

TRANSPARENCY REVIEW

June 2006

Justice For Whom?

Displacement' is a mild word that officials prefer. It does not convey the horror and hardship suffered by people evicted from ancestral homes, denied their customary occupations, forced to live and labour in unfamiliar surroundings to survive. The compensation they are forced to accept is riddled with corruption and false promises. It does not last long, for they are easy victims of urban salesmen and temptations. They are impoverished while others profit from the projects built on the land seized from them. No attempt is made to give them the share in the returns that would safeguard their future.

Yet some of our judges seem oblivious of the grave social injustice involved in forced displacement from the Narmada and other land-devouring projects. Equally disquieting is the denial of livelihood and shelter in the name of civic improvement, displacing millions. Traditional occupations of farmers, weavers, craftsmen and other rural workers are being disrupted by new economic policies. Some commit suicide; others are forced to crowd into slums to seek their livelihood.

The ban imposed by the Delhi High Court on cycle rickshaws in the historic Chandni

Chowk area is the latest to show little recognition of social reality. Pedaling cycle rickshaws under the summer sun is a cruel way to earn a living, but the increasing number of rickshaws throughout the country is a tragic indication of mounting displacement. The rickshaw drivers deserve our sympathy for not turning to crime. In other countries, non-polluting rickshaws are being encouraged in areas closed to vehicular traffic.

Long-established jhuggi colonies on the banks of the Yamuna are being demolished to prepare for the Commonwealth Games. Crores are to be spent on clearing and constructing a colony for the event. But there is little to compensate those evicted for the livelihood will lose. Beautifying the capital will not camouflage India's low status in human development. The latest indicator is a UNICEF survey that finds that 47 per cent of India's children are undernourished, a distinction it shares with Ethiopia.

In view of the serious implications of a perceived disjunction between the courts and social justice, this issue of Transparency Review focuses on the issue. Supreme Court lawyer Prashant Bhushan leads off with a comprehensive review of its history and consequences.

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RTI Awareness Campaign

A national television channel, newspapers and volunteer workers have agreed to launch a nation-wide campaign from July 1 to guide citizens on how to file applications under the Right to Information Act. The campaign will continue for two weeks. It is being sponsored by the Centre for Media Studies and Parivartan.

The campaign will focus primarily on advising citizens that the Act can help them get legitimate work done in time by government offices without paying the bribes that have become customary. Several cases have occurred already in which merely the filing of applications has led to prompt execution of the required service.

The provisions of the Act make it possible for citizens to examine the files to see why their work has

not been done in time; even to secure specimens of material used for road repairs before their houses. Fear of exposure speeds up work and discourages corruption. Penalties are prescribed if the citizen fails to get a response to his application in 30 days.

Concerned citizens are provided with an instrument to secure the widest range of information under the Act. The list is comprehensive. It includes "the right to inspect works, documents, records; take notes, extracts or certified copies of documents and records; take certified samples of material and obtain information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or any other device." ■

Assault on the Poor

■ Prashant Bhushan

There was a time, not so long ago, when the Supreme Court of India waxed eloquent about the Fundamental right to life and liberty guaranteed by Article 21 of the Constitution to include all that it takes to lead a decent and dignified life. They thus held that the right to life includes the right to food, the right to employment and the right to shelter: in other words, the right to all the basic necessities of life. That was in the roaring 80's when the Court gave a series of path breaking judgements; Olga Tellis (where it held that even pavement dwellers have the right to resettlement and a right of hearing before they are evicted); the Asiad Workers case, where it held that non payment of minimum wages to the workers violated their right to life; the Bandhua Mukti Morcha case, where it was held that workers cannot be kept in bondage because of loans they had taken from their employers; in Vishaka where while giving a liberal interpretation to sexual harassment of women in the workplace, they held that international covenants signed by India can be read into domestic law.

A new tool of Public Interest Litigation was fashioned where anyone could invoke the jurisdiction of the Courts even by writing a post card on behalf of the poor and disadvantaged who were too weak to approach the courts themselves. It seemed that a new era was dawning and that the courts were emerging as a new liberal instrument within the State to provide the poor some respite from the various excesses and assaults of the executive.

Alas, all that seems a distant dream now, given the recent role of the courts in not just failing to protect the rights of the poor that they had themselves declared not long ago, but in fact spearheading the massive assault on the poor, particularly since the era of economic liberaliza-

tion. This is happening in case after case, whether they are of the tribal oustees of the Narmada Dam, or the urban slum dwellers whose homes are being ruthlessly bulldozed without notice and without rehabilitation, on the orders of the court, or the urban hawkers and rickshaw pullers of Delhi and Mumbai who have been ordered to be removed from the streets again on the orders of the court. Public Interest Litigation has been turned on its head. Instead of being used to protect the rights of the poor, it is now being used by commercial interests and the upper middle classes to launch a massive assault in the poor, in the drive to take over urban spaces and even rural land occupied by the poor, for commercial development.

While the lands of the rural poor are being compulsorily taken over for commercial real estate development for the wealthy, the urban poor are being evicted from the public land that they have been occupying for decades for commercial development by big builders, for shopping malls and housing for the rich. Roadside hawkers are being evicted on the orders of the Courts (which will ensure that people will shop only in these shopping malls). All this is being done, not only in violation of the rights of the poor declared by the Courts, but also in violation of the policies for slum dwellers and hawkers which have been formulated by the governments. Sometimes these actions of the Court seem to have the tacit and covert approval of the govern-

ment (and the court is being used to do what a democratically accountable government cannot or dare not do), but occasionally they are against the will of the government. Let us examine a few of these cases.

In the main judgement of the Narmada Bachao Andolan case on the Sardar Sarovar Dam, the majority judges in the Supreme Court ruled in October 2000, that the project need

While the lands of the rural poor are being compulsorily taken over for commercial real estate development for the wealthy, the urban poor are being evicted

not be reviewed, despite Justice Bharucha holding that a cost benefit analysis of the project had never been done, since even the environmental impact studies had not been done. While giving the go ahead for the project, the majority judges justified it by saying that the Narmada Water Disputes tribunal's award had given a very humane and generous land based rehabilitation package for the oustees of the project which must be implemented, and which will ensure that the oustees will be better off after their displacement and rehabilitation. They also ruled that the award which mandated that rehabilitation must precede submergence and displacement must be adhered to at all costs.

NBA Case Dismissed

In 2002 however, the NBA went to court again against the permission to raise the height of the dam to 100 metres, when it was clear from the government's own records and reports that the oustees to be submerged at that level had not been rehabilitated. The court first adjourned the matter because of a difference of opinion between the judges hearing the case, and finally, Justice Kirpal, who had written the majority judgement in 2000, dismissed it by saying that NBA could not approach the court on behalf of the oustees, who had to come on their own and after first ventilating their grievance before the Grievance Redressal Authorities. The whole basis of Public Interest Litigation developed over the last 25 years, which allowed any public spirited person to approach the court on behalf of persons too weak to approach the courts themselves, was casually set at naught for these Narmada oustees. And of course the construction and submergence went on without rehabilitation.

In 2004, when permission was given to construct the Dam to 110 metres, some of the affected oustees from two villages approached the Apex court again after having gone through the motions of having first approached the geriatric and moribund Grievance Redressal Authority

of M.P., who would either keep their grievances pending or dispose them off on the basis of the claims of the authorities, without bothering to get a field verification done. Two of the grievances of these oustees were, that the authorities and the GRA were not offering rehabilitation to the major sons of oustees and to those whose lands and houses would be temporarily submerged during the monsoon. The court finally ruled in 2005 that the temporarily affected oustees as well as the major sons were entitled to rehabilitation. Again however the construction was allowed to go on, resulting in the lands and homes of thousands of families getting submerged without rehabilitation.

In March 2006, the Narmada Control authority gave permission for raising the height of the Dam to 122 metres, which would result in the submergence of another 15 thousand additional families. This, when M.P. had not offered cultivable agricultural land to virtually anyone, and none of their rehabilitation sites were ready with the infrastructure of roads, water supply, electricity, and sanitation. It took more than a month long agitation and an indefinite fast by Medha Patkar for the Prime Minister to send a team of three Ministers to the valley to verify the facts. The team made a hurried visit to 7-8 rehabilitation and submergence sites and gave a scathing report pointing out that virtually none of the oustees had been resettled and none of the rehabilitation sites were even ready to house the oustees. In the Narmada review committee, consisting of the Chief Ministers of the 4 states and Union Ministers of Water resources and environment, there was a split on party lines, with the BJP CMs voting to continue construction and the three UPA members voting to stop it. The matter was referred to the PM who had been design-

ated by the Supreme Court as the final authority in such a situation. Manmohan Singh however preferred to duck his responsibility and passed the buck to the Supreme Court which was due to hear a petition by the affected oustees a few days later.

The Supreme Court, which was

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originally due to hear the matter on April 3, had earlier postponed it to the 17th, citing the non availability of the bench to hear the matter. This, despite being told that the ongoing construction would submerge an additional 150 families by every day of construction. On April 17, the report of the Group of Ministers

which had reported the gross and total failure of rehabilitation, was placed before the Court. The Court again adjourned the case by two weeks, giving the States more time to reply to the applications of the oustees and the report of the Ministers. Meanwhile the construction was allowed to go on, though the court stated that they would be forced to stop the construction if it was found that rehabilitation had not been completed in letter and spirit of the award.

Inadequate Compensation

On May 1, the Court heard detailed arguments after the counter affidavits of the States had been filed. On behalf of the oustees it was pointed out that it was the admitted position that virtually no oustee had been provided land for land. More than 90% of those entitled for land had been given only cash compensation. And more than 90% of these had been so far given only half of their cash entitlement with which they could not even buy half hectare of land despite being entitled to two hectares. The Award mandated that rehabilitation had to be completed a year before submergence. It was also admitted by M.P. in its affidavit that many rehabilitation sites meant for these oustees were incomplete and lacked basic infrastructure. It was also pointed out to the court, that Gujarat's claim that the additional height of the Dam was necessary for providing additional water to the drought prone regions of Gujarat was bogus, since Gujarat was being able to use only 10% of the water already available from the existing height of Sardar Sarovar on account of the hopelessly incomplete canals and water pipelines.

The court first adjourned the case further to May 8, and then observed that since facts were disputed,

In other words, after the Dam was completed and the oustees submerged, the court would decide whether the construction was legal or not!

decide whether the construction of the Dam was legal or not. Meanwhile the construction would continue and be completed by the end of June. In other words, after the Dam was completed and the oustees submerged, the court would decide whether the construction was legal or not! This, after the admission by M.P. that many of their rehabilitation sites were not ready, and after the scathing report of the Group of Ministers.

Bulldozing Jhuggis

Meanwhile, as the Narmada oustees were being submerged without rehabilitation, a massive programme of urban displacement of slum dwellers without rehabilitation was being carried out in Delhi and Bombay, also on the orders of the High Courts. Sometimes on the applications of upper middle class colonies, sometimes on their own, the Courts have been issuing a spate of orders for clearing slums by bulldozing the jhuggis on them, on the ground that they are on public land. Some of this is being done with the tacit approval of the government, such as the slums on the banks of the Yamuna which are being cleared for making way for the constructions for the Commonwealth games. But elsewhere the demolitions are being ordered despite the government saying that the slum dwellers are entitled to rehabilitation on the governments own policy and that right now they do not have the land to rehabilitate them. Instead of stopping the demolitions in such circumstances, the Delhi High Court has ordered the demolitions to continue regardless. And all this, without even issuing notices to the slum dwellers, in violation of the principles of natural justice.

The matter was taken to the Supreme Court, where it was pointed out that the High Court's orders were

they would like to have the report of the 3-member committee, formed by the PM, headed by the former CAG, V.N. Shunglu. This committee is supposed to give a report on the state of resettlement of the oustees to the PM by the end of June. The court therefore adjourned the matter to July 10, after which they would

in violation of at least two rights of the slum dwellers, which had been reiterated by the courts in a series of judgements of the 1980s and 1990s, starting with the pavement dwellers case of Bombay in 1984, where the Apex Court had held that poor persons occupying public pavements had a right to be heard before eviction and if they had been there for a considerable time, they had a right to be given alternative places, prior to their eviction. However, ignoring the jurisprudence developed over two decades by it, the Court dismissed the petitions and orally observed that nobody asked these persons to come to Delhi, if they could not afford housing here, and that they have no right to occupy public land.

This was not all. The Court's relentless assaults on the poor continued with the Supreme Court ordering the eviction of hawkers from the streets of Bombay and Delhi. Again, turning their backs on Constitution bench judgements of the Court that hawkers have a fundamental right to hawk on the streets, which could however be regulated, the Court now observed that streets exist primarily for traffic. They thus ordered the Municipality and the police to remove the "unlicensed hawkers" from the streets of Delhi. All this again without any notice or hearing to the hawkers. This effectively meant that almost all the more than 1.5 lakh hawkers would be placed at the mercy of the authorities, since less than three percent had been given licences.

More recently, the Delhi High Court has ordered the removal of rickshaws from the Chandni Chowk area, ostensibly to pave the way for CNG buses. This order will not only deprive tens of thousands of rickshaw pullers of a harmless and environmentally friendly source of livelihood, it will also cause enormous inconvenience to tens of thousands of commuters who use that mode of transport.

The country today is living through a phase where the country's billionaires are growing as rapidly as

farmers suicides in the countryside; where opulent shopping malls, commercial complexes and futuristic IT cities are coming up on land which the poor are being forced to vacate. Thus the poor are being deprived of the only real resources that they have, land, and are being made homeless and destitute in order to feed the greed of the wealthy. All this is being accomplished with the help of the courts, with the courts often leading the assault. This has bred and is continuing to breed enormous resentment among the poor and the destitute.

Threat of Violence

Feeling helpless and abandoned, nay violated, by every organ of the State, particularly the judiciary, many are committing suicides, but some are taking to violence. That explains the growing cadres of the Maoists who now control many districts and even States like Chhatisgarh. The government and the ruling establishment thinks that they can deal with this menace by strongarm military methods. That explains why the government relies more and more on the advice of former policemen and why there is talk of using the Army and Air Force against the Maoists. Tribals in

Chhattisgarh are being forced to join a mercenary army funded by the State by the name of Salva Judum to fight the Maoists. But all this will breed more Maoists. No insurrection bred out of desperation can be quelled by strongarm tactics. The very tactics breed more misery and desperation and will push more people to the Maoists.

Unless urgent steps are taken to correct the course that the elite establishment of this country is embarked upon, we will soon have an insurgency on our hands which will be impossible to control. Then, when the history of the country's descent towards violence and chaos is written, the judiciary of the country can claim pride of place among those who speeded up this process. ■

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Abandoning the Displaced

■ Ramaswani R. Iyer

Tt seems that the executive and the judiciary subscribe to the proposition that the infliction of injustice and misery on the project-affected people must be accepted as the “cost” of development. The Supreme Court’s Order in the Narmada case on May 8, 2006 is completely unjustified. Let us take note of some indisputable points.

First, the requirement that rehabilitation must precede submergence is beyond question: it follows from the Tribunal’s Award and the Supreme Court’s own earlier orders in this case. The proposition of construction being conditional on rehabilitation was reaffirmed in the judgment of October 2000.

Secondly, there is no doubt whatever that rehabilitation, even with reference to the dam-height already reached, is in fact incomplete and poor. The Report of the Group of three Ministers was a severe indictment of the state of rehabilitation. Even assuming there were some errors in the report that need correction, it is clear that all is not well on the rehabilitation front. The extent of failure might be in dispute - but not the fact of failure.

It follows from those two propositions that work on the dam must be stopped, rehabilitation completed, and then construction resumed. If construction has run ahead of rehabilitation, as is in fact the case, this constitutes an illegality in terms of the Tribunal’s Award and the Supreme Court’s earlier orders and judgments.

The Supreme Court now wants to wait for the Oversight Group’s report, the result of the sample survey, and the study of that material by the Prime Minister. It proposes to hold the next hearing in July 2006. One has no quarrel with any of that. What is not understandable is the court’s disinclination to stop the construction until the next hearing. At one stroke, the court has done something unthinkable: it has de-linked construction from rehabilitation. It has gone

against its own earlier orders and rewritten the “immutable” Award of the Tribunal.

If in July the court finds that there have indeed been failures in rehabilitation and that the continuation of construction was illegal, what will it do? Will it shrug its shoulders and accept the *fait accompli*?

I was about to say the order will be illegal and unjust, but that would be wrong: by definition the Supreme Court cannot do anything illegal or unjust because what it delivers is *ipso facto* justice, and what it lays down is *ipso facto* law.

Let me state my point differently: what was injustice and illegality till the morning of Monday May 8, 2006, ceased to be unjust or illegal by virtue of the Supreme Court’s order.

While the judgment of October 2000 was far from satisfactory, it did seem at least to hold out a tenuous hope of future justice. The present order extinguishes that hope and makes the denial of justice absolute.

The project-affected people (PAP) in the Narmada Valley have been abandoned by the State Governments and also the Central Government.

It now seems that the executive and the judiciary share a particular understanding of “development” and subscribe to the proposition that the infliction of injustice and misery on the PAPs must be accepted as the “cost” of that development. Project-affected people must now reconcile themselves to the fate ordained for them.

The establishment is now in a position to say a word of farewell to those who are being abandoned. Echoing Nehru’s words to Assam in 1962, it can say unctuously, “Our hearts go out to the people of the Narmada Valley.” ■

(Mr Ramaswamy is a former Secretary Union for Water Resources)

Courtesy: The Hindu

Quiet Flows the Narmada

■ B.G. Verghese

Medha Patkar was removed to AIIMS, in New Delhi, under protective medical custody to save her life. She was on the eighth day of a fast unto death to stop the Sardar Sarovar dam being raised from 110.64 m to 121.92 m, even as a ministerial delegation left Delhi for the Narmada valley to make a rapid appraisal of the rehabilitation situation. The ministers had vainly implored Patkar to give up her fast on the assurance that everything possible would be done to ensure that all affected families were properly rehabilitated.

The Narmada Bachao Andolan (NBA) supporters and environmental activists have reacted with sullen rage, even hysteria. Patkar has gone on fast time and time again to get her way. While such self-inflicted suffering arouses concern and sympathy, democratic governments have a wider ineluctable social and political responsibility, and cannot abandon due process in favour of any one set of demands through emotional blackmail. This is not Gandhian. The Mahatma was pitted against constitutionally irresponsible and unrepresentative alien rule. The situation today is very different. The water resources minister has promised a review of the Narmada Control Authority's (NCA's) decision to permit further raising of the dam. Moreover, an NBA petition on this very issue before the Supreme Court will be heard on April 17.

Patkar's insistence on immediate stoppage of work on the dam is perverse. Work on the SSP dam has been suspended off and on for approximately six or more years at the instance of the NBA. This itself has complicated issues by weakening the oustee's resolve to move, swelling numbers and preventing rehabilitation, which entails steady emotional adjustment to the new dispensation after the initial phases of relocation and resettlement. In the confused parlance of R&R debate, the last phase is treated as coterminous with the first two. Ask even a sophisticated family how long it takes to settle down when it moves house, to say

nothing of moving station. It is fallacious to imagine that R&R in the case of many tens of thousands of villagers, spread over three states will be instantly accomplished without a glitch.

The broad facts are that the NCA, chaired by the union water resources secretary, cleared the enhanced height of 121.92 m on March 8. This was done after action taken reports on R&R had been vetted by the high level Grievance Redressal Authority, set up in Gujarat, Maharashtra and Madhya Pradesh respectively at the instance of the Supreme Court, and thereafter approved by the Narmada R&R and environmental sub-groups of the NCA. This is not to say that physical or perceptual gaps and flaws might not still remain in some minds. But these are all subject to review and correction. Indeed the new Water Resources Minister had himself said that he needed to be fully satisfied and had announced his intention of convening a meeting of the ministerial level Review Committee of the NCA to go over the ground again.

There was accordingly no need for an ultimatum to halt raising the height of the dam immediately. There is a limited working season remaining within which to raise the dam to the newly approved height and take defensive measures for protection of the structure at this level before the July floods. Therefore stoppage of work would be unwarranted and expensive, especially as the dam at 121.92 m will irrigate an additional 3.6 lakh ha, provide drinking water over a longer reach of Narmada canal offtakes, and generate up to 1450 MW of power at the river bed and canal head hydel stations. These are no small gains and will benefit millions, including small and marginal farmers, and trigger further employment and income generation. Special provision can be made, including a compensation package for those - if any - eligible for R&R but inadequately provided for, or not at all, should they suffer submergence.

The NBA asserts that Madhya Pradesh has been forcing cash compensation on oustees in lieu of land-

for-land as stipulated, on the ground that land is not available. When the Narmada Award was made, degraded forest land could be used for R&R. But passage of the Forest Conservation Act in 1985 barred all such diversion. The patent untenability of the land-for-land formula was compounded by the terms offered for eligible “oustees”. This provided, with some variations, for a minimum of two ha for each “oustees”, or as much as the holding lost; two ha for each coparcener, two ha for each major son, two ha for every encroacher and two ha for each landless labourer employed. Where was all this land to come from? In addition, each “oustees” is entitled to a 500 sq m homestead plot and to be settled in clusters.

The persisting promise of land-for-land is misconceived as an absolute right and only credible form of R&R. Distress migration from the Narmada Valley, as elsewhere, on account of lack of development or employment opportunities has led to hundreds of thousands moving from farms or the countryside to non-farm, non-land occupations. Where land is available, let land be given by all means. For the rest, and

for the most part, supervised cash compensation with training and micro credit for asset-creation and self-employment around homestead plots or flatted factories would be a better answer.

As the SSP dam rises, submergence will be partial and seasonal, sometimes only for a few days in a year of high flood. Many millions of farmers all over the country live with such a regime and practice draw down farming or cultivate char lands richly fertilised by receding floods. To treat all of this as total or permanent “submergence” is to misunderstand and exaggerate the problem. Differential compensation is in order here.

Medha Patkar is not specifically opposed to the Narmada dam or any specific aspect or impact. The target varies. She is opposed to all large dams, thermal projects, mines and, indeed, all large projects at all times. For her, small is beautiful; big is bad. Her objection is ideological. Yes, R&R must be humane and just. At the end of the day those displaced must be at least as well or better off than before. Let us all join hands to achieve that objective. ■

Criminalising the Poor

Extract from an interview in The Hindu by Miloon Kothari, Special Rapporteur on Adequate Housing, appointed by the United Nations Commission on Human Rights:

In the last five years of jurisprudence in India, particularly in the Delhi High Court and the Supreme Court, courts have created an artificial and very disturbing conflict between human rights. For example, there are a series of judgments where the right to a safe environment is being seen as more important than the right to housing or livelihood. These judgments are not only placing poor communities in a very difficult position but are going one step further and criminalising the poor. They are actually saying that if you are living in a slum and you don't have security of tenure and you don't have rights, you are illegal — and if you are illegal you don't deserve anything. So you have a judgment like Almitra Patel that actually says that giving civic services and security of tenure to slum dwellers will be like rewarding a pickpocket. To have that kind of hostile language in judgments is completely unacceptable.... ■

Fate of the Jhuggi-dweller

■ Bharat Dogra

Hemvati, a 35 year old woman died from shock. Earlier Surjan had suffered a similar fate. Kamlesh and Sangeeta suffered fractures. Angoori and Bano fell unconscious while braving the scorching hot wind, a fate suffered by perhaps a dozen women.

What links the distress of all these people is that they are all part of a movement of nearly 20,000 people of Govindpuri transit camp to save their homes (and livelihood linked to their homes). This struggle peaked from May 8 - as people launched a peaceful resistance to save their houses from demolition squads, overcoming heavy odds.

These people were settled here after the demolition of several hut colonies in various parts of Delhi during 1984-86. During the last 20 to 22 years gradually they built a new life here. An entire generation has grown which knows no other home. As people got ration and I-cards, the government collected dues and installed meters, various agencies provided water, sewage and other essential facilities, people became increasingly assured of their housing rights. Whatever savings they had were utilised mostly to build a better home or add new storeys to accommodate growing families. As Abdul Hafeez says, "All hopes and aspirations of the people here are built around their homes, particularly as these are also linked closely to their livelihoods."

Most people depend on employment in Okhla Industrial Area, located at a bicycle-distance from this area. Other avenues of employment like hawking

and domestic work are also linked to the existing housing site.

So when people were asked to move away from their two decade old homes in late April and early May, they replied firmly that they will continue to stay here and protect their homes and jobs as well as the education of their children. The mixed Hindu-Muslim population has shown exemplary unity of purpose in quickly building up a peaceful resistance. From May 8 to 12 they successfully protected their homes from demolition squads. On May 12 as the Parliament passed legislation which promised some relief to targets of demolition drives in Delhi, people moved away from roads but continued their sit-in. Three persons Phool Singh,

Manoj Kumar and Khatija Begum also started an indefinite fast.

People here say that they have been asked to move away to make room for a district park, but they say why did the government settle them here and make investments such as water and sewage if it was meant to be a park. They ask why a large number of trees (including valuable neem trees) were axed here if the authorities had real concern for green cover. They insist. that real reason is the

desire to make millions from this South Delhi land whose price has skyrocketed.

"There are many who see profits but not the life and livelihood and shelter of 20,000 people", says Arvind. Several people appeared to be on the verge of breaking down as they related how the slender support system in their life will break down if they are removed from Govindpuri. ■

What links the distress of all these people is that they are all part of a movement of nearly 20,000 people of Govindpuri transit camp to save their homes (and livelihood linked to their homes)

Right to Work

'Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.'

—Article 23 of the Universal Declaration of Human Rights

India is a signatory of this declaration adopted by the United Nations in 1946. Yet, as we have seen, this basic obligation has been neglected even by the courts. This year, however, 60 years later, marks the first major effort, at the national level, to fulfill it. The National Rural Employment Guarantee Act (NREGA) was launched by the Prime Minister in a gram panchayat in Andhra Pradesh in February.

Nevertheless, this effort to provide livelihood to those needing it most is historic, even if limited to rural areas in 200 districts. Implementing an Act that seeks to reach out to villages in remote areas faces obvious problems of delivery and monitoring. It has been criticized as impractical and open to corruption.

We are indebted to Frontline for an article by Sowmya Kerbart Sivakumar on the possibilities and the problems as brought out in a social audit conducted by teams of activists in Dungarpur district in Rajasthan. A commentary by the economist, Jayanti Ghosh, and a detailed ministerial statement on the Act fill out the picture. ■

Employment Audit in Dungarpur

■ Sowmya Kerbart Sivakumar

The National Rural Employment Guarantee Act (NREGA) is barely three months old on the ground. This is precisely why the mass social audit of the Employment Guarantee Scheme (EGS) in Dungarpur district in southern Rajasthan in April held enormous implications for the way this ambitious piece of legislation could take root across the 200 districts in the country where it has been implemented.

When the Rajasthan Employment Guarantee Scheme under the NREGA was launched on February 2 in Karauli, Siroki, Dungarpur, Udaipur, Banswara and Khalawar districts, activist groups and individuals in the State wasted no time in coming together under the banner of the “Rozgar Evum Suchna Ka Adhikar Abhiyan” and taking up one district to develop a model of public monitoring of the EGS.

“Dungarpur was chosen as it falls in the poor tribal belt of southern Rajasthan where heavy labour out-migration occurs every year. It is also a ‘compact’ dis-

trict, manageable for such an initiative. Also, on February 2, we found that the response was good and the district administration was relatively better geared up to implement this scheme,” said Nikhil Dey of the Mazdoor Kisan Shakti Sangathan (MKSS).

Many factors worked to make this mass social audit a reality. Rajasthan, a State that is conditioned to handling drought and relief work and is the birth place of the Right to Information movement, has had activist groups in at least certain pockets keeping a keen vigil over the huge sums of public money spent on drought relief and this has effectively reduced corruption.

Secondly, in Rajasthan, where the demands for minimum wages and the right to work emerged from the grassroots, the NREGA is not just an abstract legal document but the just outcome of a long and relentless struggle that those who took part in it will guard at any cost. Finally, although the EGS and drought relief works share some common objectives, they crucially

differ on many aspects. Significant among them are the provisions on transparency (Section 23) and public monitoring (Section 17) in the NREGA, incorporating for the first time explicitly the process of social audit at every step, from planning to implementation to stock-taking of EGS works (as outlined in Chapter 11 of the NREGA Operational Guidelines).

Men and women, young and old, illiterates and PhDs, labourers and activists, all descended upon this sleepy town, two hours from Udaipur, the headquarters of the neighbouring district, from April 15 onwards. In all, 658 participants from 13 States and 165 organisations joined in the venture, besides 250 from Dungarpur district itself. A group of 10 from Bangladesh and two residents of the United States had traversed a long way to take part in the padayatra.

But as undeniable as their diverse horizons was that one common aim they had all come with - to spread awareness about the EGS in the 237 panchayats of Dungarpur, where 1.5 lakh labourers were employed at 1,700 worksites. They planned to do this by walking across the district and identifying the problems in the implementation of the EGS through a process of social audit involving a verification of the different provisions of the NREGA. For many, this was an opportunity to learn and hopefully replicate its lessons in their own work areas.

After a two-day orientation in communication through folk art, song, dance and puppetry, and a basic training in the process of social audit, the padayatra kicked off to an exuberant start to the symbolic beating of the dol (a large drum). Wearing multi-coloured bandanas, brandishing puppets and banners, and armed with mikes and a bagful of muster rolls and social audit formats, the participants divided into 31 groups of about 20 each. Over the course of a week, they spread out across the five blocks of Dungarpur-Aspur, ichiwada, Dungarpur, Sagwada and Simalwada - visiting every panchayat and work site where the EGS was ongoing.

While every single padayatri would have an insightful story to share, it is important to present upfront some of the broader findings of this 10-day exercise, extremely revealing to both proponents and critics of the NREGA.

To start with, around 1.5 lakh persons were employed on this scheme in this district at the time of the padayatra. If one considers that there are totally 2.37 lakh rural households in Dungarpur (as per the household count of Below Poverty Line families done under Census 2001), this number represents roughly half of all families having one member employed under the EGS. Said Malavika Pawar, Rural Development Secretary, Rajasthan, who visited the padayatra on April 18: "Five lakh labourers are now employed in the six EGA districts, while a similar number are employed in 22 districts on drought relief. By

May 1, eight lakh labourers are expected to be on EFS works." The figures speak for the demand for such an employment guarantee.

Of the 237 panchayats, 800-odd villages and 1,000-odd work sites that the padayatra covered, only 15 complaints on corruption came to light. These involved fake names in muster rolls, labourers marked present when they were absent, and discrepancies between payments shown on the

muster rolls and those actually received by labourers. The complaints involved only some 185 workers.

Contrasting the findings of the current social audit with the record of past works in Valota panchayat, Dungarpur block, where irregularities amounting to Rs. 6 lakhs were unearthed, social activist and National Advisory Council member Aruna Roy said at a public hearing on April 25: "It has been proven that when there is public monitoring of ongoing works, frauds happen to a much smaller extent than if checks are made annually It is heartening to know that there is very little corruption in the ongoing EGS works (less than 2-3 per cent)."

At 98.9 per cent of the work sites, muster rolls were available - an unheard-of phenomenon in drought

Of the 237 panchayats, 800-odd villages and 1,000-odd work sites that the padayatra covered, only 15 complaints on corruption came to light

relief works in the past. Of course, the fact that the social audit was undertaken with the full cooperation of the district administration played a huge role in this. But this reasoning only reinforced the proposition that if people were willing to monitor the scheme from the start, and the administration was supportive, such positive outcomes were not unattainable. In this instance, the argument that corruption would ruin the scheme stood totally unfounded. The important thing that this social audit established was that such an instance was possible and real for those willing to go beyond armchair criticism.

Critics had also challenged the NREGA on the grounds that even if it met the objective of employment generation, the nature and quality of harvesting structures were being built or repaired extensively as the first priority. "This reflects the demand of the people since this is a highly drought-prone area," said Maan Singh Sisodia of the Dungarpur-based Wagad Mazdoor Kisan Sangathan, one of the key organizers of the event.

"But each panchayat will have to think seriously of building assets in the long term, which will stop migration and ensure food security. For example, digging a pond may generate employment for those 100 days for a family, but if the pond can be linked to the farmer's field by building a channel, his livelihood in the long term will be ensured," he said.

Panel Discussion

At a panel discussion to present the findings of the audit, Dungarpur Collector Manju Rajpal emphasized the importance of planning the works. She said: "Before the monsoon, water-harvesting works must related to soil conservation, water harvesting and afforestation shall be undertaken."

With a responsive administration and enough funds, awareness among the people and their participation held the key to the choice of works and their execution. "In one panchayat in Aspur block, people came to us and said they would prefer to have roads built in their panchayat. We informed them of their

A highly significant finding of the pandayatra was the 70-80 per cent and sometimes all of the labourers working at the EFS sites were women

pandayatra was the 70-80 per cent and sometimes all of the labourers working at the EFS sites were women. This could be explained by the fact that Dungarpur has traditionally seen a huge male out-migration to neighbouring cities in Gujarat (Ahmedabad is just 150 km away) in the agricultural off-season. "Families consider the 100 days under EGS as an additional sources of income, but this has not stopped migration since the earnings are still inadequate. So the men continue to migrate, while the women come to work under this scheme," said Maan Singh.

The work is back-breaking and crèche facilities are woefully lacking. "But," Mann Singh said, "for the first time, women are earning hard cash for their efforts, in such amounts. This might lead to some empowerment and financial independence among rural women, with important repercussions on how the money is spent within the household."

The social audit also brought out some crucial inadequacies of the scheme in its practical nitty-gritties. The most common and justifiable complaint that surfaced was with regard to the "task" a mazdoor had to complete in order to earn the daily minimum wage of Rs. 73 (and now with the Centre's move, a possible reduction to Rs. 60). Unlike drought works, under the EGS labourers are paid a wage that is linked to the task they perform. So it becomes crucial that these norms are fixed fairly and implemented properly. But there are problems aplenty.

First, an across-the-board com-plaint from Labourers was that the prescribed task (as per the BSR matrix) was too much. K.S.Raju, Principal Secretary, Rural Development, Andhra Pradesh, pointed out: "A labourer in Andhra Pradesh has to dig 44 cubic feet to earn Rs. 80, in Rajasthan she has to

legal entitlement; that they should go to the gram sabha and put forth their demands - something they were not aware of," said a padayatri. "As of now, the gram sabha decides all the works, but the prioritization is still done by the sarpanch, sachiv and a few others," said Maan Singh.

dig 62 cubic feet for Rs. 73.”

In reality, the problem is worse, as BSR- specified tasks are not being followed carefully. “The ‘mate’, a manager of sorts of the labourers at a work site, is not trained at the site and has no knowledge of the prescribed task in different types of soil. Labourers are not allotted a specific task and daily work done by them is not measured by the mate, “ said Gireesh Bhugra, Centre for Equity Studies, Jaipur and a key member of the audit team.

Crucially, work is measured group-wise instead of individually, so free riders or the less efficient and up pushing down the wage rate for the group. But a daily individual measurement is difficult given the gross understaffing (there are only 18 Junior Engineers in the entire district), reasoned the administration. “Training of mates, systematic measurement and transparent recording of work done daily, time motion studies and creating awareness among labourers as to what are their prescribed tasks can address these problems to a large extent,” felt Gireesh.

Delayed payments to labourers since the district had not received funds; poor awareness about the need to set up vigilance committee under the Act; and the lack of medical facilities, shades and crèches at

work sites were other important problems that came to light during the audit.

Looking Ahead

On the final day of this exercise, it seemed that neither the heat nor the threats received by some of the padayatris, no the though conditions they faced had touched their spirit. On the contrary, the initial exuberance appeared to have given way to a firmer resolve to carry this forward, far and wide. The effects of the Abhiyan have already shown up in Dungarpur district and, thanks to a responsive administration, many initiatives are in the pipeline.

“The visible impact was getting the first installment, worth Rs. 50, crores, released for this financial year, and task reduction for the next two critical months when we expect much higher demand for employment,” said Manju Rajpal. As for the ‘intangible’ effects, she said: “It was for the first time in the district’s history that about 850 participants of this audit, from every possible walk of life, were among tribal people, without any expectation, any complaint, any bias, any mental block or hidden agenda.....Just to make them feel the strength of their rights and the power of social audit while work is in progress.... I feel the labour is more focused and oriented after this exercise.” ■

Guaranteeing Work

■ Jayati Ghosh

It almost seems like a mini-revolution. In one of the most backward districts of the Hindi heartland, in an area which is traditionally neglected by public policy and where most citizens' experience of the state is oppressive rather than sympathetic, there is suddenly a very different feeling of optimism and sense of rights, creating new expectations among ordinary people. Their expectations are almost palpable and new pressures are brought upon the local government machinery to deliver to meet these.

Suddenly, rural workers expect to be offered work and be paid the minimum wage for it; local officials and panchayat representatives feel the need to display all the relevant information about the work they are providing; they even seek advice from the local community about the works to be taken up. And this whole process sends out a very powerful message of hope that can have positive repercussions across the country.

A common criticism of large public expenditures directed towards improving the conditions of the poor or less well-off section is that the problems of public service delivery and corruption ensure that the poor rarely benefit or benefit only partially from these programmes. This argument has also been used against the National Rural Employment Guarantee Act (NREGA). While this Act has great potential to transform economic conditions in rural areas, it has met with much resistance at every stage. One commonly expressed view is that this is no more than money down the drain, since the money spent will be siphoned off by intermediaries or be spent inefficiently in ways that are not productive or beneficial.

This is not necessarily so, certainly in principle, or even in practice, because the Act itself has included many provisions to ensure greater community participation and monitoring, through the panchayats, and more public disclosure of important information such as the muster rolls of workers. Also, the Right to Information Act has enabled citizens to ask for infor-

mation that will allow them to check on whether expenditures are being correctly made and thereby prevent leakages as far as possible.

Of course, whether these more optimistic possibilities work themselves out depends on a number of conditions. Most importantly, none of this is possible without social mobilisation. But once such mobilisation occurs and is widespread, then it creates a momentum that is hard to stop, and which will definitely have ripple effects in surrounding areas as well.

An ongoing process of mobilisation and social audit that is taking place in Dungarpur district of Rajasthan shows how public awareness and social pressure, combined in this case with a committed and responsive district administration, can create dramatic changes not only in the implementation of this programme, but even in the way the local government works.

The Mazdoor Kisan Shakti Sangathan, which has been working in Rajasthan for more than two decades, took up the challenge of a comprehensive social mobilisation for the employment guarantee in this district, which is extremely backward with a large tribal population. The mobilisation involved as many as 658 volunteer participants from all over India, 250 from the district itself, as well as 10 from Bangladesh.

Jan sunwais - public hearings were held in as many places as possible, and the process culminated in a huge sammelan held at the district headquarters, where bureaucrats and officials involved in the process were also invited, to hear first hand of the actual conditions at the work sites.

The purpose of this exercise was simple: to make the NREGA successful. And the underlying principle was that this could be done simply by ensuring that the provisions of the law were actually upheld in the implementation, through constant and vigilant social monitoring.

The results have been impressive and inspiring. The mobilisation initiative has shown that when people are made aware of their rights and when the local author-

ities are forced to adhere to basic principles of transparency, there is huge response in terms of worker participation, reasonably efficient working of even a very new scheme and very little leakage.

In Dungarpur, the programme has been operating only for slightly more than a month, but already around 150,000 workers have been employed, covering more than half the families living in rural Dungarpur. More than 14,000 works have been opened.

The participation of women workers was as high as 73 per cent in the work sites visited by the padayatris, which is remarkable in a State where, according to the latest National Sample Survey (NSS) the work participation rate of rural women is only 25 per cent.

Almost all the works were organised by the panchayats, and no case was found of works being handed over to contractors. All the work sites visited (except one) had the muster rolls displayed or available for inspection. Despite the huge number of sites visited, only 15 complaints were received during the padayatra, and 17 complaints were received from individuals separately.

Of course, all sorts of other problems emerged or were identified during this process. The selection of works, especially watershed works, has often been ad hoc and unrelated to any overall district plan. The

issue of the unemployment benefit has not been adequately clarified, and both the authorities and workers were confused about the terms and conditions. Since task or piece rate work appears to dominate, the problems of work norms and measurement of work for payment have become serious, leading to payments of wages that were much lower than the stipulated minimum wage of Rs.73 for a day's work - in most of the sites visited, the wages paid were between Rs.40 and Rs.60 a day. There were many cases of delayed wage payments or part payments.

But the most significant problem that emerged clearly was the shortage of administrative staff to run this important programme. In particular, engineers are required at all levels to plan and supervise the projects, in addition to more administrative staff to manage activities, do the accounts, and so on. Without much more allocation for such staff, it will be extremely difficult to sustain this programme even in places where it has taken off well.

This means that the proportion of expenditure allocated for running this programme must definitely be increased, from the current 2 per cent to at least 6 per cent and possibly more depending upon the particular conditions of some districts. ■

Progress Report on NREGA

Statement by Dr. Raghuvansh Prasad Singh, Minister of Rural Development in the Lok Sabha on 23rd May, 2006 on the status of the National Rural Employment Guarantee Act.

1. Notification of NREGA:

In the monsoon session of the House in 2005, the National Rural Employment Guarantee Act 2005 (NREGA) was passed with unanimous consent to herald a path - breaking law for securing the livelihood of people in rural areas by guaranteeing 100 days of employment in a financial year to a rural household. The Act was notified on 7th September, 2005.

2. Launching NREGA

The honourable Prime Minister formally launched NREGA on 2nd February 2006 in the State of Andhra Pradesh, district Anantpur at gram panchayat Bandlapalli. With this legal notification, rural households in notified districts have obtained the right to register themselves with the local gram panchayat as persons interested in getting employment under the Act. The gram panchayat after proper verification will register the household and issue a job card to it. The job card is the legal document that entitles a person to demand work under the Act and to obtain work within 15 days of the demand for work.

3. District identified for launching NREGA in the Initial Phase

200 districts have been identified for implementation of the NREG Act in the first phase. A notification has been issued for implementation of the Act with effect from 2nd February 2006 in 185 districts. The remaining 15 districts include 3 districts of Jammu and Kashmir and 12 districts from Maharashtra. Notification in respect of two districts of Meghalaya was issued on 14th March, 2006 and the Act was brought into force w.e.f. 1.4.2006. The Act does not apply to Jammu & Kashmir in terms of Section 1 (2) of the Act. The advice of the Ministry of Law & Justice has been conveyed to the State Government according to which two options are available to the State Government. The State Government can either pass its own legislation in the State Assembly or make a request to the Central Government to amend the NREG Act and extend its provisions to J&K by deleting Section 1 (2) of the Act.

Maharashtra state has its own Employment Guarantee Act for the entire State since 1972. The State Government has decided to amend its own Act so that entitlements of workers under the Central Act are ensured in the State scheme. The Central Govt. will share the expenditure in 12 identified districts of Maharashtra as per the NREG Act. The Act will cover the entire country within five years.

4. Guidelines

Final operational guidelines have been formulated after considerable participatory discussion with State governments and representatives of multiple stakeholders and issued to all States. A Hindi version of the guidelines has also been printed and shared with States.

5. Action for Implementing NREGA:

Detailed instructions have been issued to State governments by the Ministry Rural Development indicating the activities that need to be addressed on priority basis.

- The process of registration has started in districts. Job are being issued after verification.
- Wide communication of provisions of the National Rural Employment Guarantee Act is being undertaken in the local language to likely

beneficiaries in all areas. For this purpose, at the levels of the Central and State governments, multi-media information dissemination campaigns using cultural resources at the village level and social mobilization processes through gram sabhas have been initiated.

- Sensitisation has been undertaken of PRIs and officials about provisions of the Act and their roles and responsibilities under the Act by State Governments as well as through the NIRD. Rs. 74 lacs have been released to States for training.
- State Government have been advised to prepare works manuals with feasible prototype works with designs, technologies, technical and financial estimates and benefits in terms of employment generated and assets created.
- States have initiated action to strengthen administrative capacity on the instructions of the Ministry. An assistant to each gram panchayat, a technical assistant for about ten gram panchayats and a fulltime programme officer at the block level with three assistants for accounts, works and IT have been allowed to be provided with full Central assistance. They can be on contract, deputation or by re-deployment of departmental personnel. Emphasis has been placed on professional qualifications, merit and experience and a transparent selection process.
- States have been asked to orient perspective plans required to be prepared under NFFWP towards the requirements of the National Rural Employment Guarantee Act with the approval of gram sabha, gram, intermediate and district panchayats.
- The Act allows State governments six months time to formulate an employment guarantee scheme from the date of commencement of the Act. State governments are now preparing schemes on the basis of the provisions of the Act and guidelines.
- A computerized web enabled MIS has been developed to facilitate data collection from the household level to allow citizen access to data at all levels.
- As chairpersons and members of District level vigilance and Monitoring Committees constituted by the Ministry, MPs have an important role in

reviewing the progress of implementation of NREGA and ensuring that entitlements of beneficiaries are available to them.

- Field level visits by Area Officers and external national level and district level monitors have started to assess field level implementation. 60 NLMs and 28 Area Officers have visited States implementing NREGA.
- Adequate funds have been released to districts to support the schemes to be implemented. Rs. 3,776.75 crores have been released in the cur-

rent financial year for implementation of NREGA. The statewide position of funds released in 2005-06 and 2006-07 is in the Annexure.

6. Reports on Implementation Status

States have been asked to report the implementation status of NREGA. Reports received from States indicate that 2,44,77,877 applications for registration have been received and 17089915 job cards issued. 70,99,834 persons have demanded employment and 59,94,249 persons given employment. 1,03,210 works are in progress. ■

Implementation Survey

Opinion leaders at grass roots in the three regions of Andhra Pradesh were asked whether the scheme guaranteeing 100 days of employment was being implemented in their respective area. The response pattern differed widely. In Rayalseema only 28 percent of grass roots opinion leaders acknowledged implementation of the scheme. In Coastal and Rayalseema more than 60 percent either did not know the scheme or the scheme has not taken off at all.

Is employment guarantee scheme implemented?

	(Percent)		
	Yes	No	Don't know
Telengana	76	21	3
Rayalseema	28	61	11
Coastal	40	42	18

The scheme in fact was inaugurated by the Prime Minister and UPA Chairperson in Rayalseema. That being the case the expectations in Rayalseema seemed to be high and hence the disappointment too with the scheme. Or, perhaps the scheme had either not attracted many or it was not being pursued seriously.

All Opinion leaders covered in this survey were specially asked whether they know about the scheme. Surprisingly, awareness about this scheme in the three regions was not much. More than one-third of opinion leaders do not know about the scheme. This despite the fact that the scheme, unlike in the case of RTI Act, was being promoted through mass media and also political leadership. ■

Know about employment guarantee scheme?

	(Percent)	
	Yes	No
Telengana	86	14
Rayalseema	63	37
Coastal	60	40

Right to Information

New institutions and procedures are being tested by another item of historic legislation passed last year by Parliament, the Right to Information Act. Important among them are the office of Information Commissioner set up at the Centre in the States. Much depends on their interpretation of the range and powers of the Act, the imposition of penalties for lapses and the success of their efforts to implement and spread awareness of the Act at all levels.

A conference of Chief Information Commissioners of several States organized by the Centre for Media Studies in Hyderabad provided an opportunity to exchange experiences and expose deficiencies. A report on the conference, a note by the CIC on of Orissa and a critical review of delays by Arvind Kejriwal of Parivartan bring out some of the limitations and achievements. ■

Seminar Faults Implementation

The Right To Information Act was passed last year but, on the basis of whatever experience gained so far, how could the legislation be made more effective? This was the theme of the first national seminar on the subject organized by the Centre for Media Studies and the Administrative Staff College of India in Hyderabad on May 8. The participants, numbering about 600, were varied - Andhra Pradesh Human Rights Commission Chairman, Mr Justice Subhashan Reddy, who inaugurated the Seminar, activists, seven Chief Information Commissioners, administrators and politicians. Several points that emerged from the seminar should serve to make the RTI more effective.

To begin with, is awareness about the Act widespread enough for people to benefit from it? A CMS survey of three regions in Andhra Pradesh showed that awareness about RTI Act was practically nil.

Mr Justice Reddy said that where the life and liberty of a person was involved information under the Right to Information Act should be furnished within 24 hours and not 48 hours as stipulated under the Act. This provision was, in fact, unconstitutional as a person needed to be produced in a court of law within 24 hours of detention. He also suggested that legal literacy programmes on the Right to Information Act should be conducted in a big way in rural areas to create awareness.

The Chairman of the Centre for Media Studies, Dr N. Bhaskar Rao, said that hardly 12 to 15 per cent of government functionaries were aware of the provisions of the RTI. He pointed out that the Act, though an instrument of good governance, could be misused for personal ends or for exploiting the poor. This could be made an exception only if civil society was alert and pro - active Well-intentioned citizens ought to take up issues of public interest, monitor implementation of the Act and make sure the masses were benefited.

He regretted that while there was a lot of media campaign by the Government on the Rural Employment Guarantee Act (perhaps because of its vote potential) the RTI had not received the same attention. But awareness alone was not enough. People ought to make full use of the Act. CMS played a small role in motivating the opinion makers by training working journalists in nine districts of Andhra Pradesh in ways to make use of the Act for public causes. Of about 500 journalists who attended only ten journalists had filed for information under the Act. Of the information sought only one related to an evolving story.

Dr Rao said that bureaucratic resistance was to be expected but organizations like Parivartan in Delhi combined with efforts to sensitize citizens, officials and the news media could bring the necessary changes in the power equations between those inside and outside the system. He suggested a balance in the composition

and character of Information Commissions in the States, a wide campaign to propagate the Act, clarification of doubts on the basis of the experience of RTI so far, involvement of voluntary organizations in the implementation process, training those in the system and concerted efforts to end secrecy in public dealing.

That bureaucrats continued to be the major stumbling bloc was also underlined by Prof. Shekhar Singh of the National Campaign for the People's Right to Information. He said that the ongoing battle was to protect the Act from bureaucrats who first did not want the Act to come into effect and were now trying to amend it. Different authorities were trying to exempt themselves from the provisions of the Act.

He listed the various challenges in implementing the Act and said "the machinery is not in place. The West Bengal Information Commissioner does not have an office yet, though it will soon be an year since Parliament passed this Act. There are 42 Public Information Officers in Delhi and none of the applicants know whom to approach, for which subject."

He said that surveys indicated civil servants had a very careless and casual approach towards implementing the Act. Most of them were unfamiliar with the law as there had never been an orientation class on this and Information Officers were too sympathetic to the public authorities who had to search and provide the information. There was hesitation among the Information Officers to prescribe punishment to the violators. Prof. Singh suggested monitoring of the Act so that people could benefit.

Mr Jayprakash Narayan of Lok Satta, who delivered the keynote address at the Seminar, pointed out that the law itself was brilliant but it did not give meaningful information and "the records were not extensive". He said that "it was a shame that more than six States in the country are yet to have Information Commissioners though the deadline expired on March 1. A Commissioner should be empowered to implement the laws totally with little or no interference from anyone."

That bureaucrats continued to be the major stumbling bloc was also underlined by Prof. Shekhar Singh of the National Campaign for the People's Right to Information

There were also problems in the mode of payment and many complainants did not even know where the office of the Information Commissioner was located in the city. He wanted nodal agencies to have more citizen charters to fight corruption. The Official Secrets Act and the Evidence Act needed to be amended, according to him.

The Chief Information Commissioners who attended referred to the preponderance of complaints received by them being restricted to metros and urban areas. The Andhra Pradesh CIC. Mr C.D.Arha, who presided, said that most of the complaints related to service matters. None of them was satisfied either with the preparedness of the administration or with the level of awareness of the Act among the people.

There were doubts, too. For instance, Mr Arha wanted to know whether a Public Information Officer could appeal against the order of the first appellate authority. The Karnataka CIC asked whether a First Information Report (with the police) could be construed as a public document. There was a suggestion that literacy programmes on RTI should be conducted in the rural areas. Another worry for all of them was the absence of a list of "public authorities" under the Act. This created problems in appointing Principal Information Officers or appellate officers, the participants were told.

One more issue that seemed to nag a Chief Information Officer was not prescribing any limit on the number of points on which an applicant could seek information under the Act. This often led to an applicant asking for information on 30 to 40 points and, with the time-limit of thirty days set under the Act for a reply, offices with a small manpower were greatly handicapped. Again, what, if the appellate authority's orders to Information Officers to give the information asked for was not obeyed since there was no provision under the Act which gave powers to implement the orders - this was one of the doubts raised by a Chief Information Commissioner. He also felt that another area that need-

ed to be addressed was the absence of a mechanism under the Act which would ensure that the information provided could be used to redress the grievance of the applicant.

Central Information Commissioner's information Commissioner, Ms Padma Balasubramaniam, said that all distributory agencies should be made responsible for furnishing information.

The Seminar, first of its kind in many ways, helped to focus attention on the obstacles still in the way of implementing the Act and also underlined the need for concerted initiatives to create awareness about the Act among the people the vast majority of whom were still uninformed about the Act.

The Orissa Experience

Regretting that despite a lot of talk not much had been done to eradicate corruption, Orissa's Chief Information Commissioner, Mr D.N. Padhi, suggested State Information Commissioners should be pro-active on this issue. He pointed out that Hong Kong and Singapore had successfully tackled this menace by setting up Independent Commissions on anti-corruption. Rather than adding another independent body to the plethora of commissions and committees State Information Commissions themselves acting within their mandate could pay special attention to this malady.

Referring to the challenging issues that came up before the State Commission, he raised some of them: can the PIO appeal against the order of the first appellate authority? Can a bank or financial institution refuse information to a citizen details of his own bank account on the plea that the matter was sub-judice?; what if the PIO provided documentary information but refused to certify as he was neither the holder nor the originator of the documents?; can the citizen be asked to give details like his father's name so that the information correctly reached him, and what happened if, theoretically at least, it became

Regretting that despite a lot of talk not much had been done to eradicate corruption, Orissa's Chief Information Commissioner, Mr D.N. Padhi, suggested State Information Commissioners should be pro-active

difficult to realize fines under the Public Demand Recovery Act or even impose disciplinary action?

Another matter that agitated the Commission was the manner in which the information provided was used by a citizen. In the event of the the same information being utilized to harm national interest what action would lie and how? Presuming that the other relevant laws would tackle the issue on merit, would it create a situation where the citizen while

being found guilty, the PIO or the appellate authority was considered an abettor? And could the person supplying the information be protected from vicarious responsibility?

Mr Padhi said that in order to ensure that information sought was provided within the stipulated time, and citizens got access to information as quickly as possible, Orissa Information Commission was using information technology as its tool. The Commission had decided to be, as far as possible, a "paperless" office (excepting retaining registers required for Parliamentary or State Assembly work which was mandatory); a software had been developed for receipt and tracking of appeals and complaints which was now under trial; daily updating of State Information Commission website; had engaged a consultant to monitor the websites of all public authorities and ensure weekly update; had set up a Help line to disseminate constant procedural information as per the RTI rules and had set up a legal wing with a Registrar who was a retired District and Sessions Judge.

Mr Padhi said the Right to Information Act was a boon in that it had for the first time made the citizens prima donnas, public interest took precedence, natural justice was ensured, accountability established and scope for corruption progressively eliminated. The object of the Act was to ensure accountability and transparency. The third dimension, which he suggested all the Information Commissioners would agree, was impartiality. ■

Slow Pace of CIC

■ Arvind Kejriwal

The functioning of Central Information Commission is slowly becoming a matter of serious concern amongst RTI applicants all over the country.

There are broadly three types of problems faced by the people in their interface with the Commission. The first and most important is extremely slow functioning of the Commission. Mr Habibullah, the Chief Information Commissioner, himself admitted in an interview to Tehelka that his first priority was to improve the functioning of the Commission. Here are some relevant statistics. As on May 1, 2006, more than 900 cases had been received at the Commission. Out of these, less than 80 cases had been disposed of. So, on an average, one Commissioner disposes of three cases in one month. As against this, the Chairperson of Public Grievances Committee, the appellate authority under Delhi RTI Act, disposed of roughly 500 cases in the last 10 months i.e. 50 cases every month. She works alone for only two days a week. A High Court judge hears more than 40 cases every day.

Cases are piling up at the CIC. In the last month, it received 10 cases a day but disposed of less than one a day. Thus nine cases are being added to Commission's pendency every day. Already, there is a waitlist of more than three to four months. If you file your case today, it may take four months for the first hearing is fixed. I am aware of several people, who filed complaints and appeals with the Commission in the last few months and have not received any response so far, not even an acknowledgement. They are simply at a loss - what should they do next? How long should they wait before sending a reminder?

Then, records do not seem to be safe at the Commission. There have been several incidents in which the papers of appellants have been lost.

Applicants ask if the Commission cannot ensure that cases are disposed of within a month, do they have the moral authority to impose penalty on a PIO

who does not provide information within 30 days. The Commission does not seem to share this sense of urgency. It functions in typical bureaucratic style. A Commissioner hears a case, only when it is put up to him by the staff.

Another serious problem is non-implementation of the penalty clause. The Act says that the Commission shall impose a penalty if any official violated any provision of the Act. It does not use the word "may". The job of the Commission is to decide whether there was a delay and whether there was a reasonable cause for the delay. If there was no reasonable cause, the Commissioners are under a statutory duty to impose a penalty. But in several cases, the Commissioners have refused to impose penalties despite strong cases against the PIOs. In one case it was proved that information was not provided in time and the CPIO admitted his guilt. Still, no penalty was imposed. The CIC observed: "Since the complaint has been amicably settled and since this is the first complaint in the case of the Survey of India, no penalty is imposed." The RTI Act does not have any provision for such amicable settlement in such cases.

During hearings, appellants are often asked why they should insist on penalties when the information they want has been provided, if belatedly. And that the job of the Commission realized their responsibilities. They are meant to be judges - quasi-judicial authorities, not negotiators or interlocutors. Not providing correct information in time is an offence under an Act of Parliament. It is the duty of the Commission to penalize officers for every violation of the Act. Otherwise, delays will become routine.

The third problem is that the Commissioners often violate the principles of natural justice. According to the orders at posted in the CIC's website, one Commissioner is passes orders on the basis of the appellant's petition without giving an opportunity to other parties. Another Commissioner calls the PIO for

hearing but never considers it appropriate to call the appellant. The arguments put forward by the PIO either in writing or during hearing are not communicated to the appellant. Out of 85 orders on the website, the opportunity to be heard was not provided in 41 cases.

These are among the problems that disappoint those who hoped the Central Information Commission would lead the way in securing implementation of the path-breaking Right to Information Act. Its functioning needs to be refurbished if these hopes are to be satisfied. ■

Survey on RTI Awareness

A CMS field survey in three regions of Andhra Pradesh end of April 2006 brings out that an insignificant percent of people had heard of RTI Act - even after seven months after the Act has come into being as a much hyped (but least promoted) significant Act.

Heard about RTI Act?

Region	(Percent)			
	General Public		Grassroots Opinion Leaders	
	Yes	No	Yes	No
Telengana	3	97	31	69
Rayalseema	6	9	24	76
Coastal	7	93	57	43

Source : CMS

Of those who had heard about RTI Act not all know about the provisions or even about scope of the Act.

If opinion leaders themselves have not heard of the RTI Act, what can be expected from them and how can the Act be expected to be used to help a shift in the balance of power between those in power and those outside. Unless it becomes the route for transparency and accountability in governance at the grassroots how can the Act acquire its potential in the State?

Most of those who had heard about RTI Act, both among the general public and grassroots opinion leaders, knew something or the other, from newspapers; political parties were also mentioned as a source by five percent. ■

RTI Exposes Corruption

■ Vishnu Rajgadia

The Jharkhand Assembly has a well-furnished Guest House having 30 air-conditioned rooms at the Assembly campus. The rooms are being booked for VIPs and eminent persons as well as for politicians, social workers, journalists, etc. The room rent for exMLAs, MPs etc., is Rs 100 per day and for others, it is Rs 300. The whole amount received from the guesthouse has to be deposited in the state's treasury according to the rules.

But information collected through RTI reveals that only a very small amount has been deposited in the treasury during last five years. Nobody knows where the rest of the money has gone. Shakti Pandey, a young journalist working with, Prabhat Khabar Institute of Media Studies (PKIMS) applied for the details. People were surprised to know that only Rs 30,000 was deposited in the year 2004 and only Rs 32,800 in the year 2005 (up to 7 December). Even on the basis of a layman's calculation, this amount should be Rs 20 lakhs or more. Thanks to the RTI law, massive corruption in the House of people's representatives has been exposed.

Another scam that has come to light has been the faking of names in a muster roll in Palamu. A pond in Raqngaiya village of Manatu block was to be renovated

under the "Food for Work" scheme. The state government started the renovation work there under the said scheme but the villagers had doubts about the wages and other expenses of this work. To clear their doubts they applied for the muster roll under RTI, and ultimately they received the information. To the utmost surprise of the villagers it was found that the entire list was fake. The names of the workers and their fathers' names were also wrongly written. Some names in the list were repeated several times. This indicates the state of corruption in the implementation of the 'Food for Work' scheme.

Registration of 160 NGOs without having proper or full address is another irregularity that has been exposed through RTI. Kumari Sarita from PKIMS applied for the list of NGOs registered in Jharkhand. She got the entire list, which surprisingly revealed that of the 1343 NGOs registered during the last five years 60 had no address..

A team of three-dozen students of PKIMS are currently engaged in extracting information using RTI from various government departments. ■

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