sunwais related to rural development expenditure form the core of the MKSS experience. Let us try to look at the meaning of this core.

## Tool to Identify and Fight Corruption

What began as a search for fora for listening to people's voices, as a MKSS note said during the first phase of the Jan Sunwais, turned out to be a collective exercise of the people's Right to Information. Exercised collectively, this exercise became a sharp tool to identify in detail the kind of corruption that pervade rural development work and also help fight it. The corruption in rural development work that the Jan

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*The Jan Sunwais have thus established themselves as a fight against corruption and simultaneously a fight for increasing the life chances of the poor – thereby linking the Right to Information, the fight against corruption, the right to life and livelihood and the whole range of socio-economic rights that go into the making of the right to life*

Sunwais have identified can be categorised into:

- *Purchase Overbilling:* For instance, pay for (and use) 50 bags of cement, but get a bill for 100 bags and claim it.
- *Sale Overbilling:* Suppliers give overpriced material or sell inferior or adulterated material at full price. Though Panchayat Accounts might appear alright in this case, the public is nevertheless robbed.
- *Fake Muster Rolls:* Appropriate wages of fictitious workers through ghost entries in the muster rolls.
- *Under Payment of Wages:* Get the workers to sign for an amount and pay them less than that.
- *Tinkering with Labour-Material Ratio:* Often, fake wage payments are entered in the Accounts to pay for extra material for which there is no bill. This is meant to get around the official 60:40 ratio between expenditure on wages and material respectively. Though this ‘adjustment’, as it is called, may not involve any direct misappropriation of public funds, it is serious to the extent that it deprives labourers of employment and wages.
- *Ghost Works:* This is the climactic fraud involving wholesale fabrication of records for non-existent works. In Janawad, the number of ghost works was 49 out of 141 – more than one third.

### **Linkage with Other Rights**

The Jan Sunwais also established that each of such acts of corruption robs

the poorest of the poor, especially the women and the dalits, who exist on the brink of survival, of the community and individual entitlements that would increase their life chances – their employment, wages, housing, water, schools and health centres. The Jan Sunwais have thus established themselves as a fight against corruption and simultaneously a fight for increasing the life chances of the poor – thereby linking the Right to Information, the fight against corruption, the right to life and livelihood and the whole range of socio-economic rights that go into the making of the right to life. As a forum of expression and communication, a Jan Sunwai also gets linked to a cultural right.

The Jan Sunwais, most dramatically the Bori one, also demonstrated how misappropriation through corruption in rural development works feeds on, and into, the structural feudal inequities of our society, and how by breaching feudal fear and loosening the feudal stranglehold the power relationships in a village are changed. Thus, the Jan Sunwais and the Right to Information Acts show promise towards realisation of socio-cultural rights in an innovative way.

### **Implications for Governance, Development and Democracy**

Operating in the context of rural development work executed by the Panchayati Raj bodies, an institution of democratic local self-governance, and raising questions of transparency and accountability in that context, the MKSS Jan Sunwais have important

implications for the three above mentioned things. By trying to stop pilferage of public funds and pressing for the accountability of administrative machinery through transparency, the Jan Sunwais have demonstrated the usefulness of the Right to Information for good governance. But they underline even more fundamental implications for development and democracy by aiming to:

- **Reclaim Development:** Through the Jan Sunwais, the people assert their right to the proper use of development funds, thereby reclaiming the development they have been robbed of.
- **Build Democracy:** By trying to ensure that the accountability of the government machinery flows downwards to the people, the Jan Sunwais or the collective exercise of the Right to Information becomes a means for the people to exercise their sovereignty on a continuous basis and not periodically at the time of elections. A Jan Sunwai thus becomes an exercise in “government for the people, by the people, without the intermediation of political parties,” as Jean Dreze says in an article. In short, in the words of Aruna Roy, “it is a short step towards the transition from representative democracy to participatory democracy”.

By recognising the rights of the individual, modern democracy, its institutions and the constitutions giving it form ensure the free existence of the individual against manipulation by forces beyond her control. But it is by finding ways and founding institutions

for collective exercise of the individual’s rights, that disadvantaged individuals learn to democratically renegotiate, from positions of relative strength, their status within the scheme of things. The right to vote, for instance is an individual’s right, recognising the free choice of the individual in the matter. Exercised in a purposeful way, it acquires meaning and does wonders. Collectively exercised through Jan Sunwais by the poor of Rajasthan, the individual’s Right to Information acquired hitherto unhighlighted meanings and ramifications as mentioned above. Apart from these, it also became a means of people directly setting the agenda of political discourse to be picked up later by the political parties and the administration.

### Lessons for Democratic Governance

Herein, the MKSS experience of Jan Sunwais in Rajasthan has obvious lessons for good, democratic and constitutional governance of this country. The constitutional establishment has followed up on one set of lessons by enacting RTI legislations, however problematic from the citizens’ point of view, and granting a transparency and RTI component in various other entitlements of the people and spheres of governance, for instance Panchayati Raj Act in Kerala and various other government departments in Madhya Pradesh.

Some other State governments, like Rajasthan and Madhya Pradesh, have followed up on a second set of lessons by institutionalising Social Audit through Ward Sabhas or Gram Sabhas. Even the rural development ministry of

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*Transparency has a twin in accountability, and even while trying to accommodate the former in whatever limited and halting manner, the system has much neglect to account for so far as the latter is concerned*

the central government has made this a precondition for assistance to the State governments for its schemes. But it is one thing to institutionalise merely formally and another to institutionalise substantially. As exemplified by the MKSS follow-up through Social Audit Ward Sabhas in May 2000 on Bhim Jan Sunwai, the details of procedure, which would give substance to Social Audit through Ward Sabhas, still need to be worked into the system. As the MKSS Jan Sunwais have shown, it is attention to details that traps misappropriation, pilferage and corruption.

Overlooking working out the details and procedural follow up in Social Audit by Ward/Gram Sabhas, is in consonance with the loopholes of RTI laws in a few states that it exists in and the recently enacted central legislation after so many sessions of Parliament since it was introduced. It is reflective of the entrenched resistance in the system to sharing information with the people, which would mean sharing power with the people and a democratic control ensuring the straight and narrow of public service.

### **Faltering on Accountability**

Transparency has a twin in accountability, and even while trying to accommodate the former in whatever limited and halting manner, the system has much neglect to account for so far as the latter is concerned. This is again a fact best borne out by the MKSS experience if we look at the present status of the corruption cases that sprang up in the course of various Jan Sunwais.

In the corruption cases established by the first Jan Sunwai at Kot Kirana in Dec.1994, the police dropped prosecution against the Junior Engineer named and brought charges in the court against the Gram Sewak concerned. As per rules, with a criminal case against him, his pension was stopped after retirement, but curiously begun again after some time. The case against him is still pending in the court six years later. The case against the non-existent company Bhairunath and Sons thrown up by the 2<sup>nd</sup> Jan Sunwai at Bhim in Dec.1994, and registered by the anti-corruption bureau of the State government, has been closed after levying and receiving minor taxes. The owner of that company is now the Panchayat Samiti Pradhan with no case against her. Another case of that Jan Sunwai which related to Kaladeh Panchayat did not make any headway with the police because the anti-corruption bureau took away the original papers related to the case.

The 3<sup>rd</sup> Jan Sunwai at Vijayapura had brought to light irregularities in prime land leased out by the Panchayat. The subsequent departmental inquiry invalidated valid leases to poor eligible allottees and validated irregular allotments to rich people. The case relating to Anganwadis too was covered up. In the 4<sup>th</sup> Jan Sunwai at Jawaja, the Gram Sewak had returned the bribes he had taken from beneficiaries of Indira Awas scheme. But in the case of false entries in muster rolls in Asan and Baghmal (the same workers had been shown to have worked at two different sites the

same day in these two different villages), the police closed the case on the basis of an affidavit by the accused and not by the people supposed to have worked the two far removed sites. The accused said in their affidavit that the workers had worked the two sites in different day and night shifts the same day due to rains. In the 5<sup>th</sup> Jan Sunwai at Thana in April, 1995 it was the MKSS which ensured recoveries to the Panchayat fund in a few cases of misappropriation. The cases never went to the official machinery.

With respect to the second phase of Jan Sunwais, the record of the official machinery is slightly better at the top level even though the pains taken by the system as a whole to cover up criminal cases is as much. After Sarpanch Basanta Devi of Kukarkheda Panchayat returned the embezzled Rs.50,000 following the Jan Sunwai in her Panchayat in Jan.1998, the district administration intimidated her into taking back the money by threatening her with an inquiry and prosecution. After the same Jan Sunwai, the anti-corruption bureau filed a First Information report against the Barar Sarpanch Asha Devi. There has been no information regarding any headway for nearly four years now. In Surajpura Jan Sunwai in Jan.1998, two Sarpanches had returned Rs.1.47 lakh and Rs.1.18 lakh respectively. The many cases of corruption that came up in this Jan Sunwai are being investigated simultaneously by the Panchayati Raj department, the police and the anti-corruption bureau. These probes are not complete even nearly four years later. Following this Jan Sunwai, though, the Lotiyana Sarpanch Kanku

Devi was suspended and then debarred from fighting elections by the Panchayati Raj department for her misdemeanour.

With regard to the Bori Jan Sunwai in Dec.1999, the MKSS effected a deal for recovery of embezzled funds from Thakur Nain Singh and his factotums in return for dropping of charges by the police against the dismissed Dalit Sarpanch Pyarchand, the innocent victim of the coterie's wiles. The corruption cases exposed in Bhim Jan Sunwai in April 2000, were fed into the Social Audit Ward Sabhas the next month. But even the Ward Sabha resolutions failed to lead these cases anywhere. This shows a complete failure of the system and its new initiative of Social Audit, the reasons for which have been explained above.

The Janawad Jan Sunwai experience has been recounted in great detail. The ex-Sarpanch and his two accomplices in the official machinery have been the only persons till now to have gone to jail because of their misdeeds being exposed in a Jan Sunwai. The anti-corruption bureau has filed 11 First Information Reports against them and various other accused covering the spectrum of government machinery. A recovery of Rs. 1.37 lakh has also been ordered from them by the State government.

This recollection of cases makes it clear that except in the case of Janawad, it was only the people's mechanism of redress, wherever it was strong enough to be effective, that resulted in recoveries. In the case of government machinery, forces working against justice and redress have generally proved stronger.

This brings us to the question of the replicability of the MKSS experience.

### **The Question of Replicability**

There are two aspects to the question in this context. One pertains to the people and the other to the constitutional establishment, including the governments, the legislatures and the courts. As we have seen, the people of central Rajasthan have not only replicated the Jan Sunwai several times, but have also made it evolve. Is the experience replicable in space also? The area covered by the MKSS operations has expanded over the years in central Rajasthan, albeit slowly. The demand for Jan Sunwais from newer and further off Panchayats, as in the case of Umarwas and Janawad, has come from the residents of these Panchayat themselves – indicating a slow ripple effect. The slowness of this ripple effect can be explained in terms of the arduous attention to detail and the difficulty in negotiating official hurdles, as well as those put up by the local vested interests, that a Jan Sunwai entails and the lack of MKSS' matching organisational numbers to deal with this.

The relatively slow organisational growth of MKSS in over a decade of hectic and intense activity could be due to its own subjective hesitation in expansion because of its avowed community centredness for credibility, support, recruitment and resources. This subjective hesitation could also be because of the organisation's sensitivity on the question of transparency and integrity of its members, primarily involved as it is with these questions in its public work. Already, the MKSS has had some

adverse experiences (with a few workers employed in the Mazdoor Kisana Kirana shops run by it in Bhim and Jawaja and also with the former Thana Sarpanch) in this regard within its ranks. The organisation had to indicate firmly that such things and persons had no standing at all with it. Apart from this, hurtling from one long and arduous mass agitation to another and on to national level networking efforts for the NCPRI in the past decade, especially during the past seven years, has left the MKSS with little time to attend to a grassroots organisational strategy. As it is, the organisation consists of only a handful of people – whole timers and part timers – who constitute a central committee. It has no branches or units in villages, blocks, districts or states. It receives no institutional funding as a matter of policy, but only modest individual donations. The impact and visibility of the MKSS work has been far more than its size would suggest.

For the impact and visibility to translate into rootedness of the MKSS experience elsewhere in the country, what is needed is an organisation with the sense of purpose and tenacity of the MKSS to take the exercise forward in a new region. Such an organisation should also have a local support base and macro level networking like the MKSS to bear any backlash from vested interests, local as well as official, that the central Rajasthan experience has indicated.

The work ahead for NCPRI seems cut out – identifying and supporting such grassroots organisations across the country, formulating and articulating the right to information component in

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various contexts other than rural development works and helping evolve modes of the collective exercise of people's Right to Information like the Jan Sunwais in these other contexts. A challenging task indeed, now that the NCPRI has established itself in the public realm by articulating and widely disseminating the need for a Right to Information law and helping into being laws in some states by ardent advocacy and contributions to the drafting exercise. In short, this is a task of helping translate the Beawar Resolution into Action.

The second aspect of replicability pertaining to the constitutional establishment, we have seen, still requires much work. Government machinery in an overwhelming number of states in the country have not had much experience with the Right to Information

entitlement of the people, and Parliament has only recently passed a law (in December 2002). Moreover, as the Rajasthan experience shows, the establishment still has to attend to the much neglected question of accountability that goes hand in hand with transparency, for any meaningful institutionalisation of the MKSS' Jan Sunwai experiment. The governments should at least begin by fixing, in their Right to Information legislations, responsibility and accountability of those entrusted with giving information to people but stalling it in practice.

Looking back at the sum total of the experience with transparency and accountability in Rajasthan and this country, we can say there is still a long way to go. With its pitfalls and roadblocks. And with its triumphs and exhilaration, if taken collectively and in right earnest.

*The governments should at least begin by fixing, in their Right to Information legislations, responsibility and accountability of those entrusted with giving information to people but stalling it in practice*

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