

Rights to information and the poor: experiences from India

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Over the last twenty years the number of countries passing Right to Information laws has risen sharply. By mid-2006, at least sixty eight countries worldwide had established freedom of information laws, in states as diverse as Portugal, Bulgaria, Mexico and South Africa. Indeed at least forty-four states have introduced new laws during the last decade, including established democracies such as the UK, Germany and Switzerland.ⁱ

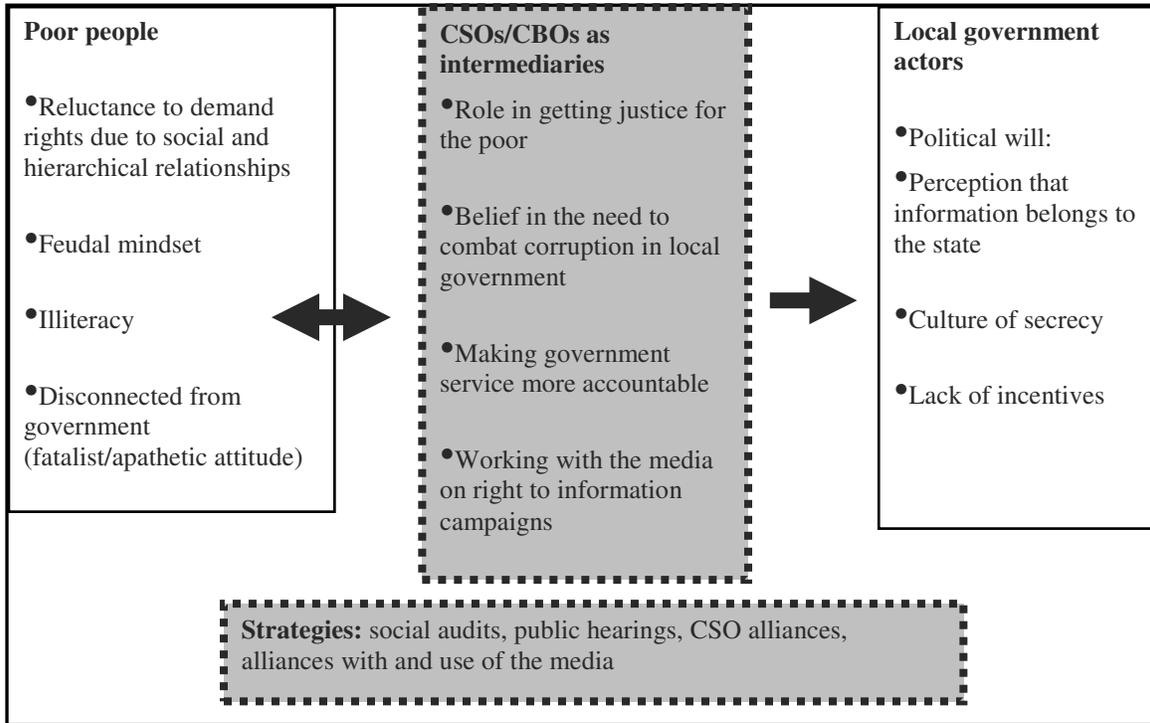
What has been the impact of this global development? In particular, greater access to official information is widely regarded as important for deepening democracy, for a variety of reasons. Government transparency has been advocated as a basic precondition for the ability of citizens to participate in policy deliberations, to cast informed choices at the ballot box, and to hold governing parties, parliamentary representatives and public officials to account for their actions, as well as for the basic principle of promoting freedom of expression and speech.ⁱⁱ The drive against corruption has also been fundamental to this movement, with sunshine regarded as the best disinfectant to reveal cases of official malfeasance and misappropriation. But can rights to information also have a significant impact upon human development and social equality, by empowering poor people and marginalized sectors of society to participate in public life?

To examine this issue, the study outlines some of the reasons for the rise of Right to Information laws around the globe then compares the experience of right to information in two states in India: Delhi and Orissa. For each state, the case study provides a snapshot of the socio-economic background, explains how right to information legislation came about, and describes the roles of the different actors. Case studies illustrate how poor people use the right to information and what differences this has made in their lives. Right to information reform requires addressing both the supply and demand sides of information. This chapter focuses on the 'demand' side of information, and explores various strategies that have been used to link the right to information with the empowerment of disadvantaged social sectors.

The core thesis developed here argues that laws guaranteeing access to public information are not simply a middle-class luxury or intrinsically valuable for improving the quality of democracy; instead, under certain conditions, these function as an instrumental means of combating the social and political exclusion of poor people and marginalized groups, by enabling them to hold government officials to account and to improve service delivery. The basic conditions of democracy, rule of law, and respect for human rights need to be established, so that citizens have confidence that they can seek legal redress under Right to Information laws without fear of retaliation by the state; Zimbabwe, for example, passed an Access to Information and Protection to Privacy Act in 2002 while Uzbekistan revised its law on the Principles and Guarantees of Freedom of Information in 2003, but in practice constitutional principles and laws are widely flouted under these regimes, including draconian restrictions on freedom of speech for opposition movements and the arrest and intimidation of journalists.ⁱⁱⁱ The comparison of the use of right to information by poor people in the Indian cases suggests that three key factors have largely determined their effectiveness, namely: the existence of strong intermediary groups (including civil society organizations and the media) to facilitate poor people's interaction with government bureaucracy; recognition by the poor of a direct and sustained benefit from exercising their right to information; and the existence of political will on the part of the government officials to implement rights to information. Figure 4.1 illustrates the relationship between these factors. Without these conditions being met, Freedom of Information laws are unlikely to prove effective. The conclusion draws together the main findings from these

cases and considers whether similar conditions also hold elsewhere in newer democracies, such as in South Africa and Mexico.

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The rise of Right to Information laws

A growing consensus exists that a formal right to information is a crucial element of democratic, accountable, and responsive government. This process is thought to help to ensure that citizens' interests are pursued and protected by those in power. An elected democratic regime may not, of itself, be sufficient for openness and transparency in government. It is also necessary that those in power are willing to keep citizens informed of what is happening and to be accountable for their acts.

As a result of these considerations, in February 2006, Vleugels reported that 68 access to information statutes exist in the world, the majority in Europe followed by the Americas. Of these, at least 50 established a right of access to information, rather than a more limited right of access to documents. There are at least 74 countries that have either established a right to information law or have codes of practice and general administrative instructions which may not be as stringent as a comprehensive right to information Act. The global surge in Freedom of Information rights has been attributed to many factors, notably the breakdown of authoritarian regimes during the third wave of democratisation. The process of regime change commonly gave rise to new constitutions that included specific guarantees of the right to information, often requiring the adoption of new legislation. Growth is also due to increasing attention to this issue among civil society organization, including social and popular movements, and demands from the media for greater access to government-held information. Among industrialized societies and established democracies, as well, freedom of information laws have diffused rapidly during recent years, even in countries such as Britain with a long tradition of official secrecy permeating Whitehall.^{iv}

In developing societies, reform was also generated by pressures for greater official transparency from multilateral organizations and bilateral donors. International bodies such as the Council of Europe, the Organization of American States, and the Commonwealth Secretariat have drafted guidelines or model legislation to promote freedom of information. The World Bank, the International Monetary Fund, and other donors have also encouraged countries to adopt right to information laws as part of their effort to increase government accountability and to reduce corruption.

Many countries have the Right to Information enshrined in their constitution, but this provision is often inadequate without a law to implement the provision. The most effective Right to Information laws confer on all people access to information and official documents held by the government without having to provide a reason for the request or explain how they are going to use the information. Ackerman and Sandoval-Ballesteros suggest Right to Information legislation implies a transformation of the provision of government information from a 'need to know' basis to a 'right to know' basis, with all government documents assumed to be in the public domain unless specifically exempted in the legislation.^v Some observers consider these principles on a par with civil, political, and social rights: '*...information rights are most of all an element of citizenship. They concern first and foremost the social functioning of citizens, not only in relation to the public authorities, but also in their mutual relations and their relations with private legal entities. Information rights should be part of the civil rights chapter of constitutions, together with the other individual rights.*'^{vi}

A right to information is not a benign or abstract right: when used by civil society, the media and individuals, it has the potential of directly altering the distribution of power between the state and citizens, including poor people. In the past, right to information has often been an academic exercise in transparency couched in esoteric terms detached from the realities of grassroots organisations and movements. The right to information, however, if guaranteed and implemented effectively, can make a major contribution to the empowerment of poor communities and help them take charge of their lives by participating in decision-making and by challenging corrupt and arbitrary actions at all levels. This empowerment is particularly significant in developing countries such as India, a nation afflicted with low literacy rates, high birth and infant mortality rates, and with social and economic tensions fuelled by class, caste and communal divides.^{vii}

A good Right to Information law on the books is not enough. There needs to be real demand for information, including from the poor, if a new access to information law is to function effectively. Experience shows that implementation has been slow in countries where the law has been introduced as part of a top-down government reform plan (such as in Albania), an international initiative (Bosnia), or by lobbying from a civil society elite (Peru). By contrast in countries such as Romania, Bulgaria, and in selected Indian states, where broad-based coalitions pressed for access laws, the legislation was used effectively by civil society, the media, and the general public.^{viii}

Freedom of expression is guaranteed under international law through numerous human rights instruments, notably under Article 19 of the Universal Declaration of Human Rights: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*" The International Convention on Civil and Political Rights also emphasizes these principles. The term freedom of *expression* is preferred to freedom of information within international conceptions of human rights, as freedom of expression is not confined to verbal speech but is understood to protect *any* act of seeking, receiving and imparting information or ideas, *regardless of the medium used*. It therefore embraces cultural expression and the arts as much as political speech. The right to freedom of expression therefore implies the right to freedom of information but it is also recognized as a right in itself - examples would include an early UN General Assembly resolution calling it "a fundamental right...touchstone of all freedoms", the Council of Europe Recommendation on Access to Official

Documents, European Parliament and Council Regulation 1049, and the Aarhus Convention, among others.

The Context of Indian Democracy

The key issue is how far Freedom of Information laws work in practice and, in particular, do they facilitate greater socio-economic equality and human development? Here we can examine cases from India, selected for examination as the world's largest democracy, and a country in which democratic traditions and a democratic culture are well embedded, despite endemic poverty. The political space exists for non-state actors, including civil society and the media, to promote and advocate the interests of different societal groups and to challenge government action and inaction. The political will is also evidenced, at least at the central government and to some extent at the state-government levels, in that right to information has been legislated and a number of steps have been taken to ensure its implementation. The capacity and determination of the various government bureaucracies, especially at local levels, to implement the legislation is more difficult to measure. Case studies of agencies in different states suggest widespread reluctance to follow through on the right to information obligations. The case studies also illustrate a special characteristic of India's right to information experience, namely the use of the right to information to enforce entitlements provided for by the state for those citizens that are 'Below the Poverty Line'.^{ix} The right to information has often been used by social movements and by civil society organizations to demand other rights, such as the right to food, shelter, education and employment.

The institutional framework for the implementation of the right to information in India continues to attract strong criticism from activists in India. In particular, the efficacy of Information Commissioners, as the appellate authorities, is called into question. If citizens do not get correct and complete information in time, Commissioners have a duty to get that information for them and to impose a penalty on guilty officials. It is therefore important, although not a requirement, that Information Commission staff are sensitised through training to the particular requirements and needs of the poor. Such training should address why access to information is important for the poor, the mechanisms and ways which poor people request information, and how requests should be met.

An overview of Right to Information reform in India

India is one of few developing countries in which a formal right to information has come about through grassroots mobilisation and action. India is a signatory to the Universal Declaration of Human Rights and has acceded to the International Convention on Civil and Political Rights. The Constitution of India under Article 19 (1a) guarantees freedom of speech and expression. By implication this includes a right of access to official information. In several landmark judgements, the Supreme Court of India has held that the disclosure of information about government and the right to know directly flow from Article 19(1a) and also from Article 21, which guarantees the right to life and liberty. In 2002, an official Commission charged with reviewing the Constitution of India recommended the explicit inclusion of right to information, including freedom of the press and other media, through a constitutional amendment.^x

The Right to Information Act 2005 (Act No. 22/2005) was enacted by the Parliament of India giving people access to records held by public authorities. Under the terms of the Act, any person may request information from a "public authority" (a body of Government or instrumentality of State) which is expected to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and proactively to publish certain categories of information so that the citizens need minimum recourse to make formal requests for information. A number of measures have been implemented to give effect to the Act, including the promulgation of detailed regulations; the designation of officers from within departments as Public

Information Officers (PIOs) to take responsibility for receiving and handling requests for information, and the establishment of a Central Information Commission and State Information Commissions. This law was passed by Parliament on 15 June 2005. Some provisions of the Act came into force immediately but the entire Act came into force on 13 October 2005.^{xi}

Prior to the national Right to Information Act of 2005, nine States had also passed their own access laws relating to the records held by public authorities under their control. The lessons learned from the implementation of these laws provided important inputs into the drafting of the national legislation. Also prior to the 2005 Act, there were several national and subject-specific laws that protected access to information.^{xii} These included: the Indian Factories Act 1948 which makes it mandatory to disclose information about hazards that the workers might face as a result of handling certain materials and the Environment (Protection) Act 1986 which provides for disclosure of information about the projects and public consultations on environmental impact of such projects. Other Acts, however, work against a right to information. The Official Secrets Act 1923 more or less continues to operate in its original form and it continues to promote the culture of secrecy. Section 5 of this Act on 'wrongful communication of information' lends itself to misuse.^{xiii} Similarly, Article 123 of the Indian Evidence Act 1872 prohibits the presentation of unpublished official information as evidence without the prior permission of the relevant head of the department, who is free to grant it or refuse it. The Civil Service Conduct Rules prohibit government servants from communicating any official information without authorization.^{xiv} While the 2005 Right to Information, together with the constitutional provisions, should technically override these Acts, the latter continue to constrain people's ability to exercise their basic right to information and these measures have encouraged a culture of secrecy at national and local levels.^{xv}

Implementation of the Right to Information Act has been uneven across the country. The Central Government, which sponsored the Act, has been relatively active, although it was slow in creating the Central Information Commission and putting in place systems to ensure proactive disclosure. To date all states have appointed Information Commissioners, although actually setting up and providing adequate resources to the Information Commission offices has often been slow. Applications are being made throughout the country, with varying levels of success. It has been reported that officials at the district and the sub-district level, including *panchayats*, have been particularly dilatory in coming to terms with their duties under the new law.^{xvi}

Conditions for effectiveness:

The existence of a strong intermediary body

A strong civil society has been a critical factor in bringing about the national Right to Information Act in India. Civil society was active in pressing for transparency and accountability as part of addressing broader governance issues, in the absence of right to information laws at national and state levels.

In India, intermediating organizations have been instrumental in the poor's use of a right to information. Such intermediaries are generally informed and committed civil society organisations which intermediate between groups of poor people and local government bodies. They play an important role in mobilising and organising local communities, especially the poor, on development issues. Such organisations have a strong direct relationship with marginalised groups, they are trusted by them, or they have strong links with organisations which work directly with poor people. They identify with the interests and key problems faced by poor people and they can also provide the resources and skills which poor people lack. These organisations generally also have an excellent knowledge of local government systems and how to use them. Many key civil society leaders in India

are former bureaucrats and have good relations with key people within the government bureaucracy, which potentially enhanced the impact of their advocacy work.

The poor must see a direct and sustained benefit from exercising their right to information

The potential benefits for the poor must outweigh the significant risks which people face in using right to information law. From the perspective of poor people, there are many problems associated with appearing to challenge government and political structures. As Webster and Engberg-Pedersen discuss, active participation in overtly political behaviour is potentially dangerous as it can exacerbate the vulnerability of poor people, while not delivering immediate material gains.^{xvii} Thus efforts to influence policies and the implementation of policies which are beneficial to the poor will often depend on the 'buffering' support and of intermediaries. Poor people in India are reluctant to demand rights to information (along with other rights) because of social and hierarchical relationships that exist in the country, and fear of retribution.

Moreover, the government's failure over many years to improve their condition has contributed to a sense of apathy by many poor people throughout the country. They have a fatalistic attitude towards their condition, accepting that their situation is unlikely to change. The mindset is feudal, and the relationship between the government and the people is largely of a patron-client nature. This culture, coupled with illiteracy and lack of access to information, makes it difficult for the poor to access the government directly. In this scenario, civil society groups have acted as intermediaries, making the right accessible to the poor on the one hand and engaging with the government on the other.

Conducive policy environment and political will on the part of local government^{xviii}

Access to information disrupts power balances within societies and communities and between state and non-state actors. Governments jealously guard information and they are reluctant to relinquish it for fear that it might dilute their power. At local levels of government, this threat and vulnerability may be felt more acutely. The result is a culture of secrecy in many public administrations and a significant institutional resistance to change, even when there is high level political commitment to implementing the right to information.

In this regard, it is important to distinguish among support from the bureaucracy, government, and key political leaders. In India, political leadership plays a strong role in the right to information movement. The involvement of key civil society activists in preparing the first draft of the Act, through the National Campaign for People's Right to Information, and reviewing subsequent drafts, improved the strength of the draft Bill that was eventually adopted. The Indian National Advisory Council, a body established by Congress and chaired by Sonia Gandhi, was important in getting the Right to Information Bill passed.

The experience in India suggests that the government bureaucracy at both national and state levels are taking measures to provide for implementing right to information legislation, but they have been relatively resistant to accept the responsibility for ensuring that such a right is used by and impacts positively on the poor in India. There are many reasons for this. Right to information requires accountability on the part of government at all levels and it directly threatens the ability of officials to get away with mismanagement and malfeasance. This is threatening to many public officials, who feel exposed and vulnerable, especially at local levels. The result is a culture of secrecy in many public agencies and a significant institutional resistance to change. This is manifest in a number of ways including: delay in setting up offices of the Information Commissions; poorly staffed and resourced Information Commissions; no provision for Right to Information expenditure in National and State Budgets; inadequate efforts to monitor the implementation of the law within government at all levels; recent lobbying of government by some public bodies to be exempted from compliance with the

Right to Information Law; and persistent reports that some of the most powerful and respected national institutions refuse either to give information or consider themselves exempt from the law courts.^{xix}

Resistance may also be related to the lack of incentives and the weak institutional and human capacity to provide information. India's right to information regime provides for the imposition of penalties on public officials (fines and disciplinary hearings). Disciplinary hearings are potentially an important deterrent against not providing information, as they can impact directly on career prospects for individual officials. In practice, however, disciplinary proceedings are long and cumbersome with a limited role for complainants if they are not part of the concerned department. Furthermore, the Information Commissioners only recommend launching such proceedings and it is up to the relevant department to accept or reject the recommendation.

Improving and simplifying public administration records, developing guidelines, and establishing training programmes on right to information for public officials at all levels would help in addressing capacity. So too would including issues related to right to information implementation in senior bureaucrats' performance contracts, in public service value statements, and in general public service regulations.

Key actors in setting and implementing the Right to Information agenda

The major players setting and implementing the right to information agenda include civil society organizations (local, national and international), local and national government actors, the media, and international development partners. Priorities include a strong conviction of the need to obtain justice for poor people and bolster their ability to assert their rights; a strong belief of the need to combat corruption in government and a commitment to make government services more accountable.

The experience of India in right to information reform is characterised by the building of coalitions and networks to develop and implement right to information strategies. Usually they include local, national and international civil society organizations that carry out a variety of roles. These roles include: representation - aggregating the voice of the poor and communicate their needs and views to local and national government; creating awareness of the law by civil society organizations (international, national and state) as well as the media; lobbying government on right to information; providing information and advice to government on right to information; providing support through training and other capacity development activities to poor communities, civil society organizations and to government; providing direct assistance to poor communities/individuals on using right to information (e.g. using activities such as social audits as mechanisms for exercising the right to information); and providing resources (financial and human) to support right to information reform.

The role of civil society in enhancing poor people's use of right to information is strengthened considerably by a number of factors including, most importantly, the relatively large political space which permits civil society to organise and advocate on a broad range of political and non-political issues in India. Another defining feature of India's civil society is that many of its leaders and activists are well educated and well connected middle class people.

In the post Independence era, India's civil society sector has grown steadily with, for the most part, extensive support from the state which has sought active involvement of 'people's institutions' in official programmes but at the same time is uncomfortable with certain cause-oriented NGOs. Ironically, however, the failure of the state to uphold people's rights and ensure that the dividends of development are equitably distributed engendered a large number of people's movements and social action groups which actively campaigned on behalf of marginalised sections of the population.

According to a recent study rural development in particular is a large sector for civil society activity.^{xx} A critical problem is the failure of public expenditures over many years to bring about a positive change in the well-being of poor and disadvantaged groups in rural areas across India. Rural decentralization, despite the impressive achievements in establishing *panchayati raj* (three-tier system of local government) institutions has yet to foster more responsive, accountable and inclusive rural institutions which take account of the needs of the poor.^{xxi}

It is in the context of bringing about greater transparency and accountability, and exposing corrupt practices at the local government level, civil society in India has fought for the formalization of the right to information. This has been in response to concern about widespread corruption in the implementation of rural development works at the expense of public interest. Examples include the use of fewer materials in construction than shown in the estimates or in the bills and vouchers; payments to fictitious workers listed in muster rolls and rules covering the award of permits, licences, house allotments, gas, water and electricity connections, contracts, etc. Concern has also been raised by wrongful or arbitrary exercise of patronage or power, for example, the selection of beneficiaries for government programmes in contravention of established rules.

Since the national Right to Information Act came into force in 2005 the national media, both print and electronic, have acted as watch-dogs and have been monitoring both national and state implementation of the legislation. Several newspapers have been tracking decisions from Information Commissions and they are quick to report any delays in providing information, the levying of penalties by the Commission and the extent of compliance with the orders of the Information Commissions. For instance, the media played a central role in a national anti-corruption campaign '*The Drive Against Bribes*' launched in July 2006, which attracted over 50,000 pledges and promoted the use of Right to Information legislation as a more effective means of obtaining information than resorting to the payment of bribes.

Strategies to implement Right to Information reform

As a result of intense campaigning by individuals, civil society organizations and social movements such as Mazdoor Kisan Shakti Sangathan, (MKSS) right to information legislation was introduced in nine Indian states during the 1990s. Many of the key actors involved in securing state-level legislation later became actively involved in lobbying for a national Right to Information law which came into force in 2005.

To illustrate some of the strategies adopted by civil society organizations and social movements, it is worthwhile focusing on MKSS as a grassroots organization formed in 1990, working in rural Rajasthan advocating on behalf of the rural poor especially in demanding minimum wages for workers that were not being paid their full minimum wage. With other civil society organizations, MKSS played a pivotal role in bringing about the national Right to Information law.

The strategies that were adopted by MKSS to stimulate demand for a right to information Act in the state of Rajasthan are noteworthy and have been emulated by civil society organizations in other states. These acts included sit-ins, rallies, as well as lobbying government. Innovative ways in communicating these ideas were also used through music, puppets, and village theatre. When the initial phase of activism began with a sit-in, the government of Rajasthan reluctantly passed an order (after much pressure) whereby the people were given the right to inspect records and later to get certified photocopies. At the time of inspecting the records of a village council, MKSS found a great deal of irregularities and malpractices. From this emerged the strategy of social audits through public hearings (*jansanwai*) which has been used by other civil society movements for bringing about right to information in other Indian states as well as elsewhere (see Chapter 3 and 10 in this volume).^{xxii}

Cases: The Right to Information in Delhi and Orissa

The two states of Orissa and Delhi were chosen as cases because they provide an opportunity to compare and contrast right to information use in a rural setting in one of the poorest states in India (Orissa) with the use of right to information by poor people in an urban context (Delhi). The urban / rural split in India is important as knowledge and use of the right to information is still largely an urban phenomenon, attributable in large part to the ability of urban civil society organizations to focus the mainstream media including print press, TV, and the Internet on right to information issues and the implications of the law thus raising considerable awareness.

Delhi

Delhi occupies a unique position in India being both the capital city as well as a city-state. With an estimated population of 13.8 million in 2001, Delhi is the third largest city in India (after Mumbai and Kolkata) and the 10th largest city in the world. It is the fastest growing city in India and its population is predicted to reach 19 million by 2010. The city acts as a magnet and attracts poor migrants from all over India but particularly from a number of North Indian states including Rajasthan, Bihar, and Uttar Pradesh. In 1999-2000 the Planning Commission of the Government of India estimated that 8 per cent of Delhi's population lived below the poverty line, much lower than the national figure of one quarter. The gap between the rich and poor in Delhi, however, is stark as the better off have been able to take advantage of expanded economic opportunities and improved access to social welfare services. The poor, particularly the migrant population who have come to the city in search of a better way of life for themselves and their families, often live in dire conditions in slums. For the most part, they are unable to access social services systematically and they remain excluded from the opportunities presented by a fast growing economy and they are extremely vulnerable to livelihood 'shocks'.

The Delhi Right to Information (DRTI) Act was passed in May, 2001.^{xxiii} The decision to enact the legislation was taken by the Delhi Government after a conference of Chief Ministers in 1997 to discuss effective and responsive administration, where the Government of India suggested that all states should introduce legislation to provide citizens access to information in areas within their jurisdiction. The Delhi Act secures for every citizen the enforceable right to seek information and to examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice.

Civil society organizations have played certain vital roles in making a formal right to information a reality for people in Delhi: developing a strong network to campaign for right to information legislation; creating awareness of the Right to Information Act amongst the Delhi public; mobilising people, especially the poorer and more vulnerable groups in the State, to use the legislation and acting as an intermediary between the poor and government officials/departments responsible for implementing and administering the provisions of the Act.

Inspired by their success in Rajasthan, a number of civil society organizations in Delhi decided to place *jan sunwais* (*people's hearing*) at the centre of their campaign to raise awareness of the Act and mobilise people to use it. Shortly after the Act came into force a *jan sunwai* was organised by Parivartan, together with the National Campaign for People's Right to Information (NCPRI) and MKSS in a slum neighbourhood in east Delhi to review public works carried out by the Municipal Corporation of Delhi (MCD) in the area.^{xxiv} The meeting, attended by local residents, government officials and journalists, revealed extensive corruption by the MCD in contracts awarded and funds paid for work which was not carried out. The *jan sunwai* was subsequently to form a central plank of Delhi Civil society organizations' advocacy work on creating awareness of the Right to Information

Act, promoting its use by poorer groups and more effective implementation of its provisions by government officials.

Since 2000 the Delhi government has introduced a number of measures to improve governance in the city and address some of the more serious and persistent problems in the performance of public bodies and delivery of public services.^{xxv} The introduction of the state right to information Act in Delhi is closely related to these governance initiatives which include the introduction of a range of partnerships between citizens/civil society organisations and government bodies in an effort to improve the quality of life in Delhi. Right to Information legislation is a key innovation introduced by the Delhi government following an active campaign by civil society actors. The government hoped that the Right to Information law would contribute to improving governance within the city by making it more transparent and accountable as well as participatory. The existence of the Public Grievance Commission, an independent oversight body under the Delhi Right to Information Act, arguably helps to strengthen the implementation of the Act.

In an urban setting such as Delhi, the mainstream media were also actively involved in raising awareness about the need for right to information legislation and its implications once the law was passed. Also, the courts were close by and accessible. The national media, particularly the English language print media, have been an important force in creating awareness of the right to information amongst the public in Delhi and in monitoring both the use of the right to information legislation by ordinary citizens and the government's implementation of this legislation. Interest on the part of the media in Right to Information has to a large extent been sparked and maintained by civil society organisations actively involved in promoting Right to Information and enhancing awareness of Right to Information legislation. Parivartan, has played a leading role in interacting with the media in this regard. During 2004 the English language daily newspaper, *Indian Express*, in close cooperation with Parivartan launched the 'Tell Them You Know' campaign. This has involved various initiatives including the newspaper regularly featuring stories of how ordinary people in Delhi are using Right to Information legislation to improve their livelihoods and well-being. It has also included the organisation of various Right to Information 'camps' to inform people about the right to information and teach them how to file applications under Right to Information legislation.

The use of the right to information by the poor

The role of civil society organizations in particular has been critical for the poor (especially slum dwellers) to benefit from the right to information. For example, Satark Nagrik Sangathan is a Delhi-based citizens group working towards encouraging active participation of citizens in governance to ensure transparency and accountability in government functioning. It runs an information centre in the Malviya Nagar constituency of South Delhi. In 2004, the Delhi High Court passed an order making it mandatory for public schools to reserve 20% seats for students from economically weaker sections of society. By this order, all public schools dependent on government grants in any form are required to waive admission costs and fees for poor students applying through this reserved quota. The order also states the criteria for deciding which families fall in this category.

Satark Nagrik Sangathan disseminated information about this order to residents of slum settlements in Malviya Nagar. Several people, keen to explore the option of public schools for their children, approached Apeejay School (public school in the area) for admission forms but were turned down by school authorities on various pretexts. When people approached Satark Nagrik Sangathan with this problem, volunteers accompanied them to meet the principal of the school and helped them file RTI applications to the Directorate of Education seeking information regarding availability of seats for the poor in Apeejay school and eligibility norms. Response to the questions asked revealed that Apeejay School was obliged to give admission to a large number of poor students and very few admissions had been given so far. The information helped mount pressure on the school authorities,

with the result that the school made seven token admissions. However, armed with information about the existence of many more vacant seats, guardians and Satark Nagrik Sangathan volunteers created pressure on school authorities to follow the stipulated procedure. After much effort, the school was compelled to interview 66 students out of which 25 were selected for admission.

Another illustration of the key role of intermediaries is the work of Parivartan, a Delhi NGO that has waged a two-year campaign for the proper distribution of food rations and a corruption-free system.^{xxvi} Their efforts have produced some very impressive outcomes. The Government of India spends Rs 26,000 crore annually on food subsidies to 6.5 crore people living below the poverty line. The system works by providing food rations to poor people at highly subsidised prices under what is called the Public Distribution System (PDS). The PDS works by issuing licences to individuals to run “fair price” shops, which dispense food at subsidised prices to citizens issued with ration cards. Investigations into the PDS system have revealed widespread corruption and abuse of the system. According to Parivartan, shops are rarely open for business, and when they are, shopkeepers either claim that stocks are not available or dole out rations that are less than the prescribed quantity or quality. Frequently, food rations released by the Government do not reach the fair price shops; it has been found that trucks carrying rations drive directly to private mills rather than the food shops where they are then sold on the black market. Tactics such as these ensure that a bulk of the population reliant on rations for their survival, are denied them. In one study, economist Jean Dreze, calculated that the national average for food stolen from ration shops was around half.

Orissa

In 2001, Orissa’s population was 36.71 million, of which the indigenous tribal population accounted for approximately one quarter. Over the centuries Orissa’s unique political, cultural, social and religious identity has been shaped to a large extent by its geographic insulation from the rest of the country. In sharp contrast to Delhi, poverty in Orissa is overwhelmingly a rural phenomenon with distinct regional differences. Only in the coastal region of the state has rural poverty significantly declined. Almost three-quarters of the state’s poor live in the southern and northern regions and they remain heavily dependent on agriculture for their livelihoods. Almost half of the Scheduled Tribe population live in these regions. The density of population is several times greater in the coastal districts than in the other regions of the state. Annual outward migration (particularly male migration) in search of work in other states is a key feature of the state’s economy. One third of the population in Orissa is illiterate.^{xxvii}

Unlike Delhi, Orissa did not have its own state law before the national Right to Information Act was passed in 2005. Under the national Act, states such as Orissa frame their own Rules and not State laws. Thus the coming into force of the National Act superseded the four year campaign by civil society activists in Orissa to bring in a state law. The Orissa Right to Information Rules were developed by the State Government.

After the national Act came into force, an awareness-raising campaign was spearheaded by a network of civil society organizations – the Orissa Right to Food Campaign - to operationalise the Act. The specific objectives of the campaign were to ‘contribute to the advocacy efforts then going on at national level for pressing the Central Government to frame citizen-friendly rules as mandated by the Central Act, and more importantly (b) to effectively lobby with the State Government of Orissa to make the State Rules under the Act as pro-poor as possible keeping in view the interest of the overwhelming bulk of the State’s population’.^{xxviii} Throughout 2006 the Orissa Right to Food Campaign has continued to advocate for changes to the Orissa Right to Information Rules. Their advocacy efforts have included consultations with state legislators to convince the latter of the discriminatory and anti-poor nature of the right to information rules.

The national 'drive against bribes' campaign in July and November 2006 provided a vital opportunity for a coalition of organizations, Soochana Adhikar Manch, to launch a state-wide Right to Information campaign in Orissa. Based in Bhubaneswar, the capital of Orissa, the campaign covered all districts of the State. During the two phases of the campaign 42,000 applications to address mostly long-standing grievances were submitted under the Right to Information Act. In a number of instances the campaign yielded an immediate benefit for poor people. For example, one of the submissions made during the campaign related to an application filed in 2002 by thirty two landless people to receive their land entitlement under the Basundhara scheme. No action had been taken by the Orissa State government authorities. Several of these landless people came to one of the right to information camps during the second phase of the campaign and with the help of volunteers submitted their request on November 13, 2006 for the relevant documentation related to their submission in 2002. Within a few days, twenty six of those landless claimants received their land allocation.^{xxix}

The government of Orissa's support for Right to Information legislation and its strategy in creating awareness of the legislation is perhaps best illustrated through both the nature and application of the Orissa Right to Information Rules 2005, which provide the operational framework for implementing the Right to Information Act, as well as the role of the Information Commissioner. Both demonstrate that commitments on the part of the Chief Minister of the State and other government officials to ensure the effective implementation of the Right to Information Act was lacking.

A number of journalists, particularly from the print media, have been involved in the Right to Information movement in Orissa since its inception and local and state media played an important role in promoting the 'drive against bribes' campaign in 2006.

Use of the Right to Information Act by the Poor

The majority of poor people, while initially positive at the prospect of a new kind of legislation that could make a significant positive impact on their well-being, there was deep and widespread scepticism that the new law might be successful in effecting a breakthrough in the culture of secrecy and responsiveness within the State's government. Getting access to government-provided official documents such as residential certificates and 'below poverty level' (BPL) cards for many poor and tribal people in Orissa could be a long and difficult undertaking. It is not perhaps not surprising, therefore, that there is little evidence to date of poor people successfully using the Right to Information Act to claim their entitlements or to redress grievances without intermediation by civil society organizations and activists working in the area of Right to Information. It is true that the Right to Information 'camps' which were held throughout Orissa in 2005-2006 as part of the campaign against bribery yielded some quite extraordinary positive results for poor people.

Nevertheless the extent to which the poor, either directly or through intermediaries, are using the Right to Information Act to benefit from the recent National Rural Employment Guarantee Act (NREGA) is unclear. An audit of NREGA conducted in Gajapati district at the end of November 2006 suggests a low level awareness and use of the Right to Information Act by the poor and civil society organizations in the district. The audit findings indicated that poor families had not benefited significantly under the scheme. The findings included: (i) job cards were not issued to several eligible families as they did not know how to apply, (ii) a number of families which had been allocated job cards were unaware that they had to make a further application indicating when they wished to work. As a result most people with job cards did not apply for work (iii) a number of people who applied did not get work as it was not available and did not know that they had a right to unemployment benefit (iv) the job cards were in Oriya and were not understood by the majority of people in the district where the language is Telugu.^{xxx} There is little evidence that government officials at all levels engage in a proactive campaign to make the provisions of NREGA widely known to poor people

across the state. Right to Information activists have much more work to do in the state in order to enable the legislation to become an effective empowerment tool for poor people.

Conclusions

In assessing how far the poor are using right to information legislation to claim their entitlements and exercise other rights in these cases, we need to take account of the recent passage of the Right to Information legislation in both states, particularly Orissa, as well as the lack of formal data for assessing how people are using the legislation. Nevertheless, reviews of information from a variety of sources in both states support the propositions developed in this study. For poor people to exercise their right to information effectively, there needs to be a strong intermediary organization, political will by government at all levels, and poor people must see that potential advantages outweigh the real risks of challenging the status quo.

Research on both Delhi and Orissa indicates that a strong intermediary between the various levels of government bureaucracy and the poor remains essential if the latter are to use and benefit from Right to Information legislation. Case studies from both states indicate that with committed civil society organizations facilitating their engagement with government bureaucracy and supporting them in follow-up processes, poor people are able to exercise their right to public information and to use that right to claim a variety of other entitlements. In neither state, however, did research reveal examples of poor people being sufficiently empowered to exercise their right to request information, collate, analyse and act on it independently from civil society organizations to claim other social and economic entitlements. The Delhi case study illustrates that it was staff and volunteers from Parivaratan, the intermediating civil society organization, who bore the brunt of the response on the part of corrupt shopkeepers and petty officials when the latter's control of the Public Distribution System in Delhi was challenged. The findings from the Orissa research indicate that, in addition to information, poor tribal groups lack the necessary confidence and skills to engage with local government officials and are therefore exceedingly unlikely to exercise their rights to obtain information under the legislation unless supported by civil society organizations. This would suggest that in both states, raising awareness of, and mobilizing people to use, right to information legislation, may not be enough to empower poor people to use the legislation to demand their rights on their own without support. These activities may need to form part of broader, longer-term civic education programmes which aim to promote active citizenship on the part of poor people by developing their confidence and skills to assert their rights in all areas which affect their livelihoods and well-being independent of intermediaries.

Case studies, workshop reports and media coverage in both states confirm that when poor people exercise their right to information under the legislation it is almost always to secure tangible benefits such as land, food subsidies, work thus confirming the importance of a clear gain for them from exercising their right to information.

The lack of sustained political will on the part of senior government officials to use right to information legislation to promote transparency and accountability at all administrative levels is a key factor inhibiting the use of the legislation by the poor in both states. Those officials stand to have their petty corruption exposed and lose 'rent-seeking' opportunities provided by the administration of government funded programmes. There appears to be limited pressure from senior state officials to ensure that lower level officials comply with the legislation of government and therefore no incentive on their side to facilitate the implementation of the legislation. In Orissa, this is evidenced in a number of ways including the failure on the part of the state government to amend the Orissa operational rules to make them more pro-poor and people friendly and the lack of a proactive strategy to ensure Below Poverty Line (BPL) households are aware of the National Rural Employment Guarantee Act (NREGA) and their rights under this programme. This finding is in

line with the overall experience of activists lobbying for the effective implementation of Right to Information legislation across India to date.

In both states, lack of political will also seems to be related to a lack of incentives in the administrative system. The weak institutional and human capacity in many local government offices can act as a disincentive to provide information to the public. India's right to information regime provides for the imposition of penalties on public officials (fines and disciplinary hearings). If systematically applied, disciplinary hearings can act as an important incentive as such hearings impact directly on career prospects and can affect long-term plans. Improving and simplifying public administration records, developing guidelines and establishing training programmes on right to information for public officials at all levels would help in addressing the lack of political will. So too would including issues related to right to information implementation in senior bureaucrats' performance contracts, in public service value statements, and in general public service regulations.

These findings from the Indian experience have resonance elsewhere. As noted earlier, many countries have adopted similar legislation and we need to learn from these experiences.^{xxxii} In Southern Africa, for example, the experience of right to information activists also suggests that poor people need to be supported throughout the entire process from making the request to the ultimate use of the information. This requires a significant commitment and investment of time and resources on the part of the intermediary. The transferability of India's experience with right to information, and the lessons that can be learned for other countries, is an important consideration. For example the South African Law requires the South African Human Rights Commission to raise awareness of the legislation, particularly among vulnerable groups. Elsewhere, in Mexico in 2000, the successful candidate in the presidential elections, Vicente Fox, included the adoption of an access to information legislation in his campaign. The Mexican Federal Transparency and Access to Information Law (LTFaipg) was adopted in 2002. The campaign for the law, its drafting and its subsequent approval in Congress is in large part due to the civic activist group 'Grupo Oaxaca'.^{xxxiii} This law included provision for the establishment of an Access to Information institute (IFAI) which has a mandate to promote 'the culture of access to information' throughout the country including to illiterate and marginalised people apart from being an adjudicatory body on disputes under this law. The Mexican government has also ensured that the IFAI is adequately resourced in order to carry out its mandate.^{xxxiiii}

More research is needed to fully understand the link between a formal right to information, the empowerment of the poor, and its impact on human development. It is especially critical to debunk the myth that the right to information needs to wait for countries to reach a certain level of human or political development before implementation. Exercising the right to information itself contributes to the legitimate accounting of resources in the process of development. Effective anti-poverty programming requires accurate information on problems hindering development to be in the public domain. The right to information movement has contributed towards greater transparency and more open governance in many nations, and understanding the conditions in which these laws prove most effective is an important contribution towards strengthening good governance and human development.

Endnotes

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- ⁱ Roger Vleugels. 2006. *Overview of FOIA Countries Worldwide*. <http://www.statewatch.org/news/2006/feb/foia-feb-2006.pdf>. See also David Banisar. 2006. *Freedom of Information Around the World 2006: A Global Survey of Access to Government Records Laws* www.freedominfo.org.
- ⁱⁱ Burkart Holzner and Leslie Holzner. 2006. *Transparency in global change: the vanguard of the open society* Pittsburgh, PA: University of Pittsburgh Press.
- ⁱⁱⁱ See, for example, OSCE. 2005. 'Coverage of the Events and Governmental Handling of the Press During the Andijan Crisis in Uzbekistan Observations and Recommendations.' In *Freedom and responsibility: Representative on freedom of the media*. Vienna: OSCE. <http://www.osce.org/fom>. Amnesty International. 2005. *Uzbekistan: Lifting the siege on the truth about Andizhan* (AI Index: EUR 62/021/2005); Amnesty International. 2006. *Uzbekistan- Andizhan - Impunity Must Not Prevail*. <http://web.amnesty.org/library/Index/ENGEUR620102006>; Committee for the Protection of Journalists www.cpj.org
- ^{iv} Colin Bennett. 1997. 'Understanding ripple effects: The cross-national adoption of policy instruments for bureaucratic accountability.' *Governance*. 10(3): 213-34.
- ^v John M. Ackerman and Irma E. Sandoval-Ballesteros. 2006. 'The Global Explosion of Freedom of Information Laws.' *Administrative Law Review*. 58(1): 85-130.
- ^{vi} See John M. Ackerman and Irma E. Sandoval-Ballesteros. 2006. 'The Global Explosion of Freedom of Information Laws.' *Administrative Law Review*. 58(1): 85-130. See also Mark Bovens. 2002. 'Information rights: Citizenship in the information society.' *Journal of Political Philosophy* 10 (3): 317-341; Nadia Caidi and Anthony Ross. 2005. 'Information rights and national security.' *Government Information Quarterly* 22 (4): 663-684.
- ^{vii} Sandy Feinzig and Swasti Rana. 'The Importance of Right to Information in Education: Putting a Human Face on a Fundamental Right.' *Commonwealth Human Rights Initiative*. http://www.humanrightsinitiative.org/programs/ai/rti/articles/india_articles.htm
- ^{viii} Transparency International. 2006. *Using the Right to Information as an Anti-Corruption Tool*. www.ti.org.
- ^{ix} In India, targeting has been the preferred mode of reaching the poor. This was done by establishing a list of households considered to be "Below the Poverty Line" through a census.
- ^x Indian Ministry of Law and Justice. 2002. *Report of the National Commission to review the Working of the Constitution*. <http://lawmin.nic.in/ncrwc/finalreport.htm>
- ^{xi} The law was passed by the Lok Sabha (Lower House of Parliament on 11 May 2005, and by the Rajya Sabha or Upper House of Parliament on 12 May 2005 and received Presidential assent on 15 June 2005. Interestingly the Government passed the Freedom of Information Act in 2002 and it was assented to by the parliament but it was not gazetted.
- ^{xii} Pradeep Sharma. 2004. *Civil Society and Right to Information: A Perspective on India's Experience*. Oslo: UNDP.
- ^{xiii} Section 5 makes it an offence to part with any information received in the course of official duty to any non-official. It also applies to the unauthorised disclosure of unclassified documents or information. Citing several examples of the misuse of the Official Secrets Act, the civil society organisations have been clamouring for its amendment to pave the way for right to information. In 2003, over 50 Members of Parliament signed a petition calling for an amendment to Section 5 so that "nothing shall be an offence under this section if it predominantly and substantially subserves public

interest unless the communication or use of an ‘official secret’ is made for the benefit of any foreign power or is in any manner prejudicial to the safety of the state.”

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

xv Pradeep Sharma and Mandakini Devasher (2007) "Right to Information in India: Legislation and Beyond," Decentralisation: Institutions and Politics in Rural India, New Delhi, Oxford University Press.

xvi David Banisar. 2006. *Global Survey: Freedom of Information and Access to Government Records Around the World*. United Kingdom, – Commissioned by Freedominfo.org through a grant from the Open Society Justice Initiative http://www.freedominfo.org/documents/global_survey2004.pdf

xvii Neil Webster and Lars Engberg-Pedersen. 2002. *In the Name of the Poor: Contesting Political Space for Poverty Reduction*. Zed Books

xviii There is an argument that demonstrated political will on the part of government, national and local, reduces the need for intermediaries between the bureaucracy and the poor. At the very least, where political will exists, the role of civil society as intermediaries is likely to change from one of watchdog/enforcer to one of partnership with government to improve the implementation of right to information legislation at local level.

xix Analysis of how lack of political will manifests itself in India provided by the Commonwealth Human Rights Initiative.

xx Sitharamam Kakarala. 2004. *The Challenge of Democratic Empowerment- A Special Report on Civil Society Building*. Technical Report Series. Bangalore, HIVOS India Regional Office.

xxi Peter Ronald deSouza. 2003. ‘The struggle for local government: Indian democracy's new phase.’ *Publius-The Journal of Federalism* 33 (4): 99-118.

xxii Pradeep Sharma. 2004. *Civil Society and Right to Information: A Perspective on India's Experience*. Delhi: UNDP - UNDP Oslo Governance Centre fellowship paper, Oslo Norway

xxiii http://www.righttoinformation.info/delhi_act.htm

xxiv Pradeep Sharma. 2004. *Civil Society and a Right to Information: A perspective on India's experience*. UNDP Oslo Governance Centre 2004 fellowship paper, Oslo, Norway

xxv UNDP. 2006. *Delhi Human Development Report 2006* Delhi: UNDP.

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xxvii UNDP. *Orissa Human Development Report 2004*

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^{xxx} AID Rural Technology Centre, November 2006. *'The South Asian Audit of NREGA in Orissa Shows Corruption.'* Orissa, India,
http://www.thesouthasian.org/archives/2006/audit_of_nrega_in_orissa_shows.html

^{xxx}_i John M. Ackerman and Irma E. Sandoval-Ballesteros. 2006. 'The Global Explosion of Freedom of Information Laws.' *Administrative Law Review*. 58(1): 85-130.

^{xxx}_{ii} Issa Luna Pla, 2004. "Mexico: the Rise of Social Participation", Libertad de Información-México A.C
http://www.justiceinitiative.org/db/resource2?res_id=102073

^{xxx}_{iii} J. Gill and S. Hughes. 2005. 'Bureaucratic compliance with Mexico's new access to information law.' *Critical Studies in Media Communication* 22 (2): 121-137.