



Transparency Review

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PANCHAYATI RAJ, 60 WASTED YEARS!

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Editor: Ajit Bhattacharjea

PANCHAYATS: THE FOUNT OF POWER

Sixty years ago, people poured out of villages and towns throughout India to celebrate the achievement of independence. Nothing like it was known before; nothing after. Many travelled in bullock cart trains overnight to attend the first raising of the Tricolour by Jawaharlal Nehru in New Delhi on August 15, 1947. They crowded the vast lawns up to the Central Secretariat, making it difficult for Lord Mountbatten, the new Governor-General (who had been the last British Viceroy up to the previous midnight), to drive back in his ceremonial coach. The ring of security personnel, now so prominent, was missing, but the crowd willingly made way. The new Prime Minister was lost in the crowd, but was given a lift in the Governor-General's coach.

During the long years of the struggle for freedom, people had responded in millions to Mahatma Gandhi's call. They had been killed, lathi-charged, imprisoned, fined for doing so. This was their day. Their leaders had been less willing to risk their lives; they were eager to fill the high offices vacated by the departing British with minimal disturbance. The people expected

a peaceful revolution, as promised by the Mahatma; the leaders a painless transfer of power.

The role of people's power, however, could not be ignored. It was recognised in official documents and on ceremonial occasions, like Republic Day. The Constitution of India, that took effect that day, is in the name of "WE THE PEOPLE OF INDIA" and pledges to them Justice, Liberty, Equality and Fraternity, encapsulating their Fundamental Rights. The struggle for these rights continues since then, encountering resistance by elements of the political leadership and bureaucracy whose powers are reduced.

In our country, panchayats are the fount of people's power. Their basic role is recognised in the Constitution, more specifically by the 73rd Amendment pushed through by Prime Minister Rajiv Gandhi. But obstacles continue to be placed in their path, as described in this issue of Transparency Review. We are particularly grateful to the embattled Minister for Panchayati Raj, Mani Shankar Aiyer, and one of its most experienced and articulate proponents, Lakshmi Chand Jain, for contributing to it.

Letters To The Editor

I have gone through the latest issue of TR with interest. I deeply appreciate your write-up: "Mayawati Debunks Media, Money & Muscle Power". It is interesting, informative and educative and an excellent guide for the politicians. You have, indeed, done a service to the nation by making the events transparent. I appreciate you for giving an exposure with forthright boldness. May your tribe increase.

Abid Hussain, former Indian envoy to the U.S.

I thank you very much for sending the latest issue of Transparency Review. I found the information and the analysis of great value.

D.R.Kaarthikeyan
Former Director, CBI

The U.P. results must make us examine why the media is consistently failing in psephology. What is the root of the disconnect between voter behaviour and the media's attempt to guess it? It may be worthwhile for CMS to apply a sharp piercing look at the track record of the media both print and electronic. Is there a Murphy's Law operating in the media when it comes to elections? The NDA's India Shining campaign of 2004 will remain a perennial example.
N.Vittal, former Chief Vigilance Commissioner

Thanks for your e-mail attaching transparency review April-May, 2007. It is a very good idea on the part of the CMS. It is timely, informative, useful and enlightening. Kindly keep it up!

P.P. Rao Senior Advocate, Supreme Court



PANCHAYATI RAJ IN INDIA

■ Mani Shanker Aiyer

Panchayati Raj in India, in terms of the size of the electorate, the number of grassroots institutions (about 2.4 lakh), the number of persons elected -36 lakh in the panchayats and Nagarpalikas, higher than the entire population of Norway - and in terms of the empowerment at the grassroots of women is the greatest experiment in democracy ever undertaken anywhere in the world or at any time in history.

No less than 10 lakh women have been elected to our Panchayati Raj Institutions, constituting some 37 percent of all those elected and rising to as high as 54% in Bihar which has 50% reservations for women. There are also reservations for the Scheduled Castes, the Scheduled Tribes and the other backward classes in proportion to their share of the population in each panchayat area.

The Ministry of Panchayati Raj is a unique, first-ever innovation of the UPA Government. No previous government has had a separate Ministry or even Department of Panchayati Raj. The Ministry came into existence on May 27, 2004. Understandably, its first task was simply to establish itself, a process that took up much of its initial time and energy. Nevertheless, it threw itself into the substance of its work right from the word "Go" and has over the last 30 months started making a mark in the governance of the nation. Dr. Manmohan Singh, set the tone by calling his very first Conference of Chief Ministers on June 24, 2004, less than a month after the Ministry came into existence, on the subject, "Rural Prosperity and Poverty Eradication through Panchayati Raj."

The mandate of the Ministry of Panchayati Raj is enshrined in Part IX of the Constitution ("The Panchayats") read with Article 243 ZD of Part IXA relating to the District Planning Committees and the eleventh Schedule which illustratively sets out a list of 29 matters, which might be considered by State Legislatures for devolution to the panchayats in respect of the planning of economic development and social justice as well as the implementation of

"entrusted" schemes of economic and social development such in a manner as to ensure that they function as "units of self-government."

However, the Constitutional conundrum faced by the Ministry is that while its first and most important duty is to ensure conformity to these Constitutional provisions, the same Constitution charges the States, not the Centre, with the responsibility for devolution.

The processes and content of the devolution, of functions finances and functionaries - the crux of power to the panchayats - are vested entirely in State Legislatures, reinforcing the inclusion of Panchayati Raj in the State List of the Seventh Schedule.

Thus the Constitutional order makes it imperative that a national consensus be evolved through mutual consultation between the Centre and the State on the Road map of Panchayati Raj. To this end, the first task to which the fledgling Ministry addressed itself was the convening of no less than seven Round Tables of State Panchayati Raj Ministers with the Union Minister, within the space of a mere 150 days between July and December 2004, to discuss the 18 identified dimensions of Panchayati Raj ranging from the effective devolution of the three Fs - Functions, Finances, Functionaries - to District Planning, raining and capacity Building and IT-enabled e-governance.

At the conclusion of each Round Table, action points were drafted and accepted by consensus; at the conclusion of all the Round Tables, the totality of nearly 150 action points comprised in the compendium were unanimously adopted by all Panchayati Raj Ministers and referred to Chief Ministers for their approval. No objections were received and thus was launched the National Roadmap for effective Panchayati Raj.

There are some priority areas for immediate concerted action. One is the indispensable need for the preparation of detailed Activity Maps for the devolution of functions clearly spelling out the activities with respect to each devolved function which are to be attributed to each level of the three-

tier Panchayati Raj system so that there is no ambiguity at any level about the tasks entrusted to them or any overlapping of duties. Ministers of Panchayati Raj have agreed that ideally such devolution of activities should be undertaken on the principle of subsidiarity which holds that any activity which can be performed at a lower level should be undertaken only at that level and at no higher level.

The other is, based on the Activity Map and in conformity with that pattern of devolution of functions, the opening of a Panchayat Sector Window through the insertion of an appropriate budget line in the budgets of relevant line departments of the State Government to ensure the flow of funds for undertaking devolved activities to the panchayats at the level to which any given activity had been devolved is another priority.

In conformity with the pattern of devolution of Functions and Finances, the devolution of Functionaries to the level of the Panchayati Raj system to which any given activity has been assigned in the Activity Map is also necessary.

If States have been somewhat tardy in getting Activity Maps ready, Union Ministries at the Centre have been no less tardy. Indeed, given the significance of Central Government funding through Central Sector and Centrally Sponsored Schemes to the finances available to the panchayats, it can hardly be over-emphasised that it is Central Ministry Activity Maps that would set the stage for both the functional and, more importantly, the financial empowerment of the panchayats. Yet, although the Cabinet Secretariat issued instructions in October 2004 to all Union Ministries to review their Central sector and Centrally Sponsored schemes within three months to ensure the centrality of Panchayats with respect to planning and implementation, it has subsequently been found that Activity Mapping of Central Ministries is a more time-consuming business than initially anticipated.

This is partly for reasons of procedure and partly for reasons of resistance. Where mindsets have changed, the changeover to Activity Mapping has been smoother. Thus, new schemes launched by the

UPA government, such as the Backward Regions Grant Fund and the Planning Commission's guidelines for the Eleventh Five-Year Plan make Panchayati Raj the sine qua non of planning and implementation of economic development and social justice at the grassroots. The National Rural Employment Guarantee Act not only designates the panchayats as the "principal authority" for the planning and implementation of NREGP, the Act itself spells out the specific duties of the panchayats at each level with respect to the programme, thus rendering the provisions of the Act itself the Activity Map for the Programme. Equally, the Rural Electrification Policy, the Rajiv Gandhi Vidyutikaran Yojana, the National Rural Health Mission and the Jan Kerosene Yojana have a significant and central Panchayati Raj component. There are also some pre-UPA programmes which have now introduced the most telling amendments to

bring Panchayati Raj center-stage such as the Sarva Shiksha Abhiyan, the Mid-Day Meal Scheme, the National Literacy Mission, the Rajiv Gandhi Drinking Water Mission and the Total Sanitation Campaign. The Ministry is engaged in discussion

with the authorities concerned on such key schemes as ICDS, schemes of the Ministry of Social Justice and Empowerment, the legislation moved by the Ministry of Tribal Affairs on tribal forest rights and the resettlement and rehabilitation of displaced tribals, and schemes of the Department of North-East Affairs. The critical role of Panchayati Raj in containing the menace of Naxalism and other forms of terrorism and insurgency is also high on the Ministry's agenda. So is the question of panchayats and agriculture, particularly agricultural extension services which, by and large, have fallen into disarray and without which a Second Green Revolution will be difficult to attain, especially bearing in mind the great significance of extension to the success of first Green Revolution. There also remains considerable scope for increasing the involvement of panchayats in Bharat Nirman Programmes.

Perhaps the most important lesson to learn from past experience the "Big Bang" approach. That is to say, instead of incrementally moving towards



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devolution, it would be best to place confidence in the panchayats and go for substantial devolution in one giant step. Panchayats around the country have demonstrated that the greater the responsibilities bestowed on them, the quicker is capacity building. So, instead of gradually building up capacity and laboriously undertaking academic exercises in training panchayat members, it would be best to entrust serious and substantial powers to Panchayats immediately and rely on hands-on experience of administrative work to train the panchayat members in their duties. The Ministry is in the process of evolving a Gram Swaraj scheme to reinforce such a "Big Bang" approach to devolution by making available funds for building capacity and undertaking formal training exercises.

The Ministry is of the view that devolution targeted at securing the aims and objectives of Part IX of the Constitution needs to be incentivised. On the one hand, States need to be incentivised to promote better and quicker devolution to the panchayats. On the other hand, panchayats at all three levels need to be incentivised to ensure greater transparency and accountability to Gram Sabhas. In turn, Gram Sabhas (and Ward Sabhas or equivalent) need to be empowered and sensitised to rise to their responsibilities for performing their role as the People's Parliament to undertake democratic checks and balances on the executive authority of the panchayats, especially the Panchayat President and Panchayat Secretary.

The Gram Sabha is the fulcrum of the democratic process and the only guarantor against Panchayati Raj becoming a vehicle for the decentralization of corruption. Effective social audit, combined with detailed formal audit, has the potential to do wonders for transparency and accountability in the Panchayati Raj system. The sixth Round Table at Guwahati in November 2004 set out detailed steps to be taken, in the interest of good governance and transparency in transactions, for formal audit and accounts as also for social audit through the Gram Sabhas. To do so effectively, legislation to mandate the Gram Sabhas to undertake their tasks with statutory powers, including the powers mentioned above, is an objective to be realised. If there is poor

attendance at Gram Sabhas/Ward Sabhas at present, this is less due to the indifference of local communities than due to Gram Sabhas not being effectively endowed through appropriate legislation with the statutory powers they require to become meaningful institutions of democratic advice and consent, with checks and balances. The road to corruption-free Panchayati Raj lies through effective Gram Sabha control over the abuse of executive authority by panchayats and their staff.

Beginning with the 10th Finance Commission, constituted after the passage of the 73rd and 74th amendments to the Constitution, the Finance Commission (hereinafter referred to as the Central Finance Commission to distinguish it from the State Finance Commissions) has been giving directions with regard to the finances of the Panchayati Raj Institutions (PRIs).



The Twelfth Finance Commission (covering the period 2005-10) has set aside as much as Rs. 20,000 crore to be directed to the PRIs, largely in the form of relatively untied grants. By the expression "relatively untied" is meant that while some priority areas have been indicated, by and large

it is proposed that the panchayats themselves determine their own priorities and the allocations they will be making among competing demands. It is particularly significant to note that the fourth and subsequent instalments of Twelfth Finance Commission (TFC) grants are contingent on the presentation of utilization certificates by State Governments certifying that the funds from the earlier instalment have in fact reached the panchayats. This is in keeping with the injunction in the National Common Minimum Programme that funds meant for Panchayats should reach them "without delay or diversion".

As at the time of the Review and Appraisal, a regrettably large number of States have not applied for and secured their instalments in due time and far too many of them have delayed disbursement to the PRIs. It would also appear that in some States, other agencies, such as MLAs, are being given a voice (formally or informally) in determining allocations from TFC grants. This requires joint monitoring by the

Ministry of Finance (which is the disbursing authority) and the Ministry of Panchayati Raj, a matter requiring the urgent attention of both Ministries.

While the baleful effects of money power and muscle power, as well as class power and caste power, in PRI elections cannot be denied, equally it cannot be denied that repeated rounds of elections to lakhs of Panchayati Raj Institutions around the country constitutes a democratic miracle without parallel in the world or precedent in history.

The answer lies not in abandoning the democratic process but in cleaning up PRI elections. To this end, State Election Commissioners have banded themselves together in an independent forum where their vast and diverse expertise is pooled concerned. They were also kind enough to undertake a review on the eve of the Guwahati Round Table in November 2004 and send a representative to participate in the animated discussion that took place on these issues. In consequence, the Guwahati conclusions constitute the basic mandate of the Ministry and Departments of Panchayati Raj across the country to ensure free and fair elections.

The Election Commission at the Centre too has been apprised of many of the concerns of the State Election Commissioners. The Ministry of Panchayati Raj is regularly informed as are, of course, the State Governments.

Through this process of interaction, two critical issues appear to be on the verge of getting sorted out, especially in the light of the most recent judgment of the Supreme Court in this regard: one is the question of a common Voter List for State Assembly and Panchayat elections; the other is the use of Electronic Voting Machines (EVMs) for PRI elections.

Cynics and vested interests are often dismissive of Panchayati Raj as amounting merely to the decentralization of corruption. While corruption in any form or at any level of governance is, of course, to be deplored and eliminated, the answer lies in putting in place systemic measures which would cap, reduce and eventually eliminate the scope for corruption.

The Ministry is deeply concerned over the dangerously slow and incomplete manner in which PESA [Provisions of The Panchayats (Extension to Scheduled Areas) Act, 1996] is being implemented in the Fifth Schedule areas of the nine States of the Union where the Fifth Schedule applies.

Given the special attention that the UPA Government is paying to the socio-economic dimensions of tackling Naxalism and other forms of

tribal insurgency, as well as specific attention to tribal forest rights, the definition of "minor forest produce" and resettlement/rehabilitation issues, PESA comes to the forefront as the single most important statutory instrument for protecting and promoting tribal rights and the

involvement of tribals in local government. Indeed, in the view of the Ministry, PESA is the best legislation on Panchayati Raj anywhere in the country and it is the implementation of PESA in tribal areas which could well set the tone for improved Panchayati Raj in non-tribal areas. To this end, the Ministry has been working in close association with the Ministry of Home Affairs, the Ministry of Tribal Affairs and the Department of the North-East Region (DoNER).

Speaking in the Lok Sabha on August 7, 1989, while introducing the 65th amendment, Prime Minister Rajiv Gandhi said:

"We are also conscious of our work on the Panchayats being unfinished because we have not yet dealt with the Nyaya Panchayats.... This work will be a major priority for our Government."

Accordingly, the Ministry has supported the Ministry of Law's proposal of Gram Nyayalayas as the grassroots foundation of the formal judicial system. In turn, the Ministry of Law has been supportive of the Ministry of Panchayati Raj's proposal for Nyaya Panchayats as the alternative dispute resolution mechanism at the grassroots. An Expert Committee was set up under the Chairmanship of Prof. Upendra Baxi, former Vice-Chancellor of Delhi University and now at Warwick. The Committee has presented its report and draft legislation for Nyaya Panchayats, which is under process.



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The Ministry of Panchayati Raj is opposed in principle, to the "two-child norm" adopted in some States in terms of which candidates or elected members are disqualified from serving in PRIs if they have more than two children. The discriminatory and baleful consequences of this norm, particularly in terms of gender discrimination, have been well brought out in a pioneering work of research published by Nirmala Buch in *The Economic and Political Weekly* in June 2005.

However, the matter falls entirely in the jurisdiction of the States. As such, the Ministry can do no more than advocate the abolition of the norm. Some measure of success has been achieved with, for example, Himachal Pradesh; Madhya Pradesh had initially made a similar announcement but subsequently modified the two-child norm to a "three-child norm" and other States concerned, namely, Andhra Pradesh, Chattisgarh, Orissa, and Rajasthan, have the matter under consideration.

Panchayat Yuva Khel abhiyan aims at synergising funding to panchayats with management by the NYKS

youth clubs to ensure at least minimum organized games facilities in all village panchayats within the next five years. This is an ambitious programme which seeks to converge existing rural development schemes with additional Central/ State and voluntary funding to afford some 45 crore rural children, adolescents and youth who are today with no access to organized sports facilities with such access. The proposal is under formulation.

To realize the daunting role for panchayats and business enterprise set by the Prime Minister, a National Presentation on Rural Business Hubs was held at Vigyan Bhavan in November 2004, which was attended by about a thousand PRI representatives and some 250 CII representatives. This led to the Ministry for Panchayati Raj and the Confederation of Indian Industries setting up a joint RBH Council at the national level under the co-chairmanship of the Minister of Panchayati Raj and Sunil Munjal, who was CII President at the time of the National Presentation. Jairam Ramesh, Minister of State for Commerce and Industry, has

agreed to serve as Vice-Chairman. Counterpart State RBH councils have thus far been set up in nine States.

The objective of the RBH initiative is to promote at least one Rural Business Hub in each development block of the country by bringing to the attention of business houses, in both the public and the private sector, the kind of product or skill available in these blocks which are based on local resource endowments, felt needs of the people, and the relative absorptive capacity of the local community- the three criteria adumbrated by the Prime Minister. In consultation with State Governments and the panchayats themselves, the Ministry of Panchayati Raj has identified some 850 blocks and their local resource endowment. The products/ skills have been brought to the attention of the CII members through the RBH secretariat.

Compared, however, to the vast potential of rural India and the imperative of bridging the rural-urban divide, progress so far has been less than satisfactory. This is widely recognized and, therefore, CII is redoubling its

efforts to interest its members, Meanwhile, the Ministry has widened its ambit of interaction of RBHs to the Junior Chamber International, the Madras Chamber of Commerce and Industry, and the Southern Indian Chamber of Commerce and Industry. Both FICCI and ASSOCHAM have expressed interest in being associated with the RBH Initiative. Our objective is no less than catching up with and overtaking China's Township and Village Enterprises and Thailand's OTOP (One Tambon/One Product). In view of the very successful involvement in OTOP of JETRO (Japanese External Trade Organisation), conversations have been opened with JETRO in collaboration with CII.

Business enterprises have tended to think of RBHs as another Government "scheme" which will give them access to financial concessions and incentives or as a shelf of readymade DPRs from which they can pick and choose. When they find that this is not so, their initial interest has tended to wane. It has been necessary to explain to them the relatively new concept that RBHs are a means of mobilizing and converging existing schemes and



institutions, including such project reports as institutions like KVIC have readily available. It has also been necessary to explain to them that PRIs are the Constitutionally-sanctioned institutions of local self-government in rural areas and, therefore, a governance relationship with them would be in the interest of the business enterprises themselves, especially where the first link in the value chain is a product or skill that is locally available or where the mobilization of large numbers of local people to promote the enterprise or overcome community resistance is required for the success of the enterprise.

It also needs to be understood that a mere buyer-seller relationship between local producers and a business enterprise does not constitute a Rural Business Hub. There has to be an integral business relationship established between decentralized mini-production units, such as individuals, families and Self-Help groups, on the one hand, and the business enterprise, on the other. This leads over time to standardization and upgradation of quality, as well as product differentiation and higher output, through technological and management inputs provided by the business enterprise to the decentralized production units, reinforced by access to bank credit that should increase exponentially with the involvement of the business enterprise, and subsequently extend to the procurement of additional supplies of raw materials. In other words, the additional marketing opportunities afforded by the initial buyer-seller relationship between business enterprises and local decentralized production units should, over time, be expanded and diversified to cover all dimensions of an integrated business relationship across the value chain without mitigating or dam-

aging the essentially decentralized nature of the production process. The Ministry has thus tried to advocate the concept of "Haat to Hypermarket" as the overarching goal of Rural Business Hubs to promote rural prosperity, increase rural non-farm employment opportunities and alleviate rural poverty and distress.

Business enterprises have been generally conservative and cautious to respond to the RBH initiative but the co-chairman of the National RBH Council is confident that once the idea catches on and a string of pioneer RBHs comes into existence, the RBH initiative will acquire a momentum of its own. Some initial contacts made with well-known large domestic and multinational enterprises appear to indicate that this may well be so.

It is extremely disturbing that illegitimate and possibly illegal bodies give themselves the name "Panchayats" and, basing themselves on extremely

reactionary social practices and even social abuse, give the Panchayati Raj movement a bad name. Tragically, the retrograde actions of these 'khap' panchayats (and similar other caste-based organisations) is rather more widely reported in the media than the regular work of

the Constitutionally-sanctioned PRIs thus giving the impression that it is the PRIs themselves who are responsible for such deplorable behaviour.

These illegitimate caste-based associations are not "Panchayats" in the Constitutional sense of the term and have no legitimacy in terms of the Constitution or the law.

The Ministry of Panchayati Raj is initiating steps designed to reserve the expression "Panchayats" exclusively for "The Panchayats" referred to in Part IX of the Constitution. ◆◆



(Excerpts from an article written by the Minister for Panchayati Raj in the Ministry's publication on "The State of Panchayats - A Mid - Term Review and Appraisal")

RURAL GOVERNANCE

KARNATAKA SUBVERTS MOVEMENT

■ L.C. Jain

Twenty years ago, Karnataka hit the headlines when it pioneered 'grassroot empowerment' via the Government route. It worked well but only for a while. For soon, the State legislators and bureaucracy began to experience disempowerment and loss of their fifty-year old well-entrenched rural turf. They let loose hostile winds and fractured the grassroot empowerment process set in motion by the Hegde government in 1987. The newly planted grass for empowerment had not yet acquired internal strength or immunity against external assaults.

The process of grassroot empowerment however began to be revived across the country with the enactment of the 73rd Constitution Amendment in 1993 whose stated objective was "to impart certainty, continuity and strength" to elected panchayat institutions from Gram Sabha upwards. The start was promising but those hostile to democratic institutions of self-government and independent grassroot leadership were not deterred from their stance. It was not a matter of difference of opinion but conflict of interest. They set about thwarting even the Constitution backed panchayat bodies by multiple means.

The prevalence of such sabotage were brought out in the open in 2002, by a Standing Committee of Parliament (with MPs across parties and from both Lok Sabha and Rajya Sabha) which was set up to review the progress of implementation of the 73rd amendment in the 10-year period 1993-2002. The Committee found that the process of implementation by the Central and State Governments was not only 'woeful' but "the States were wilfully flouting Constitutional provisions" Imagine a more severe indictment.

Example: time-bound regular elections were mandated by the Constitution Amendment 73rd under an independent State Election Commission to ensure 'continuity and certainty', but these were anathema to the hostile camp. The Committee reported that at one stage, the Supreme Court had to intervene and rule that "the concerned States cannot be permitted to withhold election of panchayats ... It will be unfortunate if the States remain insensitive to the Constitutional mandate". The apex court also held that "any legislative device of the government which comes into direct conflict with the mandatory provisions of Article 243E of the Constitution, such device has to be declared as ultra vires of the said provisions of the Constitution."

As for the further objective of the 73rd Amendment to impart 'strength' to panchayats, it was the same story of flaunting the Constitution. The Committee observed that even after ten years, the Panchayats are lacking in "a framework in conformity with the provisions of the Constitution to devolve appropriate powers so that the elected bodies could be made functional in totality." It was "constrained to note that most of the States are yet to fully and conscientiously implement article 243G of the Constitution". So even where elections had been held, panchayats remained an empty box.

Besides, the Committee found that the extent of devolution of financial resources to panchayats remains peripheral. The bulk of the budgetary sums related to 29 subjects mentioned in the Eleventh Schedule (assigned to panchayats by the Constitution) are still retained by governments in their own hands. "More than Rs. 40,000 crore of the total annual plan outlay under the Centrally-spon-



sored/Central Sector schemes and about Rs. 31,000 crore of the annual plan outlay of the State plans, partly or wholly, are retained and spent by the Government through departments and officials.

Such severe indictment by the Parliamentary Committee failed to shock or deter one bit the nexus of MLAs and bureaucracy backed even by many MPs. In the recent five years (2002-2007), there has not been any worthwhile improvement in the empowerment of panchayats let alone imparting them 'certainty, continuity and strength'. If anything, panchayats are being further emasculated. The elected MLAs and bureaucrats who are otherwise on oath to preserve, protect and promote the Constitution continue with impunity to trample on the autonomy and dignity of 'institutions of self-government' created by the Constitution of India.

The most flagrant and recent (2007) example of assault on the spirit and letter of the 73rd Amendment is the attempt of the Karnataka legislators to 'legally' dislodge the elected panchayats from some of their 'constitutionally' mandated functions and to transfer the latter to the committees headed by MLAs. Fortunately, for the present their manoeuvre has been foiled by the principled stand taken by State Governor TN Chaturvedi. The reasons given for returning the proposed Bill are most instructive and have a wider national relevance. To quote:

"I have received several petitions and representations criticizing and opposing the aforesaid amendments from citizens, panchayats, NGOs and concerned intellectuals urging that any move that obviously leads to curtailing the powers of the panchayat is retrogressive and runs counter to the trends towards the historical process of democratic decentralization.

"The movement towards Panchayat Raj can be traced back in recent times to Mahatma Gandhi's concept of Gram Swaraj. After a long history of debate and development it found ultimate enshrinement in our Constitution through the 73rd Constitution Amendment enacted with almost near unanimity by Parliament in 1992 and embodied as Part IX in the Constitution....

"Article 40 of the Constitution which enshrines one of the Directive Principles of State Policy lays

down that the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayat Raj institutions to impart certainty, continuity and strength to them...

"The likely impact and approach of the amendment made by the Karnataka Panchayat Raj (Amendment) Bill, 2007, also require to be properly studied in the broad historical context and constitutional perspective. It will seem that the "Statement of Objects and Reasons" in the present Karnataka Panchayat Raj (Amendment) Bill, 2007,

does not make out adequate justification necessitating the proposed changes except the bald assertion: "The Gram Panchayats are required to select beneficiaries for various schemes through Ward Sabhas and Gram Sabhas. The Gram Panchayats have not been functioning effectively, which has affected the implementation of these programmes. Hence, it is considered necessary to make a provision for constitution of

Ashraya Committees to select the beneficiaries". It is not known on what basis such a conclusion has been arrived at. No committee, official or otherwise, was appointed to make a thorough study to come to such a drastic conclusion, when we in the State of Karnataka rightly take pride about the working of our Gram Panchayats and Panchayat Raj in general.

"It is not known if the situation was any better in respect of housing programmes before the amendment was made in 2003 unanimously. Moreover, it is not known as to how and why the Gram Sabhas and Gram Panchayats have not been able to discharge their duties satisfactorily, if it is really so. Was any objective and independent study made as to the possible difficulties, programmatic, administrative, financial or infrastructural that might have been faced by these local bodies? Was anything done to remedy them? Nothing definite is known. Was any consultation with the concerned bodies held at any level or at any time on the issue



to enable the members of these local bodies or NGOs, experts and others to give their viewpoints? No authentic material seems to be available for scrutiny in this regard, which could provide justification on changes in the present system that was instituted through the Karnataka Panchayat Raj Act, 2003.

"The sweeping indictment of these local bodies in these circumstances, the Hon'ble Members will agree, does not carry conviction. Amendment in the existing statute on the basis of sundry observations or personal impressions will not be fair to the panchayats which form the bedrock of the democratic system in which the higher political representatives are also expected by the people to provide motivation, guidance and support to the grassroots local democratic bodies for them to achieve their objectives effectively.

"While going through the present Karnataka Panchayat Raj (Amendment) Bill 2007, it evidently seems to undermine the Constitutional mechanism for rural development governance as enshrined in Part IX of the Constitution of India and the Karnataka Panchayat Raj Act, 1993 which are intended to implement the 73rd amendment with the twin objectives of broader democratic representation (Article 243C-243F) and direct empowerment through conferment of decision-making powers to panchayats. The 73rd amendment does not envisage that parallel institutions be invented to discharge functions even in the guise of a default power, where and when duties are alleged to be not discharged effectively by Panchayats.

"The correct approach must be to devise ways and means to enable the panchayats to function effectively, rather than to bring in higher legislators/officials into the system. It will obviously be considered as a regressive step in the march towards strengthening local democracy and striking, at the root of the 73rd amendment. It may not be out of

order also to mention that the reinstatement of legislators and officials in the set up in this manner and vesting them with authority on the plea that Gram Sabhas and Gram Panchayats have not worked satisfactorily may even be misconstrued as conflict of interests between the former and the panchayats.

"The taking away or depriving of powers to Panchayats and Gram Sabhas signifies a major reversal and retreat of Panchayat Raj and seems to violate the spirit of Panchayat Raj as enshrined in the Constitution.

The significance of the Governor's message is apparent. It is unique and heart-warming. But equally, if not more, significant are developments that exploded on the scene from the day after the State legislature sought through special enactment, to take away some of the powers/functions of the elected panchayats. As the proverb puts it: the worm



turned. There was an unprecedented Statewide, nay Gram Sabha wide, revolt by panchayats who were outraged at the move of the MLAs to disempower the grassroot elected representative bodies.

"Withdraw the recently passed amendment to the Panchayat Raj Act that violates our Constitutional Rights" - is the slogan, which is ringing clearly in the Gram Panchayats across Karnataka. It has given birth to Panchayat Raj Hakkottaya Andolana to protest against the Bill, which weakens the foundation of democracy and the Gram Sabhas and Gram Panchayats. The Andolana convened a State level Convention on July 5 in Bangalore. More than 1500 representatives from 25 districts of Karnataka took part.

Although the Governor has halted the Bill, the Andolana will not rest till it is withdrawn. That is the unprecedented grass, the roots are nursing in Karnataka and hopefully its genes will spread and sprout all across India. That offers a better assurance to empower the people with certainty as the Constitution aspires. ♦♦

(L.C. Jain is a former member of the Planning Commission)

RURAL WOMEN HERALD CHANGE

In a land where women have been discriminated against for generations, thousands of poor illiterate women are spearheading a silent social revolution. Poor and unlettered Janakamma is now the proud mother of a certified chartered accountant. Equally impoverished Kalawathi has bought two bullocks, built a new house, and is sending two sons to college.

The women understand the value of being able to stand on their own feet for they know what it means to be helpless, hungry, and poor; most belong to landless rural families from the downtrodden Dalit community who have for centuries endured agonizing social exclusion and eked a precarious existence by laboring for trifling sums.

Sitting on the ground in a village home in Andhra Pradesh recently, many of these women told their stories to Graeme Wheeler, the Bank's visiting MD, who sat on the floor beside them. Wheeler was visiting the single largest anti-poverty programme in South Asia - the Government of Andhra Pradesh's Bank-assisted Indira Kranti Patham (IKP), at the start of his India trip. The World Bank is supporting the IKP with two projects totalling US\$ 261 million.

The programme has focused on helping the most vulnerable people in society - poor rural women - by empowering them in a variety of ways through Women's Self Help Groups (SHG). Janakamma narrated how she first borrowed a paltry 150 rupees from the local women's SHG to feed her impoverished family. She had then been resigned to her fate and had little hope of ever escaping the clutches of poverty. Steadily borrowing and repaying over the years, this thrifty woman not only managed to earn a better living but also put aside Rs.120,000 - a princely sum for her - to help her son study for a professional chartered accountancy degree.

"In all my years, I never had any opportunity to improve my lot in life," she explained, "so I was determined to give my son a better future." Janakamma's wise investment in her son's educa-

tion has paid off handsomely. He now earns a sizeable Rs.20,000 a month in a prestigious white collar job, enabling his once-impoverished family to pay off their debts and live with economic security for the first time in their lives.

The women's belief in the power of education extends beyond the traditionally favoured sons. Having suffered themselves as poor, uneducated, and downtrodden women - the lowest of the low - they are equally intent on giving their daughters a better life and are therefore regularly sending them to school.

Some of the girls are doing extremely well. When Wheeler visited class four at the village primary school supported by the Bank-assisted SSA project, Praful Patel the Bank's South Asia VP, scribbled a long addition sum on the blackboard - one that children elsewhere had been unable to solve. Without a moment's hesitation, Vijayalaxmi, a farmer's young daughter did some quick calculations on her fingers and arrived at the right answer.

Although at first the men were hostile and unsupportive of the women's actions, and the women

themselves feared taking on the unknown responsibilities of the SHGs, their success in providing their families with secure incomes has earned them new-found respect within their communities.

Coming together as a group has also given them the confidence to take on the deeply entrenched gender biases of an age-old patriarchal society -from fighting the evils of the dowry system, to standing up against child marriage, girl child labour, and domestic violence. And their successes have become beacons for others to follow.

With memories of their own exclusion still fresh in their minds, the women are now reaching out to those who are even worse off than they were. They have therefore welcomed HIV positive women into their fold - far beyond their more sophisticated urban counterparts - are spreading awareness about AIDS, and actively fighting the stigma, denial, and social isolation that come with the disease.



The disabled - who are discriminated against and excluded even by the poor - have also been recently incorporated into SHGs on their own to help them earn a living, access treatment and rehabilitation services, and build an inclusive mindset within the larger community.

The clincher for the women's success has been their collective effort. They live the programme's motto: There is nothing that we cannot do if we strive together. Echoing the sentiment, Kalawathi spells out the profound lesson she has learned at the helm of affairs of one of the SHGs, "Only when each member of the group prospers can we individually stand to gain," she reflects.

(Courtesy: *World Bank News*)

But can the Andhra women's successes be replicated across the country and the world? "Vision and leadership in the government, in the programme, and on the ground, are essential to implement and carry forward a task of this magnitude," says Varalakshmi Vemuru, the programme's joint Task Team Leader.

She adds that building grassroots institutions of the poor can help bring about the deep and enduring social changes that are the foundation for lasting economic empowerment. With more than 600,000 SHGs now operating in Andhra Pradesh, covering 87 percent of the State's rural poor, the women's silent revolution is all set to unleash a storm of change. ◆◆

Learn Cycling At Primary Schools

Girls in schools run by the Uttar Pradesh Government's Primary Education Council in Agra will soon be taught a new subject: cycling.

Around 300 primary schools in Agra district will soon get more than 1,300 bicycles to be used by girls during recess, with a trainer teaching them how to be good cyclists.

The bicycles, each worth around Rs1,750, are to be purchased by the village panchayats.

"The idea is to teach the girls cycling so that they would be able to move around freely, come to school or attend to household chores. This would lead to better attendance in schools," said an Education Department official who did not want to be named.

This indeed is a unique experiment, which would give women greater mobility and also promote cycling in a big way. The move would also help open up new shops for cycle repairs, said NGO functionary Roller Singh of Barauli Ahir block, which will buy 99 bicycles.

In the city itself, 16 Nagar Nigam (municipal corporation) schools will get more than 150 cycles.

With so many girls riding cycles on the roads, parents would be naturally inclined to buy more cycles for their children, especially in the rural hinterland, according to a cycle shop-owner who is expecting a cycle boom.

(Courtesy: *The Indian Express*)

Another major decision of the State Education Department that has affected managements in a large number of private schools is that scholarships will now be transferred directly to the bank accounts of recipients.

The practice hitherto was to disburse scholarship funds through the school managements. This led to the corrupt practice of inflating the number of students and pocketing the money.

"The administration received so many complaints. Now students can open bank accounts with zero balance facility, so that corruption will be largely curtailed," explained the official.

The last few days have seen serpentine queues at banks in rural areas. "The bankers appear tired and perhaps feel it as an unnecessary and unproductive exercise. But the bank staff can do nothing about it. It's a government order and in the next few days all the accounts would be opened," said Subhash Jha, a development functionary of Bah area.

"The scholarship will now go directly to the students' accounts. There are thousands of beneficiaries and even a token help of a few hundred rupees for purchase of books, stationery or uniforms will go a long way in ensuring they complete their education. The drop-out rate is bound to come down," he added. ◆◆

TWO-CHILD NORM PUTS PRESSURE

In Rajasthan, a woman Sarpanch was forced to smuggle her one-month-old baby to her mother's house, located 120 km away from her home. The child is being brought up by its grandmother. "If I had not done so, the villagers around me would have complained to the local Collector and I would have been disqualified from my post," says Sitara Devi who lives near Kotah.

In Madhya Pradesh, an equally frightened Ahmed Hasan, who lives 80 km away from Bhopal, sent his newborn son to live with his elder brother for fear that the local Sarpanch would complain about him because he had had his third child.

Hasan points out that before his election to the post he had done a great deal of work in the village. "I could not let all that go waste simply because I had failed to comply with the mandatory two-child norm."

Presently, six States including Haryana, Rajasthan, Madhya Pradesh, Andhra Pradesh and Himachal Pradesh have made the two-child norm mandatory for all panchayat members. The Governments of all these States insist that those with more than two living children are debarred from contesting panchayat elections or remaining in office. With the minimum age for contesting elections having been lowered from 26 to 21 years, this immediately affects lakhs of younger men and women within the reproductive age-group.

The passing of the 73rd Constitutional amendment made it mandatory for 33% of all panchayat seats to be reserved for women. It also mandated quotas for socially marginalised sections including Dalits and those belonging to Scheduled Castes and Scheduled Tribes (SC/STs).

But it's the two-child policy that has had the greatest impact on women and marginalised sections of society. Nirmala Buch, who runs a Bhopal-based NGO, Mahila Chetna Manch (MCM), points out that already 412 panchayat members in Rajasthan have been removed from their posts over the past three years because they failed to comply with the two-child norm.

Buch says: "In Madhya Pradesh, 350 panchayat members have been removed and in Haryana the number of those removed is 275. In Madhya

Pradesh, all those who were removed from their posts were tribals. They are not familiar with the laws of the land, and instead of encouraging them to join this process they are being forced to turn away."

Buch is in the process of tabulating the figures of those removed in Orissa, Himachal Pradesh and Andhra Pradesh. The MCM was asked to conduct a study on the impact of the two-child policy by UNIFEM. Buch claims her organisation has interviewed several thousand panchayat members in order to compile the report. Most of the people who have been removed, she says, are either Muslims or belong to SC/STs and other backward Castes (OBCs).

Women are undoubtedly the worst affected. The majority have no say over exercising their reproductive choices. And, with preference for a male son continuing to be the norm especially at the village level, families have no objection to women stepping down from their posts in order to give birth to at least two or three sons.

Twenty-six-year-old Kalavati, from a village outside Bundi in Rajasthan, points out: "Being an OBC, I was elected on a reserved seat. During the first term I was too scared to open my mouth and remained a rubber stamp member. It was only during my second term that I began to speak out. The birth of my third child forced me to step down. The government only talks of helping us. If they had wanted to they could have allowed me to continue since I was working to improve the lot of others in my village."

Panchayat members consider their position as stepping-stones in their political careers. They also see it as a major boost to their career prospects. As a result they are willing to go to any lengths to cover up the birth of a third child. From opting to send their pregnant wives away for two to three years, to divorce, to alleging infidelity, to getting their third child adopted, to producing fake birth certificates.

Buch says: "As it is, village politics is getting so divisive. This encourages people to spy on each other and accelerate caste divisions."

Certain States have gone to the extent of laying

down a diktat that Government jobs too would be denied to people who have more than two children. Those already in service would not be promoted for five years if they opted to have a third child. This rule is already being implemented in Rajasthan; other State Governments including Maharashtra, Delhi and Gujarat are keen to introduce it. If they have not already done so it is only because several NGOs oppose the move.

The rule has been criticised by both the National Population Policy and the Ministry of Health. They point out that the entire thrust of the new panchayat policy is to get more and more young people to join politics. Ministry officials point out that with contraception and safe family practices not always being available at the village level, a cast-iron rule like this is bound to backfire.

(Courtesy: *InfoChange News & Features*)

The State Governments are only too aware of the high infant mortality rates that persist at the village level. This fact seems to have been completely bypassed when the rule was being introduced.

Prasanna Hota, Secretary at the Ministry of Family Welfare, says: "We have been trying to convince State Governments not to favour incentives or disincentives for restricting family size. But this does not work at the ground level."

Mani Shankar Aiyar, Panchayati Raj Minister, is obviously unhappy with the implementation of the two-child norm. He says: "Unfortunately, this is a State subject and should be challenged at the State level. Or else, some NGO or individual needs to file a PIL in the Supreme Court so that this whole issue can be looked at impartially." ◆◆

Bureaucracy Chokes Panchayats



Orissa. What made the difference was the involvement of a Water-Users' Association (WUA), the lowest tier of the legislatively mandated Pani Panchayat system in the State.

Pani Panchayat executive committee members had complained to the Collector of Sambalpur district of weed problems in the Sason main canal, part of the Hirakud irrigation system, after an informal meeting convened by the panchayats in February.

No action was taken even after the Pani Panchayat members raised the issue at another meeting with the Collector. When the Irrigation Department was approached, it said it needed to close the canal for seven days, which was not acceptable.

"The dalua (summer paddy crop) was already in an advanced stage. Any disruption in water supply could have resulted in huge crop failure," said Dolagovind Nayak, president of a Pani Panchayat. "Water supply to our fields would have stopped for at least 10 days," added Aditya Panda, head of Themra Pani Panchayat. Pani Panchayat members finally forced the Collector

(Courtesy: *Down To Earth*)

A canal, which ordinarily takes about 10 days for the Irrigation Department to clean, was cleaned in two days in

to allow them to clean the canal. Though maintaining it was not their responsibility, the Collector had to accede.

"We cleaned Sindurpank distributary canal in just a day, in 1996, by involving thousands," said Chandrasekhar Panda, president of another panchayat. This time the scale was bigger. It took 3,000 people two days to clean the canal. "Previously, canal cleaning was carried out departmentally or through contractors, who were not cleaning properly. In most years, the irrigation department could not complete the cleaning. See the difference," said Ashwini Mohapatra of Jyotivihar Pani Panchayat. The enthusiasm was justifiable. Nowhere in Orissa had Pani Panchayats shown such unity.

There was a history to it. "We have been fighting for just causes for more than a decade, first to ensure minimum support price for paddy then against corruption in the renovation of the Sason canal system under the World Bank-assisted Orissa Water Resources Consolidation Project (OWRCP) and now against water supply from the Hirakud reservoir to the mushrooming steel, aluminium and thermal units. The formation of Pani Panchayats has added more solidity to farmers' organisations," says Ashok Pradhan, president, Sambalpur Zilla Krushak Suraksha Sangathan (SZKSS), a collective of 33 organisations. ◆◆



Right to Information

THE JATROOPHA CONSPIRACY

■ Ajit Bhattacharjea

Five thousand farmers, men and women in traditional Rajasthani dress, squeezed into the pavement beside a busy Jaipur road, joined to coin a new slogan. Together, they shouted that the Chief Minister should grow the much-vaunted jatropha (Ratandep) plant in the extensive gardens of her official house. Also that her example should be followed by other Ministers and officials who live in houses maintained by the State.

The slogan climaxed a 17-day padyatra by dalit, tribal and other subsistence farmers. They had marched to the State capital to protest against the government's move to take over the tiny plots of land on which they and their families survived and give it to large corporations to grow jatropha (Ratandep), a plant that produces an alternative to diesel. Jatropha (Ratandep) cultivation is being given priority throughout the country to replace expensive fuel oil imports .

With much of its land arid or semi-arid, Rajasthan is well suited to the project. Jatropha (Ratandep) development could provide extra income for its many poor farmers. The plant was being grown already for its medicinal qualities. New factories had now come up to extract its fuel. The protestors were not questioning the importance of the project; they were asking a related question: why was their land being taken over? Instead, the money being invested in the project could be used as a bonus to encourage farmers to grow and sell jatropha to factories.

However, the Rajasthan Government had adopted a different course; it had announced that it proposed to take over land from farmers who

did not have proof of ownership. This affected the many dalit and tribal farmers who never had documentary evidence of ownership, their rights were traditional because the plots had been cultivated by their families for generations. But now many had received notices of eviction.

To counter this measure, right to information campaigners, guided by the influential Mazdoor Kisan Shakti Sammelan (MKSS), had advised the threatened farmers to apply for information, under the Right to Information Act, for the legal justification of the notices. Though the prescribed time limit for replies had passed, no replies to their applications had been received from the district administration. Now they had assembled in Jaipur to demand an answer from the Chief Minister, but she had disappeared; nobody was willing to tell them where she was.

The State Government, however, was obviously aware of the padyatra since the farmers began their march from the furthest districts of the huge State. Before they reached Jaipur, Section 144 was imposed on the capital to prevent them assembling in the public park in which they had planned to hold the meeting. Undeterred, they had squeezed into a roadside pavement and raised a pandal for shelter from the hot August sun.

Two days earlier, a heavy shower flooded the pavement. But local citizens had readily responded to the request for enough wooden takhats to enable the demonstrators to sit above the wet ground. Citizens of Jaipur had interacted with the MKSS many times before, supporting repeated rallies, bandhs and demonstrations held in the capital. Awareness of the crucial link between

right to information and the livelihood of the poor originated in Rajasthan.

Typical of the demonstrators was a farmer, clad in a patched but clean dhoti and kurta, who had walked all the way from Sikar. He stood up to relate the threat he and his family were facing. They lived on the grain grown on the plot; they had no other source of income. The plot had been handed down from father to son for generations; he knew nothing about the parchas (documents) now being demanded by the patwari (district official). MKSS volunteers explained that land was being seized under the SEZ (special economic zone) programme which enabled the authorities to take land from the poor and hand it over to rich multinational companies.

Evidence of the affluent link with multinational companies was provided by a BBC Channel Four reporter who had flown in from London to cover the demonstration. He said that India's ambitious jatrophy (Ratandep) project was widely known abroad. Millions of pounds had been invested in a British company claiming to participate in it. But questions had arisen in the media about who were the actual beneficiaries: local people or foreign investors? He had been assigned to do a feature on the issue. (No Indian news channel noticed the demonstration).

Before dispersing, the demonstrators endorsed a petition to the State Government demanding that the SEZ programme be abandoned, that the Right to Information Act be strictly implemented in government offices and that no legislation affecting the poor be enacted without the agreement of organisations representing them.

(Photographs by Ashok Sen Beawar)



The information provided by the BBC reporter strengthened fears voiced at the meeting that Indian and foreign speculators were exploiting the tax-free and other facilities offered by the SEZ programme. With the complicity of the State government they were securing large tracts of land from which the owners were evicted under the pretext of promoting jatropha cultivation. Large sums were being paid under the table by the companies to the ruling party. Elections were due next year.

Yet in the semi-arid Churu district of Rajasthan itself, the Centre for Jatropha (Ratandep) Production favoured a very different approach to the Government's. The Centre has been set up to promote world-wide cultivation of the plant. Its central objective is described as to "help to increase rural incomes, self-sustainability, tribal communities and small farmers." The Centre is supported by the Central Government with the objective of "breaking the cycle of poverty." It does not advocate large-scale farming or SEZs.

On its website, the Centre points out that "54 countries are poorer today than they were 15 years ago, the vast majority of them working people living on less than two dollars a day." The remedy is that at the community level, farmers be encouraged to produce "dedicated energy crops that can produce food and reliable energy." At the national level, governments are advised that producing "more biofuels will generate new industries and allow development of education and other services for their neediest citizens."

A mismatch between stated and actual objectives is evident in Rajasthan. ◆◆

CIC BRIEFS

Compensation For Delay

In a significant order, the Central Information Commission has decided to compensate a person whose application was not taken up for hearing on the scheduled date. The CIC decided to pay Rs 500 as damages to Maj. P.M. Ravindran (Retd) for expenses incurred by him for preparing himself to appear before it in a case which was adjourned on the plea of the Registrar of the Delhi High Court who was a party in his application.

The Registrar had sought adjournment on the ground that the notice sent for responding the application was too short. The CIC realised that the notice for hearing being sent less than seven days before the scheduled date was in violation of the rules of RTI appeal procedure. "We find that this Commission has been in violation of provision of the RTI Act 2005 in notifying parties of the date of hearing which necessitated adjournment. The appellant is, therefore, entitled for compensation," the Chief Information Commissioner Wajahat Habibullah said.

Maj. Ravindran, through an RTI appeal in September, 2006 with the apex information panel, sought information about a pending petition with
(Courtesy: The Asian Age)

the Delhi High Court Registry free of cost as he was not provided the details within the prescribed period.

He also demanded rationalisation of Rs 500 fee as charged by the High Court for filing an RTI application. During the hearing, the High Court Registrar informed the Commission that a part of the information had already been provided to the applicant. The Commission allowed the contention of the Registrar, declining to supply a copy of the petition to Maj. Ravindran on the ground that a copy of ongoing judicial proceedings could not be provided until the closure of the judicial proceedings.

The CIC was also informed that the fee for seeking information has been rationalised and stood at Rs 50.

In another case, the CIC has asked the Indian Institute of Management, Bangalore to categorically specify procedures for selection of disabled candidates. Bangalore-resident Vaishnavi Kasturi, a visually handicapped person, after failing to make it through to the prestigious management institute, had filed an RTI application. ◆◆

"Information" Defined

The Central Information Commission (CIC) in its full bench decision has held that a public authority is obliged to provide access to information to a citizen but it is not obligatory on the part of the public authority to create information for the purpose of its dissemination.

Complainant Vibhor Dileep Barla sought certain information from Central Excise & Customs office, Nashik, regarding pending excise dues of a private company as well as some other units and premises. The Excise Department provided information about total excise dues but refused information about other units and premises on the
(Courtesy: The Indian Express)

grounds that information sought were questions made in the form of an inquiry and, therefore, do not fall within the ambit of RTI Act, 2005.

Defining "information" under the RTI Act , the Commission said the information for the purpose of the Act means information available with public authority and not the information which is non-existent or cannot be accessed. An "opinion" or an "advice", if it is a part of the record, is "information" but one cannot seek from an IO either an "opinion" or an "advice" as it would be seeking a decision which he may not be competent or authorised to take. ◆◆

Paperless Flow Soon

Filing and receiving information under the Right to Information (RTI) Act could soon be a paperless affair. The Central Information Commission (CIC) has proposed 'e-ministration' of Government Departments so that public records are accessible online and can be used to provide information under RTI.

When implemented, this would mean that a person can file an RTI application online. The department's Public Information Officer will be able to access government records on the internet and send a reply, also online, cutting down on delays and increasing transparency within the system.

At present, CIC is the only agency that receives online appeals under RTI. Bihar took a step in this direction recently by accepting RTI applications on phone.

Though the RTI Act has been in operation for three years, applicants continue to face delays in receiving rudimentary information. A proposal to harmonise the government's computerisation plan with the RTI roadmap has now been sent to the PMO. Chief Information Commissioner Wajahat Habibullah said the CIC was already working with the Ministries of Rural Development and Panchayati Raj to fast-track computerisation of

(Courtesy: *The Hindustan Times*)

records. "With this, we hope that not only will more information be available on the internet so that people will not have to resort to RTI but also that the information officers can access records faster. Storing of records in our system is atrocious and very often, files are mislaid or destroyed," Habibullah said.

He added that computerised records would translate to "easy access, quick retrieval and dissemination of information to the public".

The stumbling block in this process could be the fee that is required to be paid when an applicant asks for a large volume of information. "We are still exploring options but applicants can send the money through a postal order as use of credit cards or plastic money will require a separate system of checks and balances that we are not ready for," Habibullah said.

While the CIC will be working with Central Government ministries and departments, State Information Commissioners will be asked to work in consonance with district and panchayat-level administration for online access to records at the grassroots level.

The RTI watchdog will be meeting State Information Commissioners in October to discuss the issue further. ◆◆

300 Complaints At Janata Durbar

Despite BSNL making claims about extending broadband connectivity to every part of the city and its outskirts, the services are absent in rural areas of Patna. This was revealed at Janata Darbar, attended by 300 complainants including those who had sought information under RTI. When contacted, Principal General Manager, K Narayanan said that since its launch, BSNL has allotted broadband connections to about 12,000 subscribers in the city and the present waiting list for broadband connection has gone up to over 2,000. BSNL, which has already declared year 2007 as the 'Year of Broadband', has decided to

(Courtesy: *The Times of India*)

add additional port capacity to existing network for providing more connections in the city as well as rural parts of the district, he said. Rakesh Shreshta, an internet cafe owner from Kamptee, said that he had applied for broadband connection six months ago but nothing has moved so far. "I am losing out on business everyday due to non-availability of broadband service," he added. And the complaints are not restricted to the outskirts alone and subscribers from the city have similar complaints too, sources informed. "BSNL cannot cater to the needs of more customers as of now as the infrastructure is not ready," ◆◆

KEEPING TRACK

GUARANTEED JOBS OR CORRUPTION?

The National Rural Employment Guarantee Act (NREGA) has been in operation for almost 18 months now. From the initial 200 the job guarantee scheme has been extended to 130 more districts since April this year. Katni is one such beneficiary district in Madhya Pradesh. While the dedicated website of NREGA (<http://nrega.nic.in>) contains stories of successful implementation in different parts of the country, for people living in the villages of Katni corruption and mismanagement are the only guarantee. Here is a sample:

Mohari a resident of Matwar Padariya village worked for four days and was paid Rs. 260. But the entry in his job card states that he worked for six days and was paid Rs. 400. Somebody had pocketed Rs. 140.

Mohari's unlettered wife Pyaribai worked for two days but had not received a penny in wages until July 14, 2007 when activists of Suchana Adhikar Abhiyan visited the village. Somebody had pocketed the entire amount.

Heerabai and Vidyabai - residents of the same village worked for one day each and paid Rs. 60. But their job card contains an entry for four days of work and payment of Rs. 400 per person. Somebody had pocketed Rs. 680.

Yashodabai and Kamlesh also of Matwar Padariya approached the Sarpanch with a request for jobs but the Sarpanch sent them away claiming that no jobs were available and that they would be

informed when jobs turned up. Somebody forgot to give them their unemployment allowance.

Verification of job cards in the villages of Matwar Padariya, Ghangri Khurd, Ghangri Kala, Kailwara Kala and Badera in Katni district by Abhiyan activists revealed that the job cards did not have photographs pasted on them. Villagers claimed that they posed for photographs during the months of May-June. Records obtained using the Right to Information Act showed that an NGO based in Katni had been awarded the contract through an open tender process for photographing

villagers who applied for job cards. They were paid Rs. 3.50 for every photograph clicked. Somebody forgot to paste photographs on the job cards distributed in these villages. Somebody else forgot to cross-check whether the con-

tract had been completed satisfactorily or not.

In many cases the Sarpanch or the Secretary collected job cards from the villagers, made entries in the safety and comfort of their own homes and returned them to the unsuspecting owners. Somebody forgot to monitor the activities of the functionaries responsible for implementing NREGA at the village level.

In Ghangri Khurd people who applied for jobs were asked to dig 70 sq ft of earth to earn Rs. 67 the minimum wage payable under the NREGS. People worked for 1½ days and gave up as it was impossible even for the best of their able bodied



men and women to meet the target. The soil was simply too hard. They informed the Secretary of the Gram Panchayat in writing about their inability to continue work in that manner. The Secretary forwarded their petition to the Chief Executive Officer of the Janpad Panchayat (Block level panchayat). None of those who toiled for 1½ days has been paid till date. No action yet on their petition. Somebody forgot to pay these people their dues. Somebody forgot to take action on their petition in a timely manner.

In 10 out of the 18 villages surveyed by Abhiyan activists in Katni district, work under NREGS began without anybody applying for jobs. The residents were simply asked to go to the work site by the Secretary or the Sarpanch and start work from a certain appointed date. Somebody forgot to educate the residents of these villages that they could formally apply for jobs and indicate the number of days that they wanted to work.

Many families of Deora Khurd applied for job cards and posed for photographs as well. But their job cards were not handed over. Somebody forgot to distribute the job cards.

Thankfully for the residents of Deora Khurd when Abhiyan activists went visiting, they found someone who gave them a patient hearing and acted upon it. Within a day of the activists making enquiries the Sarpanch distributed more than 500 job cards - all done in two days flat (July 19 and 20). Not everybody would be so lucky particularly where there are no civic-minded citizens watching over implementation of this law meant to curb poverty and create community assets in rural areas.

Suchana Adhikar Abhiyan has been actively working for spreading awareness about RTI in the Vindhya Mahakoshal region of Madhya Pradesh for more than four years. Abhiyan activists started educating people about their rights and entitlements under NREGA soon after the State Government announced that the employment guarantee scheme would be extended to Katni. Commonwealth Human Rights Initiative held an advanced capacity building workshop in June for its core members. Activists were familiarised with the nitty gritty

of NREGA. They developed a strategy for using RTI to obtain documents and verify implementation of the scheme at the ground level.

Five members of the Abhiyan- Dr. Rakesh Ranjan (Convenor), Vishwajeet Maity, Yogesh Pandey, Pramod Pandey and Deepak Srivastava launched a implementation verification campaign on July 7. They videographed testimonies of people who claimed to have worked under the scheme; the state of their job cards and the entries they contained and the documents that they obtained by using the RTI Act. They submitted a copy of the recording to the District Collector on July 16 based on a major portion of the data about corruption and mismanagement that they had collected. Even as they requested the district administration to conduct an investigation into the matter, the verification campaign continued in other villages. When approached with proof of corruption the District Collector seemed surprised. Her surprise was not at the levels of corruption exposed but the fact that 'NGOs' were meddling in Government affairs. She is reported to have told the Abhiyan activists that the RTI Act and NREGA were laws passed by the Government and that activists and NGOs did not have any role to play in its implementation after these laws had been passed!

Abhiyan activists persisted in their efforts. They sent copies of the recording and the petition to the Secretary Department of Rural Development and Panchayati Raj. The local media highlighted these instances of corruption. When pressurised by mediapersons to react to the exposé, the District Collector is reported to have convened a meeting of officials and entrusted the matter to the Block Development Officer for investigation. FIRs are likely to be filed against the Secretaries and Sarpanches of Matwar Padariya and Deora Khurd. Abhiyan activists believe that this is the tip of the proverbial iceberg and corruption would not be possible without collusion between the panchayat functionaries and their seniors at the Block and District level. They plan to take this campaign to its logical conclusion to fix accountability of officers at the higher level as well. ◆◆

(Compiled by Venkatesh Nayak for CHRI which collaborates with the Abhiyan on RTI related issues.)

More Irregularities

A survey on the More National Rural Employment Guarantee Act (NREGA) has revealed that many irregularities remain in its implementation despite improvements in the past one year in areas such as levels of employment and payment of minimum wages. Corruption also seems to have declined.

The survey, conducted in the remote Surguja district of Chhattisgarh last week by students of the Delhi and Jawaharlal Nehru Universities, points out that implementation of transparency safeguards was essential to eradicate corruption. These include availability of muster rolls at workplaces, disclosure of all NREGA-related documents on demand, making complete entries in the job cards when wages are paid and paying wages in public.

It was found that wherever these safeguards were implemented, corruption was relatively less and the scheme was of great help in protecting people from poverty, unemployment and hunger.

The survey covered 19 work spots, spread over 15 gram panchayats in Batuli Block. The public hearings were attended by 300 local residents. The survey found that most families in the block had obtained a job card without paying for it. However, various irregularities were observed in their distribution, such as applicants being charged for photograph

(Courtesy: *The Hindu*)

and joint cards being issued to joint families.

In Gram Panchayat Silma, it was found that only "Below Poverty Line" families were given job cards. In Bilaspur, people had to pay up to Rs. 60 for photograph. Under the Act, job cards are supposed to be provided on demand, free of cost.

The survey found that most people were unaware of the application procedure, or even of the need to apply. Work applications were submitted only in a few isolated cases.

Applications were often discouraged or refused, and where they were accepted, work was rarely provided within 15 days. In Govindpur and Jharganwa, work was provided only after four months. No receipts were issued anywhere for work applications, even in Chiparakaya, where people insisted on dated receipts.

At almost 70 per cent of the work sites, wages were not paid within 15 days as required under the Act. In Nakna and Tilaighar, three months had passed since payment was due. Apart from causing extreme hardship to labourers, delayed wage payments often made them lose interest in the programme.

Transparency safeguards were flouted at every work site, with supervisors recording attendance in informal notebooks and filling the official register later. Similarly, incomplete or missing entries were found in many job cards. ♦♦

Funds' Misuse

The Chhattisgarh Government removed a District Collector and suspended a Chief Executive Officer of the Zilla Panchayat for alleged misuse of funds meant for the National Rural Employment Guarantee Scheme.

After irregularities in the purchase of pesticides worth Rs 5 crore using NREGS funds came to the fore, Kanker District Collector G S Dhananjay-nodal officer for the NREGS-was shifted to Mantralaya while Zilla Panchayat CEO K P Dewangan was suspended.

Sources said that the officers did not adhere to norms and guidelines of the National Rural Employment Guarantee Scheme, wherein 60 per cent of the funds are to be utilised for paying wages and the remaining 40 per cent are to be spent on purchasing material for construction. Instead, they diverted the funds and purchased pesticides worth Rs 5 crore.

Chhattisgarh Chief Minister Raman Singh has ordered setting up of a three-member committee, headed by Commissioner of the Employment Guarantee Scheme P C Misra, to conduct an inquiry into the matter. ♦♦

(Courtesy: *The Indian Express*)

OF JUDICIAL REFORMS

The constitution of an independent Judicial Commission, on the lines of the Election Commission, with powers to enquire into allegations against judges at various levels was one of the important recommendations of the Hyderabad Declaration of the Campaign for Judicial Accountability and Reforms. The Declaration was made at a meeting organized recently in the Andhra Pradesh Capital by the Centre for Media Studies and the Administrative Staff College of India.

The meeting, attended by 40 prominent citizens from different fields of public life in the country, suggested that the proposed Judicial Commission should set minimum standards and lay down transparent procedures for recall of judges.

It wanted Article 124(3) (C), which authorizes the President to appoint a distinguished jurist, not only to be implemented fully but also suitably amended to extend the provision to the lower levels of the judiciary.

Among the other recommendations were that the provision in the Judges (Inquiries) Bill 2006, that a complainant shall be punished if the charge was not proved, should be removed as it would dissuade complaints. Section 33 of the Bill should be removed as it was against the principles of disclosure and transparency. The campaigners also wanted strict compliance of the code of judicial ethics and regular declaration of assets and liabilities by the judges,

public prosecutors, and government pleaders.

The participants were emphatic that the judiciary should not be exempted from the purview of the Right to Information Act, 2005. PIOs under the Act should be appointed in every court and people should be entitled to know the process of appointment of judicial and non-judicial staff, including at the lower courts.

The Declaration also demanded establishment of Gram Nyayalayas to enhance the access of justice to a larger public, simplification of procedures and functioning of the courts to enable the poor better access to the judicial process, setting up of a Citizen's Charter to explain the rights of the people and list the norms of behaviour of the professionals associated with the courts such as lawyers and judges.

The other important demands were that the Contempt of Court Act should be further amended to delete the words "scandalizing and lowering the authority of the court" in the clause on contempt, fair comment should be allowed as a defence of the charge of contempt and that civil society groups should engage in constant dialogue on judicial reforms and accountability to monitor the performance of the judiciary and improve the quality of justice. The participants urged the public to be active and articulate their concerns in regard to the judicial system. ◆◆

“Judiciary Needs Major Repairs”

“Ever since our Constitution was promulgated in 1950, the mandatory age of retirement of India’s Chief Justice remains fixed — regrettably — at 65 years. Consequently, since I shifted from Bombay to Delhi in May 1972 to practice in India’s Supreme Court, I have seen as many as twenty-four different persons occupying the highest judicial post. Some of them have come and gone as if through a revolving door — 18 days in the case of one CJI, 31 days in the case of another! A CJI must have a fixed tenure of sufficient duration to enable him (or her) not merely to try cases and write judgments, but to give new direction to our legal and judicial system.

The “her” in parenthesis is to remind ourselves that we just missed by the sheer magic of seniority a distinguished lady-judge as head of our judiciary! The incumbent CJI still has three years before he reaches 65; time, I hope, to get the legal system effectively functioning fast-forward, and to undertake much needed confidence-building measures to inspire renewed confidence in the entire higher judiciary.

Although the legal system has not ‘collapsed’, as one or two Chief Justices in the distant past had facilely predicted, it is certainly in need of some major repairs” ◆◆

(Extracts from an article in the Indian Express by Fali S Nariman, the noted jurist)

TRANSPARENCY STUDIES

The next issue of Transparency Review will deal with the constant battle between ideologically adamant armed groups and a Government that behaves as if the only solution lies in putting down such indigenous rebels with a heavy hand. Innocent tribals are the victims.



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