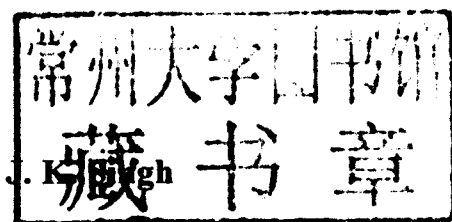




RIGHT TO INFORMATION AND FREEDOM OF PRESS

J.K. SINGH


Right to Information and Freedom of Press



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20, DDA Shopping Complex
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 26494336
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E-mail : newapcon@yahoo.co.in
newapcon@gmail.com

Preface

A democracy functions best when the people are well informed and are free to participate in public issues and have access to the widest choice of information and solutions to problems and issues that affect them. The press has an important role to play in the society. It can shape public opinion and as such it has to be cautious in every way. In a democratic set up the press can act as a bridge between the government and the people. A free press is the reflection of a free society. The main responsibility of the newspapers is to bring out facts and put them before the people. The press should uphold certain positive values that create a healthy society. It should, through its comments, enable the public to form the right way of thinking.

The freedom of expression will not be effective unless it is complemented by the right to information. Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The right to information is an essential ingredient of good governance. The Government of India has enacted the Right to Information Act in 2005. The Right to Information under this Act is meant to give to the citizens of India access to information under control of public authorities to promote transparency and accountability in these organisations.

The present book addresses all salient features of right to information and the freedom of press. The contents of the book will be highly informative to students, professionals in the field of journalism and information science, NGOs, government-aided institutions, academicians and general public.

Editor

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Right to Information in India

The right to information is implicit in the Constitution of India, even so the dominant culture of the executive has been one of secrecy and resolute denial of access of information to the citizen. Citizens groups have long battled for the exercise of these rights in courts. The movement for the right to information received a fresh impetus from a courageous and powerful grassroots struggle of the rural poor for the right to information, to combat rampant corruption in famine relief works. This struggle was led by a people's organisation, the Mazdoor Kisaan Shakti Sangathan (which literally means 'organisation for the empowerment of workers and peasants'). The reverberations of this struggle led to a nationwide demand for a law to guarantee the right to information to every citizen, with widespread support from social activists, professionals, lawyers, and persons within the bureaucracy, politics and the media, who are committed to transparent and accountable governance and people's empowerment. Three successive federal governments in quick succession have committed themselves to the passage of a law to guarantee the people's right to information and some state governments have actually passed such laws and administrative instructions.

IMPORTANCE OF RIGHT TO INFORMATION

In India today, the state has spread its tentacles to virtually every aspect of public life. The person on the street is condemned to grapple hopelessly with corruption in almost

every aspect of daily work and living. Most government offices typically present a picture of a client public bewildered and harassed by opaque rules and procedures and inordinate delays, constantly vulnerable to exploitation by employees and touts.

In the quest for systemic answers to this chronic malaise, it is important to identify the sources of corruption inherent within the character of the state machine. These include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to real results of public welfare.

In this section, we will argue that information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Ultimately the most effective systemic check on corruption would be where the citizen herself or himself has the right to take the initiative to seek information from the state, and thereby to enforce transparency and accountability.

It is in this context that the movement for right to information is so important. A statutory right to information would be in many ways the most significant reform in public administration in India in the last 50 years. This is because it would secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It would promote openness, transparency and accountability in administration, by making government more open to continuing public scrutiny.

Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on

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

There are numerous ways in which government information is at least in theory already accessible to members of the public. The parliamentary system promotes the transfer of information from government to parliament and the legislatures, and from these to the people. Members of the public can seek information from their elected members. Annual reporting requirements, committee reports, publication of information and administrative law requirements increase the flow of information from government to the citizen. Recent technological advances have the potential to reduce further the existing gap between the 'information rich' and the 'information poor'.

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

The right to information is expected to improve the quality of decision making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision making process. It would enable

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

The cumulative impact on control of corruption and the arbitrary exercise of power, of the availability of such information to the citizen, would be momentous. This information would include, for example in the context of maximum interface of the ordinary citizen with government, the following:

- All estimates, sanctions, bills, vouchers and muster rolls (statements indicating attendance and wages paid to all daily wage workers) for all public works.
- Criterion and procedure for selection of beneficiaries for any government programme, list of applicants and list of persons selected.
- Per capita food eligibility and allotments under nutrition supplementation programmes, in hospitals, welfare and custodial institutions.
- Allotments and purchase of drugs and consumable in hospitals
- Rules related to award of permits, licences, house allotments, gas, water and electricity connections, contracts, etc., list of applicants with relevant details of applications, and list of those selected, conditions of award if any
- Rules related to imposition of taxes such as property tax, stamp duty, sales tax, income tax, etc., copies of tax returns, and reasons for imposition of a particular level of tax in any specific case.

- Copies of all land records.
- Statements of revenue, civil and criminal case work disposal
- Details of afforestation works, including, details of land/sites, species and numbers of plants, expenditure on protection
- List of children enrolled and attending school, availing of scholarships and other facilities
- Rules related to criterion and procedure for selection of persons for appointment in government, local bodies or public undertakings, copy of advertisement and/or references to employment exchange, list of applicants with relevant details, and list of beneficiaries elected.
- Prescribed procedures for sending names from employment exchanges, relevant details of demands from prospective employers, list of candidates registered and list referred to specific employers.
- Rules related to criterion and procedure for college admission, list of applicants with relevant details, and list of persons selected.
- Copies of monthly crime report.
- Details of registration and disposal of crimes against women, tribals and dalits and other vulnerable groups, crimes committed during sectarian riots and corruption cases.
- Number and list of persons in police custody, period of and reasons for custody.
- Number and list of persons in custodial institutions including jails, reasons for and length of custody, details of presentation before courts etc.
- Mandatory appointment of visitors committees to every custodial institution, with full access and quasi-judicial authority to enquire into complaints.
- Air and water emission levels and content with regard to all manufacturing units, coupled with the right of citizens'

committees to check the veracity of these figures; copies also of levels declared safe by government authorities, to be published and made available on demand.

Even a short random listing such as this would demonstrate the enormous potential power of information, if it be placed in the hands of citizens, to combat corruption that they experience in their daily lives.

GRASSROOTS STRUGGLES FOR RIGHT TO INFORMATION

The most important feature that distinguishes the movement for the people's right to information in India from that in most other countries, whether of the North or the South, is that it is deeply rooted in the struggles and concerns for survival and justice of most disadvantaged rural people. The reason for this special character to the entire movement is that it was inspired by a highly courageous, resolute, and ethically consistent grassroots struggle related to the most fundamental livelihood and justice concerns of the rural poor. This inspiring struggle in the large desert state of Rajasthan was led by the Mazdoor Kisan Shakti Sangathan (MKSS), as part of a people's movement for justice in wages, livelihoods and land.

It was eleven years ago, in the summer of 1987, that the three founding activists of MKSS chose a humble hut in a small and impoverished village Devdungri in the arid state of Rajasthan, as their base to share the life and struggles of the rural poor. The oldest member of the group was Aruna Roy, who had resigned from the elite Indian Administrative Service over a decade earlier. She had worked in a pioneer developmental NGO, the Social Work and Research Centre, Tilonia, and gained important grassroots experience and contact with ordinary rural people, but now sought work which went beyond the delivery of services to greater empowerment of the poor. She was accompanied by Shankar Singh, a resident of a village not far from Devdungri, whose talent was in rural communication with a rare sense of humour and irony. He drifted through seventeen jobs—working mostly with his hands or his wits in a range of small factories and establishments—before he reached Tilonia, to help establish its rural

communication unit. With him was his wife Anshi and three small children. The third activist of the group was Nikhil Dey, a young man who abandoned his studies in the USA in search for meaningful rural social activism.

Together they had come to the village Devdungri, with only a general idea of their goal of work, to build an organisation for the rural poor. They were much clearer about what they did not want to do: they would not accept funding or set up the conventional institutional structures of buildings and vehicles common to most NGOs, they would not set up the usual delivery systems of services, they would accept not more than minimum wages for unskilled labour, and this too they would derive mainly from small research projects and assistance from friends, they would not accept international or government funding for their work, and they would not live with facilities superior to those accessible to the ordinary small farmer of the surrounding countryside.

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

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

In their initial years, the MKSS got drawn in as partners in important local struggles of the poor, relating mainly to land

and wages, but also women's rights, prices and sectarian violence. On May Day, 1990, the organisation was formally registered under the name Mazdoor Kisan Shakti Sangathan. Its ranks grew as MKSS built a strong cadre drawn from marginal peasants and landless workers, mainly from the lower socioeconomic groupings. Locally the organisation gained recognition for its uncompromising but nonviolent resistance to injustice such as an epic struggle to secure the payment of minimum wages to landless farm workers, and also for integrity and ethical consistency of the lifestyles and the means adopted by its activists.

New Instrument of Public Hearings

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

As with most great ideas, the concept and methodology of public hearings or *jan sunwais* fashioned by the MKSS is disarmingly simple. For years, indeed centuries, the people have been in their daily lives habitual victims of an unremitting tradition of acts of corruption by state authorities—graft, extortion, nepotism, arbitrariness, to name only a few, but have mostly been silent sufferers trapped in settled despair and cynicism. From time to time, courageous individuals—political leaders, officials, social activists—have attempted to fight this scourge and bring relief to the people. But in most such efforts, the role of the people who are victims of such corruption has mostly been passive, without participation or hope. Such campaigns for the most part have arisen out of sudden public anger at an event and died down as suddenly or has been sustained critically dependent on a charismatic leadership.

Consequently the results of campaigns against corruption have been temporary and unsustainable.

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

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

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

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

The village panchayat elections were then in progress and the Collector requested the withholding of the documents until the elections were over so that the village officials' strike does not obstruct the election process. MKSS organised the public hearing in the absence of documents, but were still able to gather evidence for *prima facie* cases of corruption in works and delays in payment. These were presented to the Collector, who promised an enquiry.

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

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

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

Equipped with such information, the people would be empowered to place this before and explain these documents to the concerned village communities, in a series of 'public hearings'. In these hearings, concrete evidence of corruption such as false muster rolls, diversion of building materials etc. would come to light. Armed with such evidence, the people would now be empowered to demand action against the corrupt, and recovery of diverted development expenditures.

Movement for Enforceable Right to Information

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

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

However, a full year later, this assurance to the legislature was not followed up by any administrative order. This lapse of faith was presumably under pressure both from elected