

Transparency Review

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Editor: Ajit Bhattacharjea

CHALLENGE AND RESPONSE

The Union Government can take credit for pushing through two pieces of legislation with the potential of transforming governance and society. One is the Right to Information Act of 2005 (RTI); the other the National Rural Employment Guarantee Act of 2006 (NREGA). Despite bureaucratic resistance, public access to official files has breached the walls of secrecy and begun to expose misuse of funds and to energise a lethargic administration. News reports from many parts of the country attest to this. In some States, however, Information Commissions manned by ministerial favourites have yet to show the independence required to ensure transparency. In contrast, the Central Information Commission has set an outstanding example by rebutting the desperate efforts of the Central Department of Planning and Training (DoPT), the nodal agency handling RTI, to protect file notings and generally limit the Commission's autonomy. Its ruling on the issue merit study. Extracts are reproduced in this issue.

Civil organisations have contributed greatly to initiating and sustaining the right to information movement. The role of jan sunwais (public hearings) in focusing public attention on the need for access to offi-

cial documents to counter corruption and promote is now history. Volunteer groups helped by holding training sessions on the procedures for applying for information and monitoring response. Rather belatedly, the media realised the virtues of the Act and has publicised and deployed it to good effect. Despite initial objections to access to file notings and some other provisions, the Government was obliged to endorse its achievements at the first anniversary of the RTI Act coming into force.

NREGA was a year old on February 4, but right to work has not generated the same enthusiasm and administrative backing as right to information. Yet this is the first legislation to recognise the urgent need to provide livelihood to the crores of poor and deprived citizens in rural India. The Ministry of Rural Development has placed full page advertisements in newspapers throughout the country to extol its achievements. But independent reports in these pages reveal much maladministration, corruption and bias in implementation. Unfortunately, it does not have independent commissioners to supervise implementation but is far too important to be left without effective monitoring. This is as much a challenge to civil organisations as to the government.

Letters To The Editor

I happened to come across the latest issue of your publication some days back. It was an enlightening experience, to say the least. Information on something as important to all of us as the RTI was well arranged in the various articles. I am sure that in the coming issues, you will continue to provide your readers with well researched and informative articles.

Srinath,
New Delhi

While CMS can be lauded for its heroic endeavour to review the RTI Act, it might be a good idea if the Transparency Review can take a particular case application and follow it through in their forthcoming issues. That would help the reader to indirectly participate and experience the process in itself.

Anita Bagchi,
New Delhi

(Letters to the editor maybe sent by email: transparency@cmsindia.org, info@cmsindis.org)

CIVIL SOCIETY STRENGTHENS NREGA

■ Tanushree Sood

The National Rural Employment Guarantee Act completed one year of implementation on February 3 this year. The Act tumbled through difficulties, making its way towards its objectives. The working on the ground was challenged with problems such as lack of awareness, sale of registration forms, distribution of incomplete job cards, low percentage of work demand, delay in providing employment to the applicants, and so on.

Parallel to these irregularities there have been various efforts by the civil society groups to assess the status of implementation, spread awareness about the Act and its provisions, and suggest possible recommendations for strengthening the implementation of the Act. The mediums of these struggles were many: surveys, rallies, padyatras, jan sunwais (public hearings), sammelans and dharnas. This article has been derived from the efforts of the civil society or local groups which kept a check on NREGA implementation and contributed their share towards making NREGA a success.

This past one year has been witness to the good and bad aspects of NREGA implementation. Despite its shortcomings, the Act has provided the first ever right of 'work on demand' in the hands of the people. The Act also gives an opportunity to the rural women to obtain employment. During a padyatra in Dungarpur district of Rajasthan in April 2006, it was observed that of the 1.5 lakh workers at the 1700 odd worksites, about 70-80 per cent were women.

But people's struggles have forced the administration to pay heed to the implementation of NREGA. For instance, in Gujarat a group of community-based organizations under the banner of Sabar Ekta Manch filed an appeal in the Gujarat High Court against non-payment of minimum wages. The Court, further, directed the Department of Rural Development to inquire how many such persons were working in the Sabarkantha district of the State, and to produce a statement showing actual wages being paid to the workers.

Another case of effort and change was reported

from West Bengal. A survey in Paschim Mednipur district, Binpur 2 block brought to light many irregularities in NREGA implementation. Thereafter the administration took many positive steps towards effective implementation. These included: improvement in the systems of collecting and providing information on NREGA; meetings organized to emphasize steps for publicizing the provisions of NREGA; NREGA works started in all the Gram Panchayats; all the workers received wages of Rs. 68 per day and wages were paid between a week or atmost within 15 days.

Yet another heartening effort by a civil society group surfaced in Barwani district of Madhya Pradesh. With sustained struggle, 79 differently-abled persons were gainfully employed under works in the NREGA. They were motivated and the administration was simultaneously sensitized towards the inclusion of the physically and mentally challenged. These 61 men and 18 women are spread across 27 villages of the barwani district.

Social audits and muster roll verification exercises have also been conducted in different part of the country. These have been duly submitted to the district and State authorities for action. One such instance of State action took place in Chhattisgarh. Based on the survey reports of Bagecha block in Jashpur district, presented by an independent research team, the State took the following stringent actions: the Junior Engineer, Rural Electrification Services, was suspended; notices were issued to sub-divisional officers and other Junior Engineers wherein irregularities were found during the muster roll verification exercises

In Barwani district of Madhya Pradesh, 1574 persons were paid unemployment allowance for periods ranging upto one month. Total payment was of Rs 4,75,386. People from 8 vilages of Pati block (Tapar, Piparkund, Amlī -Piparkund, Ban, Kandra, Limbi, Kalakhet, Ubadagad) and 5 villages of Pansemal block (Malgaon, Jaliapani [including the villages of Jaliapani, Keliamba, Neelbavdi, Kanjiapani, which though all separate villages are clubbed as one village in the govt records],

The past one year has been witness to the good and bad aspects of NREGA implementation

Umarbaida, Karanpura, Bhatki) were paid the allowance.

However, the Act is inflicted with the following implementation hurdles:

Absence of worksite facilities (such as safe drinking water, shade for children and periods of rest, first-aid box) is another noted problem that cuts across most states. Some reports from the field including Orissa (Kalahandi district), Chhatisgarh (Jashpur district), Jharkhand (Palamau district), Madhya Pradesh (Jhabua, Khandwa and Umaria district), Gujarat (Sabarkantha district) have reported complete lack of facilities at the worksites. But in Dungarpur district of Rajasthan it was heartening to note that medical kits were found at most worksites.

Contractors are increasingly becoming a threat to the NREGA also. Though it does not seem very clear from the surface, yet the private contractors are slowly finding their way into the system. The Act clearly states that no contractor is permitted in the implementation of the projects. Reports from the States of Chhatisgarh and Orissa point towards this emerging problem.

It is a rare opportunity when one finds the muster rolls at the worksites. Reports across the NREGA districts show that kuccha muster rolls/attendance sheets are being maintained by the mates at the worksites. Roughly kept notebooks/diaries are being used for marking attendance and making wage payments at worksites.

Launching of the Act has not been accompanied with appointment of additional staff for its implementation, thus burdening the existing staff. At the panchayat level, the Guidelines had specifically advised appointment of a 'rozgar sevak'. Disappointingly, this has not taken place so far. Such dearth of staff is having an adverse impact on the working of the NREGA. A survey at Jashpur

block of Chhatisgarh district found that sub-engineers were being burdened with the task of maintaining job cards which implies that their primary tasks suffer.

Delay in wages has always been a matter of concern in previous employment programmes and continues to plague NREGA. Wage payments are delayed for weeks and sometimes for months. The time period of lag, however, varies from State to State. For instance, in Jashpur district of Chhatisgarh, delays of months were noted. In some places like Barwani district of Madhya Pradesh delay was for a period of 15 to 30 days. Delays were also noted in Manika and Manatu blocks of Jharkhand.

In many States, workers are not earning minimum wages. For instance, in Sabarkantha district of Gujarat wages are as low as Rs. 4 to Rs. 7, in Kalahandi district (Bhawanipatna block) of Orissa, workers are earning between Rs. 40-50, whereas the minimum wage is Rs. 55. Women are getting paid even less, about Rs. 30 per day. In some states like Jharkhand workers are getting paid as low as Rs. 10.

The reasons behind payment of less than minimum wages are varied. In some States the soil type is not being considered as a result of which the payment are getting affected. Following the system of chauka in some States like Jharkhand is also leading to lowering of the wage.

Such continuous struggles have forced the district and

State authorities to give NREGA the attention it deserves.

There has been a wave of civil society initiatives for reviewing the progress of NREGA at the local level. And this perhaps is the key to making the National Rural Employment Guarantee Act a success. ◆◆

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(Tanushree Sood is Research Associate, Office of the Commissioners in the Right to Food case.)

A YEAR OF RURAL EMPLOYMENT

■ Dr N Bhaskara Rao

The National Rural Employment Guarantee Programme (NREGP) has now completed one year. Since this programme is being viewed as a flagship initiative of the UPA Government and a landmark scheme for poverty alleviation in the country, we need to take stock of its implementation. The anniversary of the scheme was marked by full page advertisements issued by the Ministry of Rural Development in the daily newspapers of the country in the first week of February. Even at the time of the programme's launch, and in the following months, the State Governments had given wide publicity to the programme in the media as if it was a panacea for poverty

eradication. Not merely that; considerable media hype accompanied the launch of the programme on February 2 last when it was dedicated to the nation from Anantpur district by the Prime Minister and the UPA Chairperson with considerable media hype. In fact, no other programme of the UPA Government had received as much publicity. The Right to Information Act of 2005, on the other, hardly had any such media support although it was a path-breaking

legislation benefiting all countrymen and required much more support than the NREGP which was limited to 200 districts and aimed at those who were at the "antyodaya" level of our development process, not the prime target of the nation's news media.

Going by the claims in the full page advertisements, only 43 percent of those who were issued job cards under the scheme were actually provided employment. Worse still, many of them could be provided with a job for only one or a limited number of days against 100 days' work promised under the Act. That work could be provided to that many in the first year itself could be touted as impressive, but work was provided for less than 14 days during the year in a number of districts. There were many districts / blocks including the most needy ones where only one or two days' work was given to registered card holders during the year. There were also districts where work was offered for little over 14 days

during the year. But nowhere was the promised 100 days' work provided. This is the picture going by the figures prominently advertised by the Government.

The picture at the grassroots level in the districts selected for the NREGP scheme reveals that it is still far from reaching its full potential and hence every effort should be made to ensure its success and urgently make whatever modifications needed in the light of the year-long experience.

The CMS survey (Transparency Review of June 2006) in Anantpur district a few months after the launch of NREGP had brought out that awareness about the scheme was nowhere near the level

expected to make the scheme a potential instrument for poverty eradication or for providing relief to the most deserving. The Social Audit conducted towards the end of the first year in the same Anantpur district had brought out grim realities in the implementation of the NREGP. First, the Social Audit showed that corruption and irregularities were as much a problem with NREGP as with any other Government scheme. This included fake muster rolls, under- payment to the

A social audit towards the end of first year of NREGP in Anantpur District showed corruption and irregularities were as much a problem as with any other scheme

labourers, political patronage to the elements tampering with the scheme, threatening job card holders from revealing facts, engaging cheap labour from neighboring Karnataka in the name of rightful card holders. Social Audit teams have brought to the fore several other malpractices. A CMS survey had also revealed that migration for work from Anantpur had increased since the launch of the NREGP contrary to what one would have expected.

For instance a couple looking for jobs for both at the same site for the sake of their young children cannot avail of the Scheme because it limits jobs to one in each household.

The second issue relates to information about work schedule and the number of days work being provided. The uncertainty about the number of days, when work would be available next and where, and the nature of work that might be offered were factors inhibiting the success of NREGP.

What is more, the wages being paid varied; in some cases it was lower than the prevailing wage rate.

The third irritant is the payment schedule. A daily wage-earner needs money at the end of the day's work to get his basic needs. He cannot be expected to wait for a week or two and then go to the post office, and wait for another day or two to realize the wages specially when there is no credit facility.

The job cards in many instances are being given to the Panchayat Secretary or kept with him, a confirmed ticket for organized corruption. Works to be undertaken under the scheme are not decided by the

villagers but by officers.

To sum up, it could be said that transparency in the operations of NREGP is glaringly missing in the first year. Since the scheme is proposed to be extended to another 200 districts next year, it is all the more critical that lessons of the first year are taken seriously and the programme is saved from "wearing off". Also, the NREGP should be viewed as a significant "national programme" (rather than as "UPA Government's"). The Act passed by the Parliament in the regard should not end up as a mere "legal right to work". ◆ ◆

(Dr.Rao is Chairman, CMS)

No Room for Disabled in Scheme

Ramesh Pal, 42, a resident of Patara Kalan village in Kasmanda Block of Sitapur, has lost the use of his polio-stricken right leg. This makes it difficult for him to find any employment. He hoped things would change with the National Rural Employment Guarantee Scheme (NREGS), under which he even got a job card made. But Pal was given the job of carrying bricks and transferring them to another site - a task which he could not fulfill because of his lame leg.

Now, local NGOs are working towards ensuring that physically challenged people, like Pal, are not only issued job cards but are also given tasks which they can carry out successfully.

"He has lost one of his limbs, but can perform tasks which don't require him to run around. But Pal was given a job which made him run about a lot, and therefore, he could not fulfil it," pointed out Sonik, the district coordination of the Poorest Areas Civil Society (PACS) Programme, which is also helping villagers get job cards in Sitapur district.

Like Ramchander Yadav of Shivpuri village in Peer Nagar panchayat of Sitapur, whose leg has been amputated. Yadav, who is actively involved with a local NGO, not only managed to get his job card made but was also assigned a task which he could successfully carry out. "I was asked to work in digging a pond. I filled metal bowls with the soil that had been dug out. These bowls were then carried off by other labourers," said Yadav.

(Courtesy: InfoChange News & Features)

NGOs working in the field pointed out that although the Government of India's labour rules state that in all poverty alleviation schemes, there should be 3 per cent participation and focus on the disabled, the section is yet to reap benefits from the NREGS.

Sunil Singh of Rahi Foundation, an NGO working towards poverty alleviation activities in the districts of Sitapur and Lakhimpur Kheri, said: "We managed to get job cards made for about five disabled villagers in Sitapur, but with much difficulty. The attitude of the other villagers, including the gram pradhans, was very negative."

Singh pointed out that there are half-a-dozen tasks under the NREGS which can be carried out by the disabled people. "These tasks include serving water at the construction site, cleaning bricks, digging soil, mixing soil and cement and also, if they are educated, monitoring the number of labourers, their muster rolls, the work hours and maintaining records. But so far, all the disabled who have managed to get job cards have not been given any such tasks," he added.

The Rahi Foundation organised a State-level consultation on NREGA and inclusion of persons with disabilities, where such cases were highlighted in the presence of the government officials. P K Srivastava, the additional commissioner, rural development, admitted that NREGA had not been able to reach out to the disabled as yet. ◆ ◆

JOBS FOR CRORES

■ Dr. Raghuvansh Prasad Singh

The Minister for Rural Development, Dr Raghuvansh Prasad Singh has said that crores of people below the poverty line have benefited from the National Rural Employment Guarantee Scheme. Addressing the media a few days ago, the Minister said that the present rural development policy and strategy was based on a business plan for rural India named 'Bharat Nirman' and a legal framework of NREGA under which employment was assured to jobless rural households.

Describing 'Bharat Nirman - building India' as the present mantra, the Minister told media persons recently that development works were undertaken in the areas of irrigation, roads, rural housing, rural water supply, rural electrification and rural telecommunication and connectivity. Specific targets were to be achieved under each of these goals in a time-bound manner so that there was accountability in the progress of the initiative. Bharat Nirman was viewed as an effort to unlock rural India's growth potential and to be a key for ushering a new era.

Referring to unemployment as a major challenge for the country, he said that with the objective of providing additional employment in the rural areas as also food security, along with the creation of durable community, social and economic infrastructure in the rural areas, the 'Sampoorna Grameen Rozgar Yojana' was launched in 2001 by merging the on-going schemes of Jawahar Gram Samridhi Yojana and the Employment Assurance Scheme. Now, SGRY along with National Food for Work Programme have been subsumed in the NREGA districts.

Dr Singh said that the National Rural Employment Guarantee Act had been launched for securing the livelihood of the people in the rural areas by guaranteeing 100 days' work in a financial year to every household whose adult members volunteer to do unskilled manual work. Underlining the fact that employment had been conferred the status of a legal right through an Act of Parliament, he said that the NREGA provided a social safety net for the

vulnerable groups and an opportunity to combine growth with equity. Channelisation of resources under these programmes in identified priority areas could go a long way towards enhancing and conserving our natural resources and creating our natural resources and durable economic assets. The hope was that the assets created would result in sustained employment for the area for future growth and self-sufficiency.

The job scheme, launched on February 2 last year and implemented in 200 districts, had resulted in issuing 3.47 crores of job cards. As many as 1.51 crore households had demanded employment and 1.47 crore had been provided employment until the end of January, the Minister said. Many Job-seekers had not demanded work though they had been given cards; it was clarified that according to the law only those who demanded work could be given jobs. So far, Rs13, 008.95 crores had been released by the Centre to the States. But the States had spent only Rs7,617.95 crores had been spent. The total number of mandays created was 53.65. A total of about 6 lakhs of rural works had been undertaken under the scheme of which 2.8 nearly half, related to water conservation.

Asserting that strict monitoring arrangements had been made to ensure that "every paisa spent under the Scheme was tracked," Dr Singh said that in fact his Ministry was keeping a watch over the proper utilization of funds under various other schemes as well. Much emphasis has been laid on Monitoring and Evaluation of all rural development programmes to ensure optimum use of resources. The monitoring mechanism included the Performance Review Committee, review meetings by the Minister and Ministers of State in the Rural Development Ministry with the Chief Ministers or Ministers of Rural Development and officers of the States, the Area Officer Scheme, on-line reporting of monthly progress report, submission of audit and utilization certificates, video conferencing and field visits. ◆ ◆

(Dr Singh is the Minister for Rural Development)

LACK OF AWARENESS

■ Pamela Philipose

After the intense conversations and debates around the National Rural Employment Guarantee Act in 2005, there is an alarming silence about it in the public domain. This should worry everybody who had hoped that the initiative represented a paradigm shift in the government's approach to social welfare. It could, possibly, be a reflection of the complexity of translating a programme that guarantees the "legal right of a hundred days of wage employment" into a framework for transforming lives. It most certainly mirrors our tendency to move to the next big thing without as much as a backward glance. Yet, if there is one big message out of the 200 districts that came under the National Rural Employment Guarantee Scheme (NREGS) early this year, it is this: don't take your eye off the ball.

The National Advisory Council (NAC) to the UPA government, when it had envisaged this ambitious social intervention, was aware of the infirmities inherent in earlier job guarantee schemes. It listed 13 fatal flaws that had undermined earlier initiatives: lack of awareness among local communities about its existence, lack of community participation, lack of planning, sub-standard quality of assets created, false muster rolls, problems of payments, contractors persisted with, diversion of funds, weak monitoring and verification systems, no comprehensive data base, inadequate capacity of implementing agencies, multiple wage programmes running in parallel, no public accountability.

The NAC hoped to overcome these fatal flaws by ensuring that the NREGS gives work on demand, that no contractor is recruited for carrying out the works, that payment would be made on every seventh day, that muster rolls would be maintained on the work site itself, and that a social audit would be carried out with the involvement of the local people to ensure accountability. So far the NREGS appears to have been successful in avoiding only two of 13 listed flaws. From all evidence, contractors have been kept away from these sites and there has been a streamlining of the job guarantee programmes on offer - it is the NREGS that has emerged

the flagship project in these 200 districts. As for the other flaws highlighted by the NAC, they are both ubiquitous and persistent, despite the extraordinary attention paid to the Scheme by those at the highest echelon of government.

Take the first, and most major debilitating factor - a profound and widespread lack of awareness. Not only are many within the district ignorant about the existence of such a scheme; not only are those who know about it and want to avail themselves of it in the dark about their entitlements under it; not only are those meant to oversee it like sarpanches, ignorant and untrained - even those labouring on these worksites are clueless about working under the NREGS!

A detailed report on 33 panchayats in Bhawanipatna block in Kalahandi district, filed by a group of 25 volunteers in June, highlighted how this debilitating lack of general information is in direct proportion to the interest the local district administration and gram panchayats take in the project. While some pockets reported satisfactory progress, in other villages even the panchayat offices were found to be locked on most days. Many did not have the facilities to store NREGS documents, much less display them for public viewing.

The confusion of where to go for a job card was widespread, and while the minimum wage was Rs 55 in the area, most men reported that they were getting much less, with the women paid even lower. The leaks that the NAC had hoped to plug in the NREGS were very much in evidence. Reports from other parts of the country six months later, revealed almost the same problems. Not only were the wages paid far lower than the statutory minimum, they were delayed, and despite an entitlement of 100 days under the Scheme, some managed only 10-25 days of work in many districts.

We are talking of regions where illiteracy is rampant and media exposure minimal. Unless the NREGS goes to the people through an active outreach programme and adequate staff, rather than expect the people to come in

So far the NREGS appears to have been successful in avoiding only two of the thirteen listed flaws

search of it, this enormous gap caused by a lack of information and understanding of entitlements can never get bridged.

Already the level of employment generated by the NREGS has failed to meet expectations, going by the gross under-utilisation of funds released for the Scheme. According to the Centre's own assessment, only 25 per cent of the budget for the NREGS has been utilised in a little over six months, and the number of mandays generated is far below the figure projected. Take Karnataka for example. By July 31, the State Government was able to spend only Rs 30.57 crore out of a fund of Rs 131.12 crore, and this has been the story in many other States as well. And we have not even begun to ask whether the works that are being done are getting translated into what can be considered to be important infrastructure that would make a difference to the quality of life in these regions.

So do these conspicuous failures mean that those who had argued vociferously against the NREGS last year were right? That would be an extremely short-sighted reading of the experiences of these last 10 months. For the first time in 50 years of social welfare planning in India, we have evolved a method that can potentially reach

(Courtesy: The Indian Express)

out to the lowest tier by using methods that can potentially deepen democracy in that it takes the idea of entitlements and choices to the last person. It has, besides, a self-limiting structure and will be found redundant in those regions where it is not needed, regions where rural labour has already found themselves more rewarding jobs and professions.

But all good ideas and paradigms require to be constantly reviewed, refined, reformed and made relevant. One of the more innovative features of the NREGS is the provision of a social audit by local groups and communities. Such audits if conducted efficiently can both create wider awareness about these programmes and flag corruption and inefficiencies. A recent exercise in Hardoi, UP, for instance, underlined the lethargy of the local administration. Another in Madhya Pradesh revealed an invidious corruption, with even the engineers sent to evaluate these projects demanding commissions from sarpanches. The process of social auditing, with the help of information technologies, needs to be mainstreamed and assisted, so that every district covered by the NREGS is under constant and unremitting scrutiny and is seen to be so. ◆ ◆

More Districts To Be Covered

Dr. Raghuvansh Prasad Singh, Union Rural Development Minister has said that he would take up with the Prime Minister and the Finance Minister the issue of expansion of the National Rural Employment Guarantee (NREG) Scheme if the Planning Commission raised any objection to funding.

He had written to Commission's Deputy Chairman for identification of more districts to be included in the second phase of the

scheme. The Ministry required three or four months to prepare for the formal launch. All rural districts were to be covered under the scheme in five years.

However, the Minister said "the Planning Commission had raised some queries such as the utilisation of funds and the criteria for choosing the districts but said that the second phase of the scheme was under serious consideration,". ◆ ◆

(Courtesy: The Hindu)

CASTE AND CLASS BIAS

■ Kiran Bhatta

A new law guaranteeing rural employment may be changing centuries-old power relations in India's villages. Dirt-poor villagers, denied work or cheated, have dared defy local authorities and testify against them in a people's court attended by top government officials.

Some 1,500 women and men from 50 villages participated in the public meeting in Sandila, 75 km west of Lucknow, capital of northern Uttar Pradesh State, to review the functioning of the National Rural Employment Guarantee Scheme (NREGS) which is both a poverty alleviation programme and a powerful catalyst of social change in rural India. Launched in 200 districts in 14 States earlier this year, it promises 100 days of wage labour to one adult member of every rural household that volunteers for unskilled work.

A mass social audit of the implementation of the law conducted by Asha, a non-governmental organisation (NGO) headed by Sandeep Pandey -- winner of the 2002 Ramon Magsaysay award for emergent leadership in 2002 -- detected very serious problems in two blocks in Hardoi district.

Administrators and pradhans (village chiefs) of Sandila and Hardoi blocks, entrusted with the task of implementing NREGS, were found to have blatantly misused their powers to forge muster rolls, siphon funds and disqualify legitimate job seekers.

Implementation of the law was skewed by hidebound caste and class distinctions that have thwarted affirmative action legislated by India's founding fathers nearly six decades ago. For generations, land-owning upper caste groups have controlled village societies as headmen, revenue officers and priests. The landless poor are mainly from among the lower castes, minority Muslims and Dalits (those outside the Hindu caste system).

The findings of the social audit were made public at the hearing on Dec. 2.

An elderly Dalit farm worker who was denied work under NREGS boldly testified: "Main bahut ghareeb hoon, aap log paise-wale ho; main padhalikha nahin hun, aap log gyaani ho; main Dalit hun aap Thakur-Brahmin hain, lekin aapka vote aur

mera vote ek hai. Parantu mera naam voter list mein nahin hain aur isliye mujhe job card nahin mila." I am very poor, you are rich; I am illiterate, you are knowledgeable; I am a Dalit and you are Thakur or Brahmin, yet we have one vote each. My name is not on the voters list and that is why I have not got a NREGS job card.)"

Thakurs and Brahmins (from the warrior and priestly castes respectively) continue to bully the so-called lower castes and monopolise key positions almost six decades after India became a republic and gave itself a constitution that emphasises social equality.

Under the NREGS, it is mandatory that job cards be issued to every family. But in many villages surveyed, the poorest of the poor were issued job cards only the day before the Asha teams arrived. Instead of transparency, gross irregularities and discrepancies were found everywhere with regard to employment and payment under the scheme.

In Athsalia panchayat, records showed that 25 villagers who were issued job cards were never given work -- which went to 29 others who did not have job cards but had links to the village elite. Worse, the workers were not paid the full minimum wage of 58 rupees (a little over one dollar).

When asked why he shortchanged the workers, the pradhan's son (village chief) was dismissive and said his family had been village chiefs since "azadi" (independence in 1947) and the payment was made from his own money; the government would take at least six months to reimburse him.

That apart, attendance registers were inflated -- workers' signatures or thumb impressions put on more days than they had actually worked, while the wages for the days they did not work were pocketed by corrupt local authorities. For NREGS' intended beneficiaries this is a double injustice: they lose out on their just wages as well as on the number of days of work that they are entitled to.

But the most striking finding here is the absolute absence of women in the NREGS. In Sandila block, for which the official records were made available,

The landless poor are mainly from among the lower castes, minority Muslims and Dalits

a total of only seven women were given employment. The teams did not find a single woman who had worked and worse still none of them were registered on the job cards. Even where women are the sole bread-earners in a family, job cards were denied to them.

This is contrary to the experience in other parts of the country under NREGS where similar social audits have been conducted, like Dungarpur in Rajasthan state, and Anantpur in Andhra Pradesh; also Sonebhadra in Uttar Pradesh where there has been large-scale employment of women under the job guarantee scheme.

In Hardoi and Sandila blocks caste and class divisions are formidable. At the public hearing, a "pradhan-pati" (title given to the pradhan's husband) who was unembarrassed about speaking for his wife at a public meeting, said that "women do only two kinds of work: boaaee (sowing) and kataee (cutting). They do not do mazdoori (manual work)".

Indeed, several women during the social audit complained that their men prevented them from going to work at the NREGS sites claiming that it

would be a dishonour for them -- "mahilaon se mazdoori karaenge to badnaami hogi". Family honour seemed to matter more than finding work to feed starving families.

In addition, the pradhan-pati's statements reflect a caste and class bias. Poor women, especially from the lower castes with fewer taboos on work, do all sorts of hard, manual labour. Keeping them out of NREGS is a denial of an assured source of employment, which only serves to keep the economic and social inequalities in villages intact.

Following the public airing of grievances, the administration has pulled up the defaulting local agencies, particularly the BDOs, and promised greater administrative vigilance and transparency. Angry local officials have retaliated by submitting a memorandum to the Rural Development Commissioner (in Lucknow, the state capital) saying that they would not do any NREGS work in their areas.

The standoff could prove to be a valuable chance to democratise village governments, and move positions of power out of upper caste families. ◆ ◆

(Courtesy: Infochange India)

No Job Cards In Gujarat

More than the 100-day job guarantee, it is the elusive job card that Ganpat Raisinh and his son Abhesinh have been waiting for since a year, in Aankli village. In neighbouring Bamroli village all that siblings Abhesinh and Jagdish Mangar know is that their job cards have been issued, but they don't know why these are in the custody of a former sarpanch, while rightfully they should have them.

During the first public social audit of the National Rural Guarantee Act implementation in Dahod and Panchmahals districts in Gujarat, registers and muster rolls were hardly made available, in spite of written instructions by district collectors. This is despite the fact that Gujarat is spending a whopping 28% of the grant funds on administrative costs, instead of the requisite 2% for the Act's implementation, which is officially labeled as contingency costs. And right now, there is no answer as to how this money is being spent.

(Courtesy: The Hindustan Times)

The social audit also threw up the fact that in villages of Dahod and Panachmahals, the wide disparity in the job cards and work allotted has yet to be felt. This is because the tribals, who are from amongst the 100 poorest districts in the country, are busy trying to figure out how to get job cards first, since only then will employment and rightful remuneration guaranteed by the Act follow.

While NREGA might have come into force a year ago, in addition to the villagers, the talatis and sarpanaches either seem to be at sea or adept at misinformation when asked about NREGA implementation. In Aankli village, a reluctant newly-elected sarpanch, Kanak Baria, who attended the gram sabha, called for a public hearing. While he could not answer why only a few had been photographed for job cards, he and talati, Shweta Bhabhor, promised the villagers that they would ensure personal delivery of the cards in a week. ◆ ◆

RIGHT TO FOOD CAMPAIGN

■ By Biraj Patnaik

The Right to Food Campaign has succeeded in placing hunger at the centre of development discourse in India. The campaign hopes that this long-running case will culminate in the right to food becoming a fundamental right that can be made justiciable in any court of law in the country. The case and the accompanying campaign have established the importance of the law as facilitator, but the right to food also requires political means and people's participation.

In recent years, the battle against hunger has been placed at the centre of the development discourse in India. This has come about mainly due to the efforts of the Right to Food Campaign and as a direct result of a writ petition filed in the Supreme Court of India.

The petition was filed by the People's Union for Civil Liberties in April 2001 to seek legal enforcement of the right to food. This case, popularly known as the Right to Food Case, has since become a rallying point for trade unions, activists, grass-roots organisations and NGOs to make the right to food a justiciable right. While the Indian Constitution does not explicitly mention the right to food as a fundamental right, it is implicitly enshrined in Article 21 of the Constitution as the fundamental right to life of every Indian citizen. Article 47 of the Constitution (in the Directive Principles of State Policy) is unambiguous: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..."

The Indian judiciary, especially the Supreme Court, has on many occasions reaffirmed that the "right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with dignity; it would include all these aspects which make life meaningful, complete and living" (*Maneka Gandhi vs Union of India* AIR 1978 SC 597). Other statutory constitutional institutions like the National Human Rights Commission (NHRC) have also stated: "There is a fundamental right to be free from hunger" (January 17, 2003).

Despite this, India continues to be the site of the most unconscionable levels of chronic hunger and deprivation. Child malnutrition levels in India

(46%; height for age data) have consistently been higher than those of even Sub-Saharan Africa and of countries with lower rates of economic growth like neighbouring Bangladesh (45%). The National Nutrition Monitoring Bureau (conducted by the National Institute of Nutrition, Indian Council for Medical Research) estimates that nearly 40% of the adult population in India has a Body Mass Index of less than 18.5, which implies chronic energy deficiency of epic proportions, bordering on a national humanitarian crisis.

It is in this context that Indian planners have, over the post-independence decades, put in place some of the biggest food security programmes in the world. The schemes can be broadly divided into four categories:

- ◆ Entitlement feeding (Integrated Child Development Services [ICDS], Mid-Day Meal Scheme [MDMS])
- ◆ Food subsidy programmes (targeted Public Distribution System [PDS] including Antyodaya and Annapurna Yojana)
- ◆ Employment programmes (National Rural Employment Guarantee Act [NREGA], Sampoorna Grameen Rozgar Yojana, National Food for Work Programme, Rashtriya Sam Vikas Yojana)
- ◆ Social security programmes (National Maternity Benefit Scheme, National Old Age Pension Scheme and National Family Benefit Scheme).

These are comprehensive programmes that address the nutritional needs of a person from the time of birth through to old age. The ICDS seeks to take care of the nutritional challenges faced by infants and young children (0-6 years) and pregnant women, nursing mothers and adolescent girls; the MDMS provides meals to all primary schoolchildren; the targeted PDS provides subsidised grain to families below the poverty line; the NREGA provides 100 days of employment in 200 districts (to begin with); the social assistance programmes cover the aged who are left out of the social security net.

For decades, these programmes have succeeded in preventing the kind of large-scale famines that

occurred in the years before independence (such as the Bengal famine of 1943). Yet they have been unable to substantively address the problem of chronic hunger. This is not only because of gaps in implementation, but also because, as many activists argue, they do not provide for sustainable and lasting livelihood options. The problem is compounded by the fact that concerted efforts have been lacking, except in a few states like West Bengal, to undertake land reforms, give communities rights over natural resources, and address the structural causes of poverty. Caste and gender discrimination have also been major contributing factors.

On the contrary, the last two decades have witnessed an unprecedented alienation of indigenous people and other marginalised communities from their land and other natural resources; displacement due to industrial projects and large dams in rural areas; and fundamental changes in the nature of poverty with unbridled urbanisation and the disenfranchisement of large sections of urban populations. Global pressures on the Indian economy and the pursuit of deflationary, neo-liberal policies by successive governments from the early-1990s have abetted in this pauperisation of millions of Indians.

The importance of the Right to Food Case has to be viewed in this macro-context. Therefore interventions by the Supreme Court through interim orders in this case become critical. The Right to Food Case is perhaps the longest continuing mandamus in the world on this issue. It is also one of the largest and most complex litigations involving a wide range of state and civil society actors in India. More than 400 affidavits have been filed so far; over 60 interim applications have been submitted and 47 interim orders have been passed by the SC in this case over the last five years.

In an interim order on November 28, 2001, the Supreme Court converted most food and employment-related schemes into "legal entitlements". This also implies that the Government of India and state governments cannot change these schemes without the permission of the SC till the final judgment is passed in this case. The campaign hopes that this case will culminate in the right to food becoming a fundamental right that can be made jus-

ticiable in any court of law in the country.

The interim orders of the SC reflect the growing complexity of the case and the diverse issues being covered. The orders on universalising access to food, especially for children-related to mid-day meals and the ICDS-have been landmarks. On November 28, 2001, the Supreme Court directed State and Central Governments to universalise the mid-day meals and provide hot, cooked meals to all primary school children in India. The interim order also universalised the ICDS programme, making it mandatory for government to provide supplementary nutrition and the other five services under the ICDS to all children below the age of six, all pregnant women and nursing mothers and adolescent girls.

The NREGA emerged out of a separate process of political mobilisation involving a wider range of people outside the Right to Food Campaign, but the environment created by the Right to Food Case facilitated the emergence of the NREGA. Detailed orders have been passed from time to time on some of the schemes, but the PDS has not yet been universalised, nor have many other schemes that come within the purview of this case.

The order on the ICDS illustrates the nature of the interim orders. This order explicitly stated that: "We direct the State Governments/Union territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under:

Each child up to 6 years of age to get 300 calories and 8-10 grams of protein, each adolescent girl to get 500 calories and 20-25 grams of protein, each pregnant woman and each nursing mother to get 500 calories and 20-25grams of protein, each mal-nourished child to get 600 calories and 16-20 grams of protein and have a disbursement centre in every settlement."

When the State and Central governments did not comply, the SC was compelled to pass further orders on October 7, 2004, directing the Government of India to increase the number of ICDS centres to cover 14 lakh habitations. This would mean starting at least 7 lakh additional centres as a minimum requirement to universalise the

The NREGA emerges out of a separate process of political mobilisation involving a wider range of people outside the Right to Food Campaign

ICDS. The same order recommended the increase of the allocation of "rupees one per child per day" to "rupees two per child per day", with the Central and State Governments contributing one rupee each.

The same interim order also directed the Government to make "earnest effort to cover the slums under ICDS" and ensure that all SC/ST habitations got an anganwadi "as early as possible". The SC also categorically banned the use of contractors for providing supplementary nutrition and directed the Government of India and all States and union territories to use local women's self-help groups and mahila mandals to supply the supplementary food distributed in anganwadi centres.

Similar detailed interim orders have been passed for virtually every scheme that falls in the ambit of the case. The scope of judicial intervention on the right to food has thus been considerably enhanced through the interventions of the Supreme Court.

Simultaneously, the campaigners and individual citizens have started approaching High Courts across the country on matters related to the right to food and the lack of compliance by State Governments with the interim orders of the SC. Having secured significant policy changes at the national level, the focus has moved to legal interventions on implementation.

In an interim order of October 29, 2002, the SC had directed that the "Chief Secretaries" of the concerned states would be held responsible for any persistent default in compliance with orders. This had led to some ambiguity, with the Delhi and Rajasthan High Courts refusing to entertain petitions pertaining to violations at the State level since the SC was monitoring the schemes. In another order, the SC invoked the procedure of the DK Basu protocol for the right to food and stated that: "Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental action also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter."

In an interim order of May 8, 2002, the SC also put in place an independent mechanism-the

Having secured significant policy changes at the national level, the focus has shifted to legal intervention on implementation

Commissioners of the Supreme Court-to ensure compliance by the State and Central Government with the orders of the court. This is not the first time the SC has put in place such a mechanism, but it is the first instance in the context of the right to food.

The Commissioners submit bi-annual reports to the SC. Six reports highlighting non-compliance, structural issues regarding

hunger, and the hurdles in implementation have been submitted to the SC so far. The SC then asks the State and Central Governments to respond to the issues raised by the Commissioners.

The Commissioners are also empowered to move contempt of court charges against Chief Secretaries and other senior State/ Central Government officials when the non-compliance is wilful and deliberate. The Commissioners have appointed Joint Commissions of Enquiry (JCEs) with representatives nominated both by the Commissioners and the government, to enquire into charges of malfeasance by government officials in food schemes. JCEs have been commissioned in Chhattisgarh, Assam, West Bengal and Madhya Pradesh. These enquiries have led to the dismissal of a few officials, departmental enquiries against some, and suspension from service for others. They have also led to grievances about the implementation of food schemes being addressed.

The Commissioners operate through a network of honorary State and national advisers to monitor the progress of the food schemes, suggest reforms in the laws, policies and programmes pertaining to the Right to Food, and, wherever necessary, get directions from the SC and have action taken against erring state/ central government officials.

In the five years since the Right to Food Case was admitted in the Supreme Court, many milestones have been achieved, but the journey ahead is much longer than the path traversed so far. For example, the interim orders have resulted in the Government of India sanctioning 1.88 lakh additional ICDS centres so far, with a sanction of another lakh expected soon.

At the macro level the budget of the ICDS has gone up nearly three times from Rs 1,500 crore in 2003-04 to almost Rs 4,000 crore for 2006-07. Many State Governments have been galvanised

into action and the ICDS has been the focus of discussions for the National Advisory Committee of the UPA government. The interim orders on the ICDS have also brought together many sections of civil society. The Hyderabad convention on the Children's Right to Food and subsequent action by local groups reflect some of the newer forms of mobilisation on this issue.

But these significant changes in the ICDS are inadequate when compared to what needs to be done to make the services universal. The Government of India took almost three years to act on the interim orders. Consequently, very few of the 1.88 lakh new anganwadi centres have become operational in the states. Even when the government did act, it chose to contest the figure for making the programme universal. It has still not agreed, as its correspondence with the Commissioners of January 23, 2006 shows, to a minimum of 14 lakh anganwadi centres. After an intervention by the Commissioners, the matter is now sub-judice in the SC.

Most State Governments continue to retain contractors and have not decentralised the provision of supplementary nutrition to women's self-help groups despite the unambiguous orders. The battle against the contractor lobby is likely to continue for

some time even as they innovate ways to retain their interests in the ICDS. The Commissioners have pointed out in a note to the SC, discussed at the July 17 hearing at the SC, that the new norms proposed by the Government of India in fact go against the principle of decentralisation.

Despite the odds, the Commissioners office and the legal team have got the overwhelming support of civil society organisations. This support adds strength to their intervention and it is special because working on the details of government programmes has not been a significant area of work for many of these organisations.

Compliance with SC orders has been strongest where local mobilisation has been successful. This has reaffirmed the limited role that legal action on its own can play in securing rights. It has also re-established the strength of mobilising people to assert their rights. The right to food is a political issue that can be resolved only through political means and will not lend itself only to a legal solution. However, this case has also established the ways in which the law can be a facilitator and a catalyst. This, amongst others, may be one of the lasting contributions that the Right to Food Campaign in India will make to the rights discourse in India. ◆ ◆

(Biraj Patnaik is the Principal Adviser to the Commissioners of the Supreme Court)

(Courtesy: InfoChange News & Features)

Scheme To Cover More Districts In HP

Himachal Pradesh Chief Minister Virbhadra Singh has said Shimla, Mandi and Kangra districts will be brought under the National Rural Employment Guarantee Scheme (NREGS) during the next financial year, while extending it to the entire State in the next two years.

Addressing a public meeting at Smah in Chamba district of the State recently, he said the scheme, which was being implemented in Chamba and Sirmaur districts of the State, have yielded encouraging results.

Mr Singh said his Government has urged the Centre to include Kangra, Mandi and Shimla districts in the scheme from the next financial year, which was likely to be

(Courtesy.. UNI)

extended to the entire State in the next two years.

Under the scheme, one member of below poverty line (BPL) family would be provided 100 days of assured employment or remuneration for the same period, if no work was available.

He said the employment would only be provided within the four km radius and special concessions would be provided to women.

The State Government was creating necessary infrastructure to facilitate growing of off-season vegetables, herbs, flowers, aromatic plants and other cash crops for which technical know how could be made available to the farmers, he said. ◆ ◆

Right to Information

CIC AUTONOMY UPHELD

■ Transparency Studies

The exhaustive ruling of the Central Information Commission (CIC) against the Department of Personnel and Training of the Government of India (DoPT) on January 27, 2007 is particularly significant. It counters last-ditch attempts to override the autonomy and authority of the CIC by any Government agency and proclaims the supremacy of the provisions of the Right to Information Act of 2005.

The ruling deals comprehensively with the contentious issues of disclosure of file notings and the continued defiance of DoPT to its decision requiring it to erase contrary advice on its

website that file notings need not be disclosed. It also rebuts the DoPT argument seeking to question decisions that are not taken by a full bench and thus the autonomy of the CIC.

The concluding remark that "the DoPT as the nodal Ministry must realise that it is bound by the provisions of an enactment and it cannot do anything which will be contrary to the provisions of any law" puts an end to any further doubts. It is to be seen if the department now amends its website as instructed.

The following are extracts from the ruling of January 29:

Section 27 of Chapter II: 'Definitions', clearly states, 'File means a collection of papers on a specific subject matter assigned a file number and consisting of one or more of the following parts:

- (a) Correspondence
- (b) Notes
- (c) Appendix to Correspondence
- (d) Appendix to Notes'

This would imply that 'notings' are an inextricable part of a record as defined u/s 2(f) and further defined u/s 2(i)(a) of the Act unless it had been specifically exempted. Without that, by excluding 'notings' from a file, the DoPT would be going against their own Manual and established procedure mandated by them. This would also mean that if, as the Learned Counsel insists, 'notings' are not to be a part of the file, then first an amendment would have had to be carried out on the definition of a file in the DoPT's own manual.

Thus, from whichever angle the provisions of the Right to Information Act are looked into, "file noting" cannot be held to be excluded unless they come in conflict with public interest as aforesaid or are excluded under any of the provisions of the RTI Act, 2005. We therefore see no reason to disagree with the Decisions on the subject pronounced thus far by this Commission. File noting is to be made available to applicants under the Right to Information Act unless they come in conflict with public interest including preservation of confidentiality of sensitive information and are therefore excluded under any of the provisions of the Act.

The issue is decided accordingly.

The Right to Information Act, 2005 seeks to establish a practical regime to ensure that the right to access of information conferred on a citizen is put in actual practice in order to pro-

mote transparency and accountability in the working of every public authority. With that object in view, it provides for constitution of Central Information Commission and the State Information Commissions. In this context, it is pertinent to refer to the preamble of the Act which reads as under:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental there to."

Thus, the constitution of the Central Information Commission is central to the Act of 2005 and the Commission has been constituted to exercise the powers conferred on and to perform the functions assigned to it under this Act. The Act intends to secure complete autonomy to the Commission while exercising its Powers and performing its functions assigned to it under the Act. It will be pertinent to quote the provisions contained in Section 12(4) of the Act which reads as under:

"The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act."

The Central Information Commission is, therefore, expected to work without being subjected to directions by any other

authority under this Act and it is needless to say that any other authority would implicitly include the Government and any public authority. It is also clear that the general superintendence, direction and management of the affairs of the Commission vests in the Chief Information Commissioner and he may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously. The autonomy granted to the Commission would implicitly mean and include that the Commission has the freedom and powers to act independently and effectively for ensuring better management of its affairs. The constitution of the Benches is an integral part of internal management of the affairs of the Commission. If the Commission is of the view that the disposal of cases or discharging of the duties can be better managed by constitution of single or division Benches under these provisions, the Chief Information Commissioner is fully empowered to do so under Section 12(4) of the Act. The comparison with the powers assigned under the Consumer Protection Act 1986 is misplaced since there is no clause comparative to Sec 12(4) in that Act.

The very fact that the Government has already framed the rules and that these rules did not provide for constitution of the Benches makes it very clear that these matters concerning the constitution of Benches and internal management affairs of the Commission were left to be decided by the Chief Information Commissioner and the Commission has been deciding these matters normally in its weekly meetings, the minutes of which are displayed on its web site for the information of the general public. In this context, it may be pertinent to mention that the Commission has so far received more than 4,000 Appeals/complaints and if the contention of the DoPT that the Commission should hear and decide all Appeals and complaints sitting only in full Bench is accepted, it would be amount to rendering the whole enactment meaningless negating the very first words of the Prelude to the Act, "for setting out the practical regime of right to information". No such interpretation can ever be accepted which will make the Act, which confers the right on a citizen to access information totally unworkable. The issue is decided accordingly.

The question that now remains to be decided is as to whether the directions could have been passed by the Commission asking the DoPT to remove its instructions/views displayed on its web site and contained in its Office Memorandum No.10/8/2006-IR dated 2.2.2006 addressed to the Railway Ministry. It is a fact that the DoPT was not a party in any of these cases where the matter concerning "file noting" was decided, but each of the Department/Public Authority has cited and submitted that the DoPT instructions are in conflict with the decisions of the Commission. This necessitated the Commission to direct the DoPT to remove these instructions from their web site which were misleading other public authorities. During the course of hearing, it has been submitted on behalf of the DoPT that the web site contains its views and these are not directions to any public authority. In fact Joint Secretary Shri Ramanujam of the DoPT has, in a closely argued

presentation before us gone to the extent of stating that nowhere have they said that no one should disclose the "file noting" and that they have not stopped any public authority from disclosing "file noting".

One of the arguments that has been advanced on behalf of the DoPT is that the web site reflects the views of the nodal Ministry and not of a public authority and as such no directions can be passed by this Commission on the Ministry. While making these submissions, the DoPT has relied on Section 25 (5) of the RTI Act and has accordingly contended that the Central Information Commission or the State Information Commission, if it finds that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity. The provisions of Section 25 relate to monitoring and reporting implementation of the Right to Information Act. The recommendations given under this Section while monitoring the implementation of the provisions of the Right to Information Act are different in nature. It does not mean that the Commission while deciding a matter under Sections 18 and 19 cannot pass directions or issue orders or that it cannot enforce its decision. Sections 19 and 25 are different and deal with different aspects. The role of the Central Information Commission is advisory while discharging functions under Section 25 whereas it is quasi-judicial when exercising appellate powers under Section 19 of the RTI Act.

In this context, it is pertinent to refer to the provisions of Section 19(7) of the Right to Information Act, 2005 which read as under:

Section 19(7) - "Central Information Commission or State Information Commission, as the case may be, shall be binding."

The DoPT as the nodal Ministry must realize that it is bound by the provisions of an enactment and it cannot do anything or act in a manner which will be contrary to the provisions of any law. No public authority, Government, or statutory organization can ever claim that it is above the law. An authority which has been conferred with powers under a law is deemed to be vested with all incidental or ancillary powers to ensure that the powers conferred on it are effectively exercised. The directions of the Commission are, therefore, binding on each public authority which includes the Ministry of Personnel, Public Grievances and Pensions. The Ministry of Personnel, Public Grievances & Pensions has erred in claiming that it is not the public authority but a nodal Ministry. In fact that Ministry cannot escape its obligations under the Act nor can it take the plea that the Commission can only give recommendations and not issue directions.

In light of the reasons recorded above, the Commission recommends that the DoPT will suitably amend their website and remove all instructions/views which are contrary to the above decision within one month. ◆ ◆

THE BATTLE OF FILE NOTINGS

■ Ajit Bhattacharjea

The year 2006 will go down in history as the year when democracy became an actuality in India, when the equation between governor and the governed altered. It was the year that the innermost defences set up by an entrenched bureaucracy to protect their ultimate source of power - secrecy - were breached. The flag was lowered, surreptitiously and unannounced, towards the end of the year when their remaining missile, an amendment to the Right to Information Act, designed to be fired in the winter session of Parliament, misfired.

The last defence line was thrown round the most precious bureaucratic privilege, anonymity. The Official Secrets Act, imposed before Independence, had enabled officials to recommend or endorse any decision or action, secure in the knowledge that their role would not be exposed to public gaze. With increasing criminalisation of politics and administration, pressures to twist the rules were mounting. This could be done safely as long as the notes they initialled on the relevant files were treated as sacrosanct.

So, moves to enter this privileged ground under the protection of the Right to Information Act had to be resisted, leading to the great 'Battle of the File Notings' of 2006. Defence strategy was devised by the highest bureaucratic command, disguised as the Department of Planning and Training (DoPT). The defences were manned by the cream of the Indian Administrative Service, but their ranks had been undermined from within by renegade bureaucrats who took their pledge to serve the public seriously. The battle was joined early in the year when retired officials, placed in the crucial Central Information Commission, let down their side. They ruled that the right to seek information contained in file notings could not be denied under the existing provisions of the Act.

The DoPT took up the challenge the way it knew best, by trying to change the rules of the game, the existing provisions. A comprehensive amendment to the Act was drafted. Two of its provisions were designed to protect file notings; two others catered to other administrative anxieties. Disclosure of file notings, except in

social and developmental issues; and disclosure of the identity of individuals who put down file notings, were specifically barred. So were disclosure of information pertaining to any examination conducted by any public authority and disclosure of ministerial decisions 'till the matter is complete or over'.

Details of the counter-offensive leaked out after they were circulated to secure key allies. Among those roped in was the Prime Minister. He was persuaded to endorse the proposed changes as designed to "promote even greater transparency and accountability in the decision-making process". But the ammunition DoPT procured had a built-in defect; it exploded on the defenders. It was based on the strange argument that honest officers might suffer unless shielded by the amendment. The public saw it as a means to protect the dishonest.

Originally planned for the monsoon session of Parliament, then for the winter session, the amendment disappeared without trace. No reference to file notings was made by the President or Prime Minister when they addressed the National Convention to celebrate one year of the implementation of the Right to Information Act in October. It was mentioned by the keynote speaker, PC Alexander, a seasoned bureaucrat, but only to ridicule the suggestion that honest officers could be deterred by transparency.

Unwittingly, the DoPT had done a great service to Right to Information (RTI). The chain of angry statements and demonstrations it sparked demonstrated that the movement was unstoppable. The print and electronic media entered the fray. It also helped to publicise the campaign to expand the ranks of the movement with intensive two-week training sessions in cities and towns throughout the country to educate the public on how to deploy the RTI Act to check bribery.

The Battle of the File Notings was the most notable, but it was not an isolated victory. Successful skirmishes were reported throughout 2006. One of the most heartening came from Naraini block of Banda,

The Battle of File Notings was the most notable, but it was not an isolated victory

one of the most backward districts in Uttar Pradesh. No electricity, no roads, no bridge over flooded rivers, the villages were cut off. Conditions had not changed since Independence. But an application filed under the RTI Act demanding information about the District Magistrate's visit and the orders he had passed, and details of how the money allocated to the area had been spent, initiated action for the first time. The application was filed on July 1. Within a month, work began on an approach road, a bridge and on electric connections. A group of NGO volunteers had educated the local villagers on the procedure of utilising the RTI Act.

The Act came too late to help poor tribals of the backward areas of Orissa. But details of their plight in previous years, extracted by the RTI Act and reported in the press, revealed a high level of official persecution. Some tribals were fined for pilfering fruits and forest produce valued as little as Rs 2. Bullock carts and bicycles were seized for theft of produce valued at Rs 10. Such disclosures led to the framing of laws to protect forest dwellers.

(Courtesy: The Hindustan Times)

The poorest of the poor are getting some protection under the RTI Act. Applications for detailed disclosure of expenditure under the National Rural Employment Guarantee Act are discouraging the practice of expanding the number employed and reducing the wages paid.

Elements in the bureaucracy are fighting a rear-guard action to counter the transparency offensive. Applicants are being deterred by levying exorbitant fees for processing information. Penalties for delay are being overlooked. The biggest hurdle is for State Governments to ignore their obligations under the RTI Act.

In this, Ministers are involved. They, too, fear transparency. Information Commissioners are not appointed, or filled with retired bureaucrats known for lack of independence. Public Information Officers, the key officials who receive applications, are not designated. Adequate office space with secretarial assistance is not provided.

A crucial battle was won in 2006 but the war is not over. ◆ ◆

First RTI Call Centre in Bihar

Bihar has become first State in the country to open a call centre for facilitating use of the Right to Information (RTI) by people.

Since a large chunk of rural population is unable to read and write, the Call Centre, named "Jankari" and opened in the last week of January, would prove a boon for them as it would virtually write application on behalf of the complainants. A sum of Rs 10 as fees (under the RTI provisions) would automatically be charged in the caller's telephone bill. The Call Centre's number is 155331.

On their part, the government officers would have to explain the lapses coming to light

through calls to the Call Centre. "Officers would have to be responsive and responsible otherwise severe action could be initiated under the RTI Act. Officers now can't escape," the Chief Minister, Mr. Nitish Kumar said.

As a first caller to "Jankari", he sought information about the target fixed for construction of houses under the Indira Awas Yojana during the current financial year and also the money sanctioned for it. He was allotted a registration number by the call centre. Future queries pertaining to the progress of his information demand would be entertained on furnishing this registration number. ◆ ◆

(Courtesy: Times of India)

OPEN FORUM IN ANDHRA

■ Transparency Studies

On completion of one year of Andhra Pradesh Information Commission, a public hearing was organized in Hyderabad in December. Organized by the Social Audit Council on Information Right in association with CMS, the public hearing was attended by activists from across Andhra Pradesh and by representatives of institutes engaged in training those tasked to implement the RTI Act. The Chief Information Commissioner of Andhra Pradesh answered questions and explained the work of the Commission in the State. As the hearing was the first such open forum in the State, it attracted the attention of activists, academics, senior citizens, freedom fighters, media and the public. Among the 120 who attended, 27 were active participants and another 14 represented various services like the police, forest, public administration etc., who shared their experiences in implementing the Act.

The meet was organized to assess the progress in the implementation of the Act in the State and to chalk out a plan of action for the stakeholders' groups in the State. The day's proceedings brought out the fact that the efforts by the State Government and the State Information Commission so far lagged far short of what was needed to reap the full benefits of the RTI Act. The meeting called for renewed efforts to unleash the real potential of the Act in terms of accountability, responsiveness and transparency of public services at the State, district and grassroot levels. It noted the lack of any evidence to show that the RTI Act was recognized as a potent tool to combat corruption.

Nevertheless, the participants applauded the State Government for promptly providing an impressive infrastructure for the operations of the Information Commission. The State Government should also often reiterate its seriousness at the highest level to send the right message to its officers in the districts and other service agencies. It felt that the composition of the Information Commission should be made more inclusive and more specifically that it should have a woman and a tribal as Commissioner.

The hearing expressed its disappointment that the three most important sections of society who could make effective use of the RTI were either unenthusiastic or, at best, showed occasional interest. These

were political parties and political leaders, news media and civil society groups. It called upon these sections to realize the significance of the Act, show their concern and take initiatives.

After prolonged deliberations, the public hearing made the following recommendations for the consideration of the Government and the Commission so that the second year of the RTI Act became more effective and its efficacy felt widely:

The Information Commission should use Telegu in all its correspondence, including printed material like instructions, manuals etc. As regards holding hearings, instead of calling every one to Hyderabad, it should bunch appeals district-wise often and go to the concerned district to hold hearings there. It should avail the opportunity to hold public hearings or address as many local citizens' and society groups as possible to instill seriousness among various public service departments in the district. Such meetings in the district should help minimize delays in attending to the appeals and also ensure suo motu initiatives. The Commission should find ways to cut short the process to minimize the backlog.

While appreciating the State Government's gesture in exempting application fees for seeking information at the Panchayat level, and for making it only Rs5 at the Mandal/Block level, a step not taken anywhere else in the country, the hearing suggested that until a judicial stamp or a postal stamp for an RTI application becomes acceptable, as in the case of a revenue stamp, the procedure for payment of fees should be made simpler and easier even if it is by cash, and it should be accepted across all levels. In any case, all offices should also be advised to issue receipts for such payments promptly.

The Commission should bring out its annual report regularly with full details about implementation of the Act by various public services. After presenting the annual report to the State Assembly, the Commission should make it available to the public. The Commission should also ensure that the directory of PIOs and APIOs is brought out district and servicewise and widely available, specially in public libraries. Wherever possible, such directories should give sources of help and assistance for availing the provisions of the Act.

Political parties and mass media should also be

brought under the purview of the RTI Act and should be made accountable. Further, the State Government should have a Standing Advisory Committee to facilitate the functioning of the Information Commission. This should have grass-root level activists with public standing but political activists and affiliates should be kept out.

The Government should provide budgetary support to District Collectors or provide them with necessary software for documentation and networking of public services at various levels. Similar efforts should be made for critical departments at the Secretariat.

It would be useful if the Commission's judgements, now on the website, is promptly released to news media and also encourage the presence of the media at the hearings. Another important aspect relates to maintenance and retrieval of records, the key elements for the successful implementation of the RTI Act. The Government should provide specific mechanism for ensuring record maintenance and on-line management vertically and horizontally

among services and levels.

Training and orientation of PIOs and front-end offices being critical, serious efforts should be made to provide specific mechanism. Such facilities should be extended to civil society groups wherever possible. PIOs should be linked through a network to make their task more effective.

The State Government should provide periodic awareness campaigns about the RTI Act. At various levels and for various sections of society. To do this there should be enough budgetary provision so that the Information Commission could evolve a proper communication strategy.

While appreciating the initiatives taken by the Social Audit Council and the CMS, the public hearing resolved that these recommendations should be conveyed to the Chief Minister and others concerned. The participants wanted the Council to continue its efforts towards analyzing the Act's implementation, sensitizing the public and networking with civil society groups and news media. ◆ ◆

RTI in Chhattisgarh Schools

Chhattisgarh is introducing the Right to Information Act (RTI) in school curriculum in a move aimed at making its people more aware of their rights at an early age and growing a culture of transparency in the young State. Council for Educational Research and Training has decided to include an extensive chapter on the RTI Act in its proposed books for class VIII in the upcoming academic session in what may be the first such attempt in the country.

SCERT director Nand Kumar told The Indian Express that it is an attempt to make education more relevant and practical for school students. "Our decision to introduce a chapter on RTI aims at providing the power of knowledge to our students," he said. Kumar is also the secretary of an agency for the implementation of the RTI Act in Chhattisgarh.

"The chapter is being introduced in the syllabus

on an experimental basis but we aim to make it a permanent part of curriculum for students of social studies in all senior classes," Kumar said.

The chapter, titled Suchna Ka Adhikar, in the social science book for class VIII explains through examples how it can be used to protect a person's rights.

It also details how a person can approach a government department for certain information, how and what amount of fees need to be paid and what the grievance redressal mechanism is, if the person is dissatisfied with the information provided by the authorities.

A case study in the chapter depicts how a group of daily-wage labourers, in a backward Chhattisgarh village, were being paid lower than mandated wages. A labourer's niece comes to know of the Act and files a petition under it, and secures the correct wage for the workers. ◆ ◆

(Courtesy: Times of India)

RTI NOTINGS

Response to Call Centre

"Hello, I'm calling from Fatehpur. The ration shop near my house is refusing to give me my ration. I was told you can help me out. My name is Ram Khiladi. I'm a fruit seller..."

"I am Dr Neeta Gupta calling from Jammu. I'm facing some problem in getting my voter ID done. Can you tell me if the Right to Information Act applies to my State?"

"My name is GV Manjunathan and I am calling from Bangalore. Some people are encroaching on the land in front of my house. I want a plan of the road in front. Can you tell me how I can get it using my Right to Information, and who should I contact?"

These are some of the 100 calls received every day by the first national RTI helpline (92504-00100) launched two months ago. Farmers or celebrities, residents of Kashmir or Kochi, people seek assistance on a range of problems - some want to know what RTI is and some ask how and where the form should be submitted.

The Gurgaon-based Call Centre, to which the
(*Courtesy: The Indian Express*)

helpline is routed, says it has received almost 6,000 calls so far.

"The response has been better than we expected. In the first month, almost all calls were from cities. But now, about a third come from small towns and villages," said an assistant manager at the BPO, not wishing to be named.

The Centre, financed by the Manjunath Shanmugam Trust, was set up to help people exercise their right to information, as many of those who knew about the RTI Act were not familiar with the procedure of using it.

"The number of calls coming in every day has been on the rise. A substantial number of callers are those wanting information from the municipal authority or the passport office," said the leader of the 10-member team which answers the calls.

"We also get many calls from people complaining about the police," he added.

The team has been specially trained by RTI experts on the provisions of the Act and on how to use them. ◆ ◆

Route to School Admission

The day starts early for five-year-old Lokesh. Going to school is the best part of his day and Lokesh will miss it for nothing, not even sleep.

In another house in east Delhi's Sundarnagari, little Harsh is getting ready to join Lokesh. But it wasn't like this always. The journey from their homes to the public school has not been easy.

Pushpa, Lokesh's mother says: "When we went to the school to deposit the admission fees they refused to give us the form. They said they wouldn't fill the names of our children here. We asked why and they replied they won't accept admissions of children from poor families."

(*Courtesy: The Indian Express*)

Under the Weaker Sections Act, public schools are supposed to give free admission to poor children. But most schools don't follow it.

When Pushpa applied for her son's admission in Nutan Vidya Mandir, they gave the admission but demanded a huge sum of money as development charges. Pushpa filed an RTI in the Education Department.

An appeal to the public grievance committee forced the school into admitting the children and refunding their money.

Once aimless and carefree, today these kids proudly narrate stories and recite poems. ◆ ◆

Maharashtra Lags in Implementation

Whereas primary data of RTI applications in the country is not available in the country, secondary data, based on Second appeals and Complaints received by the Information commission, is a fair indicator of the number of RTI applications received, and more importantly the level of RTI awareness amongst Citizens. By these criterion, Maharashtra appears to lead the country, with its high level of usage and awareness. According to the data received so far, most State Commissions have received less than 2000 second appeals and complaints until December, 2006. The Central Information Commission, which is the second appellate authority for all the Central Government bodies in the Country has received a total of 4939 second appeals and complaints.

Maharashtra Information Commission has received 6641 second appeals and complaints until December. This is a clear indicator that citizens are using RTI extensively and have also become

(Courtesy: Times of India)

reasonably aware and skilled, so as to be able to file second appeals and complaints. The other interesting feature of this is that the second appeals and complaints under RTI have come from all the revenue divisions in a fairly well distributed manner. This clearly shows that RTI movement has gone deep across the State of Maharashtra, and is not limited to certain regions. The Maharashtra Government was found clearly lagging in the implementation of the RTI Act.

On RTI, its actions appear to be responsive only to Anna Hazare's threats. It provided only one Information Commissioner to meet the huge demands, whereas Assam had two, and Kerala four. When Anna threatened an agitation, it immediately swore in two Commissioners and has now selected four more. The opaque method of its selection of Information Commissioners continues, and it appears the Governor has withheld his assent for one of the Commissioners.



Discoms Are Covered

The Central Information Commission's decision to declare power companies to be "public authorities" and therefore within the purview of the Right to Information Act appears to have set the discoms against the DERC.

The discoms say they would rather provide information through the DERC and not be brought under the RTI while the DERC says the discoms are "taking recourse to technicalities to get away from the RTI".

As per the CIC order, the power companies are required to appoint Public Information Officers (PIOs) by February 1. They are also required to inform the public by putting up the details of the RTI infrastructure on their websites. For now though, the discoms are "studying the CIC order" and are in no hurry to implement it.

A DERC member, who did not wish to be quoted, says they have always said that the discoms

(Courtesy: Indian Express)

should, in "the spirit of the RTI Act appoint PIOs" since they provide a "public service".

The CIC does not want to continue to receive RTI applications seeking information from the discoms while the DERC says that it is "not willing to act as an information box" as it is a regulatory body and not an information provider. "The consumer should be approaching the discoms directly and not through us," it says.

BSES says the discoms are "studying the order and deliberating whether to challenge it in Delhi High Court". They are opposing the order on several grounds, one of which being that it requires new staff to be appointed, "virtually creating another bureaucratic structure".

The discoms are ready to continue to provide information to the DERC if asked but want to stay out of the RTI's loop. They maintain that all the information is available on their website anyway.



TRANSPARENCY STUDIES

The Right to Information Act 2005 represents a historic breakthrough in recognising the citizen's democratic rights to monitor measures affecting the public good. Following adoption of the Act by the Parliament of India, the Centre for Media Studies (CMS) set up a Transparency Studies wing to document, examine and publicise the interrelation between governance and society in all its aspects. It facilitates dissemination of relevant material, confers with experts and field workers and networks with the media to promote implementation and awareness.

The functions of Transparency Studies include:

- Publishing and distribution by electronic mail of *Transparency Review*, a journal designed to publicise news, articles and documentation concerning developments in Right to Information and the overall interface between governance and society. Priority is given to right to education, especially of children; right to work; right to justice and associated human and social rights, especially at the grassroots.
- Operating Transparency Features to disseminate articles and information on the above.
- Linking with civil society groups to further common objectives like exposing corruption, monitoring elections, improving civic services.
- Arranging discussions on emerging issues and problems between specialists and mediapersons.

CENTRE FOR MEDIA STUDIES (CMS)

Centre for Media Studies (CMS) is an independent professional forum engaged in research, policy advocacy, advisory services and programme evaluation. CMS promotes accountability, responsiveness and transparency in policy-making in public systems and services. CMS debates and dialogues on important public issues are appreciated nationally.

