

The Genesis and Evolution of the Right to Information Regime in India¹

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This paper attempts to describe the genesis and evolution of the RTI regime in India, within the global and regional context. It describes the events leading up to the coalescing of the RTI movement in India. It goes on to list the challenges before the RTI movement, identifies its allies and opponents, and discusses the strategies adopted, and the resultant successes and failures. Based on all this, it attempts to draw out lessons that might be learnt from the Indian RTI movement. The paper ends with a summary of the findings of two nation-wide studies recently conducted to assess the implementation of the RTI Act in India and suggests an agenda for action, aimed at strengthening and deepening India's RTI regime.

EVOLUTION OF THE IDEA OF TRANSPARENCY

Clearly, transparency is an idea whose time has come. Named word of the year by Webster's Dictionary in 2003², "transparency"

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²Named the Word of the Year for 2003 at Webster's New World College Dictionary, transparency is an answer to the public's impatience with secrecy and deceit on the part of leaders, institutions, and processes everywhere, Webster's editors stated in a press release. (December 16, 2003. See <http://www.theworldlink.com/articles/2003/12/16/news/news08.tx>).

might well prove to be the word of the last decade and a half. Consider that in the two hundred and thirty years from 1766 when the first transparency law was passed in Sweden, till 1995, less than 20 countries had such laws. In the fifteen years, from 1995 to 2010, nearly sixty additional countries have either passed transparency laws or set up some instruments to facilitate public access to institutional information.

In the South Asian Region, the state of Tamil Nadu, in India, was the first to pass a freedom of information law way back in 1997. Though the law was essentially weak and ineffective, it was soon followed by somewhat more effective laws in many of the other states.

Meanwhile, at the national level, Pakistan was the first off the block and passed a transparency ordinance in 2002. However, there is some dispute whether this was finally converted into a legally sustainable law and whether it is still applicable³. India came next, with a national Freedom of Information Act, passed in 2002. However, this somewhat weak Indian law never came into effect and was finally replaced, in 2005, by a much stronger Right to Information Act. Nepal followed, soon after, in 2007 and Bangladesh in 2009. Sri Lanka, Bhutan and the Maldives are still at various stages in their quest for establishing a transparency regime.

GENESIS OF RTI REGIMES

Globally, it has been argued that the major impetus to transparency has been the growth of democracy⁴. Credit has also been given to multilateral donor agencies⁵ for “persuading” governments, especially in countries of the South, to set up transparency regimes, often as a condition attached to the sanction of loans and aid. In Europe, concerns about the environment have catalyzed efforts at transparent governance, especially with the Aarhus Convention⁶. The

³Recent news suggests that the insertion of Article 19A in Pakistan’s Constitution will make the right to information a fundamental right in Pakistan (*The News*, April 9, 2010, “Access to information now a fundamental right”). However, they might still need a new facilitating law.

⁴Banisar, D. “Freedom of Information and Access to Government Records Around the World”, posted on www.ati.gov.jm/freedomofinformation.pdf

⁵*Ibid*

⁶The Aarhus Convention is a Treaty of the United Nations Economic Commission for Europe (UNECE). Adopted in 1998, the Aarhus Convention represents enforceable binding law in most member states of the European Union (EU), including the UK. With effect

environmental movement has been one of the initiators of the transparency movement in many parts of the world, including India⁷.

Interestingly, in India, it was not so much the birth of democracy (in 1947) but its subsequent failures, especially as a representative democracy, that gave birth and impetus to the transparency regime. The RTI regime emerged essentially as a manifestation of the desire to move the democratic process progressively towards participatory democracy, while deepening democracy and making it more universally inclusive. However, the democratic nature of the state did, on the one hand, allow space for the growth of the RTI regime and, on the other, respond to the voices of those (very many) people who increasingly demanded the facilitation of a right to information. Perhaps without a democracy, the transparency regime would never have blossomed, but also without the failures of this democratic system, the motivation among the people to formalize such a regime might not have been there⁸.

The impetus for operationalising the right to information, a fundamental (human) right that is enshrined as such in the Indian constitution, arose primarily out of the failure of the government to prevent corruption and to ensure effective and empathetic governance. The role, if any, of international agencies was marginal⁹. The Indian RTI Act of 2005 is widely recognized as being among the most powerful transparency laws in the world and promises far greater transparency than what is prescribed or required by most international

from 28 June 2007 all institutions, bodies, offices or agencies of the EU will also have to comply with the provisions of the Convention. Designed to improve the way ordinary people engage with government and decision-makers on environmental matters, it is expected that the Convention will help to ensure that environmental information is easy to get hold of and easy to understand. Campaigners are also hoping the convention will improve the way governments fund and deal with environmental cases. For further details see www.capacity.org.uk/resourcecentre/article_aarhus.html

⁷See, for example, Singh, Misha and Shekhar Singh, "Transparency and the Natural Environment", *Economic and Political Weekly*, 41:15, pp. 1440-1446, April 15, 2006.

⁸India is a successful democracy in so far as the government that comes to power is unquestionably the one that the people have voted for. It is unsuccessful in so far as, once the government comes into power, it mostly does not reflect the concerns of the people, especially the oppressed majority, in the process of governance. It shares with most other democracies of the world the weakness that it offers voters limited choices, thereby making it difficult for them to use their franchise to ensure that their will is done.

⁹In fact, since 2005, the Indian RTI regime is far more stringent than those of international agencies, and one concern of at least some of the international agencies operating in India has been to protect their own "secrets" from being made public under the Indian RTI law.

organizations. Though the World Bank, for example, has recently revamped its disclosure policy¹⁰ and made it much stronger, it still lags behind the Indian law, at least in coverage and intent.

LIMITATIONS OF A REPRESENTATIVE DEMOCRACY

In India, as in most other democracies, functionaries of the government are answerable directly to institutions within the executive, including institutions designed to prevent corruption, monitor performance and redress public grievances. They are also answerable in courts of law if they violate a law or the constitution, or (in a somewhat uniquely Indian practice) if they do not meet with the expectations of the judiciary¹¹. The Government, as a collective, is answerable to the legislature, though with the party whip system¹² prevalent in India it is arguable whether the government in power can actually be taken to task by the Parliament or the Legislative Assembly. Finally, it is indirectly answerable every five years, when it attempts to get re-elected, to the citizen's of India, or at least to those among them who are eligible to vote.

Inevitably, institutions of the government have proved to be ineffective watch dogs. Being within the system and manned by civil servants, they are easily co-opted by those they are supposed to monitor and regulate. The resultant institutional loyalty, and the closing of ranks especially when faced with public criticism, often leads to the ignoring or covering up of misdeeds. Even the honest within them have to struggle with the burden of not letting one's side down, not exposing the system to attack by "unreasonable and impractical" activists and by a media looking to "sensationalize" all news. Added to this, they have to work within the context of very low standards of performance that the bureaucracy sets for itself and the rhetoric that

¹⁰Copy of the World Bank disclosure policy available at <http://siteresources.worldbank.org/EXTINFODISCLOSURE/Resources/R2009-0259-2.pdf?&resourceurlname=R2009-0259-2.pdf>

¹¹The Indian judiciary is often described as the most powerful in the world and has been accused, not always without basis, of blurring the distinction between the judiciary and the executive, and indeed even the legislature, and passing directions and delivering judgments on matters that should ordinarily not concern them.

¹²The Tenth Schedule of the Constitution of India was added in 1985 as a result of the 52nd Constitutional amendment. This specifies, among other things, that an elected member would be disqualified "...b) If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission."

India is a poor country and that the government is doing the best it can under the circumstances.

Many other institutions are blatantly corrupt, with civil servants competing fiercely (and out-bidding each other) in order to occupy what are generally considered to be “lucrative” posts.

Those that, even in part, survive these pitfalls, are often marginalized, with successive governments ignoring them and their findings. The Auditor and Comptroller General of India, and the Central Vigilance Commission, are two among many such institutions that often speak out in vain.

Other institutions are overwhelmed by the sheer volume of work, and starved of resources to tackle the workload in even a minimally acceptable time frame or manner. The judiciary, for example, apart from often being corrupt or co-opted, has by one estimate a back log of over 30 million cases that, at current levels of support and staffing, will take a whopping 320 years to clear!¹³ Apart from the intolerable delays, for most of the poorer citizens of the country, whose need for justice is most pressing, access to the courts of law is beyond their financial means.

Ultimately, in a democracy the responsibility for ensuring proper governance rests with the elected members of the national Parliament and the state legislative assemblies. However, in the sort of representative democracy we have in India, our elected representatives have not proved to be effective guardians of social justice and human rights. There are many reasons for this.

Essentially parliamentary (and assembly) constituencies are too large¹⁴ and too varied. Added to this, the weakest segments of society are by definition not organized into politically significant lobbies. Elections are held once in five years and issues before the voters are many. Besides, voting is not influenced only by the past performance of elected representatives but by many other considerations, including caste, religious and party loyalties, and how socially accessibly the

¹³“Indian judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts including High courts in the country, Andhra Pradesh High Court judge Justice V.V. Rao said”. (*Courts will take 320 years to clear backlog cases: Justice Rao* (Press Trust of India, Mar 6, 2010, as posted on <http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms>).

¹⁴On Member of Parliament in India represents on an average 2 million people.

elected representative is¹⁵.

However, in the final analysis, there are no real options before the voter. Usually, there isn't much difference between the various candidates who offer themselves for elections. Even where there is a progressive candidate, the chances of that candidate winning without a major party affiliation are slim. And even if some progressive candidates win, there is little that they can do if they are not a part of the major party structures. Besides, the process and content of governance has become very complex and most of our elected representatives are neither trained nor otherwise equipped to effectively deal with such complexities.

Most major political parties in India do not have genuine inner party democracy, and the scope for dissent and criticism is limited. This situation is aggravated by the anti defection law and the binding nature of the party whip (described earlier), making it virtually impossible for legislators to challenge the party leadership. On the other hand, where the party leadership is enlightened, as is sometimes the case, it finds it difficult to challenge or discipline its own cadres, or the bureaucracy, on fundamental issues like corruption or apathetic and ineffective governance, for fear of alienating them.

The party leadership recognizes its dependence on its party workers and functionaries, especially during election time. It also recognizes the ability of the permanent bureaucracy to sabotage government programs and schemes and, consequently, its chances of re-election. Therefore, it wants to alienate neither. All this makes it very difficult for the common person to get justice or relief.

CHALLENGES FOR A REPRESENTATIVE DEMOCRACY

This inability to provide effective governance and a semblance of justice to the poor and marginalized has its own consequences. Apart from the suffering that it imposes on the citizens of India, it has also fostered a violent response. From the late 1960s there has been a festering armed revolution in parts of India. Originally known as Naxalism, after the Naxalbari village of West Bengal from where it originated, a new

¹⁵One of the MPs from Delhi once told a public gathering that he spends most of his time attending wedding and birthday parties among his constituents, for he knows that at the end of five years that is what will get him votes rather than any work that he might do in and for the constituency. Though a somewhat cynical view, it does have elements of truth.

and somewhat transformed version of the armed “revolution” is now more popularly known as Maoism. Recently, the Prime Minister declared Maoism the greatest threat to India’s internal security¹⁶.

The popularity of Maoism has ebbed and waned over the years. In the early 1990s, with the opening up of the economy, many believed that corruption and the poor delivery of services could now be tackled through the three pillars of the new economic order: privatization, liberalization and globalization. The dismantling of the “licence raj”¹⁷ and the inclusion of the private sector into core economic activities was seen as the way to break the nexus between the corrupt bureaucrat and politician, and deliver essential services and economic growth to the citizens of India. However, nearly twenty years down the line, though the economy has grown, the stock exchange is doing well and India has all but weathered the global economic meltdown, the plight of the poor and the marginalized seems no better.

All that seems to have changed is that whereas earlier Maoists were fighting against the mis-governance of the state, they now fight against the usurping of natural resources and land by corporations intent on building factories, mining natural resources, and displacing local populations. The writer Arundhati Roy suggests that the so called “Maoist corridors”, where the violence is often in opposition to the memoranda of understanding (MoUs) being signed between governments and profit seeking corporations, can more appropriately be called “MoUist corridors”¹⁸!

¹⁶“Singh told a meeting of top police officers from around the country that Maoist rebels posed the greatest threat to India’s internal security and that a new strategy was required to deal with the problem..... The country’s Maoist insurgency, which started as a peasant uprising in 1967, has spread to 20 of the country’s 29 states and claimed 580 lives so far this year.” (*PM warns of failure to tackle Maoist ‘menace’*; Sep 15 2009; <http://www.livemint.com/2009/09/15114802/PM-warns-of-failure-to-tackle.html>)

¹⁷The dismantling of government control and regulation in favour of private enterprise.

¹⁸“Ms. Roy also described her recent visit into areas controlled by groups portrayed in the mainstream media as “violent Maoist rebels” that need to be “wiped out.” She argued that in exchange for giving such groups the right to vote, democracy “has snatched away their right to livelihoods, to forest produce and to traditional ways of life.”

She pointed out that the states of Chattishgarh, Jharkhand, Orissa and West Bengal, had signed hundreds of Memoranda of Understanding worth billions of dollars with large trans-national companies and this inevitably led to moving tribal people from their lands. “We refer to such areas not as the Maoist corridor but the MoU-ist corridor,” she quipped.” (The Hindu, 3 April 2010, reporting on conversations between Naom Chomsky and Arundhati Roy in New York; posted at <http://beta.thehindu.com/news/national/article387214.ece>.)

OVERTHROWING THE STATE, OR MAKING IT WORK

Perhaps an alternate to the armed struggle that started around Naxalbari village of West Bengal in the late 1960s is the RTI movement that started around village Devdoongri, in Rajasthan, in the early 1990s. Reacting to similar types of oppression, corruption and apathy, a group of local people, led by the Mazdoor Kisan Shakti Sangathan¹⁹ (MKSS), decided to demand information. “Armed” with this information, they proceeded to confront the government and its functionaries and demand justice. From these modest beginnings grew the movement for the right to information, a movement that could promise an alternative to the gun.

But is the RTI movement really an alternative to the armed struggles that threatens many parts of India. To answer this question, one has to look at the genesis and the outcome of both the armed struggles and the alternate, peaceful, movements in India. One common thread that seems to run through many struggles and movements is that they arise out of a sense of acute frustration among people who feel that their legitimate demands and grievances are being deliberately ignored by the government.

The genesis of such struggles and movements, at least for most of the rank and file, is not always a fundamental ideological difference with the government’s stated policies and objectives, but a frustration that the government violates with impunity its own stated policies, whether they be about the protection of the weak and oppressed, the removal of poverty and corruption, or the protection of life and property. Groups with seemingly radical ideologies go further and argue that such contradictions are inherent in the current State structure (“capitalist”, etc.) and can only be removed by overthrowing the State.

On the other hand, movements like the RTI movement try and make the system face up to its own contradictions and try and force the state to respond to the demands of the people.

Both approaches also recognize that the problem lies in the imbalance of power between the State and its citizens, but whereas one tries to counter regressive State power by the power of the gun, the other tries to use transparency to progressively disempower the State in favour of empowering the citizen, thereby somewhat righting the imbalance in the power structure.

¹⁹Loosely translated, the alliance of the power of farmers and workers.

SOME LANDMARKS IN THE RTI JOURNEY

- 1975:** Supreme Court of India rules that the people of India have a right to know.
- 1982:** Supreme Court rules that the right to information is a fundamental right.
- 1985:** Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.
- 1989:** Election promise by the new coalition government to bring in a transparency law.
- 1990:** Government falls before the transparency law can be introduced.
- 1990:** Formation of the *Mazdoor Kisan Shakti Sangathan* (MKSS) in Rajasthan and the launching of a movement demanding village level information.
- 1996:** Formation of the National Campaign for People's Right to Information (NCPRI).
- 1996:** Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.
- 1997:** Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie.
- 1997:** The Shourie Committee submits its report to the government.
- 1999:** A cabinet minister allows access to information in his ministry. Order reversed by PM.
- 2000:** Case filed in the Supreme Court demanding the institutionalization of the RTI.
- 2000:** Shourie Committee report referred to a Parliamentary Committee.
- 2001:** Parliamentary Committee gives its recommendations
- 2002:** Supreme Court gives ultimatum to the government regarding the right to information.
- 2002:** Freedom of Information Act passed in both houses of Parliament.
- 2003:** Gets Presidential assent, but is never notified.
- 2004:** National elections announced, and the "strengthening" of the RTI Act included in the manifesto of the Congress Party.
- May 2004:** The Congress Party comes to power as a part of a UPA coalition government, and the UPA formulates a "minimum common programme" which again stresses the RTI.
- June 2004:** Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi.
- August 2004:** NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its recommendations, to the government.
- December 2004:** RTI Bill introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government.
- Jan-April 2005:** Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.
- May 2005:** The RTI Bill passed by both houses of Parliament.
- June 2005:** RTI Bill gets the assent of the President of India
- October 2005:** The RTI Act comes into force.
- 2006:** First abortive attempt by the government to amend the RTI Act.
- 2009:** Second abortive attempt by the government to amend the RTI Act

As far as outcomes are concerned, the picture is more complex. Though none of the armed struggles in India have achieved their stated ideological goal of “overthrowing” the State, however much we might wish that we could demonstrate their futility, the fact is that many of them have been followed by, if not resulted in, significant (progressive) systemic changes. This is primarily because the Indian State, like many others, is essentially reactive. It reacts to stimuli, and the nature and intensity of its reaction is mostly in direct proportion to the nature and intensity of the stimulus.

Even successful armed struggles across the world have demonstrated that though the State, and its leadership, might be overthrown, this does not necessarily change the way in which power gets concentrated and used.

Therefore, the question is not whether armed struggles achieve anything, but whether they are worth all the bloodshed and suffering, especially when invariably the victims are the poorest and weakest segments of society, and very little finally changes. If the tendency to concentrate and misuse power is inherent to all types of State structures, perhaps the better alternative is to attack this tendency rather than the nature of the State itself.

The RTI regime, though it also occasionally results in violence and has its own victims, promises a much more benign method of making governments answerable. But is it effective?

In India, so far, it has performed well in addressing individual grievances, resolving specific problems, and exposing individual corruption. However, there is yet little evidence that all this leads to any fundamental systemic changes in the way in which the government conducts its business. Arguably, it is still too early for the long term, systemic, impacts of RTI to kick in. Perhaps, as more and more misdeeds get exposed and the government becomes increasingly accountable, there will be a gradual but inevitable movement towards better governance and towards greater public empowerment in relation to the government.

The worrying thing is that the government, rather than recognizing that the opening up of its functioning and the increase in accountability is perhaps the best way to prevent the “radicalization” of huge swathes of population, continues to try and weaken the RTI regime, as will be described later.

DEMANDS FOR TRANSPARENCY

In post independence India there were sporadic demands for transparency in government, especially around specific events or issues. Tragic disasters like train accidents invariably inspired demands from the public and often from people's representatives in Parliament and in the state legislative assemblies, to make public the findings of enquiry committee's which were inevitably set up. Similarly, when there were police actions like *lathi* (cane/baton) charges, or firing on members of the public, or the use of tear gas, there would be public demand for full transparency.

Perhaps the humiliating war with China, in 1962, more than any other single event, marked the end of the public's honeymoon with the Indian Government. The poor performance of the Indian army in the face of Chinese attacks, and the rapid loss of territory to China, shook public confidence in the government like nothing had done before. The euphoria of the freedom movement and independence had finally faded. People started questioning government action and inaction like never before and suddenly there were more persistent and strident demands for information and justification. However, it took another ten years or so for the Supreme Court of India to take cognizance of public demand for access to information and rule that the right to information was a fundamental (human) right. In 1975 the Supreme Court, in *State of UP vs Raj Narain*, ruled that: "In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings."

Subsequently, in 1982 the Supreme Court of India, hearing a matter relating to the transfer of judges, held that the right to information was a fundamental right under the Indian Constitution. The judges stated that: "The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest,

bearing in mind all the time that disclosure also serves an important aspect of public interest” (SP Gupta & others vs The President of India and others, 1982, AIR (SC) 149, p. 234).

However, despite all this, there was little effort by the government to institutionalize the right to information and to set up a legal regime which could facilitate its exercise by the common citizen. Though in 1985, following the disastrous gas leak in the Union Carbide Corporation plant in Bhopal, various environmental groups petitioned the Supreme Court asking for transparency in environmental matters; especially where storage of hazardous materials was concerned, specific relief in this matter did not result in there being any systemic change.

In 1989, there was a change of government at the national level, the ruling Congress party losing the elections²⁰. There were promises by the new ruling coalition to quickly bring in a right to information law, but the early collapse of this government and reported resistance by the bureaucracy resulted in a status quo.

It was only in the mid-1990s, with the coming together of various people’s movements, that there was concerted and sustained pressure towards such institutionalization. It was only then that the state began to respond and work towards an appropriate legislation.

BIRTH OF THE RTI MOVEMENT IN INDIA

The 1990s saw the emergence of a right to information movement²¹ which primarily comprised three kinds of stakeholders. First, there were people’s movements working on ensuring basic economic rights and access to government schemes for the rural poor. The relevance and importance of transparency was brought home to them when they found that the landless workers in rural areas were often cheated and not paid their full wages. Yet, the workers could not challenge their paymasters, who claimed that they had worked for less days than they actually had, as these workers were denied

²⁰Interestingly, in the late 1990s and the early 2000s, it was the Congress party which took the lead in enacting right to information laws in the states that they ruled and today it is seen as the champion of the right to information in the country, having rightly got credit for enacting a powerful national law.

²¹For a fuller account of the RTI movement in India, see Shekhar Singh, “India: Grassroots Initiatives”, in Ann Florini (Ed.) *The Right to Know: Transparency for an Open World*, Columbia University Press, New York, 2007.

access to the attendance register in which they had affixed their thumb prints every day they worked, because these were “government records”.

The second group of activists who joined hands in the fight for transparency were those fighting for the human rights of various individuals and groups, especially in conflict prone areas of India. They found that their efforts to prevent human rights abuses and illegal detentions and disappearances were frustrated because they were denied access to the relevant information.

The third group of supporters were environmentalists who were concerned about the rapid destruction and degradation of the environment. They were spurred on by the success, though limited, of an earlier petition to the Supreme Court demanding transparency about environmental matters.

Along with these movements, central to the fight for transparency were various professionals, especially journalists, lawyers, academics, and some retired and serving civil servants.

TOWARDS A NATIONAL RTI LEGISLATION

From the early 1990s, the Mazdoor Kisan Shakti Sangathan (MKSS) had started a grassroots movement in the rural areas of the state of Rajasthan, demanding access to government information on behalf of the wage workers and small farmers who were often deprived of their rightful wages or their just benefits under government schemes. The MKSS transformed the RTI movement. What was till then mainly an urban movement pushed by a few activists and academics metamorphosed into a mass movement that quickly spread not only across the state of Rajasthan but to most of the country. It was mainly as a result of this rapid spread of the demand for transparency that the need to have a national body that coordinated and oversaw the formulation of a national RTI legislation began to be felt.

Such a need was the focus of discussion in a meeting held in October 1995, at the Lal Bahadur Shastri National Academy for Administration (LBSNAA), Mussoorie²². This meeting, attended by activists, professionals and administrators alike, took forward the agenda of setting up an appropriate national body.

²²This is a government institute that trains civil servants on their entry into service.

In August, 1996, a meeting was convened, appropriately at the Gandhi Peace Foundation, in New Delhi where the National Campaign for People's Right to Information (NCPRI) was born. It had, among its founding members, activists, journalists, lawyers, retired civil servants and academics. This campaign, after detailed discussions, decided that the best way to ensure that the fundamental right to information could be universally exercised was to get an appropriate law enacted, which covered the whole country. Consequently, one of the first tasks that the NCPRI addressed itself to was to draft a right to information law that could form the basis of the proposed national act²³.

Once drafted, this draft bill was sent to the Press Council of India²⁴, which was headed by a sympathetic chairperson, Justice S.B. Sawant, who was a retired judge of the Supreme Court of India. The press Council examined the draft bill and suggested a few additions and modifications. The revised bill was then presented at a large conference, organised in Delhi, which had among its participants representatives of most of the important political parties of India. The draft bill was discussed in detail and was enthusiastically endorsed by the participants, including those from political parties.

The NCPRI then sent this much debated and widely supported bill to the Government of India, with a request that the government consider urgently converting it into a law. This was in 1996!

In response, the Government of India set up a committee, known as the Shourie Committee, after its chair, Mr. H.D. Shourie. The Shourie committee was given the responsibility of examining the draft right to information bill and making recommendations that would help the government to institutionalise transparency. The committee worked fast and presented its report to the government within a few months of being set up, though it did succeed in significantly diluting the draft RTI bill drafted by civil society groups.

²³The states seem to catch on to the idea of transparency much faster than the Centre did. In fact, starting from the mid 1990s with Tamil Nadu, various states in India enacted transparency laws of varying description and often dubious efficacy. The exceptions were Maharashtra, Delhi and Karnataka, and to some extent Rajasthan. However, even in these states, much was missing from the transparency laws and implementation was by and large poor. The other states with transparency laws of one form or another were Assam, Goa, Andhra Pradesh and Madhya Pradesh.

²⁴The consumer protection movement in India had also been concerned about the lack of transparency with regards to matters that affected consumer rights. They had also formulated an "Access to Information Bill 1996.

Once again, the government was confronted with the prospect of introducing a right to information bill in Parliament. Clearly the dominant mood in the government was against any such move, but it was never politically expedient to openly oppose transparency. That would make the government seem unwilling to be accountable, almost as if it had something to hide. Therefore, inevitably, the draft bill, based on the recommendations of the Shourie committee, was referred to another committee: this time a Parliamentary committee.

Government committees serve various purposes. Primarily they examine proposals in detail, sometime consult other stakeholders, consider diverse opinions, examine facts and statistics, and then to come to reasoned findings or recommendations. However, committees can also be a means of delaying decisions or action, and for taking unpopular, or even indefensible, decisions. The tyranny of a committee is far worse than the tyranny of an individual. Whereas an individual can be challenged and discredited, it is much more difficult to pinpoint responsibility in a committee, especially if it has many honourable members, and it becomes difficult to figure out who said what and who supported what.

THE SLEEPING GIANT STIRS: RESPONSE OF THE GOVERNMENT

Inevitably, around this time various sections of the government started becoming alarmed at the growing demand for transparency. This also marked the beginnings of organized opposition to the proposed bill and to the right to information. Interestingly, the armed forces, which in many other countries are reportedly at the centre of opposition to transparency, were not a significant part of the opposition at this stage. This might perhaps have been because they assumed, wrongly as it turned out, that any transparency law would not be applicable to them. More likely, it was the outcome of the tradition in India, wisely nurtured by the national political leadership, which discourages the armed forces from meddling in legislative or policy issues apart from those relating to defence and security.

Characteristically, the Indian State was a divided and somewhat confused house. There were many bureaucrats and politicians who were enthused about the possibility of a right to information law and did all that they could to facilitate its passage. However, many others were alarmed at the prospect of there being a citizen's right to information that was enforceable. Undoubtedly, some of these individuals were corrupt and saw the right to information act as a

threat to their rent-seeking activities. Yet, many others opposed transparency as they felt that this would be detrimental to good governance. Some of them felt that opening up the government would result in officers becoming increasingly cautious. Already, there was a tendency in the government to play safe and not take decisions that might be controversial. It was felt that opening up files and papers to public scrutiny would just aggravate this tendency and reinforce in the minds of civil servants the adage that they can only be punished for sins of commission, never for sins of omission.

Another group of bureaucrats and politicians feared that the opening up of government processes to public scrutiny would result in the death of discretion. The government would become too rigid and rule-bound as no officer would like to exercise discretion which could later be questioned. In the same spirit it was also thought that the public would not appreciate the fact that many administrative decisions have to be taken in the heat of the moment, without full information, and under various pressures including those of time. There were apprehensions that many such decisions would be criticized with hindsight and the competence, sincerity and even integrity of the officers involved would be questioned. There were also those who felt that too much transparency in the process of governance would result in officials playing to the gallery and becoming disinclined to take unpopular decisions.

Some elements in the government feared that transparency laws would be misused by vested interests to harass and even blackmail civil servants. Others felt outraged that the general public, especially the riffraff among them, would be given the right to question their integrity and credentials. There were also those who felt that the Indian public was not yet ready to be given this right, reminiscent of the British on the eve of Indian independence who seemed convinced that Indians were not capable of governing themselves. There were even those who objected on principle, arguing that secrecy was the bedrock of governance!

As was inevitable, these internal contradictions within and among different levels of the government had to, sooner or later, come to a head. They did, in 1999, with a cabinet minister unilaterally ordering that all the files in his ministry henceforth be open to public scrutiny²⁵.

²⁵In 1999 Mr Ram Jethmalani, then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his Ministry.

This, of course, rang alarm bells among the bureaucracy and among many of his cabinet colleagues. Though the minister's order was quickly reversed by the Prime Minister, it gave an opening for activists and lawyers to file a petition in the Supreme Court of India questioning the right of the Prime Minister to reverse a minister's order, especially when the order was in keeping with various Supreme Court judgments declaring the right to information to be a fundamental right.

By now it seemed clear that a large segment of the bureaucracy and political leaders were not eager to allow the passage of a right to information act. On the other hand, the judiciary had more than once held that the right to information was a fundamental right and at least hinted that the government should ensure that the public could effectively exercise this right.

The third wing of the government, the Legislature, had not yet joined the fray as no bill had yet been presented to Parliament. However, in certain states of India, notably Tamil Nadu, Goa, Madhya Pradesh, Maharashtra, Karnataka, Rajasthan, Assam, Jammu and Kashmir, and even Delhi, the legislature proved to be sympathetic by passing state RTI acts (albeit, mostly weak ones) much before the national act was finally passed by Parliament.

Perhaps the happenings in India around that time very starkly illustrate the contradictions present within governments in relationship to the question of transparency. As was done in India, even elsewhere such contradictions can be used to weaken and divide the opposition to transparency laws and regimes, and to drive a wedge in what might initially appear to be bureaucratic unity in opposition to transparency.

PASSING THE FREEDOM OF INFORMATION ACT 2002

Meanwhile, as mentioned earlier, a case had been filed in the Supreme Court questioning the unwillingness of the government to facilitate the exercise of the fundamental right to information. This case continued from 2000 to 2002 with the government using all its resources to postpone any decision. However, finally, the court lost patience and gave an ultimatum to the government. Consequently, the government enacted the Freedom of Information Act, 2002, perhaps in order to avoid specific directions about the exercise of the right to information from the Supreme Court. It seemed that the will of the people, supported by the might of the Supreme Court of India, had finally prevailed and the representatives of the people had

enacted the required law, even if it was a very watered-down version of the original bill drafted by the people²⁶. Unfortunately, this was not really so.

The Freedom of Information Act, as passed by Parliament in 2002, had the provision that it would come into effect from the date notified. Interestingly, despite being passed by both houses of Parliament and having received presidential assent, this act was never notified and therefore never became effective. The bureaucracy had, in fact, had the last laugh!

CHANGE IN GOVERNMENT, AND A CHANGE IN FORTUNES

In May, 2004, the United Progressive Alliance (UPA), led by the Congress Party, came to power at the national level, displacing the Bharatiya Janata Party led National Democratic Alliance government. The UPA government brought out a Common Minimum Programme (CMP) which promised, among other things, “to provide a government that is corruption-free, transparent and accountable at all times...” and to make the Right to Information Act “more progressive, participatory and meaningful”. The UPA government also set up a National Advisory Council (NAC)²⁷, to monitor the implementation of the CMP. This council had leaders of various people’s movements, including the right to information movement, as members.

This was recognised by the NCPRI and its partners as a rare opportunity and it was decided to quickly finalise and submit for the NAC’s consideration, a revamped and strengthened draft bill that recognized people’s access to information as a right. As a matter of strategy, it was decided to submit this revised bill as a series of amendments to the existing (but non-operative) Freedom of Information Act, rather than an altogether new act.

²⁶Essentially, the five indicators of a strong transparency law can be seen to be *minimum exclusions, mandatory and reasonable timelines, independent appeals, stringent penalties and universal accessibility*. The 2000 Bill failed on most of these counts. It excluded a large number of intelligence and security agencies from the ambit of the act, it had no mechanism for independent appeals, it prescribed no penalties for violation of the act and it restricted the access only to “citizens” and did not put a cap on the fees chargeable under the act.

²⁷The NAC was chaired for the first couple of years of its existence by Mrs. Sonia Gandhi, President of the Congress Party and Chairperson of the UPA.

Accordingly, in August 2004, the National Campaign for People's Right to Information (NCPRI), formulated a set of suggested amendments to the 2002 Freedom of Information Act²⁸. These amendments, designed to strengthen and make more effective the 2002 Act, were based on extensive discussions with civil society groups working on transparency and other related issues. These suggested amendments were forwarded to the NAC, which endorsed most of them and forwarded them to the Prime Minister of India for further action.

THE EMPIRE STRIKES BACK

Reportedly, the receipt of the NAC letter and recommended amendments was treated with dismay within certain sections of the government bureaucracy. A system, that was not willing to operationalise a much weaker Freedom of Information Act, was suddenly confronted with the prospect of having to stand by and watch a much stronger transparency bill become law. Therefore, damage control measures were set into motion and, soon after, a notice appeared in some of the national newspapers announcing the government's intention to finally (after two and a half years) notify the Freedom of Information Act, 2002. It sought from members of the public suggestions on the rules related to the FoIA. This, of course, alerted the activists that all was not well, and sympathizers within the system confirmed that the government had decided that the best way of neutralizing the NAC recommendations was to resuscitate the old FoIA and suggest that amendments can be thought of, if necessary, in this act, after a few years experience!

The next three or four months saw a flurry of activity from RTI activists, with the Prime Minister and other political leaders being met and appealed to, the media being regularly briefed and support being gathered from all and sundry, especially retired senior civil servants (who better to reassure the government that the RTI Act

²⁸The first of these amendments was the renaming of the Act from "Freedom of Information" to "Right to Information". The RTI Act was among the first of the laws unveiling the rights based approach public entitlement –subsequent ones include the National Rural Employment Guarantee Act and the Right to Education Act. The rights based approach, apart from empowering the people, also does away with the prevailing system of benign dispensation of entitlements, leading to state patronage and corruption. It allows even the poorest of the poor to demand with dignity what is their due, rather than to beg for it and humiliate themselves, while being at the mercy of insensitive, partisan or corrupt civil bureaucrats.

did not signify the end of governance, as we knew it), and other prominent citizens.

This intense lobbying paid off and after a tense and pivotal meeting with the Prime Minister (arranged by a former Prime Minister, who was also present and supportive), in the middle of December 2004, the Government agreed to introduce in Parliament a fresh RTI Bill along the lines recommended by the NAC.

Consequently, the Government of India introduced a revised Right to Information Bill in Parliament on 22 December 2004, just a day or two before its winter recess. Unfortunately, though this RTI Bill was a vast improvement over the 2002 Act, some of the critical clauses recommended by the NCPRI and endorsed by the NAC had been deleted or amended. Most significantly, the 2004 Bill was applicable only to the central (federal) government, and not to the states. This omission was particularly significant as most of the information that was of relevance to the common person, especially the rural and urban poor, was with state governments and not with the Government of India.

Consequently, there was a sharp reaction from civil society groups, while the government set up a group of ministers to review the bill, and the Speaker of the *Lok Sabha* (the lower house of Parliament) referred the RTI Bill to the concerned standing committee of Parliament. Soon after, the NAC met and expressed, in a letter to the Prime Minister, their unanimous support for their original recommendations. Representatives of the NCPRI and various other civil society groups sent in written submissions to the Parliamentary Committee and many were invited to give verbal evidence. The group of Ministers, chaired by the senior minister, Shri Pranab Mukherjee, was also lobbied²⁹.

Fortunately, these efforts were mostly successful and the Parliamentary Committee and Group of Ministers recommended the restitution of most of the provisions that had been deleted, including applicability to states. The Right to Information Bill, as amended, was passed by both houses of the Indian Parliament in May 2005, got Presidential assent on 15 June 2005, and became fully operational from 13 October 2005.

²⁹See text of letter at Annexure I.

Even while according assent “in due deference to our Parliament”, the then President had some reservations which he expressed in a letter dated 15 June 2005 addressed to the Prime Minister. Essentially, the President wanted communication between the President and the Prime Minister exempt from disclosure. He also wanted file notings to be exempt. The Prime Minister, in his reply dated 26 July 2005, disagreed with the first point but reassured the President (wrongly, as it turned out), that file notings were exempt under the RTI Act³⁰.

In any case, those who thought that the main struggle to ensure a strong legislation was over and that the focus could now shift to implementation issues were in for a rude shock. In 2006 the government made a concerted effort to amend the Act and to weaken it. Though this move was finally defeated, the danger has not yet abated, as will be described later.

“STRENGTHENING” BY WEAKENING: THREATS TO THE RTI ACT

Less than a year after the RTI Act came into force, there were rumours that the Government of India was intending to amend it, ostensibly to make it “more effective”. Sympathisers within the government confirmed that a bill to amend the RTI Act had been approved by the Cabinet and was ready for introduction in Parliament in the coming session. A copy of the draft amendment bill also became available, though legally it would not be publicly accessible till it was presented in Parliament.

A perusal of the draft bill revealed that the main thrust of the amendments was to effectively remove “file notings”³¹ from under the purview of the RTI Act. The genesis of this demand of the government lay in the drafting of the RTI Act itself. When people’s movements were drafting the RTI Act, they had under the definition of information specifically added “including file notings”. The

³⁰Copies of the correspondence at Annexure II.

³¹“File notings are the views, recommendations and decisions recorded by civil servants/ministers in files and include the deliberative process which leads up to the final decision. In the Indian system this deliberative process is usually recorded on sheets of (usually light green) paper with a margin. These sheets are attached to a file but are distinct from the correspondence and other documents that comprise the remaining file. There are strict conventions about how notes are to be recorded – and even the colour of ink to be used – and usually the file and the consequent notes move up and down the hierarchy, starting from near bottom, moving up to the appropriate decision making level, and then coming down for implementation of the decision and storage of the file.

government, while finalizing the bill for introduction in Parliament had deleted this phrase³². However, as it turned out, even without this phrase the definition of information in the act was wide and generic enough to unambiguously include file notings³³.

As soon as the RTI Act became operative, the nodal department of the Government of India (Department of Personnel and Training) stated on its web site that file notings need not be disclosed under the RTI Act. This was challenged by citizens, who appealed to the central, and various state information commissions. Despite government efforts, these various information commissions held that, as per the definition of information in the RTI Act, file notings could not, as a class of records, be excluded. This forced the government to try and amend the RTI Act itself.

Unfortunately, the government tried to perpetuate the myth that, in amending the RTI Act, they were actually trying to strengthen rather than weaken the act. In a letter addressed to the noted RTI activist Anna Hazare, the Prime Minister states: “File notings were never covered in the definition of ‘information’ in the RTI Act passed by Parliament. In fact, the amendments being currently proposed expand the scope of the Act to specifically include file notings relating to development and social issues. The overall effort is to promote even greater transparency and accountability in our decision making process”.³⁴ Fortunately, the public didn’t buy the argument, especially as more than one information commission had held that the RTI Act, in its present form, did include file notings.

People’s organisations reacted strongly to this attempt to weaken the RTI Act and restrict its scope and coverage. They organized a nation-wide campaign, including a *dharna* (sit-down protest) near the Parliament. Political parties were lobbied, the media was contacted³⁵,

³²See, for example, para 15 of the Prime Minister’s response to the President of India, copy at Annexure II.

³³The President and the Prime Minister of India also seemed to be agreed on the necessity of keeping file notings out of the purview of the RTI Act – the Prime Minister going so far as to assure the President, just a few days after the RTI Act was approved, that in case there was any ambiguity in the RTI Act on the matter, the Act would be amended (for correspondence between the two see Annexure II).

³⁴Letter dated July 27, 2006 – for complete text, see annexure III.

³⁵The left parties were immediately sympathetic and supportive. Among the ruling Congress Party, many leaders were privately supportive but could not publicly oppose the Government’s stand. The media was universally supportive and gave extensive coverage to the issue.

and influential groups and individuals were drawn into the struggle. A point by point answer to all the issues raised by the government, in favour of this and other proposed amendments, was prepared by RTI activists and publicly conveyed to the government³⁶, with the challenge that the government should publicly debate the issues.

The government beat a hasty retreat in front of this onslaught and the amendment bill, as approved by the cabinet, was never introduced in Parliament. One would have expected that by now the government would have learnt to leave the RTI Act alone, but that was too much to hope for.

RENEWED EFFORTS TO WEAKEN THE ACT

In 2009 fresh rumours started circulating that the government was once again proposing to amend the RTI Act. The real agenda remained “file notings” though this time around they were calling it “discussion/consultations that take place before arriving at a decision”. Other aspects were also included and mostly involved either non-issues (like whether information commissioners had to all sit together to give orders, or could they do so individually), or issues that could easily be tackled by amending the rules (like defining “substantially funded” or facilitating use by Indians residing abroad), without touching the Act itself.

Another issue that made its appearance, mainly thanks to the report of the Administrative Reforms Commission, was the effort to exempt so called “frivolous and vexatious” applications. The first report of the Second Administrative Reforms Commission (ARC), presented in June 2008, had the unfortunate recommendation that the RTI Act should be amended to provide for exclusion of any application that is “frivolous or vexatious”.

Meanwhile, a threat from a new quarter, the judiciary, emerged. In 2007, an RTI application was filed with the Supreme Court (SC) asking, among other things, whether SC judges and high court (HC) judges are submitting information about their assets to their respective chief justices³⁷.

³⁶For a copy, see annexure IV.

³⁷The Supreme Court of India, and all the high courts, had resolved that all judges would declare their (and their spouse/dependent’s) assets to the respective chief justice, and update it every time there was a substantial acquisition. This was seen as a means of promoting probity and institutional accountability.

This information was denied even though the Central Information Commission subsequently upheld the appeal. The main issue was whether the office of the Chief Justice of India (CJI) was under the purview of the RTI Act. The matter was then appealed to by the Supreme Court Registry before the High Court of Delhi, where a single judge ruled that the CJI was covered under the RTI Act.³⁸ A fresh appeal was filed by the Supreme Court in front of a full bench of the Delhi High Court which has also, since, ruled against the Supreme Court³⁹. The Supreme Court has now taken the somewhat unusual and perhaps unprecedented step of filing an appeal against the order of the full bench of the Delhi High Court in front of itself!

Interestingly, the real issue was no longer the assets of the Supreme Court judges. In fact, perhaps at least partly in response to public pressure and perception, judges of the Supreme Court and various high courts (including Delhi) had already put the list of their assets on the web. The dispute seemed to be about more sensitive issues, arising out of recent controversies about the basis on which high court judges were recommended for elevation to the Supreme Court⁴⁰. Newspaper reports suggested that some members of the higher judiciary were concerned that if the office of the Chief Justice of India was declared to be a public authority then the basis on which individual judges were recommended or ignored for elevation would also have to be made public.

Therefore, even as the Supreme Court prepared to listen to an appeal from itself to itself, great pressure was exerted on the government to save them the embarrassment of either ruling in their own favour, or ruling against themselves. This the government could do if it amended the RTI Act and excluded the office of the Chief Justice of India (and presumably other such “high constitutional offices”) from the purview of the RTI Act.

Even while the appeal against the single judge order to the full bench of the Delhi High Court was pending, the then CJI wrote a long letter to the Prime Minister, trying to make a case for the exclusion of the CJI from the scope of the RTI Act. Among other things, he contended that “Pursuant to the decision of the Delhi High Court

³⁸Judgment of the High Court of Delhi dated 2 September, 2009, W.P. (C) 288/2009.

³⁹Judgment of the High Court of Delhi dated 12 January 2010, LPA No. 50-1/2009.

⁴⁰The current system in India gives exclusive power to a Collegium of Supreme Court judges, headed by the Chief Justice and comprising four senior most judges, to decide on whom to elevate.

and in view of the wide definition of information under section 2(f) of the RTI Act, several confidential and sensitive matters which are exclusively in the custody of the Chief Justice of India may have to be disclosed to the applicant-citizens exercising their right for such information under the RTI Act. Undoubtedly, this would prejudicially affect the working and functioning of the Supreme Court as this would make serious inroad into the independence of the judiciary.....In this scenario, I earnestly and sincerely feel that Section 8 of the RTI Act needs to be suitably amended by inserting another clause to the effect that any information, disclosure of which would prejudicially affect the independence of the judiciary should be exempted from disclosure.....”⁴¹

All this came together in October 2009, when just after the annual conference, organized each year by the CIC, the nodal department of the Government of India (the DoPT) organized a meeting of chief information commissioners and information commissioners from across the country to discuss the proposed amendments. As RTI activists had already got wind of this meeting, many of the commissioners were briefed in advance. In any case, most of the information commissioners were sympathetic to the activist’s point of view and, by all accounts, the proposed amendments were rejected by almost all those present⁴².

RTI activists also prepared a response to the proposed amendments and, in an open letter to the Prime Minister and the Chairperson of the ruling coalition, disputed the need and the desirability of the proposed amendments.⁴³ Some of the activists also met the Chairperson of the ruling alliance, who was sympathetic and supportive and even addressed a letter to the Prime Minister. These activists also met the DoPT secretary and the concerned minister and got an assurance from them that there would be no effort to amend the RTI Act without first consulting various stakeholders, including people’s movements and organizations. In any case, the matter seemed to have again been put on hold, at least for the moment.

⁴¹Letter dated 16 September 2009, from the Chief Justice of India to the Prime Minister – for other extracts, see Annexure IX.

⁴²Though no official version of the proceedings of this meeting ever appeared in the public domain, one of the information commissioners who attended the meeting later on publicly circulated his version of the proceedings (see annexure V).

⁴³Copy of letter at annexure VI.

Subsequently, Mrs. Sonia Gandhi, Chairperson of the UPA, addressed a letter to the Prime Minister on 10 November 2009, where she stated that “In my opinion, there is no need for changes or amendments. The only exceptions permitted, such as national security, are already well taken care of in the legislation”. Unfortunately, the PM seemed less supportive and in his response, dated 24 December 2009, said that “While we are taking steps to improve dissemination of information and training of personnel, there are some issues that cannot be dealt with, except by amending the Act.”⁴⁴

However, there seems to have been no further effort at amending the RTI Act. The Supreme Court has also not yet started hearing its appeal to itself. Therefore, as of now (September 2010), that is where the matter rests⁴⁵.

HOW DID WE GET HERE: A RETROSPECT OF THE RTI MOVEMENT

The right to information movement in India can be broadly classified into three phases. In the first phase, from 1975 to 1996, there were sporadic demands for information from various sections of the society, culminating in a more focused demand for access to information from environmental movements in the mid 1980s, and from grassroots movements in rural Rajasthan in the early 1990s. This phase ended with the formation of the National Campaign for People’s Right to Information (NCPRI), in 1996. This phase also saw various judicial orders in support of transparency, and the judicial pronouncement that the right to information was a fundamental right.

The second phase starts in 1996, with the formulation of a draft RTI bill, spearheaded by the NCPRI, and its subsequent processing by the government and the Parliament. Various state RTI laws are passed during this period, including in Tamil Nadu, Delhi, Maharashtra, Karnataka, Assam, Madhya Pradesh, and Goa, as is the national Freedom of Information Act in 2002. This phase also marks the rapid

⁴⁴Copies of correspondence between Chairperson of the UPA and the Prime Minister at annexure VII and VIII.

⁴⁵It is interesting to compare the Indian experience with the British one. The British Government took longer than even the Indian one to formulate a transparency law, and then as soon as it was passed, set about trying to destroy it. Perhaps British Colonial influence runs deeper within the Indian bureaucracy than anyone imagined! See annexure XI for an interesting account of the British experience.

growth in size and influence of the RTI movement in India, and culminates in the passing of the national RTI Act in 2005⁴⁶. This is also the period that sees a large number of countries across the world enact transparency laws.

The third phase, from the end of 2005 to the present, has been mainly focused on the consolidation of the act and on pushing for proper implementation. Part of the effort has also been to safeguard the RTI Act from at least two efforts to weaken it, and to push the boundaries of the RTI regime and make it deeper and wider in coverage, participation, and impact.

LESSONS LEARNT: GRASSROOTS MOBILIZATION AND BUILDING OF ALLIANCES

The first phase represented a period when different groups and individuals independently experimented with trying to push the transparency agenda, for varying reasons, in different ways, and sometimes with differing results. The higher judiciary on its own championed the cause in relationship to matters brought up for their consideration. Separately the environmental movement sought to use the Supreme Court and some of the high Courts to push for transparency in environmental matters.

At another perhaps even more important level, grassroots activists and movements in Rajasthan and elsewhere sought to push the transparency agenda through mass mobilization of rural populations, and through demonstrations and petitions to the government. It was a phase of experimentation, with groups and individuals discovering for themselves, through trial and error, the best strategies for effectively demanding transparency from governments and institutions. It was also a period when people discovered the value of transparency while at the same time realizing how difficult it was to persuade governments and institutions to be even minimally transparent.

The second phase represented the coming together of these and other diverse groups along with their common agenda of transparency in government. This not only led to the formation of a broad coalition

⁴⁶A remarkable achievement, in 2002/3, was that of the Association for Democratic Reforms, which successfully petitioned the Supreme Court and finally got a law passed that made it compulsory for all those standing for elections for Parliament and state assemblies to declare their assets, their educational qualifications and their criminal records, if any. For details, see <http://www.adrindia.org/Activities/Content/achievements.html>.

in the form of NCPRI, but also allowed for more extensive alliances. Building on the lessons of the first phase, there was a recognition that the battle for transparency was not a trivial one and if it was to be won, all the progressive forces in the country had to join together, cutting across traditional barriers. It was recognized that, though it helped if there was a well-crafted draft of an RTI Bill, and well-argued and researched documents and reports in support of the benefits of transparency, in the final analysis this was not a techno-managerial battle but a political one. What would determine the outcome was not the drafting and debating skills of either side, but who had the greater political support.

In a democracy like India this meant that it was not enough that people's organizations and NGOs supported the RTI, allies had to be found among the media, the bureaucracy and the politicians. It was not enough that urban professionals and middle class activists demanded the right; grassroots mobilization was also required across the country so that the voices of the rural masses were heard along with those of their urban compatriots. The demand for the right to information must be recognized by all political parties as a politically sensitive demand that had electoral implications. They recognized that people's right to information would significantly disempower them, and their support for the RTI, however reluctant, would only come if they believed that opposition to the demand of transparency was political suicide.

One challenge before the RTI movement was to unite, around the demand for transparency, groups and movements working with other agendas. Initially there was a tendency to treat the RTI as another area of work, like child rights, or gender rights, or environmental conservation. An important part of the mobilization was to establish to those working with different movements that RTI was not just another issue, but a cross cutting issue that concerned the environmental movement as much as it concerned the movement for gender equality, or child rights, or for social justice and human rights. A turning point in the success of the RTI movement was when movements across the board joined hands and recognized the right to information as a fundamental right that was a priority for all of them.

Equally important was the lobbying with political parties and with individual members of Parliament. The media was also an

important ally and ensured that the issue was never out of the public eye. In short, the lessons of this phase were that the most critical requirement is to build alliances across the board, ensure that there is grass roots mobilization and pose the demand as a political demand rather than a techno-managerial one.

The third phase, which has been marked by repeated efforts to weaken the RTI Act, has shown the value of rapidly expanding and consolidating the alliances formed in the second phase. As a rapidly growing number of people use the RTI Act (estimated to be over a million a year at present), the number of stakeholders ready and willing to protest any attempt to tamper with the Act grows larger. Even though the Act does not work perfectly, enough of the information asked for is received (estimated to currently be about 60%) to ensure that those who have received it do not want to lose that privilege, and those who haven't, live in hope.

Perhaps, more crucially, it is not just the receiving of information that is the main attraction of the RTI Act. For a vast majority of Indians it is a new sense of empowerment that, for the very first time, allows them to “demand” information and explanation of the high and mighty, the senior government officials, whom they could till now at best observe from afar. Therefore, it is not so much the information they receive, but the fact that they have a legal right to demand it, and to receive it in a timely manner, and to have the official penalized if the information is wrongly denied or delayed, and the flutter that all this causes among the officials, that is the real value of the RTI Act. And this sense of empowerment inevitably spills over to other transactions so that, for perhaps the first time in their lives, they start looking at the government as something that is answerable to them and not just as something that they are answerable to, as was always the case.

LESSONS LEARNT: EXPLOITING OPPORTUNITIES

Another lesson learnt from this phase is that RTI movements must be prepared to exploit opportunities that might suddenly appear. In India, the change of government, the refusal of Mrs. Sonia Gandhi to become the Prime Minister and the extraordinary level of moral authority this gave her, the setting up of the National Advisory Council under her leadership, the unfamiliarity of the system with this first-of-its-kind council and therefore its inability to “manage” and neutralize it, the hesitation of the bureaucrat to openly oppose proposals coming from this council, all led to a window of opportunity which allowed

the RTI Act to “slip through”. It is quite possible that if the movement was not ready with a draft bill, or did not recognize the significance of this window of opportunity, this Act would never have been passed. In fact, as the system assimilated the NAC it developed its own strategies to neutralize it, as can be seen from the fate of subsequent proposals, most notably the National Rehabilitation Policy, which was also forwarded by the NAC to the Government, in a manner not dissimilar to that of the RTI Act, and yet got nowhere.

LESSONS LEARNT: FLEXIBILITY AND CONSENSUS

Undoubtedly, when alliances are to be built, there has to be the ability and willingness to compromise and build consensus. Sometimes this is the hardest part of the process, for people come to the negotiating table after years of struggle for things they passionately believe in. Then to compromise and give up some of your demands in order to build up broader alliances is never easy. There is, of course, the danger of giving up too much and it is difficult to be sure how far is far enough. In forging consensus around the Indian RTI Bill, this was often an issue. People concerned about undue invasion of privacy wanted far more stringent safeguards, but others felt that such safeguards could get misused to deny even legitimately accessible information. Human rights activists wanted access to all information relating to intelligence and security agencies, but this was violently objected to by these agencies and other interests. The compromise (perhaps not a happy one) was to allow the exclusion of certain notified intelligence and security agencies but only for information that was not about allegations of human rights violation or allegations of corruption.

LESSONS LEARNT: POLITICAL MANDATES AND TRANSPARENCY

The national election of 2009 gave a new political rationale for the RTI Act. In recent years there has been a tendency for parties in power to lose elections or come back with reduced majorities, due to what is popularly known as the “incumbency factor”. This incumbency factor is little more than a polite way of describing the frustration and anger that the voter expresses against poor governance and votes out or against the incumbent party in the hope that the new one would be better.

In 2004 the incumbent coalition led by the Bharatiya Janata Party had lost its mandate, even though it was widely expected to win, and

this was attributed to the “incumbency factor” Therefore, it was thought that in 2009 the incumbent coalition led by the Congress Party would lose, or at least have a reduced majority, for the same reasons. However, belying such expectations, the coalition led by the Congress Party not only won but did better than it had done in 2004. The Congress Party itself got many more seats than it had got last time. This victory of the coalition, and especially of the Congress Party, has been widely attributed (even by the Congress Party Leadership) to be mainly due to the two progressive, people friendly, and popular laws it passed in its first term, one of which was the Right to Information Act⁴⁷. This has predictably perked up the interest of democratically elected leaders in other countries, who are vulnerable to persuasion that the introduction of effective transparency laws prior to the next elections might give them an edge in the hustings.

In conclusion, it must be recognized that acknowledging people’s right to information is acknowledging that they are the ones to whom the government is ultimately and directly answerable. When people exercise this right, they actually take back some of the power that was rightly theirs but had, over the years, been usurped by governments and institutions.

Governments are not ordinarily in the business of disempowering themselves. Therefore, in order to wrest from them this right, the people have to line up all the power and influence they can muster, and exploit all the windows of opportunity that present themselves. In India this meant building alliances among NGOs and people’s organizations, with sympathetic elements among the government and the political leadership, and among the media, and supporting this with grass roots mobilization. In another country the opportunities and possibilities might be different and the more relevant allies might be international organization and NGOs, or groups of professionals like lawyers and academics. Windows of opportunity might also be different. For example it might not be post election chaos but pre election insecurity of a political party that can be exploited to get their support for such a “popular” law!

WHAT THE FUTURE HOLDS

One might be forgiven for hazarding a prediction that the RTI

⁴⁷The other being the National Rural Employment Guarantee Act.

Act in India is here to stay. And as more time passes and more and more people use it with greater effect, it will become increasingly difficult for the government to tamper with it, to weaken it or to repeal it altogether.

However, this is not the time to gloat or be complacent, for even if the RTI Act is here to stay and is not amended and weakened, it can die just because of poor implementation. Therefore, clearly one priority must be to improve its implementation, especially in light of the findings of the two national studies that have been recently completed. Also, at least in part the success of the RTI Act must be measured not by the number of applications that are made for information, or even by the proportion of these that are responded to fully and in a timely manner, but by how effective it has been in improving governance. In order to achieve this, the application and scope of the law has to be expanded and new and innovative ways found to use the Act to promote institutional probity.

THE STATE OF IMPLEMENTATION

In 2008 the DoPT, Government of India, decided to commission an assessment of the implementation of the RTI Act. An international accountancy company, PriceWaterhouse Coopers (PwC) was awarded the contract, reportedly paid for by the DFID of the Government of UK. Forever watchful of governments, when people's organizations heard about this impending assessment they decided to do one of their own, so that if any very startling results (for example those that supported the need for amending the RTI Act) emerged from the PwC assessment, they would have a parallel assessment, done at the same time, which was arguably bigger, more scientific and more participatory, on the basis of which these results could be challenged. Consequently, two nation-wide assessments of the implementation of the RTI Act were done in 2008-09, both coming up with their reports in 2009⁴⁸.

Ultimately, there was no major contradiction in the findings of both these studies. There were some minor differences in the statistics that emerged, but this was understandable as the scope, coverage and methodology differed – the PwC study covering five states while the People's Assessment covered 11, including the five covered by PwC.

⁴⁸PwC report is available at <http://rti.gov.in/rticorner/studybypwc/index-study.htm>. Executive summary of the People's Assessment is available at http://www.rti-assessment.org/exe_summ_report.pdf.

Both studies came to the conclusion that awareness about the RTI Act was still very low, especially among rural populations and among women. Fortunately, surveys done in rural areas as a part of the People's Assessment estimated that in the first two and a half years of the RTI Act (Oct 2005 to March 2008) there were an estimated two million RTI applications filed across the country, of which an estimated 400,000 RTI applications were filed from the rural areas, belying the impression that only the educated urban people used the RTI Act. Nearly 50% of the rural and 40% of the urban applicants were not even graduates, and the representation among applicants of the disadvantaged groups was in proportion to their population in India. Both studies, however, concluded that the Act was primarily being used by men and only 5% of the rural and 10% of the urban applicants were women.

Both studies agreed that applicants, especially in the rural areas, faced a lot of harassment at the hands of the public information officers who are supposed to receive their applications and provide them with information. In many cases the applicants had to visit the office more than once, and waste a considerable amount of time, in order to get their applications accepted. There were also instances of applicants being discouraged from filing RTI applications, threatened, and even physically attacked.

Both studies highlighted the need for training more government functionaries on how to respond to RTI applications, and on the need to significantly improve record management. The People's Assessment found that, between 50% to 60% of the information asked for was actually received (though not always on time), and that 40% of the rural and 60% of the urban applicants who got the information they asked for said that the objective of seeking the information was fully met. 20% of those receiving information said that the objective was partly met.

Another weak area was the functioning of the information commissions⁴⁹. The People's Assessment highlighted that in many of

⁴⁹A recent (2009) study done by the Public Causes Research Foundation (PCRF) on the functioning of information commissions around the country has identified huge delays and a high proportion of anti-transparency orders as two of the important problems. Another major problem identified was the inability or unwillingness of commissions to ensure that their orders were complied with. The PCRF also decided to rank information commissioners and information commissions – thereby causing much controversy. Their report can be accessed from <http://www.rtiawards.org>.

the states the back-log was huge and growing. This meant that appellants had to wait for months in order to get their matter heard and decided upon. It was also found that, despite the fact that the RTI Act mandated that a penalty shall be imposed every time information is not provided within 30 days (without reasonable cause), very few penalties were actually being imposed, with some commissions imposing no penalties at all. Also, there was no consistency or uniformity in the orders of the commissions, with similar or even identical applications being treated differently by different commissions, by different commissioners in the same commission, and in at least one bizarre case, by the same commissioner! There was also a tendency, among many information commissioners, to uphold refusal of information for a variety of reasons not permissible under the law.

In short, whereas the RTI Act was doing well in terms of the enthusiasm with which the public had taken to it, or the fact that between 50 and 60% of the applicants actually got the information asked for, and that for many of these it resulted in the ultimate objective being met, there was much to be done to improve the functioning of the government and the commissions.

A PROPOSED AGENDA FOR ACTION

The earlier described People's Assessment came out with a list of priority actions, which are summarized in annexure X. These priorities have been set on the basis of discussions with various stake holders, including information commissioners and government officials at the centre and in some of the states. Some of the main recommendations are summarized below.

1. Both the assessments described above highlighted the *need to raise awareness* about the RTI Act, especially among the rural populations and among women. The PwC study recommended promoting RTI as a brand name and using established marketing strategies. In addition, the People's Assessment recommended the use of electronic and traditional media, including folk theatre, song and dance troupes, and the medium of fictionalized television serials. They also recommended introducing RTI as a non-credit instructional subject at senior school, and college and university level (detailed recommendations at s. no 1-4 of annexure X).
2. Both the studies also highlighted the need to *train effectively* a much larger number of civil servants and to orient them to facilitating

people's right to information. It was thought that the current efforts were not enough, both qualitatively and quantitatively. Detailed recommendations are at s. no. 5-12 of annexure X.

3. Perhaps the future of the RTI regime lies in progressively *strengthening the pro-active disclosure* of information so that there is little need for applicants to apply for information and for officials to process, and respond to, these applications. Apart from saving time, effort and costs all around, a proactive regime of information disclosure has many other advantages. Though the Indian RTI Act contains strong provisions for pro-active disclosure of information, both the assessments highlighted the unsatisfactory implementation of these provisions. In fact, ideally speaking public authorities should go much beyond the minimum required by the law, but at the moment they are not even meeting the minimum requirements. Perhaps there is both a need to monitor this aspect more stringently and also to involve external professional agencies to assist public authorities in this task. Detailed recommendations are given at s. No. 23-28 of annexure X.
4. Both the studies have suggested that the poor state of *record management* in most public authorities is one major constraint to providing complete information in a timely manner. Though detailed instructions exist, most public authorities do not have the resources, the manpower or even the space to organize their records in a manner that would allow effective retrieval of information. On the other hand, a proper management of records, especially their computerization and digitization, would not only facilitate the implementation of the RTI Act but also help in many other aspects of governance. Therefore, this can also be seen as a priority area for action. Detailed recommendations are at S. no. 29-30 of annexure X.
5. Another major need is the *strengthening of information commissions*. Though the RTI Act gives a fair amount of authority to information commissions, most of them are not able to fully exercise this authority or meet fully their various legal obligations, primarily because of a lack of resources. Most information commissioners have no legal background before they join the commission and there is currently no system by which they are oriented and trained. There is also little ability to learn from each other's experiences or to be consistent in the interpretation of the law. Therefore, significant strengthening of the information commissions is required and detailed recommendations are at s. no. 35-38 of annexure X.

CONCLUSION

Undoubtedly, the Right to Information Act is historic, and has the potential of changing, forever, the balance of power in India – disempowering governments and other powerful institutions and distributing this power to the people. It also has the potential to deepen democracy and transform it from a representative to a participatory one, where governments, and their functionaries at all levels, are directly answerable to the people for their actions and inaction. However, if this potential has to be actualized, a much more concerted push has to be given to strengthen the RTI regime in the next few years. In struggles as fundamental as those for power and control, there is no time to waste. If the people do not come together and recapture the power that is rightfully theirs, vested interests will exploit this weakness and grow stronger and more invincible with each passing day.

So, the people of India move ahead, and the world watches with bated breath!