WORKING PAPER

Corruption and the Right to Information

Harsh Mander

This paper explores the phenomenon of corruption by public authorities in India, particularly the civil services: its causes, dynamics and the methods and dilemmas associated with its possible control. It examines the efficacy of systemic regulation and reforms to reduce corruption, and argues that the movement for right to information in India demonstrates the critical significance of citizen vigilance and assertion in checking the corrupt and arbitrary exercise of state power. It emphasises that it is through the creation of effective legal spaces for the exercise of the people's right to information that the most powerful, sustainable and reliable safeguards against corruption in public life can be erected.

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From time to time, corruption surfaces briefly in our polity as a central issue engaging and agitating ordinary people. On such occasions, both the context and the catalyst often vary: activism in the media, the judiciary, politics, the civil services or, as is most frequent, in the wider civil society. The ordinary citizen watches with mounting outrage as novel dimensions of corruption in public life come to light each time, confirming once more the malfeasance of those who govern and administer us, in their perilous compromises with public welfare, the control of organised crime and even national security. Each time, the citizen responds with a weary and fragile hope that justice will be done, but before long the dust settles, the guilty are rarely punished, and the citizen returns to struggles of daily survival in what increasingly appears to be an irrevocably corrupt, corroded system.

In the first part of this paper, we will study closely the phenomenon of corruption by public authorities in India, particularly the civil services: its causes, dynamics and the methods and dilemmas associated with its possible control. We will examine the efficacy of systemic regulation and reforms to reduce corruption. In the second part, we will argue that the movement for right to information in India demonstrates the critical significance of citizen vigilance and assertion in checking the corrupt and arbitrary exercise of state power. We will conclude that it is through the creation of effective legal spaces for the exercise of the people's right to information that the most powerful, sustainable and reliable safeguards against corruption in public life can be erected.

PART I

Causes and Control of Corruption in India

Definition of corruption

In a literal sense, the word `corruption' means to change from good to bad, to debase, to pervert. In the context of public office, the most widely accepted definition of corruption is the misuse of public office, power or authority for private gain.[1] Corruption may involve two (or more) parties, as would be the case for instance in bribery, extortion, nepotism, and speed money. Corruption by public authorities may also be a solitary engagement, as in embezzlement, fraud and the misuse of official facilities.

One problem with this definition of corruption is that it appears to exclude the private sector from its scope. Recent exposures in India have shown that the rot of corruption runs at least as deep in the private sector as in government, and that the private sector is, in fact, in many cases, a willing partner in government corruption. For example, it has been pointed out that large corporations and even governments in some industrial countries resist reforms to control corruption, because of the belief that illegal payments to officials in less industrialised countries work to their benefit. However, even while acknowledging this, this paper will limit itself to an examination of corruption by public authorities, particularly in the civil services, in the context of India.

A distinction is sometimes made in the literature between petty and grand corruption, according to which petty corruption is based on small kickbacks, and follows from the grossly low salaries paid to public servants. On the other hand, grand corruption refers to the huge amounts made by high officials on decisions relating, for instance, to large public contracts.

The distinction is a real one, but there is a danger of using this distinction for rationalising, possibly almost condoning even if only by implication, petty corruption, as being based on need rather than greed. The poor are no doubt hurt by grand corruption, but also in their day-to-day lives grapple debilitatingly with petty corruption. It is important that both forms of corruption are both examined and confronted together.

A distinction is also sometimes made between legitimate 'gifts' and bribes. Olusegun Obasanjo, a former Nigerian Head of State, has been quoted to say, 'The distinction between gifts and bribes is easily recognisable. A gift can be accepted openly; a bribe has to be kept secret'. However, this distinction is mostly spurious. Even gifts that do not involve cash transactions involve the same explicit or implicit obligations of reciprocity involved in cash bribes. Therefore, they also constitute corrupt transactions, which may be described as the grey areas of corruption. These grey areas of

[1] A more elaborate definition of corruption as 'behaviour which deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power or status' is discussed by Khan (1996). He also offers a typology of the categories and causes of corruption as described in the economic literature.

corruption are, in practice, far more common in India than money transactions, and may include the acceptance of favours in the form of liquor, loans of cars, travel and hotel hospitality, house rent, placement of relatives in multinational companies and scholarships for foreign universities etc.

Such non-pecuniary grey area corruption is often packaged to make it appear antiseptic and respectable, both to the recipient and to the general public. The most obvious and literal example of such packaged corruption in India is the ubiquitous Diwali[2] gift, which has evolved from boxes of *mithai*[3] and baskets of fruit, to gifts of expensive suit-lengths, foreign liquor and gold and silver. Another notorious, particularly sophisticated form in which corruption is packaged is promoters' quota shares. Its neatness lies in the fact that widespread bribe-taking at the highest levels, especially of those charged with the formulation and implementation of economic policy, can be conducted brazenly in the open, effectively disguised as part of the legitimate right of public servants to trade in stocks and shares.

In many ways, packaged grey area corruption is more dangerous than pecuniary corruption. Not only is it much more difficult to catch, it is also much easier for the recipients of such bribes to rationalise these to their own conscience. Such rationalisations are often ingenious. A young income tax officer in Delhi, for instance, claimed to this writer that since he lived 27 kilometres away from his office in Delhi, coming to work each day by a local bus would tire him out and affect his productivity and his official duties would suffer. Therefore, if a client sent him a car each day to come and go from work, the government was the one to benefit from his higher productivity at work!

There is some resonance in spirit with Obasanjo's rationalisation referred to earlier, according to which consideration accepted openly was not a bribe: in other words, if one receives benefits for which one cannot legally be caught, it is not a bribe. Surely, it must be clear that corruption by public authorities cannot be defined in terms of the scale, content (cash or kind), secrecy or openness of a transaction. Instead, any transaction intended to influence the misuse of public office for private benefit is a corrupt act - even if packaged in a culturally acceptable form, or in a form that would not invite punitive outcomes.

There are many civil servants who make a choice of personal honesty, but refuse to take proactive action to control corruption among their subordinates, in their own offices and in other offices under their jurisdiction. Many refuse to take action when confronted with irrefutable evidence of corruption. The reason for such an attitude is often a fear of the consequences to themselves of rocking the boat in pervasively corrupt waters. A corrupt subordinate is often known to wield more real power than the superior, and can even secure the transfer or harassment of an inconvenient boss. However, it would be evident that ethically there is very little difference between active participation in corrupt practices, and tacit or passive acceptance of it for fear of consequences. Therefore, we include refusal to control

[2] Diwali or the festival of lights, widely celebrated in most parts of India, also may involve the exchange of gifts. In
[3] Traditional sweetmeats

corruption within one's official jurisdiction, even while remaining nominally honest personally, within the scope of our definition of corruption.

Dynamics of corruption

We noted that some forms of corruption could be engaged in on the solitary initiative of the public official, such as leakages, embezzlement and wilful misuse of facilities. On the other hand, corruption in the complex interface of public authorities and the public takes diverse forms. First, there is the phenomenon widely known as 'speed money', in which there is no attempt to influence the outcome of an official decision; the effort instead is to overcome delays. This is possibly the most common dynamic of corruption in public offices, and arises from the unpredictable and uncertain delays that riddle the routine functioning of any office. The client is then encouraged to pay pre-arranged sums to ensure that a decision is taken on an issue. This is, for instance, common in courts, where the client would be willing to pay even for an adverse decision, to enable recourse to further avenues of relief, in preference to protracted and uncertain delays which result in a stalemate and paralysis of options.

A second dynamic of corruption is what we may term as 'goodwill money'. In such cases, the client pays to influence neither the outcome nor the speed of specific official decisions. It is instead a regular payment in cash or kind to keep public servants in good humour, in the hope that they would be positively disposed towards the client in the future in the event of decisions affecting the fortunes of the client. Businessmen routinely resort to such goodwill bribery, and a large part of the payment to politicians and officials allegedly made by the Jain brothers in what is now known as the infamous 'hawala' scandal[4], which briefly rocked the Indian political establishment, appears to fall in this category. It is an investment in the future not related to specific favours, and which may or may not be ultimately encashed.

A third category is what we may describe as 'end money'. In such cases, money or favours are offered specifically to influence official decisions in favour of the client. Such bribes are frequently used to obtain contracts and licenses, favourable outcomes in courts, tax cases and police investigations etc.[6]

The most diabolical form of corruption is what may be termed 'blackmail money'. Here, the initiative is not taken by the client in any way, either to influence the speed or outcome of any official decision or to invest in goodwill. Instead, it is the official who traps the client into a situation, in which he or

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[4] The hawala scandal led to revelations that senior politicians and even Members of Parliament from almost all major political parties, barring the left, had received sums of money from the infamous Jain brothers, who were alleged to have been engaged in a massive money-laundering operation. The resulting outcry forced many of the accused to resign from the posts they were occupying. Eventually, however, the case petered out with - many politicians being acquitted of wrongdoing because the courts found the evidence inadequate. For contemporary accounts of the scam, in its early days, see The Hindu, February 23, 1996 and Business Line, February 23, 1996.

[6] An anecdote may help to illustrate this phenomenon. In what is most likely to be an aprophical story, a Chief Minister is alleged to have agreed to award a contract on the basis of a promise of a large sum of money. When the file was presented to him proposing the award of the contract, he wrote 'Approved'. When the recipient of the contract subsequently went back on the promised bribe, the file was called back and the word 'Not' added before 'Approved'. The client is believed to have quickly made amends with an even higher amount than what was earlier negotiated. The file was recalled a third time, and this time only the vowel 'e' was added. The order now read ''Note Approved'!

she must pay, or else face adverse consequences. Such consequences may include registration of false revenue, civil, tax or police cases. In this event, the client is an unwilling and hapless partner in corruption, paying only to escape harassment.

Causes of corruption

Corruption is a symptom of the collapse of the institutions of governance that are supposed to mediate the relationship between citizens and the state. The legitimacy of the state is related to its responsibilities for ensuring that scarce resources are allocated according to principles of justice for development, protection and welfare of the disadvantaged, sustainable management of natural resources, the rule of law, peace and security. Corruption represents the subversion of these responsibilities for the personal enrichment and aggrandisement of public servants.

The causes for this malaise lie both in society, as well as in the character of the bureaucratic machine. The sombre empirical reality of the pervasiveness of corruption in Indian public life today is rooted first and foremost in the social legitimacy that has come to be tacitly accorded to corruption in every sphere. In the relatively idealistic decades just after Independence, corruption did exist, but the corrupt official or politician tended to be low-key and defensive, and ostracised if exposed. The situation today is almost the opposite — it is the honest official or politician who is defensive, viewed as an anachronism, a comic figure or a fool. As all restraint is thrown to the winds, the corrupt have no compunction in flaunting their illegal wealth, grotesquely disproportionate to all legitimate and known sources of income in large mansions and conspicuous consumption. One by one, every idol is found to have corrupt feet of clay. In India, cricket players enjoyed vast cult following and had huge legitimate wealth, but utterly sordid revelations about bribery and match-fixing have brought them crashing down. Exposures like this strengthen the belief that many young people are growing up with, that no one is honest if they have the opportunity to make illegal money.

Related to this is the burgeoning of consumerist values, fostered by seductive advertising especially on the electronic media, in the permissive environment created by the debunking of constraints imposed in the past by the stated socialist goals of official policy. The salaries of civil servants by no means reduce them to poverty, but at the same time guarantee no more than a middle-class existence. [7] Some decades ago, there was a willingness to accept this as the cost of a fulfilling and prestigious vocation, but in today's consumerist world we find an unwillingness among civil servants to reconcile to a middle-class standard of living. This sharp imbalance between means and aspirations fuels corruption, especially of the grey and packaged kind.

The opportunities for corrupt practice are further fostered by several systemic factors intrinsic to the character of the bureaucratic machine. These include lack of transparency, accessibility or

[7] The Fifth Pay Commission's recommendation have made the overall remuneration package for a variety of governmental functionaries much more attractive, partly to keep up with stratospheric private sector salaries. However it has also fuelled

accountability, a demotivated and untrained staff, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to public welfare outcomes. Moreover, the degree of discretion available to public servants is large; rules and procedures are complex and mystified, poorly defined, poorly disseminated and ever-changing; and accountability is low. Most government offices typically present a picture of a client public bewildered and harassed by opaque rules and procedures and inordinate delays, vulnerable to exploitation by employees and touts.

Though the state has spread its tentacles to virtually aspects of the day-to-day life of the citizen, development and welfare programmes are seen are largesse to be distributed for a price.[8] Critical rights to land, shelter or natural resources are affirmed only when they are recorded by the state. Burgeoning litigation in courts is often greased by speed money, and law enforcement agencies are known to indulge in extortion from the poor.

These problems are further aggravated by the absence of effective professional and social sanctions in the civil services: while systemic rewards are not linked to integrity (sadly often the reverse), and the probabilities of detection and punishment remain extremely low. Though, as we shall see, there exist powerful laws in the statutes to control corruption - in practice detection is extremely weak, and even the few cases of malfeasance that are detected are often soft-pedalled, and toothless departmental proceedings are resorted to instead of deterrent criminal action. Investigation of corruption cases is typically shoddy and lackadaisical in comparison to other offences; often the investigating officer does not understand the details and nuances of the internal workings of the specific department, and valuable evidence is overlooked.

Though the aggressively honest public servant does not usually suffer in the long-run even today, there are often severe setbacks in the short-run that frighten all but the most stout-hearted.[9] At the same time, the corrupt are perceived to enjoy not only a good life but also the symbols of professional success, such as powerful postings and stable tenures, with very little likelihood of being brought to book. Scholar-administrator N.C. Saxena describes corruption today as an activity of low risk and high return. This permissive environment is gravely aggravated by the tendency among most officers, noted earlier, of wantonly ignoring corruption in their offices, to escape the consequences of aggressive honesty.

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concern about the budgetary burden, particularly with strident calls from other groups, such as university teachers, for matching increases in their remuneration. See for example, Naik (1999).

[8] Haragopal (1994) argues that in the Indian Context, the bureaucracy has emerged as a ruling rather than a serving class and the administrative culture combines a contempt for its poorer subjects with a hostility to welfare, development and change (1994: 314).

[9] Abraham (1990) documents the case of an Indian Administrative Service (IAS) officer Arun Bhatia who has had to face the wrath of the bureaucratic establishment for his campaign against corruption. The problems faced by those attempting to fight the system can be judged from the fact that Bhatia was in the news again recently, at the very end of the decade, during a posting in Pune - where a transfer resulting from his challenge to the land mafia was vigorously contested by the local citizenry.

Control of corruption

In this section, we shall first examine and then attempt to refute arguments against aggressive policing of corruption, and go on to look at internal systemic modes of control of corruption by public authorities. In other words, we will examine whether it is desirable and feasible, and if so, to what extent, for public authorities to combat corruption within public offices by methods such as policing and internal administrative reforms, which do not directly involve civil society.

In the literature, as well as in public life, one may encounter arguments that bribes are in effect incentive payments for low-paid officials, and that they provide avenues to escape the burden of unrealistic government regulations, taxes, and laws.[10] In this view, a frontal fight against corruption would result in a collapse of the system, because sullen subordinates would refuse to work in an environment that is efficiently policed against corruption. According to the logic of this line of argument, an active struggle against corruption would in fact be against public welfare because the benefits that clients are receiving even from a functioning corrupt system would be extinguished if the incentive of corruption is lost.

There are many weaknesses to this strain of reasoning. It presumes, first, that the public receives substantial benefits even from a corrupt public office. It has been pointed out that corruption leads to serious misallocation of resources away from areas of greatest need and thus social productivity. It also imposes high transaction costs on the client public, thereby, in fact shutting out even the target groups, leading to inefficiency in public expenditure.

A second assumption is that most government employees are motivated primarily by the wish to extort bribes from the client public. However, the experience of those officials like this writer who have attempted to fight corruption frontally, by a variety of measures described below, has been entirely to the contrary. If strict and fair action against corruption is accompanied by motivation of staff, recognition of good work and responsiveness to genuine grievances, employee motivation is found not to decline but in fact greatly blossom among the large majority of the staff. Human nature is not by and large irredeemable. Fighting corruption does not result in the collapse of the system, as is alleged by advocates of a passive policy towards corruption, but instead leads to it becoming much more humanised.

Other fatalists also point out that most anti-corruption campaigns end in failure. It often the experience that even criminal cases against corruption (leave alone civil proceedings), ultimately fail, either in the course of investigation or in the courts. Of the tiny proportion of cases actually brought to book, an even more microscopic fraction culminates in punishment. An officer of integrity and courage, who confronts corruption at great personal cost, is likely to despair when the corrupt in most cases thus walk away scot-free. Yet it is important to recognise that even failed efforts at controlling corruption are not futile, because they show that the situation is not hopeless, counter cynicism, and

[10] Khan (1996) in fact presents stylised economic models of this type.

act as a brake against completely unbridled corruption. Above all, the cumulative effect of such isolated examples is to break public passivity over time - and as we shall see, real solutions lie in the end in organised public action.

There are those who argue that the best solution is not policing but pay reforms to raise salaries, thereby reducing the marginal benefits of bribery. The government may be well advised not so much to raise salaries as to ensure fulfilment of at least middle-class aspirations of civil servants, for housing, transport, telephones and so on, to cushion from temptation at least the less vulnerable among them. However, it has not been demonstrated that higher salaries reliably depress corruption. Highly paid officials are not, as a rule, less corrupt than those paid low salaries.

The reasons for this are not hard to seek - for if we recognise that corruption is related not to one's means but to one's aspirations, there is no guarantee that increased means would necessarily be accompanied by frozen aspirations. The reverse may well be true, because although a civil servant even today can take satisfaction by comparing his or her lot with the large mass of those below, human nature is much more likely to continue comparisons with the lifestyles of those who would always be better off than them in any circumstances. Also, in many developing countries, already as much as 70 per cent or more of gross state revenues are being spent on salaries. It would be unconscionable, and politically costly, to raise the establishment burden on the state exchequer any further. The only way higher salaries would be feasible would be by downsizing bureaucracy. However, with burgeoning unemployment and slow economic growth, government jobs are often the major avenue of new livelihoods for the educated, and typically there is, therefore, little political will for reducing government employment.

It is also often argued that controlling corruption within public offices however desirable theoretically is virtually impossible to achieve in practice. However, as we shall observe in the remaining part of this section, systemic responses to controlling corruption are feasible, given administrative or political will operating chiefly through the quality of leadership of public authorities, the enforcement of anti-corruption laws, and administrative reforms. We shall consider each of these in turn.

Quality of administrative leadership

The internal control of corruption in any public system is critically dependent of the quality of leadership in public authorities. The first step in controlling corruption among subordinates is a clear will on the part of the supervising officer, and one that is equally clearly communicated i.e. not only a clear statement of intent, but also consistent backing by the actions of the manager.

Subordinates also take lessons from the kind of choice of employees official superiors make for tasks of responsibility. Most frequently, a public manager is forced to choose between corrupt and efficient, or honest and inefficient subordinates. Even for bona fide motives of result achievement, the choice often veers towards the former - but such a choice robs any statement of intention to campaign against corruption on the part of the public manager of any credibility.

What is also of paramount importance is the transparent and unimpeachable personal integrity of the manager. In all government offices, there is little about what transpires there that remains hidden from those working in it. Government officials serving in small towns quickly also learn that almost nothing in their private lives is hidden from inquisitive public scrutiny. Officers who choose to launch on a path of aggressive honesty cannot afford to lapse into even tamer forms of grey area corruption, because the inevitable backlash by vested interests affected by a campaign against corruption would render them entirely vulnerable. It is only an officer perceived be personally incorruptible who can afford to take up cudgels against corruption.

An officer committed to controlling corruption must further be fully accessible to the client public, and take prompt action in the event of any bona fide and reliable complaint. Any compromise on accessibility could breed corruption among those who filter access to the officer, and unwillingness or delay in acting on complaints of corruption would destroy the credibility and the ability of the officer in gathering intelligence about the sources and dynamics of corruption in his or her jurisdiction.

The social and systemic barriers that militate against the fostering of such leadership in public offices have already been elaborated. However, though such qualities of leadership are indispensable in public offices are indispensable for the success of any campaign by public authorities for probity, it is important to recognise that such leadership is also more likely to be fostered in an environment of social mobilisation.

Enforcement of anti-corruption laws

If an officer is to be effective in policing corruption, he or she must take decisive action against the biggest sharks; the most powerful offenders; the persons with the greatest potential to create trouble. Usually the choice is just the reverse - to concentrate if at all on the smallest and weakest offenders. This is likely to have little impact on the overall system even after significant expense of energy. On the other hand, effective and high-profile action against a small number of the biggest offenders, would result in a situation in which the smaller offenders would feel themselves constrained to restrict their corrupt activities.

In practice, the few cases of corruption by public authorities that come to light are generally soft-pedalled with departmental action, treating these as breaches of the conduct rules of public servants rather than as criminal liability. However, there is no dearth of strong legal provisions in India, both under the Indian Penal Code (IPC) and the Prevention of Corruption Act, 1988 (referred to as the PCA).

The IPC makes the following offences by public servants punishable:

i. Public servant taking gratification other than legal remuneration in respect of official act (Section 161 IPC).

ii. Taking gratification by corrupt or illegal means, to influence public servant (Section 162 IPC).

iii. Taking gratification for exercise of personal influence with public servant (Section 163 of IPC).

iv. Abetment of offences by public servant (Section 164 IPC).

v. Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant (Section 165 of IPC).

However, most of these offences are not cognisable in relation to public servants, and the onus of proof is on the prosecution.

The PCA contains many features that strengthen the capacity of the state to prosecute offenders for corruption. These include a wider definition of public servant, provisions to establish special courts, stringent punishment and investigation of offences related to corruption at senior levels. An important provision is the shift of burden of proof to the person accused of holding assets disproportionate to income.

Despite such strong anti-corruption legislation, weak, ambivalent detection, registration, investigation and pursuit in courts leads to very poor actual deterrence[11]. In India, the performance of other watchdog institutions like accountants and the press has been extremely patchy.

There is no doubt that strong anti-corruption laws are critical for the control of corruption. However, in a situation in which corruption is `systemic' and pervasive, where both parties to a bribe benefit, and in which most victims of corruption are politically and economically relatively powerless, it is not surprising that detection and enforcement are so poor.

In the end, political will can be generated only by the organisation of public opinion of the victims of corruption as a political pressure group for the enforcement of anti-corruption laws. We will return to this in the second part of our paper.

Administrative reforms

There are a large number of administrative reforms that can reduce corruption. Reforms that reduce delay, that demystify rules and procedures and promote transparency are of utmost importance. The head of the office may accomplish these in a variety of ways. She or he may identify major arenas of client interface in the office, and prepare pamphlets to be distributed free of charge and notice boards to be placed in conspicuous places, which list with clarity in local language, all relevant rules and procedures. This could include information regarding to whom one should apply, in what format or application form, rules regarding eligibility, a check-list of documents required, the time limit for application and the authority to be contacted in the event of grievance. Such information should also be actively disseminated through the local press, especially in publications with large rural circulation, in literacy and post-literacy classes, and through camps to both educate rural youth on such

information and to motivate them to disseminate it in their villages. All relevant information regarding decisions involving the discretion of officials at all levels must be readily available to ordinary citizens, public representatives, NGOs and the press. The officer can also exercise control, through tours, inspections, and setting and reviewing targets in areas vulnerable to speed money corruption.

Reforms are also required to reduce the stranglehold of the state exercises over every aspect of citizen life. Decontrol of mindless regulations would also reduce corruption. While organised industry works today in a regime of dismantled control, little of this liberalisation has filtered down to the small producer in the unorganised sector, who continues to confront the old licence-permit *raj*, and its festering corruption. Again, in an agriculturally prosperous state like Haryana, there is no use for a regulatory food supply machinery, except to spawn corruption (Saxena 1996). Conscious dismanting of controls except where they are genuinely in the public interest, and simplification and transparency where such controls are continued, would be a strong systemic prophylaxis. This should not be regarded as a justification for the retreat of the state. There are many regulations that are vital for equity and public welfare, but these regulations must be enforced with far greater transparency. The sustainable management of natural resources must no longer be the monopoly of the state, and control by community institutions like the *gram sabha* must be established. Development and welfare programmes must not be designed as discretionary largesse to passive populations. Again, their planning and implementation must involve people centrally.

In summary, control of corruption is possible by stricter enforcement of anti-corruption laws, but this requires public vigilance and pressure. In the long run, the answer lies in consciously dismantling areas of state control on citizen lives, drastically reducing discretion, forcing transparency in rules and procedures, and increasing citizen participation in decision-making.

Impact of corruption on the poor

There has been a recent surge of international concern with the phenomenon of corruption by public authorities. This new international concern for good governance in countries of the South may be understood at least in part in the context of globalisation, and the aspirations of many actors in the global economic arena for greater predictability in returns from their cross-country investments. A substantial body of the literature therefore focuses on the economic costs of corruption. A UNDP Discussion Paper (1997), for instance notes:

> Corrupt businesses are sheltered from competition with legitimate businesses by their illegality. In corrupt systems they also operate without fear of prosecution by paying off the police and politicians or including them directly in their businesses. Illegal businesses are especially vulnerable to extortionary demands. Law enforcement authorities – from the police

[11] Palmier (1985) provides a comprehensive (although dated) description of mechanisms instituted to fight corruption and their effectiveness.

> to prosecutors to judges—can demand payments to overlook criminal law violations or limit penalties.
> [UNDP 1997: 40]

Gray and Kaufmann (CHRI 1998), both economists working for the World Bank, summarise the economic impact of corruption as follows:

- Bribery raises transaction costs and uncertainty in an economy.
- Bribery usually leads to inefficient economic outcomes. It impedes long-term foreign and domestic investment, misallocates talent to rent-seeking activities, and distorts sectoral priorities and technology choices (by, for example, creating incentives to contract for large defense projects rather than rural health clinics specializng in preventive care). It pushes firms underground (outside the formal sector), undercuts the state's ability to raise revenues, and leads to ever-higher tax rates being levied on fewer and fewer taxpayers. This, in turn, reduces the state's ability to provide essential public goods, including the rule of law. A vicious circle of increasing corruption and underground economic activity can result.
- Bribery is unfair. It imposes a regressive tax that falls particularly heavily on trade and service activities undertaken by small enterprises.
- Corruption undermines the state's legitimacy.

Some of these impacts would impinge indirectly on the poor, such as in the misallocation of resources away from the social sectors. However, there are also grave direct impacts on the poor, both from `grand' and `petty' corruption.

The major impact of corruption on the poor is firstly through the likely misdirection of public investment in favour of large centralised and complex projects rather than dispersed, decentralised programmes requiring less state financial resources (to which reference has already been made). However, the reverse may also hold good, if decentralised power structures gain significant political influence, as in India's *panchayat* system. There may be an incentive then for decentralised, dispersed schemes in which vigilance and detection are weak. In both cases, however the basic principle is that decision-making regarding public investment may be directly influenced much less by considerations of public welfare than by opportunities for corruption.

Corruption in fiscal management and collection also militates against the poorest, because they have less power and influence to evade direct or indirect tax burdens. It may be argued that the really poor are not taxpayers, but they disproportionately bear the burden of indirect taxes and of the inflationary impacts of fiscal profligacy. In many ways, the poor actually subsidise the rich.

Further, if goods and services provided by government in the name of development and welfare are, in fact, only available for a price, the distribution of these goods and services would be severely

biased against those without the capacity to pay. In theory these are precisely the people for whose social security these programmes are designed.

There is also irony in the fact that although large industry has been substantially deregulated, small petty producers continue to grapple with mindless controls, very few of which have been dismantled[13]. Deregulation has made almost no impact at the district and village level. One can set up an industry worth billions of rupees in India without any license today, but a farmer in U.P. can neither set up a brick kiln unit, nor a rice shelling plant, nor a cold storage, and not even cut a tree standing on his own private field, without bribing several officials. A simple operation of converting prosipis (a shrub that is plentiful in states like Gujarat), which can give employment to thousands of people requires four different permissions! Thus the process of liberalisation which has removed the shackles on industrial production in urban areas, must be carried forward to the rural areas so as to widen the base of rural entrepreneurship.

According to Orissa's laws, processing of hill brooms can be done only by the leaseholder, TDCC (Tribal Development Cooperative) and its traders. Tribals can collect hill brooms, but cannot bind these into a broom, or store and sell the collected item in the open market. Thus the poor are prevented both from engaging in value addition through processing and storage, and the right to get the best price for their produce. Similar restrictions exist in several states governments.

The Government of Orissa has decided to assign bamboo forests to the paper industry, after appointing them as contractors and sub-agents of the OFDC (The Orissa Forest Development Corporation). Despite the New Forest Policy (1988) prescription that the needs of the forest dwellers will be the first charge on the forest produce, the poor in Orissa have to meet their demand for bamboo by stealing, while the industry gets subsidised bamboo and has the first charge. Similar anti-poor measures are being introduced in Madhya Pradesh now. A large number of families have the expertise and skills for processing bamboo and making hats, baskets, etc., but they are prevented from getting the full price for their labour, because stocking bamboo and selling bamboo products requires permission from the Forest Department. Freeing the artisans from such constraints can itself lead to a widening of the base of entrepreneurial activities in the village.

A study of two thousand flayers in four districts of Central U.P. shows that the flayers have almost no legal control over their own produce i.e. the hides they flay from the naturally fallen animals. The Zilla Parishads exercise control over the produce by awarding contracts, either to individuals or to cooperatives for collection and storage of hides. The contract provides monopoly control over the hides retrieved in the areas and hence on the flayer. Thus the flayer is forced to work at meagre wages for the contractor who reaps the profits. These small producers are subject to the tyranny of the corrupt petty officials for their day-to-day survival.

[13] Much of the following discussion is based on N. C. Saxena (1996). The interested reader is referred to this monograph for further examples.

The same unrealistic legal and policy structure militates against much of the informal sector in towns and cities. In most parts of India, there are almost no legal means for someone who is very poor to secure legal access to land for shelter or livelihood. Survival and work are therefore forced into the outer fringes of illegality, which renders the urban poor constantly vulnerable to extortion by various arms of the regulatory administration.

There is no doubt that corruption, which represents serious distortion of state mechanisms for ensuring equity, development justice and order, disproportionately burdens the poor. The poor, even without corruption, are greatly disadvantaged in any interface with the state, in the ways outlined above, because of their economic, social and political powerlessness. However, this disadvantage is greatly compounded when state institutions are corroded by corruption.

PART II

Right to Information and People's Power to Control Corruption

In the first part of this paper, we surveyed the phenomenon of corruption by public authorities in India, examined its major causes, and also noted the disproportionate burden of corrupt governance borne by the poor. We have identified some avenues for internal systemic reform, but have observed that even these measures, such as the enforcement of stronger anti-corruption laws and pro-people administrative reforms, require the breaking of citizen passivity and fatalism, and the exercise of more effective people's pressure for probity, responsiveness and accountability in governance.

In this part of the paper, we will argue that the most powerful instrument for sustainably combating corruption by public authorities is the people's right to information, because it directly empowers ordinary citizens to combat state corruption. We will describe in some detail the most important grassroots struggle for the right to information, which has succeeded in linking the country-wide movement country to the struggles for survival and justice of the poorest. We then delineate the constitutional history of the right, and attempts made through the courts to breach the culture of secrecy of the executive, and initiatives from persons within the government. We end by describing efforts at the national level to legislate this right.

Importance of right to information to combat corruption

In the space of less than a decade, the burgeoning movement for the right to information in India has sought to significantly expand democratic space, and empower the ordinary citizen to exercise far greater control over the corrupt and arbitrary exercise of state power. This movement is based on the premise that information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and *proactive* dissemination of this relevant information among the public is potentially a very strong safeguard against corruption. Ultimately the most effective check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability.

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

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

There are numerous ways in which government information is at least in theory already accessible to members of the public. The parliamentary system promotes the transfer of information from government to parliament and the legislatures, and from these to the people. Members of the public can seek information from their elected members. Annual reporting requirements, committee reports, publication of information and administrative law requirements increase the flow of information from government to the citizen. Recent technological advances such as the internet have the potential to reduce further the existing gap between those who control information i.e., the government and those who may wish to avail of it.

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

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

The cumulative impact of the availability of such information to the citizen, on control of corruption and the arbitrary exercise of power, would be momentous. Those advocating legislation to guarantee

the right to information envisage not only the availability of such information on demand from public authorities, but also compulsary disclosure and dissemination of some categories of information by public authorities even without public demand for such information. This responsibility for the suo moto release of certain categories of information is critical for enforcing transparency and enabling citizens to counter corruption that they experience in their daily lives. These categories, based on the draft legislation prepared by the National Campaign for the People's Right to Information (1999), are given in the annexure.

Right to information: The grassroots struggle in Rajasthan

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of the most disadvantaged of rural people. The reason for this special character is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor. This struggle in the northern desert state of Rajasthan was led by the Mazdoor Kisan Shakti Sangathan (MKSS), as part of a people's movement for justice in wages, livelihoods and land. In this section, we will recount in some detail the story of the MKSS, because it would enable a deeper understanding of why the movement for the people's right to information in India has developed as part of a larger movement for people's empowerment and justice.

It was in the summer of 1987 that the three founding activists of MKSS chose a humble hut in a small and impoverished Rajasthani village Devdungri as their base to share the life and struggles of the rural poor. The oldest member of the group was Aruna Roy, who had resigned from the elite Indian Administrative Service (IAS) over a decade earlier. She had worked in a pioneer developmental NGO, the Social Work and Research Centre, Tilonia, and had gained important grassroots experience and contact with ordinary rural people - but now sought work that went beyond the delivery of services to greater empowerment of the poor. She was accompanied by Shankar Singh, a resident of a village not far from Devdungri, whose talent was in rural communication with a rare sense of humour and irony. He drifted through seventeen jobs — working mostly with his hands or his wits in a range of small factories and establishments — before he reached Tilonia, to help establish its rural communication unit. With him was his wife Anshi and three small children. The third activist of the group was Nikhil Dey, a young man who abandoned his studies in the USA in search for meaningful rural social activism.

Together they had come to the village Devdungri, with only a general idea of the goal of their work, to build an organisation for the rural poor. They were much clearer about what they did not want to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs; they would not set up the usual delivery systems of services; they would accept not more than minimum wages for unskilled labour, and this too they would derive

mainly from small research projects and assistance from friends; they would not accept international or government funding for their work; and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

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

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

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

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

As with most great ideas, the concept and methodology of public hearings or *jan sunwais* fashioned by the MKSS is disarmingly simple. For years, indeed centuries, the people have been, in their daily lives, habitual victims of an unremitting tradition of acts of corruption by state authorities — graft, extortion, nepotism, arbitrariness, to name only a few — but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous individuals — political leaders, officials, social activists — have attempted to fight this scourge and bring relief to the people. But in most of such efforts, the role of the people who are victims of such corruption has mostly been

passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event, and either died down as suddenly, or were sustained through critically dependence on a charismatic leadership. Consequently the results of such campaigns against corruption have been temporary and unsustainable.

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

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

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

It is interesting and educative to see how officials and public representatives at various levels of the hierarchy have reacted to this unprecedented movement for people's empowerment. For a public hearing organised in 1998, for instance, the head of the district administration, known as the Collector, initially acceded to the demands of the MKSS activists, and issued instructions for copies of the muster rolls, bills and vouchers to be given to the activists. The village development officers however refused to comply with the written instructions of the Collector, and went on strike against the Collector's order, insisting that they would submit themselves to an audit only by government, and that they would refuse to share copies of documents with any non-officials. The agitation spread to the entire state of Rajasthan.

The village *panchayat* elections were then in progress, and the Collector requested the withholding of the documents until the elections were over so that the village officials' strike did not obstruct the election process. MKSS organised the public hearing in the absence of documents, but were still able

to gather evidence for prima facie cases of corruption in works and delays in payment. These were presented to the Collector, who promised an enquiry.

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

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

Notwithstanding such roadblocks, the enormous significance of this struggle has been its fundamental premise that ordinary people should not be condemned to remain dependent on the chance good fortune of an honest and courageous official, or political or social leader, to release them from the oppressive stranglehold of corruption. The people must be empowered to control and fight corruption directly. For this, they first require a cast-iron right to information. Concretely, this means that the citizen must have the right to obtain documents such as bills, vouchers and muster rolls, connected with expenditures on all local development works.

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

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

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

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

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

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

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

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

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

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

However, no assurance from the government was forthcoming, and therefore after completion of polling on May 2, 1996, the *dharna* in Beawar not only continued but also spread to the state capital of Jaipur. In Jaipur, in an unprecedented gesture, over 70 people's organisations and several respected

citizens came forward to extend support to the MKSS demand. The mainstream press was also openly sympathetic.

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

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

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

At the end of 52 days of the *dharna*, the Deputy Chief Minister made the astonishing announcement that the state government had already notified the right to receive photocopies of documents related to *panchayat* six months earlier. Why an order, ironically related to transparency, had been kept a secret, even during the 52-day *dharna*, remained a mystery. Nevertheless, the order of the state government was welcomed as a major milestone, because for the first time, it recognised the legal entitlement of ordinary citizens to obtain copies of government held documents.

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

The MKSS responded to such problems by complaints to authorities, from local levels to the state government, highlighting the illegal withholding of information in the press, and organising and mobilising people to mount peaceful democratic agitational pressure on the authorities. To take a case study, the *sarpanch* or elected head of the village *panchayat* of Harmara refused to give copies of muster rolls, bills and vouchers for works conducted in his *panchayat*. MKSS workers made repeated visits to the *sarpanch*, and kept a meticulous record of the number of times they unsuccessfully contacted the *sarpanch* for these documents. At the time of writing, 65 such visits and appeals to the *sarpanch* had been made, but with very limited success. After a while, the *sarpanch* and *panchayat* secretary stopped visiting the *panchayat* office altogether. The MKSS workers then visited his home,

but were manhandled and pushed out. The *sarpanch* followed this up by registering a false complaint with the police against the MKSS workers, who responded with their own police complaint. The Rajasthan State Campaign Committee on Right to Information held a *dharna*, in collaboration with the state People's Union for Civil Liberties, but the *sarpanch* remained recalcitrant. Eventually, MKSS gave notice for a *dharna* at the sub-divisional headquarters of Kishengarh, with backing from the National Campaign for Right to Information. The *sarpanch* finally responded with documents for only 3 works out of the 20 sought, and these were also incomplete and unreliable with extensive over-writing. The Block Office gave copies of muster rolls for 13 works the night before the *dharna*, but no bills and vouchers. The Collector ordered a special audit and seizure of the documents, but this was also not implemented.

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

Attempts to breach the Official Secrets Act[14]

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

The Official Secrets Act is a replica of the erstwhile British Official Secrets Act and deals with espionage on the one hand, but has the damaging 'catch all' Section 5 which makes it an offence to part with any information received in the course of official duty, to non-officials.[15]

Objections to this provision have been raised ever since 1948, when the Press Laws Enquiry Committee said that 'the application of the Act must be confined, as the recent Geneva Conference on Freedom of Information has recommended, only to matters which must remain secret in the interests of national security'. This was sound advice which went unheeded, and many seminars, academic debates and political promises later (election manifestoes of almost all major political parties have, at least in the last decade been promising transparency and administrative reform)[16] the position has not changed much.

In fact, the Act has been used time and again to suit the purposes of the government. Two infamous cases come to mind in the present context. One was the imposition of the Official Secrets Act being used to prohibit entry of journalists into an area where massive displacement is taking place due to

[14] This sub-section is almost entirely based on the research and writing of Abha Joshi of the Commonwealth Human Rights Foundation of India, New Delhi.

[15] The text of this Act may be found, among other sources, in a 1998 booklet published by the Commonwealth Human Rights Initiative (CHRI), self-explanatorily titled 'Submissions to Legislators on a Right to Information Law'. This booklet is a concise compendium of the legislation, rules and bills proposed regarding information.

construction of a large dam, one of the world's largest dams displacing hundreds of thousands, the Sardar Sarovar Project. A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of survival rights of the marginalised as well as the cost to the environment of such large "developmental projects". Public debate and dissent was sought to be suppressed by the use of this law.

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

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

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

There have been, in the past, several attempts to amend the Official Secrets Act but in the absence of genuine political and administrative will, and popular pressure, all these initiatives have come to nought. For example, in 1977 a Working Group was formed by the Government of India, to look into required amendments to the Official Secrets Act to enable greater dissemination of information to the public. This group recommended that no change was required in the Act as it pertained only to protection of national safety and not to prevention of legitimate release of information to the public. In practice, however, the executive predictably continued to revel in this protective shroud of secrecy using the fig leaf of this Act.

In 1989, yet another Committee was set up, which recommended restriction of the areas where governmental information could be withheld, and opening up of all other spheres of information. No legislation followed these recommendations. In 1991 sections of the press[17] reported the

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[16] CHRI (1998) provides excerpts from the manifestos of various political parties, listing commitments on this front.

[17] The Hindu, 13th December, 1991

recommendations of a task force on the modification of the Official Secrets Act and the enactment of a Freedom of Information Act, but again, no legislative action followed.

The most recent of these exercises has been a Working Group, which submitted its report in 1997.[18] The Working Group made some recommendations for changes in some statutes that protect secrecy such as the Official Secrets Act and also recommended a draft law. The development of public awareness and interest in the issue of right to information is evident from the fact that this report was much more widely discussed by academia and the media than those in the past. However, this did not alter the fact that this report too seems to have gone into cold storage.

The one point which marks all these exercises and which civil society groups need to be strongly aware of, is that these processes contain their own seeds of failure. For instance, in India, none of the above exercises were done openly, rarely were any wide public consultations done on the questions under consideration, and the recommendations were never sufficiently publicised. The 1997 Working Group, for instance, consisted of ten persons, all male, eight of whom were senior bureaucrats from the Central government. This made the group highly urban-centric as well as government-centric. Practically no consultations were undertaken by the group. The group did not think fit to seek recommendations from any other relevant groups - whether it be civil society groups, representatives of the rural poor, the media, bar associations, etc. In contrast, the process of drafting of South Africa's Open Democracy Bill is one that we would all do well to follow. This Bill is being drafted in consultation with various departments, institutions and persons such as Ministries and government departments/offices including the premiers of provinces, the Public Prosecutor, Attorney General, South African Police services, South African Defence forces and the national intelligence agency, the Chief justice and judge President of the Supreme Court, the Open Democracy Advisory Forum.

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

Efforts for a law for the people's right to information

The first major draft legislation on right to information in the country that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. Interestingly, this in turn derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and

[18] This 'Working Group on Right to Information and Promotion of Open and transparent Government' to give it its complete nomenclature, was set up under the auspices of the Ministry of Personnel, Public Grievances and Pensions, Government of India. The resulting Freedom of Information Bill, 1997 is given in CHRI (1998).

lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October, 1995. This is the institute for training all recruits to the elite higher civil services, and it is interesting that serving officials of this institute took the initiative to convene this meeting, which became a kind of a watershed in the national movement for the right to information.

One important feature of the Press Council draft legislation was that it affirmed in its preamble the constitutional position on the right to information, as a natural corollary to the fundamental right to free speech and expression under Article 19(1) of the Constitution. It stated that the legislation merely seeks to make explicit provisions for securing to the citizen this right to information. Incidentally, the view that the right to information flows from the fundamental right to freedom of speech and expression has earlier been affirmed in a number of Supreme Court rulings, such as the State of UP vs *Raj* Narain (AIR 1975 SC 865)[19]; Maneka Gandhi vs Union of India (AIR 1978 SC 597); S P Gupta vs Union of India (High Court Judes' transfer case) (AIR 1981 SC 149); and Secretary, Ministry of I and B vs Cricket Association of Bengal and Ors (1995)(2 SCC 161).

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

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

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

[19] In this case, the Supreme Court ruled '… The people of this country have a right to know every public act, everything that is dine in a public way by their public functionaries.… The right to know which is derived from the concept of freedom of

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

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

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

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

However, with the demise in quick succession of two left-leaning United Front governments, this draft also went into cold storage. The right-wing BJP led alliance also promised a legislation for right to information in its national agenda, but there has been little open debate about the contents of the proposed legislation. The new elected government in Rajasthan in 1999 has also declared that it was committed to the passage of a powerful bill for the right to information. It invited the MKSS and the National Campaign for People's Right to Information (NCPRI) to prepare a draft act. The NCPRI and MKSS prepared an initial draft, and then held extensive consultations with citizens groups and concerned individuals at each of the Divisional Headquarters of the State. The final draft submitted by the NCPRI to the state government, which represents the current thinking of the NCPRI regarding an ideal draft legislation, is given in the annexure. At the time of writing, the draft was under the active consideration of the state government.[20]

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speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussions on public security'(CHRI 1998).

[20] In May, 2000,the Rajasthan Legislative assembly passed a Right to Information Bill, containing as many as 10 categories of restrictions on information despite incorporation of NCPRI's feedback (Down to Earth, 2000). However, despite the absence of vigorous movements for right to information, Goa, Tamil Nadu and Madhya Pradesh stole a march over Rajasthan with respect of passage of Right to Information Acts.

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

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

ANNEXURE

DRAFT BILL FOR RIGHT TO INFORMATION, 1999

A Bill to make provision for securing the enforceable right to information, which is a fundamental right being part of Article 19(i)(a) of the Consultation. It seeks to promote good governance, openness, transparency and accountability, by making both government and the private sector open to public security.

Be it enacted by the Parliament as follows:

1. The Act may be called the Right to Information Act, 1999. It extends to the whole of the India. It shall come into force on such date as State Government may, by notification is the Official Gazette, appoint, which shall not be later than 6 months from the date of the passing of the Act.

2. Definition

In this Act, unless the context otherwise requires:

a. Prescribed means prescribed by rules under the Act;

b. Public authority includes:

i. the Government and Parliament of the India, local or other authorities within the territory of or under the control of the Government of India; and

ii. the administrative offices of the Courts of India.

iii. any company, corporation, trust, firm, society, cooperative society, educational institution or association whether owned or controlled by the Government of India or by private individuals or institutions located within the territory of India.

The expressions company, corporation, trust, firm, society, a cooperative society, or associations shall have the same meaning as assigned to them in the respective Acts under which they are registered.

c. `Information' means any material relating to the affairs, administration or decisions of a public authority and includes any document or record relating to the affairs of the public authority, or to the conduct of any public servant.

d. 'Right of information' means the right to seek information and includes inspection, taking notes and extracts and obtaining certified copies of documents or records from any public authority, and where the information is stored in audio and video cassettes, computers or any other electromagnetic device, the facility of access to it through terminals or supply of printouts.

e. The expression `public servant' shall have the same meaning as under the Prevention of Corruption Act.

3. Right to Information

Every citizen of India would enjoy the right to information with regard to all public authorities, by mechanisms and subject to restrictions as indicated in these executive instructions with regard to every public authority of India.

Provided that this right would extend even to persons or groups of persons who are not citizens of India for issues of life and liberty.

Provided further that this right can be exercised by any citizen, or any formal or informal group of citizens, with regard to any matter, regardless of whether they are directly concerned with such matter. Only in matters of life and liberty, this right can be exercised only by those non-citizens or groups of non-citizens who are directly affected by the matter.

Provided further still that this right can be exercised for the entire life of the record in question, as prescribed in the standing instructions of the department at the time of application, and that no record can be destroyed during the pendency of any application for its inspection for copy.

4. Obligations of Public Authorities

i. For every public authority, the head of an office (which would also include the chief executive officer of a unit), shall be responsible for preparation, maintenance, management, updating and preservation of all records as are necessary to document adequately policies, functions, decisions, the procedures and transactions of such authority.

ii. Such head of office shall also be responsible to ensure that:

a. Records are indexed and cross-referenced in a manner that facilitates ready identification and promotes easy accessibility.

b. Records are stored in a scientific and systematic manner which contributes to their permanent preservation or preservation for the prescribed period, as the case may be
c. The prescribed procedures for good record keeping in public departments is scrupulously observed.
d. A list of documents and records required to be collected, prepared and stored in any office, and the procedure for inspection and obtaining certified copies are prominently displayed in a notice board, and copies available on demand.

5. Delegation of Powers to Other Officials

i) The head of office would be also personally responsible to establish within an office such procedures and to authorise such persons as may be regarded necessary, to make available to any person requesting information from it, the information sought for, subject to the exceptions provided for in this order itself.

ii) The head of office may delegate some or all of her or his functions and powers under these rules to any official designated from the office. What powers have been delegated to whom must be clearly stated in the notice board of the office.

iii) Such delegation shall not be construed as relieving the head of office of her or his statutory duties and responsibilities under these instructions and it shall be obligatory on the part of the head of office to monitor the functioning of designated officers in carrying out their duties.

6. Exemptions from Disclosure

Disclosure of information by public authorities on demand by the citizen, in accordance with the procedures and subject to the exceptions laid down in this Act, is the rule, and denial of information by public authorities the exception. However, the authority for reason be recorded in writing may withhold the following categories of information:

i. information, the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States, public order, investigation of an offence or which leads to incitement to an offence;

ii. information relating to personal or other information, the disclosure of which has no relationship to any public activity or in which the public has to interest and would constitute a clear and unwarranted invasion of personal privacy.

iii. trade and commercial secrets protected by law.

iv. Premature disclosure of information proposals relating to taxes, duties, surcharge and interest-rates, the premature disclosure of which would prejudicially affect the State Government's ability to manage the economy.

Provided that documents which cannot be denied to a member of Parliament shall not be denied to any citizen.

7. Grounds for Refusal of Access in Certain Cases

Without prejudice to the provisions of section 6, the head of office may refuse access to information where the request applies to information that is not required to be collected or recorded by the public authority. The right to information guaranteed by these instructions applies only to such collected or recorded information. It would not be reasonable to expect agencies to collect information that is not recorded, only to satisfy a right to information request.

Provided that in the event of any refusal by a public authority to provide information under this provision, the citizen would be authorised to resort to the same appeal mechanisms that are provided for in these instructions for other refusals. Such an appeal would indicate the grounds for the need to create fresh documents to protect the rights of citizens and to render government functioning more transparent. The decision of the appellate authority on the creation of new documents would be binding on the public authority.

8. Requests for Access to Information

i. A request under these orders shall be made to the head of office or such official who is authorised by the head of office in writing, and shall specify, as clearly as possible, the particulars of the information, and documents or records to which access is being sought.

Provided that where the person making the request cannot, for valid reasons, make a request in writing, the head of office, or such official who is authorised by the head of office, may either accept an oral request, or would be under the obligation to render reasonable assistance to the person making a request in written. Reasonable assistance

would include in situations where the persons making a request does not know the details of documents in which the desired information is contained, the obligation for the head of office or authorised person to assist the person making a request to identify the document.

ii. For the purpose of receiving applications, the head of office will notify the persons by designation, who shall be competent to receive applications and to deal with them in accordance with the procedure established by these instructions.

iii. All applications for inspection and copies of documents shall be made at the place or places where these documents are ordinarily stored.

iv. Immediately on receipt of any application for inspection or copies, the head of office or authorised person would give, or cause to be given, an acknowledgement in writing to the person making a request, stating also the date on which the copy would be available. A register will also be maintained in every office in which every such application is registered immediately on receipt. The format of both the receipt and application register would be prescribed by rules under this Act.

9. Disposal of Requests

i. Upon a request being made to her or him, the head of office or such official who is authorised by the head of office, shall provide access to the information, where it is decided not to refuse such access, as expeditiously as possible and in any case within 15 working days of the receipt of the request.

ii. Where the head of office or such official who is authorised by the head of office, decides to refuse access, such decision shall also be taken within 15 days of the receipt of the request, and it shall be communicated to the person making a request in writing, setting out the precise grounds and the relevant provisions of this order on which such refusal is based, and mentioning the remedy open to the person making a request.

Provided that every order of refusal by any head of office must have the prior written approval of the public authority directly superior to such head of office, and such approval must be secured within the same period of 15 days.

10. Deemed Refusal of Request

Where the decision on a request for access to information is not communicated to the person making a request within prescribed time limit, the request shall be deemed to have been refused. The person making the request shall have the right to make a review application to the next superior officer to the head of office to whom the original application is made. The review authority is obliged to call for the said records and make the copies available to the person making the request within the prescribed time period if it is in accordance with the provisions of this order. The review authority would also be obliged in all instances of such deemed refusal to show-cause the subordinate officer regarding reasons for failure to supply information on time. If the review officer is not satisfied that the reasons are reasonable and sufficient, the review officer will institute departmental proceedings against the said officer.

Provided that these proceedings do not preclude the person making the request from the remedy of appeal provided in these orders.

11. Procedure for Inspection of records

i. All inspections shall be held in the presence of an official to be nominated for this purpose by the head of office by a general or special order.

ii. The person allowed to inspect shall not carry or have in her or his possession any sharp object such as knife, scissors or pen or any other substance including the chemical which can make permanent indelible marks on a document or may destroy or damage a document during the course of inspection, with or without taking of notes/extracts.

12. Provision of Copies

i. The head of office shall make arrangements in each office where records are available for preparation of copies by copyists or scribes, either by manual means or through typing or photocopying. It is not necessary that these scribes or copyists should be government employees and in the event of their not being government servants, arrangements should be made for their remuneration on folio basis.

ii. For the purpose of providing certified copies, the head of office shall appoint an official in each office as a Certifying Officer who shall be responsible for ensuring that the

copy supplied is a faithful reproduction of the original. Once such a certificate is appended, the copy bearing such endorsement shall be deemed to be a copy of the original.

13. Fee

The State Government may prescribe the fees to be charged for access to information, which may include an application fee and such additional fees, subject to the condition that such fees shall not exceed the cost of duplication and supplying the document.

Provided that the fees may be waived by the head of office, where the applicant is found to be of indigent means.

14. Severability

If a request for access to information is refused on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding any thing contained in this order, access may be given to that part of the document which does not contain any information that is exempted from disclosure under this order, which can reasonably be severed from any part that contains exempted information.

Provided that the severed copy must be accompanied by a note indicating that this is a severed copy, and the reasons for withholding the rest of the document, and the portions that are withheld must be blacked out from the copy to enable the applicant to appreciate the context and quantity of what is withheld.

15. Appeals

i. The first appeal against the order of the head of office of any public authority to refuse, or to fail to provide information within 15 days, would be to the District Council for Right to Information, referred to in section 21 of this Act, in whose jurisdiction the head of office of the public authority is located. The first appeal must be disposed of within 30 days.

ii. Provided that even before the disposal of the appeal, the secretary of the appellate authority is required to call for the disputed records, and to expeditiously make available information applied for and eligible under these instructions, to the person making the request.

iii. The second appeal would be to State Council for Right to Information, referred to in section 22 of this Act. The second appeal must be disposed of within 30 days, and its decision would be final.

16. Release of information on demand

The right to information that is guaranteed by this Act would apply to all documents of all public authorities, except those that are specifically exempted from disclosure under provisions contained in section 6 of this Act. Without compromise of the generality of the right of citizens for the release of information by public authorities on demand, as provided for in this Act, some of the major types documents that would now be accessible to citizens are listed in Schedule 1 appended to this Act, by way of illustration

17. Suo moto release of information and measures for transparency

i. Notwithstanding anything contained in these instructions or in any other law for the time-being in force, the heads of all public bodies will be required mandatorily to suo-moto make public certain categories of information, even if they have not been asked for and/or are unaware or the need of for it, of the following categories:

a. Information required to enable persons to monitor public expenditure and collection of public revenues. This would include:

- Estimates, muster rolls, bills and vouchers etc. relating to all public works and activities.
- Establishment expenditure as a percentage of total expenditure, with disaggregated figures for entertainment and furnishings.
- For all revenue collection agencies (as appropriate) list and returns of assessees, lists of defaulters and details of prosecutions undertaken by the department, with their outcome.

Provided that the different levels at which such information should be made available are local, sub-district, district and state levels. For expenditure and revenue, disaggregated information at the level made/collected, and one higher level must be made public. Aggregated information shall be made public at all higher levels. Information at district and state levels must also be put on websites.

b. Performance indicators and annual reports of actual performance of all agencies. This would include monthly crime reports with special emphasis on crimes against women and weaker sections, school enrolment and retention and retention figures, etc.

c. Information the awareness of which is essential for the public to verify the probity of public servants, such as:
   - Annual property returns of all public servants, including property abroad.
   - Income and wealth-tax returns of all public servants.
   - Annual reports of detail of registration and conviction of cases regarding corruption and other economic offences.

e. Information necessary for a person to effectively safeguard his/her legitimate interest of property and other economic interests. This would include all property (urban and rural) records.

ii. Notwithstanding anything contained in these instructions or in any other law for the time-being in force, there are certain matters for which the heads of public bodies are not only responsible that they are suo-moto made public, but the heads of these public bodies are vested with the direct responsibility to ensure that they reach in a comprehensible manner to all the concerned individuals, even if they have not asked for it and/or are unaware or the need for it. Such information would be of the following categories:

a. Any information, the awareness of which is essential for an individual to protect his/her life, liberty, health, property and legitimate economic interests and/or the environment, from imminent danger. This information must be publicised as soon as possible and certainly in time to allow the individual to take the preventive action necessary. An illustrative list of such information is:
   - Proposals for projects and activities that would impact upon the

ecology, habitat, health conditions and livelihood of people living in the area; or lead to their forceful displacement.

- Information regarding imminent natural and human made disaster.
- Ambient air and water pollution levels, where these are in violation of prescribed standards, along with pollution emission levels and details of polluting sources, minimum safe levels and possible adverse impacts.
- Annual reports of actual and prescribed forest cover and population of Schedule-1 species, where these are below the prescribed standards/levels.
- Details of dangerous materials stored/used/produced in factories etc. and recommended precautions in the event of leakage, including details of potential and imminent threats; and
- Crime alerts specifying the presence of criminal elements or threats.

b. Any information, the awareness of which is crucial for the protection of life, liberty and human rights of other persons from imminent threat. This would include lists of persons arrested, detained or restrained in custody for any length of time with reasons, relevant legal details and period taken for judicial presentation, if any. Such information must be made as soon as possible and certainly within 24 hours of such arrest/detention/restraint, to members of the affected person's family. In addition, such information must be pasted prominently outside the office in which the person is held in custody and such information must be updated every 24 hours.

c. Criteria and detailed procedures for decisions to be made by public agencies which would result in benefit to some individuals and exclusion of others. This would include selection for government employment, selective benefit under any government schemes for individuals or groups of individuals like recipients of IRDP loans, location of hand pumps etc. award of contract, licences, house allotment, land allotment, quotas etc. In cases where the criteria or procedures are not subject to periodic being taken and with enough time for the public to express its opinions and for such opinions to be duly considered by the public agencies, before the procedures and criteria are used or applied.

d. List of successful applicants/ recipients benefiting from decisions described under

sub-section c) above, with relevant details of the basis for selection/award and based on the criteria and procedures earlier published.

Provided that such decisions of public agencies would not come into effect until they are so published, and due to opportunity given for objections to be made and considered.

e. Information that would assist any visitor to the office of any public authority to conduct her or his objectives from this office. In particular, it should be mandatory for every office to publicise the functions of the office, the duties of each functionary, who to apply to, for what and in which format, the scheme for right to information and grievance redressal in that office, etc.

f. Notwithstanding anything in these instructions or any other law for the time being in force, every person who initiates or sanctions or causes to be sanctioned any project or activity as may be specified by the Government shall notify in such manner as may be prescribed before the commencement of the project or activity, the place nature and object of such project or activity and such other matters affecting the health and safety of the persons of vicinity when the proposed project or activity is commenced.

g. All custodial institutions, including jails, *nari niketan*s and juvenile justice homes, must as a mandatory provision under this Act, appoint visitors' committees comprising respected private citizens, with full access to all spaces and records of the institution, and with quasi judicial authority to enquire into complaints.

18. Private Sector

i. For every company, corporation, trust, firm, society, co-operative society, educational institution and association owned by private individuals and associations, in addition to the right to information available to the citizen in relation to all public authorities, the citizen would also be authorised to seek information from the public authority which is responsible for regulating the said private sector body. In such an event, the same obligations would vest with the regulating public authority to provide information as prescribed in these instructions, as if the information was applied for directly to the public authority.

ii. The regulating public authority would also enforce publication by a private sector body of any suo moto information of the kind listed in section 16 above, necessary for the information and protection of the citizen, e.g., the State Pollution Board must be responsible to ensure publication of air and water emission levels, and safety standards, of all private polluting industries.

19. Publication

Publication under sections 16 and 17 above should be in a form and language that in comprehensible to the local citizens. An illustrative but not exhaustive list of modes for publication is by beat of drums, on notice boards located at sites in the office which are accessible to the public, in public places, in *gram sabha*s, by publication in local newspapers and through computer web-sites, cable television etc.

20. Penalties

i. The failure of a head of office or any official authorised by the head of office to provide information within the time limits prescribed in this Act, or to publish information which is mandatory under Sectors 16 and 17, or to create, maintain, index and preserve records in such a manner as prescribed, or any action to wantonly provide false or incomplete information, would be deemed a personal misconduct of both the head of office and any official authorised by the head of office for this purpose. The person who is proved guilty of such misconduct, and who is responsible for supplying the information shall be punishable with a personal fine equivalent to half a day's salary of the concerned official, for every day of delay after the day by which it is required to be supplied. The fine will be doubled for every subsequent default. If any person responsible for providing any information under this Act, fails to furnish such information or furnishes any information which is false in any material particular and which he or she knows or has reasonable cause to believe to be false or does not believe it to be true, or wanton failures in record creation and record keeping as required under section 4 above, such person shall be liable to pay personally a fine which shall not be less than rupees one thousand. Here again, the fine will be doubled for every subsequent default.

ii. This penalty will be a personal liability on the head of office or designated officer as the

case may be and not a liability on the public authority.

iii. Such action may be initiated suo-moto by a superior officer to the head of office or authorised person who is prima facie guilty of any such misconduct, or by the state government, or on the recommendation of the District or State Councils for Right to Information. Alternatively, a complaint to this effect may be made by the person or group aggrieved to the District Council for Right to Information in the district in which the head of office of the public authority is located. Provided that only in the event of a complaint against the office of the District Collector, the first application would lie not to the District Council but to the office of the Divisional Commissioner. Provided further that in the event of the office having jurisdiction beyond one district, the first application would be to the state government

iv. The appeal must be disposed of within 30 days by a written speaking order.

v. The appeal to this order would be possible to the State Council for Right to Information, whose decision would be final.

21. District Council for Right to Information

i. The State Government will appoint for every district a District Council for Right to Information, comprising seven members of undisputed integrity, of whom at least 3 are women. The members may be drawn from the fields of grassroots social service, civil services, trade unions, law, academics, the press, the professions, retired civil servants and judicial officers. No office-bearer of any registered political party will be eligible to be a member. Each member will be confirmed only if the member agrees to fill a transparency form, indicating the details of the property of the member, in accordance with the rules which would be notified under this Act.

ii. There would be two ex-officio members of the State Council, viz. the District *Panchayat* President and the District Collector, and the latter would be ex-officio Secretary of the District Council for Right to Information. The Collector would not be authorised to delegate this responsibility to any other official.

iii. The selection of the five non-official members, and from among them the Chairperson, would be done by the State Council for Right to Information.

iv. The terms of service of the Chairperson and members would be separately prescribed by the state government, provided that non-official members would not be eligible for any emoluments apart from daily allowance and reimbursement of travel. The length of tenure of each appointment would be years, and no non-official member would be permitted two consecutive terms.

v. The responsibilities of the District Council for Right to Information would be as follows:

a. To audit records and record-keeping practices in the district, and to enforce correctives.
b. Hearing the first appeals against rejection of requests for information, including deemed refusal of requests;
c. Hearing the first appeals for applications for creation of new documents by public authorities;
d. Hearing the first appeals regarding award of penalties against public authorities for wanton breach of responsibilities to provide timely and full information under these instructions.
e. To take all such other steps as it considers necessary to promote the freedom of information within the state.

vi. The Collector would be personally responsible to ensure that the Council meets at least once a month, and that appeals pending before the Council are disposed of within the time limits prescribed under Act. There would be no quorum for the conduct of Council meetings. The Council would be free to define its own procedures, including the establishment of fully empowered sub-committees for its various functions, including the hearing of appeals.

vii. The District Council shall present its report annually to the District *Panchayat* and the State Council for Right to Information.

22. State Council for Right to Information

i. The State Government will appoint a State Council for Right to Information, chaired by a retired judge of the Supreme Court or High Court, and with four members of undisputed integrity, of which at least 2 are women. The members may be drawn from the fields of

social service, trade-unions, law, academics, the press, the professions, retired civil servants and judicial officers. No office-bearer of any registered political party will be eligible to be a member. Each member will be confirmed only the member agrees to fill a transparency form, indicating the details of the property of the member, in accordance with the rules, which would be notified under this Act. The selection of the Chairperson and members would be by a panel comprising the Chief Minister, Leader of the Opposition, Chief Justice of the High Court, Chairperson of the State Human Rights Commission and the Lokayukt.

ii. The terms of service would be separately prescribed by the state government. The length of tenure of each appointment would be two years, and no member would be eligible for two consecutive terms.

iii. The responsibilities of the State Council for Right to Information would be as follows:

a. To issue record-keeping standards, to audit records and record-keeping practices, and to enforce correctives.
b. Hearing the final appeals against refusal,, including deemed refusal of requests.
c. Hearing the final appeals for applications for creation of new documents by public authorities;
d. Hearing the final appeals regarding award of penalties against public authorities for wanton breach of responsibilities to provide timely and full information under these instructions.
e. To take all such other steps as it considers necessary to promote the freedom of information within the state.

iv. The State Council shall be assisted by a small Secretariat, headed by a Commissioner for Right to Information, appointed from among the serving officials of the state government who are in the super-time scale. The Commissioner would be appointed by the State Government for a fixed tenure of 3 years, with the mandatory concurrence of the State Council for Right to Information. The staffing of the Secretariat would be entirely by redeployment of staff, and no new posts would be created for establishment of the Secretariat.

v. The State Council shall present its report annually to the State Legislature.

SCHEDULE - 1

Illustrative list of documents available to citizens from public authorities on demand

1. Criteria and procedures for selection of beneficiaries under any scheme or programme, list of applicants with relevant details about their qualifications and list of selected beneficiaries.

2. Criteria and procedures for selection for employment in any public authority, list of applicants with relevant details about their qualifications and list of selected applicants.

3. Criteria and procedures for award of any contract or licence by any public authority, list of applicants with relevant details about their qualifications and list of selected applicants.

4. Below-poverty line lists for rural and urban areas, along with details of eligibility and procedures for preparation of the list.

5. All executive instructions regarding the right to information, including those issued to operationalise this right by the head of office within every office of every public authority.

6. For all public works copies of all estimates, technical and administrative sanction orders, muster rolls, bills, vouchers, purchase orders, comparative chart of tenders received, stock register, measurement book and contract deed.

7. In all supplementary nutrition programme, hostels, jails and custodial institutions, per head eligibility of food, and all documents related to tender, purchase, stocks, release and quality of food utilised.

8. List of SC, ST, OBC and other students receiving stipends and scholarships for each educational institution and hostel; rules regarding eligibility, application and selection for stipend and scholarship; and copies of the register or bank scroll indicating distribution of stipend and scholarship.

9. Procedures for registration in employment exchange and for forwarding of names to employees for registered vacancies, the registration list with every employment exchange, list of registered vacancies and names actually sent.

10. For all PDS shops, copies of the stock register, distribution register and ration card register.

11. Procedures for grant of permission to survey, and for grant of temporary and permanent lease for all major or minor minerals, list of applicants, and orders for rejection or selection of applicants stating reasons.

12. For all education institutions, list of registered students, and attendance register for students and teachers.

13. For all hospitals and health centres, government-orders regarding procedures for purchase of equipment, medicines and other consumables, and all details regarding allotments both of money and kind, and of purchase, deployment and distribution of consumables and equipment.

14. All land records.

15. For all courts, monthly statement regarding registration and disposal of cases, including a separate statement of cases not disposed of for over six months.

16. For all food adulteration samples, inspection of sample sent for chemical inspection, and copy of chemical analysis report.

17. Weekly air and water emission reports of all private and public polluting industries, together with prescribed safe limits

18. Data, returns and other raw materials on the basis of which consolidated information is collated.

19. Citizens' charters

20. Proceedings of the State and District Councils for Right to Information.

21. The conditionalities of loans taken by the government from foreign lending agencies and of permission to firms with foreign equity to invest in the country.

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