

Expanding the public domain

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'The right to information applies first to oneself, then to others. Those asking for the right are first bound by it themselves. We must know and believe in and demand the right.'

Susheela,

Mazdoor Kisan Sangharsh Samiti

(2nd NCPRI conference, New Delhi, 2004).

THE demand for the peoples' right to information stems from long standing collective action against arbitrariness and corruption by the agencies of state that have an immediate and grave impact on issues related to survival and dignity, particularly of those belonging to the most underprivileged and marginalized sections of the population. In the course of mobilization and coming together, the building of solidarities depends critically on processes of democratic governance within movements and equal participation of all people affected by the denial of the right. The emergence of leadership too, it is assumed, will be part of widespread democratic processes making the character of leadership in movements radically different from that of entrenched mainstream politics that inhabits state apparatuses.

The demand for the right to information raises several questions related to access, diversity and representation both within state apparatuses and civil society – in the public and private domains of citizenship – that must be addressed for the effective realization of the right. The legislation itself is one small part of this demand. In this essay I hope to point to some of these concerns of diversity and democratization that must figure in the main agenda of the right to information.

How would women, across class, whose access to the public is severely curtailed by practices of violence and dual exclusion, even begin to access the right to information? In a situation where even women of privileged classes across caste and community are excluded from formal politics and governance through brazen practices of misogyny that are widespread and legitimate (even our Parliament is not an exception), how would we begin to think of the right to information also as a question of physical access to public spaces where information can be obtained and accountability and transparency sought? I will look at two key issues that women across class must have remedy against, one in the private sphere of the family and the other in the public sphere of work.

The delivery of justice for women has been virtually absent. Dealing with cases of domestic violence and sexual assault on a day-to-day basis, it is clear that there has been little abatement in violence against women. Attempting to find life supports for women who suddenly find themselves hurled onto the streets after a decade or more of marriage, bigamy has always figured as a problem that dispossesses women. Yet, when the AP legislature silently passed the amendments making 498A and bigamy compoundable, the justifications given were that men suffered untold misery and violence in marriage. The law minister at that time even went on record saying that the bigamy amendment would help rural women enter second marriages unhindered.

Where is the record of the debate that led to the passing of these amendments? What were the statistical records that this move was based on? Why was there no public debate prior to the passing of these amendments? It is true that women find it very difficult to sustain charges of domestic assault and often withdraw their cases. This is not because the charges are false but because they find it easier to cope with a hostile home environment than with a hostile and misogynist public space, of which the criminal justice system and the legal profession is often a part. It is this hostility that is responsible for the failure of 498A, not the treachery of women, as people (read men) are quick to assert. What alternative mechanism will we have in place to provide effective remedies to women against the increasing violence in their homes?

In 1997, the Supreme Court in response to the assault on Bhanwari Devi delivered the *Vishakha* judgment to curb sexual harassment in the work-place. As part of this process, all state governments were instructed to set up complaints committees according to specified guidelines, and were asked to report back on action taken. Universities and employers, private or public were also expected to follow this procedure. Seven years later, neither government departments nor centres of learning have cared to put these mechanisms in place according to the specifications.

Nominal committees have been set up in some places, but our information shows that none of these committees, even in premier universities and centres of higher education in the country, conform to the guidelines in any sense. In government departments, there is a complete lack of commitment to addressing this issue in any serious fashion. Yet, sexual harassment remains the single most serious problem faced by women in the workplace, posing a constant threat to security of person and affecting efficiency and work performance adversely, irrespective of position.

There are instances of women officers of the prestigious diplomatic services being harassed, assaulted even, but preferring not to report the incidents in the interest of career prospects, bearing the scars of the trauma for years later. Beginning with missions abroad down to the smallest workplace in a corner of the country, *Vishakha* must

apply so as to create a secure environment for women in public spaces. We also need mechanisms in place to provide for women of the working classes, in the unorganized sector for instance, or in the free trade zones, which are notorious for routinely violating women's right to dignity and security in employment. While the setting up of these committees and ensuring their effective functioning might not eliminate the problem, the process is an indispensable part of the basic human right to bodily integrity and security of person, not a question of choice.

These are only two issues, and rather arbitrarily selected. Action Aid, in its cross-country study on the impact of violence on basic education of girls found that entrenched practices of violence severely limited the participation of girls in the schooling system. And this is not the only impact of violence against girls. Our work for over a decade with women writers across the country shows that education and class privilege do not alter the fact that women are hindered in their participation in the public domain, the censorship civil society unleashes on them being far more virulent than the official censorship on grounds of sedition, and the safeguards to their freedom of expression being non-existent, unlike official censorship. And if the right to information is part of the freedom of expression, how will we as women structure it so as to make it accessible to all women?

The second aspect of unhindered access concerns access to the public domain by persons with disabilities. If, as has been stated earlier in this essay, information assumes access, the progressive curtailment of access abridges the ability to seek and use information at all levels. The most serious problem in dealing with the issue of differently-abled people is the absence of any formal mechanism to record numbers and the unavailability of these numbers in the public domain. What we need at this point is an official National Disability Census that will create the information base necessary to address the issues in this sector effectively.

In this context, it is necessary also to evolve a Disability Index that will then become the reference point for all employers and institutions to measure the degree to which they conform to the anti-discrimination commitment of the state on disability issues. Providing information on the Disability Index must be made mandatory and communicated across languages, so that in the absence of requisite numbers or transparency it will become possible for persons with disabilities to seek remedial action through the formal justice delivery system.

In the context of universal primary education, how is the network of government schools equipped to make access routinely available to children with disabilities? With the exception of those mentally

challenged children who require special education, all other children could benefit with the provision of teaching aids and creation of physical access to participate in the normal/formal schooling system with ease. This would require, in the first instance, a disability census and the creation of infrastructure to fulfil the responsibility of providing access.

Questions of basic survival and adequate protection for persons with disabilities, especially women in rural areas, remain largely unaddressed. While this is part of the larger environment in which routine and systematic violence against women is endemic, it is necessary to address the specific needs and interests of women with disabilities within a broad human rights framework. The meaning of equality under the constitution has been addressed in terms of education, employment opportunities, and creation of access to public transport. While each of these are important, they also limit the scope of the issue in the very articulation.

Figures of children with disabilities being able to access normal schooling are inadequate and do not cover the field, the census being a very urgent need. The Persons with Disabilities Act does not touch upon the need for affirmative action to be made mandatory and binding on all employers, but merely ensures the creation of special facilities and protection of promotional avenues once employment has been obtained. Ironically, even while protecting the right to employment in whatever limited fashion, there has been no systematic review of rules of public employment in each sector, nor any attempt to amend or repeal provisions that violate the state's commitment to end discrimination against persons with disabilities.

The AP Judicial Services Rules have a sub clause in clause 12 that persons with bodily defect or infirmity are ineligible. While even the mere use of the terms 'bodily defect or infirmity' are objectionable and violate the fundamental right to dignity of persons with disabilities, in terms of procedures for selection, the exact applicability of these terms is not defined and the decision of whether or not to apply the provision is entirely a matter of interpretation. Visually challenged lawyers have been barred from entering the judicial services under this rule.

The *ambulift* cases have been a significant milestone in mainstreaming disability rights in judicial discourse by raising the critical question of access to public transportation by persons with disabilities. However, the applicability of the decision has been limited in characteristic fashion to air travel alone, while the majority of persons with disabilities use the cheaper modes of public transport routinely and on an everyday basis. The provision of seats and concessional travel is one small part of the solution. Facilitating easier and more dignified access, which is really the issue the *Abidi* case raises, remains unaddressed, thereby curtailing mobility of persons with disabilities in serious ways. Issues of access and mobility undoubtedly are critical elements of the right to

information for persons with disabilities.

Questions of democratic governance within communities that have mobilized themselves around issues are addressed systematically and checks and balances put into place to steer clear of any potential for the concentration of power or its unethical use. However, while it is relatively easier to raise questions of accountability and transparency with respect to public resources and their distribution and access to marginalized communities, often the core issues of equity within communities remain largely unaddressed even within the democratic spaces of movements, various unacknowledged forms of exclusion serving to limit the public domain to a largely homogenous 'oppressed class'.

It is relatively easy to pose the question of the right to information with respect to governments because there is a tradition of adversarial discourse between the state and citizen, with each end keeping the other in check. The questions are more difficult to pose with respect to oppositional struggles. The field of struggle and mass mobilization is particularly significant because it is representative of diversity in ways that the state and normative social spaces (the dominant public) are not. Issues of caste, adivasi rights, political and civil rights, questions of identity and the rights that emanate from identity politics, rights related to trade unionism and the freedom of association, rights of GLBT communities, labour rights, issue related to child rights, homelessness and so many more have broken homogenous hegemonies in civil society, rupturing boundaries and writing in processes of inclusion in the public in radically new ways.

The space of struggle itself, however, has ironically been relatively resistant to the same processes of inclusion internally, so that while representation and accountability are posited as problems without, homogeneity of interest blurs questions of diversity within. Of course, this is not to say that diversity or the lack of it is not a problem within movements. Dalit, women and minority activists have consistently critiqued the lack of inclusive diverse processes within movements. Whole new movements have grown out of this critique. Yet, problems of hierarchy, of representation, of leadership and autonomy continue to bind worlds of resistance within unnecessarily narrow confines, and tend to nurture adversarial politics between movements that address each other's concerns inadequately. Susheela's question really acquires immediate relevance in this context. Representation and voice are critical elements of the right to information and must reflect democracy within.

The right to information can only be realized through processes of

inclusion and representation. If the space of social existence is undercut by exclusion and resistance to formal numerical representation; or if it is undercut by the persistence of little 'private' spaces where democracy and autonomy are legitimately suspended; or even where the lack of representation is explained away by substituting the 'representation of interests' for actual physical representation by people belonging to excluded groups, an assumption can safely be made that access to the right to information exists only in very limited and partial ways.

Women today continue to hear the argument that they are unable to rise to leadership positions within movements in sufficient numbers because they are hampered by 'natural constraints' or are so tied down by tradition that it will take them longer to break free than it has taken the men. Peace processes from the north and northeast to the south continue to exclude women and by that token their voices and interests although in most instances, women have in fact been the architects of peace on a day-to-day basis. The rights of persons with disabilities have only now begun to touch human rights movements, as also questions related to the right to sexual orientation. The space of struggle therefore remains fraught with problems on the critical issue of representation.

The public domain of the state, however, poses an even more serious problem. While information can generally be sought and obtained, albeit with difficulty with respect to most of the executive and the legislature, the judiciary at all levels remains impervious to change. In a situation where we argue that the right to information is justiciable and that it is an intrinsic part of democratic functioning, the same questions of accountability, transparency and representation must bind the judiciary as much as, if not more than, the parties making the claim. The principle is the same. Justice can only be impartial if the diversity of civil society is reflected in the constitution of the judiciary at all levels.

While women get into the subordinate judiciary, the figures for women in the judiciary are pyramidal, with the figure for the Supreme Court remaining at a constant 1, raising doubts whether this is entirely a coincidence. Figures for dalits within the judiciary exhibit the same structure, and the debate surrounding the elevation of Justice Balakrishnan is too well-known to be repeated here. There are no figures for persons with disabilities within the judiciary because there is a bar on their entry at the lowest level; the pyramid cannot rise without a base. It is necessary at this point to focus the right to information, transparency and accountability on the judiciary, because both the opacity in functioning and homogeneity in constitution confound the justice claims of people of marginalized groups. Justice must be seen to be done.

The demand for the right to information, which draws on the experiences predominantly of dalit-bahujan working classes, assumes that everyone can enter the public space equally. Once they

enter, however, their access to information is curtailed and hence the right to information must be provided. However, in fact even access is a difficult issue that has not been realized on several counts. The normalization of violence, particularly against girls and women across caste, caste and community, and the entrenchment of patriarchal authority curtails women's exercise of the right to information and their assumption of full-blown, autonomous leadership in movements on the one hand, and serves as a powerful instrument of exclusion from the public domain on the other, with impunity being guaranteed to perpetrators of violence against women – Gujarat demonstrating to us the extent of violation women must bear.

The right to representation especially in governance is a basic precondition for the full exercise of the right to information. While transparency and accountability in governance are the central demands of the National Campaign for the Public Right to Information, neither of these can be effectively achieved simultaneously with practices of exclusion in governance at different levels. To the extent that they are achieved, they will still reflect the same hierarchies and structures of dominance that are sought to be undermined, since the physical location of political power and legitimate power in the public domain continue to remain unchanged.

The expansion of the public domain through the conscious adoption of systematic processes of formal representation is the only way that diversity and difference will begin to inform the agenda of the right to information. There are several examples that illustrate that even where there have been gains, the absence of a formal reconstitution of decision-making bodies has resulted in the ineffectiveness of remedies bitterly fought for and won. The right to information therefore, must be articulated in terms of a complex web of rights of which this is one critical piece.

