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Civil Society and Right to Information:
a Perspective on India's Experience
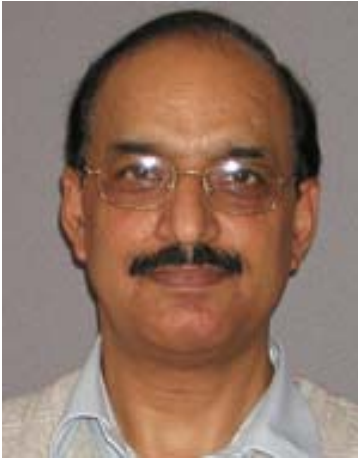
Pradeep Sharma, August 2004

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Executive Summary

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Right to information is increasingly being recognized as a necessary condition to achieve accountable, transparent and participatory governance and people-centred development. While in India, a conducive legal and constitutional environment in support of this right always existed, as reflected in the Constitution and various Supreme Court judgements among others, it was the work of the civil society organizations at grassroots level and their strong advocacy that led to enactment of right to information legislation in India - first at the sub-national and then at the national level.

Conceptually, there are three stages in the promotion of a right to information regime: pre-legislation stage; during drafting stage; and post-legislation stage. Civil society in India has played a role in all the three stages. Accordingly, this paper examines how civil society has

1. brought about a conceptual shift in the debate on right to information;
2. used public hearing as a mode of mobilizing people to demand transparency and accountability;
3. used several methods of social audit to promote transparency and accountability;
4. exerted pressure, through networking, on government for a legislation on right to information;
5. supplied drafts of possible legislation and flagged gaps in the legislation once it was passed;
6. used state-level legislation, created awareness about it, prepared people to use it and officials to implement it

This paper concentrates on the role of civil society in promoting the concept of social audit through four methods: public hearings, report cards, budget information, and social audit under «panchayati raj». Social audit is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance.

While mobilizing people for the right to information movement, civil society in India focused on four aspects that were very different from the debate elsewhere in the world. Firstly, it shifted the focus from media's right to access information to people's right to information. Secondly, it rooted the debate within the constitutionally guaranteed right to life and liberty which turned an abstract right into a practical tool in the hands of people. Thirdly, it looked upon information as a public good and made people realize that public money is their money and that they have a right to ask for an account of how this

money is being spent, thus introducing the concept of 'social audit' and direct accountability. Fourthly, civil society used the right to information platform to promote people's participation in governance.

The civil society organizations also put pressure on government for a right to information legislation through networking and advocacy. They also provided several drafts of a possible legislation. The Freedom of Information Act (FOIA) was finally approved by the Parliament in 2002, but has not become effective yet. The FOIA has come in for severe criticism from civil society on various grounds, most notably for the large number of exemptions, excluding private agencies, not providing for a penalty clause, lack of an independent appeals mechanism and absence of an oversight body. Yet it marks recognition of the need to move from a culture of secrecy to one of greater openness.

For the right to information to become a reality, it is important that these laws are extensively used by the people, supply side of information is strengthened through proper information management systems, bureaucracy is sensitized, social audit procedures are streamlined, and civil society continues to work with people to mobilize them and advocate for greater openness in governance as well as for improvements in the right to information law itself.

UNDP, as a trusted and impartial partner with a long relationship with government and civil society, has taken several initiatives in the field of promoting citizens' access to information. These initiatives comprise holding multi-stakeholder consultations with government, civil society and media; capacity building of civil servants, media and people to strengthen both the supply and demand side of information; using IT-based kiosks for providing information to citizens; and documentation and advocacy.

A key lesson learnt is that development outcomes are considerably higher when engagement with civil society is multilateral and long term, rather than project-based, involving all stakeholders including government and media. Given that capacity building has long been UNDP's strength, this should be used for working with civil society, civil servants and media for development of capacities of both information providers and information seekers to make right to information an effective tool to achieve transparent and accountable governance.

Glossary

CERC	-	Consumer Education Research Council
CHRI	-	Commonwealth Human Rights Initiative
DISHA	-	Development Initiatives for Social and Human Action
FOIA	-	Freedom of Information Act, 2000 (of Government of India)
Gram panchayat	-	Village *panchayat*
Gram Sabha	-	A village assembly
ICCPR	-	International Covenant on Civil and Political Rights
Jan sunwai	-	A public hearing
MKSS	-	Mazdoor Kisan Shakti Sangathan (a grassroots organization)
MORD	-	Ministry of Rural Development (Government of India)
NCPRI	-	National Campaign for People's Right to Information
PAC	-	Public Affairs Centre
Panchayat	-	A local elected body of governance
Panchayati Raj	-	The system of local self-governance
PROOF	-	Public Record of Operations and Finances
PUCL	-	People's Union for Civil Liberties
UNDP	-	United Nations Development Programme

1. Introduction

Citizens' right to information is a necessary condition to achieve accountable, transparent and participatory governance and people-centred development. It empowers citizens in relation to the state and enhances their control over political processes. It acts as a deterrent against arbitrary exercise of official power. It empowers people to hold public authorities accountable for their actions on a regular basis. Well informed citizens can also make better choices and are able to participate in governance. Right to information helps transform a representative democracy into a participatory democracy. It is through right to information that people can realize other rights. It is not surprising therefore that there is an unmistakable global trend towards citizens and civil society organizations raising the demand for right to information. They want to know how governments, private corporations and international organizations function, how decisions are made and how public resources are used.

Access to government-held information allows citizens to hold their government accountable for policy decisions and public expenditures. Informed citizens can more fully participate in their democracy and more effectively choose their representatives. Importantly, access to information laws can be used to ensure basic human rights are upheld and fundamental needs met, as individuals may request information relating to housing, education and public benefits. Suchlaws also help government, as they increase the efficiency and organization of critical records. Governance is improved, and the private sector is assured of more transparent investment conditions. Access to information bridges the gap between state and society as a partnership transparency unfolds.

Jimmy Carter, former President of United States
as quoted in the Global Corruption Report, 2004

In India, the growth of civil society in size and diversity represents disenchantment of ordinary people with the institutions of governance. Civil society has come to occupy an important non-party political space between the state and the private sector for airing the concerns of the poor, excluded and marginalized. It has become an important player in the business of governance. Its methods could be confrontation or cooperation; its objectives may differ from advocacy to service delivery; and it can take the form of a movement or a more formally organized effort. Several efforts led by civil society in the fields of environment, health, gender issues and education have brought about significant changes in the thinking on development and governance, including right to information.

In India, the civil society worked against the backdrop of many constitutional and legal factors that enable right to information. These include:

- India is a signatory to the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights, ICCPR, (1966) of which Article 19 is devoted to right to information.[1]
- The Constitution of India, under Article 19(1) (a), guarantees freedom of speech and expression which, by implication, includes right of access to information.
- In several landmark judgements, the Supreme Court of India has held that the disclosure of information about government and the right to know about government directly flow from Article 19(1) (a) that guarantees freedom of speech and expression.[2] Right to information is thus a fundamental right guaranteed under the Indian Constitution.
- The right to information also seems to flow from Article 21 of the Constitution on the right to life and liberty, which includes right to know about things that affect our lives.
- The Commission to Review the Constitution of India in its report recommends explicit inclusion of right to information, including freedom of the press and other media, as a fundamental right.[3]
- There are also several subject-specific laws that allow access to information. For example, the Indian Factories Act 1948 makes it mandatory to disclose information about hazards that the workers might face as a result of handling certain materials. The Environment (Protection) Act 1986 provides for disclosure of information about the projects and public consultations on environmental impact of such projects.
- Nine States in India have already enacted Right to Information Acts since 1997 and the central act on the subject, Freedom of Information Act, 2002 (FOIA), has also been passed by the Parliament but awaits formal notification along with the rules. Once FOIA is notified, for which no timeframe has been fixed, the State Acts may cease to exist, though the position on this is far from clear.

Equally, there are others that work against it. These include:

- The Official Secrets Act 1923, which more or less continues to operate in its original form, is a major act that promotes the culture of secrecy. The all-encompassing Section 5 of this Act on wrongful communication of information lends itself to misuse.[4]
- Similarly, Article 123 of the Indian Evidence Act 1872 prohibits the presentation of unpublished official information as evidence

1 It states: «Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice».

2 See for instance Bennett Coleman & Company v Union of India (1973), State of UP v Raj Narain (1975); S P Gupta v Union of India (1982) and Bombay Environmental Group and others v Pune Cantonment Board (1986) among many others.

3 Report of the National Commission to Review the Working of the Constitution (Chairman: Justice M N Venkatachaliah), Ministry of Law and Justice, March 2002. www.lawmin.nic.in/ncrwc/finalreport

4 Section 5 makes it an offence to part with any information received in the course of official duty to any non-official. It also applies to the unauthorized disclosure of unclassified documents or information. Citing several examples of the misuse of the Official Secrets Act, the civil society organizations have been clamouring for its amendment to pave the way for right to information. In 2003, over 50 Members of Parliament signed a petition calling for an amendment to Section 5 so that «nothing shall be an offence under this section if it predominantly and substantially subserves public interest unless the communication or use of an'official secret' is made for the benefit of any foreign power or is in any manner prejudicial to the safety of the state.» Interestingly, the Act does not define «official secret».

without the prior permission of the relevant head of the department who is free to grant it or refuse it.
· The Civil Service Conduct Rules prohibit government servants from communicating any official information without authorization.[5]

5 This has been an important rallying point for the civil society. With the enactment of the Freedom of Information Act, 2002 some of the provisions under the Conduct Rules have become incongruous. It is understood that these rules are being amended to bring them in conformity with FOIA.

Scope of the Paper

Despite there being a strong constitutional and legal support to it, the right to information began to receive attention only when civil society began to work with people in rural India. Through grassroots mobilization, building coalitions and strong advocacy, it exerted pressure on government to bring about right to information legislation. It provided drafts of legislation with progressive and pro-disclosure provisions. In the post-legislation stage, it is working to build capacities and create awareness for making right to information a reality. Civil society has thus played a role in three stages: pre-legislation stage; during drafting stage; and post-legislation stage.

In this context, the paper aims to discuss the role of civil society in realizing the right to information. In particular, the paper examines how civil society has

1. brought about a conceptual shift in the debate on right to information;
2. used public hearing as a mode of mobilizing people to demand transparency and accountability;
3. used several methods of social audit to promote transparency and accountability;
4. exerted pressure, through networking, on government for a legislation on right to information;
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The paper also discusses the role of UNDP in partnering with civil society for the promotion of right to information in India. Though the right to information can be used in many situations, in view of UNDP's mandate, this paper focuses on right to information the way it applies to development situations.

In this paper, civil society refers to the self-organized, voluntary, non-profit, non-party political space between the government and the citizen and includes non-government organizations, social movements and grassroots organizations, formal or informal, working to improve the welfare of their constituents. Civil society «constitutes

a third sector, existing alongside and interacting with the State and profit-seeking firms». [6]

This paper provides an account of the right to information movement spearheaded by civil society in India. After a brief discussion, in Chapter 2, on the right to information debate the paper presents (in Chapter 3) different methods of social audit to achieve transparency and accountability and greater citizen participation. It analyses the networking and advocacy role of civil society in the pre-legislation stage. Chapter 4 examines the effectiveness of the legislation in promoting disclosure and if the legislation conforms to certain standards. Implementation and monitoring aspects of right to information, in the context of the role of civil society in the post-legislation phase, are taken up in Chapter 5. The issue of civil society's own accountability is briefly discussed in Chapter 6. An overview of UNDP's role and its experience in collaborating with civil society for the promotion of right to information in India is taken up in Chapter 7. Conclusions, key lessons and future directions are set out in Chapter 8. The paper ends with references to key resources and further readings in Chapter 9.

2. The Role of Civil Society in Realizing the Right to Information

In many regions, enactment of legislation on right to information has resulted from the fall of authoritarian regimes. Most countries in Southeast Asia for example enacted laws to grant freedom of information after the fall of more repressive regimes. Similarly, in South Africa, right to information law became necessary following the end of apartheid. In some countries, it is the result of external pressure for economic reform.[7] Despite different historical circumstances, what is common across countries is the role played by civil society. In India the enactment on right to information has been the result of years of agitation by people and grassroots organizations, most notably in rural Rajasthan. Similarly, in the UK, it is the intense lobbying from citizens' groups that made the law possible.[8]

The history of the right to information is a history of struggle between the power of the state and civil society, including media. The degree of success has invariably been determined by their relative strengths, although external factors may have also sometimes played a role. Today it is difficult to mention any country which has enacted right to information legislation without it having preceded by civil society pressure in varying degrees.

Using different methods, civil society has catalyzed people into demanding information on how governments, and indeed private corporations, international organizations and civil society organizations themselves, function, how decisions are made and how public resources are used. They are questioning the culture of secrecy and are less willing to accept corruption with apathy. Though secrecy and corruption are also found in developed societies, the consequences of opacity in the institutions of governance in developing countries are far reaching, especially for the poor and the marginalized who share a disproportionate burden of wasted development.

In India, civil society worked not only at the grassroots level to mobilize people, but also networked with other like-minded organizations to form a strong advocacy group to push for legislation. The ongoing right to information campaign in rural Rajasthan caught the imagination of activists, civil servants, lawyers and media. With a view to provide a more broad-based platform to discuss various aspects of right to information and to exert pressure on authorities to introduce legislation, a National Campaign for People's Right to Information (NCPRI) was formed in 1996. This platform played a significant role in bringing diverse civil society partners on board to debate the issue.

Despite a clear constitutional guarantee of the right to information, upheld by the Supreme Court in many landmark judgements, constitutional freedoms are not perceived as operational instruments. Right to information had to become a part of the national policy and ethos. This was possible through a national law on right to information.

In particular, civil society pushed for law for the following reasons:

1. In the absence of law, people will be required to go to the court for enforcement of this fundamental constitutional right which will deter people from demanding information and, as a consequence, information which should be available as a matter of right will become a matter for the courts to decide.
2. Right to information (like other rights) has to function within reasonable limits. These limits are not defined anywhere which creates confusion and leads to blanket refusal of information. A separate law will ensure that the exemptions from disclosure of information are clearly defined so that officials do not act arbitrarily.
3. Having a law provides an opportunity for the government to review and amend many of its other laws and rules that come in the way of implementation of right to information. In India, the Official Secrets Act, Indian Evidence Act and Civil Service Conduct Rules are examples of such laws and rules that need to be brought into conformity with the right to information legislation. The civil society demands on the Official Secrets Act have ranged from amendment of Section 5 of the Act to its outright repeal.
4. The law forces public authorities to lay down and streamline procedures for accessing information, including procedure for appeals against refusal. A clear procedure will empower citizens to access information easily. Having a law will ultimately lead to much needed reforms of the information management systems and will thus improve the quality of government functioning.
5. Right to information bolsters all other rights whose realization depends very crucially on availability of information. Its cross-cutting nature makes it necessary that there be a separate law so that other rights are realized.
6. Law on right to information provides protection to the lower-level official functionaries who may be willing to give information but are afraid of retaliation by their superiors.

3. The Right to Information Debate: Conceptual Shifts

The movement on right to information in India, spearheaded by a small grassroots organization in rural Rajasthan, was the first major people's movement against misappropriation in public expenditure and for gaining access to official information as a right. This was the first influential attempt to reclaim development and the first movement that brought about a conceptual shift in the right to information debate in at least four respects.

Firstly, it shifted the focus of the right to information debate from one that was in the past concerned with «freedom of speech and expression» or «media's freedom of access to information» to the *«citizens' right to information»*. Much of the debate in the past had focused on right to free expression and freedom of the press. Although media clearly is an important source of information for people, it cannot be the only source. Media has its own internal problems imposed by market interests, political leanings of the owners, private agendas and urban slant, and has failed to utilize the space for reflecting the concerns of the ordinary people. There was thus a need to recognize that apart from the *media's* right to information, there was *people's* right to information to demand government transparency. The intensity of this need led to the remark that «right to information is too important to be left to the press and media.» This was a remarkable shift in the debate that raised right to information to a different footing.

Secondly, it rooted the right to information debate within the constitutionally guaranteed right to life and liberty. It highlighted the underpinning nature of right to information for the realization of other rights. It brought out the linkage between information and livelihoods and hence survival. From an abstract notion, right to information became a living and practical tool for people to protect their life and livelihoods.

Thirdly, it looked upon information as a public good, generated for the public with public money and held by public officials. The civil society's work led to people realizing that the public expenditure incurred in their name is in fact *their* money and they have a right to demand how that money is being used. This encouraged them to ask for records held by public officials. This was the beginning of the concept of 'social audit' in India. Civil society empowered people to demand *direct* accountability of civil servants as distinct from their accountability to people *through* their superiors, courts or elected representatives. This redefined the whole concept of accountability.

Fourthly, civil society in India has also used right to information as an instrument for greater citizen participation in governance. Along with transparency and accountability, this is a key component of democratic governance. In the context of globalization, where people are losing control over decision-making in matters that affect their lives, one thing that can have a countervailing effect is greater participation in local governance which makes free access to information a prerequisite. People can then not only demand information on how their money is being spent by government officials, but actually determine what development activities their money should be spent on. With the tremendous emphasis on decentralization and local governance in India, the participatory angle provided by civil society is an important aspect of the right to information movement.

4. Social Audit: Concept and Methods

A social audit is a process through which an organization assesses and achieves its declared social objectives. It is a way of measuring, understanding, reporting and ultimately improving an organization's social and ethical performance. [9] It involves the experience of the people it is intended to serve. Social audit can be compared to a Swiss Army knife –it is a planning tool, a management tool and a communication tool at the same time. It goes beyond financial performance and looks at the quality of expenditure, social outcomes and environmental impact. It values the voice of stakeholders, including the marginalized whose voices are rarely heard. It is an ongoing dialogue between the organization and the stakeholders. Social auditing enhances accountability, transparency and participation and is seen as particularly relevant in local governance.

Social audit is a way in which people directly access official records to ascertain if there has been defalcation, arbitrary exercise of power, exploitation, adverse environmental impact, dereliction of duty and non-consultative decision-making in matters that affect people. The most common notion of social audit is to examine if the expenditure incurred on public works was commensurate with the quality and quantity of assets created or whether there has been any misappropriation of public funds. Social audit aims to supplement, and not supplant, the normal departmental audit and other channels of accountability such as judicial scrutiny or accountability to the legislature. The need for social audit arises in view of failure of other channels to use local knowledge in assessing public authorities. It should be used for enhancing organizational learning about how to improve social performance rather than pointing fingers.

Social audit increases the effectiveness of local development programmes. It enhances the possibility that development expenditure is directed towards people-determined priorities and that leakage of resources is checked. It makes it possible for people to assess gaps between the physical and financial resources needed and available for local development. It creates awareness about how the decisions are made and how the resources are obtained and spent. Social audit encourages community participation, promotes collective decision-making, benefits disadvantaged groups and develops social capital. It was by demonstrating leakage in development expenditure through social audits, that the civil society was able to lobby for right to information legislation in its pre-legislation stage.

Social audit and right to information are interlinked. Though the latter is a broader concept, and goes beyond audit of development expenditure, for effective social audit citizens (or the social audit panel appointed by them) must be well informed and should have free access to all relevant, demystified and comprehensible information and documents regarding the works *gram sabha* is empowered to audit. Additionally, the state governments should take pro-active steps to publish in local language booklets on how to comprehend and analyse estimates, vouchers, bills, measurement books and muster rolls. Local media and civil society groups should be associated with the creation of mass awareness about social audit.

There are different methods through which social audit could be conducted and public authorities held accountable; some are more direct and confrontational than others. The four modes discussed in this paper are (a) public hearings (b) report cards (c) budget information and (d) social audit under *panchayati raj* system.

4.1 Social Audit through Public Hearings

This method is the outcome of the right to information movement in India led by the Mazdoor Kisan Shakti Sangathan (MKSS), or the Organization for the Power of Workers and Farmers. Interestingly, this movement did not start as a right to information movement. It was born out of an agitation for minimum wages in rural Rajasthan spearheaded by three social activists, who later founded MKSS on May Day in 1990. It was during their campaign for payment of minimum wages, started in 1988, that the group realized that unless government accounts and records were made available to people for scrutiny, government officials would continue to deny payment of minimum wages. Working hand-in-glove with the contractors, the officials reportedly made fake entries in the books that recorded the tasks performed and wages paid, and charged the government much more than was actually paid to workers, thus misappropriating public funds. When caught, by people and official enquiries, these officials tried to suppress evidence and cover up defalcation using all kinds of means.

It was to counter such attempts to cover up malfeasance that the innovative idea of holding a *jan sunwai* or public hearing was born. The term *jan sunwai* is taken literally and it implies that the power, legitimacy and sanctity of the forum will emanate from the people – not any judge or panel; and that it is a hearing and not a court or agitational body. The decision of the assembled collective to pose a certain set of questions would determine the priorities of the hearing.[10] It does not pass a verdict or punish the guilty. It puts to shame those government officials who, in connivance with suppliers

10 See «Public Hearing: A Mode for People's Monitoring» by Nikhil Dey, Aruna Roy, Shankar Singh and Kavita Srivastava in Readings on Right to Information, LBS National Academy of Administration, Mussoorie (undated).

and contractors, have made money illegally from public works. They are asked to return the missing money back to the people. It is a gathering of citizens before whom public documents are read. These documents, obtained after a great deal of groundwork preceding a public hearing, relate to public works, expenditure statements, ration cards under the food subsidy schemes, list of workers paid to work on public projects and so on. These documents are hard to obtain and meet with refusal on the grounds of being 'secret documents'.

Several *jan sunwais* were organized by MKSS, each pointing out discrepancies between the official records and reality, exposing cases of payment for ghost works, fudged muster rolls, overbilled purchases, underpayment of wages, poor quality of construction, tinkering with prescribed labour-material ratio, payment to bogus companies, and community assets under personal possession and use. A case that amused people in one of the *jan sunwais* and caught the media attention was one where a veterinary hospital was shown to have been built on the first floor!

It is interesting to see how the mode of struggle shifted from MKSS in its early days trying to obtain documents directly through government officials to adoption of a more powerful «naming and shaming» mode. Showing up tainted officials in full public glare in the *jan sunwais* did have its impact. Publicly shamed officials began to return the defalcated money (something completely unheard of in the past!). Some other officials either quit or were suspended from the service. Some arrests were also made.

Official Response
The official response to *jan sunwais* was generally hostile. This was understandable as MKSS confronted public officials with concrete evidence of their complicity in the misappropriation of public funds. Besides the citizens of that area, social activists, lawyers, media persons and civil servants were invited to participate. Public officials questioned such public hearings. They challenged that they could be subjected to such a public inquest and held that their records could only be audited by official auditors. Some of them tried to bring stay orders from the court against divulging such information. Even among senior civil servants, scepticism was not uncommon. Some of them called it an extra-legal form of evaluating evidence paying scant regard to rule of law, with the sole objective of exposing guilty officials rather than bringing them to book through courts of law.

While in the early *jan sunwais* government officials did not participate, since April 1995 these officials – mostly middle ranking -

have been participating. However, officials directly in the line of fire continued to obstruct the process. Official participation may have been spurred by the announcement on April 6, 1995 by the Rajasthan Chief Minister in the State Assembly promising people right to information with respect to all the affairs of the *panchayati raj* (elected local government) institutions. In the course of its work, MKSS has come across officials that were sympathetic to the cause and others who were either indifferent or hostile. Some changed from being cooperative to hostile. Constant engagement led to the state government relenting, which brought about positive changes.

Why did people participate in jan sunwais?
Wage-earning villagers were drawn into this struggle as it affected their livelihoods directly. Underpayment of wages to them for the hard days' labour on the public works in a drought-prone area with limited livelihood options was not an abstract governance issue but a question of survival. The rural middle class, though not a direct beneficiary of government programmes, participated as they began to see the link between leakages in development expenditure and quality of infrastructure. The positive outcomes on the ground gave people the confidence to demand information which they never could in the past. The idea of people having the right to monitor public expenditure on development works thus caught on. This was the beginning of the concept of social audit in India. MKSS was thus restoring to people what was rightfully theirs in the first place.

No less important was the way MKSS worked. Their members (one of them a senior civil servant who quit her job in 1975 to form the Social Work and Research Centre in Rajasthan and another just returned from the US after acquiring a degree) lived in rural areas, shared the lifestyle of the rural poor, did not accept grants and largely worked with the money collected through voluntary donations. This helped establish their legitimacy and their identification with people and their problems was beyond any doubt.

The seminal work of MKSS brought to the fore two issues: people's right to conduct social audit and people's right to information. It gave a methodology of social audit and a right that underpinned every other right. It made people understand the link between information and survival. It was the perception that their livelihoods were under attack that brought people together and not the right to information *per se*. This gave life and meaning to what would have remained an abstract right.

An amendment to the Panchayati Raj Act of Rajasthan to allow citizens access to, and obtain photocopies of, documents pertaining

to the subjects handled by *panchayati raj* department was a major early victory. This led to the issue of social audit guidelines by the central Ministry of Rural Development for all public works taken up under the Ministry's anti-poverty programmes. These guidelines provided for *panchayat* records (measurement books, muster rolls, bills and vouchers) to be made available to people for inspection and providing photocopies on demand and display of all relevant information on billboards about public works (such as cost estimates, availability of funds, expenditure, date of start, name of contractor).

The power of social audit also gave people an opportunity to question the whole functioning of democracy and accountability. It underscored the need for direct and continuous accountability of public officials and not once in five years when people get a chance to reject the non-performing candidates in elections. It prepared the ground for participatory democracy as distinct from representative democracy. This aspect is very significant in the Indian context as the government has devolved powers on elected local bodies under Panchayati Raj following the 73rd and 74th Constitutional Amendments.[11] With people empowered with right to information, *panchayats* (elected local government institutions) can hope to become truly democratic, transparent and accountable institutions. Ultimately, it is the assigned responsibility of the *gram sabha* (village assembly) to conduct a social audit of development works and hold public officials accountable, a role in which civil society can greatly assist.

Jan Sunwais and Legal Action
The *jan sunwais* organized by MKSS, or other organizations (see next section), were not in the nature of public courts. No verdicts were announced and no persons were adjudged guilty or punished. This way, MKSS steered clear of any likely accusation of organizing extra-legal proceedings. The *jan sunwais* were more in the nature of collection and sharing of information with people. This information, that proved complicity of officials, could be used as admissible evidence in a court of law and in fact was used as such against officials in departmental enquiries and judicial cases. Very few of such cases resulted in the government or courts punishing the guilty officials; many cases are still going on. In fact, MKSS did not actively chase the tainted officials in courts of law, as it was 'naming and shaming' -more than having the officials punished in a court of law– that was the underlying strategy behind *jan sunwais*.

Urban Jan Sunwais
The experience of MKSS in rural Rajasthan has inspired a host of other civil society organizations. A logical follow-up to the MKSS activities

11 In 1992, through 73rd and 74th Constitutional Amendment Acts, Government of India provided the statutory mandate to local bodies in rural and urban areas respectively as institutions of self-governance thus paving the way for direct democracy. The Acts envisaged a three-tier structure, regular conduct of elections to local bodies, reservation of seats for women and marginalized groups, setting up of State Finance Commissions, State Election Commissions and District Planning Committees, and devolution of functions, funds and functionaries.

was to extend *jan sunwais* to urban areas to mobilize urban poor and empower them to demand records of public expenditure. One such organization that accepted this challenge was Parivartan (or, the Change), a Delhi-based NGO set up in 2000 previously helping citizens get their work done in government departments without having to pay bribes. The organization was not satisfied as it was only providing immediate relief to citizens and not helping bring about systemic change. Then it began to organize *jan sunwais*.

Parivartan started with two advantages. It already had the rich experience of MKSS to draw on and knew all that it takes to prepare for and actually organize *jan sunwais*. Secondly, unlike MKSS, which had to struggle to get the legislation passed, the Delhi Right to Information Act (2001) was already in place. It was a good Act with clear rules. Parivartan's task was clear cut; it had to use the Act to get information and mobilize people to file applications under the Act.

The first *jan sunwai* was organized by Parivartan along with NCPRI and MKSS on December 14, 2002, in a slum resettlement colony in east Delhi, on departmental works executed by the Municipal Corporation of Delhi (MCD) in that colony and a neighbouring one. The *jan sunwai* was attended by over one thousand people comprising local residents, journalists and eminent persons. Representatives from the Delhi Government, local political representatives and engineers of MCD also participated. In preparation for this *jan sunwai*, Parivartan collected details of 68 contracts amounting to Rs 14.2 million (1US$=Rs 45) awarded to various executing firms. These contracts pertained to various works such as roads, lanes, drains and handpumps. Based on the social audit of these works, Parivartan reported that the extent of defalcation in these contracts was nearly Rs 7.0 million (that is, works worth this amount did not exist).[12] The organization also made use of a unique provision in the Delhi Act that extends the scope of information to include physical inspection of works and taking out samples of materials. This provision came in useful recently during the social audit of a road built by the Public Works Department when the applicant, a Parivartan worker, collected samples of the material used and compared measurements of work as entered in the books with the ground reality to expose poor quality of work.

This *jan sunwa has had a positive impact*. People who would earlier hold senior government officials and political representatives in awe now became fearless. The officials are now far more courteous and responsive when they deal with people from this area. People have formed *mohalla samitis* (or local area committees) to monitor the execution of civil works in their respective areas and will not allow

any work to proceed unless contract papers are made public. Orders have been issued to provide copies of contract papers to the residents before the execution of the work starts. This not only enabled people to verify the actual quality and quantity of work with what was stated in the contract papers, but also empowered them to demand that only those works are taken up that are useful for the community. Works taken up in accordance with the community needs and monitoring by the *mohalla samitis* would ensure that the public money is properly utilized.

The organization has been actively encouraging people to file applications under the Delhi Right of Information Act to seek information about public works in their area and on other issues. It is educating people on how to file applications under the Act. There are several documented cases where such use of the Act by people in Delhi has solved many civic problems. Parivartan has also been agitating about the problems that people encounter in the implementation of the Act. It has taken up one such problem, that of high fee structure which deters people from using this Act. Thanks to its efforts, fees for filing applications under the Act have been reduced.

In many respects, working on right to information issues in urban areas is more difficult than in rural areas. The stakes involved are high and political resistance strong. In urban areas, capacity to disrupt such initiatives is also very high. This was clear from the intensity of reaction from political representatives, contractors and officials to the *jan sunwai*. Attempts were made to disrupt the proceedings and workers were threatened. Political affiliation of people in urban areas makes matters worse. Moreover, unlike in rural areas where *panchayats* are directly responsible for public works, in the cities it is large corporations that farm out contracts. There is no mechanism for a face-to-face democracy in urban areas. The sense of community in a city is very different. Yet, the active participation by people in the *jan sunwai* disproved the general perception that urban citizens are apathetic to such issues.

The Snowball Effect
There are many other civil society organizations, either working with Parivartan or independently, who are similarly making efforts to promote right to information within the urban poor communities. Under their PLUS (Promoting Linkages for Urban Sustainable Development) programme, CARE India has implemented a right to information campaign in ten low-income settlements of Delhi. The campaign included orientation of the urban poor to right to information through workshops, participation in public hearings and

interactive street theatre methodologies. It also included sensitization of local government functionaries to right to information.

The fact that the right to information touches the lives and livelihoods of ordinary people has led to snowballing of the movement. In Rajasthan, the Akal Sangharsh Samiti (a citizens' forum fighting for transparency in drought relief) obtained valuable information from the government and in the process several concessions with regard to food security and drought relief. The right to information law in the state and the favourable climate it created clearly helped. This work on drought relief led to the Rajasthan chapter of the People's Union for Civil Liberties (PUCL) filing a writ petition in the Supreme Court in 2001. The Supreme Court took the writ very seriously and has issued several orders converting food entitlements into legal entitlements and has appointed two commissioners to monitor its orders.

Another fallout was on the voters' right to information. Both MKSS and Parivartan used their experience of *jan sunwais* to read out the voters' lists in open meetings. This was in accordance with the orders issued by the Chief Election Commissioner. To the utter surprise of the voters, many of them did not find their names on the voters' lists and were thus denied the basic right to political participation. There were also names of people who were either long dead or had migrated. Some names appeared more than once. Several civil society organizations have been working in this area, notably Loksatta, a Hyderabad-based organization, for quite some time, and it is their efforts and strong networking that led to the Supreme Court directing in a landmark judgement[13] that all candidates have to provide, at the time of filing their nominations, information on their antecedents. With the backing of the Supreme Court ruling and the Election Commission orders, civil society played a key role in recent elections in providing information about the candidates, thus effectively promoting an important right of citizens enabling them to make well-informed choices.

13 PUCL & others v Union of India & another (2003), 4 SCC 399.

Limitations of Jan Sunwais
Though a direct and powerful means to demand accountability and conduct social audit, *jan sunwais* have great limitations. These limitations restrict the replicability of this mode to other situations and cultures. The *jan sunwais* require huge preparations and mass mobilization which is not possible for ordinary people to do. Such preparations and actual *jan sunwais* face strong resistance from vested interests. The impact of *jan sunwais* essentially remains localized, notwithstanding the influence the *jan sunwais* in rural Rajasthan have had on the nationwide campaign on right to

information. The desire to replicate this model is strong but if organized without adequate preparation, it runs the risk of dilution. Some of the state-sponsored *jan sunwais* in Rajasthan, and also those organized by some other NGOs, are a case in point.

4.2 Citizens' Report Cards

Unlike the more direct social audit methods used by MKSS and Parivartan of holding public authorities accountable, Public Affairs Centre (PAC) used a somewhat indirect 'report card' methodology of bringing citizens' voices into service delivery. Under this method, a survey is conducted, generally by an NGO supported by a marketing research firm, to elicit responses from citizens who express their level of satisfaction with the quality of public services and their perceptions of corruption across various departments (such as electricity, water, municipal, and telephones). A report card then grades various government departments and agencies for their performance based on the findings of this survey. The results are widely disseminated and published by the media. The evaluation of services by citizens, through such client satisfaction surveys, puts pressure on the service providers to respond to the client needs. It also introduces an element of competition in otherwise inherently uncompetitive government monopolies. It has created awareness among both the citizens and government agencies. Dialogues for reform with the service providers have been a major outcome of the report card methodology, which is now well known and has been replicated in other cities in India and abroad. Recently, the report card methodology was used by PAC to prepare 'The State of India's Public Services: Benchmarks for the New Millennium' – India's first independent assessment of the quality of public services by citizens.

In terms of its impact, there is evidence that agencies rated poorly make attempts to review their internal systems. Some have formalized regular dialogue with NGOs. The methodology seems to have earned credibility among public officials. The third citizen report card on public services in Bangalore, carried out by PAC and AC Nielsen ORG-MARG in mid-2003, based on feedback from over 1700 middle-class and poor households in the city, shows noticeable improvements in the satisfaction levels across all public agencies. This is quite different from previous report cards (1994 and 1999) where improvements were not across the board. The 2003 report card also shows a perceptible decline in corruption levels in routine transactions and improvement in behaviour of staff of these agencies. The World Bank has lauded PAC's report cards as a 'powerful tool for civic engagement and reform.'[14]

14 www.pacindia.org/ Programmes_Activities/ 03report%20cards/index_html

The survey methodology is somewhat rigid, not allowing for soft qualitative responses. It also does not adequately reflect responses from women who should be the primary respondents and not men, especially in low-income areas. Through quantitative client satisfaction survey, report card methodology aims to hold service providers accountable. Its role in people's empowerment and mobilization appears to be somewhat limited. Information flow also seems to be one way – from citizens to the service providers. Whether information held by the government departments is also provided to citizens, other than what these departments want to disclose, is not known.

It is also naïve to assume that before the PAC report cards enlightened them, the public authorities did not know of the people's dissatisfaction with services. Though the data produced by these surveys can put some pressure on authorities, the response to 'report cards' can be severely limited by the structural limitations service providers face in large cities. The methodology also does not seem to be workable in rural areas.

4.3 Budget Information System

Providing information to citizens and conducting social audit can take many forms. One such form is to provide citizens with information about the budgets, and through budgets about other activities of local bodies to demystify the budgetary process, make it more transparent and in the process secure citizens' participation and local government agencies' accountability. PROOF (Public Record of Operations and Finances) is one such advocacy campaign in Bangalore that aims to create space for constructive engagement between citizens and their local governments. Launched jointly by four organizations[15] in July 2002, it does not take a confrontational approach. It believes that the system can be improved by working in a partnership mode.

PROOF uses quarterly financial statements of the Bangalore City Corporation as a tool to take information about the functioning of the corporation to citizens. These statements are discussed in multi-stakeholder meetings with a view to track financial statements of the corporation, develop performance indicators for expenditure under different heads and create space for citizens to take part in the local governance. Such meetings in the past have taken up questions like the ownership and utilization of assets and whether expenditure on, say, education is giving citizens value for money. Through capacity-building workshops, citizens are being equipped with an understanding of financial documents to enable them to raise questions.

15 These are Janagraha, VOICES, Centre for Budget and Policy Studies and Public Affairs Centre (PAC).

While the campaign has been able to flag the important issue of budgetary information, it is still a big challenge to enhance citizens' participation and secure their ownership of the campaign. For quite some time, the involvement of poor citizens and slum dwellers was minimal and it remained an urban middle-class phenomenon. Now the campaign is being taken to slum-dwellers and students. The evident visibility of the PROOF campaign also had a lot to do with the involvement of prominent, high-profile persons including the Chairman of Infosys. Meetings were also held in the swanky campus of Infosys and many citizens would go to these meetings just to see the campus. Some of the community-based organizations also feel that this soft approach would dilute their struggle for more fundamental urban issues like land rights. Even with this soft approach, PROOF has to tread cautiously to avoid the impression that it is trying to take over the management of the corporation. There have been instances where PROOF felt that there was a need for a more critical approach. Applications filed under the Right to Information Act of Karnataka to obtain information about a large loan agreement the corporation had signed with HUDCO (Housing and Urban Development Corporation) met with no response.

Use of budget as an instrument to promote citizens' right to information as well as to achieve greater transparency and participation for pro-poor allocations (or, democratizing the budget process) has been the business of a Gujarat-based organization called DISHA (Development Initiatives for Social and Human Action) since 1992. It is an organization that began with issues of the state's forest labourers and tribal population but soon expanded to cover the budgetary analysis, especially to know what happened to the funds allocated for tribal development. The process includes accessing budget documents and analysing them with respect to explicit pro-poor policy statements and to monitor if the funds allocated in the budget are commensurate with the commitments. It demystifies the budget, analyses it for its pro-poor orientation and prepares briefs for the members of the state legislature to enable them to demand explanations from the ruling government. It explains to the disadvantaged groups, the gaps between what is promised and what is provided to carry out those promises and creates a pressure for greater accountability in matters of public expenditure. DISHA's work has improved the quality of budgetary debate simply because it removed the veil of complexity surrounding the budgetary process and made budget a non-technical document which was relevant for ordinary people and should be accessible to them. It has also made the budgetary planning more realistic in relation to sectoral allocations and has enhanced allocation to priority sectors. Budget allocations are, however, poor predictors of the quality and quantity

of services beneficiaries receive when governance is poor. While it is important to move towards enhanced budgetary allocations to priority sectors, it is important to know how these budgetary allocations are transformed into services. Many times allocated money does not reach its destination because of misappropriation or mismanagement.[16]

4.4 Social Audit through Panchayati Raj

With the passage of the 73rd Constitutional Amendment Act (CAA), India has paved the way for direct democracy. Though the notion of *panchayati raj* existed before, through this amendment it acquired legal status. It follows a three-tier structure, direct elections are held to each of the tiers (village, block and district) with one third of seats reserved for women. Seats are also reserved for marginalized groups (Scheduled Castes and Scheduled Tribes) in proportion to their population. The *panchayati raj* institutions are assigned a wide gamut of functions with stress on transferring commensurate funds and administrative powers.

One of the major provisions of the *panchayati raj* system is the role envisioned for the *gram sabha* or the village assembly.[17] It is a constitutional body at the village level comprising all persons registered as voters in the village electoral roll within the area of the *panchayat* at the village level (a *panchayat* normally consists of two to three villages). The CAA left the functions and powers that *gram sabha* may enjoy to be determined by the state governments. Over a decade after the enactment of the CAA, the State Acts have not spelt out the powers of this important body. The CAA envisaged the *gram sabha* to function and act as a watchdog to protect community interest and common property resources through social audit, determine local plan priorities, and approve the list of beneficiaries and location of projects under various anti-poverty programmes. To accelerate the emergence of the *gram sabha* as a body to whom the *gram panchayat* is accountable, it is essential to spell out clearly the powers and functions of *gram sabha* as planners, decision makers and auditors.

The Tenth Five-year Plan (2002-2007) envisaged that the social audit of all development programmes by the *gram sabha* would be made mandatory. While some states have legally empowered *gram sabha* for social audit, most states have not passed detailed orders to operationalize social audit. Therefore, the Ministry of Rural Development (MORD) issued instructions to lay down a detailed procedure for the conduct of statutory social audit of rural development works by *gram sabhas*. These binding instructions require that the completion certificate in respect of public works can be awarded by the *gram sabha* which can issue such a certificate only

after conducting social audit of the works in question. While these instructions were made mandatory for all rural development works funded under schemes of the MORD of the Government of India, state governments were advised to also use these for the works implemented by state departments through *panchayati raj* institutions.

Social audit is required to be conducted in special *gram sabhas* convened exclusively for the purpose. At least one *gram sabha* is required to be conducted during the last quarter of every financial year for social audit of all works in progress or completed during that financial year within the area concerned. Copies of all documents related to the works in question, including the estimates, bills, vouchers, measuring book and muster roll are required to be pasted on the notice board of the *gram panchayat* office. These records must also be available for inspection and certified copies provided on payment of required fees. If the social audit reveals misappropriation of funds, the *gram sabha* will not issue the completion certificate and the matter will be heard in the court of the SDO (Sub-Divisional Officer). If SDO confirms misappropriation, he / she will institute recoveries and register criminal charges. If the *gram sabha* is convinced of the SDO's findings, the matter will be filed. If not, an appeal can be made against the SDO's order in the court of the District Collector.

Though the guidelines on social audit issued by the government are a positive development, the reality on the ground is very different. Social audit is an exception rather than the rule. A lot more remains to be done to strengthen the institution of *gram sabha*. This institution, which is the best constitutional social audit institution in a democratic set-up, needs to be empowered in years to come. For *gram sabha* to function effectively, it should have clear legal powers to demand information, scrutinize records, access *panchayat* records and seek clarifications on activities, schemes, income and expenditure statements and decision-making processes. It should be able to access documents relating to budget allocations, list of beneficiaries, measurement books, muster rolls, bills, vouchers, accounts, materials purchased, records of decisions made and so on. This means strict enforcement of right to information in relation to implementing agencies for which enactment of legislation has laid the foundation.[18] The success of social audit depends on the quality of information, the groups it is shared with (marginalized, women, rural poor), the level of commitment to conduct social audit and then to follow up for action by functionaries, and involvement of key stakeholders. This is not easy and the civil society groups need to play a role to ensure that social audit by *gram sabha* does not become a ritual.

18 In states like Kerala, although there is no proper right to information act, the right to access information, inspect records and obtain photocopies of panchayat records has been incorporated in the Panchayati Raj Act and thus has the status of a legal right.

The social audit methodology is still evolving and further action is required to standardize it. A common method is to set up a social audit committee comprising people drawn from among the programme stakeholders. These are typically teachers, retired functionaries of different organizations and people of integrity acceptable to people. These committees are not permanent but set up depending on the nature of the public work or scheme to be audited. There is a need to build capacities of stakeholders to conduct social audit and to put in place a mechanism to monitor and oversee the process. It is pertinent to mention that in India the office of the Comptroller and Auditor General has a separate wing dealing with *panchayat* audit. They should be associated while designing the methodology of social audit. Simultaneously it is also important that there is a clear channel of accountability of the *gram panchayat* (the executive wing) for its actions to *gram sabha* (the village assembly). The powers of *gram sabha* should also be enhanced to give disadvantaged groups in the village an opportunity and a forum to voice their concerns and injustices. They also need protection against any retribution if they decide to speak up against officials or functionaries involved in any misconduct. When *gram sabha* functions in this empowered manner, it will not be very different from the *jan sunwai* method already discussed above except that this would be a more institutionalized method.

To sum up, the chapter on social audit presented four different methods with varying approaches to achieving transparency and accountability in public expenditure. Some approaches are more direct and challenging to the establishment, some others are more in the partnership mode. Initiatives other than *jan sunwais* are also in some way driven by specialists and require prior expert analysis such as of budgets and income and expenditure statements. But they all aim at finding out how the public money is being spent and how this public expenditure can be made more pro-poor. These initiatives demonstrate beyond doubt the role of information in empowering people and bringing about improvements in service delivery. In view of the enormous preparation and mass mobilization it takes, the replicability of *jan sunwais* across the country is a much more challenging mode of achieving transparency and accountability than an institutionalized system of social audit through local bodies like *panchayats.* Absence of action against the guilty through departmental enquiry or in a court of law, following the 'naming-and-shaming' *jan sunwais,* can soon dampen the excitement about this innovative mode of holding public authorities accountable.

The stakeholders should build on the trigger provided by *jan sunwais* and work towards a system of social audit that is simple, effective and participatory. Social audit is still an evolving form of governance and has immense potential. Its rules and methods are yet to be concretized which provides ample scope for the government, civil society and media to work together within the overarching framework of the *panchayati raj*. That would encourage people's direct participation in governance and be more empowering.

5. Civil Society Engagement in the development of Right to Information Legislation

Although the trigger for right to information legislation was provided by civil society organizations and it was involved in making presentations to the Parliamentary Standing Committee that was examining it, civil society was kept out of the process of actual drafting. As a result, when the final FOI Bill was presented to the Parliament for approval, it left out most of the suggestions civil society had made. This was disappointing for civil society. Their demand was for a much stronger legislation with presumption in favour of disclosure to make a dent in the culture of secrecy and to empower people with information.

Encouraged by the success of grassroots movements and the environment they created, many organizations came together to network and build coalitions with other civil society groups and individuals to have a wider policy impact and obtain access to information as a legal, enforceable right. This led to the formation of the National Campaign for People's Right to Information (NCPRI) in August 1996 to provide support to grassroots struggles for right to information and advocacy at the national level. It is this combination of grassroots work, networking and advocacy that led to the enactment of national legislation.

Many civil society organizations started working on draft legislation. Several drafts were prepared, based on a study of international standards and similar laws elsewhere in the world. The first draft on right to information legislation was prepared – with help from MKSS - by the Press Council of India in 1996 (updated in September 1997 at a workshop with the National Institute of Rural Development, or NIRD, hence this draft is also called PCI-NIRD draft). The draft affirmed, in its preamble, that right to information was a fundamental right as a corollary to the freedom of speech and expression under Article 19 (1) (a) of the Constitution. It asserted that information that could not be denied to Parliament or State legislature could not be denied to a citizen.[19] The draft was important at least in one respect, that it covered not only public bodies, widely defined to include government and its undertakings and local bodies, but also private companies, corporations, cooperative societies and trusts owned or controlled by private individuals whose activities affect the public interest.

The next draft prepared by the Consumer Education Research Council (CERC) was more progressive and covered all persons including non-citizens but excluding «alien enemies.» It also subjected documents relating to security, international relations, defence, economic and commercial affairs to a «grave and significant

19 This was a rather innovative idea. The government could not have disagreed that elected representatives act on behalf of people and if information could be given to the people's agents it could certainly be given to the people (or principals). Government would have found it difficult to assert that it would withhold certain information from the parliament or state legislatures. That would have provoked adverse reaction.

20 The Movement for Right to Information in India by Harsh Mander and Abha Singhal Joshi, CHRI, (2000).

damage» test. The draft bill required public agencies to maintain their records in good order, publish all laws and government rules and circulars, and promote computerization of records. It also called for outright repeal of the Official Secrets Act.

In May 1997, a Working Group on Right to Information and Promotion of Open and Transparent Government, set up by the government, gave its report and proposed changes in the Official Secrets Act and suggested a draft legislation on right to information, known as the Shourie draft after its chairman H D Shourie, a well-known consumer activist. The Shourie draft brought judiciary and legislatures within the purview of the proposed legislation. It also provided for oral requests for information, a provision on which other draft bills have been silent. It provided for release of confidential commercial information held by government if such a release was in the public interest. Despite these advances, the Shourie draft was criticized for widening the scope of exemptions, and for not providing for penalties or protection to whistle-blowers. Appeals were allowed in consumer courts, which are already burdened with backlogs. Equating such a fundamental human right with a more contractual and commercial consumer right was also criticized.[20] This draft was not introduced in the Parliament.

In May 1997, an Action Plan for Effective and Responsive Government was adopted at a Conference of Chief Ministers. The Action Plan included, among others, ensuring transparency and introducing right to information. It also called for amending all those laws that stipulate unnecessary restrictions on the free access of the public to information. States were also asked to introduce state laws to provide information in areas within their jurisdiction. The imprint of civil society work was clearly visible.

21 Maharashtra had an earlier act of 2000 which was repealed in favour of a more powerful ordinance on right to information (2002). When the ordinance lapsed and the state government failed to enact the legislation (in fact the act was lying with the centre for consideration), social activist Anna Hazare went on hunger strike and the Right to Information Act (2003) was passed with lightening speed in August 2003. Issues were raised as to whether yet another state law can be passed when the central act was already there, but it was argued that the state was empowered to enact its own law as the central act had not become effective yet.

While the civil society was working on various drafts of a possible *central* legislation, many States went ahead and passed their own right to information acts, some before the central bill was introduced in the Parliament (2000) and some after it. These States include Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Assam (2002), Madhya Pradesh (2002), Maharashtra (2003)[21] and Jammu and Kashmir (2004). Uttar Pradesh does not have an act but has adopted a Code of Practice on Access to Information (2000). It is interesting to note that at the time of the enactment, all these states were ruled by parties that were not partners with the ruling National Democratic Alliance at the centre.

The Freedom of Information Bill was finally introduced in the Parliament in 2000 and later approved to become the Freedom of

Information Act 2002. This was believed to be the reworked version of the Shourie draft. The Bill was pending for about two years during which time it was referred to a Parliamentary Standing Committee. The Committee invited suggestions from various individuals and organizations. Several civil society organizations gave their views and made recommendations before the Committee. The report of the Committee was presented to both houses in July 2001. The Freedom of Information Bill 2000 was finally passed by Parliament in December 2002 and it received the assent of the President of India in January 2003. The passage of the Freedom of Information Act, 2002 (hereafter FOIA) was notified as Act No. 5 of 2003 on 6 January 2003 but it has not become effective yet. The government is working on the formulation of rules which will be notified along with the Act to give effect to it, but has not indicated any timeframe for the same.

Once the central legislation, FOIA, takes effect, the State laws may have to be repealed. This subject does not fall under any of the three subject lists (Union, State and Concurrent) of the Indian Constitution. As such, it is a residuary matter and the power to legislate on residuary matters rests with the union government.[22] Besides this constitutional issue, there is also the question of lack of uniformity in the state acts – it will be confusing for citizens to have different levels of access to information in different states. The quality of state acts varies drastically across states. The central government has already written to the states to put on hold implementation of their right to information acts. This is being examined by many states, notably Delhi, as their laws are more progressive than the central law. The civil society would like to support progressive state acts rather than a watered down version of the FOIA but the constitutional position is such that ultimately FOIA may prevail and state acts may be superseded. This poses a challenge for the civil society to continuously work towards improvements in FOIA by bringing into it good provisions of the state acts. As other different views are also being expressed on this issue, the essential situation will not be clear until after the notification of the central act.

5.1 Civil Society Reactions to the FOIA

Though the passage of the right to information law in India was generally welcomed, civil society in India has raised concerns about dilution of many provisions of the state acts and the drafts for a central legislation that many civil society organizations had provided. It finds the FOIA in its present form a weak instrument to make a dent in the culture of secrecy or provide citizens with any meaningful access to information. Some of these reactions to the FOIA follow. These include both strengths and weaknesses:

22 Under entry 97 of List I, Union List, VI Schedule of the Constitution of India.

Strengths
· While the FOIA does not provide for a presumption that all public information is open unless limited by law, the FOIA does impose an important duty on every public authority to maintain records and publish information about the following: particulars of its organization, functions and responsibilities; description of its decision-making processes in terms of procedures, powers and responsibilities of its officers and employees; norms for performance of activities; classes of records under its control; facilities provided for access to information; and particulars of the Public Information Officer to whom requests may be addressed. The definition of information within the FOIA, and most state Acts, includes certified copies of documents or records, taking notes and extracts, and inspection of records. Interestingly, some state Acts also include, within the definition of information, inspection of works and taking of samples of material from public works. This provision was effectively used by a Delhi-based NGO, Parivartan, to prove defalcation in the public works in Delhi. If state laws are repealed, following the enactment of the central act which does not have this provision, this unique tool in the hands of civil society will be lost.
· There is a provision to declassify information after a lapse of 25 years. Section 8 (2) of FOIA says that any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty-five years before the date on which any request is made under the Act shall be provided to any person making a request.

Weaknesses
• The FOIA provides for a large number of exemptions. The legal position is that as the FOIA aims to operationalize Article 19 (1) (a) of the Constitution, the exemptions under the Act cannot go beyond what are allowed under the Constitution as «reasonable restrictions». In this context, some of the exemptions under the FOIA – as well as some state acts – will not pass this test and hence are unconstitutional. The FOIA also exempts certain public authorities as a class (such as intelligence agencies), which violates the principle that exemption should be content-based and not class-based.
· The FOIA extends only to public authorities. With the gradual withdrawal of the state from public services and increasing privatization, the applicability of the FOIA only to public authorities is being seen by civil society as nothing short of a deliberate attempt to avoid accountability. A public authority is defined as any authority or body established or constituted by or

23 People's Right to Information Movement: Lessons from Rajasthan by Neelabh Mishra, Human Development Resource Centre, UNDP, New Delhi, 2003.

24 In this respect, a far-reaching piece of legislation is the Promotion of Access to Information Act (PAIA), 2000 of South Africa. It gives effect to the 'constitutional right of access to any information held by the state and any information that is held by another person and that is required for the exercise or protection of any rights. ' This is one of the few pieces of access to information legislation in the world to apply to both public and private bodies. (See The State of Access to Information in South Africa by Dale T McKinley, Centre for the Study of Violence and Reconciliation, 2003).

25 In Delhi, the Public Grievances Commission states that in 80 percent of cases government departments deny information to applicants on flimsy grounds. In nearly 550 cases the Commission recommended that officers be penalized under the provisions of the Act. But not a single officer has been punished to date, according to Parivartan (Our Secret Society by Siddharth Varadarajan, Sunday Times of India, New Delhi, 28 March 2004).

under the Constitution or by any law made by the appropriate government and includes any body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate government (italics added). Unfortunately, the term «substantially financed» is interpreted to indicate that the government has more than a 50 percent share in the authority. Civil society is demanding that even if the government has a small share, the body concerned should be held accountable for providing information. In this respect, Romania's right to information act is quite instructive. It uses the «public money» test and defines public authority as any entity using public money. In India, the exclusion of a large number of recently privatized public bodies that provide public services, and influence public life, is a matter of concern. Another reason why private bodies should be included is that under Article 19 (1) of the Indian Constitution, right to information is a fundamental right of general import and universal applicability. Since there is another negative right available specifically against the state under Article 14, the right under 19 (1) is of universal applicability. Hence restricting access to information only to public bodies is unconstitutional.[23, 24]

· The lack of penalty clauses. Civil society has also criticized the FOIA as a toothless piece of legislation since there is no penalty clause in it. Although some state-level acts do have provisions for penalty in the form of disciplinary action (Rajasthan and Assam), monetary fines (Goa, Delhi and Karnataka) or both (Maharashtra), it is not known if these clauses have ever been used.[25]

· The high fee structure for gaining access to information can in effect negate the right to information. In Delhi, the high cost of accessing information has been a major bone of contention between the civil society and the authorities. The state government's argument that lower fees will inundate them with frivolous requests has been countered by NGOs like Parivartan who say that those who do make vexatious requests will not be deterred by high fees - it is the genuine people who will.

· The lack of an independent appeal mechanism. The FOIA does not have an independent appeal mechanism, although some states do. In the absence of an independent appellate mechanism, the activists on the ground fear that denial of information may become the norm. A good appellate mechanism, independent of government, provides protection against arbitrary denial of access to information. As all right to information laws in India bar the jurisdiction of courts (which itself is in contravention of the Supreme Court orders in several other cases in the past and is not maintainable in a court of law), a sound institution like Ombudsman or Information Commissioner becomes necessary. Most Indian Acts provide for two appeals. The first appeal lies

within the superior authority in the same administrative department. The second appeals mechanism, however, differs.

· The existence of many conflicting laws. There are several existing laws and rules that conflict with the right to information legislation. Quite often, governments do not amend other laws but insert an «overriding effect» clause to give right to information precedence over conflicting laws. While this is welcome, it is the experience on the ground that unless the incompatible laws and rules are also amended, the more restrictive of the laws (that prohibit disclosure of information) prevail notwithstanding the overriding clause. In India, the FOIA says that «the Official Secrets Act 1923 and every other Act in force shall cease to be operative to the extent to which they are inconsistent with the provisions of this Act». Yet, it is important that the Official Secrets Act is amended to make it consistent with the right to information law. Similarly, there is a need to amend Section 123 of the Indian Evidence Act that prohibits giving evidence based on unpublished official information without prior permission. The Civil Service Conduct Rules also deter civil servants from providing information.[26] In spite of passing the FOIA, the government has not issued orders informing civil servants of the suspension of operation of the relevant rules that prohibit disclosure, to give the Right to Information Act overriding effect. However, it is understood that a code of practice is under preparation to replace the existing conduct rules.[27]

· Absence of an oversight body in FOIA is a major weakness. Only two states, Delhi and Goa, have provisions about an oversight body. Called the State Councils for Right to Information, with elected representatives, civil servants, media, and non-government organizations as members, the objective of these bodies is to promote right to information in the state. More specifically, the Councils aim to review the operation of the law and the rules made thereunder, to review administrative arrangements and procedures, and to advise government on all matters relating to management of information, and training, development and orientation of employees to bring in a culture of openness and transparency. As members of the oversight bodies, civil society can play a pivotal role in monitoring the legislation and influencing decision-making.

26 Unauthorized communication of information by civil servants is governed by Rule 11 of the Central Civil Services (Conduct) Rules 1964 and Rule 9 of the All India Services (Conduct) Rules, 1968. The rules provide that no government servant shall, except in accordance with any general or special order of the government or in the performance in good faith of the duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any government servant or any other person to whom he is not authorized to communicate such document or information.

27 Indian Express, August 12, 2003.

6. Effective implementation of Right to Information Legislation

The enactment of the right to information law signals an important shift in the attitude of the government and a recognition to move from the culture of secrecy to greater openness. It also marks the culmination of a long-standing civil society struggle which has met some expectations, albeit partially. Legislation on right to information is an important necessary step that governments must take to provide accountable and transparent governance.

However, no matter how progressive the law, unless public bodies actively promote right to information, the forces inimical to openness can undermine the law. It is therefore important that people use this law extensively to bring forward the types of information people need so that the information in the public domain can be expanded. Effective implementation of the law requires action both on the supply side and the demand side. On the supply side, there are problems that relate to organizational inefficiencies and there are others associated with bureaucratic obstruction and inertia.

6.1 Supply side considerations
At the organizational level, cumbersome administrative procedures and discretionary powers with the bureaucrats need to be reformed. Streamlining the chaotic system of archives and records and improving internal management of information are essential pre-requisites for effective law enforcement. Proper records management is an essential pre-requisite for an effective right to information regime. With the spread of information technologies, this has become much easier now than it ever was. There are many government-supported initiatives that enhance the efficiency of government operations. There are equally a large number of civil society supported technological solutions that are not technocratic but transform technology into the realization of social goals. Large number of civil society groups are providing information to marginalized citizens on a whole range of matters in remote rural areas, overcoming infrastructural barriers. Working with civil society even for technological solutions will ensure that the right to information is realized even in unreached areas and by the disadvantaged.

The bureaucratic culture of secrecy is another major hurdle in effective implementation of right to information. There have been instances where citizens have been told by official functionaries to file applications under the act for information that was easily available before the act came in force. By providing poor quality information, officials can thwart the whole process of moving towards

a more transparent regime. Providing information in a form or language that is not citizen-friendly will have the same effect. Absence of a penalty clause, independent appeals mechanism and an oversight body in FOIA will further bolster bureaucratic obstruction and inertia unless there is constant pressure from citizens.

If action is not taken after citizens have shown defalcation, based on information obtained under the legislation, citizens may turn cynical and slowly lose interest. This is likely to happen as the post-information investigation and action are still weak areas that need to be addressed. Government needs to take quick cognisance of the information produced under the legislation and strengthen investigative machinery.

6.2 Demand side considerations

The organization of citizens at grassroots level and networking of civil society groups at the macro level must continue for the right to information to become a ground reality. It is often said that 'information is power' but the ground experience suggests that in the absence of organization, information alone is not of much help to citizens. For example in India, the Minimum Wages Act has been in force since 1948. But it was not until MKSS took upon itself to mobilize people to demand minimum wages that this law came to life. Therefore, it may be more appropriate to say that 'information with organization is power'.

Lack of awareness among officials and citizens about the right to information law is the single biggest roadblock in its effective implementation. This is also a major cause of bureaucratic resistance. The law aims at nothing short of a cultural change in the way public administration has been functioning. This requires systematic capacity building and sensitization not only of civil servants but also media, lawyers and NGOs in a campaign mode in which civil society has an enormous role to play.

Civil society's role does not end with legislation. While it should continue to mobilize people to keep the pressure on public authorities for providing information, it should not regard capacity building as government's sole responsibility. It should work with the government and other stakeholders for joint capacity building initiatives. In Romania, for example, an informal coalition of civil society not only pressed for a law but is now preparing projects aimed at training public information officers, journalists, lawyers and magistrates regarding the implementation of the law.

6.3 Civil Society Monitoring of Right to Information Legislation

«Law now, information later» was how civil society was criticized in India for being too heavily legislation-focused in its right to information campaign. This tells us that a law on right to information is a good beginning, but that it will not *ipso facto* ensure that citizens have access to information that is relevant, timely and available at low cost and effort. Governments can slide back after passing the legislation and laws can become dead letters if not used and monitored by citizens. Constant monitoring can ensure that citizens' feedback is available and hurdles are removed. Monitoring can also help identify departments that receive a large number of requests and initiate action to aggregate information and provide the same in a pro-active manner through websites or any other means of communication.

With a view to assess the responsiveness of public authorities in providing information and to generate citizens' recommendations for relaying to government, Public Affairs Centre (PAC), Bangalore and Commonwealth Human Rights Initiative (CHRI), New Delhi jointly conducted an 'implementation audit' of the Karnataka Right to Information Act (KRIA) in the capital city of Bangalore. The audit was conducted during November 2002 and April 2003. The results indicated a general lack of awareness about the law among the government officials and people. Officials lacked clarity on how to implement it. *Suo moto* disclosures were not made except by one organization. There were delays in providing information. Eleven out of twenty public authorities that were approached with applications did not even respond. The appeal procedure was time-consuming and highly legalistic, requiring presentation through legal counsel. This audit recommended training to all officials on the law and procedures, particularly to competent and appellate authorities.

With a view to make an assessment of the functioning of the state level acts, a survey was conducted by CERC in 2003 in six states (Tamil Nadu, Goa, Delhi, Karnataka, Rajasthan and Maharashtra). The survey showed a low level of awareness and use of the acts. Even among those people that applied under the acts, a very small percentage actually got the information. The states of Delhi, Goa and Karnataka were better in implementing their acts. These were also the states with a higher level of awareness and use of the acts. Suggestions were made by the respondents for inclusion of penal provisions or strict enforcement where they existed in the acts to prevent negligence and delays on the part of civil servants in providing information.

Parivartan's entire work has been after the Delhi Right to Information Act was passed and focuses on effective use of the Act. It regularly monitors and documents cases where people have used the Right to Information Act in Delhi and received information. There is, however, a need for more systematic documentation on people's experience with the acts in different states. Such documentation should also focus on non-users.

6.4 Independent Oversight Bodies

Post-legislation monitoring of the legislation can also be institutionalized. As mentioned earlier, two states have set up State Councils for Right to Information. This is a very important forum, represented, among others, by citizens' groups, media and civil society to ensure that the government does not backtrack after passing the legislation. Where such forums are not constituted as part of the legislation, there is a need to do so. Post-legislation monitoring is essential to constantly gauge the responsiveness of public agencies and their compliance with the acts. The monitoring body can review cases of non-compliance to identify the underlying causes and then address those causes to overcome non-compliance. These oversight bodies only monitor the implementation of the act and do not function as an independent appeals mechanism for which a separate institution like the Ombudsman needs to be established.

An oversight body can also suggest steps through which complex and legalistic official information can be simplified, interpreted or translated and provided to citizens in a simple, user-friendly way. This monitoring body can also think of innovative means of communicating information. Civil society can certainly be of great help here. The *jan sunwais* organized by grassroots organizations were also a great lesson in how best to reach out to people through simple, interesting, folk means of communication. They used street theatre, song and drama very effectively to communicate with people.

Though a formal assessment of the functioning of the State Councils for Right to Information is not available, in Delhi the pressure from civil society members led to a reduction in application fees under the act.

Post-legislation monitoring is absolutely critical in ascertaining whether the institutions set up under the law are functioning or not and how their functioning can be further improved. Under the FOIA, each public authority is expected to appoint one or more public information officers. There is a need to identify critical capacity gaps and make an assessment of their capacity needs. An important area

of work with civil servants is to streamline records management. It is a pity that records management is considered to be a relatively unimportant activity in public administration entrusted to the junior officials. In India, a posting to the records section will be seen as a punishment posting fit only for inefficient and unwanted government officials. This mindset has to change. The spread of information and communications technologies has made it a lot easier to store loads of data in a systematic manner amenable to quick and inexpensive retrieval.

6.5 Reform of Right to Information legislation

By providing several drafts to government, civil society laid the foundation for legislation on right to information in the country. The legislation, however, needs considerable improvement for which civil society has to continuously work, through forums such as oversight bodies or other informal forums, to influence legislation to make it more effective and powerful. The civil society may get an opportunity to influence legislation if the rules, under formulation now, are disseminated for comments. Though rules cannot alter the basic structure of the act, clearly defined rules can augment the effectiveness of the act.

7. Civil Society Accountability and Co-operation

The struggle for right to information in India raised issues of civil society's legitimacy, transparency and accountability. These issues are inherently linked to their funding sources, participatory mechanisms for internal debates and decision-making, their nature (whether advocacy or service providing), and goals and values. The organizations that have worked for right to information in India have largely been in the advocacy and democratization mode, claiming to be apolitical in terms of party politics but at the same time empowering the poor. Unlike the service delivery, where alternative modes are taken more kindly by the national government, an advocacy and empowerment agenda can become confrontational.

Again, unlike service delivery NGOs, which can alter the social contract between the state and citizens, the advocacy NGOs do not substitute for the state. It is important to raise these points here as MKSS has been focusing on the need to strengthen the formal structure of accountability of elected representatives and government to the people. Even when it achieved successes in mobilizing people and accessing government records on public works, MKSS felt it was important for government to recognize this as a right by enactment of a law. For it is only through a law that a formal accountability relationship between the state and citizens gets built. In the same context, it was important to have the Chief Minister of Rajasthan issue orders to formalize people's right to take photocopies of records of *panchayati raj* institutions.

NGOs have multiple and complex accountability to people, donors, government, and trustees. In view of this, the accountability channels either get blurred or tend to veer towards the more powerful client. The elected governments, on the other hand, have clear accountability to the people who elected them. Therefore, rather than assuming the role of substituting government, NGOs should play a catalytic and a watchdog role. They should build strategic alliances based on common agendas and play a bridging role of bringing together other grassroots organizations and NGOs.

Co-operation is a real threat faced by NGOs. Following the success of MKSS in Rajasthan, the state government decided to organize *jan sunwais* for conducting social audit in partnership with MKSS. At one level, MKSS had a reason to feel satisfied that its stand on social audit got vindicated, but at another, there was a fear that such government-sponsored *jan sunwais* might degenerate into yet another government scheme. Co-option can be disempowering for the people and pose a dilemma to the NGOs whether to oversee this process from outside or become a part of it. For those NGOs that receive government funds, the risk of becoming responsive to the benefactor rather than people they claim to represent is even greater.

8. UNDP, Civil Society and Right to Information

UNDP has been present in India for a long time. Because of its impartiality and neutrality, people-centred long-term perspective of development, and engagement with civil society actors, it enjoys the trust and credibility of national government. It aligns its work with the articulated priorities of the nationalgovernment and plays a catalytic and supportive role by providing knowledge, experience and resources.

UNDP's policy on Information Disclosure is itself quite wide and inclusive.[28] There is a presumption in favour of public disclosure of information and documentation generated or held by UNDP. This provides credibility to the work UNDP does in this field. Commenting on UNDP's disclosure policy, CHRI said «Such policies are an important step forward, facilitating citizens' participation in projects that affect them and working to ensure that economic development reaches its target.»[29]

The Government of India sees citizens' freedom to access information as an important means to achieve accountable, transparent and participatory government. This was articulated in the Chief Ministers' Conference on Effective and Responsive Government held on May 24, 1997. The Conference adopted an Action Plan to take initiatives in the following three areas:

(i)   Making administration accountable and citizen-friendly.
(ii)   Ensuring transparency and right to information.
(iii)   Taking measures to motivate civil services.

A year later, in July 1998, the Department of Administrative Reforms and Public Grievances in the Government of India and UNDP brought out a report on operationalization of right to information. This report examines the international experience in this area and cautions that «unless continuous vigil is exercised in its implementation, feedback of users sought, and independent assessment of the efficacy of the legislation got done from reputed agencies and individuals from time to time, the proposed legislation will not serve its laudable purpose.»

Since then, UNDP has provided support to several initiatives discussed below.

8.1 Multi-stakeholder Consultations
UNDP has brought together government officials, media, non-government organizations, academia, lawyers and students for multi-stakeholder consultations on different occasions. In one such consultation, government officials, senior lawyers, civil society members and students discussed the draft model rules under the FOI

28 www.undp.org/cso/policies/doc/ piddp03_en.doc

29 See Open Sesame – Looking for the Right to Information in the Commonwealth, Commonwealth Human Rights Initiative, New Delhi, 2003, p27.

Act in a workshop organized under the aegis of the National Law School University of India, Bangalore, supported by UNDP. The rules were drafted by the students and faculty and were based on the good points taken from legislation and rules in other states in India as well as in other countries. These rules were subsequently shared with the central government.

The legislative and implementation matters relating to Delhi's Right to Information Act were also debated in another workshop organized jointly by UNDP and the Government of Delhi. This workshop not only discussed the legislation and the rules (which are amongst the best in the country) and the role of civil society, it also devoted considerable time to the supply side of information. Several champions of e-governance initiatives from other states also came and shared their experience. Civil society representatives demanded a reduction in the fee as they felt at the present rates it would act as a deterrent.

Another multi-stakeholder consultation titled «Access to Information, ICTs and Cross-media Partnerships-The Empowerment Agenda» organized by UNDP in partnership with Government of India was in fact a culmination of efforts so far. It brought together media (English and language, print and electronic), civil servants, and civil society organizations. It was an occasion to discuss provisions under the right to information legislation, present people's experience in using the acts in different states, for civil servants who have made innovative use of ICTs to provide people with information to present their experience, and for media to introspect and remind themselves of their social responsibility towards 'development reporting' – all directed towards the common goal of improving citizens' access to information. UNDP's strategy of associating media was appropriate as it brought out that media's non-use of right to information acts and absence of reporting on this issue was largely a result of lack of awareness and capacity, and not any inherent limitation imposed by media's market interests.

8.2 Capacity Building of Civil Servants

As major information holders and providers, civil servants have a huge responsibility towards citizens. Having long worked in a culture of secrecy, it requires considerable efforts to sensitize them and to address their supply-side problems. UNDP is working with the Department of Personnel and Training which is responsible, among others, for the training of civil servants in the centre and states through central and state training institutes. UNDP is supporting preparation of training material to be used in these training institutes. The material will be such that it can be adapted to suit training needs of media colleges, state institutes of rural

development for *panchayati raj* training, other training institutes and NGOs. The material will also be used for advocacy purposes. This is possible because training material is being produced as a multi-media CD-ROM which will contain text (central and state laws and rules, various orders and notifications issued by governments from time to time) and visuals (experiences of citizens and authorities, success and failure stories on IT-based initiatives, people's movements). This material will be used and validated in forthcoming joint workshops for civil servants and media.

With a view to provide first hand grassroots experience on the linkage between information and development, exposure visits were organized for senior civil servants from different states to the *jan sunwais* organized by MKSS on public distribution in rural Rajasthan and Parivartan on public works in Sudernagri, Delhi. Civil servants appreciated that such *jan sunwais* were not one-sided and everyone – officials, traders, contractors – had a right to make his or her point. For example, traders pointed out that their low margins and uneconomic functioning force them to use corrupt practices in public distribution. This exposure visit had a sensitizing effect on civil servants and will go a long way in improving the interface between them and the grassroots organizations and in enhancing mutual understanding and trust.

Under the CARE-India's right to information campaign, supported by UNDP, capacity building workshops were organized with Delhi government functionaries. These capacity-building workshops received due support from the Department of Administrative Reforms of Delhi, responsible for implementing right to information, and the State Council, responsible for monitoring it, who ensured participation of officials through formal directives. Officials' lack of awareness of the right to information act in their own state was glaring. They resisted the idea that they now have to provide information under an act. It is a telling comment on the bureaucratic culture that in one of these workshops an official was overjoyed to know that there was a national security clause under which information could be refused.

8.3 IT-based Information Kiosks
UNDP has also focused on facilitating access to information through information technology. In partnership with the Department of Personnel and Training, UNDP supported setting up of IT-based information kiosks in Jhalawar (a backward rural district in Rajasthan), Mandya (an urban district in Karnataka), Bhopal (capital city of Madhya Pradesh), Jorhat (a district in the Northeastern state of Assam with world's largest riverine island Majuli), Kalahandi (tribal district in

Orissa), and Kutch and Panchmahals (in Gujarat, former heavily destroyed during an earthquake).[30]

These initiatives, preceded by information needs assessment surveys, followed a simple 'business model' where the citizen end of the kiosk is connected to a district server where information is stored and updated. Though it varies from project to project, these kiosks provide a whole range of information and services such as copies of land records, permanent residence certificates, birth and death certificates, copies of court orders, farm prices, details of government schemes and subsidies, examination results, grievance redressal and a host of others. The kiosks are run by private entrepreneurs - generally local educated unemployed youth with some knowledge of computers and internet. They provide official information at a nominal charge, fixed by the public authorities, except certain types of information which are provided free of cost. Most importantly, these entrepreneurs also conduct private business from these kiosks (such as providing photocopying facilities, internet surfing, and even horoscope making!) where they make a profit. It is the experience that these entrepreneurs recover their initial investment in very little time.

These kiosks are proving to be a boon for the citizens. It saves them time, effort and money. They need not make endless trips to government offices. This has also eliminated middlemen and touts who would charge big amounts for these services previously.

Some initiatives are doing better than others. An important lesson learned is that where the lead is taken by a person with knowledge of the domain, the initiative has worked, but where the initiative is technology-driven, it has not shown encouraging results. Where it is the domain expert (read District Collector), the resistance from the lower level functionaries was also successfully overcome. To sustain these kiosks, it is imperative that information is constantly updated and more and more services are added. In some places, efforts are on to also computerize backend processes. Care also needs to be exercised that information for which people are not willing to pay, but information is important nevertheless, is not lost sight of. Social barriers to accessing information from these kiosks faced by some groups, such as women, also need to be addressed.

8.4 Capacity Building of People
UNDP has also supported CARE-India's right to information campaign in ten low-income settlements of urban Delhi. The objective of this campaign was to develop capacities of communities in these settlements to seek information for improved access to civic services

and government schemes and use this to improve their quality of life. This was done with the help of two NGOs already working in these areas by creating a pool of trainers, identification of change agents from within the communities, linking communities to other groups similarly working in this field and sensitizing government functionaries to people's need for information and procedures under the law.

As part of their efforts to empower people with information, two information fairs were organized by CARE with the help of government agencies, non-government organizations, and community members. The objective of these fairs was to inform people about their entitlements, departmental norms for various civic facilities, the structure and functioning of departments they have to frequently interact with, and names of concerned offices / officials they should approach for any information or problems. Women, who turned out in large numbers, showed great interest in these fairs.

The entire process of capacity building of the marginalized communities has led to their increased confidence and self-esteem. Empowered with information, they now understand their own role in the management of the city and can improve their lot.

8.5 Capacity Building of Media

Feeling the need to involve the media in encouraging them to use right to information acts and report about how people are using these acts, UNDP organized intensive workshops with local language media, print and TV. The broad objective was to build capacities of media and sensitize them to development issues including decentralized governance, ICTs for development (including the role of community radio), concerns of the marginalized groups (women and HIV positive persons), and right to information. In particular, media persons were encouraged to go on field trips to give feedback on the working of right to information and document people's experience in accessing information. These workshops revealed critical capacity gaps in media and how inadequate language media's access is to high quality technical reports. In India, even the Human Development Report, UNDP's flagship publication, has not been translated into Hindi –the language of millions!

These capacity building workshops culminated in a multi-stakeholder consultation titled «Access to Information, ICTs and Cross-media Partnerships» referred to above.

8.6 Documentation

The documentation material prepared under various projects provides a rich capacity building and advocacy resource. Training modules prepared for civil servants, illustrated booklets and pamphlets in local language, user manuals for the community mobilizers and volunteers, audio-visual documentation of the capacity building workshops, and films on *jan sunwais* are all very useful material to be built upon for UNDP's future work in this area. This is in addition to the survey on citizens' awareness and perception about right to information acts across states conducted by CERC, documentation on international laws by the National Law School and a comprehensive paper on right to information in Rajasthan. A CD-ROM, under preparation, is expected to be a powerful multi-media tool which can be used for capacity building of diverse audiences.

9. Conclusion

Civil society in India has played an enormous role in highlighting the importance of and campaigning for right to information as a necessary condition to achieve accountable, transparent and participatory governance and people-centred development. By linking it to right to life and livelihoods and focusing on citizens' rather than media's right to access information, it brought about a paradigm shift in the debate on right to information in the country. Another major contribution of civil society in India – and departure from debate elsewhere - is linking of right to information with people's participation. For direct democracy at local levels, ushered in through *panchayati raj*, to be meaningful, it is important that people participate in decision-making and hold local institutions accountable to them.

Civil society's strong grassroots work caught the imagination of other concerned groups and citizens and it soon became an influential movement. Social audit through *jan sunwais* (or public hearings) was a direct and innovative approach. Though it led to many successes, including enactment of right to information legislation at state and national levels, it is not a sustainable or replicable method. Attempts elsewhere to replicate it – including those under the aegis of the state governments - have met with partial success. Other methods like report cards and budget information, though important initiatives in holding public authorities accountable, do not go very far in terms of recognizing citizens' access to information as a matter of legal right. These methods have also been used in conjunction with right to information acts but with little success. There is, therefore, a need to institutionalize the social audit in the local bodies responsible for development and service delivery. A detailed methodology of social audit, built on the people's right to access information held by public authorities, needs to be developed. The mainstreaming of the concept of 'social audit' has been a solid contribution of civil society in India.

It is interesting how the right to information movement caught on and many civil society groups and individuals got associated with it to form a network. It is this networking that led to enactment of legislation on right to information. These laws may not be perfect, and their implementation on the ground may initially face roadblocks, yet they mark recognition of the need to move from the culture of secrecy to that of greater openness. The networks are debating on 'the central act (FOIA) versus the state acts' with a view to ensure the best possible outcome such as inclusion, among others, of private parties and penalty clause in the legislation.

The civil society has not only played a critical role in bringing about legislation but is also extensively using the legislation to demand information on public works. The work of Parivartan in urban areas of Delhi is a case in point. While it is too early to assess the impact of the legislation in terms of poverty reduction, there are several documented micro-level cases which indicate successful outcomes of filing applications under the right to information acts in many states. These successes have not only been in terms of government departments providing information, but also improved responses in service delivery. However, there is still a long way to go. For the right to information to become a reality, it is important that these laws are extensively used by the people, supply side of information is strengthened through proper information management systems, bureaucracy is sensitized, social audit procedures are streamlined, and civil society continues to work with people to mobilize them and advocate for greater openness in governance. Civil society should also continue to work for capacity building and empowerment of local bodies, set up under the *panchayati raj*, particularly the *gram sabha* that has the constitutional mandate for social audit.

UNDP, by virtue of its long association with the national government and its credibility as a trusted partner, has provided support in this seemingly sensitive area. This support has taken the shape of providing a platform for multi-stakeholder consultations, building capacities of public authorities to supply information, including through innovative application of ICTs, and of people and media by creating awareness and engaging them in a long term dialogue.

Lessons Learnt
The following are some 'lessons learnt' and reflections for UNDP's future work in this area.

1. Engagement with civil society that is multilateral, involving all other stakeholders including government and media, enhances mutual understanding and development outcomes.
2. Capacity building and advocacy require sustained engagement with key actors, including civil society. UNDP's engagement therefore has to be long-term and strategic, rather than project-based.
3. Initial choice of entry points is critically important for UNDP to become a part of the ongoing dialogue on right to information and to partner with civil society on a long-term basis.
4. Working with media (both print and electronic) – the traditional pressure group pushing for freedom of information - enhances visibility and impact. Media has participated with civil society in the right to information movement as concerned citizens. It is

important they are involved as an institution to start using the law themselves and also act as a monitoring arm by reporting about citizens who are using, or not using, the law.

Future Directions
1. UNDP should support public authorities charged with the responsibility of providing information to citizens. The interventions could take the form of modernization of records management and internal information management systems. UNDP can bring in its global experience in this field. Capacity building of civil servants and sensitizing them through orientation courses are areas where UNDP can potentially provide support.
2. Support to civil society organizations engaged in mass mobilization and encouraging people to demand information would provide the much-needed pressure from below to keep the law alive. Capacity building of civil society organizations engaged in areas such as environment, gender, health or HIV/AIDS in right to information would enrich their work and enhance development impact. Monitoring (by civil society, including media) how people are using, or not using, the law and feeding that information back to oversight bodies could be an important area of future support.
3. Ongoing UNDP programmes, such as on local governance (rural and urban) or ICT for development, should be used as vehicles for mainstreaming right to information. In India, capacity building of *panchayati raj* institutions offers a sound platform for further work in this area. UNDP could support initiatives to formulate rules and institutional procedures for social audit.
4. UNDP's own information disclosure policy is a sound one. That could be used as a model for the civil society organizations to establish their own information disclosure policies.

Resources and Further Reading

General Reading

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