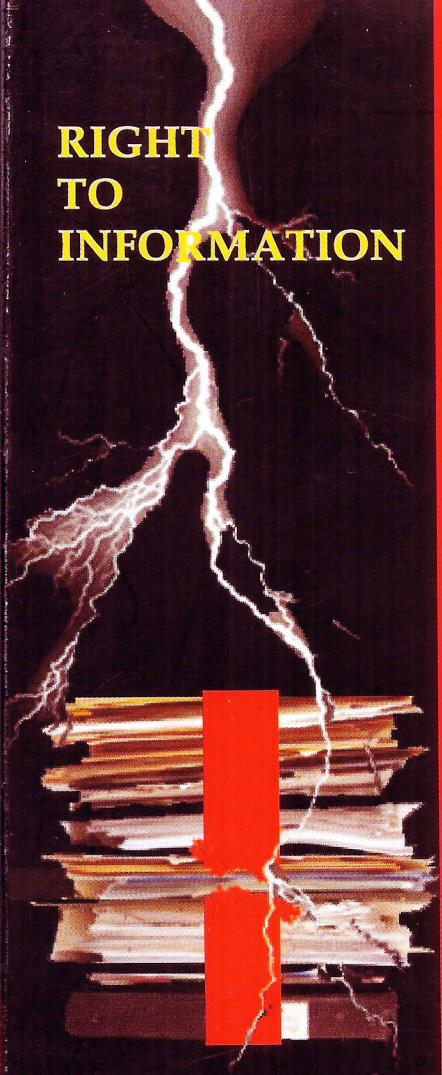

RIGHT TO INFORMATION

TRANSPARENT GOVERNANCE IN SOUTH ASIA

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

TRANSPARENT GOVERNANCE IN SOUTH ASIA

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(Background Papers and Proceedings of the Regional Workshop on 'Towards More Open and Transparent Governance in South Asia')

INDIAN INSTITUTE OF PUBLIC ADMINISTRATION

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FOREWORD

The Right to Information is increasingly recognised the world over as a basic freedom which, in today's world, makes it a necessary component of any governance system that claims to be a system representing the will of its people. As Kofi Annan, former Secretary General of the United Nations so succinctly put it:

> "The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task, your task … is to make that change real for those in need, wherever they may be. With information on our side, with knowledge of a potential for all, the path to poverty can be reversed".

The right to information is now a 'Fundamental Right' of a free citizenry, from which other basic human rights can flow, and no society can claim to be truly free unless it has both the instrumentality and the practice of this right, whether it be called the freedom of information as it is in most countries where it is practiced at present, or the right to information which it has become after it has been so declared in the world's largest and increasingly intense democracy with the enforcement of India's Right to Information Act in October 2005.

The Indian Institute of Public Administration has, then, acted at the appropriate moment in publishing the proceedings of the Regional Workshop "Towards More Open and Transparent Governance in South Asia" organised by it with the support of the World Bank in New Delhi in April 2010 as part of the campaign for recognition of the essentiality of this freedom in the South Asian region. An assessment can now be made of the history of the use of this freedom and the experience of different societies and diverse nations of this region in its actual adoption and its implementation.

The Right to Information Act in India has been described by many as the most radical legislation in India since the passage of the Constitution of India in 1950. Even if one were to demur on this definition, the test of the law's acceptance by the public in general

came in mid-2006 when the very Government which had passed this legislation through India's Parliament sought to bring amendments which many perceived as curtailing of the Right guaranteed by the original Act. The widespread public debate both in the visual and written media as well as the general public outcry in neighbourhoods which included slum areas persuaded the Government of India that no amendment would be considered in future without wide public consultation. In other words, the Government that had, in fact, sponsored the Act recognised that this Legislation had passed beyond its control and had been accepted by India's public as its own. No legislature could have wished for more from any legislation.

The exercise of the freedom of information has now been initiated in several countries of South and South East Asia, but it is relatively nascent and as this publication points out, "Each of the countries of the region viz. Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka are at different stages of introducing and establishing formal mechanisms of transparency and accountability, including access to information laws, in public institutions and overall governance structures". Most of the these countries moreover are among those that are only now emerging from the incubus of a colonial hierarchy, structured to exploit the skills of its people at the least cost to the colonial masters and the economic ruin of the colonised populace. In such a system transparency was of no account and accountability encouraged only to itself, never to the public. Hence we have insidious legislations like India's Official Secrets Act of 1923, which clearly defined the public as enemy of the State. It is for this reason that South Asia's experimentation with this Right, which has seen varying results both within the administrative structures of each country, and from country to country has been put under close scrutiny by this publication, the first of its kind.

"Transparent Governance in South Asia" examines the explorations of different countries and India's experience placing these in the historical context of the evolution of this Right from an esoteric freedom of a highly enlightened society aloof from the humdrum of the prosaic world, to its recognition as a fundamental right for all. It highlights with detailed discussion the experiences of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka and through workshop documents the bearing that this has had in the promotion of the awareness of this right, its practice and present shortcomings in outcomes. This book will form an essential reference work for all

those seeking to mould such a right in their societies, both those where none has been recognised so far, and those where such a legislation is already in operation, and help chart a roadmap to further strengthen the basis of the exercise of this right by all. It might be well to remember that in both Bangladesh and Pakistan the law was passed through Ordnance under military rule, and although Pakistan was the first to have such a law in South Asia, the right has taken wing in Bangladesh under its present democratic dispensation, whereas Pakistan's law is still beset with teething problems in a country which at the time of the workshop was already beset with war and terrorism, and since then also by unprecedented floods. But it will be seen from this work that many of the problems that the countries of the region face are common to all in varying degree. And common folk, though their NGOs, which, at least in the case of Bangladesh have given its women the lead, have proved catalyst. Perhaps the day is not far when all the peoples of South Asia can come together in a universal crusade, uniting in their diversity, in securing for themselves the rights that are now recognised as basic to democratic function. The promise lies in the fact that all these countries are today practicing democracies. In this volume are contained the instrumentalities which can make these democracies real for their people. It is significant that the author of one of the country papers forming part of this Volume observes, "*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 Devdhungari village, in Rajasthan, in the early 1990s*". That Naxalbari movement that has morphed into a Maoist menace threatening large swathes of eastern and central India's countryside, has been described by India's Prime Minister as India's gravest security threat. Will Devdhungari prove the best counter by giving wing to India's democracy?

Wajahat Habibullah
Chief Information Commissioner
India

PREFACE

The South Asian region is blessed with much sunshine throughout the year. This physical phenomenon has seen a conceptual parallel unfold in the last decade through the growth of access to information regimes in countries across the region. The enactment of these "sunshine laws" began with Pakistan's Freedom of Information Ordinance in 2002. Today, Bangladesh, India and Nepal have full-fledged legislations, and the processes to enact access to information laws are in advanced stages in Afghanistan, Bhutan and Maldives, while discussions on enacting a law continue in Sri Lanka.

The narrative histories of the growth of freedom of information (FoI) in each of these countries are rich, as they are different. However, there has indeed been a cross-fertilisation of ideas, even as advocacy groups and networks promoting FoI have developed over the last decade across the region. These have had a critical role to play in the development of national strategies on the issue by sharing information with each other, by learning from each others' experiences, and by providing intellectual and moral support to efforts which aim to bring greater transparency in government functioning in countries across the region.

Inspired by this spirit of cooperation, mutual support and learning, the World Bank-funded Governance Partnership Facility in the South Asia region (SAR) sought to provide a platform for key individuals, organisations and government representatives from the SAR to come together and take the discussions on FoI in the region further, through a regional workshop entitled "Towards More Open and Transparent Governance in South Asia", held in New Delhi in April 2010. Jointly organised by The World Bank and the Indian Institute of Public Administration (IIPA), the workshop brought together over a hundred people from across (and beyond) the region, including government ministers, information commissioners, civil servants, activists, scholars, media practitioners and civil society representatives.

The aim of the workshop was twofold. First, it sought to provide

a space where FoI advocates from across the region could engage with each other by sharing their experiences and providing information about new developments related to FoI in each of their countries. Secondly, and perhaps more critically, the workshop sought to develop a regional approach to FoI, not only in terms of debating and sharing ideas, but in terms of developing specific priorities for action, both at the country as well as regional levels. The resolution which was developed during the workshop (and which forms a part of this volume) was the culmination of that process, which we hope is only the starting point for the evolution of a regional approach to transparent governance in South Asia.

This volume is another important output of the workshop, and includes papers which provide narratives of the growth and evolution of national level FoI legislations in South Asia, and also provides other resources for researchers and others interested in the issue. It also incorporates the details of the proceedings of the workshop, and in that is a formal documentation of the process which led to the final resolution being adopted by the participants.

Such a workshop, the first of its kind in South Asia, could not have been made possible without the huge contributions and efforts being made by many people. In the first instance, we would like to thank the contributors to this volume, Shaheen Anam, Sanchita Bakshi, Taranath Dahal, Rohan Edrisinha, Iffat Idris, Venkatesh Nayak, Tahmina Rahman, Prashant Sharma and Shekhar Singh, who have provided their invaluable insights into how national level FoI legislations evolved in the region.We would also like to extend our deep gratitude to colleagues at IIPA, especially Prof. Pranab Banerji, who provided unconditional and constant support throughout the process from its inception onwards. Marcos Mendiburu at the World Bank Institute in Washington DC supported the process throughout and we are grateful to him for the same. The workshop would not have come together without the enormous efforts of colleagues at the New Delhi office of The World Bank, especially Vidya Kamath, who was instrumental in ensuring everything came together. We would also like to extend my gratitude to Stephanie de Chassy and Prashant Sharma who were consultants for the workshop. The workshop benefited immensely from the deep involvement of Venkatesh Nayak who played a key role at all stages. Last, but certainly not the least, we extend our grateful thanks to all the

participants of the workshop, who not only contributed tremendous intellectual energy to the entire process, but most importantly, have provided clear and inspiring guidelines towards realising the goal of transparent governance in South Asia.

B.S. Baswan
Indian Institute of Public Administration
New Delhi

Vikram Khub Chand
The World Bank
New Delhi

Introduction to the Volume

In 1989, freedom of information laws (of any kind) existed only in eight countries in the world.[1] By 2010, over 70 countries had freedom of information laws, and over a hundred have some manner of a transparency regime (not necessary limited to having a formal freedom of information law) or are in the process of developing one. Clearly, transparency generally, and freedom of information specifically, has captured the global imagination in the last two decades.

The South Asia Region (SAR) is not an exception to this trend. Each of the countries of the region viz. Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka are at different stages of introducing and establishing formal mechanisms of transparency and accountability, including access to information laws, in public institutions and overall governance structures.

A regional workshop titled "Towards More Open and Transparent Governance in South Asia" was organised by the Indian Institute of Public Administration (IIPA) and The World Bank in New

[1] Throughout this paper, the terms 'access to information', 'freedom of information' and 'right to information' have been used interchangeably. While the political implications of the choice of phrase is well understood by the authors, the focus here is on the existence of a formal mechanism through which citizens can seek and receive publicly held information, and the usage of any of the above phrases may be seen within this specific and limited context.

Delhi over 27-29 April 2010 to support these developments in the South Asia region. Invited stakeholders included country government representatives, Information Commissions, civil society groups, academics and researchers, media practitioners, and representatives of international and donor organisations. This workshop was envisaged as a part of a larger consultation and planning process with various components which included:

- Sharing of experiences across countries and stakeholders;
- Research and assessment of the status of the Right to Information (RTI) in the countries of the region;
- Identification of specific priorities and roles of various stakeholders;
- Development of action plans to be carried out at the country level;
- Development of a 'regional' thinking on the issue of access to information and transparency;
- Agreement on a common "resolution" that could be used for advancing RTI efforts in each country and across the region; and
- Dialogue with supporters and donors, and sharing of respective governance agendas.

While the workshop yielded rich dividends in terms of the discussions and debates, work carried out in preparation for the workshop also produced a considerable body of resources.[2] These include commissioned country papers which form, in some cases, a baseline report on the status of the access to information regime in a particular country. Other papers were drafted and volunteered for the workshop by experts in this thematic area. Country specific and regional level literature reviews on access to information were also carried out. Annotated bibliographies of key documents which provide a comprehensive overview of the developments related to access to information regimes in the SAR were also developed in preparation for the workshop.[3]

[2] Proceedings of the workshop form a part of this volume.

[3] No literature review or annotated bibliography could be developed for Afghanistan and Maldives due to lack of material.

Even as all of this material has been made available publicly through the internet, the lack of any comparable published resource has led to the publication of this volume which incorporates much of the above.[4]

The themes addressed in the papers in this volume are directly related to the different stages each country of the region is at with respect to the evolution of an access to information regime. Such an evolution in a country can be seen in at least four phases. The first phase is the pre-law phase where some transparency exists as a part of other laws and procedures, but there is no law specifically guaranteeing access to information, as a right or otherwise. The main task in this phase is to develop support for enhanced transparency, build allies, neutralise opposition, and lobby to have a strong RTI bill drafted. As the papers by Prashant Sharma and Rohan Edrisinha in this volume suggest, Bhutan and Sri Lanka are in this phase.

The second phase is when there is a weak law or not a full-fledged law, like Pakistan and India between 2002 and 2005, as highlighted by the papers by Iffat Idris and Shekhar Singh respectively in this volume. The focus then is to strengthen the law while building capacity among the government to implement the law, and among people to use the law.

The third phase is when finally there is a reasonable law, as is the case in Nepal, Bangladesh and India, but poor implementation. Though the effort to strengthen the law never ceases, the focus shifts to protecting the law from amendments and dilution (as in India), establishing systems, training staff, raising awareness among the people, developing favourable case law, and getting more and more people and institutions involved in using and celebrating the RTI law. Papers authored by Taranath Dahal (Nepal), Shaheen Anam and Tahmina Rahman (Bangladesh), and Shekhar Singh (India) document these processes in this volume.

[4] All material, including key documents not produced specifically for this workshop and available in the public domain, can be accessed at http://rtiworkshop.pbworks.com. It may be noted that no resources could be developed for this volume with respect to Afghanistan. However, the presentation made by the Afghan government representative at the workshop is available at: http://rtiworkshop.pbworks.com/f/2010-04-AF-RTI-Workshop-Afghanistan-Presentation-Rahela-Siddiqi.pdf.

The final phase comes when a sound law is functioning reasonably well. The focus then shifts to pushing for increasing proactive (*suo moto*) disclosure so that there is less and less need to actually apply for information. Apart from proactively putting all relevant information in the public domain, governments also start diagnosing the factors that lead to public dissatisfaction and the consequent filing of RTI requests. They take the required corrective measures, setting up systems to cut out delay, arbitrariness, and local level corruption, thereby almost eliminating requests emanating from individual grievances and complaints. Consequently, transparency laws get increasingly used primarily for policy issues, and for monitoring the functioning of the government at a macro level.

A brief schematic representation of the description above is given below.

Phase I - Prior To Legal Instrument Afghanistan, Bhutan, Maldives, Sri Lanka			
Broadening and Deepening support for transparency	Forming alliances with supportive elements in government, legislature and judiciary, and in the media	Mobilizing pro-transparency pressures within and outside the country	Drafting and lobbying for a model RTI Act
Phase II - Weak Legal Instrument Pakistan			
Lobbying for a model RTI Act	Broadening and deepening support for an RTI Act	Building capacity among information providers	Raising awareness among people
Phase III- Reasonable Law But Poor Implementation Nepal, India, Bangladesh			
Strengthen information delivery systems – governments and commissions	Raise public awareness and capacity	Develop progressive conventions, processes and case law	Safeguard the law
Phase IV – Reasonable Law And Reasonable Implementation Bangladesh, India, Nepal - In the near future			
Increase proactive disclosures and consequent decrease in requests	Systemic improvements in governance leading to reduced grievance related information requests	Broaden scope and coverage (include private/corporate sector; media; international organizations; NGOs, etc.)	Reduce exemptions

Many of these themes recurred consistently during the course of the workshop. Details of the deliberations, as well as the resolution

adopted by participants form a part of this volume. In these documents, action points arising out of the workshop have been structured both by country as well as stakeholder groups viz. governments, information commissions, civil society groups, and media.

The papers in this volume are structured by country. The country papers are followed by a section which provides literature reviews and annotated bibliographies of material available freely in the public domain relevant to each country.[5] This material is followed by the summary of proceedings of the workshop, and finally, the resolution of the participants is provided at the end. Appendices to the volume give the reader the schedule of the workshop as well as details of the participants.

With the full realisation that access to information, particularly in the SAR, is an area of tremendous dynamism and some of the material may become dated soon, it is hoped that this volume will provide researchers, practitioners, activists, media, government functionaries, politicians and the general reader with an interest in these issues a comprehensive and accessible understanding of the evolution, current state, and future trends in the development of access to information regimes in South Asia.

In addition to this primary purpose, this volume also seeks to address the singular lack of any publication which provides such a perspective on the region, and hopes to encourage a profusion of focused research and documentation on an issue which has come to represent a central theme in the practice of democratic deepening in South Asia.

In the end, the editors wish to acknowledge the immense efforts put in by the contributors to this volume, as well as B.S. Baswan, Pranab Banerji, Vikram Chand, Marcos Mendiburu, Venkatesh Nayak, XXX, XXX, XXX without whose active engagement and support neither the workshop nor this volume would have been possible.

—Editors

[5] Except for Afghanistan and Maldives, for which no material was found.

Towards More Open and Transparent Governance in South Asia

Workshop Resolution

We, the supporters of the right to information, from Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka, having assembled in New Delhi, India in April 2010, while:

Drawing Attention to the commitment made by the South Asian Association for Regional Cooperation (SAARC), at its ministerial meeting in 2008, to guarantee through appropriate legislation, the right to information for all citizens, from governments and public authorities, to eliminate arbitrariness and corrupt practices and improve governance at the regional, national and local levels;

Reiterating our belief that the right to seek and obtain information from government and other institutions affecting the public is a fundamental human right and must be guaranteed for all persons in the South Asian region and that governments and public bodies have the duty to promote, protect and fulfill the fundamental human right to information;

Recognising that the exercise of the right to information is an indispensable precondition for building truly participatory democracies, thereby ensuring accountable governance and greater justice for all, especially for the deprived and the marginalised; and

Taking note of the experience of implementing right to information laws in other countries including Canada, Mexico, South Africa and the United States of America represented at the workshop;

Determine the following priorities at the national and regional level to promote the establishment and evolution of a transparency regime:

1. Country/National Priorities:

1.1. Afghanistan:

1.1.1. Develop regulations for the mass media-related constitutional provisions;

1.1.2. Establish a lobby group for action on RTI at the national level; and

1.1.3. Adopt a strong RTI law and provide for the establishment of an independent Information Commission.

1.2. Bangladesh:

1.2.1. Work towards developing a strong political will and commitment to implement the RTI Act from the Government and strong leadership from the Information Commission to implement the RTI Act;

1.2.2. Ensure institution building of the Information Commission with adequate financial and human resources and development of its capacity;

1.2.3. Ensure appointment of suitable designated officers in all public offices with a secure tenure of at least three years and provide them adequate training;

1.2.4. Improve the Government's records management system and build web-based database for all public sector agencies;

1.2.5. Adopt a pro-poor strategy for spreading awareness about RTI and implementing the RTI Act;

1.2.6. Establish community e-centres at all levels for ensuring easy access to development-related information and public services; and

1.2.7. Build central and local monitoring mechanisms to oversee the effective implementation of the RTI Act at all levels and stages.

1.3. India:

1.3.1. Implement proactive disclosure provisions better and more effectively;

1.3.2. Undertake more public education and awareness raising programmes and incorporate RTI syllabus in the school and college curricula;

1.3.3. Ensure uniformity in the RTI Rules notified by competent authorities and that they conform to the letter and the spirit of the RTI Act; and

1.3.4. Establish effective linkages between RTI and mechanisms for redressing people's grievances about public service delivery.

1.4. Maldives:

1.4.1. Overcome the culture of secrecy steeped in the lingering feudal mentality;

1.4.2. Adopt an RTI law that covers the legislature, the executive, the judiciary and private bodies;

1.4.3. Establish the office of the Information Commissioner and ensure that appointments are made in a transparent manner;

1.4.4. Build the capacity of civil society to understand and promote RTI; and

1.4.5. Train the media to report on RTI and other issues objectively.

1.5. Nepal:

1.5.1. Provide feedback to the constitution drafting process for including RTI as a fundamental right in tune with international standards;

1.5.2. Strengthen and empower the Information Commission;

1.5.3. Reform the RTI regulations in collaboration with civil society organisations;

1.5.4. Ensure that Government proactively strengthens the capacity of public authorities, including local government bodies, to implement the RTI Act; and Ensure effective collaboration between civil society and the media for awareness raising, modeling RTI usage, capacity building of CSOs and monitoring compliance with the RTI Act.

1.6. Pakistan:

1.6.1. Reform the RTI law to conform to internationally recognised standards;

1.6.2. Build capacity of designated officers in all departments;

1.6.3. Improve proactive disclosure in government departments;

1.6.4. Adopt similar standards of proactive disclosure for civil society organisations;

1.6.5. Create linkages with other civil society at the regional level to reform the RTI law;

1.6.6. Initiate a civil society campaign to disseminate information about the recent constitutional amendment incorporating RTI as a fundamental right; and

1.6.7. Encourage donor agencies to adopt self-disclosure

policies.

1.7. Sri Lanka:

1.7.1. Build the capacity of people to use disclosure provisions contained in existing laws at the local level;

1.7.2. Use the term 'access to information' while dialoguing with Government to establish a transparency regime;

1.7.3. Involve the mass media in the campaign for access to information;

1.7.4. Identify champions within the Government to press for the adoption of the access to information law;

1.7.5. Identify interested actors outside the Government and include them in the campaign; and

1.7.6. Encourage multilateral agencies to persuade the Government to include transparency and accountability standards in the implementation of development projects.

2. Stakeholder Priorities:

2.1. Governments:

2.1.1. Change the prevalent culture from secrecy to openness;

2.1.2. Provide adequate resources to implement RTI in public authorities;

2.1.3. Improve records keeping with particular emphasis on the classification, indexing, digitizing and archivising of records and adherence to a record retention schedule;

2.1.4. Utilise the existing potential of Information Technology to proactively make information more accessible to people;

2.1.5. Train and incentivise government functionaries with appropriate qualifications to implement RTI effectively;

2.1.6. Regularly upload on websites important decisions and minutes of meetings and quarterly and annual reports of all public authorities;

2.1.7. Spread awareness about RTI amongst people at the grassroots level;

2.1.8. Mandate the inclusion of RTI in school and college curricula; and

2.1.9. Link RTI to good governance and anti-corruption strategies and enact whistleblower legislation;

2.2. Information Commissions:

2.2.1 Ensure financial, staffing and functional autonomy for

Information Commissions;

2.2.2 Ensure transparent and norm-based process for appointing Information Commissioners;

2.2.3 Ensure security of tenure for Information Commissioners;

2.2.4 Ensure a non-arbitrary process for removal of Information Commissioners;

2.2.5 Adopt norms to regulate the working of Information Commissions;

2.2.6 Identify objective criteria for determining the number of Information Commissioners; and

2.2.7 Develop common software to enable the Information Commissions to work more efficiently.

2.3. Civil Society:

2.3.1. Develop an e-network and other participatory action forums for advocacy and support mobilization;

2.3.2. Develop and disseminate a comparative study on RTI-related best practices and challenges through a regional platform; and

2.3.3. Promote a pro-poor approach to RTI.

2.4. Media:

2.4.1. Encourage media houses to cover RTI as a regular beat;

2.4.2. Provide in-field training for working journalists to understand their respective RTI laws and draft RTI requests;

2.4.3. Conduct high-level briefings of news editors to demonstrate the news flow benefits of RTI and to encourage them to commit time and resources for their reporters to pursue RTI-driven projects;

2.4.4. Create and maintain a website, with links to other RTI resources, for tracking RTI-related developments throughout the region and acting as a journalists' forum for RTI;

2.4.5. Create an annual South Asia journalism award for the best RTI-based stories; and

2.4.6. Include RTI in the curricula of schools and departments of journalism in the region.

3. Regional Priorities:

3.1. Promote inter-governmental exchange of best practices for improving transparency regimes;

3.2. Create a regional platform for Information Commissions to regularly interact with each other and with Information Commissioners in other countries;

3.3. Promote more intensive exchange of expertise and experience on RTI between activists and civil society organisations in the region;

3.4. Develop a web-based database of all orders and decisions of Information Commissions in South Asia to be maintained by a regional RTI resource centre;

3.5. Develop guidelines on internal disclosure policies for civil society organisations;

3.6. Develop a regional mechanism to provide technical assistance on RTI and advocate for the adoption of best practice RTI legislation.

We Further Resolve to join hands and support the establishment and the evolution of a right to information regime in each country of the region, and to collaborate with other regions of the world to strengthen the transparency regime at the global level.

Conference Hall,
Indian Institute of Public Administration
New Delhi
29/04/2010

CONTENTS

COUNTRY PAPERS

1

Evolution of the RTI Act 2009 in Bangladesh

Shaheen Anam

INTRODUCTION

The Right to Information (RTI) Act 2009 was passed in the first session of Parliament on March 29, 2009. It was a ground breaking decision on the part of the government and paved the way for all citizens to get information from public authorities as a right. In doing so, Bangladesh joined 75 countries in the world which have RTI regimes.

The rationale for the law is clearly stated in the preamble of the Act. "The right to information shall ensure that transparency and accountability in all public, autonomous and statutory organizations and in private organizations run on government or foreign funding shall increase, corruption shall decrease and good governance shall be established. It is expedient and necessary to make provisions for ensuring transparency and accountability."[1]

The law was passed through the efforts, effective lobbying and advocacy of many civil society organisations, academia, media, researchers and legal experts. It was not preceded by a grassroots level awareness and mobilization as in India. However, there is now a concerted effort to increase awareness about the law and its use so that people at the grassroots level are able to use it for their benefit.

[1]Right to Information Act 2009, Government of Bangladesh.

BACKGROUND

The demand for a law on Freedom of Information was first articulated by the Press Council in 1986 as a response to the curtailment of press freedoms under a dictatorial regime. The demand was raised in the form of a memorandum to the President seeking press freedom and allowing journalists to perform their professional duties without fear. Most well-known newspapers, both in English and Bangla, such as *Observer* and *Ittefaq* joined in this demand. Subsequently, a number of civil society organizations started to have discussions on the necessity of adopting an RTI regime in Bangladesh. Notable among these discussions was a seminar organised by Ain o Salish Kendra (ASK) and Commonwealth Human Rights Initiative (CHRI) in 1998, and other initiatives by organisations such as Mass-Line Media Centre (MMC) and Nagorik Uddog.

Meanwhile, The Law Commission prepared a working paper on RTI in 2002. This was inspired by the pledges the Bangladesh government made during that time, both nationally and internationally. However, the most compelling rationale can be found in the Constitution, where Article 7 and 11 implicitly recognise the people's right to information. Article 7 declares that all powers in the Republic belong to the people. Article 11 declares the Republic as a democracy and assures human rights and freedom. In addition, Article 39 articulates freedom of thought, conscience, speech and the freedom of press. Therefore, the people's right to all information cannot be barred in any way. If democracy is to be practiced in real terms, then the absence of any specific provision for this right in the Constitution should not create any bars in accessing information. Unfortunately, the working paper on RTI prepared by the Law Commission involved limited consultations with other stakeholders and therefore was not owned by the different government departments or by the people in general. Subsequent efforts to trace the follow up on the paper resulted proved fruitless as it appeared that the paper had been lost between the Information and Law Ministries.

MANUSHER JONNO FOUNDATION

As awareness of the governance and development aspects of RTI and its benefits for ordinary citizens grew, Manusher Jonno Foundation (MJF) decided that this was a niche area it could work on. The MJF is a grant making national organization which supports good governance and human rights initiatives. It works with more than 120 partner

organizations across Bangladesh to create conditions in which vulnerable and marginalised people are able to raise their voices for better governance, fulfilment of human rights and access to improved basic services. MJF also works on the supply side to motivate and make public institutions respond to the demands of these groups. The support that MJF provides revolves around four thematic programmatic areas:

1. Combating violence against women;
2. Ensuring rights of marginalised groups;
3. Protecting working children and vulnerable workers; and
4. Ensuring responsiveness of public institutions.

Through its work, MJF concluded that transparency and accountability of public institutions was essential if vulnerable groups were to improve their livelihoods and receive better services. MJF's work with partners also demonstrated that the poor are deprived in multiple ways because of a lack of information.

Learning from examples of other countries where RTI regimes have changed the outlook and functioning of public institutions, MJF, along with other organisations, embarked on a mission to facilitate and coordinate the enactment of an RTI law. As a first step, MJF commissioned a rapid assessment to identify the different actors involved, as well as assess the general perception of RTI in Bangladesh. A teacher from the Law Department of Dhaka University conducted a survey of 20 organizations and 25 individuals from different professional groups including the media, activists, academics and NGOs who were directly or indirectly involved with access to information, human rights or governance issues. Structured interviews were carried out to understand how they conceptualised the RTI. This rapid assessment report revealed that the existing perception about RTI was related more to freedom of information with respect to the media than as a governance or development tool.[2] Though the constitution of Bangladesh has recognised freedom of expression as a fundamental right, there was a common notion that Right to Information was only related to the freedom of the press.[3] Moreover, state rules and regulations do not consider and recognise the idea of

[2]Situational Analysis of Right to Information in Bangladesh: A Rapid Assessment (2005). Manusher Jonno Foundation, Dhaka.

[3]Constitution of the People's Republic of Bangladesh, Article 39.

information as a right to which all citizens should have access. The main reason behind this is the "culture of secrecy" which prevails in every sphere of the governance system of the state.

MJF took up several strategies involving different stakeholders to take the demand for an RTI law further. It set up three core groups - Law Drafting Core Group, Policy Advocacy Core Group and Awareness/Capacity Building Core Group. Eminent persons and experts were made members of these Core Groups and included legal experts, academics, NGO representatives, media personalities, activists and researchers. Each Core Group had its own terms of reference and worked accordingly. This strategy was effective in broadening the support base and raising a concerted demand for an RTI law.

DRAFTING THE RTI LAW

The Law Core Group comprised of noted legal experts including Shahdeen Malik, Sultana Kamal, Shamsul Bari, Asif Nazrul, Tanjibul Alam and Elena Khan. All the members provided input, feedback and reviewed the draft several times while Tanjibul Alam, a lawyer at the Supreme Court, drafted the Act. RTI laws from India, South Africa, Canada, and the UK were consulted during the process. National and regional consultations were held where the draft was shared and comments received. Organisations such as Article 19 and CHRI provided feedback, comments and recommendations. It is important to note that the Working Paper of the Law Commission was taken as a basis for the draft. The draft was formally presented to the Law Advisor of the caretaker government in 2007.

In 1996, a caretaker government had been created largely due to the assertion of opposition parties that a free and fair election could not be held under the government in power at that time. Ultimately, the Constitution of Bangladesh had to be changed to bring in the provision of a caretaker government which would have the responsibility of overseeing the elections and handing over power to an elected government. The elections planned for February 2007 became controversial and amidst threats of violence and anarchy, an army backed caretaker government was installed. This government promised to hold elections as soon as a proper electoral list with identity cards was ready. This process took two years during which many political leaders from the two main political parties were arrested on charges of corruption. This government was headed by a Chief Advisor with a cabinet of ten Advisors responsible for running the administration, and the Election

Commission was entrusted with conducting the elections. The Chief Advisor of the caretaker government took a special interest in the RTI law as he wanted to leave a lasting legacy of transparency and accountability in governance. It was during this time that the draft RTI law was submitted to the Advisor for Law, Justice and Parliament Affairs.

PROCESS OF AWARENESS RAISING AND CAPACITY BUILDING

In 2005 MJF contacted CHRI to provide technical assistance and assist in catalysing RTI in Bangladesh, and a two-day regional conference was organised jointly with CHRI in December 2005. This partnership between CHRI and MJF resulted in a series of meetings, trainings, workshops, and other capacity building initiatives. Meanwhile, the demand for RTI started to be made in various forums by different groups including media, research groups, academia, NGOs, etc. A process of knowledge building was started by developing various communication materials, including a theme song on RTI, as well as by commissioning research. MJF partner organisations, in addition to other networks, were actively involved in this process.

IDENTIFYING ACTS/LAWS AND OTHER POLICY PROCEDURES WHICH HAVE AN ACCESS PROVISION

MJF commissioned another study in June 2007 to examine existing laws, policies and mechanisms to assess how they recognised, directly or indirectly, the people's right to access information. This study was undertaken with the aim to benefit people by informing them of provisions that already existed but were not being utilised. The study revealed that some significant provisions and judgments already existed which complemented access to information, though it should be noted that very few people were aware of them.

NETWORKING AND ALLIANCE BUILDING WITH DIFFERENT STAKEHOLDERS INCLUDING MEDIA

The core groups on Policy Advocacy and Mass Mobilization also initiated a series of activities such as writing articles, holding television talk shows, and orienting NGOs, local journalists, policy makers etc. about RTI. Journalists were sent on visits to India to learn from their experience. Government officials also went on a learning tour to Mexico. In addition, alliances were built through regional and

international networking with national and local partners for issue based mobilisation on RTI such as Transparency International Bangladesh, People's Empowerment Trust, Nijera Kori, Campaign for Good Governance, CHRI, Article 19 and Mazdoor Kisan Shakti Sangathan (India). Eminent personalities were approached to act as champions for the law, and began to lobby for its enactment.

ENGAGING GOVERNMENT

In March, 2007 the Law Core Group submitted a draft law to the Law, Justice and Parliamentary Affairs and Information Advisor's office for its review and consideration. Members of the Core Groups met with the Law Advisor several times as follow up.

In an MJF organised seminar in December 2007, the Chief Advisor of the caretaker government announced that the RTI would be enacted as an Ordinance, and instructed the Information Ministry to prepare the draft law, keeping in mind the draft submitted by civil society. It may be mentioned here that during the caretaker government's period in power, the Chief of Army, General Moeen U. Ahmad in his speech at a meeting organised by the Global Organization of Parliamentarians Against Corruption said, "in the near future the interim government will introduce a Right to Information Act and review the Official Secrets Act so that corrupt officials cannot hide behind the cloak of secrecy and escape punishment". Civil society thus found unlikely allies in the army and the caretaker government to push the Ordinance through.

Following direct instructions of the Chief Advisor, the Ministry of Information (MoI) formed a working group to draft and finalise the law and an MJF representative was included officially as part of the working group, which was given a month's time to finalise the draft. During this time a number of discussions were held with different Ministries and Departments. There was opposition on certain clauses such as the imposing of fine on government officials in case of denial of information, inclusion of Union Parishad as a Public Authority, and the insistence of civil society on having at least one woman member in the Information Commission.

Initially, the MJF faced resistance when it attempted to ascertain the status of the Law Commission's Working Paper on RTI, but the MoI eventually organised a national seminar in March 2008, to share the draft law, and subsequently put it up on a public website for comments. This was a rare initiative of the Government of Bangladesh,

where it sought public comments on a legislation prior to it being finalised. This was very well received by the public and numerous inputs and comments were shared.

The Government also invited Mr. Wajahat Habibullah, Chief Information Commissioner, Government of India, on 19 March 2008 to seek his views and opinions on the draft. He had meetings with politicians, business professionals, media and civil society representatives.

After the draft was finalised by the working group, it was sent to the Committee of Secretaries via the Cabinet Ministry to get comments from all other Ministries. It is alleged that it was during this time that certain changes were brought into the draft. The penalty clause remained but the amount was drastically reduced. A clause was inserted which gave indemnity to officials in case of denial of information in "good faith" (which was later removed due to pressure from civil society), the exemption list was made longer and the private sector and political parties were removed from the ambit of the law. The exclusion of the private sector was reportedly effected due to pressure from influential private sector groups who argued that they had their own regulatory bodies to monitor transparency and compliance to laws. It may be mentioned that the inclusion of foreign funded NGOs as public authorities was also resisted and opposed by some, but civil society groups advocating for the law insisted these should remain under the purview of the RTI Act. It was agreed that by doing this, advocacy groups gained moral authority to insist on transparency from all other groups.

Finally, the draft was submitted to the Chief Advisor's Office in July 2008. During this period, there was constant dialogue, and consultations between relevant civil society members, the Information Ministry and the Chief Advisor's Office. Although there were many champions within the government who worked with civil society to make the RTI Act a progressive law, several attempts were made to dilute the draft and add provisions that would curtail people's access to information.

The Council of Advisors approved the ordinance on 20 September 2008 and it was passed as an Ordinance by the President on 20 October 2008. This perhaps paved the way for the eventual adoption of the RTI law by the elected government which came to power in December 2008.

FORMATION OF THE RTI FORUM

The RTI Forum was set up in 2008 with MJF as its Secretariat. Comprising 40 organisations and individuals, its objective was to create a demand for changing the RTI Ordinance into a law, and later to monitor its implementation. The RTI Forum organised a number of events collectively, such as celebrations of the International Right to Know Day in September 2008, and an International Conference on RTI in May 2009. It also published several communication materials.

The members of the Forum come from diverse backgrounds such as NGOs, media, academia, and legal professionals. NGO members are involved with issues of corruption, transparency, and human rights. Noteworthy among these are Transparency International Bangladesh, Nijera Kori, Nagorik Uddog and Research Initiatives Bangladesh. Although many of these have not been advocating for the RTI law per se prior to the beginning of the movement, they have been working to demand transparency in public institutions so that marginalised populations are served better.

ENGAGING POLITICAL PARTIES

Attempts had been made to engage political parties in the dialogue on RTI since 2005. Members of different political parties were invited to seminars and workshops, and were also met with individually. The general response was positive and most pledged that they would support such a move. In October 2005, MJF in collaboration with the All Party Parliament Group (APPG) and People's Empowerment Trust (PET) organised a National Dialogue where the General Secretary of Bangladesh Nationalist Party (BNP) attended as the Chief Guest. Important members of all political parties attended this dialogue where the RTI law and its importance and relevance to Bangladesh were discussed.

Civil society groups were aware that political parties needed to be engaged if the law was to be passed in Parliament once an elected government came to power. With this view, a series of consultations and meetings were held with members of the main political parties. Attempts were made to have RTI included in their party manifestos prior to the National Elections. All this was done to build their ownership of the issue and the draft law. An important seminar was held on 31 August, 2008 titled *RTI: Commitment of Political Parties* in which all the main political parties participated. Awami League, the

party that later won the elections, included RTI in its party manifesto, as did the Jatio Party. Some political leaders and Members of Parliament worked closely with MJF and the RTI Forum and acted as champions within their political parties to raise awareness and build a positive attitude towards RTI.

LEGISLATION OF THE RTI ACT 2009

After the General Elections of December 2008, the RTI Forum began to lobby with Parliamentarians for the enactment of the RTI Act. The Law Minister, Information Minister and several members of parliament were met individually to press for its enactment. During the caretaker government's term, a total of 154 Ordinances had been passed. A number of expert groups were set up to review the Ordinances and make recommendations to a special Parliamentary Committee. MJF was invited to become a member of the review committee of the Parliamentary Standing Committee to make comments and recommendations on the Act. The RTI Forum lobbied with expert groups and the special committee, meeting each member individually, while members of the RTI Forum held discussions and recommended certain changes in the law.

Finally on 20 March 2009, The RTI draft law was approved by the Cabinet, and it was passed by the Parliament on 29 March 2009. It may be noted that the law was passed in the very first session of Parliament, with the following changes recommended by the special committee.

- The law included the provision of supremacy of this Act in case of contradiction with other laws in disclosing information;
- A government nominated person involved in journalism, or a citizen involved in mass communication was included in the selection committee for the Information Commission;
- The exemption list for restricting information was increased, although provisions were made for providing information within 24 hours in case of human rights violations and corruption; and
- Minor changes were made in terms of quorum formation of Information Commission meetings.

LIMITATIONS

Though the list of exemptions is quite long and civil society groups

are critical about it, there is scope to advocate strongly for making the Act more focused during implementation.

Though the Information Commission was expected to have the authority to take decisions regarding staff capacity, numbers and budgets, as per the Act, the government is to provide the final approval on these. The rank and salaries of Chief Information Commissioner and Information Commissioners is also to be decided by the government.

CONCLUSION

Although the RTI Act 2009 has not fully incorporated all the best international practices, yet it is a progressive law compared with many other countries. Its true value will be realised once it is implemented, and when citizens start to use it. There are huge challenges - including a need for raising awareness on a large scale about the law, and helping people to understand how they can use it for their benefit. Unless the public start to request information, we will never know how effective the act really is. For that to happen we need to organise massive campaigns and mobilise the masses, a process that civil society organisations and the Information Commission have already embarked on.

While it is true that the demand for an RTI Act did not start from the grassroots level as in India, there is every reason to believe that the Act can be effectively used in Bangladesh by ordinary citizens to bring about positive changes in their lives. This will happen when public Authorities as well as NGOs, are aware, sensitive and open, and develop the capacity to implement and use the law effectively.

In the enactment of the RTI Act, Bangladesh has made a strong statement to the world that it is committed to establishing transparency and accountability in public institutions. This commitment will be tested only with the proper implementation of the law.

2

RTI Law Implementation in Bangladesh: Taking It to the Next Phase

Tahmina Rahman[1]

CONTEXT

One of the major developments in the field of human rights and good governance in Bangladesh was the enactment of the Right to Information Act, 2009 by the Parliament, making Bangladesh one of the 88 countries that have adopted such a law. It was enacted in response to the long standing demand for such a law, which was driven by civil society organisations (CSOs), NGOs, journalists, and media, with support from international development partners of the government. Developments in neighbouring countries especially in India, led by the Mazdoor Kisan Shakti Sangathan (MKSS) also influenced happenings in Bangladesh. Other milestones include a Law Commission working paper on a draft RTI law in Bangladesh (2002), and the declaration of 28 September as Right to Know Day by a network of international NGOs in Sofia, Bulgaria (2002). Increasing demands from CSOs and NGOs for an RTI law in Bangladesh eventually led to the formation of the RTI Forum in 2008. The Forum included several organisations, many of whom were supported by Maunsher Jonno Foundation, ARTICLE 19 and other international NGOs.[2]

[1]The author would like to thank everyone who has shared information, opinions and views in the course of writing this paper, the Indian Institute for Public Administration and the World Bank for the invitation to write it, and ARTICLE 19 for providing the time to do so.

[2]ARTICLE 19 Press Release, 3 April 2009.

Growing advocacy coincided with the caretaker government's agenda for reform that eventually led, in March 2008, to the government placing a draft version of an RTI Ordinance for public consultation. CSOs and NGOs responded enthusiastically, with extensive consultations held by various groups throughout the country at the grassroots and national levels. This included recommendations from ARTICLE 19 and other partners to ensure that the right to information law was in accordance with international standards.[3] After provisional approval from the Council of Advisers of the Caretaker Government, an improved version of the RTI Ordinance 2008 was finally published in the Bangladesh Gazette on 20 October 2008.

Subsequently the Right to Information Act was adopted as a law on 29 March 2009. It was one of 49 Ordinances passed by the Parliament, thus marking the new government's commitment to law, transparency and accountability. The law was published in the official gazette on 6 April 2009, and became effective on 1 July 2009.

RTI ACT 2009: COMPLIANCE WITH INTERNATIONAL STANDARDS

Article 39 of the Constitution of Bangladesh, fashioned in accordance with Article 19 of the Universal Declaration of Human Rights, guarantees freedom of thought, conscience, speech and freedom of the press. This includes freedom to hold opinions without interference and to seek, receive and impart information regardless of frontlines. The Right to Information Act derives its essence from these provisions. This is outlined clearly in the preamble to the Law:

> "As all powers of the Republic is vested in its people, the right to information is essential for their empowerment."

The principal sprit of the Act is to promote an environment for the free flow of information for ensuring greater transparency and accountability.

Some of the positive aspects of the Right to Information Act includes its wide application to all information held by all public bodies, improved rules on payment of fees for access to information, the fact that the new law overrides inconsistent secrecy legislation, the wide promotional role allocated to the Information Commission, and the

[3]ARTICLE 19 Submission on Draft RTI Ordinance, March 2008.

non-applicability of exemptions in cases of human rights violation and corruption. The law also requires both public and non-government organisations to provide citizens all information "in relation to their structure, composition, activities". Organisations are also required to disclose in a clear and comprehensible manner, information relating to "decisions taken, and programme of work and existing and/or proposed operations".

However some concerns exist. These include:[4]

- The proactive publication obligations are very limited, both in terms of the scope of information covered, as well as the means of dissemination of this information.
- The range of exceptions remains too broad. It contains exclusions (security and intelligence bodies) and exceptions which are not legitimate. It also does not provide any possibility for these exceptions to be overruled in special circumstances as the rules allowing provision of information in public interest has actually been removed.
- By excluding government offices at the local level (Union Parishad) from the definition of "information providing units", people will not be able to seek information directly where there are government offices at that level.[5] Instead they will have to go to the *upazila* (sub-district) level where the information officer is appointed. However it must be noted that Union Parishads are autonomous offices consisting of elected representatives and paid employees who have specific roles and responsibilities under local governance laws. Nothing in the RTI Act excludes them from its purview.
- It fails to provide protection for good faith disclosures pursuant to the law or protection for whistleblowers.
- The right to access is limited only to citizens of the country.

The Commission has since then framed rules and regulations as an integral part of its implementation plans.

[4]ARTICLE 19 Press Releases, 3 April and 24 October 2008.

[5]Bangladesh is divided into seven administrative divisions, each named after their respective divisional headquarters. Divisions are subdivided into districts (*zila*). There are 64 districts in Bangladesh, each further subdivided into *upazila* (subdistricts) or *thana*. The area within each police station, except for those in metropolitan areas, is divided into several unions, with each union consisting of multiple villages.

STATUS OF IMPLEMENTATION

Despite some concerns, civil society organisations, academia, individuals, experts and international development partners of Bangladesh have welcomed the RTI Act, 2009 and see it as an opportunity to strengthen democracy and establish a transparent and participatory system of governance. Being implemented at various levels, it primarily involves initiatives led by the Information Commission, the government and its various agencies, and NGOs and CSOs.

INFORMATION COMMISSION LED INITIATIVES

The Information Commission was established on 1 July 2009 well within the required 90 days from the enactment of the law. Two commissioners, one of whom is a woman, and the Chief Commissioner were appointed on 4 July 2009. They were Chief Commissioner Azizur Rahman, Abu Taher and Professor Sadeka Halim. The Chief Commissioner, however, had to resign on 10 January 2010 as he attained the maximum permissible age for remaining in public service. After a gap of nearly 3 months, he was replaced by Mohammed Zamir, a veteran diplomat.

Since its establishment, the newly formed Commission has undertaken a number of activities, which include public consultation meetings on RTI with local level public officials and citizens in 25 districts.[6] The Commission has also supported the preparation of Rules on Requests, Appeal and Costs (2009) notified by the government, and the drafting of the Regulations on Conservation and Management of Information (2009), (which were vetted by the Ministries of Information, and Law, Justice and Parliamentary Affairs). A list of designated information officers is being compiled. Approval has been received on the organogram and budget from the Ministry of Establishment. Other activities include the branding of the commission, publication of a progress report, and profiling the issue of RTI implementation in seminars and symposiums. The Commission has now been provided with permanent office premises at the Directorate of Archaeology, after a brief spell within the offices of the National Institute of Mass Communication (NIMCO).

[6]Information Commission Annual Report 2009.

MEASURES AT THE GOVERNMENT LEVEL

A number of initial steps have also been taken by the Ministry of Information, including holding introductory meetings with information officers, and preparing a list of focal persons responsible for providing information. The finalisation of a database of these focal persons is underway. It is expected that the database will be published soon after completion. Initiatives also include orientations and seminars by various agencies such as the Press Information Department. The Bangladesh Public Administration Training Centre in collaboration with the Manusher Jonno Foundation has also undertaken a three-day orientation programme for newly appointed government officials. They have also planned a pilot project which will address information needs for proactive disclosure by various sectoral agencies.

Once implemented, the government's policy on Community Radio Installation, Broadcasting and Operation will promote the participation of poor people in the free flow of information at the rural level. The government's policy to switch over from analogue to digital also envisages more efficient and timely flows of information in the education, health and other sectors in accordance with the Governments objective of transforming Bangladesh into a digitally enabled country by 2021.[7] Planned initiatives include computer-aided connectivity to promote improved access to information at the district and *upazila* levels. For example, better hospital record management under the Ministry of Health will improve patients' access to medical records, advice and services. Plans are underway to provide internet connectivity to at least 800 major hospitals in the country.[8] Examination results under the Ministries of Education and Health are being released on the Internet and mobile phones, saving huge travel time and consternation for both parents and examinees. Several ministries are making regulations and circulars available on their websites. The Ministry of Land has been undertaking a pilot project to scan records so that they are accessible to the public. The Ministry of Agriculture is establishing Agriculture Information Centres in rural areas, with ten having already been set up so far.[9] The government's investments in infrastructure for establishing a digital system is believed to be

[7]Rahman, Tahmina. ARTICLE 19 Assessment Report on RTI Law Implementation. March 2009.

[8]*Ibid*.

[9]Smith, Kevin. Records Management and Right to Information in Bangladesh. World Bank Institute, June 2009.

over 900 billion Bangladesh takas. These electronic information initiatives are expected to have a direct bearing on any programme to strengthen records management in Bangladesh, an essential aspect for the effective implementation of the RTI Law.

INITIATIVES BY NGOS AND CIVIL SOCIETY ORGANISATIONS

NGOs and CSOs have undertaken a range of activities post enactment of the law, especially with respect to advocacy and lobbying with the government. These include MJF and RTI Forum initiatives for the framing of Rules and Regulations, development of training manuals such as *Tathya Adhikar* by MJF, and the publication of *Proshnottore Tathya Adikar Ain,* a Bangla handbook adapted from ARTICLE 19's analysis of international standards on RTI and their correspondence to the law in Bangladesh. Over 3,000 copies of this have been distributed so far, including substantial numbers at the request of government departments. Many organisations including Nagorik Uddyog, MJF, ARTICLE 19, and Management and Resources Development Initiative (MRDI) have published communication posters and leaflets. Orientations and training programmes with partner NGOs have also been undertaken by MJF, ARTICLE 19 and Nagorik Uddyog. Sensitisation workshops with district and upazila level public officials have also been held. A number of other NGOs such as Mass-Line Media Centre, Campaign for Popular Education (CAMPE) and Rashtro have organised RTI related events.

Other notable activities include ARTICLE 19 and its partners on the much-needed public awareness and mobilisation campaign in 20 districts of the country, perhaps the only one on such a scale. The campaign has reached out to thousands through rickshaw parades and school/college debates, posters and leaflets. The campaign attracted spontaneous participation of the public, particularly the youth. Debating competitions attracted young boys and girls and raised transparency and accountability issues with regard to school registration fees, government schemes related to subsidised education materials, scholarships and stipends.

RTI LAW IMPLEMENTATION: CHALLENGES AND OPPORTUNITIES

The effective implementation of the RTI Act 2009 depends on how well the following challenges are addressed:

- Promoting an effective and independent Information Commission;
- Enhancing the provision of information;
- Changing the culture of secrecy to one of openness; and
- Engaging the public.

PROMOTING AN EFFECTIVE AND INDEPENDENT INFORMATION COMMISSION

Information Commissions can play a very important role in promoting the right to information. However the ability of oversight bodies to play a positive role depends on a number of factors, including their composition, mandate, independence, both formally and, in terms of the funding available to them, and their relationship with other key players such as the public authorities and other institutions they oversee, and with civil society.

Article 15(1) of the RTI Act, 2009 provides for a three member Information Commission and states that the "Commission shall be an independent body". Its main office will be in Dhaka. Security of tenure is provided to the Chief Commissioner and other Commissioners. The Commission is responsible for undertaking five main types of functions - issuing directives and guidelines, conducting research and advising the government on improving the access to information regime and compliance with international instruments, building institutional capacity, conducting promotional activities, and resolving complaints.[10] The Commission has been authorised to issue directives and guidelines including, "regulations" to guide and direct "authorities" in preparing and publishing lists of information that would be available free of cost.[11] Compliance to the regulations is obligatory. The Act provides for the establishment of an "information fund" allowing for grants both from the government and "any institution with the approval of the Government".[12] The Commission also has the power to act as a court of law - it can summon attendance in cases of non-compliance for submission of requested information.[13] The Commission is also vested with the same powers as those of a civil court and it can require authorities to take any necessary steps in the event of non-compliance, including awarding compensation to the complainant.

[10]Section 13.5 of the RTI Act 2009.
[11]Section 8.6 of the RTI Act 2009.
[12]Section 19.4 of the Act 2009.
[13]Section 13 of the RTI Act, 2009.

COMPOSITION AND PROFILE OF THE COMMISSION

The information commission has a chief information commissioner and two commissioners, one of them a woman. They were chosen by a selection committee comprising a judge of the Appellate Division of the Supreme Court, and a nominated panel of six members including the cabinet secretary, representatives from the treasury and opposition benches, and from civil society. The Act came into full effect with the appointment of the three-member Information Commission by President Zillur Rahman. It consisted of retired secretary M. Azizur Rahman as the chief information commissioner (CIC), while former secretary Mohammad Abu Taher, and Professor Sadeka Halim of the Sociology Department of Dhaka University were appointed as information commissioners. However, the position of the CIC became vacant soon after, and was ultimately filled by Muhammad Zamir, a former ambassador of Bangladesh to many countries.

The new Chief Information Commissioner (CIC) had the opportunity to set a defining tone in the leadership of the Commission, which was needed to bring impetus to the implementation of the RTI law, in the wake of the lull created by speculations around the appointment of the first CIC who was already approaching the retirement age and uncertainties after his departure.[14]

As the Information Commission was composed of two civil servants and only one academic, it was widely felt that civil society was underrepresented, when compared to public administration. It is hoped that the current Chief Information Commissioner's associations with the media will help to ameliorate such perceptions to some extent, though much more can be done both in terms of increasing the number of Commissioners (India, in contrast, has ten information commissioner), and redefining the profile of the Commission.

HUMAN RESOURCE CAPACITY

The current human resource capacity of the Commissioners is quite limited. The Ministry of Establishment has approved a 77-member organogram. However, key positions still remain vacant including that of the Director General, Directors for Research and Training, and Administration, and Deputy Directors for

[14]*Kaler Kantha*, 15 February 2010.

Communication and Public Relations, Finance and Complaints and Appeals, among many others. There is also a lack of clarity regarding the process of recruitment to be followed when filling these positions and decisions are still pending on whether the Commission will lead the recruitment process. This situation would greatly benefit from the formulation of Recruitment Rules which, with approval from the Public Service Commission (PSC), could be notified in the gazette and enacted fairly soon. A direct recruitment by the PSC will require a lengthy process and will further delay the staffing of the Commission.

FINANCIAL INDEPENDENCE

The Commission is required to submit an annual budget for each fiscal year for approval by the government. However, it is not necessary for the Commission to "take the previous approval of the Government to spend the money against the approved and prescribed heads".[15] So far, 117 million takas has been proposed as the budget for the fiscal year 2009-2010, of which just over 60 million takas has been approved by the Government. A lump sum amount of five million takas has been approved for training purposes. However, the Commission has so far been unable to spend most of the money, partly because of the lack of staff and partly because of delays arising out of administrative glitches with regard to further "approvals from the Ministries of Establishment and Finance".[16] Expressing similar concerns, Information Commissioner Professor Sadeka Halim said, "We are unable to undertake any training, despite all preparations, until we have the go-ahead from the Ministry of Finance". Consternation in the Commission regarding its financial dependence on the government is evident, and these shortcomings need to be overcome to fully establish the independence of the Commission.

RESPONDING TO COMPLAINTS

The vetting of rules on application, appeal and costs for requests has been completed and these were notified in the official gazette on 8 March 2010 after amending the initial version of November 2009. This has formally initiated the process of implementation, enabling the Commission to accept complaints about non-compliance to requests for information, one of its principal functions. The same process was completed in India in less than 120 days. A gazette

[15]Section 21 of the RTI Act, 2009.

[16]Information Commission Secretary, interview with *Kaler Kantha*, February 2009.

notification of amended regulations on preservation and management of information is expected soon. Without the necessary rules and regulations, the Commission has so far accepted only five complaints. These include a complaint against Rajdhani Unnayan Katripakhkho's (RAJUK) refusal to disclose plans for Bangladesh Garment's Manufacturers and Exporters Association's (BGMEA) construction, and another complaint against the Land Registry Office of Dhaka which refused to provide copies of land ownership instruments. In the first year of implementation in India, seventy thousand information seekers had asked for information and two thousand appeals were registered in the Commission on the rejection of their initial requests.

RESPONDING TO REQUESTS FOR INFORMATION

Requests for information in the first instance shall be made to an "Officer-in-Charge" designated to provide such information within the specified time frame of 20 days.[17] All authorities are required to appoint such designated officers and inform the Commission with their coordinates.[18] The Commission is in the process of putting together a comprehensive database from country-wide lists of designated officials. So far over 5,000 names have been received. Given that the list will include officials from government departments, NGOs and private sector institutions, the number of such functionaries will cross an estimated 600,000. It is expected that these lists will be made public soon, even though no time frame has been announced as yet. It is possible that the lists may be released in phases and a decision from the Commission on this issue would be needed soon to begin the implementation process.

PROMOTIONAL ACTIVITIES OF THE COMMISSION

The Commission has had considerable success in reaching out to the public. Commissioners have visited a number of districts, and over 25 public consultation meetings have been held with the participation of a cross section of stakeholders. These meetings have been well received with a huge turnout of citizens, public officials, NGOs, teachers, print and electronic media journalists, and members of civil society. These sessions have included question and answer sessions with members of the commission. Sessions have also been conducted with the Police, Criminal Investigation Department (CID),

[17]Sections 8 and 9 of the RTI Act, 2009.
[18]Sections 10.2 and 3 of the RTI Act, 2009.

Public Administration Training Centre (PATC), Bangladesh Academy for Rural Development (BARD) and electronic and print media including *Jugantor, Kaler Kantha*, and International Television Channel (NTV). It is understood from the Commission that the orientation sessions with public officials have hugely influenced the appointment of designated officials as many more names have been received from areas where such consultations have been held. The Commissioners have also met donors such as the World Bank, UNDP, Asian Development Bank and international organisations working on access to information and freedom of expression issues such as International Press Institute (IPI) and ARTICLE 19. The participation of Commissioners in access to information, governance and human rights seminars, workshops and symposiums has also increased the profile of the Commission.

ACCOUNTABILITY

The Commission is required to furnish an annual report to the President before the end of March every year, with details of the number of requests made to each authority, number of decisions which deny information, number of appeals, particulars of any disciplinary action, reform proposals, activities undertaken, and complaints. The report then must be published and publicised in the media and on the Commission's website.

The Commission's Annual Report for 2009 has been published and presented to the President. The report provides an update of the activities and initiatives undertaken by the Commission up to the end of the year, profiles of the Commissioners, current human resources, and sets out some short and medium term plans. It emphasises training of trainers (ToT) for designated public officials, approval of the organogram and recruitment of staff, approval of regulations, and some measures for a communications strategy for promoting RTI, including a logo for the Commission.

ENHANCING THE PROVISION OF INFORMATION

A strong flow of information is key to building public support and a robust, progressive right to information system. Therefore it is important to put in place mechanisms for the efficient application of the two main information disclosure systems, namely disclosure by request and voluntary/proactive disclosure.[19]

[19]Sections 8 and 6 of the RTI Act, 2009.

Although the proactive disclosure list appears to be somewhat limited compared to Mexico and India, authorities are required to publish an annual report with details of activities, description of staff and their responsibilities, decisions, and processes of decision making. Information relating to any laws, regulations, notifications and directives are also required to be disclosed. Organisations are also required to disclose clearly the services citizens can expect in obtaining licenses, permits, grants, approvals etc. Local and national institutions under the law may also be required to disclose a range of information relating to budgetary allocations, expenditure for development programmes, fiscal transactions, health and education, and other public services. There is nothing in the law that can prevent such disclosure. In many cases, a challenge on the supply side will be the inability of authorities to provide such information due to poor information management. Such a situation might create frustration among the citizens and will undermine the purpose of the law. Hence the government's plans for preparedness and readiness in this respect would be a critical factor for the effective implementation of the RTI Law. In many cases, government agencies may be challenged with regard to the technical skills necessary for managing records properly.

PROMOTING ACCESS TO INFORMATION TO CITIZENS OF THE COUNTRY

One of the major concerns regarding the implementation of the law is access to information by a vast majority of the people who cannot read or do not have the necessary education to comprehend the mechanisms of a law that can ultimately benefit them. Proactive disclosure, sometimes referred to as routine or *suo moto* disclosure, has been recognised as central to an effective RTI system. Section 6 of the Act provides for the disclosure of four kinds of information voluntarily, as opposed to the seventeen in India and five in Pakistan. Even so, for a country like Bangladesh, it can ensure that a minimum level of information is made publicly available and access to information for a majority of individuals who may never make a request, is promoted. A concerted focus on this aspect will also lead to a decline in requests for information. Modern governments are increasingly making large amounts of information public on a proactive basis. The Commission can take steps to produce guidance notes or a detailed template on proactive disclosure for officials.

IMPROVING RECORDS MANAGEMENT

"The Right to Information legislation will only be as good as the quality of the records which are subject to its provisions. Statutory rights of access such as this are of little use if reliable records and information are not created in the first place, if they cannot be found when needed, or if the arrangements for their eventual archiving or destruction are inadequate. In addition the fast-growing use of information technology will increase the pressure on the record keeping system. Good records management practice is therefore essential in implementing the RTI Act".[20] Records management has had a very low profile in the Bangladesh public sector, with adverse consequences on the effective functioning of the government, on the delivery of services, and on the ability of the government to introduce sustainable information communication technology (ICT) initiatives. The principal responsibility in the Bangladesh government for the management of records rests nominally with the Ministry of Establishment. In practice, each government ministry and department looks after its own records, but in general the existing systems for creating, managing, storing and archiving records are ineffective. The introduction of the RTI law presents an opportunity to correct this. Procedures must be made clear for maintaining records, their transfers, tracking applications, and ensuring responses.

DEVELOPING GUIDANCE RESOURCES FOR OFFICIALS

The implementation of the new law will require all government officials to have at least a basic understanding of the Act, so that they know how to manage information, know what to do when an application reaches their desk, are able to process requests properly, and apply exemptions when appropriate. Public officials have appreciated handbooks such as Proshnottore Tathya Adhikar Ain as a useful primer to the law in Bangladesh. While training will assist with familiarising officials with the law, it will also be useful to develop specific reference guides to proactive disclosure, application of exceptions etc. Lessons could be learned from the United Kingdom Commissioner's Guidance Series.

[20]Smith, Kevin. Records Management and Right to Information in Bangladesh. World Bank Institute, June 2009.

CHANGING THE CULTURE OF SECRECY TO ONE OF OPENNESS

Though promoting transparency is the responsibility of all officials, in practice, even when the political culture has largely accepted the idea of openness, problems of bureaucratic resistance remain and promoting a true culture of openness remains a very significant challenge. The prevailing culture of secrecy, lack of awareness among public officials regarding the right to information and the RTI Law 2009, and duties and responsibilities of concerned authorities and officials under the law, are issues of concern. The government's capacity to provide training and enhance the technical skills of its officials will also be critical to promoting a culture of openness.

PREVAILING CULTURE OF SECRECY

One of the central challenges to the implementation of the RTI law will be changing the prevailing culture of secrecy. Restrictive laws such as the Official Secrets Act, 1923, and provisions of the Government Servants' (Conduct) Rules, 1979, and Rules of Business 1996 have defined and fostered this culture. Government officials have always functioned and operated under the remnants of a legal regime designed during colonial rule, thus inculcating a closed mind-set under an obligation not to disclose "departmental" information to the public. Though section 3 of the RTI Act clearly gives precedence to the provisions of the Act where there is conflict with any other legislation, and section 35 provides the opportunity to remove any ambiguity by issuing official notifications problems remain. The implementation process would need to address inconsistencies and contradictions between the provisions of the Act and other existing restrictive laws and provisions. At the same time, the necessity of developing supporting legislation may need to be considered.

DEMYSTIFYING THE PROVISIONS OF THE ACT

It must be remembered that public officials are not specialists in information access laws and can sometimes find provisions of the law genuinely "daunting and a strong instrument to handle".[21] At the district and *upazila* levels, only some public officials have access to a copy of the new law, and many have never even seen one. "It was

[21]Rahman, Tahmina. ARTICLE 19 Assessment Report on RTI Law Implementation. March 2009.

clearly evident that most trainees have little knowledge and understanding of the new law, some are familiar with it, though superficially", commented Ashraf Hossain, the Course Coordinator of a training programme for new entrants organised by BPATC and MJF.[22] Trainees are said to have commented that "The law will benefit journalists and create uneasiness for public officials". Others saw weaknesses in government record keeping systems and internal procedures as challenges to providing information on time.

INFORMATION OFFICERS AND THEIR EMERGING ROLE

One of the defining features of the successful implementation of the Act will rest on how well information officers will be able to perform their roles. Under the existing system, information officers are responsible for promoting and providing information related to the government's development activities and awareness campaigns on health, education, agriculture etc. This is done under the supervision of the district administration with directives from the Ministry of Information. Other officials at the district and upazila levels, such as Upazila Nirbahi Officers and project implementation officers, could find themselves in the role and position of "designated information officers" under the Act. Whereas currently they are closely associated with the administrative machinery, their new roles will necessitate a greater degree of independence and authority to make decisions on a wide range of disclosures including those related to decision-making processes. Timely and efficient operation of access to information mechanisms will demand that information officers take most disclosure related decisions. The implementation process would therefore need to address such issues of independence, authority and delegation, along with the issue of apportioning resources for these positions so that they are able to deliver on their new responsibilities. The role of government departments, directorates and institutions, such as the Department of Mass Communication, Press Institute of Bangladesh (PIB), Press Information Department (PID) and National Institute of Mass Communication (NIMCO) would need to be reviewed in relation to the implementation process.

BPTAC has already introduced RTI in their quarterly training programmes. Over 900 (of which about 30% were women) public officials have undergone RTI orientation and training through

[22] *Prothom Alo*, 28 March 2010.

sensitisation workshops organised by ARTICLE 19 at the district level. They included district and local level public officials such as district commissioners, assistant district commissioners, information officers, sub-district executing officers, health, education, agriculture, fisheries officers, assistant commissioners, and land and co-operative officers.

ENGAGING THE PUBLIC

The 2002 Information Review Task Force in Canada noted that "In Canada after 20 years, the right to access information is still not well understood".[23] This underscores the Herculean challenge that a country like Bangladesh faces in trying to create a demand for information, considering that over 75% of the population is rural, and ignorance about their rights and entitlements is widespread. In these circumstances, effective implementation of the RTI law will depend largely on raising people's awareness of their rights in seeking, receiving and sharing information, and their knowledge of the law. This would depend on the extent to which they can be empowered to use the RTI Act as an instrument for demanding information that would help secure their basic rights to shelter, food, clean water, health and education. Only when this happens could the RTI law be considered to be on the path to implementation.

The Act places much emphasis on public education and awareness-raising, indeed the Commission has been tasked to "increase public awareness about the right to information" amongst different sections of the society through dissemination, publication and other methods.[24] The Commission's initial work has also focused on this aspect of their functions.

ROLE OF NGOS AND CIVIL SOCIETY ORGANISATIONS

NGOs and civil society organisations were key stakeholders in developing the demand for an RTI law in Bangladesh, and they have a critical role to play as catalysts and leaders of social movements for ensuring the effective implementation of the law. Through their networks, skills and expertise, they can lead public education and awareness-raising campaigns in engaging the public. In this respect the Commission would find them to be active allies. ARTICLE 19's

[23]Mendel, Toby. Implementation of the Right to Information: Lessons from Canada, Mexico and South Africa, 2008.

[24]Sections 13.5 (j) and (m) of the RTI Act, 2009.

experience indicates that even in these early stages of RTI law implementation, such campaigns result in increasing demands from citizens seeking information from hospital and school authorities, the district administration, women's affairs directorate, and the forest department. Alliances of government and non-government organisations, active coalitions of information seekers and RTI champions have emerged as requester groups.[25] The campaign involved the media at all levels as a part of the strategy for wider communication of messages. Only this kind of activism at the grassroots will fully ensure the usage of the law as a tool in the fight against poverty, corruption and inequity. NGOs and CSOs also have a critical role to play as citizen-led watchdogs of the implementation process in undertaking and publicising periodic reviews and impact assessments.

ROLE OF THE MEDIA

Journalists are critical stakeholders of the law and potentially frequent users. In spite of the weaknesses in the RTI Act, it has the potential for establishing an enabling legal framework for securing journalists' freedom of expression. However, misconceptions and apathy on their part will continue to be an obstacle in advancing the use of the law as an instrument for investigative journalism. Both electronic and print media can be effective partners with the Government in designing and delivering a well-defined communication and media strategy to promote the RTI Act and its potential for ensuring access to basic public services and humanitarian assistance, unearthing corruption, human rights violations, and aid and public expenditure tracking.

TAKING IT TO THE NEXT PHASE

The first year of implementation of the RTI law in Bangladesh can be characterised as having had some successes, while marked by a number of setbacks. Successes include the passing of the law by the Parliament, the establishment of the Information Commission, including the appointment of Commissioners, the approval of the organogram and budget, the setting up of a permanent office space, the publication of the progress report, and the holding of a series of high profile public orientation meetings. On the other hand a number

[25]Rahman, Tahmina. ARTICLE 19 Assessment Report on RTI Law Implementation. March 2009.

of essential tasks necessary to open up the process of requesting information and lodging complaints, such as the finalisation and notification of the rules on applications, appeals and costs have only been completed recently. Other important issues remain pending, such as the notification of regulations on preservation and management of information, completion of the list of "designated public officials", and recruitment of key staff positions for the Commission. Administrative glitches with regard to finances of the Commission have also slowed down implementation. A gap in leadership for a period of time has, to some extent, led to undue speculation and dented both the morale of the Commissioners and the image of the Commission.

SIGNALLING STRONG POLITICAL WILL

With new leadership at the helm, the second year of implementation provided the Commission and the Government with an opportunity to make a fresh commitment to and assert a stronger political will on the implementation of the RTI Act. An immediate form of signalling this commitment could be the development and publication of a strategic framework and plan of action, identifying key implementation tasks, the agency or agencies responsible for implementing them, and designating strict timelines for completion. While it is good practice to involve multiple stakeholders in the process, a lead agency within the government should have the overall responsibility. Key ministries, particularly the Cabinet Office, and Ministries of Information, Home, Health, Education, Agriculture, and ICT should be brought into the process early on. An inter-ministerial committee could coordinate and monitor the implementation of the strategy. Key aspects of implementation should include the coordination of training, records management, and the regular disclosure of information.

ENSURING THE INTEGRITY AND INDEPENDENCE OF THE COMMISSION

The independence of the Commission as the arbiter of complaints from information seekers is yet to be tested since the rules and regulations have not yet been notified. The enforceability of the Commission's decisions has also not been tested yet. At the same time, concerns already exist in the Commission regarding its financial independence. Moreover, the development of directives concerning applications, appeals and costs, preservation and management of

requests for information, and the complaints process have also been caught up in "administrative procedures", leading to delays in implementation. Although initial versions of both the rules and regulations were formulated in the early days of the setting up of the Commission, it has taken almost a year for them to be notified after prolonged deliberations. In order to bring out the full potential of the Commissioners and the dynamism of the Commission, ways must be found to overcome these hurdles. Budget rules could perhaps be amended so that funding comes directly from Parliament.

ENSURING A POVERTY APPROACH TO IMPLEMENTATION

Bangladesh has the seventh largest population in the world of which almost 76% lives in rural areas. About 63 million people live in a state of deprivation, and two-thirds of them in extreme poverty. 70% of the urban populations live in slums. More than 30 million people do not have access to safe drinking water. Inequality appears to be rising and adult illiteracy persistent. Only about 4% have internet access. Attaining human development goals will require accountable and responsive social service delivery systems that reach the poor, particularly women. As such, central to the strategy for promoting the implementation of the RTI Act must be an effort to ensure that the voices of the poor are heard and they are allowed and empowered to participate in the whole process as a means of promoting their freedom and well-being. Poor and vulnerable people will remain trapped in a web of powerlessness unless their right to know is protected and ensured.

Key strategies towards achieving this could include:

- Promoting massive public awareness and mobilisation campaigns on the right to information and its benefits;
- Supporting the emergence of coalitions of information seekers, and networks of requester groups;
- Making increasingly large amounts of information that may be of public interest available on a proactive basis;
- Undertaking necessary reforms to ensure that unions, the lowest tier of the local government, also have obligations of disclosure; and
- Launching a country-wide government media and communications campaign using electronic, print and other

means to promote people's awareness on the right to information, its benefits, and the methods for obtaining information.

The Information Commission could lead the development and publication of such a strategy in alliance with NGOs, civil society organisations, media, relevant government agencies, international NGOs and development partners of the government.

Widespread public education and awareness-raising campaigns are central to engaging with the public. The early years of implementing a right to information regime are particularly important as they set the trend and form lasting impressions of the value and impact of the system. ARTICLE 19's campaign activities have been directed at improving both the supply and demand side of RTI. On the demand side, outreach has been directed towards those likely to use the system, such as public officials, RTI campaigners, civil society organisations, NGOs, academics, students, teachers, youth and the general population at the grassroots level. Early assessment reports clearly indicate that dividends from the campaign are evident with increasing demands from citizens seeking information from hospital and school authorities, district administration and women's affairs directorates etc. Alliances between government and non-government organisations, active coalitions of information seekers and networks, and RTI champions have emerged as requester groups.[26]

PUTTING IN PLACE EFFECTIVE SYSTEMS

The relationship between the government and citizens in Bangladesh will experience a fundamental change as the RTI Act is implemented. It will affect every person employed in public service including government ministries, departments and agencies, local authorities, police authorities as well as private organisations discharging public functions. Key to this change would be the development of modern, easy to facilitate, dependable and secure information management system. Such a system would ensure timely processing of requests and support the government in placing information into the public domain on a regular basis. There is no other alternative to this.

[26]Rahman, Tahmina. ARTICLE 19 Assessment Report on RTI Law Implementation. March 2009.

Work on the setting up of the Commission's web portal is in an advanced stage and a launch is expected within the next few months. This web portal would be a central element in the larger right to information management system. However, much more needs to be done. Record management must be given the highest priority within the government with the support of senior government officials. A record management unit could be established, with designated records managers in each government ministry. Management of records and information could be guided by advice and expertise from the National Archives of Bangladesh. A training programme could be developed with existing institutions, such as the Bangladesh Public Administration Training Centre (BPATC). However, along with formal processes, dialogue between information officers and applicants would need to be encouraged. This could help save time and effort and increase the likelihood of requests for information being honoured. The proposed Inter-Ministerial Committee responsible for the coordination and monitoring of the Government's strategy could oversee the implementation of these measures.

SUPPORTING A NEW GENERATION OF PRO-PEOPLE INFORMATION OFFICERS

At its core, the RTI Act envisages a fundamental power shift in the way information officers discharge their duties - from custodians of information to those who will be responsible for unlocking it. They will now serve as the main interface with the public and will need to make important decisions about the processing of requests, and in most cases, the release of information. However this transformation will have implications on resources, capacity and independence.

Sensitisation meetings and workshops, and training and capacity-building for public officials will be necessary for building the capacity of information officers. Extensive cooperation should take place between the government, Information Commission and civil society. An example is the recent MJF/BPATC collaboration for the training of new entrants. Lessons can also be learned from the ARTICLE 19 sensitisation workshops with local level public officials. Training programmes and modules must be designed to address both technical and cultural issues. The Commission could provide technical support to authorities and information officers, and develop Manuals and Reference Guides. Guidance Notes with detailed guidelines explaining each of the exemptions and applying them in real life situations, along with publication schemes and records management guidelines, could

be produced and disseminated through the Commission's website. Lessons could be learned from the Jamaican and United Kingdom experiences. Laws having the potential to restrict the independence of information officers would need to be reviewed, and ambiguities and inconsistencies removed by official notifications. Supporting legislations for the promotion of open government may need to be considered. The role of existing institutions such as PIB, PID and NIMCO could be reviewed to support the new system. The Commission could initiate a systematic review looking at structural issues with regard to the status and role of information officers and the issue of resources for effective delivery of their new functions. Such a review would need to explore the independence and visibility of information officers and reporting lines.

Finally, as civil society and media are critical stakeholders in the development of a new information sharing system, greater cooperation and coordination will be necessary to enhance the impact of their work. As key stakeholders, they would need to be vigilant and continuously review and monitor the implementation process through citizen participation.

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Mohammed Zamir, Chief Information Commissioner

3

RTI in Bhutan: A Background Note[1]

Prashant Sharma

Bhutan held its first national election in March 2008 and thus paved the way for changing its form of government from a monarchy to a democratic constitutional monarchy. This was the culmination of several years of political reform which had been initiated by King Jigme Singye Wangchuk in 1998, when he transferred many of his administrative powers to his Prime Minister. He also introduced fundamental changes in the political framework by allowing the impeachment of the King by the National Assembly by two-thirds majority. A year later in 1999, a ban on the internet and television was lifted, a step which took Bhutan much closer to the larger world than ever before.

"On 4th September 2001, His Majesty the King briefed the Council of Ministers, the Chief Justice and the Chairman of the Royal Advisory

[1]Very little resource material currently exists in the public domain on freedom of information in Bhutan. This can be attributed partly to the fact that Bhutan has moved from being a fairly isolated and closed country with a monarchical system of government to a more open and democratic one only very recently. The evolution of a debate on the establishment of a legally mandated freedom of information regime in the country is also quite a recent phenomenon. As a result, this note is based primarily on the small amount of literature which indirectly addresses issues around freedom of information in Bhutan, newspaper reports on the issue, and detailed interviews held in March 2010 with Tenzing Lamsang, one of the few journalists in Bhutan who has been reporting regularly on this issue in *The Kuensel* newspaper. Input from Phurba Dorji, a journalist with *Business Bhutan* has also been used. References to 'observers' in this note may be attributed to a combination of these sources.

Council on the need to draft a formal Constitution for the Kingdom of Bhutan."[2] Following this, a Constitution Drafting Committee was formed, which had as a part of its 39 members the Chief Justice of Bhutan (the Chairperson of the Committee), the Speaker of the National Assembly, two representatives from the monastic body, one elected member from each of the twenty districts[3], the head of the Royal Advisory Council and all its members, five representatives of the government, and two legal experts from the judiciary. The Member Secretary was an official from the Office of Legal Affairs.

The first draft developed by the Drafting Committee was distributed widely across the country in March 2005 for input from diverse groups such as the Bhutan Chamber of Commerce and Industry, educational institutions, the judiciary, municipal corporations, and civil servants. Simultaneously, a website on the draft constitution was also launched. Nationwide consultations were also held at district headquarters across the country where individual citizens were urged to participate in the process. This nationwide consultation process ended in May 2006. The Constitution was ratified by the King on 18th July 2008, soon after the first democratically elected government with Jigme Thinley as the Prime Minister was sworn-in, which declared the Sovereign Kingdom of Bhutan to henceforth be a Democratic Constitutional Monarchy.

The constitution of Bhutan is particularly unique with regard to access to information as it formally, directly and *without any qualifications* recognises the Right to Information as a fundamental right. Article 7.3 of the Bhutanese Constitution unequivocally states that "A Bhutanese citizen shall have the right to information". Although no enabling legal and institutional framework which would operationalise the functioning of this article currently exists, a draft Right to Information Bill is being considered by the Ministry of Information and Communication, the nodal ministry mandated by the government to look into matters related to access to information.

The roots of an access to information regime in Bhutan (which have found culmination in article 7.3 of the constitution) can be traced to the period before democracy was introduced in the country at the behest of the former King of Bhutan, Jigme Singye Wangchuk. The

[2] http://www.constitution.bt/html/sources/royal.htm. Accessed 19 March 2010.

[3] These had been elected specifically for serving on the drafting committee.

former King is perhaps best known for promoting the concept of Gross National Happiness as an indicator of development of a country. Within this rubric, the four pillars on which a people's well-being could be judged are promotion of sustainable development, preservation and promotion of cultural values, conservation of the natural environment, and establishment of good governance. It was within the good governance theme that the first steps towards administrative accountability were introduced in Bhutan along with the launch of the first of the five-year plans in the early sixties. Since the first plan established a permanent and professional civil service, several rules, regulations and provisions were introduced by the government to guide their activities. This accountability was perceived in these formative years to be an adherence to these rules and regulations to carry out their responsibilities diligently.

Since then, and until the introduction of democracy, several institutions and mechanisms were developed to make the public sector more accountable to people. One such was the institutionalisation of the traditional system for redressing grievances whereby any citizen could approach the King directly for the redressal of any grievance related to the functioning of the government. Other institutions which grew to support the realisation of public accountability were the Royal Audit Authority, the Royal Civil Service Commission and the creation of Block Development Committees for overseeing development works at the community level.[4]

Even as the drafting of the constitution took place over a period of several years and was timed to be in sync with the swearing-in of the first democratically elected national government of the country, work had already been started by the same drafting committee on developing drafts of major acts to be taken up by the first parliament once the new government was in power. The Right to Information Bill was one such legislation on which work had begun as early as 2007, much before the elected government was in place.[5] The process followed a top-down approach, with no consultations with civil society

[4] For an insightful discussion on accountability in the context of Gross National Happiness, see Gurung, 1999. Available at: http://tinyurl.com/ybzg5ss. Accessed 19 March 2010.

[5] "His Majesty the Fourth Druk Gyalpo in his great wisdom had earlier asked that the draft of all major acts be ready before the constitution is passed." – Statement by the Chief Justice of the Bhutan High Court and Chair of the Constitution Drafting Committee quoted in *The Kuensel* Newspaper, 21 June 2008. Available at: http://tinyurl.com/y869zna. Accessed 19 March 2010.

organisations (CSOs) and with the draft never being made public. This echoes the process of democratisation of the country as well, where the process was introduced not as a result of any pressure from below, but at the instance of the King. However, given that RTI has been enshrined as a fundamental right in the constitution, the drafting of which was reportedly a public and participatory exercise, it can arguably be extrapolated that public support for an effective access to information regime is present in Bhutan.

Observers of Bhutanese politics suggest that the RTI Act under consideration of the government is largely based on the Indian RTI Act of 2005. Key features of the draft which is currently with the Ministry of Information and Communication include:[6]

- "It will be an enforceable public right to access information in possession of any government ministry, department, nationalised industry, public corporation or any other organisation substantially financed by the government.
- Information implies all written papers, documents, drawings, electronic, photographic, film, audio and physical records, including all records of all administrative decisions.
- The government agency would *not* be allowed to question the person seeking information or set conditions for giving information.
- All information will have to be furnished within 30 days from application and an extension of 15 days will only be granted if information asked is of a large volume of records affecting government function, consultations needed to clear the request and also to protect any government interest or rights of any person.
- A maximum three-month extension would be possible in exceptional cases like a national calamity of large proportions. But any extension or denial would have to be submitted in written form by the public authority. If any information is not provided within time or any reasonable extension not applied for in writing, then it would be taken as denial.

[6]The complete draft of the bill has not been made public yet. These key features were reported in *The Kuensel* dated 21 June 2008. Available at: http://tinyurl.com/y869zna. Accessed 19 March 2010.

- In case of denial of any information, the court can be approached which will decide the case under the civil and criminal procedures code of Bhutan on the lines of administrative adjudication, liability for damages, denial of information and contempt of court.
- Exempt information shall be those affecting the security and sovereignty of the nation, personal information with no relation to public activity, protected intellectual property rights, prohibition by court order and prohibition by another act which mentions this act, substantially diverts public resources and interferes with lawful functions. However, apart from national security issues, the police and the courts will also come under this act.
- It will be mandatory for every government agency to set up an information cell headed by an information officer.
- The responsible 'public authority' under the act will be the head of the public authority itself.
- The public authority will also have to make available to the public an annually updated detailed organisational and operational statement that describes its structure, functions, budget, decision making procedures, powers, laws, all categories of official information, advisory boards, telephone directory of all employees, facilities for obtaining information, policies, receipt of concessions and permits granted by it.
- The public authority will also have to maintain all information in an organised and easily reproducible manner and provide it in the desired format at the cheapest cost possible.
- The public authority will also have to submit to the prime minister an annual report on the compliance of the authority with its obligations under the Act."

The draft RTI Act was provided to the Ministry of Information and Communication in 2009 by the Constitutional Drafting Committee. The Ministry is currently analysing the draft even as it holds consultations with other ministries of the government on its features. Public assurances have been given by ministry officials that the draft will be introduced in the Bhutanese parliament this year, without any changes being made to its key features. Critically, journalists who have been following the progress of this act have also

been assured that the draft will be made public for consultations before the bill is finalised by the cabinet and introduced in parliament. The delay in the introduction of the act in the parliament is being attributed by observers to the fact that other more pressing bills, such as the ones related to local government and the functioning of the civil service, are taking precedence, and the process to pass them in parliament is taking more time than expected.

However, even as the process to enact the RTI act continues, government representatives have gone on record to say that since RTI is a fundamental right in the constitution, any citizen can seek information from public bodies even in the absence of an RTI Act. In case of denial of information, citizens can move the High Court, which in turn can ask the government to fulfill its constitutional obligations. It is perhaps for this reason that the government has continued to make statements which are positive and supportive of bringing in an RTI Act. However, observers say that these intentions must be backed up with action - the introduction of the bill in the parliament within this year. Should the government not do so, some questions are likely to be raised, at least by those journalists who have been following this issue.

The current King, Jigme Khesar Namgyel Wangchuk, who is the head of state, has not made any specific statement regarding the proposed RTI Act, but has made several statements lauding the role of the media in bringing information to the people and for strengthening democracy, as well as on the larger issue of transparency.[7] Observers suggest that there certainly seems to be an indirect approval of the evolution of processes which lead to greater transparency.

Rooted in the same vocabulary of good governance and transparency, a pre-democracy manifestation was an increasing push towards e-governance, information technology enabled government-to-citizen services, and increasing provision of public services online. It is within this framework that representatives of the government are seeing the proposed RTI Act – as another tool for providing transparent and efficient governance.[8]

[7]Traditionally, Bhutan has been considered to be very conservative with regard to freedom of expression and media. A good discussion on this issue is available in Mehta and Dorji, 2007 and Pek-Dorji, 2007.

[8]Interview with Tenzing Lamsang of *The Kuensel* newspaper, March 2010.

According to journalists who have interacted with Members of Parliament on this issue, the political class seems to be supportive of the act. The reason offered in part is the compulsions of electoral democracy. Reportedly, MPs themselves find that they do not have information regarding development works in their constituencies. Since promises have been made by them to their electorates, they find that access to information allows them to function better, and keep their voters in good humour for the next election. The issue of information on development works seems to have become particularly important as the current five-year plan of the government is the largest to date, and the government, especially elected representatives, seem to be quite keen on ensuring that funds for development reach the people they are meant for.

At the same time, observers suggest that some resistance seems to exist in sections of the bureaucracy, which stand to be affected the most by the enactment of an RTI Act. While no group or individual has come out publicly against having an RTI Act in Bhutan, privately articulated concerns are formulated in terms of government being bogged down by frivolous requests, much in the same vein as in the Indian case.

There has been limited media reportage on this issue in Bhutan. Only a handful, if that, of individual journalists and specific newspapers which have a special interest in the issue have been reporting on the progress of the act, as well as its implications on transparency and good governance.[9] Limited programming on the issue of RTI and transparency has also been aired on national television. Some amount of pressure, both through media reports, as well through informal channels in use by journalists, is being exerted on the government to ensure that the bill is introduced in parliament within this year. At the same time, no group or civil society forum seems to have emerged which has taken up this issue on a wider basis. Part of the reason for this lack is also the fact of low awareness about this act. While progressive civil servants and better educated citizens know of the draft and are supportive of it, most people are simply unaware about this act or its potential. However, it seems that once the bill is made public for consultation and eventually enacted, groups and civil society organisations which focus on RTI might emerge to carry the debate

[9]In particular *The Kuensel*, which interestingly, is a state owned newspaper.

forward. It should be noted that Bhutan has a relatively young history of NGOs and CSOs, and the recent enactment of the Civil Society Organizations Act in 2007 by the parliament now provides a framework within which such organisations can evolve.[10]

In sum, the case of Bhutan remains special on many counts. First, RTI has been enshrined in the constitution as a fundamental right. Second, it is a country where many progressive changes, including democratisation and RTI as a fundamental right, have been brought in from above. Third, independent privately owned media and CSOs are very young in the country. Fourth, a culture of public consultation on key government decisions within a democratic framework seems to have been established with the process followed for the drafting of the constitution. Given these special circumstances and other facts highlighted in this note, it is most likely that a legal framework for operationalising RTI as a fundamental right will be in place soon, and that a nascent civil society along with a newly democratised citizenry is likely to find new and innovative ways to use this right. The priority at this point seems to be that of ensuring that the draft bill is made available for public consultation soon, from where the bill could then be introduced in the parliament for eventual legislation.

Bhutan is at this point is possibly the only case in the world where democracy and access to information have seen the light of day virtually simultaneously. It will therefore be a fascinating and deeply educative experience to observe how the relationship between democracy and access to information evolves in this country.

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4

The Genesis and Evolution of the Right to Information Regime in India[1]

Shekhar Singh

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 2003[2], "transparency"

[1] Venkatesh Naik, Shailaja Chandra, Yamini Aiyar, Misha Singh and Marcos Mendiburu gave useful comments, and Prashant Sharma and Misha Singh assisted in the editing of this paper. The views expressed in this paper are entirely those of the author, as are its defects, and no other individual or institution should be held responsible.

[2] Named 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 twenty years from 1776, 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 applicable[3]. 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 democracy[4]. Credit has also been given to multilateral donor agencies[5] 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 Aahrus Convention[6]. The

[3] Recent 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.

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

[5] *Ibid*

[6] The 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

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environmental movement has been one of the initiators of the transparency movement in many parts of the world, including India[7].

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 there[8].

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 marginal[9]. The Indian RTI Act of 2005 is widely recognized as being among the most powerful transparency laws in the world and promises far greater

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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_aarhaus.html

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

[8] India 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.

[9] In 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.

transparency than what is prescribed or required by most international organizations. Though the World Bank, for example, has recently revamped its disclosure policy[10] 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 judiciary[11]. The Government, as a collective, is answerable to the legislature, though with the party whip system[12] 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

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

[11] The 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.

[12] The 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 en 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."

performance that the bureaucracy sets for itself and the rhetoric that 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 large[14] 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

[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).

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

caste, religious and party loyalties, and how socially accessibly the elected representative is[15].

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

[15] One 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 security[16].

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]!

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[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)

[17] The 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, Orrissa 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 Devdhungari village, 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 Sangathan[19] (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 ("bourgeoisie", "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

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

State in favour of empowering the citizen, thereby somewhat righting the imbalance in the power structure.

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.

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.

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 elections[20]. 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 movement[21] 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 then they actually had, as these workers were denied 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.

[20] Interestingly, 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.

[21] For 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.

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), Mussoorie[22]. This meeting, attended by activists, professionals and administrators alike, took forward the agenda of setting up an appropriate national body.

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

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

to was to draft a right to information law that could form the basis of the proposed national act[23].

Once drafted, this draft bill was sent to the Press Council of India[24], 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.

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.

[23] The states seem to catch on to the idea of transparency much faster that 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.

[24] The 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.

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 scrutiny[25]. 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

[25]In 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.

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 people[26]. Unfortunately, this was not really so.

[26] Essentially, 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.

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 BJP 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.

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 Act[28], These amendments, designed to strengthen and make more effective the

[27]The 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.

[28]The 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.

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 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 lobbied[29].

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.

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 Act[30].

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

[29] See text of letter at Annexure I.

[30] Copies of the correspondence at Annexure II.

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 government, while finalizing the bill for introduction in Parliament had deleted this phrase[32]. 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 notings[33].

As soon as the RTI Act became operative, the nodal department of the Government of India (Department of Personnel and Training)

[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.

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

[33] The 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).

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 Minster 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 contacted[35], 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 government[36], 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

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

[35] The 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.

[36] For a copy, see annexure IV.

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 justices[37].

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

[37] The 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.

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

Supreme Court[39]. 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 Court[40]. 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 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

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

[40] The 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.

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 present[42].

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.

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]

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

[42] Though 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).

[43] Copy of letter at annexure VI.

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

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 rests[45].

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 growth in size and influence of the RTI movement in India, and culminates in the passing of the national RTI Act in 2005[46]. 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

[45]It 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.

[46]A 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.

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 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 Act[47]. This has predictably perked up the interest of

[47] The other being the National Rural Employment Guarantee Act.

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 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 2009[48].

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.

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

[48]PwC 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.

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 (PIO's) 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 commissions[49]. The People's Assessment highlighted that in many of 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

[49] A 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.

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!

ANNEXURE I

Text of the NCPRI letter dated, 18th January 2005, to Mr. Pranab Mukherjee, Chairman of the Group of Ministers set up to look at the draft RTI Bill, regarding amendments to the RTI Bill.

The National Campaign for People's Right to Information has been campaigning for an effective national law on the right to information for many years now. The Freedom of Information Act 2002 passed by the previous Lok Sabha was very weak, especially in terms of too many exemptions and the lack of independent appeal mechanisms and penalties, though it applied to all public authorities whether they were under the Central or State Governments or even local bodies.

The Right to Information Bill 2004 introduced in the Lok Sabha recently, though better than the FOI Act 2002 in many respects, still has several critical weaknesses which must be rectified before it can become an effective tool which will ensure transparency in public functioning and effectively guarantee the people their fundamental right to know under Article 19(1)(a) of the Constitution.

1. The first crucial weakness in the Act is the fact that it has been restricted to authorities and bodies under the Central government alone. This is the result of the restrictive effect of the definition of Public Authority read with the definition of Government contained in Section 2 of the bill. This has apparently been prompted by concerns regarding the simultaneous existence of the State Right To Information Acts along with the Central Act and some doubt about whether the Central Act can legislate for authorities under the States. Apart from the fact that the FOI Act of 2002 was applicable to all public authorities whether they were under the Central or State Governments or even local authorities, enclosed is a clear and authoritative legal opinion of the Former Law Minister, Mr. Shanti Bhushan which points out how and why the Central Act can apply to all Public Authorities and how the Central and State Acts can coexist by providing in the Central Act that the rights created under the Central Act would be in addition and not in derogation to the rights created by the State Acts. We understand that the National Advisory Council has also made a recommendation to this effect. We therefore request you to use your good offices to get the government itself to amend the Bill

accordingly.

2. Another weakness of the Bill is the Penalty provision contained in Section 17. There is no reason why the Information Commissioners should not be able to levy a monetary penalty against the Information officers for unexplained failure to provide correct and complete information requested within the period mandated by the Act. Section 17 of the Bill could be amended thus:

"17. PENALTIES

(1) Subject to sub-section (3), where any Public Information Officer, or any other officer who holds or is responsible for holding the information, as the case may be, has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the Information Commissioner shall, on appeal, impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer or the other officer, as the case may be, a reasonable opportunity of being heard

(2) Where it is found in appeal that any Public Information Officer has –

(i) Refused to receive an application for information;

(ii) Mala fide denied a request for information;

(iii) Knowingly given incorrect or misleading information, Knowingly given wrong or incomplete information,

(iv) Destroyed information subject to a request; or

(v) Obstructed the activities of a Public Information Officer, any Information Commission or the courts; he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand, and imprisonment of up to five years, or both.

(3) Where the Commission comes to the prima facie conclusion that an offence under subsection (2) has been committed, the Commission shall through an officer of the Commission file charges against the offending Officer in a court of competent jurisdiction."

3. The third crucial issue is that of reasonable fees. It is essential that the Act should make clear that the fees provided must be reasonable and must not exceed the actual cost of providing the information.

4. The fourth crucial issue deals with third party information. Section 11 of the Bill which provides that disclosure of such information may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of the third party. This means that information about a third party which includes public authorities can be withheld even in the information does not fall within the exclusions provided in Section 8, if the information officer feels that the public interest in disclosure does not outweigh the interests of the third party. This would go completely against the letter and spirit of Section 8 which provides that information can only be restricted if it falls within one of the exclusionary clauses and even if it does it can be disclosed if the public interest in disclosure outweighs the harm to the public authority, or if it is information of a kind which must be supplied to Parliament etc. Therefore the proviso to Sub section 1 of Section 11 may be amended to read as follows:

   Provided that information of a third party can only be withheld if it falls within one of the exclusionary clauses of Section 8. Provided further that such information must be disclosed if the Public Interest in disclosure outweighs in importance any possible harm or injury to the interests of such third Party.

5. In addition the Bill placed in Parliament does not include the following important NAC recommendations mentioned below which also need to be considered by the Government:
   a) The NAC draft had a proviso for intelligence and security agencies otherwise exempted from the Act, being required to provide information on allegations of corruption and human rights violations. The RTI Bill 2004 has removed the obligation of these agencies to provide information in relation to human rights violations.
   b) The NAC draft gave all "persons" the right to information, this has been replaced by restricting the right to "citizens" alone.
   c) The NAC draft gave citizens the right to access all documents after a 25 year period – even those covered by the exemption clauses. The RTI Bill 2004 has deleted this provision.

The above amendments in the Bill are absolutely essential if the Bill is to subserve the fundamental rights of the people under Article 19(1)(a) of the Constitution and ensure transparency in the

functioning of the government which is the stated object of the Bill.

We therefore request you to use your good offices to get the government itself to make these amendments to the Bill. We would be happy to discuss any clarifications regarding our above submissions.

(Footnotes)

ANNEXURE II

CORRESPONDENCE BETWEEN THE PRESIDENT AND THE PRIME MINSTER OF INDIA RELATING TO THE RTI ACT: JUNE/ JULY 2005

3402/10(S)/2005-ESH
SECRET

सत्यमेव जयते
राष्ट्रपति
भारत गणतंत्र
PRESIDENT
REPUBLIC OF INDIA

15 June, 2005

Dear Dr. Manmohan Singhji,

The Right to Information Bill, 2005 duly passed by both Houses of Parliament has been sent to me for according assent. In due deference to our Parliament, I have given my assent too. However, I thought it appropriate and advisable to bring the following points to your notice for such action as you deem fit.

(1) Section 8 provides for exemption from disclosure of information. The grounds of exemption are so wide-ranging that by resorting to them, the authorities concerned can prevent disclosure of even routine information.

(2) Proviso to Section 8(1)(i) appears to contravene Article 74(2) of the Constitution. According to the above Section in the Right to Information Bill, decisions taken by the Council of Ministers and the material on the basis of which decisions were taken have to be made public after the decision has been taken and the matter is complete. In other words, all advice tendered by the Cabinet to the President would have to be made available to the public on demand. This militates against Article 74(2) of the Constitution which states that advice tendered by Ministers to the President shall not be enquired into by any Court. It may be recalled that this Article was invoked recently so as to avoid sharing of privileged communication exchanged between the former President and the former Prime Minister on the Godhra incident. Similarly, in cases of Article 356 Proclamation including dissolution of the Assembly, the material facts contained in the advice of the Cabinet to the President and vice-versa are precluded from enquiry into by a Court of Law. Apparently, the Right to Information Act has not taken this crucial dimension of our Constitution into consideration.

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(3) Prima-facie it appears that this legislation has been enacted under entry 97 of the Union List under the Seventh Schedule. If that be so, then Section 28 of the Right to Information Bill is defective as it allows the competent authorities at the State level to frame their own rules. These rules can always turn out to be at cross purposes with the rules framed by the competent authority at the Central Government level. Technically speaking, since this legislation is under the Union List, the State Governments get automatically debarred from framing their own rules. This aspect has been overlooked in this Act.

(4) The definition of the words, "information" in Section 2(f); "record" in Section 2(i) and "right to information" in Section 2(j) are such that even note portions of the file which contain advice/opinion tendered by officials on arriving at a final decision can be insisted upon for production. This is not a fair approach and will harm the process of decision making as officials would be more cautious in or ever refrain from rendering objective, frank and written advice on file. Sharing of information on decisions taken and sharing of information on how the decision is actually arrived at have entirely different dimensions and ought to have been handled differently.

You may like to have these points gone into for appropriate action.

Yours sincerely,

A.P.J. Abdul Kalam

(A.P.J. Abdul Kalam)

Dr. Manmohan Singh
Prime Minister of India
South Block
New Delhi.

प्रधान मंत्री
Prime Minister

New Delhi
July 26, 2005

Respected Rashtrapati ji,

I am grateful to you for your assent to the Right to Information Bill, 2005 which has now become Act with effect from 15th June, 2005. I am also in receipt of your letter dated 15th June, 2005 inviting my attention to some of the provisions of the Act for a possible reassessment.

2. The Right to Information Act acknowledges the inherent conflict between the State as the custodian of information and the citizens' right to have access to the same. The Act resolves this conflict in favour of the citizen. Therefore, it is quite natural to expect that when the State enacts an empowering legislation such as the Right to Information Act, it generously allows the information held in its charge to be shared with the citizens.

3. Your point regarding the range and the scope of the exemptions in the Act is, in that context, quite relevant. This matter had engaged Government's attention and was very closely examined. Allow me to say that the range of the exemptions under Section 8 of the Act is no more extensive than it is in similar Acts of other Parliamentary Democracies of the world. Similar exemptions were provided in the Freedom of Information Act, 2002, which has now been repealed. Exemptions relating to national security, information received from other countries, privacy, confidentiality, contempt of court, privileges of the legislatures, deliberations of the Council of Ministers, etc. are traditionally exempted in all other similar Acts the world over. There are certain underlying principles regarding these exemptions. One is that the State is required to maintain a certain level of confidentiality for its functioning and should be given the benefit of exemption from the disclosure of information in those select areas. Matters concerning sovereignty and integrity of the country thus are exempted from the purview of this Act. Certain exemptions such as those regarding commercial information are meant to ensure that the provisions of this Act are not misused by interested parties for wrongful gains. Privacy of the individual also needs to be protected from intrusive examination.

4. You may, therefore, kindly observe that the exemptions listed in Section 8 are based upon sound principles derived from historical experience, experience within the country as well as from abroad. However, lest the provisions under Section 8 are used, or stretched, to defeat the very purpose of conferring the right to information on the citizen, the Act has included, in its Section 8(2), the 'public interest override' clause which ensures that the exemptions notwithstanding, access to information may be allowed where public interest outweighs the requirement of confidentiality. There is also no bar to the disclosure of the non-sensitive parts of a document or record, even when the document as a whole comes under the exempted category. Thus, it may be seen that apart from the limited scope of the range of the exemptions, care has been taken not to make them too rigorous through suitable provisions incorporated in various Sections of the Act.

5. I may invite your attention to Section 22 of the Act which allows the Right to Information Act to override the provisions of the Official Secrets Act, as also any other Act or Instrument, in case of any conflict. This only underscores the point that not only does the Right to Information Act allows unprecedented scope for the citizen to receive a large variety of information from the State, it also softens the secrecy and confidentiality provisions of other Acts as well. I may also mention that the Right to Information Act is somewhat unique in the sense that no other country, as far as I know, has an identical provision in its Information Act.

6. The point made by you about a possible conflict between Article 74(2) of our Constitution and the proviso to the Section 8(1)(i) of the Right to Information Act has been carefully examined. The position in this regard is brought out in the following paragraphs.

7. Article 74(2), as it is expressly worded, bars an inquiry by any court into the question whether any, and if so, what advice was tendered by the Ministers to the President. However, there is no bar if the Government, for any reasons discloses such advice, or the reasons therefor, to the public. This position has been upheld in judicial pronouncements. The first proviso to Section 8(1)(i),

which provides for disclosure of the decisions of the Council of Ministers and the reasons thereof, is based on the accepted legal jurisprudence and, in this view of the matter, there seems to be no conflict with the constitutional provisions.

8. I may, however, hasten to add that disclosures under the aforesaid first proviso are not unrestricted as the second proviso to Section 8(1)(i) expressly forbids disclosure of the decisions of the Council of Ministers which attract any of the other exemptions provided in this section. Our understanding, therefore, is that not all the advice tendered by the Council of Ministers to the President shall be open to the public on demand. Similarly, any communication from the President to the Council of Ministers, which attracts any of the exemptions specified in Section 8(1), stands exempted from disclosure. In other words, it shall be the nature of the content of the communication which will ultimately decide whether the information requested should be given or not.

9. The Right to Information Act cannot confer any right to the citizens over and above the Constitutional rights. For example, even though the jurisdiction of the courts over orders issued under this Act has been barred under Section 23, the writ jurisdiction of the High Court and the Supreme Court will still remain intact and available to both the Government as well as the citizen.

10. You have also pointed out that the State Governments, which have been authorized under Section 27 of the Right to Information Act to frame Rules, cannot enjoy such a power given the fact that the Act itself has been enacted under entry 97 of the Union List, of the Seventh Schedule to the Constitution.

11. I may point out that this provision has been incorporated in the Right to Information Act, 2005 following legal advice, that even when the Act was within the Centre's legislative competence, there was no bar to the legislation delegating the rule making authority either to the State Government or to any other authority. In a practical sense, this sounds reasonable since the rules will then reflect the specific and unique conditions in the States. You will kindly notice that the States have to draft Rules in regard to fee to be charged from citizens, terms and conditions of the service of the staff of the State Information Commission, the appeal procedure to be adopted by the Commission

as also any other matter as may be required or prescribed. These are matters of detail and the process of formulation of the Rules, therefore, is better left to the individual States.

12. Furthermore, there is nothing uncommon about such a provision enabling the States to frame their own Rules in respect of a law enacted under the Centre's legislative competence. I may point out that not only did "The Freedom of Information Act, 2002" have a similar provision, but the "Narcotics Drugs and Psychotropic Substances Act, 1985" too has such a provision under Section 78 of it.

13. There is thus no technical or legal lacunae in the arrangement provided.

14. You have very correctly pointed out that "note" portion of the files should not be disclosed to the citizens, who invoke the provisions of this Act. I fully agree that the notings contain the deliberations inside a department, or across departments, preceding a decision. The disclosure of "note" portion of a file will inhibit civil servants, experts and advisors from recording their views freely and frankly.

15. I may share with you that the draft of the RTI Bill, which was received from the National Advisory Council for consideration of the Government, had mentioned file notings as one of the items that can be disclosed. But, the Group of Ministers, as well as the Department-related Parliamentary Standing Committee, pointedly excluded file notings from the items liable for disclosure.

16. As you are well aware, it is the practice in Government that file notings are withheld even when they are summoned by courts of law. Accordingly, file notings may also be excluded from disclosure requirement under this Act. As you have pointed out, it may be possible for some one to seek disclosure of file notings under such expressions as 'records', 'advice', 'memo' and so on. In case it is noticed that file notings are in danger of exposure under this Act, we will consider amending the Act suitably at the appropriate time.

17. In conclusion, I wish to thank you for your very sage and practical advice about the Right to Information Act. By all accounts, this is a path-breaking legislation which will be a powerful tool in the hands of the citizens against the State's traditional monopoly on information. It will be refined and improved as it evolves through the experience gained and the lessons learnt.

With warm regards,

Yours sincerely,

[Manmohan Singh]

Dr. A.P.J. Abdul Kalam
President of India
Rashtrapati Bhavan
New Delhi

ANNEXURE III

प्रधान मंत्री
Prime Minister

New Delhi
July 27, 2006

Dear Shri Hazare,

I have received your letter of 26th July regarding the proposed amendments to the Right to Information Act.

The RTI Act is one of the most progressive acts brought into place by our Government to promote transparency and accountability in governance at all levels. In fact, this Act goes far beyond the provisions in the Freedom of Information Act which was passed by the previous Government.

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.

I am enclosing a note which explains in detail the nature of amendments being proposed to the Act. I hope this will clarify all doubts that may be there in this regard.

With regards,

Yours sincerely,

(Manmohan Singh)

Shri Anna Hazare
Ralegan Sidhi
Taluka Parnar
District Ahmednagar
Maharashtra-414 302

Encl: As above

PRESS STATEMENT

The recent decision of the Union Cabinet to bring about some change in the Right to Information Act has evoked sharp criticism from some section of the Press and civil society. This criticism is based on incomplet knowledge of facts. The chronology of events and the true picture is a follows :

1. When the Right to Information Bill was introduced in Parliament, i was referred to the concerned Parliamentary Standing Committee. The Bill, a subsequently endorsed by the Parliamentary Standing Committee, did no include the words "file notings" in the definition of "information" given i Sections 2 (f). In other words, file notings were not included in th information that was liable to be disclosed under this law.

2. Consequently, the Right to Information Act, as passed by both th Houses of Parliament and assented to by the President, excluded "file notings' from the definition of Information that was accessible under the Act. Th Department of Personnel and Training accordingly made this clear on its owr website.

3. The arguments that were placed before the Government in favour o non-disclosure of file notings included :

a) the fact that the Freedom of Information Act passed during the tenure of the NDA Government did not allow the disclosure of file notings;

b) the fact that similar legislations enacted in the developed democratic countries like the USA, UK, Australia, France, Canada, etc. also exempted the "deliberative process" from disclosure. Even Netherlands, which is considered to be one of the most open societies, has enacted a legislation which specifically exempts internal discussions and advice from disclosure;

c) the fact that the State Information Acts in place at the time of the passage of the RTI Act also did not have any provision for the disclosure of file notings

d) the fear that disclosure of file notings may cast a reflection on the reputation of an officer or place him under threat or danger;

e) the fear that exposure to public glare may inhibit the expression of frank views by officers;

f) the belief that a measure of confidentiality is not only desirable but necessary in the smooth functioning of Government.

4. Nevertheless, the exemption of file notings from disclosure under the Right to Information Act led to protests from certain sections of civil society soon after the passage of the Act. Although these protests subsequently died

down, the Government remained conscious that this issue needed to be further looked into. Despite the arguments advanced against the disclosure of file notings, the UPA Government remained convinced that the principles of greater transparency and accountability in the public decision-making process are of paramount importance. In view of this firm belief, the Union Cabinet has now approved an amendment to section 2 (i) (a) of the Act that specifically provides that file notings of all plans, schemes and programmes of the Government that relate to development and social issues shall be disclosed.

5. It is apparent that disclosure of file notings on the most important and vast bulk of Government activities has now become possible for the first time. This was not possible before. It is thus not a case of retrogression. This is a positive step forward.

6. Only a small portion of file notings now remain exempted from disclosure. This is related to subjects that are already exempted under sub-Section (1) of Section 8 of the Act and to personnel-related matters like examination, assessment and evaluation for recruitment, disciplinary proceedings, etc.

7. The amendment recently approved by the Union Cabinet also vastly increases the role and responsibility of the Central and State Information Commissions which are independent authorities. So far, under the existing Right to Information Act, the main role of the Central and State Information Commissions has been to hear appeals. The amendments now approved will help to enhance the independence, autonomy and authority of the Commissions. These amendments include :

a) powers to the Commissions to take all necessary measures to promote the use of electronic record keeping and to facilitate effective disclosure of information as well as information management;

b) powers to make recommendations regarding effective implementation and monitoring mechanisms;

c) powers to make recommendations regarding systems and tools that need to be developed and deployed;

d) powers to make recommendations for development of guidelines, minimum requirements, proactive disclosure of information, methods of publication, etc.

8. It is thus apparent that the implementation of the amendments approved by the Union Cabinet will make the Right to Information Act a more powerful tool for more transparent and just governance where the public will have increased access to information relating to not only the decisions taken but also how and why they are taken.

26.7.2006

ANNEXURE IV

Point wise Response by the NCPRI to the Justifications Given by the Government Of India for the Proposed Amendments to the Right To Information Act, 3 August 2006

(Enclosures not included)

A. GOI: The Right to Information (RTI) Act 2005 is far superior in many ways to the Freedom of Information (FOI) Act 2002.

OUR RESPONSE:

There is no doubt that the RTI Act of 2005 is a stronger act than the FOI 2002. In fact, it was the weakness of FOI Act 2002 that resulted in its repeal and its replacement by the stronger RTI 2005 Act, by the UPA Government. However, it must not be forgotten that, even then, sections of the bureaucracy tried very hard to scuttle the proposed RTI Act, or to emasculate it. There was also an attempt to notify the old FOI Act of 2002 instead, once it became obvious that the RTI Act would get the political support of the UPA Government.

B. GOI: Why disclosure of file notings will not be in public interest. Specifically:

1. The government says: Disclosure of file notings made by the individual officers may expose these officers to threats and risks from mafia group and anti-social elements against whom such officers may record notes.
   Our Response: There is already an exemption under section 8(1)(g) stating that "there shall be no obligation to give any citizen…. information the disclosure of which would endanger the life or physical safety of any person….". Therefore, without amending the existing law, not only file notings but all information can be withheld, if there is a credible threat perception.
2. The government says: Disclosure of file notings may expose individual officers to trial by vested interests in media, which may be detrimental to the smooth functioning of public administration.
   Our Response: For years honest civil servants and politicians have been publicly maligned on the basis of unfounded rumours and disinformation. As long as there was no access to information these officers and politicians could not defend themselves as they were prevented from making their notings and advice public. With the right to information, for the first

time individuals who are being wrongly maligned can defend themselves by making public their notings and other documentation that exonerates them. What is needed is not less but more transparency, if this tendency has to be fought, and perhaps more effective laws of libel and tort. It is also significant to note that, since the controversy regarding the proposal to amend the RTI Act has become public, numerous politicians, and serving and retired civil servants and judges, have expressed the view that access to file notings would significantly help to protect the honest among the civil servants and politicians.

3. The government says: Disclosure of file notings may lead to unnecessary litigation against individual officers.
   Our Response: Again, there is already much litigation by those (within or outside the government) who feel they have been unfairly treated by the government. A large part of this litigation is based on misapprehensions and conjectures, for actual information is not available, at least not till it is requisitioned by a court of law as a part of the litigation. When information starts becoming accessible, the disgruntled potential litigant can make an informed decision whether there is cause for legal action. Considering litigation also costs the litigant time, money and effort, there would most likely be less litigation rather than more, once greater transparency is ensured. Litigation would also go down because greater transparency will ensure that the government is more careful and deals with issues and cases in a correct, timely and legal manner.

Also, preliminary analysis of the use of the RTI Act suggests that a large number of applications are from government servants seeking job related information from their own departments. This clearly indicates that there is a crying need to make more and more information available, suo moto, and not to further hide the information that will in any case become available through litigation.

4. The government says: Disclosure of file notings may impede free and frank expression of views by public servants and may affect the candour of expression. As a result the quality of decision making may suffer.
   Our Response: The argument that public access to file notings would impede free and frank expression of views by public servants and may effect candour of expression, is a seriously flawed one. The assumption is that the possibility of public exposure would pressurise officials against expressing their views frankly. However, the truth is that officers are pressurised to record notings contrary to their convictions or opinions, or

those not in keeping with public interest or the law, NOT by the public but by their bureaucratic and political bosses (or by others who have the ear of these bosses). These bosses already have access to file notings and do not need the RTI act to access them. On the contrary, disclosure of file notings would help ensure that officers are not pressurised into recording notes that are not in public interest. This would strengthen the hands of the honest and conscientious officers and expose the dishonest and self serving ones.

Disclosure of file notings will also improve the quality of decision making, for it would ensure that decisions are based on reasonable grounds and are not arbitrary or self-serving. It would deter unscrupulous administrative and/or political bosses from overruling their subordinates and taking decisions that have no basis in law or are against public interest. This is, again, a view that has been supported by a large number of politicians, civil servants and judges, both serving and retired.

5. The government says: Even the constitutional authorities like UPSC have advised the government against disclosing internal deliberative process.
   Our Response: As we do not know the basis on which this advice was given, or the details of the advice, we cannot comment. However, we do recognise the need to include under section 8, sub-section (1) another sub section (k) that exempts from disclosure, prior to an examination, the examination papers containing questions that examinees have to answer. This sub-section could also exempt from disclosure the identities of examinees and examiners, where such an exemption is required for the fair conduct of examinations.
6. The government says: Disclosure of file notings to officers facing corruption cases may help such officers to know the weaknesses of the case against them and they may use it for their acquittal. This would thus weaken the fight against corruption.
   Our Response: Section 8(1)(h) states that… "there shall be no obligation to give any citizen…. information which would impede the process of investigation or apprehension or prosecution of offenders;" Therefore, the existing act contains adequate safeguards to ensure that "corrupt" officers cannot misuse it to escape the ends of justice. No amendment is required.

However, there are numerous cases of honest officers being entangled in false corruption cases by unscrupulous bosses who want to victimise and harass them. In such cases, it is clearly in public interest

that the victims have access to the information that allows them to defend themselves.

Also, the regime of secrecy that is sought to be brought back has resulted in numerous corrupt officers escaping prosecution because of lack of administrative and political sanction. Access to file notings will help pressurise the government to speedily dispose of requests for permission to prosecute corrupt officers.

7. The government says: Due to these factors, the government had taken a conscious decision not to allow disclosure of any file notings, while formulating the RTI Act, 2005.
   Our Response: Though we are not privy to the decisions of the government "..while formulating the RTI Act, 2005", as there was no right to information then, and subsequent efforts to access those files have not yet met with success, the Act, as passed by Parliament, does not reflect such a conscious decision. The Act clearly states that ""information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form….(Section 2(f)). No where else in the Act is it stated that file notings are excluded from the definition of information.
8. The government says: But due to the several representations received on the subject, the government is now introducing some clarifications and allow most of the notings on the subject that relate to the common people (sic). It has decided that the file notings related to social and development issues shall now be made available under RTI Act.
   Our Response: Again, we have not seen those "several representations". However, going by media reports and the reactions of the many credible civil society groups campaigning for the right to information, it seems clear that when the RTI Act was passed by Parliament in May 2005, it was widely hailed as a very progressive act and there were no reports in the media that people had protested about lack of access to file notings. This was because everyone understood the Act to allow access to file notings. The first public protests were in December 2005, when the Prime Minister's Office, through the issue of a circular, tried to restrict access to file notings except, as currently proposed, to those pertaining to "development and social issues". There were also protests about the DoPT web site, which insisted on declaring that file notings were not a part of information, even after the Chief Information Commissioner of India

had formally ruled that they were.

9. The government says: As the government would allow disclosure of final decision and the reason there for in the cases other that social and development issues (sic), the access of information is in no way hindered by excluding disclosure of who wrote what.

Our Response: This will prevent access to most file notings and, in any case, make it procedurally very difficult to access even those few that are not exempt. When any file noting is requested for, the PIO will have to determine:

i. Whether it relates to development and social issues.

a. The terms "development" and "social" in this context are not well defined. In one sense they would collectively include every aspect of administration.. But then this qualification is redundant.

b. However, in practice, each PIO will interpret it differently, involving a large number of appeals and a huge waste of time.

ii. Once it has been established that the notings asked for deal with development and social issues, then the PIO would have to determine whether these file notings are on plans, schemes, or programmes of the government.

c. This immediately leaves out all non-plan expenditure of the government, including repair and maintenance work, or the expenses of running an office. But what could be the justification for this.

d. It also excludes the normal duties and functions of administrators. For example, enforcement of laws and policies, or the supervision of officers and agencies, or the hearing and resolution of grievances, are not necessarily parts of any plans, schemes or programmes. Therefore, they would be inaccessible. But why? [We cannot, for example, get notings related to why a passport or FCRA clearance was refused, or why someone was not given permission to join a job, etc.]

iii. Even for those few notings that relate to development and social issues, and are on plans, schemes, or programmes of the government, the PIO will still have to determine whether they are substantial or not.

e. It is not clear what are "insubstantial" notings.

f. In any case, this term will also be variously interpreted by PIOs and again result in endless appeals and delays.

This, then, would unquestionably be a very significant weakening of the RTI act. Without access to file notings, there is no real transparency. The public usually knows what decision the government has taken. What the file notings show is the basis on which this decision has been taken.

If access to file notings is denied, then the public will have no way to authenticate the information regarding the reasons and basis for decisions being taken by the government, and no access to contrary views expressed and the why they were overruled.

Obviously, decisions of the government cannot be evaluated unless one knows the basis on which they were taken and the options that were considered and rejected. Surely, in a democracy, all decisions of the government (except the sensitive ones which are already protected under section 8(1)) must be able to stand up to public scrutiny.

10. The government says: In the constitutional scheme of governance adopted by us, it is the government of the day and not the individual officers, who is responsible to the people for its actions/ decisions. Bureaucrats, in turn are responsible to the government of the day.

Our Response: Access to notings does not seek to make an individual officer responsible for the actions of the government of the day, but only accountable for his or her own actions, irrespective of the government of the day. Besides, it is wrong to think that the only or primary responsibility of bureaucrats is to "the government of the day". Their primary responsibility is to the people of India, to the constitution of India and to its laws. It is their primary responsibility to advise the government of the day on what is legal, what is constitutional and what is in public interest. Whereas the final decision might often be that of the "government of the day", the responsibility for the advice given always remains that of the individual officer who gave that advice. And the people of democratic India have a right to know what advice the officer gave, and if it was disregarded, why was it disregarded. This is a fundamental right in a democracy.

11. The government says: Nowhere in the world, including the developed countries, file notings, along with the identity of the officers who made them, are revealed.

Our Response: This is not correct. A preliminary and quick

analysis of the transparency laws of 32 countries revealed that at least nine provided full access to notings or their equivalent, and 16 countries provided partial access. Please see annex 1.

It might also be worth noting that most of the countries that do not provide access to notings have other well established systems for ensuring bureaucratic accountability which actually work - as evidenced by the low levels of corruption there. And then of course there is Pakistan - but surely we do not want to emulate them!

12. The government says: None of the State Information Acts in India provided for disclosure of file notings.

Our Response: This is again not correct. An analysis of the nine state acts shows that at least five state acts allow access to file notings to a varying extent (See annex 2).

C. EXCLUDING FILE NOTINGS WAS A DECISION TAKEN WHILE FORMULATING RTI BILL. SPECIFICALLY:

1. The government says: Freedom of Information Act, enacted by the NDA government expressly excluded the internal deliberative process (file notings) from disclosure.

Our Response: *The only reference to file notings, and that also an indirect reference, in the Freedom of Information Act of 2002 was in section 8(1)(e), wherein it is stated that "Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation" will be exempt from disclosure. In other words, file notings would be exempt from disclosure till the executive decision was made or the policy formulated. Therefore, it is incorrect to say that the Freedom of Information Act 2002 "expressly excluded the internal deliberative process (file notings) from disclosure", as claimed by the government.*

In any case, this Act was repealed and replaced by the Right to Information Act of 2005, by the UPA government, because it was found to be too weak. The Common Minimum Programme of the UPA government had specifically undertaken that "The Right to Information Act will be made more progressive, participatory and meaningful". Therefore, it would be against the CMP to amend the Right to Information Act to a point where it is even weaker than the Freedom of Information Act of 2002.

2. The government says: The parliamentary Standing Committee, the GOM and the Cabinet decided that 'file noting' should not be included in the definition of 'information'.

Our Response: Though we are not privy to the decisions of the GOM and the Cabinet, as requests for the concerned documents have not yet succeeded, there is no mention in the report of the Parliamentary Standing Committee Report that there was any decision to remove file notings from the purview of the RTI Act. In fact, the Committee chairman, Congress MP from Tamil Nadu, Shri E.M. Sudarsana Natchiappan, reportedly told The Indian Express: "We did examine the 'notings' matter then. At the time, we thought it was useful to allow access…." (Indian Express, 3 August, Excluding 'notings' from RTI: Convincing House could be tough. The Parliamentary Standing Committee examining the Bill had, in 2004-05, thought it was okay to reveal 'notings', by Seema Chishti).

We also do not know what facts were put up to the GOM and the Cabinet and that, if they indeed did decide against allowing notings to be a part of the RTI Act, why this decision was not followed through. Perhaps when we can access the cabinet note, we can determine whether a fair case was made out before a decision was taken.

3. The government says: The website of the administrative ministry of RTI, i.e. DoPT expressly mentioned that file notings are not included in the definition of 'information' under the RTI Act.

Our Response: We are frankly surprised that the government even mentions this. The insistence of the DoPT to continue to state on its website that information does not include file noting is itself proof of the fact that the RTI Act did not exclude file notings and, consequently, the DoPT had to take it upon themselves to illegally, and in disregard for the law passed by Parliament, state this on their website.

What is even more surprising is that they continue to do this till today, even after the Central Information Commission and the Chief Information Commissioner of India had ruled in appeal No. ICPB/A-1/CIC/2006, dated 31.1.06, (copy available at the website of the Central Information Commission), that: "… a combined reading of Sections 2(f), (i)&(j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. If the legislature had intended that "file notings" are to be exempted from

disclosure, while defining a "record" or "file" it could have specifically provided so. Therefore, we are of the firm view, that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in "file notings" unless the same relates to matters covered under Section 8 of the Act."

D. CONGRESS/UPA FAVOURS TRANSPARENCY IN GOVERNANCE

Our Response: We concur. That is why we are surprised that the UPA Government, after having done so much to promote transparency in government, now runs the danger of being seen as the party that took away our right to information.

ANNEXURE V

Minutes of the Consultative Meeting held by DOPT with Central and State Information Commissioners on 14 October 2009 – As Circulated by Shri Shailesh Gandhi, Central Information Commissioner.

DOPT had called a meeting for consultation with the Information Commissioners across the Country on 14 October 2009 on ways of strengthening the RTI Act. Around 60 Central and State Information Commissioners were present for this meeting.

Mr. Prithiviraj Chavan , Minister DOPT outlined the Government's thinking that there was a need to strengthen the RTI Act by amending it. The papers circulated at the start of the meeting gave an idea of the amendments which the Government had in mind. Mr. Wajahat Habibullah Chief Information Commissioner who spoke next, very lucidly explained his view that there was no need to amend the RTI Act presently. After this the DOPT officers gave a point by point presentation of the amendments they were proposing to the Commissioners. They outlined seven amendments. The Information Commissioners almost unanimously pointed out that the first five points needed no amendments. The seven proposals had five which needed no amendments and two which would dilute the RTI Act and would need an amendment to the Act:

1) Constitution of benches: DoPT held that the present constitution of benches, where cases are heard by a single Information Commissioner, is not legal. The Commissioners pointed out that this was not the correct position, and the Central Information Commission had already ruled on this matter. Even if the DOPT's argument was accepted, only a change of rules would be required. DOPT was proposing that all benches should be two member benches, which would increase the expenditure per case by nearly 100%, and most Commissions would be overwhelmed by the cases, since they would not be able to cope.
2) Removal of 9 exempted public authorities from the list in Schedule 2.: There is no need for an amendment, as a few public authorities have already been included and deleted through a notification as per Section 24(2) of the RTI Act.
3) Include Citizens Charter in Section 4 declarations of each public authority.: Here again, there is no need to amend, as it can be included under Sec 4(1)(b)(xvii), which says, 'Such other information as may

be prescribed'.

4) Defining what is meant by 'substantially financed' under 2(h)(d)(ii).: This already being judicially defined by Information Commissioners.
5) Facilitate Indians abroad to use RTI Act through embassies. This can be done very easily by making appropriate rules.

The two proposals which needed an amendment to the Act proposed by DOPT:

6) Adding 'frivolous & vexatious requests' to the list of Section 8 exemptions. Commissioners pointed out that the decision of what constitutes 'vexatious' or 'frivolous' would have to left to the PIOs. This would result in large-scale rejections by PIOs and would go against the present principle that no purpose needs to be given by applicants. Most Commissioners spoke against such an amendment, while two stated that it was necessary.
7) Excluding discussions / consultations that take place before arriving at governmental decisions; in other words, exclusion of file-notings, which would render the working of the government completely opaque to citizens. This would mean that Citizens will know the reasons for taking decisions only after the decisions have been taken and never know why certain decisions in their benefit were not taken.

All the Information Commissioners who spoke gave their verdict that for the first five objectives there was no need to amend the RTI Act. On point 6 two Commissioners spoke in favour of amending the Act to prevent frivolous and vexatious RTI queries, whereas over half a dozen opposed these. On point 7 also the Commissioners expressed a clear view that no amendment was desirable. Some Commissioners pointed out that any change in the RTI Act would lead to unnecessary confusion in implementation and the minds of Citizens and PIOs.

The Information Commissioners had almost unanimously given their clear and unequivocal stand, that no amendments were necessary to the RTI Act.

Shailesh Gandhi

ANNEXURE VI

Text of the letter sent by the NCPRI, on 18th October 2009, to Dr. Manmohan Singh, Prime Minister, and Mrs. Sonia Gandhi, Chairperson of the United Progressive Alliance, regarding the proposed amendments to the RTI Act.

We are alarmed and distressed to learn from media reports that the Government of India proposes to introduce amendments to the RTI Act. This is despite categorical assurances by the concerned Minister that any amendments, if at all necessary, would only be decided upon after consultations with the public. We are further dismayed to read that far from strengthening the RTI Act, as stated by the Honourable President of India during her speech to the Parliament on 4th June 2009, the government is actually proposing to emasculate the RTI Act. The proposed amendments include, introducing exemption for so-called "vexatious and frivolous" exemptions and by excluding from the purview of the RTI Act access to "file notings", this time in the guise of excluding "discussion/ consultations that take place before arriving at a decision".

Two current nation-wide studies, one done under the aegis of the Government of India and the other by people's organizations (RaaG and NCPRI), have both concluded, that the main constraints faced by the government in providing information is inadequate implementation, the lack of training of the staff, and poor record management. They have also identified lack of awareness, along with harassment of the applicant, as two of the major constraints that prevent citizen from exercising their right to information. Neither of these studies, despite interviewing thousands of PIOs and officials, has concluded that the occurrence of frivolous or vexatious applications is frequent enough to pose either a threat to the government or to the RTI regime in general. Certainly no evidence has been forthcoming in either of these studies that access to "file notings" or other elements of the deliberative process, has posed a major problem for the nation. On the contrary, many of the officers interviewed have candidly stated that the opening up of the deliberative process has strengthened the hands of the honest and sincere official.

We challenge the government to come up with definitions of "vexatious" and "frivolous" that are not hopelessly subjective and consequently prone to rampant misuse by officials. We also challenge

the government to come up with definitions of "transparency" and "accountability" in governance which exclude the basis on which a decision is taken. Would it be fair to judge a decision (or the decision maker) without knowing why such a decision was taken, what facts and arguments were advanced in its favour, and what against? Can one hold a government (or an official) accountable just on the basis of what they did (or did not do) without knowing the real reasons for their action or inaction? We, the people of India, already directly or indirectly know the decisions of the government, for we are the ones who bear the consequences. What the RTI Act facilitated was a right to know why those decisions were taken, by whom, and based on what advice. This right is the bedrock of democracy and the right to information, and cannot be separated or extinguished without denying the fundamental right.

In any case, if the government has credible evidence, despite the findings of the earlier mentioned studies, that "vexatious and frivolous" applications, and access to the deliberative process, despite the safeguards inherent in the RTI Act, are posing a great danger to the Indian nation it should place it in the public domain. We are confident that the involvement of the people of India will result in evolving solutions that do not threaten to destroy the RTI Act itself. Surely that is the least that can be expected of a government that propagates the spirit of transparency.

It is significant that even among the collective of Information Commissioners from across the country, whom the government recently "consulted", the overwhelming view was against making any amendments to the RTI Act at this stage of its implementation. These Commissioners, all appointed by the government, have a bird's eye view of the implementation of the RTI Act. They have the statutory responsibility to monitor the implementation of the Act, and the moral authority to speak in its defense. Since the government works with the democratic mandate of the people, the collective wisdom, of people across the board who use and implement the law with an ethical base cannot be put aside without adversely affecting the government in power.

The government should, therefore, abandon this ill advised move to amend the RTI Act. Instead, it should initiate a public debate of the problems that it might be facing in the implementing of the RTI Act and take on board the findings of the two national studies that

have recently been completed. It is only through such a public debate that a lasting and credible way can be found to strengthen the RTI regime.

This government gave its citizens the RTI Act. It has, as a result in the last four years benefited from improving governance and helping change its image to that of an open and receptive government. It can hardly now be persuaded to amend the Act, without adversely affecting its own image of an ethical and responsive government and abrogating its obligation to govern for the people.

We strongly urge that an unequivocal decision be taken to not amend the RTI Act.

ANNEXURE VII

LETTER FROM MRS. SONIA GANDHI TO THE PRIME MINISTER OF INDIA REGARDING AMENDMENTS TO THE RTI ACT, 10 NOVEMBER 2009.

SONIA GANDHI
Cha person
United Progressive Alliance (UPA)

10, Janpath
New Delhi - 110 011
Ph : 23012656, 23012686
Fax : 23018651

November 10, 2009

Dear Prime Minister,

The Right to Information Act is now four years old and has begun to make a significant impact on the relationship between the people and the government at all levels, from the local to the national. It is regarded as one of the most effective pieces of legislation, an instrument that has empowered people and made government more responsive.

Much has been achieved in these initial years and while there are still problems of proper implementation, RTI has begun to change the lives of our people and the ways of governance in our country. It will of course take time before the momentum generated by the Act makes for greater transparency and accountability in the structures of the government. But the process has begun and it must be strengthened.

It is important, therefore, that we adhere strictly to its original aims and refrain from accepting or introducing changes in the legislation on the way it is implemented that would dilute its purpose.

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.

Two nation-wide studies, one by the government and one by NGOs, have indicated that the main constraints faced by the government are due to lack of training of government staff and inadequate record maintenance. There is also a problem with a public lack of awareness of the RTI and the harassment of applicants. It is these problems that need to be addressed.

With good wishes,

Yours sincerely,

Sonia Gandhi

Dr Manmohan Singh
Prime Minister of India
7, Race Course Road
New Delhi - 110 011

Attested
11/4/10

ANNEXURE VIII

RESPONSE FROM THE PRIME MINISTER TO MRS SONIA GANDHI, REGARDING AMENDMENTS TO THE RTI ACT: 24 DECEMBER 2009

प्रधान मंत्री

Prime Minister

New Delhi
24 December, 2009

Respected Sonia ji,

Please refer to your letter of 10 November, 2009 regarding the Right to Information Act.

I fully agree with you that the Act is one of the most effective pieces of legislation and is already changing the ways of governance in our country. However, as the implementation of the Act is still in its infancy, we are all learning as we go along. 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. Just to cite a few, the Act does not provide for the constitution of Benches of the Central Information Commission though this is how the business of the Commission is being conducted. There is no provision about alternate arrangements in the event of a sudden vacancy in the office of the Chief Information Commissioner. The Chief Justice of India has pointed out that the independence of the higher judiciary needs to be safeguarded in the implementation of the Act. There are some issues relating to disclosure of Cabinet papers and internal discussions.

All these issues are being examined carefully in consultation with all the stakeholders. I would like to assure you that any amendments to the RTI Act would be considered only after completing such consultation and without diluting the spirit of the Act.

With warm regards,

Yours sincerely,

(Manmohan Singh)

Shrimati Sonia Gandhi
Chairperson
United Progressive Alliance
10, Janpath
New Delhi 110011

Attested

ANNEXURE IX

EXTRACT FROM LETTER WRITTEN BY THE CHIEF JUSTICE OF INDIA TO THE PRIME MINISTER, REGARDING AMENDMENT OF THE RTI ACT, 16 SEPTEMBER 2009.

It is observed that while specifying the exemptions in Section 8 of the Act, highly sensitive nature of the working of the office of the Chief Justice of India has not been taken note of. Quite frequently, information of highly confidential and sensitive nature of matters handled by the Chief Justice of India, is being sought to be disclosed under the provisions of the RTI Act by applicant-citizens but such information has to be refused as disclosure in those cases would prejudicially affect the independence of judiciary. For instance, in the matter of appointment of Judges of higher Courts, written opinions/views as to suitability of prospective candidates obtained from informed/conversant Judges and/or other Constitutional authorities, forming part of the record of the office of the Chief Justice of India, fall in such category. Similarly, Judgments/Orders prepared and circulated to the other members of the Bench, cannot be disclosed to the public until they are officially pronounced in the open Court as per the relevant Rules. Complaints making serious allegations against sitting Judges of higher Courts received by the Chief Justice of India; consequent proceedings of the inquiries conducted in terms of the In-House Procedure adopted by the Full Court of the Supreme Court in 1997 and the Chief Justices' Conference held in 1999; notings/ minutes recorded during arguments in the courts; privileged documents like correspondence between Chief Justice of India and President or the Prime Minister & other Constitutional dignitaries, are only a few instances which if allowed to be disclosed, would pose a threat to the independence of judiciary; there could be many other types of information falling in such category of exempted information specified, but regrettably not exhaustively, in Section 8 of the RTI Act. Apparently, the framers of the RTI Act could not visualize, while drafting the RTI Bill, these far-reaching implications for the judiciary, and that has led to this possibly inadvertent omission on the part of the Legislature to find a place for another clause in Section 8 so as to make a provision for exemption of these types of information from being disclosed under the RTI Act.

As you would be aware, through media, very recently, a single Judge Bench of the Delhi High Court has in WP (C) No.288 of 2009 titled *The CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal & Anr.* while deciding an appeal arising of an RTI application seeking information relating to declaration of assets by the Supreme Court Judges, has held Chief Justice of India to be a "public authority" under the RTI Act. It was

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K. G. Balakrishnan
Chief Justice of India

5, Krishna Menon Marg,
New Delhi - 110 011

contented in that case that the Supreme Court of India alone is a "Public Authority" and not the Chief Justice of India since the Chief Justice of India is specifically declared under Section 12 (e) of the RTI Act to be "competent authority". Pursuant to the decision of the Delhi High Court 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, which as held by the Supreme Court in its decision in the ***Kesavananda Bharti case*** [AIR 1973 SC 1461] is a "basic structure of the Constitution" which cannot be abrogated or altered even by the process of its amendment of the Constitution itself. Needless to add, this "basic structure" doctrine has consistently continued to be acted upon till date.

Incidentally, it may also be mentioned that as regards declaration of assets of sitting Judges of Supreme Court, it has already been decided to put details of assets on the website of the Supreme Court. Similar decisions have been taken by several High Courts. Every possible endeavour is thus being made to enhance the credibility of the courts in India and to make the functioning of courts more and more transparent.

In this scenario, I earnestly and sincerely feel that Section 8 of the RTI Act needs to be suitably amended by inserting another specific clause to the effect that any information disclosure of which would prejudicially affect the independence of the judiciary should be exempted from disclosure under the provisions of RTI Act.

I hope and am sure that you will take appropriate steps in this regard at the earliest.

Attested
Br
7/4/10

Yours sincerely,

[K.G. Balakrishnan]

Hon'ble Dr. Manmohan Singh,
Prime Minister of India,
Race Course Road,
New Delhi – 110011.

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ANNEXURE X

PEOPLE'S RTI ASSESSMENT 2008-9

MAJOR FINDINGS AND A DRAFT AGENDA FOR ACTION

Finding I: There is poor awareness about the RTI Act, especially in the rural areas.

RECOMMENDED ACTION:

1. A task force should be set up at the national level, headed by an eminent media personality or public communications expert, to design and implement suitable public awareness programmes. Information regarding the RTI Act and its relevance to the people should be imparted in conjunction with information about other basic rights, highlighting how the RTI Act can be used to ensure access to these other rights. This would not only contextualize information about the RTI Act but also raise awareness about other rights.
2. A multiplicity of modes should be used for spreading this message, including folk theatre, song and dance, and of course the radio, television and the printed media.
3. Fictionalized television programs based on RTI related case studies and success stories should be serialized, perhaps with recognizable heroes and heroines, to motivate and energize the RTI users. **[ACTION: DoPT, MoI&B, NGOs, Media Houses, Television Channels, Folk Theatre Groups]**
4. A module on RTI should be made mandatory (though without credits) in school curriculum for 11th and 12th classes, and for all undergraduate and postgraduate courses in India. **[MoHRD]**

Finding II: Less than half the PIOs and even a lesser proportion of other civil servants have been oriented and trained towards facilitating the right to information.

RECOMMENDED ACTION:

5. Appropriate governments and the ICs should direct all PAs and training institutions (invoking, if need be, S.19(8)(a)(v)), that, apart from conducting separate training courses for PIOs/FAAs and other officers, a module on RTI should be incorporated into all training programmes, considering every government employee is subject to the RTI Act. **[DoPT, CIC, SIC]**

6. In order to facilitate the recommended training courses, a committee of RTI and governance experts should be constituted, also involving CICs/ICs from various states and the Centre, to develop a training plan and a model syllabi for training modules at different levels of the government. This exercise can be anchored by one of the state or national training institutions.
7. Concurrently, it is also important to identify and train trainers. A roster of trainers, in different languages and for different levels of officials, need to be set up so that training institutions have access to trained trainers.
8. Training material, in the form of printed material and films also needs to be compiled and, where required, developed in the various languages. State training institutes and other state level institution could be made repository libraries for training material, to be accessed by departments and institutions for use in training programmes.
9. An agency, within or outside the government, needs to be given the responsibility of monitoring the state of preparedness among a sample of PIOs and officers, in order to assess the efficacy of the training programme.
10. Advisories Could be sent (perhaps once a month and at least once every three months) by Information Commissions (ICs), under section 25(5) of the RTI Act, to all public authorities bringing to their notice important interpretations of the law decided by the ICs, with the recommendation that these should be brought to the notice of all PIOs and maintained by them as reference material. Such advisories could also alert PAs and PIOs against common errors made by them in disposing RTI applications (like denying information just because it is third party, or just because it is subjudice, or just because it concerns a police investigation.)
11. Such advisories would also ensure that PIOs cannot take the plea that they were not aware of the interpretation of the law by ICs, or about widespread yet erroneous ways of interpreting the law.
12. In order to facilitate this, each information commission needs to have a research and statistics cell that supports these functions.

Finding III: All state and union territory governments (a total of 34), all the high courts (19) and legislative assemblies (29), the central government, the Supreme Court and both houses of Parliament

have a right to make their own rules. This can result in 86 different sets of rules in the country. In addition, the 28 information commissions also have their own rules and procedures, a total of 114 sets of rules relating to the RTI in India! Consequently, an applicant is confronted with the often insurmountable problem of first finding out the relevant rules and then attempting to comply with the application form, identity proof, or mode of fee payment requirements, which differ from state to state and are often virtually impossible to comply with.

RECOMMENDED ACTION:

13. The Government of India needs to develop a consensus among all appropriate governments and competent authorities on a common set of minimum rules that would enable applicants from residing in one state to apply for information from any other state, without first having to find, study and understand the rules of each state and competent authority. **[DoPT, Appropriate Governments, Competent Authorities]**
14. Though, given the provisions of the RTI Act, it might not be possible or even desirable to insist on total uniformity, at least the basic application fee should be the same. There should be at least one mode of payment (perhaps the suggested postage stamp – see 17 below) that should be acceptable to all states and competent authorities. Applications on plain paper should be accepted by all with at least the following three bits of information: Name of the Public Authority, details of the information sought, and name and address of the applicant. Where exemption under BPL category is sought, relevant proof of BPL status should also be enclosed.
15. Similarly, basic rules for filing first and second appeals must also be uniform across the country, so that people are enabled to pursue their applications (even where there is a deemed refusal or no response from the first appellate) without having to study 114 sets of rules.
16. Beyond this, appropriate governments and competent authorities could exercise the freedom of allowing additional modes of payment specifically appropriate to their conditions, or give additional concessions (like the waiver of application fee in rural areas of Andhra Pradesh).

17. The Information Commissions could support the imperative for basic common rules and procedures across the country by invoking the powers given to them under S. 19(8)(a) of the RTI Act. **[CIC, SIC]**

18. Special effort must be made to ensure easy payment of application and additional fee. Though Indian Postal Orders (IPOs) are the easiest of the currently allowed modes of payment, especially for those who do not live close to the public authority or do not want to go personally and pay in cash, IPOs are not easy to purchase, especially in rural areas. Besides, many states and competent authorities do not accept IPOs. Rather than introducing a new instrument for payment of fees, perhaps all states and competent authorities can be persuaded to accept **postage stamps (including post cards)** as a means of payment. These are widely available. Where the amount is large, especially where a large number of pages have to be photocopied, all public authorities should be willing to accept money orders.

Finding IV: Applicants, especially from the weaker segments of society, are often intimidated, threatened and even physically attacked when they go to submit an RTI application, or as a consequence of their submitting such an application.

RECOMMENDED ACTION:

19. Complaints of such intimidation, threat or attack to ICs must be treated as complaints received under S. 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an enquiry under S. 18(2) read along with S. 18(3) and 18 (4). **[CIC,SIC]**

20. Such intimidation, threat or attack, in so far as it is an effort to deter the applicant from filing or pursuing an RTI application, can clearly be considered as obstruction and falls within the gamut of S. 20(1) as a penalisable offence. Therefore, where the enquiry establishes the guilt of a person who is a PIO, the IC must impose such penalty as is appropriate to the case and acts as a deterrent to other PIOs.

21. Where the guilty party is not a PIO, the IC must establish a tradition of passing on the enquiry report to the police, where a cognizable offence is made, or otherwise to the relevant court, and use its good offices (and its moral authority) to ensure that timely and appropriate action is taken.

22. It would also help if public authorities designated Assistant Public information Officers (APIOs), as required under S. 5(2) of the RTI Act, from neutral agencies. Following the example of the Government of India, it would be a good idea if post offices across the country are made universal APIOs, so that any applicant can file an application in any post office pertaining to any public authority. This would also otherwise facilitate the filing of RTI applications, especially for the rural applicant. **[DoPT, Appropriate Governments, Competent Authorities, MoCommunications]**

Finding V: Despite a very strong provision for proactive (suo moto) disclosure under section 4 of the RTI Act, there is poor compliance by public authorities, thereby forcing applicants to file applications for information that should be available to them proactively, and consequently creating extra work for themselves and for information commissions.

RECOMMENDED ACTION:

23. Given the very poor implementation of Section 4 by most public authorities, the ICs could recommend (under S. 25(5) read with S.18(8)(a)) that each PA designate one PIO as responsible for ensuring compliance with all the relevant provisions of section 4. The Commission would hold this PIO responsible for any gaps or infirmities, subject to provisions S. 5(4) and 5(5) of the RTI Act. **[CIC, SIC]**
24. Where an appeal or complaint comes before an IC relating to information that should rightly have been made available *suo moto* under section 4 of the RTI Act, but was not, the IC should exercise its powers under S. 19(8)(b) and compensate the appellant/ complainant for having to waste time and energy seeking information that should have been provided proactively. This will not only encourage applicants to complain against PAs not complying with S.4, but also encourage PAs to fully comply.
25. To ensure that the information proactively put out is up to date, the ICs could direct all PAs that each web site and publication relating to S. 4 compliance must carry the date (where appropriate for each category of information) on which the information was uploaded/printed and the date till which it is valid/it would be revalidated.

26. Concurrently, appropriate governments should commission competent professional agencies to develop a template for S. 4 declarations, with the required flexibility to be usable by different types of PAs. This or some other agency should also be in a position to help PAs to organize the required information in the manner required.
27. The ICs should also require each PA to make a negative list of those subjects/files which might attract any of the sub-sections of section 8(1) and thereby be exempt from disclosure. This list should be sent to the ICs, with justifications, and the advice of the ICs considered before finalizing it. The remaining subjects/ files should be declared open and any RTI request relating to them should be automatically honoured. Further, all the relevant information in these open files should be progressively made public *suo moto,* so that there is finally no need to invoke the RTI Act in order to access such information. **[DoPT, Appropriate Governments, CIC, SIC]**
28. Appropriate governments and competent authorities should encourage the setting up of information clearing houses outside the government, especially by involving NGOs and professional institutions for subjects related to their area of work. Such clearing houses could function as repositories of electronic information accessed from the concerned public authorities. They can systematically and regularly access information that is of interest to the public. They can demystify, contextualize, and classify such information and make it easily available o the public through electronic and other means. They an also send out alerts regarding information that needs urgent attention. However, such clearing houses should not absolve public authorities of their own obligations under the RTI Act and should actually motivate governments to be more proactive and organized while disclosing information. **[Appropriate Governments, Competent Authorities, NGOs, Professional Institutions]**

Finding VI: One major constraint faced by PIOs in providing information in a timely manner is the poor state of record management in most public authorities.

RECOMMENDED ACTION:

29. Section 4(1)(a) of the RTI Act obligates every public authority to properly manage and speedily computerize its records.

However, given the tardy progress in this direction perhaps what is needed is a national task force specifically charged with scanning all office records in a time bound manner. Apart from saving an enormous amount of time and valuable space, the replacing of paper records by the digital version would also make it more difficult to manipulate records, or to conveniently misplace them, provided proper authentication and security protocols are followed. **[DoPT, MoInfo. Tech.]**

30. A priority should be given to scanning records at the village, block and sub-divisional level. As facilities for digitizing records are not usually available at this level, it is recommended that a special scheme for scanning rural records, using mobile vans (or "scan vans") fitted with the requisite equipment and with their own power source and wireless communication facilities should be commissioned to cover all rural records in a time bound manner.

Finding VII: Certain public authorities, especially those with extensive public dealing (like municipalities, land and building departments, police departments, etc.) receive a disproportionate share of RTI applications compared to other public authorities. In some cases there is resentment among PIOs as they have to deal with a large number of RTI applications in addition to their normal work.

RECOMMENDED ACTION:

31. Without illegitimately curbing the citizen's fundamental right to information, there are various ways of ensuring that the numbers of RTI applications received by a public authority do not become unmanageable. First, each public authority should assess every three months what types of information are being sought by the public. As far as possible, the types of information that are most often sought should then be proactively made available, thereby making it unnecessary for the citizen to file and pursue an RTI application. **[Appropriate Governments, Competent Authorities]**

32. Second, most often RTI applications are filed because there are unattended grievances that the public has with the public authority. These are mostly delays, lack of response to queries, not making the basis of decisions public, seemingly arbitrary or discriminatory decisions, violation of norms, rules or laws by the public authority, and non-disclosure of routine information that

should have been disclosed even without the RTI. If heads of public authorities periodically (say once in six months) reviewed the basic reasons behind the RTI applications received, they could initiate systemic changes within the PA that would obviate the need to file these applications.

33. Besides, such systemic changes would ensure that the benefits of the enhanced transparency and accountability consequent to the RTI Act do not only go to those who actually use the Act, but to even those who might be too poor or otherwise unable to take advantage of it.

34. Another practice that would minimize the work load of many public authorities is the putting of all RTI queries and the answers given (except where the information relates to matters private) in the public domain. This would allow people to access information that has already been accessed by someone earlier without having to resort to filing an RTI application. This would also be a good way of ensuring that information accessed under the RTI Act is not used to blackmail anyone. Once all accessed information has been proactively put into the public domain, the potential blackmailer would have no remaining leverage.

Finding VIII : There are huge and growing delays in the disposal of cases in many of the information commissions, with pendency of cases growing every month. The main reasons behind the delays seem to be the paucity of commissioners in some of the commissions (eg. Gujarat, Rajasthan – both with only a CIC) and the low productivity of some of the other commissioners, mainly due to inadequate support.

RECOMMENDED ACTION:

35. There is a need to develop a consensus among information commissioners, across the country, on norms for budgets and staffing patterns of ICs, based on the number of cases/appeals received, the number of information commissioners, and other relevant state specific issues. **[CIC, SIC, DoPT, Appropriate Governments]**

36. Similarly, there needs to emerge, through a broad consensus, a norm on the number of cases a commissioner is expected to deal with in a month. This could help determine the required strength of commissions, the period of pendency, and also indicate to the public the norm which the commissioners have agreed to follow

for themselves. Of course, such a norm should be developed after discussion with other stake holders, especially the public.

37. In order to have the ability to evolve a consensus among information commissioners on these and other such issues, it is important that there be a community or body of commissioners, formal or semi-formal, perhaps as a collegium.

38. There also need to be created a system of legal aid where non-governmental organizations and legal professionals can assist appellants, especially those coming from weaker segments of the society, to formulate their appeals clearly and more effectively. This would also help information commissions to deal with such appeals more speedily and effectively.

Finding IX: Many information commissions feel that their dependence on the government for budgets, sanctions and staff seriously undermines their independence and autonomy, as envisaged in the RTI Act, and inhibits their functioning.

RECOMMENDED ACTION:

39. The budgets of information commissions must be delinked from any department of the government and should be directly voted by the Parliament or the state assembly, as the case may be. The CIC should be the sanctioning authority with full powers to create posts, hire staff, and incur capital and recurring expenditure, in accordance with the budget, based on budget norms developed for information commissions across the country (see 36 above). **[DoPT, Appropriate Governments]**

Finding X: Information commission orders are of varying quality, often with poor consistency on similar issues across commissions, within commissions and even among orders of the same commissioner. Many orders contain insufficient information for the appellant/complainant to assess the legal basis for, or the rationale behind, the order.

RECOMMENDED ACTION:

40. Newly appointed information commissioners must be provided an opportunity to orient themselves to the law and case law. Incumbent commissioners should have an opportunity to refresh their knowledge and understanding and to discuss their experiences and thinking with commissioners from other commissions. Towards this end, it might be desirable to link up

with the National Judicial Academy, in Bhopal, and request them to organize orientation and refresher workshops, the latter over the weekend, in order to minimize disruption of work. This is similar to the workshops being organized by them for High Court judges. **[CIC, SIC]**

41. There also needs to be a standardized format for IC orders that ensures that at least the basic information about the case and the rationale for the decision is available in the order. This again needs to be discussed with other stakeholders and agreed to by the community of information commissioners.

Finding XI: Often, orders of information commissions are not heeded by the concerned public authority. Many commissions do not have workable methods of monitoring whether their orders have been complied with, leave alone for ensuring that they are complied with.

RECOMMENDED ACTION:

42. All ICs must fix a time limit within which their orders have to be complied with and compliance reported to the commission in writing. Every order of the commission where some action is required to be taken by a public authority should also fix a hearing two weeks after the deadline for compliance is over, with the proviso that the IC will only have a hearing if the appellant appeals in writing that the orders of the commission have not been complied, to be received by the commission at least three days before the date of hearing. Where no such complaint is received, the hearing should be cancelled and the orders assumed to have been complied with, unless evidence to the contrary is presented subsequently**.[CIC, SIC]**
43. Where there is a lack of compliance by a PIO, automatically show cause notices should be issues for imposition of penalty and unless compliance follows in a reasonable time, penalty should invariably be imposed.

Finding XII: A very small proportion of the penalties imposable under the RTI Act (less than 2%) are actually imposed by commissions. Though further research needs to be done on this aspect, preliminary data suggests that there is a correlation between the number of penalties imposed and the record of PAs in terms of making information available.

RECOMMENDED ACTION

44. Information commissioners across the country should get together and collectively resolve to start applying the RTI Act more rigorously, especially as four years have passed since the Act came into effect, and this is more than enough time for the government, and for PIOs, to prepare themselves to implement the Act.**[CIC, SIC]**

45. At the same time, a dialogue needs to be initiated between the public and information commissions to discuss why they are not imposing penalties even where clearly no reasonable ground exists for delay or refusal of information, etc. To that end, it is required that groups of interested citizens join hands with the media and the legal professionals, and progressive former civil servants and judges, and start on a regular and systematic basis, analyzing orders of commissions, so that a meaningful dialogue can be had with commissions on the need for imposition of penalties. **[NGOs, People's Movements]**

46. Perhaps it might also help if separate benches are constituted to deal with penalty related matters, and orders are always reserved and given later, to minimize the emotive content.

Finding XIII: The mechanisms for monitoring the implementation of the RTI Act, and for receiving and assimilating feedback, is almost non-existent.

RECOMMENDED ACTION

47. There needs to be a National Council for the Right to Information, to monitor the implementation of the RTI Act and to advise the government from time to time on the measures that need to be taken to strengthen its implementation. This council should be chaired by the concerned Minister and have as members, apart from people's representatives, nodal officers from various state governments on a rotational basis. The Central Information Commissioner and CICs from a certain number of states on a rotational basis should be permanent invitees to the Council**. [DoPT]**

Finding XIV: The composition of information commissions across the country has a bias towards retired government servants. It is desirable to have a more balanced composition so that diverse expertise is represented in the commission.

RECOMMENDED ACTION:

48. Towards this end, the process of short-listing candidates for appointment to information commissions must be participatory and transparent, allowing public consultation and debate before a short-list is finally sent to the selection committee. **[DoPT, Appropriate Governments]**

Finding XV: There is a need for setting up follow up mechanisms where information accessed by using the RTI Act can be expeditiously acted upon, where required, without again having to access the over-burdened and /or ineffective courts and departmental mechanisms.

RECOMMENDED ACTION:

49. The Central and state governments need to set up independent grievance redressal authorities (along the lines of the one in Delhi – but with more teeth), so that instances of delay, wrong doing or inaction can be independently and speedily adjudicated and corrective action initiated.
50. Information accessed through the RTI Act, as it is certified by the public authority to be correct, should be given an appropriate evidentiary status so that investigation into wrongdoing or lapses can be expedited.

ANNEXURE XI

EXTRACT FROM *THE BLAIR MEMOIRS AND FOI* (6 SEPTEMBER 2010) BY MAURICE FRANKEL OF "THE CAMPAIGN FOR FREEDOM OF INFORMATION", UK.[1]

FOI had featured in Labour's 1997 manifesto - the sixth successive time that the party had promised it to the electorate since the early 1970s.

Months after the 1997 election, the government published its well received FOI white paper. The proposals were produced by Dr David Clark, the Chancellor of Duchy of Lancaster, strongly backed by Lord Irvine, the Lord Chancellor, one of the most influential of Blair's ministers.

Yet 7 months later, David Clark had lost his job and FOI had been placed under the notably less sympathetic wing of Jack Straw, the Home Secretary. The Home Office later produced a uniquely awful draft bill. There was a voluntary public interest test, which the Information Commissioner could not rule on. Safety information was protected from disclosure by no less than three broad exemptions. If no grounds could be found to block a request which had been received, a new exemption could rapidly be created without primary legislation. Most bizarre was the "right to pry and gag". Authorities would be able to insist on knowing why someone wanted information - and to disclose it on condition they did not share it with anyone else.

Fortunately these and many other weaknesses were later removed. The final, much improved Act, was passed in November 2000.

But that was not the end of FOI's troubles. Although Jack Straw and Derry Irvine (who later took over responsibility for FOI) both wanted to bring the Act into force for central government after 12-18 months, Tony Blair's personal intervention ensured it was delayed for over 4 years. The right of access did not take effect until January 2005.

Just 18 months later, Mr Blair struck again. New regulations were proposed, drastically limiting the right of access. Requests can

[1] The full article, including details of references made within it, is available at http://www.cfoi.org.uk/blairarticle060910.html

be refused if the cost of answering them exceeds certain limits, but only the time spent finding and extracting the information can be counted. The government proposed to also include the time officials spent thinking about the decision. Any complex request, or one raising new issues, would involve considerable 'thinking time' and so would be likely to be refused on cost grounds - freezing progress on openness. Another provision would have rationed the number of requests anyone could make within a 3 month period, limiting campaigners, and entire organisations such as the BBC, to perhaps one or two requests a quarter to any one authority.

Weeks later, yet another assault: a private member's bill to remove Parliament from the Act's scope. Although introduced by a backbench MP, it clearly had government support. Instead of taking pride in its creation, the Blair administration was trying to smother its infant law.

Fortunately, both initiatives failed. The private member's bill was killed off by overwhelming public and press hostility. The FOI restrictions were rejected by Blair's successor, Gordon Brown.

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Right to Information in Maldives

Venkatesh Nayak and Sanchita Bakshi[1]

BACKGROUND

Maldives – a country situated in South Asia – comprises of about 1,200 islands grouped into atolls. About 200 islands are permanently inhabited by a population of 310,000.[2] With 97% of the population being literate, Maldives has the highest rate of literacy in the region. According to 2005 estimates, only 16% of the population lives below the national poverty line which is much less than the incidence of poverty in countries like Bangladesh, India and Pakistan.[3] 83% of the population has access to improved drinking water sources and the under-5 mortality rate is 28 per 1000 live births. In 2009 Maldives was ranked 95 on UNDP's Human Development Index placing it in

[1]This note is based on the authors' impressions of some crucial aspects of the state of the right to information in Maldives. A major source of data for this note is one-to-one interviews conducted with senior officers of the Maldives administration and senior politicians in early 2010. The authors have also looked at select secondary literature about Maldives available on the internet. None of the interviewees have been named as the interviews were conducted in confidence. The authors do not claim that this note represents the official picture of the state of the right to information in Maldives. The authors thank Drushya Sridhar, Intern, Commonwealth Human Rights Initiative (CHRI) for her research inputs.

[2] See *Asian Development Bank and Maldives Fact Sheet*, 2009, pp. 1. Available at: http://www.adb.org/Documents/Fact_Sheets/MLD.pdf. Accessed 23 June 2010.

[3] *Ibid*.

the category of countries with medium human development.[4] Public expenditure comprises 64% of the gross domestic product and close to 70% of the government's revenue is spent on the public sector wage bill.[5] At the time of democratic transition of Maldives in 2008-09, the national debt stood at 33% of the GDP.[6]

Most politicians and bureaucrats say that despite experiencing relatively higher levels of human development compared to its neighbours in the region, Maldives was not an open society under the three-decade long administration of President Mamoon Abdul Gayoom. The current President Mohamed Nasheed stated that the previous regime was characterised by several instances of corruption and human rights abuses.[7] Prior to 2003, it is said that the media was completely under the control of the government with little freedom for free and unbiased reporting despite the right to freedom of speech and expression being guaranteed by the Constitution in place then.[8] However the exercise of democratic reform initiated by the Gayoom regime in its final years is considered to have given some impetus to freedom of expression. Censorship of the media was reduced considerably by the year 2006, thanks to pressure from civil society and opposition parties. However, information from government bodies was disseminated by their public relations officers only on a need to know basis. The previous Constitution did not contain any reference to the people's right to information.

RIGHT TO INFORMATION (RTI) AS A PART OF DEMOCRATIC REFORM

As part of the process of initiating democratic reforms in 2007, the then Minister for Information and Legal Reforms had drafted a

[4] Human Development Report 2009, UNDP. Maldives Country Report. Available at: http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_MDV.html. Accessed 23 June 2010.

[5] Address by President Mohamed Nasheed, at the inaugural event of the Sixteenth South Asian Association for Regional Cooperation (SAARC) Summit, 28 April 2010. Available at: http://www.sixteenthsaarcsummit.bt/wp-content/uploads/2010/04/maldives.pdf. Accessed 23 June 2010.

[6] *Ibid*. According to President Nasheed, the budgetary deficit has been brought down to 28% due to austerity measures initiated by his regime.

[7] *Ibid*.

[8] Mohamed Jawad, *Right to Information in the Maldives*. Paper presented at the Right to Information Programme for Asia Region organised by the Institute of Secretariat Training and Management, New Delhi with support from the Commonwealth Secretariat, London, October 2009 (unpublished).

Bill on the right to information. This Bill was closely modelled on the access laws of the United Kingdom and Canada, and was drafted with the assistance of Article XIX, an international resource organisation working on freedom of expression and access to information.[9] However, the Bill could not pass muster in the People's Majlis – it fell short of majority support by one vote.[10]

Despite this debacle, the Minister for Information and Legal Reforms took the initiative of converting the Bill into a set of Regulations applicable to the Executive only. These Regulations were notified by a Presidential Decree on 3 May 2008 on the occasion of World Press Freedom Day. The objectives of the Regulations were to:

- Provide Maldivians with the right to access information held by government administrative offices;
- Specify the situations and conditions under which information shall not be disclosed; and
- Encourage government departments and offices to publicise information about their working more frequently.

The Government gave itself a lead time of eight months to prepare for the implementation of these Regulations, which were to become fully operational in January 2009.[11] There was a provision to appoint an Information Commissioner in these Regulations, whose role would have been to guide the implementation of this process and adjudicate over access disputes. However, in response to pressure from Opposition parties ahead of the Presidential elections, the responsibility of recruiting civil servants was transferred from the President's Office to a newly created Civil Service Commission. This caused hurdles in the appointment of the Information Commissioner.

THE TIDE OF DEMOCRATIC CHANGE

Mr. Mohamed Nasheed was elected President in the first multi-party elections held in 2008 thanks to pressure from opposition parties,

[9]CHRI submitted detailed comments on this draft Bill and suggested several improvements including strengthening the provisions of voluntary disclosure of information by public bodies.

[10] The people's Majlis is the supreme legislative authority in the country and is one of the three principal organs of government. From http://www.majlis.gov.mv/en/majlis-at-a-glance/. Accessed 8 July 2010.

[11] Under the constitutional scheme of Maldives, regulations notified by the Executive apply only to government bodies. Therefore private bodies were left out of the coverage of the RTI Regulations.

civil society and the media. In August that year, the People's Majlis adopted a new Constitution which not only guarantees the right to freedom of speech and expression, but also the freedom to seek, receive and impart information.[12] It is notable that the freedom to acquire information is not restricted to citizens only. It is available to every person irrespective of nationality or any other identity marker. This constitutional guarantee therefore provides the foundation on which an open government can be built in the Maldives, even as it facilitates people's access to information held by public bodies.

The newly elected President pursued the process of democratic reform more vigorously than under the Gayoom regime, and transparency in government seemed to be high on his agenda of priorities. With the dissolution of the Ministry of Information and Legal Reforms, the subject of RTI was transferred to the Ministry of Home Affairs even as the Department of Information was absorbed by the Ministry for Tourism, Arts and Culture.[13] The responsibility for overseeing the implementation of RTI Regulations was placed with an RTI Cell specially created within the Ministry of Home Affairs. This arrangement is likely to continue until the appointment of the Information Commissioner.

Upon completing a hundred days in office, President Nasheed highlighted two major actions taken by his government for promoting transparency in the document entitled "First Hundred Days of Democratic Government".[14] These included the appointment of information officers in all government offices for the purpose of providing information to people, and increasing transparency in their

[12] Article 29: "Everyone has the freedom to acquire and impart knowledge information and learning". Available at: http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/maldives/constitution_of_maldives.pdf. Accessed 23 June 2010. The new Constitution also restored the powers of the President to create posts required for the purpose of fulfilling his responsibilities.

[13] Information obtained through an interview with a senior officer assigned to the President's office.

[14] Amongst other things, the section on good governance in this document mentions the following achievements:

"Information Officers at government offices has been trained (*sic*). They were trained on how to acquire and impart information in a more transparent way. An information session for Ministers and other senior government officials on how the government's policy on acquiring and imparting of information was held."

See: http://www.presidencymaldives.gov.mv/downloads/100-days-en.pdf. Accessed 23 June 2010.

working.[15] The government also made a serious effort to train Ministers, senior bureaucrats and newly appointed information officers to effectively implement the provisions of the RTI Regulations. According to a senior officer associated with the RTI Cell, till date, more than 1,450 government officers have been trained to implement RTI Regulations within their jurisdictions, and have also been sensitised about the importance of RTI to the democratic setup of Maldives.

A NEW LEGISLATIVE INITIATIVE ON RTI

After the general elections held in May 2009, the Maldivian Democratic Party (MDP) Alliance formed a coalition government. The MDP Alliance had included the promise of providing access to information to all people as a long term goal (1-5 years) in its election manifesto, as part of its agenda of democratic governance and the establishment of the rule of law and justice.[16] Subsequently in November 2009, the Attorney General of the new government tabled the *Right to Information Bill 2009* in the People's Majlis. Closely modelled on the existing RTI Regulations, it was initially referred to the Standing Committee on Economic Affairs for detailed deliberations over its provisions. Subsequently the Bill has been transferred to the Standing Committee on Social Affairs as that Committee has oversight over the Ministry of Home Affairs.[17] Senior representatives of government and members of parliament are hopeful that the RTI law will be enacted this year itself.

[15] According to a senior officer in the RTI Section, all Permanent Secretaries have been designated as the Information Officers of their departments.

[16] "Provide access to information to facilitate social and economic development as well as self-sufficiency among the residents of the atolls." *Aneh Dhivehi Rajje: The Other Maldives, Manifesto of the Maldivian Democratic Party Alliance, 2008-2013*. Available at: http://www.presidencymaldives.gov.mv/downloads/menifesto-en.pdf. Accessed 23 June 2010.

[17] The authors have recently prepared a detailed critique of the contents of the RTI Bill with several recommendations for improvement in order to bring it up to par with the international best practice standards of RTI legislation. This critique has been shared with influential members of parliament, senior representatives of government, the Human Rights Commission of Maldives and civil society organisations in Maldives. The critique is available at:

http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/maldives/chri_analysis_maldives_rti_bill.pdf. Accessed 23 June 2010.

CHALLENGES TO IMPLEMENTING RTI IN THE MALDIVES

STATE OF PREPAREDNESS OF THE LEGISLATURE

According to members of parliament, who have had long years of experience as lawmakers in Maldives, a big challenge is to build the capacity of first time members of the People's Majlis to participate in the process of law-making in an informed manner. As Maldives is going through a process of democratic consolidation, the legislative agenda of the People's Majlis is heavy and several members are not yet well versed in the processes of law-making. More than 150 Bills are pending before the People's Majlis as it is engaged in the task of harmonising existing legislation with the new Constitution and establishing a governance framework underpinned by the ideals of democracy and the principle of rule of law. The RTI Bill is only one of several important pieces of legislation awaiting the approval of the Majlis. It is hoped that the provisions of the Bill as well as the recommendations for change made by civil society will be discussed at length at the committee stage before it is taken up in the plenary session.

STATE OF PREPAREDNESS OF THE EXECUTIVE

A few senior officers revealed that there is a lack of adequate preparedness in the bureaucracy to implement an RTI law despite the training initiatives of the new government. A large majority of the members of the bureaucracy continue to be unaware of the requirements of RTI Regulations. In addition to this knowledge deficit, there are systemic challenges as well. As the government is going through a process of large scale restructuring, ministries and departments are being abolished and their duties and responsibilities reassigned to others. Instances of loss or misplacement of documents of the abolished offices during this transitional process are not rare. Existing departments will have difficulties when people start asking for information about the activities of the abolished offices.

The communications system within government departments may also prove to be an obstacle in the initial stages of the implementation of the RTI law. For example, some senior officers opined that the rank of information officers designated under the Regulations (Permanent Secretaries) is so high that they may not actually possess all information created by different wings and sections of their department. They would therefore need to consult with their

subordinates, Junior Press Officers, who perform the role of Communications Officers. Currently these officers handle the dissemination of information related to the working of their departments to the media and citizens in general. A senior representative of the Ministry of Human Resources, Youth and Sports however drew attention to the e-communications initiative of the Government that is likely to facilitate better communication within and between departments in the near future. It is hoped that this new system will facilitate easier access to the department's records for designated information officers so that decisions regarding grant of access may be made quickly.

Similarly, the restructuring of government offices has slowed down the progress made with regard to proactive disclosure of information required under RTI Regulations. For example, a senior representative of the Malé Municipality explained that due to the organizational restructuring exercise that was underway in the organisation, very little information had been uploaded on its website. However, the officer was hopeful that with the finalisation of standard operating procedures for the Municipality, the task of updating the website would be taken up.

STATE OF AWARENESS AMONGST MALDIVIANS

Representatives of government and civil society were unanimous in their view that knowledge about RTI is not widespread amongst Maldivians. This may prove to be a hindrance to the successful implementation of the RTI law. Even though the RTI Cell has initiated the airing of radio programmes on the significance of RTI and the provisions contained in the RTI Regulations, knowledge levels, especially in distant atolls, are said to be poor. Despite the operationalisation of the RTI Regulations in January 2009, very few Maldivians have sought information under this instrument. For example, a senior representative of the Malé Municipality confirmed that only a couple of requests for information are received every week. Often the requests are for information about land-related matters. Where it is possible to give the information readily, the Municipality provides it on demand. However, where it is necessary to search for records and documents, the Municipality asks the requestor to fill out the application form prescribed in the Regulations. Further, due to inadequate training on RTI, the process of decision-making on whether or not to disclose the requested information is often delayed.

The Information Officer is required to consult laws and regulations related to land matters in order to check whether any restrictions on disclosure are applicable. However, initiatives have been taken to provide to all senior officers a compilation of all laws and regulations being implemented through the Municipality to enable them to discharge their duties better. A set of Frequently Asked Questions (FAQs) about the services provided by the Municipality is likely to be uploaded on the website shortly. On a different note, a representative of the Ministry of Human Resources, Youth and Sports confirmed that they had received a request for information about the travel expenses of Ministers from an opposition party. However these kinds of requests are few and far between.

Some senior officers expressed concern about the manner in which people are using the RTI. For example, a senior officer of the Ministry of Human Resources, Youth and Sports reported that people tend to use the RTI application forms to write long letters, which are often in the nature of complaints or grievances. A senior representative of the Ministry of Housing, Transport and Environment expressed frustration at receiving more than a hundred letters seeking information from one person in the course of a month. The officer strongly believed that the information seeker was only creating a fuss with no specific purpose in mind. However he also stated that the media frequently approached his ministry for information regarding its decisions and activities and as there exists a friendly relationship between the media and the government, providing access to information was not posing any major problems.

IN CONCLUSION

Maldives is currently engaged in the process of democratic consolidation and a restructuring of government. Despite this onerous task, the Government has placed transparency high on its agenda. The introduction of the RTI Bill in the People's Majlis is an indication of its seriousness with regard to fulfilling the MDP Alliance's electoral promise of transparency in administration. This Bill itself needs several major changes in order to match international standards of RTI legislation. A great amount of effort is required to build the capacity of the bureaucracy to provide people with access to information in real time. There is also an urgent need to build capacity on the management and maintenance of public records in order to facilitate easy access under the RTI law. Building the capacity of the bureaucracy

and the administration to deliver on the promise of transparency is therefore the need of the hour. Proactive dissemination of information that Maldivians require on a day to day basis may also need to be prioritised so that their need for making formal requests for information is reduced. Mass awareness raising programmes must be initiated to educate Maldivians about their right to information and its responsible use.

6

Freedom of Information in Nepal

Taranath Dahal

INTRODUCTION

The Right to Information (RTI), despite being guaranteed since the adoption of the 1990 Constitution, was only given effect in July 2007 with the adoption of the RTI Act 2007 in Nepal. The Parliament of Nepal passed the Act in July 2007 to give effect to the people's fundamental right to seek and receive information on any matters of public importance held by public agencies.

The People's Movement of 1990 has stood as one of the major historical turning points in the political history of Nepal. It was important from the point of view of a paradigm shift in the political system that recognised people's fundamental rights and accepted people's participation in governance. The Constitution of the Kingdom of Nepal 1990 guaranteed the right to information as a fundamental right for the first time in Nepal, which paved the way for the RTI Act. The RTI Act is thus the outcome of a one-and-half decade long movement for RTI in Nepal led by civil society organisations since 1990.

The credit to introduce RTI as people's right in Nepal should go to the 1990 Constitution Drafting Committee Chairperson Biswonath Upadhyay and former Justice and former Chairperson of Nepal Bar Association Laxman Aryal. Aryal was also the member of 1990 Constitution Drafting Committee representing the Nepali Congress.

Aryal suggested the inclusion of RTI in the new constitution to the Constitution Drafting Committee Chair Upadhyay after attending a programme on a similar theme in the United States of America. Upadhyay gave his approval to this proposal and introduced this idea in the new constitution arguing for it as an significant move for strengthening democracy in Nepal. Meanwhile, the Federation of Nepali Journalists (FNJ) had been demanding that the government introduce an RTI law in Nepal from the perspective that it will be an important asset for journalists to get information on all public bodies and check wrong doings in public authorities.

However, the government did not show interest in the formulation of the Right to Information (RTI) Act even after the RTI was constitutionally guaranteed in 1990. However, the judiciary played a very significant role in the interpretation of the fundamental right to information and the development of RTI jurisprudence in Nepal. In 1991, some citizens approached the Supreme Court (SC) seeking information in connection with the dispute about the use of water resource of two rivers in Nepal. The first dispute was about the Mahakali river on the Nepal-India border in the west. More specifically, the debate arose when India constructed the Tanakpur dam on the Mahakali river on both sides of the border to generate hydropower for its own purpose. In this case, the SC issued orders to make public the Memorandum of Understanding (MoU) inked between the Prime Ministers of both nations on this issue.

The second case was related to the comprehensive feasibility study carried out for the implementation of a hydropower project on the Arun River in Eastern Nepal where details of the study and the project were sought by citizens in public interest.[1] In 1993, the SC gave a verdict that the government was to disclose all information in this matter. In the same judgement, the SC described the importance of RTI and directed the government to enact an RTI law as soon as possible. Further, the court also set out eight-point procedures to provide copies of documents by public agencies until such a law was enacted.[2]

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[1]*Advocate Gopal Siwakoti 'Chintan' et al v. Ministry of Finance and others*, Writ Petition 2049/050.

[2]The petitioners had asked for the copies of the project document of World Bank financed Arun III hydropower project. Ironically, while the court set the procedures for obtaining information but did not issue orders for producing documents in this case as demanded by the petitioners.

However, the government did not issue any comments or reactions to the 1993 decision of the Supreme Court. Further, the government did not take any concrete action to implement the SC decisions. No department followed the eight-point procedure to give information to people, and no NGOs/CSOs tested the application of this decision. As the Court's decision came in a particular case, there was no chance for the media to scrutinise compliance of the orders of the SC within the government.

However, following these two important public cases, the government tabled a Bill on RTI in the Parliament in 1993, but it was rejected by the parliamentary committee as stakeholders, including the media, opposed that draft. They claimed that the government intended to create a legal regime to hide information rather than disclose information.[3] Media organisations took the initiative in 1997 to draft a different bill and present it to the government.

A seven-member independent RTI law drafting team, comprising of media experts, lawyers and Members of Parliament was formed to prepare this draft bill. Suresh Acharya, President, FNJ, Taranath Dahal, General Secretary, FNJ, Gokul Pokharel, Chairperson, Nepal Press Institute, Bhesraj Sharma, Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs, Yubaraj Pandey, Director General, Department of Information, Harihar Dahal, Chairperson, Nepal Bar Association and RTI expert Ramkrishna Timalsena were members of this committee.

The Bill was finally tabled in the Parliament in 2002. However, this Bill never saw the light of day because of political bickering and the eventual dissolution of the parliament. Even the democratic government at that time could not give proper attention to the RTI movement as Nepal witnessed the culmination of the Maoist insurgency and the macabre massacre of the royal family leading to the stagnation of all areas of development.

Despite this, and following the earlier order of the Supreme Court, the government of the day started some activity for a right to information legislation. A draft RTI law was released by the Nepalese Law Reform Commission in 2003 but not much more was done due to the existing political upheavals and power struggles going on at

[3]Interview with Mr. Homnath Dahal, then Chairperson of the Nepal Journalist Association, and later Member of Parliament, Nepal Congress.

that time. Although political parties were also supportive during this period and there was a new hope among RTI activists that the Bill would be endorsed, the parliamentary system witnessed a sudden setback when the parliamentary session could not convene. The main opposition party, the Communist Party of Nepal (Unified Marxist Leninist) (CPN-UML) obstructed the house for 58 consecutive days, following which Nepal was in a state of emergency for a year.

The dissolution of the parliament marked another political standoff in Nepal and ushered in a vicious cycle of autocracy. The Monarch at the time, Gyanendra, toppled the democratic political system and introduced an autocratic regime, effectively ending the campaign for RTI until the establishment of democracy soon after the popular April Uprising in 2006. A High Level Media Commission, established after the popular movement of 2006 which restored democracy, produced a report in September 2006, which also called for the adoption of a right to information law to give effect to this constitutionally protected right.

The role of civil society is very significant in the development of the right to information in Nepal. Civil society in Nepal was very vibrant and actively pressurised the government for a legislative initiative. A group of civil society organisations, including Freedom Forum, an organisation working for freedom of expression and media rights, Federation of Nepalese Journalists, an umbrella organisation of Nepalese journalists, and Nepal Press Institute, an NGO working for the promotion of media rights, had started a nationwide advocacy campaign to spread awareness amongst the public and demanded that the government give effect to the people's fundamental right to access to information enshrined in the constitution. The three organisations prioritised RTI with the understanding that an effective RTI law and its enforcement could strengthen the freedom of expression of the press, enhancing the media's role in creating an informed citizenry, empowering democracy and fostering good governance in the country. Thus the organisations geared up their lobbying and advocacy efforts, as representatives of civil society aimed at establishing this right as a public asset. Till this time, there were no interactions with international peers regarding RTI.

Freedom Forum launched a nationwide campaign in 2005. Similarly, Citizens' Campaign for Right to Information (CCRI) - a loose network of civil society organisations, activists, and international

and intergovernmental organisations including Action Aid and the International Centre for Integrated Mountain Development (ICIMOD), was formed under the leadership of Freedom Forum in June 2005 to pressure the government to develop an RTI law.

The resource pool on RTI included competent and well-known Nepalese trainers and consultants, who took on the responsibility for training citizens and civil society representatives on RTI. The major members of the resource pool were Kashi Raj Dahal (Coordinator of Training), Taranath Dahal (Chairperson, Freedom Forum), Ranjan Krishna Aryal (Joint Secretary in the Ministry of Law), Chiranjivi Kafle (Trainer and Rapporteur) and Raghav Raj Regmi (Independent Consultant). Other members were representatives of civil society organisations, legal practitioners, human rights defenders and so on. Freedom Forum brought together these experts for the RTI campaign since they had substantial knowledge and experience with good governance and transparency. Freedom Forum, in association with ICIMOD, took initiatives to take the RTI campaign beyond the Kathmandu Valley. Inputs were provided by other civil society organisations and the media fraternity on the issues to be included in the nationwide campaign.

The initiative taken in 2007 included the production of simple publicity materials and their use in workshops and seminars in all five development regions of the country. Two-day regional workshops on Right to Information were held in all five development regions followed by a remarkable national seminar in Kathmandu spread across three and half months which began in the third week of January 2007. The initiative sought to spread awareness on Right to Information and collected recommendations from opinion leaders throughout the country.

The four themes that provided input to all the RTI regional workshops included working papers on Right to Information and Democratization by Kashi Raj Dahal, Good Governance and Information by Taranath Dahal, Right to Information and Means of Livelihood by Ranjan Krishna Aryal and the RTI Draft Bill with a comparative note on the changes made by the government, also by Kashi Raj Dahal.

The workshops conveyed the message that the Right to Information concerned everyone, irrespective of their profession, and they also helped exert pressure on the government to take measures

to introduce an effective and meaningful Right to Information law in Nepal. In addition, the RTI was promoted as a tool to strengthen investigative reporting and a means to promote openness and check wrong doings on the part of public agencies.

Finally, the government formed a taskforce to draft a Bill on Right to Information in September 2007, after the Interim Constitution 2007 guaranteed this right as a fundamental right for the second time. The seven-member taskforce was headed by former Secretary of the Judicial Council, Kashi Raj Dahal. A majority of the other members of the taskforce were career journalists and representatives of media unions, and consisted of both government and non-government members.

The RTI laws and practices of South Africa, India and Thailand served as an inspiration for the drafting committee, and exposure to them supported the process of drafting the law for Nepal. Debates were held between members of the taskforce and representatives of different groups such as media, CSOs, NGOs, legal practitioners, parliamentarians, bureaucrats, the private sector, security agencies and so on. There were some concerns on provisions related to proactive disclosure and the definition of 'information', but these were resolved easily. No substantial dissent arose since this process was taking place immediately after the popular movement of April, and the RTI was seen as a tool to empower people. The government had some reservations about the Bill submitted by the Taskforce and made certain amendments to it before tabling it in the Parliament.

Freedom Forum and Citizens' Campaign for Right to Information (CCRI), worked along with the taskforce to ensure the maximum possible participation of the public in the process. They successfully bridged the gap between the interim parliament and civil society in the process of the finalisation of the bill.

The parliament endorsed the draft produced by the taskforce with amendments on 18 July 2007 and the Act came into force on 19 August 2007. The National Information Commission provided for by the RTI Act was appointed on 4 June 2008.

Currently, all political parties seem to be supportive of RTI. The Maoists are also positive in their statements, but are not forthcoming when concrete political commitment is needed for the promotion of the RTI Act. However, no party has taken any bold initiatives towards

strengthening the RTI Act and its effective enforcement. The parties have also not yet implemented the provisions of the RTI Act with respect to their own functioning. Public commitment without any implementation is the problem of the political parties in Nepal with respect to the RTI Act.

The Nepal Army (NA) has not brought the RTI Act into its activities, but it has also not made any public statement against the enforcement of the RTI Act. A case was filed by Gyanendra Raj Aran in the Defence Ministry seeking official and digital copies of the details of the deaths of Nepal Army personnel during the Maoist insurgency. He submitted his application on 24 January 2008 (facilitated by the Freedom Forum Litigation Support Unit). The NA did not entertain his application and no information was provided. So far no information has been provided by the NA through the use of the RTI Act.

Civil servants however, have recently started using the RTI Act, particularly in cases related to their promotions and transfers. The business community has not yet substantially utilised this Act to seek information.

The role of the judiciary regarding RTI implementation in Nepal can be deemed important from two aspects - hearing appeals on RTI cases, and enforcement within its own scope of work. The past history of the involvement of the judiciary is positive and proactive, since the RTI was first introduced in Nepal and constitutionally guaranteed to the people by the bold initiatives taken by the former Chief Justice of the Supreme Court Biswonath Upadhyay, and former Justice Laxman Aryal. While its role on hearing appeals on RTI has been positive, its implementation of RTI within its own scope of work has not been so praiseworthy.

In 2009, Freedom Forum learnt that the government had decided to classify information related to every ministry and all government bodies without following the transparency related processes specified in the Right to Information Act. According to Article 27 of the Right to Information (RTI) Act, there needs to be a three-member committee comprising of the Chief Secretary to the Government (Chairperson), Secretary to the relevant Ministry (Member), and a subject matter expert (Member) to classify information at the policy level for the protection of information related to subsection (3) of section (3). Further, the committee has the right to classify only exceptional information in a particular way but not all general

information. The government however, decided to flout this legal provision, and informed the National Information Commission (NIC) about the classification exercise without fulfilling the processes required under law. This is a disturbing development that not only contravenes the RTI Act, but also undermines the process of empowering people and strengthening democracy. Disturbingly, the NIC, which only reserves the right to review the classification of information, has remained tight-lipped on this development. Freedom Forum strongly protested against this action and urged the government to immediately make public the decision regarding the classification of information, to annul this illegal decision, and to respect the spirit of Act.

Though NGOs in Nepal have realised the importance of the RTI Act in empowering the people and fostering good governance, they have not been able to promote its usage. Most NGOs lack adequate knowledge on using the RTI Act and are therefore unable to expand its reach to the grassroots level. Only a few NGOs in the capital have the required knowledge and experience because of their involvement in the RTI movement from the very beginning. The importance of the role of NGOs in Nepal lies in spreading public awareness and making advocacy efforts at the grassroots level. Even as some NGOs outside the Kathmandu valley are including the RTI in training events, the problem in Nepal is that the concerned Ministries and Authorities have not circulated directives to public agencies for the execution of the provisions of the RTI Act. In this context, mere awareness among the people will be ineffectual, as they will not get a response even when they demand information.

Although the movement for an RTI Act was spearheaded by media professionals and their dominance was visible in advocacy efforts, NGOs were also at the forefront and were key to the success of the movement that resulted in the enactment of the law. Their poor involvement since can be attributed to a lack of adequate and in-depth knowledge on its use and scope.

At the same time, it is the stark reality in Nepal that many critical development issues have been relegated to the backburner with most attention being paid to constitution-making and securing a stable and secure post-conflict governance environment. Much time has been spent on the issues pertaining to constitution making, particularly the contentious issues of state restructuring and forms of governance.

Hence, the RTI Act has been overshadowed by a focus on other issues. However, there still exists a political commitment from political actors and the government for the promotion of RTI.

This country paper on RTI has been divided into five major parts, including the content of the law; its assessment, and the experience of implementation including its utilisation; opportunities and challenges; and the way forward. The first part deals with the guarantee of the RTI in the constitution and international instruments, and its salient features. This part of the paper also sheds light on the key positive features and controversial provisions in the RTI law of Nepal. The second part provides a brief assessment of the implementation of the RTI, focusing on strengths and weaknesses with regard to enforcement authorities and systems, information officers, appeal mechanisms, record management, awareness-raising and others. The third part describes the use of RTI as a tool to promote democracy, good governance, and human rights illustrated with selected cases. The major challenges that surfaced in the implementation of RTI have been outlined in the fourth part, while tasks ahead are mentioned in the fifth part of the paper.

PART 1: LEGAL FRAMEWORK OF THE RIGHT TO INFORMATION

Constitutional provisions

Article 27 of the Interim Constitution of Nepal, adopted by the House of Representatives in January 2007, guarantees the right to information in terms which are identical to its predecessor, the 1990 Constitution (Article 16).[4] The Interim constitution of 2007 has expanded the ambit of this right to cover personal information.

Right to information, which has been considered to be a part of the right to freedom of expression by international human rights courts in recent years, is protected by the international instruments to which Nepal is a party. The International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of expression and *inter alia* right to information under Article 19.[5] Such international instruments are part of the Nepalese legal system according to the

[4]Article 16 of the Constitution of Kingdom of Nepal, 1990 provides that "Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance. Provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law."

[5]Nepal ratified the ICCPR on 14 May 1991.

Nepal Treaty Act.[6]

RTI ACT 2007: KEY FEATURES

The RTI Act 2007 has a number of progressive features. It guarantees the right to information as a fundamental right, subject to exceptions, contains a broad definition of public bodies, and mandates the establishment of the National Information Commission (NIC). At the same time, the Act suffers from some weaknesses including a regime of exemptions which are not subject to a public interest override.

SCOPE

The scope of the RTI Act 2007 has three dimensions - bodies that have an obligation to respond to requests for information, types of material included in the definition of "information", and who is entitled to exercise the right to access information.

The RTI Act applies to all 'public agencies', a term which is defined in Article 2(a). The definition covers constitutional and statutory bodies, agencies established by law to render services to the public, or agencies operating under government funding or controlled by the government. It also covers political parties and organisations, and non-governmental organisations (NGOs) which operate with funds obtained directly or indirectly from the Nepal government, a foreign government, or an international organisation.

The Act has defined 'information' as any written document, material or information related to the functions, proceedings thereof or decision of public importance made or to be made by public agencies.[7] The term 'written document' includes any kind of scripted documents and any audio visual materials collected and updated through 'any medium' and that can be printed and retrieved.

Article 3 of the Act provides that the right to information belongs to 'every Nepali citizen' and accordingly, every Nepali citizen shall have access to the information held by public agencies.

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[6]Article 9 of the Nepal Treaty Act 1991 states that, "If any provision of the treaty of which His Majesty's Government or the Kingdom of Nepal is party, after such treaty is ratified, acceded or approved, is inconsistent with any law in force, such law to the extent of such inconsistency, shall be void and the provision of the treaty shall come into force as law of Nepal".

[7]Article 2(b)

EXEMPTIONS

The Act provides five categories of interests that could justify a refusal to disclose information. The list includes national security, information affecting harmonious relations among various castes and communities, privacy and others.[8] A public body may only invoke these exemptions if there is an "appropriate and adequate reason".

In a situation when a request is made for a record which contains some information that can be released and other information to which an exception applies, the law provides that the concerned information officer has to provide the requested information after separating that from the information that cannot be released.[9]

APPLICATION PROCESS

Each public body must appoint an Information Officer (IO) who will be responsible for dealing with information requests. A Nepali citizen who wishes to obtain information must submit an application to the relevant IO mentioning the reason.[10] The IO is obliged to provide information immediately, or within 15 days, or provide a notice to the applicant of the reasons for any delay.[11] The IO must provide requested information within 24 hours of the request in case the information is related to the safety or the life of any person.[12]

APPEALS

The Act includes detailed provisions on appeals against refusal to provide information, as well as other failures to comply with the RTI Act.[13] An applicant may appeal to the head of the public agency within seven days in case he is not provided with the information or provided only partial information. In the Act, this appeal has been referred to as a 'complaint'.[14] After investigating such a complaint, the head shall order the Information Officer to provide information as demanded by applicant if it is found that the information was wrongly denied, or only partially provided, or wrong information was

[8]Article 3(3)
[9]Article 3(4)
[10]Article 7(1)
[11]Article 7(3)
[12]Article 7(4)
[13]Article 9 and 10
[14]Article 9 (1)

provided, or make a decision that information cannot be provided.[15] In the latter case, he has to provide a notice stating the reasons to the applicant.[16] In case of dissatisfaction over the decision made by the head, the requester may file an appeal to the National Information Commission (NIC) within 15 days. The NIC may summon the IO or the concerned Head and take their statements, review the evidence and inspect any document held by the public body. The Commission shall have to reach a decision within 60 days. This decision can also be appealed against in the appellate court within 35 days.[17]

Article 32 and 33 provide for compensation and other remedies where the Commission finds that the head of a public body, or an IO processed a request improperly.

PROACTIVE DISCLOSURE

Public bodies under the RTI Act are obliged to classify, update and disclose information on a regular basis.[18] The Act provides a concrete list of information that is mandatory for public bodies to disclose proactively. However the Act has failed to provide guidelines about the process of making information public.[19] The concerned provision simply states that the public bodies may use different national languages and mass media while publishing, broadcasting or making information public.[20]

NATIONAL INFORMATION COMMISSION

The Act provides for the National Information Commission, which is a permanent mechanism to hear complaints with respect to the law. The Commission is composed of a Chief Information Commissioner and two other Information Commissioners, who are appointed by the Government at the recommendation of a committee. The committee consists of the Minister for Information and Communication, the President of the Federation of Nepalese

[15]Article 9 (2). There is no specific timeframe imposed on the Head to make his decision.
[16]Article 9 (4)
[17]Article 34
[18]Article 4(2)(a)
[19]The Act is silent whether such disclosure is made through publishing documents or uploading information on the website of concerned public bodies, or by disseminating through media or simply by posting the information on the notice board of the office.
[20]Article 4(3)

Journalists and the Speaker of Parliament, with the latter acting as chair.[21]

The commission has a wide mandate; the RTI Act outlines a broad role for the Nepal Information Commission as a promoter and protector of the right to information. The execution of this role by the Commission is indispensable for the successful implementation, and fulfilment of the objectives, of the RTI Act. Apart from its major responsibility of adjudication on cases, it may issue orders to public agencies, provide recommendations and suggestions to the government and other public bodies, and prescribe timeframes to public bodies to provide information. However, the Act does not provide an advocacy or awareness-raising role to the Commission in an explicit manner.

The Commission's budget is provided by the government.[22] An annual report of the Commission's activities must be published and laid before the Parliament every year.[23]

PROTECTION OF WHISTLEBLOWERS

The Act provides protection for whistleblowers, affirming the responsibility of employees within public agencies to provide information proactively on any ongoing or probable "corruption or irregularities" or on any deed constituting an offence under prevailing laws.[24] Further, it is forbidden to cause harm to or punish a whistleblower for such disclosures, and whistleblowers may complain to the Commission and demand compensation in cases where they are penalised.

RTI REGULATION 2008

The Regulation was adopted pursuant to Article 38 of the RTI Act 2007. Among other things, it provides the schedule of fees to obtain information, elaborates the list of information to be disclosed by public agencies proactively, describes the procedures for an appeal to the Commission and provides the template for an appeal. It also sets the time limit for the heads of public agencies to respond to complaints made by applicants, thereby filling the gap existing in the Act.

[21]Article 11(1)-(4)
[22]Article 23
[23]Article 25
[24]Article 29

CRITIQUE OF THE RTI ACT 2007

Positive Aspects

The RTI Act 2007 clearly states that the law shall come into force after the 30th day of its validation and does not give any discretionary power to the government to prevent it from coming into effect.[25] The RTI Act was passed on 18 July 2007 and entered into force on 19 August 2007. It was indeed a challenge for the government to get ready for its implementation, which could be deemed a positive aspect.

Another positive aspect of the act is the broad coverage of the public bodies that are obliged to provide information.[26] The Act also imposes the obligation for updating, maintaining and disclosing information, and provides a concrete list of information that is mandatory for public bodies to disclose on a regular basis.

This process is to be facilitated by the appointment of Information Officers. Likewise the special timeline of 24 hours for providing information relating to the defence of human life, and minimal costs to be paid by applicants for information are some other positive provisions.

The provision of compensation is one of the most important provisions of the act. It states that if any person incurs losses or damages due to information not being provided, providing partial or wrong information, or destruction of information by the Head of public agency or Information Officer, such a person may appeal to the Commission for compensation within 3 months from the date of not acquiring information, acquiring partial or wrong information or destruction of information (Article 33.1). Furthermore, it has authorised the Information Commission to order compensation to the applicant from the concerned agency taking into account the losses to the applicant.[27]

[25]The law came into effect after Speaker of Parliament validated it. In the past, a number of Acts contained a provision where it states that the law shall come into force when the government publishes a notice in the gazette. In the case of RTI, the legislature did not give that discretion to the government.

[26]Article 2 (a)

[27]Article 33 (2)

SHORTCOMINGS

There are a number of provisions which can undermine the effectiveness of the law. The flaws mentioned here have been identified comparing the Nepalese RTI law to international standards of freedom of expression and right to information, according to the analysis of the law made jointly by Article 19, Freedom Forum, and Federation of Nepali Journalists.[28]

The Act has guaranteed the access to information only to a Nepali citizen and not to an individual.[29] This provision limits the access of other people who are not citizens but have a real concern about the information being sought. This limitation is against the standards set by the International Covenant on Civil and Political Rights (ICCPR).[30]

Also, part of the scope of the application of the law remains unclear and this may need to be better worded for clarity. The definition section of the Act does not specifically make clear whether the RTI Act applies to the legislative and judicial branches of government, as well as to the executive.

A Nepali citizen who wishes to obtain information must submit an application to the relevant information officer, "mentioning the reason". Likewise, the Act has also incorporated a clause that the information demanded by the citizen should be of "public importance". This provision discourages information seekers and limits the scope of the RTI Act and does not meet international standards. These provisions should be removed, in line with international standards and practices. The NIC has not furnished any substantial interpretation regarding this nor has it handled any such cases so far.

In many countries there are provisions under right to information laws that information sought for public use such as research are provided without fee. Strict fee provision regardless of the use of the information is another lamentable provision of the act.

The exemption regime in the RTI Act is one of its weakest points and it fails to strike a careful balance between the right of the public

[28]See "An analysis of Right to Information Act 2007". Authored by Article19, Freedom Forum, Federation of Nepali Journalists, 2007. Available at www.article19.org.
[29]Article 2 (1)
[30]Article 19, ICCPR

to know and the need to protect other important public interests. Inclusion of public interest overrides, where information is to be disclosed in case the importance of information overweighs the interests protected by the exemptions would have been better. The Act introduces a classification process for information in Article 27. Essentially, the Act establishes a committee tasked with determining whether one of the exceptions found in Article 3(3) applies to official documents. The committee can declare a document classified for a maximum of thirty years and an additional period of confidentiality may be added by the committee where deemed necessary based on the nature of the information therein.

The classification scheme introduced by the Act is marred by a lack of conceptual clarity. Classification should be an administrative practice, designed to ensure a proper internal management of information. However, classification status should be irrelevant to the question of whether a document is subject to disclosure under the RTI Act. When a request for access to a document is received, this request should always be judged on the basis of the exceptions regime contained within the RTI Act. A separate law or civil service rule may regulate classification levels, to ensure the appropriate management of files within public bodies. This should not, however, affect the question of disclosure under the RTI Act.

The RTI Act has no clear override effect regarding the enforcement of its provisions. Article 37 of the RTI Act states that all matters in this Act shall be carried out according to this Act, while other matters shall be dealt in accordance with other prevalent laws. The legal status of provisions in the RTI Act which contravene other prevalent laws are ambiguous, and this has impeded its implementation.

PART 2: IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT

The sections above illustrate how the constitutional and legal provisions in the RTI Act in Nepal are to some extent in line with international standards. However, the level of implementation is poor and after two-and-half years, the Act does not live up to the aspirations of the people. "The government feels that its responsibility is over after the promulgation of the Act and has not taken concrete steps to give it massive publicity and take it to the people's level which has resulted in the non-implementation of the Act", says RTI researcher Yek Raj Pathak.

IMPLEMENTATION AND ENFORCEMENT MECHANISMS

Implementation

One of the major problems concerning the effective implementation of the RTI Act is the lack of a coordinating body. The Act does not state which ministry is responsible for the implementation of the Act. There is no unit established by the executive branch for its implementation, and there are no clear responsibilities allotted within the executive branch.

Similarly, ministers, concerned public and non-governmental entities and political parties that come under the purview of RTI are reluctant to comply with its directives, and most are unaware of their responsibilities regarding the implementation of the people's right to know. Government officials still behave as if information generated in their offices is their private property. This unfortunate situation arises from a lack of a coordinating body for the implementation of the RTI Act.

After its establishment, the Nepal Information Commission (NIC) organised a 'Commitment Workshop' in December 2008, where then Prime Minister Pushpa Kamal Dahal and other ministers, the Chief Secretary to the Cabinet, and other high level officials participated and expressed their commitment to the implementation of the Right to information Act. Prime Minister Dahal vowed to uphold the right to information in that workshop. "Until and unless political leadership and senior government officials are committed, the right cannot be ensured effectively", says Vinaya Kasajoo, the Chief Information Commissioner.

ENFORCEMENT AND OVERSIGHT

The NIC has a significant role in implementing, promoting and monitoring the implementation of the RTI Act, but it has not made any noteworthy progress towards that end. "It is a very disappointing situation that people are still not aware that information held by public bodies could be received on demand. No government mechanism is looking into the enforcement and monitoring of the RTI implementation" Pathak added, stressing the need for the NIC to be active and cooperative towards promoting the culture of freedom of information in Nepal.

In its first year, the Commission decided on 12 appeals, organised

a Commitment Workshop at the central level, organised 5 regional workshops for the heads of public agencies and information officers, and organised district-level training-cum discussion programmes for information officers in 15 districts. The Commission also organised awareness-raising programmes in 3 other districts in partnership with the Asia Journalist Foundation.

Similarly, the Commission published and disseminated a booklet entitled 'The Right to Know' on 28 September 2008 celebrating World Right to Know Day. The Commission has also published 'Right to Information Implementation Guidelines' for heads and information officers of public agencies. Likewise it has published leaflets, translated the law and regulations into English, prepared and broadcast public service announcements (PSA) in Nepali and 4 other national dialects. Apart from this, the Commission is disseminating information through its website. However, the efforts have been meagre and have had no substantial impact regarding the protection, promotion and use of the RTI Act.

The number of appeals filed in the Information Commission shows that the appeal mechanism has not been used widely by the public. So far only 12 appeals demanding information have been submitted to the NIC. The Act has provided no provision for appeals against decisions made by the Commission. Therefore, these decisions are technically final. However, this was not the case when the Commission ordered the provision of copies of marked answer sheets as demanded by one university student. The defendant, Tribhuvan University, has filed a writ petition in the Supreme Court to quash the order of the Commission. The case is subjudice in the Supreme Court. Similarly, in some cases, public agencies have denied applications asking for information when applications were sent through the postal service.[31]

The scope of the responsibilities of NIC needs to be reviewed to make it more efficient in discharging its role.

INFORMATION OFFICERS

According to the Act, it is the primary responsibility of the public bodies to appoint Information Officers immediately after the Act

[31] See Annual Report of National Information Commission. Available at: http://nic.gov.np/download/annual_report_2065_2066.pdf.

comes into force. However this primary obligation has not been completely fulfilled. According to the website of the Nepal Information Commission[32], which has maintained data on information officers, central level public bodies such as ministers, constitutional bodies, and regional level public agencies have appointed information officers. However, the offices at the district level are not fully complying with this provision. None of the courts functioning at the district level have appointed IOs.

There is no fixed tenure of the person appointed as information officer. During interviews, government officials were critical about the lack of security of tenure for persons appointed as IOs. IOs appointed at the level of the ministry/department being senior and experienced officers are transferred from one post to another frequently. Such frequent transfers have affected the continuity and progress of their work.

RECORD MANAGEMENT SYSTEM

There is no proper record management system in place in Nepal which has frequently caused problems on the supply side to provide information in line with the RTI Act. No archives are maintained and no other systems are in place. Documents in most offices are packed in sacks.

Information management is itself a challenging task. No concrete programme or policies have been proposed, and no investment or human resources have been allocated for it.

A case reported in a recent edition of *Dristi Weekly* (23 February 2010) reflects the poor management of records in public agencies. The owner of the Biratnagar-based Hotel Xenial was told by the tax office that a portion of his income tax could be exempted if he provided the evidence of closure of business during curfews imposed by the administration due to civil unrest. When he approached the District Administration Office (DAO) to get information about the imposition of curfews, no records were available.

PROACTIVE DISCLOSURE

Routine disclosure is a key element of any right to information regime, as many people will find it difficult to file requests for

[32]See www.nic.gov.np.

information to public bodies, said Chairperson of the Federation of Nepali Journalists (FNJ), Dharmendra Jha. "But it is not found widely prevailing in practice in Nepal", he added.

Proactive disclosures imply that public agencies should disclose certain information even if there is no request made by citizens. Generally, proactive disclosure is carried out by publishing information on the websites of public bodies. However, merely uploading information on websites is not adequate in Nepal, given the low level of internet penetration (less than 1.7% of the population).[33] As stated above, the RTI Act lacks provisions on procedures and methods for proactive disclosure. Similarly, it is not clear in the Act whether proactive disclosure is the obligation of the Head of the Public Agency, or of the Information Officer.

In addition, the compliance of proactive disclosure is quite uneven. The website of the Ministry of Finance contains a wealth of information such as budgets, economic surveys, a brief description of the work profile of different departments and divisions, and their progress reports in English and Nepali. The website of the Department of Land Reform and Management contains a description of the services provided and the complete procedure involved for accessing these services. However the website of the Ministry of Home Affairs contains very little information apart from a brief description of its activities. The Ministry of Youth Affairs and the newly set up Ministry for Culture and State Restructuring do not have websites of their own.

TRAINING OF OFFICIALS

The Act has made it compulsory for offices concerned to arrange periodic training for information officers, and to enhance their capacity to disseminate information in a systematic manner. But this is yet to be done. In addition, training on RTI should also be provided to all civil servants to strengthen the supply side. The Nepal representative of Article 19, Tanka Raj Aryal states, "Openness of public agencies will materialise only when requesters get information on time and in a usable format, and public agencies promote proactive disclosure and respect the citizens' right to access information". For this to happen, capacity building of officials is a must.

[33]See http://www.internetworldstats.com/stats3.htm.

PUBLIC EDUCATION/AWARENESS CAMPAIGN

The lack of awareness about the RTI Act, and its significance is a big problem. "No massive awareness campaigns have been conducted to educate people about their right to access information", said Santosh Sigdel, an RTI advocate in Nepal. Citizens are still confused about which agencies provide what types of information.

Given the size of Nepal, the small number of information requests made so far are indicative of the lack of awareness amongst the general public. With this in mind, the NIC has mobilised mass media to some extent, and has conducted sensitising workshops, seminars, and interactions in various districts. Unfortunately, so far the intervention has been minimal. "Owing to a lack of adequate and appropriate human resource in the Commission, the intervention is limited to some districts. However, it has been decided to expand this campaign nationwide in collaboration with organisations working in this field", states the NIC Annual Report 2009.

Besides this, civil society organisations like Freedom Forum have launched some initiatives to educate the public and create awareness on the use of the RTI Act to serve the broader objective of promoting a culture of openness. However, much more has to be done in this sphere before it will reflect in the number of requests seeking information. "The Forum has facilitated processes in filing applications to seek information from public agencies in line with the RTI Act", Freedom Forum Program Coordinator Krishna Sapkota said, adding that the Forum has also been directly involved in demanding information of public importance related to elections, government funds, development projects etc.

PART 3: OPPORTUNITIES IN THE UTILISATION OF THE RTI ACT

UTILISATION BY CIVIL SOCIETY

Utilisation of the Act by Civil Society Organizations (CSOs) assumes considerable importance in the governance process and as a bridge between the community and public agencies. CSOs can not only play an important role in monitoring public service delivery by encouraging wider participation of citizens, but also in generating awareness, advocating and creating a critical mass to check possible corruption in public agencies and bodies.

Access to information not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process.

RTI AS AN EFFECTIVE TOOL TO CHECK WRONGDOINGS: THE CASE OF THE DISASTER FUND

In view of checking wrongdoings of public authorities, Freedom Forum submitted an application to the Office of the Prime Minister and Council of Ministers (OPMCM) on 10 November 2008, demanding information regarding the amount deposited in the PM Natural Disaster Relief Fund from various individuals and organisations for the Koshi flood victims.

The application also demanded information about the number of people displaced due to the destruction of the Koshi river embankment, the government report thereof, details of amounts deposited in the Fund, names of donors and details of the distribution of the relief funds.

It became clear that the government had misused the Relief Fund for Koshi victims when Jagadish Regmi, under-secretary of OPMCM, Press and Information Management Unit, gave the information that the government had used money from this Fund for other purposes and in other districts. According to him, the government had approved 2.5 billion rupees for Koshi reconstruction. However, without furnishing justifiable reasons, the government provided 10 million rupees from the Fund to other districts.

After the revelation of this fact, the Koshi flood victims took their protests to new heights. Panchanarayan Mandal, President of Koshi Flood Victims Struggle Committee, said that they "were not getting relief funds as per the budget granted in their name". Koshi flood victims then launched a fresh protest with the demand of transparency.

It is important to mention that this is the first time, since its implementation, that the RTI Act was successfully used in a real sense.

INITIATIVE FOR GOOD GOVERNANCE THROUGH RTI

In a bid to promote the constitutional right of citizens to seek and receive information, Freedom Forum has been making efforts towards enhancing good governance and facilitating the people's involvement in this massive campaign through various means.

An RTI application filed by Freedom Forum demanded information about the Local Governance and Community Development Programme (LGCDP), which was supposed to have been developed with the aim of performing national activities based on principles of good governance and co-ordination.

The application filed on 15 March 2009 sought detailed information from the government about the concept of the LGCDP programme, copies of related guidelines, details of funds collected from the Nepal Government and other bodies, names of policy bodies and their responsible officials and representatives, and names of officials designated to implement the program and their responsibilities, duties and working areas amongst others.

Likewise, comprehensive information about governmental, non-governmental and community-level partners selected for working in cooperation with the government on the Programme, related rules, regulations and copies of the guidelines, activities performed under the Programme, copies of progress reports till date, different agreements held between the Government of Nepal and donor countries and other institutions under the LGCDP were also demanded through the application.

After receiving the information, Freedom Forum provided the information to the media and a number of newspaper articles were produced based on that information.

Civil society organisations have also not expanded their role in promoting an RTI culture in Nepal despite their potential strength in engaging the citizenry in this movement. Their efforts are not focused on making people aware on the use of the RTI Act and connecting it with different areas such as governance, livelihood, transparency and civil rights. Civil society organisations are agents of change that have the capacity to develop a critical mass, but this is not being done substantially. Civil society could use the RTI Act to strengthen the citizenry and encourage their direct role in governance.

UTILISATION BY PRESS/MEDIA (INVESTIGATIVE JOURNALISM/CATALYST ROLE)

Nepali media, which was engaged in the continuous advocacy for the formulation of the Act, has also not been exercising the rights guaranteed by the Act. The media sector could improve its performance, enhance its credibility and explore more issues concerning human interests by utilising this Act in gathering information and developing follow-up stories. "But the press has failed to embrace the procedures of the Act", said NIC Chief Commissioner Vinaya Kumar Kasajoo. Reporting in the press is still guided by the culture of 'verification' through telephone and traditional means. "Journalists are always obliged to work under time pressure; so it is difficult for us to adopt lengthy processes under RTI", said a reporter for *The Himalayan Times*, Kamal Dev Bhattarai.

"It is the weakness on the part of the Nepali press to use unreal, unverified, partial and incomplete information in the name of quick and easy reporting", admitted Senior Correspondent for Rastriya Samachar Samiti (RSS), Yek Raj Pathak. Due to the indifference of the media regarding the utilisation of the Act - which could be a tool to assist journalists to find accurate, balanced and credible information, people have not been motivated to use this Act. It has not been used as a catalyst to seek more information and propel investigative journalism.

RTI FOR INVESTIGATIVE REPORTING

In one notable exception, Ramji Dahal, a journalist for Himal Media, used the RTI Act to seek the details of expenses, as well as a copy of the report of the Probe Commission formed to investigate the incident of the murder of journalist J.P. Joshi in Kailali. He filed an application at the Office of the Prime Minister and Council of Ministers in line with the RTI Act, Clause 7(a) on 26 January 26 2010. "I did not get complete information from the authority concerned and I appealed to the Home Ministry again citing dissatisfaction with the information given to me", said journalist Dahal. The ministry has not yet decided on his appeal.

UTILISATION BY BUSINESS SECTOR

Access to information laws can help facilitate effective business practices. Commercial requesters are one of the most significant user groups of such laws. According to Chairperson of the Federation of

Nepalese Chambers of Commerce and Industry (FNCCI) Kush Kumar Joshi, "Public bodies hold a vast amount of information of all kinds, much of which relates to economic matters and which can be very useful for enterprises". The potential for increasing the effectiveness of business is an important benefit of access to information laws, and helps answer the concerns of some governments about the cost of implementing such legislation, he added.

Use of RTI by the public to monitor transparency in the private sector if financed through public money enhances third party monitoring in this sector as well. Whether the private sector is able to influence the government in limiting the rights of citizens to access financial information is also an issue to be observed by civilians.

UTILISATION BY NEPALI CITIZENS

As mentioned before, the Nepali people have not been able to grasp the full power of this legal instrument. It is still regarded as the exclusive domain of journalists. However, media is also not extensively using the RTI Act as a tool for investigative journalism and to develop awareness on the use of this act. "Lack of awareness among people mostly belonging to marginalised sections in rural areas is a barrier to access to information", said Nayan Bahadur Khadka, executive member of Citizen's Campaign for Right to Information (CCRI). "The need for frequent follow-up visits, the non-friendly attitude of the officials of the concerned agency, and difficulties in entering the Singha Durbar - the main administrative building of Nepal Government - in course of purposive works are discouraging factors in seeking and receiving information", said Ram Hari Dulal, Office Assistant of Freedom Forum. He added, "I have visited the Office of the Prime Minister and Council of Ministers (OPMCM) and Home Minister 17 times to follow up on an application demanding information on separate murder incidents in Dang and Surkhet districts". The government has formed commissions to probe into the incidents and Freedom Forum filed applications demanding the reports drafted by the commissions be made public.

PART 4: CHALLENGES IN THE IMPLEMENTATION OF THE RTI ACT

Political Transition

The state has not been able to focus much attention or plan any

concrete action with regard to the implementation of the Act, since the government has needed to focus its efforts on the epoch-making Constituent Assembly (CA) elections and on managing the transition. The government has not come up with any institutional design to implement the Act since it feels that its responsibility was over with the promulgation of the Act.

LACK OF POLITICAL COMMITMENT

Though it has been proved by international experiences that RTI can be an effective tool to foster an open and transparent society, create an informed citizenry and build an accountable government, the lack of visionary leadership and commitment to enforce the Act has remained a major stumbling block. It is widely recognised that an important issue to tackle in the early stages of implementation is unambiguous political will. No political party in Nepal has appointed an Information Officer to impart information as per the RTI Act which serves as evidence that political parties lack commitment to it.

LACK OF MONITORING MECHANISMS

In order to ensure the effective implementation of the provisions of the Act, it is important that effective systems and processes are in place. The Act has clearly specified the provision that every public agency should disclose information every three months in a proactive manner, but this has not materialised in actions. This is because there is neither a strong mechanism to enforce the implementation of the law into practice, nor any system to monitor whether the Act is being implemented in line with its objectives.

DEEP-ROOTED CULTURE OF SECRECY IN CIVIL SERVICE/ BUREAUCRACY

It is alleged that the civil service and bureaucracy in Nepal have nurtured a culture of secrecy. The general practice is that employee competence in civil service is evaluated on his/her capacity to maintain secrecy. This orientation of the employees is all-pervasive and is supported by the Civil Service Act which does not encourage authorities to provide information held by public agencies on demand. This culture has remained as one of the big challenges in the implementation of the RTI Act.

LIMITED CIVIL SOCIETY CAMPAIGN

Even after considerable time has elapsed following the enactment of the law, people are neither using this law as a tool to check bad practices in the governance system nor utilising it to safeguard their interests. Civil society organisations have not fulfilled their obligations to stimulate the demand side of the implementation of the RTI Act. Until and unless people realise the power of this tool, it will just remain a mere piece of paper. Additionally, civil society has to increase their monitoring role in the implementation of the Act and devise coordinated and concerted efforts to create mechanisms to implement the Act.

PART 5: FUTURE OF THE RIGHT TO INFORMATION

Major recommendations regarding the future of the RTI Act in Nepal are presented below.

State

The state should take the initiative for overall constitutional reforms with regard to the provisions in the RTI Act. Every person regardless of nationality, residence and other status should be able to exercise their right to information.

Government

- The government should develop a model agency to demonstrate exemplary practices related to RTI so that other public agencies can replicate them.
- A unit should be set up either under the Office of the Prime Minister or the Ministry of Information and Communication to coordinate the implementation and monitoring of the RTI Act. The government should take overall leadership of the RTI Act with high political commitment.
- All Ministers, Departments and Central Public Agencies should comply with the provisions of the RTI Act at the secretariat, regional, district and line agency level, outlining the various tasks that need to be undertaken for ensuring effective implementation of the Act.
- Record management system and practices should be improved in public agencies, including local governments to facilitate quicker access to information.

- Internal communication mechanisms in public agencies should be developed by harnessing modern information technologies.
- Classification of information carried out under the leadership of Chief Secretary should be annulled at the earliest.
- Efforts should be made to include civic education on RTI in the curriculum in secondary and higher secondary school levels.
- The government or concerned ministries should immediately dispatch copies of the RTI Act to public agencies with a particular focus on information officers.
- Initiatives should be taken to make the general public aware on the use of the RTI Act and strengthen the demand side so as to promote an RTI culture.
- The National Information Commission should be made effective and efficient by bringing about reforms in its court-like working procedures and lackadaisical working style.
- The Commission should be kept independent of the government. It should possess the authority to appoint employees needed to execute its plans and activities.
- Necessary training should be provided to representatives of public agencies across the country to facilitate the recruitment of IOs in consultation with civil society organisations, NIC and consultants.
- In order to promote the culture of openness and proactive disclosure of information, employees in public bodies should be provided training, and arrangements should be made to have regular interaction between information officers and media persons.

PARLIAMENT

- The Act should be amended to make it clear that it covers all three branches of the government, and private bodies rendering public services.
- All records should fall within the scope of the definition of information regardless of whether they relate to 'functions, proceedings or decisions of public importance'.
- The Act should add public interest overrides guaranteeing

that information will be released where it is in the overall public interest.

- The Act should not provide for a classifying system. Decisions on whether to disclose information should be made on a case-by-case basis rather than on the classification status.
- The fee structure should make it clear that applicants may only be charged the costs involved in duplicating and delivering the requested information.
- The culture of providing information only on demand should be put to an end by adopting measures to promote openness. For example public bodies should be required to publish opportunities for public participation in their decision making processes.
- Whistleblower protection should apply broadly to all disclosures of information which reveal the existence of any serious threat to public interest such as public health, environment protection and so on.

INFORMATION COMMISSION

- The network of the Commission should be expanded nationwide and volunteers should be deputed as per need.
- The Commission should consult selected public agencies and develop and circulate schemes containing minimum content and templates for the purpose of proactive disclosure required under the Act.
- The Information Commission should sensitise stakeholders, including on the demand and supply sides on RTI, in an effort to promote the use of the RTI Act.
- The Commission should develop close coordination with civil society organisations (CSOs) for the promotion, protection and practice of RTI.

CIVIL SOCIETY AND NON-GOVERNMENT ORGANISATIONS

- Civil society organisations and freedom of information advocates should constantly carry out advocacy to ensure progressive RTI in the constitution.
- Litigation support should be provided to information requesters free of cost and a free hotline service should be

introduced.

- RTI guidelines focusing on different stakeholders (demand and supply sides) such as civil society and media should be prepared and disseminated.
- A comprehensive study on the assessment of the implementation status of RTI in Nepal should be carried out which could make recommendations for improvement.
- Research should be carried out to identify the legal provisions specified in other Acts and laws which contravene the RTI laws. This will help facilitate the implementation of the RTI Act.
- The general public should be informed about the definition of a public agency. A massive campaign for creating public awareness on the legal provisions and use of RTI in various contexts should be carried out so that people can develop a sense of ownership of the law. Information, Education and Communication (IEC) materials should be prepared and taken to the general public through different media.

MEDIA

- The media should raise awareness about the RTI Act and its usage by producing news and articles so that people belonging to different walks of life could explore its utilisation.
- The media should use it as a tool to carry out investigative reporting.
- The media should constantly bring up the issues of reforms regarding the RTI Act as this would put pressure on the government. Journalists should maximise the use of RTI to explore issues of public interest.

DONORS AND DEVELOPMENT AGENCIES

- Financial, technical and policy support from donors is essential for the government, NIC and civil society organisations engaged in promotional and capacity building activities.
- Support from donors and development agencies should also be focused on infrastructure development across the country.

7

Right to Information in Pakistan

Iffat Idris

INTRODUCTION

Pakistan was a pioneer in South Asia in passing RTI legislation, but today it would be fair to say the country lacks a strong RTI regime. This paper examines the reasons for this and what can be done to bring about more effective access to information in Pakistan.

The paper begins by explaining the origins and main features of the FOI Ordinance 2002, and critiquing its design: the areas in which it does not conform to accepted principles for sound RTI legislation. It then looks at the record of implementation in Pakistan: measures taken by the government as well as the extent to which citizens have made use of the law. In the third section 'Challenges and Opportunities' the paper examines the interests and role played by different stakeholders (political parties, civil society, the media, donors, etc). It concludes with recommendations for measures to move from the current situation to one that genuinely provides citizens with access to information.

1. HISTORY AND BACKGROUND

1.1 Background to FOI Ordinance 2002

Pakistan was the first country in South Asia to pass an RTI legislation. This happened in 2002 but efforts to pass freedom of

information (FOI) [the term more commonly used in Pakistan] legislation had been underway for many years prior to that. In the 1990s Senator Khurshid Ahmed (Jama'at-i-Islami) tabled a private member's bill for FOI which was rejected by the government.[1] This was a personal rather than party initiative, motivated by the desire to strengthen accountability. In 1996 Justice (retd) Fakhruddin G. Ibrahim, Minister for Law in the caretaker administration, drafted a Freedom of Information Bill. A diluted version of this was promulgated as an Ordinance on 29 January 1997 by President Farooq Ahmed Khan.[2] However, once an elected government took office, it failed to present the Ordinance for parliamentary approval; after 120 days it lapsed.

General Pervez Musharraf seized power in October 1999, and in 2000 the Minister for Information and Broadcasting, Javed Jabbar, drafted and circulated a new FOI bill. He initiated a wide-ranging consultation with stakeholders – including civil society groups - but the exercise was cut short by his resignation. Government interest in FOI legislation then appeared to wane. But in October 2002, after elections to the National and Provincial Assemblies were held, but before elected governments had assumed office, President Musharraf promulgated the Freedom of Information Ordinance. Negligible stakeholder/civil society consultation was carried out: the FOI Ordinance 2002 was very much a 'top-down' initiative. Though issued by presidential decree, it was protected under the Legal Framework Order and therefore did not require parliamentary approval.[3]

[1] Mukhtar Ahmad Ali, '*Freedom of Information in South Asia: Comparative Perspectives on Civil Society Initiative',* pp. 6.

[2] The original Bill had a provision for FOI legislation to over-ride other legislation, but this was dropped in the Ordinance. Fakhruddin Ibrahim resigned before the Ordinance was promulgated because of differences with the President over this and other issues.

[3] Article 270 AA (3) of the Legal Framework Order (LFO) states: 'All Proclamations, President's Orders, Ordinances, Chief Executive's Orders, laws, regulations, enactments, notifications, rules, orders or bye-laws in force immediately before the date on which this Article comes into force shall continue in force until altered, repealed or amended by competent authority.' The LFO was issued by President Pervez Musharraf in August 2002. It provided for the general elections of 2002 and revival of the 1973 Constitution of Pakistan, but added numerous amendments to the Constitution. The Supreme Court ruled that all amendments would have to be approved by two-thirds of both houses of parliament. Following the October 2002 elections, Parliament was deadlocked on the issue. But in December 2003 the Jama'at-i-Islami and affiliated parties 'made a deal' with Musharraf and approved the Seventeenth Constitutional Amendment which incorporated parts of the LFO in the Constitution. The FOI Ordinance 2002 was promulgated by the President before restoration of the Assemblies, and is thus protected under the LFO/17th Amendment.

Two key factors prompted the Musharraf government to pass FOI legislation: one, its desire to overcome international hostility stemming from its military background and lack of democratic roots; two, pressure from donors. By presenting itself as pro-reform – and specifically as committed to good governance - the administration hoped to win international support. FOI legislation was part of a much wider reform package which included devolution, justice sector reforms, promotion of gender equality, and so on.[4] This strategy, coupled with Pakistan's position as a frontline state in the war on terror, succeeded in attracting vast international funding to the country. The Asian Development Bank (ADB) was one of several international donor agencies that invested heavily in governance reform in Pakistan. ADB's Access to Justice Program (AJP) had a total value of US$350 million. Passage of FOI legislation was one of the policy conditions for release of AJP loan funding to the Government. This is widely considered as being the main driver behind the FOI Ordinance 2002. Subsequent efforts at legislative reform are detailed in Section 3.

1.2 Main Features of FOI Ordinance 2002

Objective – 'To provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens'.

Scope - The 2002 Ordinance applies only to the federal government; it does not provide access to information held by provincial or local governments. Within the federal government it applies to all ministries and departments, councils, tribunals and other such bodies, but it does not apply to the defence services or to government-owned corporations. It allows only citizens of Pakistan to access information.

Type of Information – The Ordinance allows access to 'public records' which are defined as: policies, and guidelines; property transactions and expenditure; information about grant of licenses, contracts, etc; final orders and decisions; and anything else notified by the federal government as public record.

[4] Many of these other reforms also failed to achieve their objectives, in large measure because of the lack of stakeholder consensus and ownership. The Local Government Ordinance 2001, for example, has since been rejected by the provincial governments and they are engaged in a process of de facto 'decentralization'.

Exemptions – These are numerous and include: notings on files, minutes of meetings, intermediary opinions or recommendations, records relating to the personal privacy of any individual, records declared as classified by the federal government; records relating to defence forces, installations and national security; banking companies and financial institutions' customer records and 'any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance'. There are numerous 'public interest' provisions for withholding information, including: anything that could damage Pakistan's relations with other countries; that could cause commission of an offence/harm security of any property or system; damage/impede an inquiry or investigation; cause damage to the economy; cause damage to the financial interests of a public body.

Relation to Existing Laws – The FOI Ordinance 2002 does not have primacy over other laws. Its provisions 'shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force'.

Automatic Disclosure and Record-keeping – The Ordinance makes it mandatory for public bodies to publish standard information such as accounts, annual reports, organizational set-up, contact details (including of concerned officials), manuals and so on. They are also required to maintain proper, updated, indexed records and to computerise and network these and ensure they are available across the country. However, this carries the proviso 'subject to finances' and public bodies are allowed a reasonable period to do so.

Responsibility – The Ordinance requires all relevant public bodies to designate officials responsible for handling FOI requests. It specifies that they are 'to ensure easy public access to information'.

Time – Requests for information must be responded to within 21 days. If information cannot be provided the applicant must be given a written answer explaining why within 21 days of the request being made.

Appeals Mechanisms – If information is not provided, if a request for information is refused (which the applicant feels should be accessible) or if applicants have any other grievances, they must first take complaints to the head of the public body concerned. This must be done within 30 days of the refusal/denial, etc. Once the time allocated for the department head to respond has lapsed, if no

(satisfactory) response is forthcoming, applicants can then take their complaint to the Federal Ombudsman (or Federal Tax Ombudsman for cases related to the Revenue Division). The Ombudsman can uphold a complaint and order disclosure, or reject the complaint. The law does not specify any appeals mechanism beyond the Federal Ombudsman.

Sanctions – For officials/personnel found guilty of destroying information that was the subject of a request/complaint, so as to prevent its disclosure, the Ombudsman can impose prison sentences of up to two years. But the Ordinance states that 'no suit, prosecution or legal proceedings shall lie against any person for anything which is done in good faith'. For complaints found to be malicious or frivolous the Ombudsman can impose fines up to Rs. 10,000.

1.3 Freedom of Information Rules 2004

The FOI Ordinance 2002 stated that 'The Federal Government may… make rules for carrying out the purposes of this Ordinance'. This was interpreted in different ways: some (notably government bodies) claimed the rules were an essential requisite for FOI implementation, while others (notably CSOs) claimed the Ordinance had come into immediate effect and lack of rules could not be a reason for non-disclosure. This position was upheld by the Federal Ombudsman, who also stated that the absence of rules amounted to malpractice.[5] The FOI Rules were eventually notified in 2004.

The key procedures for accessing information outlined in the Rules are as follows:

Designated Officials – Each public body head is to designate an official, not below BPS grade 19 (a senior officer) to provide information to applicants. Should an official not be designated, the head of the public body shall be considered the designated official.

[5] The Centre for Peace and Development Initiatives (CPDI), an NGO, submitted an information request to the Ministry of Information under the FOI Ordinance 2002. The Ministry sought advice from the Cabinet, which advised it not to disclose the information because rules setting out the procedure for dealing with requests had not yet been formulated. CPDI complained to the Ombudsman, arguing that if the absence of procedural rules was accepted as a valid reason for non-disclosure that would effectively override the FOI Ordinance. The Ombudsman ruled that the information should be disclosed and that the absence of rules amounted to malpractice.

Application for Obtaining Information – Requests must be made on designated application forms. This requires the applicant to declare the 'purpose of the acquisition of the information or record'; they must also sign a declaration that 'the information obtained would not be used for any purpose other than specified above'.

Fees - An initial information request carries a fee of Rs.50 which must be deposited in designated banks. This fee gives access to a maximum of ten pages of documents: for additional pages there is a charge of Rs.5/page.

Disposal of Complaints by Head of Public Body – a time of 30 days from receipt is allowed to heads of public bodies to dispose of complaints relating to denial of information requests.

1.4 Critique of FOI Ordinance and Rules[6]

Freedom of information is a fundamental human right guaranteed in Article 19 of the Universal Declaration of Human Rights. FOI is critical for citizen empowerment, transparency and accountability, good governance, development and thus poverty reduction. FOI legislation is necessary to ensure that citizens can access information. The design of FOI legislation greatly determines its impact – whether or not FOI is delivered in practice.

In the case of Pakistan's FOI Ordinance 2002 and the 2004 Rules, there are significant 'design flaws' where they divert from accepted good RTI practice:[7]

§ RTI legislation should be based on the premise of maximum disclosure. The FOI Ordinance 2002 starts from the opposite premise – of what *can* be made available to citizens.

§ RTI legislation should be applicable to all public bodies (including private bodies receiving public funds) and to all information held by them. The FOI Ordinance is applicable only to some federal government bodies and to some of their documents. [Note: The 1997 Ordinance covered provincial and local/municipal records.]

[6] To see how the RTI legislation and rules in Pakistan compare to those of other countries see David Banisar, *Freedom of Information 2006: A Global Survey of Access to Government Information Laws,* (Privacy International, 2006) and Toby Mendel, *Freedom of Information: A Comparative Legal Survey,* (UNESCO, 2003).[7] See, for example, Thomas Blanton , 'The World's Right to Know', *Foreign Policy,* (No. 131, 1 July 2002), available at: http://www.foreignpolicy.com/articles/2002/07/01/the_worlds_right_to_know?page=full

§ Exemptions to RTI legislation should be kept to a minimum, should only be allowed where there will be clear harm to public interest in disclosing information, and should be clearly defined so scope for ad hoc interpretation and abuse is curtailed. The FOI Ordinance has an extensive list of specified exemptions (defence information, minutes of meetings, etc), on top of which it provides a virtual 'blanket' exemption 'in the public interest' – which is not defined.

§ Access to information provided under an RTI law should override restrictions imposed by other laws. The FOI Ordinance 2002 is not supreme – indeed, it could even be said the FOI Ordinance and Rules *add* to existing restrictions on information access.

§ RTI legislation should ideally provide access to all people. The FOI Ordinance 2002 only provides access to citizens of Pakistan.

§ The requirement under the FOI Ordinance 2002 for an explanation as to why the information is being sought, and the mandatory affidavit that applicants will only use it for the stated purpose, undermines citizens' fundamental right to access and use information.

§ Procedures for accessing information should be kept simple and ideally cost-free. The FOI Ordinance Rules require applicants to fill out an application form, sign an affidavit, deposit fees in a bank, pay Rs.50 [US$ 0.6] for the first ten pages and Rs.5/ additional page, i.e. they are far from simple or cheap.[8]

§ RTI legislation should enable quick access to information. The FOI Ordinance and Rules allow public bodies 21 days to respond, allow the head of the public body 30 days from receipt of a complaint about denial of information to address it, and allow the Federal Ombudsman a further 30 days to respond to complaints made to that office – all of which can make for a very lengthy procedure. There is no provision to deal with urgent information requests.[9]

[8] The rationale behind having a fee and setting it at the Rs.50 level was to prevent people making 'frivolous' information requests: 'if the fee pinched people would only ask for information if they really needed it'. It was also designed to meet photocopying costs, and to put pressure on civil servants to respond.

[9] By comparison the Indian Right to Information Act 2005 allows 30 working days to grant/respond to standard information requests, but where the information requested concerns the life and liberty of a person, it has to be provided within 48 hours of the receipt of the request.

§ RTI appeals mechanisms should be independent. The bodies involved should be mandated to enforce release of information where this is illegally with-held and to monitor implementation. The FOI Ordinance 2002 assigns this responsibility to the Federal Ombudsman, an already over-burdened and under-resourced institution.[10]

§ RTI legislation should include scope to punish wrong-doers and protect whistle-blowers who provide information about wrong-doing. There is scope in the FOI Ordinance 2002 for punishments of up to two years imprisonment for public servants guilty of failing to provide information, but this is countered by the 'good faith' clause which gives them almost 'blanket' protection. No protection is provided to whistle-blowers.

Given these numerous 'design flaws' – in particular the numerous exemptions, procedural difficulties, and weak enforcement mechanisms - one could conclude that the FOI Ordinance 2002 fails to fulfil its purpose, namely to provide access to information. As one observer commented: the law 'lacks the presumption of freedom'.[11]

[10] The mandate of the Wafaqi Mohtasib (Federal Ombudsman) is to ensure bureaucratic accountability: specifically 'to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration'. This is defined in the broadest sense covering both acts of commission and omission. Its jurisdiction extends to all federal government agencies, with exceptions such as the defence services and *sub judice* cases. The Federal Ombudsman Office was set up in 1983 but has faced persistent problems with lack of resources, lack of adequate and qualified staff, and lack of a permanent building. While there has been some increase in resource allocations, the number of cases being reported to the Office has increased at a faster pace. In short, it lacks the capacity to fulfil its pre-FOI mandate, let alone to deal with the additional workload imposed by the FOI Ordinance 2002.

[11] The Official Secrets Act states that even an individual found in possession of 'official information' can be prosecuted, but gives no definition for this – allowing very wide scope for prosecution. Section 11 of the Security of Pakistan Act 1952 gives the federal government the power to require an editor, publisher or printer to disclose the name of a confidential source of information deemed likely to endanger the defence, external affairs or security of Pakistan – again undefined, and potentially very wide-ranging terms. The Maintenance of Public Order Act 1960 allows 'draconian' restrictions to be applied on the media, including requirements to prohibit publication and require the disclosure of a confidential source. Article 6 of the Qanoon-e-Shahadat Order states: 'no one is permitted to disclose official record relating to the affairs of the state unless authorized to do so by head of the department concerned, who shall give or withhold such information as he thinks fit.' Article 7 states that no government official can be compelled to give information 'when he considers that the public interest would suffer by disclosure'. Section 123-A of the Pakistan Penal Code criminalizes anything prejudicial to the safety or ideology of Pakistan or which amounts to 'abuse' of Pakistan. The lack of definition about these terms creates considerable scope to apply Section 123-A to anyone giving out information.

1.5 Related Legislation

The access to information (albeit limited) provided by the FOI Ordinance 2002 is both supplemented and undermined by related legislation. It is supplemented by the Local Government Ordinance (LGO) which provides for proactive disclosure of information by local governments (e.g. display of public accounts) and gives citizens the right to obtain information. Two provinces – Baluchistan and Sindh – have passed FOI legislation allowing access to information from provincial public bodies. The Baluchistan FOI Act was passed in December 2005, and the Sindh FOI Act in 2006. Both are based on the federal law template and are identical except for their respective jurisdictions and the role assigned to the Ombudsman. They appear to have been passed as part of a wider pattern of federal legislation often being followed by 'replica' provincial legislation; not as a result of civil society mobilization. However, the rules for these provincial FOI laws have not yet been notified, meaning implementation is negligible.

Access to information in Pakistan is undermined by the Official Secrets Act 1923. Though dating back to British India, this is still in force. Further curbs on information release are imposed by the Security of Pakistan Act 1952, the Maintenance of Public Order Act 1960, the Qanoon-e-Shahadat (Law of Evidence) Order 1984, the Defence of Pakistan Rules and the Pakistan Penal Code.[12] Civil service rules also conspire against public disclosure (see section 3.1).

2. IMPLEMENTATION STATUS

FOI legislation is the first step in establishing a sound FOI regime: equally important are the measures taken for implementation. Essential steps are resource allocation, public awareness campaigns, capacity building of relevant officials, improved record-keeping and proactive disclosure.

2.1 Implementation Responsibility

Primary responsibility for implementation of the FOI Ordinance and Rules has been assigned to the Cabinet Division. It is supposed to ensure that all relevant ministries and departments appoint designated officers to address information requests; it is to help build the capacity of public bodies to implement FOI and respond effectively

[12] The National Archives focuses on collecting and preserving records with 'bearing on the history, culture and heritage of Pakistan'. The material it largely relates to the colonial era and the Pakistan Movement.

to requests; it is to monitor implementation (number of requests received, response) on a monthly basis. While the Cabinet Division has a coordination role, each individual ministry/department/public body also has FOI responsibilities: to appoint a Designated Officer; facilitate the public in making requests and accessing information; ensure a sound and accessible record-keeping system; proactively publish reports, manuals, rules, etc. Finally, the Federal Ombudsman is responsible for handling complaints about FOI requests. Its role is discussed below.

2.2 Implementation Measures

Pakistan's RTI legislation was passed in 2002; almost eight years on, implementation is still extremely weak. This can be gauged from the following:

§ *Resources* - There have been no resource allocations for FOI implementation in the public sector budget. The limited funds for FOI training activities have been provided through donor-funded programs.

§ *Training* - Some capacity building of relevant officials was undertaken by ADB under its Access to Justice Program. But there has been no widespread or systematic training program for FOI implementation. It should also be noted that the frequent transfers of postings in the Pakistan civil service, mean any learning is unlikely to have been institutionally retained.

§ *Record-Keeping* – Efforts (if any) to improve record-keeping have been undertaken by various ministries/public bodies on their own initiative; not as part of a systematic and coordinated drive to facilitate information access. The National Documentation Wing of the Cabinet Division has made significant progress in indexing its own records and applying modern technology to preserve and make old records accessible. However, its scope is confined to Cabinet records; even these are still not fully automated. Individual ministries and departments are responsible for managing their own records: there is no centralised body for this.[13] The situation with regard to record-keeping in most other

[13]Another AJP loan condition was for the appointment of Designated Officers within each ministry/department to act as focal point for interaction with the Wafaqi Mohtasib Secretariat (Federal Ombudsman); the same individuals were appointed Designated Officers for both the WMS and FOI.

ministries is much worse than in the Cabinet Division: the norm is still hand-written, poorly indexed and stored paper files (see 3.2 below). The computerization of records of each public body called for in the FOI Ordinance 2002 is a distant prospect.

§ *Designated Officers* - Designated officers have been appointed in some federal ministries/bodies;[14] these are generally of the rank of Deputy Secretary. A list of Designated Officers is available on the Cabinet Division website. As of February 2010 just five names were given, including the Deputy Secretary of the Cabinet Division itself.[15]

§ *Awareness-Raising* – No public awareness campaign has been conducted by the government to make people aware of their rights under the FOI Ordinance 2002 and the procedures by which they can access information. The Cabinet Division has apparently prepared a plan for a publicity campaign,[16] but lacks the resources to implement it.

§ *Monitoring* - The National Documentation Wing, within the Cabinet Division, keeps records of FOI complaints made to different federal ministries/bodies (see below).

§ *Handling Complaints* - The Federal Ombudsman office carried out some training for investigation officers dealing with FOI cases. Initially these cases were assigned to different investigation officers (according to the agency they dealt with), but at the end of 2009 a centralised system was introduced in which all FOI cases – irrespective of the agency involved – are handled by the same investigation officer.

§ *Proactive Disclosure* – All laws, rules, regulations, notifications, etc are published in official gazettes. But the FOI Ordinance 2002 requirement for these to be 'made available at a reasonable price at an adequate number of outlets' has not been met: the print run for official gazettes is very limited, they are only available at a few select places in major cities. Furthermore they are in English and therefore incomprehensible to most people. All government departments and ministries are required to publish annual reports

[14] Full list of Designated Officials for Implementation of FOI Ordinance 2002 available on Cabinet Division website: http://202.83.164.26/wps/portal/Cabinet under 'Policies' and 'Freedom of Information Ordinance'.

[15] Interview with Director, National Documentation Wing, Islamabad, Feb. 2010.

[16] Interview with Aftab Alam, advocate, Centre for Research and Security Studies. Islamabad, Feb. 2010.

and make these accessible to members of the public. But again, the reports are printed in very limited numbers and are difficult to obtain. Their quality also tends to be poor, so they don't provide useful information. Most ministries have a spokesperson but their role is usually very limited; information release tends to be of a reactionary nature, or about official events such as visits. The spokespersons are not geared towards promoting transparency and engagement with the public. Moreover, they tend to be senior officers with numerous other duties.

2.3 Record of FOI Use

A number of indicators can be used to assess the level of FOI use in Pakistan: number of information requests made and proportion of responses; number of complaints made to the Federal Ombudsman and disposal of these; number of court cases/judgments referring to FOI.

a) Number of Requests

According to reports maintained by the National Documentation Wing (Cabinet Division), the total monthly tally of information requests made to all federal ministries/departments/bodies comes to an average of 1-5 requests. In the report for November-December 2009, for example, the majority of ministries reported 'nil' – they had received no information requests in that period. Estimates for the total number of information requests submitted since 2002 vary from less than 500 to over 1,200.[17] Even based on the higher figure, the average number of requests per year is around 100, i.e. extremely low. Furthermore, most of these were submitted as 'test' requests by civil society organizations rather than by 'ordinary' members of the public.

Case Study 1: FOI Request About Government Lawyers' Fees[18]

The CSO CPDI submitted an information request to the Ministry of Law, Justice and Human Rights, asking for the names and addresses of lawyers hired by the Ministry to represent the Federal Government in the Supreme Country between 1 Oct 2002 and 20 March 2008, the total amount paid by the Ministry, and the fee paid to each lawyer. The Ministry denied the information request, arguing

[17] *CPDI Information Requests Changing Culture of Secrecy,* p. 6.
[18] Brig. Salim, *Freedom of Information,* pp.5-6.

it would open a 'Pandora's box'. CPDI passed this on to a journalist Ansar Abbasi, leading to a front-page story in the *News* and *Jang* 'Law Ministry protecting Musharraf's Legal Extravagance' [14 July 2008]. The publicity led to an MNA posing the same question to the Minister for Law in the National Assembly; the information was then released. This was followed by prominent media coverage of the amounts paid on 12 August 2008.

b) Number of Complaints to Federal Ombudsman

Between 2003 and 2007, 51 complaints relating to FOI were made to the Federal Ombudsman – an average of almost 13 per year.[19] Of these, again the majority were from civil society organizations: only 8 complaints were made by ordinary members of the public. Most cases were decided in favour of the complainant. The Federal Ombudsman is generally considered to be efficient in responding to FOI complaints.[20] The record of response by government agencies to decisions by the Ombudsman to disclose information is mixed: in some cases information was then released, in others the agency applied to the Ombudsman for review, and in others they simply failed to comply.[21] As of January 2010, there were some 30 cases being dealt with the by Federal Ombudsman FOI Investigation Officer, of which only one was from an ordinary citizen: all the others were from civil society organizations.[22]

Case Study 2: FOI Request about Cost of Date Palm Trees[23]

CPDI submitted an information request to Islamabad's Capital Development Authority (CDA) asking for the number of date palm trees planted in the city's Blue Area and the cost incurred on each. At the time there was a lot of speculation in the media and among the

[19] This was the view expressed by all CSO representatives interviewed.

[20] These varied responses are reflected in CPDI's *Brief on Information Requests January – December 2005,* which details the progress of a number of information requests made by the CSO. Note that in all cases there was an initial refusal to disclose information, leading to CPDI lodging complaints with the Ombudsman.

[21] Interview with FOI Investigation Officer, Federal Ombudsman Secretariat, Islamabad, Feb. 2010.

[22] *CPDI Information Requests,* p. 5.

[23] As well as those detailed in footnote 13, Rule 18 of the Government Servants (Conduct) Rules 1964 states: '"No Government Servant shall, except in accordance with any special or general order of the Government, communicate directly or indirectly any official document or information to a Government Servant unauthorized to receive it, or to a non-official person, or to the press."

public about the origin of the trees and price – estimates ranged from Rs.5,000 to Rs.100,000. The CDA did not respond to CPDI's request, and after 21 days the CSO complained to the Ombudsman who directed the CDA to release the information. It transpired that each tree cost Rs.990 [US$ 16 based on prevailing exchange rate] but that a total of Rs.2.4 million had been spent. The request led to the Federal Ombudsman formulating guidelines for the handling of FOI complaints.

3. CHALLENGES AND OPPORTUNITIES

3.1 Public Sector Culture of Secrecy

A culture of secrecy is deeply rooted within the Pakistani civil service and dates back to the colonial era. There is a vast body of laws and rules which restrict the release of information.[24] The 'fear' of punitive action inculcated by these makes civil servants hesitant to release any information at all.[25] This culture of secrecy is an obvious impediment to FOI implementation.[26] A further constraint is that the civil service mentality in Pakistan is not geared towards 'serving the public': quite the opposite, in fact, with a sense of superiority and elitism being widely held. This too conspires against willing release of information to the public. The natural desire to cover up incompetence and wrong-doing is also a factor. These characteristics are related to wider governance failings – notably a lack of transparency and accountability in the public sector. The Musharraf government tried to implement wide-ranging reforms to promote

[24] 'The persistence of culture of secrecy is largely based on a large number of laws, rules and government instructions, which can be invoked anytime to punish officers who have violated them. These laws, rules and instructions are often so broad in application that even the disclosure of any information can be treated as unlawful. This makes government officials feel significantly insecure, and compels them to usually decide in favour of secrecy even in cases where information requested is of very ordinary nature. It is also because of this that, even when government officers do disclose information, they mostly do it informally. They are mostly very reluctant to put a cover note under their signatures or certify that the information disclosed is authentic, except when it is specifically and clearly required under the existing laws or rules.' *State of Transparency and Freedom of Information in Pakistan,* (CPDI), p. 7.

[25] This view was confirmed in interviews with Ijaz Raheem, former Cabinet Secretary; Syed Yasin Ahmed, former Additional Secretary Cabinet Division; and several CSO representatives; Islamabad, Feb. 2010.

[26] For a detailed assessment of the problems with record maintenance in Pakistan's public sector see *State of Transparency and FOI in Pakistan, op. cit.,* pp.11-12.

good governance, but its efforts were undermined by its undemocratic nature and by the lack of stakeholder participation in and ownership of the reform process.

So entrenched is the notion of holding onto information that government officials/departments are reluctant even to make available annual reports, rules, etc – documents that should be released as a matter of course. Classifications like 'Confidential' and 'Secret' are readily stamped on official files, without rigorous consideration of their necessity. The Cabinet Division has Declassification Committees which decide on an A, B or C classification of documents (A being the most secret), but generally there are no clear guidelines for such classifications. As a result they tend to be applied far more widely than is warranted.

3.2 Public Sector Lack of Capacity

Poor record-keeping is a major practical obstacle to FOI implementation. Most government bodies hold manual records, often in hard-to-access stores (particularly those dating back many years). There is a shortage of record rooms. Indexing is limited and automation even less. Records are not 'weeded out' to remove those that do not need to be preserved – leading to vast numbers of files being accumulated.[27] All this means that retrieving information is a physical activity that consumes a lot of time. The Federal Ombudsman has upheld some denials of information requests on the grounds that collecting the information sought would entail efforts by multiple people over multiple days – diverting them from their normal duties.[28] Thus in many cases, denial of information stems not from the culture of secrecy referred to above, but from reluctance to take on an onerous task and a lack of resources.

[27] This was confirmed in interviews with the FOI Investigation Officer, Federal Ombudsman Secretariat, and with Syed Yasin Ahmed, former Additional Secretary Cabinet Division and currently an Investigation Officer in the Federal Ombudsman Secretariat; Islamabad, Feb. 2010.

[28] Before becoming a member of parliament, Sherry Rehman worked in journalism for twenty years - including ten years as editor of Herald news magazine. She also served on the Council of Pakistan Newspaper Editors. Sherry Rehman first became an MNA in 2002, and was returned to parliament in 2008. She was appointed Minister for Information and Broadcasting in the PPP Government, but resigned after one year. She authored a number of bills tabled by the PPP relating to human rights (e.g. Women Empowerment Bill, Domestic Violence Prevention Bill), and tabled two private member's bills: Freedom of Information Bill and the Press Act.

Overall the generation, classification and preservation of information in government has been described as a 'medieval system' not suited at all to meeting FOI requirements.

3.3 Political Parties

A commitment to FOI was included in the Charter of Democracy, signed by Benazir Bhutto and Nawaz Sharif in May 2006. However, this is not considered reflective of deep-rooted political commitment to FOI; rather it came about because of prompting by Sherry Rehman, close advisor to Benazir Bhutto and a long-standing advocate for FOI reform.[29] An assessment of the manifestoes of some 112 national, regional and local level political parties prior to the 2008 election, found FOI mentioned in only 8.[30] A survey of six national level political parties to identify policy commitments on a range of issues included a section on freedom of information and transparency. Most parties committed to appoint designated FOI officers in all public bodies, reduce the photocopying fee to Rs.1/page, enact FOI legislation in the remaining two provinces and carry out a review of the status of FOI in Pakistan. The PPP gave no response to any of the questions.[31]

In addition to Sherry Rehman, a handful of politicians have some record of activism on the FOI issue. These include: Senator Raza Rabbani (PPP), currently Chair of the Parliamentary Committee on Constitutional Reform[32]; Farhatullah Babar[33] (PPP); and Ahsan Iqbal[34] (PML-N). Of the 'younger' generation of politicians, Doniya Aziz[35] (PML-Q) recently moved a private members' bill on FOI. But

[29] Aftab Alam, Centre for Research and Security Studies.

[30] *General Elections 2008. Beyond Manifestoes: Specific Policy Commitments of Political Parties,* (CRCP-Institute of Social and Policy Sciences, Islamabad, February 2008), pp. 28-29.

[31] Raza Rabbani is a former lawyer, with a long record of political activism and campaigning on rights issues. He was imprisoned for his opposition to the Martial Law regime of General Zia-ul-Haq. He has remained loyal to the PPP, but resigned from ministerial positions on a number of occasions because of disagreements with the party leadership over decisions he felt were non-merit based or undemocratic.

[32] Farhatullah Babar was a vocal critic of the Musharraf regime, particularly its alleged human rights violations and lack of democracy. He is currently spokesperson to the President and has since largely been silent on the FOI issue.

[33] Ahsan Iqbal is Information Secretary of the PML-N and former Minister for Education. He is regarded as one of the more intellectual politicians in Pakistan, well-educated and widely read, and with a strong commitment to promotion of democracy and human rights. He too was a long-standing opponent of the Musharraf regime.

[34] Doniya Aziz is a doctor by training, who only recently entered politics.

[35] This was the view of a number of CSO representatives interviewed for this paper.

in general FOI is not an issue that has captured the political imagination.

The PPP government that took power in February 2008 made early strong commitments to carry out FOI reform. In his speech outlining the government's agenda for its first 100 days in power, Prime Minister Yusuf Gilani pledged to introduce new FOI legislation. President Zardari also mentioned FOI in his first address to the Joint Assembly. This commitment by the PPP is, again, credited to Sherry Rehman. In her capacity as Minister for Information and Broadcasting she conducted stakeholder consultations on FOI reform and prepared the Draft FOI Bill 2008. While an improvement on the FOI Ordinance 2002, the provisions in the Draft Bill 2008 were considerably weaker than those in the private member's bill Sherry Rehman had tabled in 2004.

On 25 January 2009 the Draft FOI Bill was presented to the Cabinet, but has still not been included on the Cabinet agenda. Following Sherry Rehman's resignation as Minister, the government's interest in FOI reform waned. It holds a majority in the National Assembly and could get the Bill approved if it wanted to; particularly since the opposition parties are not against FOI reform. That it has not done so suggests that it has other priorities and/or that it is reluctant to pass legislation which would make government more accountable.

The Ministry of Information recently passed the draft Bill back to the Cabinet Division, noting that it had responsibility for FOI and hence any revisions in legislation should be initiated there. This apparently means that the reform efforts initiated by Sherry Rehman were misplaced, and the reform process will have to begin afresh from the Cabinet Division.[36] Irrespective of which public body should lead FOI reform, the 'bottom line' is that the government currently has negligible interest in this. 'Every Act requires ownership – there is no ownership for FOI.'

The only other sign of political activism on FOI is in Punjab: the Government of the Punjab recently established a committee to

[36]Another possible explanation is lobbying of the Punjab Government by CPDI: the establishment of an FOI Committee could be designed to show the CSO that the government is doing something. According to Zahid Abdullah, journalist and civil society activist on FOI, the Punjab Government is waiting for revised federal legislation before devising a provincial FOI law.

examine and make recommendations on the FOI issue. The Committee is headed by the Minister of Law and includes senior government officials, but has no civil society representation. This suggests that the initiative is more procrastination than evidence of strong commitment to FOI by the provincial government.[37]

Some progress has been made on the constitutional front. At the end of March 2010 the cross-party Parliamentary Committee on Constitutional Reform reached an agreement on a draft 18th Amendment. This covers a broad range of issues and proposes a total of about 100 amendments to various articles of the Constitution. The following article is to be inserted in Article 19: "19A. Right to information. Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law". The 18th Amendment Bill 2010 was passed by the National Assembly on 8 April 2010, and then submitted for approval by the Senate.[38]

3.4 Role of Civil Society

As seen, there was some civil society engagement in Javed Jabbar's efforts to pass FOI legislation; a couple of CSOs were also working on the issue at that time. But there was negligible civil society involvement in design or passage of the FOI Ordinance 2002. Not surprisingly, the top-down manner in which the Ordinance was promulgated, the fact that this was done by a military ruler, and the significant design flaws in the law, led to widespread civil society rejection of the 2002 Ordinance. The majority of civil society activists and groups wanted nothing to do with it.

However, a minority of CSOs took the view that – even if flawed – the access to information provided under the FOI Ordinance should be availed. They felt the process of using the FOI Ordinance would

[37]This was the status of the Bill as of 13 April 2010.

[38]Publications/papers on different aspects of FOI produced by CSOs are listed in Annex 1 under 'Secondary Sources'. They include CPDI's *State of Transparency and Freedom of Information in Pakistan* and CRCP's *Freedom of Information 2002 and Bills 2004 & 2008: Analysis and Recommendations.* Both CPDI and CRCP have been very active in making information requests. The outcome of some of these by CPDI are detailed in its *Brief on Information Requests Jan.-Dec. 2005.* The Centre for Civic Education will be launching a 'Postcard to the PM' campaign in the first quarter of 2010, in which members of the public will sign postcards asking about progress on the government's commitment to reform FOI legislation within its first 100 days in office..

eventually lead to pressure for more effective legislation and a stronger FOI regime. Of these CSOs, those with a long record of activism on FOI are:

- § Consumer Rights Commission of Pakistan – developed a Model FOI Act in 2000 and convened the first All Parties Conference on FOI in 2001;
- § Centre for Civic Education, Pakistan – headed by former journalist Zafarullah Khan;
- § Centre for Peace and Development Initiatives – both CPDI and CRCP have filed numerous information requests (as well as complaints to the Federal Ombudsman), in an effort to strengthen the legislation through use;
- § Shehri – a Karachi-based NGO working on consumer rights.

Examples of initiatives by such organizations include: preparation of briefing papers on FOI; holding seminars to raise awareness of FOI and push for legislative reform; making 'test' information requests to various government ministries and (if needed) complaints to the Federal Ombudsman; organizing a campaign of 'postcards from the public to the PM' asking about progress on the revised FOI Bill.[39]

There has generally been limited coordination and collaboration between these CSOs. Indeed, they have tended to display a competitive mentality (stemming in part from their dependence on the same pool of donor funding) and to place great stress on ensuring credit for their efforts. These traits are not conducive to networking and undermine the impact of their initiatives.[40] A further issue is lack of awareness and appreciation on the part of many civil society organizations about the significance of FOI for transparency, accountability and citizen empowerment.

The number of CSOs engaged on FOI has certainly increased since 2000, but when viewed as a whole, the FOI is still not a mainstream civil society issue. Of the factors highlighted above, the rejection of anything associated with the Musharraf regime and lack

[39] Pakistan has tens of thousands of CSOs, varying in size and scope from the community-level with miniscule resources to national organizations implementing large-scale projects. The latter are heavily dependent on donor funding, and this does lead to a 'competitive mentality'. However this trait appears to be far less pronounced among CSOs working on other issues, e.g. women's rights, labour rights, than among those active on FOI.

[40] *Nawaz Sharif vs. President of Pakistan,* PLD 1993, SC 473.

of awareness are the most significant causes. This lack of interest in FOI is despite the fact that in recent years, civil society in Pakistan has demonstrated a capacity for strong activism (notably for restoration of the judiciary). Civil society has become galvanised - but not on FOI. This again points to lack of awareness and appreciation of the potential of FOI to strengthen democracy in Pakistan. Until this situation changes and civil society becomes mobilised, it will be difficult to bring about significant reform: 'FOI will never come from the supply side'.

There has been a strong tradition of 'personalization' of the FOI agenda in Pakistan, i.e. it has been associated with a handful of key individuals rather than institutions. These include Senator Khurshid Ahmed, Justice (retd) Fakhruddin G. Ibrahim, Javed Jabbar, Barrister Shahida Jamal (Law Minister under President Musharraf when the FOI Ordinance was promulgated), Sherry Rehman, I. A. Rehman of the Human Rights Commission of Pakistan and Ijaz Raheem, Cabinet Secretary from 2004-6. Ijaz Raheem, for example, was pivotal in getting the FOI Rules 2004 notified and in pushing other ministries to appoint Designated Officers. Movement on strengthening FOI in Pakistan has been through the efforts of these few individuals. The downside of this is that, when the individuals move on, institutional interest in FOI subsides. After Ijaz Raheem left his Cabinet Secretary post, Cabinet Division activism on FOI abated. Similarly, since Sherry Rehman's resignation as Minister for Information, the PPP Government has put FOI on the backburner.

3.5 Role of the Media

The media is one institution that would be expected to have a keen interest in promoting FOI: access to information provides the substance for stories (investigative journalism). However this is not the case in Pakistan. A handful of journalists periodically report on the issue – Adnan Rehmat (*Intermedia*), Zahid Abdullah (*News*, *Dawn*), Matiullah Jan (*Dawn*), Ansar Abbasi (*Jang*) – but viewed as a whole there has been very little media interest in FOI.

There are a number of explanations for this. Firstly, the time involved in FOI requests does not suit the rapid pace at which the media operates and needs to deliver stories. This matters far less in investigative journalism, but there is not a strong tradition of investigative journalism in Pakistan: most reports are 'statement-based' [such an event happened, this was the response from VIP 1,

from VIP 2 and so on]. Secondly, the overall capacity of the media in Pakistan is weak. There are few qualified and experienced media persons – and with the rapid expansion in electronic media in recent years many more inexperienced people have entered the profession. These people are not trained to carry out (investigative) journalism. Thirdly, those media persons who do need and seek information, use sources and channels other than the FOI Ordinance, e.g. personal contacts. Fourthly, the media (like the public) do not associate FOI with the concerns of ordinary citizens. Program-makers think the current applications of FOI – to obtain information about highway projects, government-paid lawyers, parliamentarians with dual nationality, etc – are too boring for viewers; hence the negligible inclusion of the topic in TV discussions.

Two further points should be noted in the context of the media and FOI. One, recent media activism – particularly by the Jang-Geo group – to expose corruption on the part of senior government leaders (including the President) has given the government even less enthusiasm to facilitate access to information. The government does not wish to enhance the tools by which the media/civil society can hold them accountable. Two, the nomenclature of RTI legislation in Pakistan – Freedom of *Information* – causes confusion; many people associate it with media freedom.

A number of universities are now offering courses on FOI as part of their Media Studies programs. The course was developed by the CSO, Centre for Civic Education Pakistan (CCEP), and is currently being offered in seven universities including Allama Iqbal, Karachi, International Islamic and Fatima Jinnah Women's University. CCEP reports good interest in the courses, with a number of other universities planning to take it up. However, this is a long-term investment in developing media awareness and capacity, the impact of which will only be seen when students taking the course become media professionals.

3.6 Lack of Public Awareness

There is widespread lack of awareness about FOI, reflected in the very small number of information requests submitted. This has numerous causes: failure by the government to conduct a communications campaign when the Ordinance was promulgated, or at any time subsequently, and the failure by civil society groups to take up FOI as a mainstream issue are key factors. Because of poor

advocacy, ordinary citizens don't know about it or don't see the access to information provided under the FOI Ordinance as relevant to them, to their 'everyday' concerns and problems. The extremely small number of FOI requests submitted since 2002 is clear testimony to this. Civil society organizations active on FOI are also partly to blame: most of their 'pilot' information requests have been about 'macro-level' functioning of institutions, e.g. recruitment procedures in the CDA, award of contracts for highways – not issues that would mobilise a common person.

Further factors hampering the public are the difficulties associated with making information requests (form, fee deposit, etc), and low education and literacy levels in the population (the law and rules are in English). But even among the educated elite there is little awareness of FOI. Those citizens who are educated and have awareness of FOI would be more likely to use other channels to get information, such as *sifarish* (personal contacts). Finally, lack of confidence in the FOI Ordinance 2002 because of its restricted scope; the Ordinance only applies to federal ministries and departments while the sort of information ordinary people need would be found at provincial or local level.

3.7 Judicial Recourse

There is no provision for freedom of information in the Constitution of Pakistan, but in 1993 the Supreme Court ruled in the case 'Nawaz Sharif vs. President of Pakistan' that the right to freedom of expression – which is provided for in the Constitution – includes the right to receive information.[41] This is the only example of judicial activism on the FOI issue prior to the 2002 Ordinance.

Judicial activism following the Ordinance has been equally negligible. This is largely because the law provides no recourse to the courts for FOI cases. Complaints relating to denials/failure to provide information are, as a first resort, to be made to the head of the public body concerned; should that not yield satisfaction, then to the Federal Ombudsman. The law and rules are silent about what to do should that option be exhausted, but for non-FOI cases the normal procedure is to appeal to the President of Pakistan. Since there is no scope to bring FOI into the courtroom, lawyers have little interest in it. Very

[41] 'Indus Battery Industries (Pvt.) Ltd. (Petitioner) vs. Federation of Pakistan and others (Respondents)' Constitutional Petition No. D-2326 of 2006, heard on 11th October 2007.

few court judgements refer to FOI. A rare exception was a 2007 case in Sindh, in which the court judgement upheld the rights provided under the FOI Ordinance:

'It goes without saying that access to information is sine qua non of constitutional democracy. The public has a right to know everything that is done by the public functionaries. … Though this right has its limitations but every routine business of the public functionary cannot be covered with the veil of secrecy or privilege. Only where disclosures would cause greater harm than good that the disclosures are to be disallowed.'[42]

However, this ruling has not led to any noticeable change in the record of compliance (or lack of it) with the FOI Ordinance 2002.

3.8 Donor Interest

The FOI Ordinance 2002 came about primarily because ADB included it as a policy condition in the US$350 million Access to Justice Program loan. FOI is an integral requirement for good governance. As such one would have expected it to feature prominently on donor agendas, but this was not really the case. ADB's interest in FOI was the exception rather than the norm. Lack of appreciation among donors of the critical role access to information has in promoting good governance cannot be ruled out; nor donor reluctance to antagonise the government.

Since the removal of President Musharraf and the sharp rise in terrorist attacks in Pakistan, donors have lost interest - not just in FOI - but in governance as a whole.[43] Today it is not a priority among donors in Pakistan.[44] At best, one finds isolated small-scale initiatives

[42]Both ADB's 'flagship' governance programs – AJP and the Decentralization Support Program – have been wound up and the funds returned by the Government (disbursal was generally far less than 20%). ADB no longer has a Governance Unit in its Pakistan Resident Mission.

[43]This view was expressed by both ADB and DFID representatives interviewed for this paper. For details of donor assistance focus areas in Pakistan see, for example: World Bank *Country Assistance Strategy 2006-9* available at http://siteresources.worldbank.org/PAKISTANEXTN/Resources/293051-1150456082276/Contents-Summary.pdf; ADB *Country Partnership Strategy 2009-2013* available at http://www.adb.org/Documents/CPSs/PAK/2009/CPS-PAK-2009-2013.pdf.

[44]Strengthening Public Grievance Redress Mechanisms (SPGRM) Project with the Federal Ombudsman Secretariat, details available at http://undp.org.pk/strengthening-public-grievance-redress-mechanisms-spgrm.html.

for FOI promotion, e.g. the World Bank sponsored a conference on FOI legislation reform in June 2008; a UNDP project[45] with the Federal Ombudsman Secretariat includes activities for public outreach about the Ombudsman's role in handling FOI complaints; The Asia Foundation has supported some publications on FOI by CSOs, including CPDI's *State of Transparency* report.

4. LOOKING AHEAD

The analysis above highlights the fact that, while there are definite shortcomings in the 'supply side' of the FOI regime in Pakistan – flawed legislation and weak implementation by government – there are also clear failings on the 'demand side'. Civil society groups, the media, even political parties have not taken up FOI as a mainstream issue that can empower citizens, promote transparency and accountability. This suggests that legislative reform or other supply side measures - while needed - will not, on their own, deliver effective access to information. Both supply and demand for FOI have to be strengthened.

The following short-list of priority requirements to promote FOI in Pakistan is based on this premise:

§ The FOI Ordinance 2002 needs to be revised and brought in line with accepted best practice on RTI legislation. Wide-ranging stakeholder participation is essential in this process. BUT legislative reform should not hold up other reform efforts;

§ Ownership for FOI needs to be developed within civil society, legislators and the media;

§ Public awareness of FOI, its applicability to the concerns of ordinary citizens, and how to make use of it must be raised;

§ Public sector preparedness and capacity for FOI implementation needs to be enhanced.

In addition, efforts need to be made to change the culture of secrecy and 'superiority' in the public sector, i.e. to promote concepts of public service, transparency and accountability.

The list of specific measures/activities that must be carried out for these is much longer and would include, for example:

§ Establishment of a national committee on reform and implementation of FOI, with representation by government,

opposition parties, the media, civil society groups;

- § Setting of standards for information disclosure, including clear definitions of concepts like 'public interest', 'national security' and 'confidential';
- § Conduct of a public awareness campaign in Urdu and local languages, explaining in simple terms what FOI is, how it will help citizens and how they can make information requests;
- § Identification of strategic entry points for FOI, e.g. access to land ownership records, that can effectively demonstrate its relevance and utility, and encourage people to use it;
- § Identification and cultivation of 'champions' for FOI among politicians and parliamentarians;
- § Capacity building of media persons to understand the significance of FOI and encourage its use in investigative (and other) journalism;
- § Efforts by politicians, civil society and the media to 'reposition' the FOI issue in the context of enhanced transparency and accountability, and strengthening of democracy;
- § Capacity building of Designated Officials in government ministries and departments to enable them to handle information requests sympathetically and efficiently;
- § Investment in improved record-keeping systems (notably automation) across the public sector;
- § Promotion of proactive disclosure by public bodies, e.g. annual reports, rules, notifications, and implementation of measures to ensure ready accessibility of such information;
- § Efforts by civil society groups to promote networking and coordinated action to promote FOI. Greater interaction between CSOs would be a necessary condition for this.

While the first measure listed above – establishment of a national committee – would be relatively straightforward (provided there was political/government will for this), most of the other measures are geared towards the medium-to-long term and depend on FOI ownership within government/civil society. There are few short-term initiatives that could substantially promote FOI in Pakistan.

Donor organizations like the World Bank can play a role supporting both supply and demand sides of FOI. Obvious areas for

intervention include: technical and financial support to the government to improve its information management systems; sponsorship of stakeholder consultations on FOI; dissemination of lessons from international practice; and so on. Donor agencies also need to promote transparency in their own programs, and operationalise FOI in agreements with local partners.

Regional cooperation can be useful in promoting networking, identifying solutions, sharing lessons and experiences. Particularly useful would be ideas to promote public awareness of FOI and its relevance to the concerns of ordinary citizens, and the role played by CSOs in this. Government agencies could gain from the experience of counterparts in other countries in carrying out proactive disclosure, improving record management and handling information requests from the public.

ANNEXES

PRIMARY AND SECONDARY SOURCES

*Primary Sources**

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2. Zafarullah Khan, Director, Centre for Civic Education Pakistan (CCEP)
3. Adnan Rehmat, journalist, Inter-media News Agency
4. Zahid Abdullah, journalist, (formerly CPDI) Free and Fair Elections Network
5. Brigadier (retd) Ahmad Salim, Investigation Officer FOI, Federal Ombudsman
6. Ijaz Raheem, former Secretary Cabinet Division
7. Qamar-uz-Zaman, Director, National Documentation Wing
8. Muhammed Sarwar Khan, Senior Legal & Governance Specialist, Pakistan Resident Mission, Asian Development Bank
9. Ali Azhar, Governance Specialist, DFID
10. Aftab Alam, advocate, Centre for Research and Security Studies
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KEY FEATURES OF DRAFT FOI BILL 2008

As seen in Section 3.3 of this paper, the PPP-led Government is in the process of introducing new FOI legislation. This Annex details the main changes/differences in the draft FOI Bill 2008 from the FOI Ordinance 2002. Note that the analysis below is based on the draft circulated by the Ministry of Information at a stakeholder

consultation workshop organised in collaboration with CCED, and held in Islamabad on 22 March 2010. In that 'latest' draft, the new legislation is called the Access to Information Act 2009:

PREAMBLE/STATEMENT OF OBJECTS AND REASONS:

The Preamble criticises the previous administration of President Musharraf.

Whereas Right to know is an inalienable birth right of an individual and is universally recognised in a democratic dispensation, where the public officials are the custodians of the public records and documents, the people, the real sovereigns, have the right of access to all public records, subject to law and except the material disclosure of which nay be harmful to national security ,relations with the friendly countries and privacy of the life, home, family and honour of the citizen of Pakistan .

And whereas The Freedom of Information Ordinance ,2002 one of the nightmares of the despotic rule of strangulation of information and denial of fundamental rights to the people of Pakistan ,served as a suppressor and blocker of the information and has thus failed to achieve its declared objectives .

Therefore, with a view to opening up 'so called' secrets to the general public, the elected government intents to substitute the black and anti-information "Freedom of Information Ordinance 2002 (XCVI of 2002)" by a more democratic and people friendly Act of Parliament, "Freedom of Information Act, 2008" to ensure comfort and convenience for the people, openness and transparency in public offices and accountability of the public sector organizations.

MINISTER IN CHARGE

1. **Short Title, Extent and Commencement**: *The name of the legislation is changed:*

   (1) This Act shall be called Access to Information Act 2009;

2. **Definitions:** *The scope of 'public record' and 'public body' is expanded:*

   (i) "Public Record" means:

   (i) record mentioned in Section 7, in any form, whether printed or

in writing or in any form such as map, diagram, photograph, film, video, microfilm;

(ii) transactions involving acquisition and disposal of property and expenditure undertaken by a public body;

(iii) information regarding grant of licenses, approvals, consents, allotments and other benefits and privileges, and contracts made by a public body;

(iv) correspondence, summaries and notes relating to any of the above matters;

(v) any information required to be furnished by a person to a public body under any law or furnished for the purpose of receiving any benefit or advantage;

(j) "public body" means:

i. any Ministry, Division, Department or attached Department of the Federal or the Provincial Government;

ii. any Federal or Provincial legislature, and any Municipal or Local authority set up or established by or under any law;

iii. any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal or a Provincial Government;

iv. any incorporated or unincorporated body or legal entity functioning under the control or authority of the Federal or Provincial Government or wherein one or more of such Governments owns or has controlling interests, or which is funded by any such government;

v. any court, tribunal, commission or board.

5. Publication and availability of records: *The obligations on Principal Officers for proactive disclosure of information have been increased:*

(ii) The Principal Officer of each public body shall, within six months of the commencement of this Act, cause to be published in the Official Gazette or special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:

(a) description of the public body's organization and functions, indicating as far as possible the duties and functions of various officers of the body empowered to take decisions;

(b) statutes, statutory rules, regulations, orders, notifications applicable to the public body disclosing the date of their respective coming into force or effect;

(c) substantive or procedural rules and regulations of general application evolved or adopted by the public body;

(d) statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;

(e) the conditions upon which members of the public can acquire any licenses, permits, consents, approvals, grants, allotments or other benefits of whatsoever nature from any public body, or upon which transactions, and contracts including contracts of employment, can be entered into with the public body;

(f) the methods whereby specific information in possession or control of the public body may be obtained, and the basis of the fee required therefore;

(g) such other matters which the principal officer of the public body deems fit to be published in the public interest;

Provided that no information otherwise already published in the Official Gazette shall be required to be so published under this sub-section

(iii) any amendment, alteration or modification relating to matters described in sub-section (i) shall also be published and made available for inspection and copying in the like manner, and no person shall be adversely affected by any amendment, modification, or alteration of any matter other than a statute.

6. **Computerization of Record:** *The Government is required to maintain an FOI website:*

(2) The Federal Government shall maintain a FOI website listing updated rules, application forms, as well as the names and addresses of the designated officials.

7. **Declaration of Public Records:** *There is a provision for all public records to be made public after 20 years:*

(2) Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiations.

8. **Exclusion of Certain Record**: *The list of exclusions has been cut,*

i.e. the following items given in the FOI Ordinance 2002 are no longer excluded:

(a) notings on the files;

(b) minutes of meetings;

(c) any intermediary opinion or recommendation;

13. Procedures for Disposal: *The time period in which information has to be provided has been*

cut from 21 days to 14 days:

(1) Subject to sub-section (2), on receiving an application under section 12 , the designated official shall, within fourteen days of the receipt of the request, supply to the applicant the required information or, as the case may be a copy of any public record.

19. Recourse to the Mohtasib and Federal Tax Ombudsman: *Recourse to the courts is now provided for:*

(3) The complainant may be challenge the Mohtasib or the Federal Tax Ombudsman decision to classify or exempt a record in the High Court of competent Jurisdiction and in the event of an adverse decision appeal to the Supreme Court.

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Freedom of Information in Sri Lanka

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INTRODUCTION

Sri Lanka does not have a Right to Information Act on its statute books. However in the past 15 years or so there has been discussion on constitutional and legislative reform to promote freedom of information and also various unsuccessful initiatives to introduce such reform. This paper will spell out the case for a freedom of information law in Sri Lanka with particular reference to the country's constitutional context and political culture, the various attempts at law reform, and will seek to draw conclusions from such unsuccessful initiatives and recommend strategies for a future campaign for law reform.

Democracy, or the 'rule of the people', believes that discussion, dialogue and consensus between all the citizens of a country will bring about the fairest decisions on how to manage social affairs and govern the country. It also believes that the people have the freedom to choose their governments and the policies by which they wish to be governed. In a parliamentary democracy like Sri Lanka, the citizens assign the responsibility of decision making to a number of representatives: the President, Cabinet and the Parliament. These representatives are to be no more than the temporary decision and policy makers and managers of public assets. They are expected to exercise public power as a trust on behalf of the people. It is important to remember that

the citizens retain the final say as to the performance of those in office and express their will through periodic elections.

The 'rule of the people' however requires more than the mere exercise of franchise at regular intervals. At the very least, for citizens to choose those best suited to represent their views and to serve the common good, they must be able to assess the record of those in office and to know what the various candidates and their parties stand for. But this is not sufficient, for in order to make a discerning choice, citizens must be able to grasp the issues at stake, be they local, national or international, and to form their own views in full knowledge of all relevant information. Information is thus crucial not only for exercising franchise but also to ensure that citizens fully and meaningfully participate in the shaping of their common future.

Cass Sunstein has highlighted the importance of deliberation and people's participation in a modern democracy.

> "Constitutional institutions such as a system of checks and balances, are best understood not as a way of reducing accountability to the public but as a guarantee of deliberation. Deliberative democracies do not respond mechanically to what a majority currently thinks. They do not take snapshots of public opinion... A deliberative democracy requires the exercise of governmental power, and the distribution of benefits and burdens, to be justified not by the fact that a majority is in favour of it but on the basis of reasons that can be seen, by all or almost all citizens, as public."[1]

In Sri Lanka there is very little public deliberation and governmental justification for its decision making.

CONSTITUTIONAL CHALLENGES

Sri Lanka faces enormous challenges in the areas of conflict resolution and national integration. Sri Lanka also faces a crisis of governance which needs to be addressed to ensure Constitutionalism, the Rule of Law and participatory democracy. Though universal franchise was introduced in 1931 and the country has had a reasonably healthy tradition of parliamentary democracy for over sixty years, it is clear that this has not fostered a culture of an active, engaged citizenry in the spheres of law and policy making.

[1] Sunstein, Cass R., Designing Democracy: What Constitutions Do pp. 239 (New York, Oxford University Press, 2001)

One of the major weaknesses in governance in Sri Lanka is the absence of transparency, and the strong prevailing culture of authority and secrecy rather than a culture of justification and transparency. This prevents effective people's participation in law and policy making processes. This has contributed to the formulation of laws and policies which are often 'people unfriendly' in that they are designed to promote executive convenience rather than the rights of ordinary people.

This weakness is compounded by two unusual constitutional features that promote the dominance of the executive branch of government.

Since the mid 1980s, Members of Parliament in Sri Lanka have not had the freedom to vote according to their conscience. Members of Parliament are considered to be ambassadors of their parties in Parliament, rather than representatives of the people, those who defy their party positions are liable not only to be expelled from their respective parties but also, thereafter, from Parliament. Given that there is little intra-party democracy in Sri Lanka's political parties, the party leadership has tight control over its members in Parliament. The rise in the notion of "party democracy" as opposed to representative democracy has diluted the importance of the individual responsibility of a Member of Parliament as a legislator and advocate for the people. This in turn has further weakened the already ineffective committee system in Parliament.

A second unsatisfactory feature is that unlike in most countries which have written Constitutions, there is no judicial review of legislation (constitutional review). Therefore, in Sri Lanka, once a Bill is passed by the uni-cameral legislature it cannot be challenged for constitutionality. The Constitution provides for limited pre-enactment review of legislation. Once a Bill is published in the Government Gazette, a citizen has a two week period during which s/he has to obtain a copy of the Bill, scrutinise it, obtain legal advice and if so desired prepare a comprehensive legal challenge before the Supreme Court of the country. This is often impractical. As a result Sri Lanka has many laws which violate its Constitution on the statute book.

Apart from undermining the supremacy of the Constitution, the law making process shuts people out of the process and promotes a culture of authority and secrecy rather than a culture of justification and transparency. Draft legislation is secret and inaccessible until it

has been approved by the Cabinet of Ministers. Once the Cabinet of Ministers has approved a Bill it is futile to attempt to change it either through advocacy or lobbying.

An example of such a practice was the introduction of the Consumer Protection Authority Act in 2000. It was drafted by the Ministry of Trade and Commerce, with little or no public consultation. When there were media reports that the Ministry of Trade and Commerce had prepared such a Bill, an independent public policy institute, the Centre for Policy Alternatives (CPA) requested the Ministry for a copy of the Bill. A Ministry official informed the CPA that a copy of the Bill could not be released to the public until the Bill had been approved by the Cabinet of Ministers. CPA finally managed to obtain a copy from the Chamber of Commerce which seemed to be the only civil society institution which was consulted in the drafting process! CPA discovered that there were provisions which exempted significant categories of goods and services provided by the government, including several public utilities and enterprises which were granted monopoly status by the Bill. Consumer groups were completely unaware of these provisions as the Bill had not been publicised. To make matters worse the Government decided to introduce it as an urgent Bill in the national interest which meant that the usual two week pre-enactment review period was reduced to 24 hours.

Therefore, there is a vital need to effect constitutional and legal changes to prevent such a culture of authority and secrecy. We need to ensure that law and policy making is done

a) in an open and transparent manner;

b) in consultation with relevant stakeholders; and

c) in a manner which is consistent with the Constitution, the supreme law of the land.

This will also improve the quality of legislation, engage the citizenry in governance and development, enhance civil society and government interaction, and enhance good governance and participatory democracy.

Therefore, Sri Lanka has, at most, a tradition of thin democracy, where it is viewed primarily as participation in elections. There is a definite need to promote a stronger democracy, which is more participatory, and which will further empower the people and promote accountable governance.

POLITICAL CULTURE

In the context of Sri Lanka, as was rightly pointed out by the Law Commission in its 1996 report on the freedom of information, "the current administrative policy appears to be that all information in the possession of the government is secret unless there is good reason to allow public access".

The government rarely volunteers to share information in public interest, save when this information serves the interest of party politics. Government notices are published in the official gazette. The media receives and reports Government decisions and the political situation on an ad hoc basis. Neither is there a practice among public bodies to release information upon requests by the public, NGOs or the media.

Of particular importance in the Sri Lankan context is the issue of language. While the Constitution of Sri Lanka recognises Sinhala and Tamil as official languages of the Republic, the practice is often discriminatory towards Tamil speaking citizens. Police reports, for instance, are submitted to Tamil speakers in Sinhala, thus seriously hampering their right to be informed of charges against them and to seek redress. Access to other information, including financial information, will have to deal with similar challenges.

In Sri Lanka, malpractice in the public sector appears to be the norm and expresses itself in the following ways. The abuse of discretion, and specifically patronage and preferential treatment in the allocation of government resources: jobs, documentation, contracts, relief money, etc. In recent years serious concerns have been expressed about the conduct of the National Board of Investment, the Ceylon Electricity Board and the Urban Development Authority. Various questions have been raised with regard to tender procedures for development projects. Serious concerns have also been raised about successive Governments' Poverty Alleviation Programmes, where officials were suspected of abuse of power particularly in the allocation of funds. Resources are often allocated in a partisan manner based on the political affiliation of the recipient in question.

Lack of access to information, such as official documents on governmental policies regarding medical records, poverty alleviation programmes, legal aid, education, etc. affects other human rights, including economic and social rights. Furthermore, people's ignorance of the full range of human rights to which they are entitled under the

constitution, and the international human rights standards which Sri Lanka has ratified, is a serious impediment to their enjoying those rights, and to seeking redress when these rights are violated. This is compounded by a general lack of awareness of the procedures to obtain legal redress.

Following successive military operations, the ethnic conflict has displaced hundreds of thousands of people in Sri Lanka over the years. These 'internally displaced persons' (IDPs) have sought refuge either in camps or with friends and relatives, and many are dependent on the aid provided by international humanitarian agencies and the government to fulfil their most basic needs, such as food, shelter and health care. Lack of access to information on entitlements and policies has led to discrimination and arbitrariness in the distribution of essential aid.

The long civil war also meant that a state of emergency has been the norm rather than the exception in the country. Under a state of emergency, the powerful Executive President is made even more powerful by becoming entitled to promulgate emergency regulations that can even trump laws enacted by the legislature. As a result, various rules on censorship, access to certain parts of the country and other restrictions on the media have been in place for many years, and national security concerns have often been invoked to impose restrictions on the right to information.

A guaranteed right to information would minimise such malpractices and promote transparency and accountability at all levels of governance.

CONSTITUTIONAL PROVISIONS

The Constitution of the Democratic Socialist Republic of Sri Lanka contains provisions which have a bearing on freedom of speech and expression and the mass media - both print and electronic, but there is no specific reference to the right to information. Some rights apply to 'persons' while others apply only to 'citizens'. For example, Article 10 of the Constitution guarantees to every person the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice. However, Article 14 (1) (a) guarantees to every citizen freedom of speech and expression including publication. This right is subject to restrictions that may be prescribed by law in the interests of racial and religious harmony or in relation

to parliamentary privilege, contempt of court, defamation, or incitement to an offence. Moreover, this freedom is also subject to restrictions that may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

One of the serious deficiencies in Sri Lanka's Bill of Rights is the existence of Article 16 of the Constitution, which renders all existing written and unwritten law valid and operative notwithstanding any inconsistency with the provisions of the chapter on fundamental rights. Hence the fundamental right of freedom of thought and conscience couched in absolute terms becomes illusory to any person vis-à-vis an existing law - whether written or unwritten - if that law was in existence at the commencement of the Constitution. All laws dealing with freedom of speech and expression enacted before the Constitution became operative in 1978 remain valid even though they may be inconsistent with provisions in the Supreme Law of the land.

The second constitutional provision which violates Constitutionalism and which also is a reproduction of a section first introduced in the Constitution of 1972 is Article 80 of the present Constitution. Article 80 (3) provides that once a Bill is passed, i.e. once it becomes an Act of Parliament, it cannot be challenged on any ground including that of unconstitutionality.

Only Article 121 permits pre-enactment judicial review of legislation where a Bill may be challenged, and but only within a time period of one week from the Bill appearing on the Order Paper of Parliament. The example of the Sri Lanka Broadcasting Authority Bill, tabled in Parliament, just a few days before a long period of public holidays, demonstrated the weakness of a system that focuses on detection within a limited period, rather than on the crucial question of whether Parliament can violate its creator, the Constitution. Fortunately, the Broadcasting Authority Bill, which if enacted, would have had a seriously adverse impact on freedom of speech and expression, was successfully challenged during the limited time period due to the vigilance of media and civil society groups and the commitment of a small group of lawyers. The dangerous Voluntary Social Services (Amendment) or "NGO" Bill, the National Transport Commission Bill and the Southern Area Development Authority Bill are a few that were not detected in time. They are, therefore, "legal",

despite probably being unconstitutional.

A practical mechanism by which the supremacy of the Constitution is upheld in nearly all constitutional democracies - constitutional or judicial review of legislation, is therefore expressly prohibited in Sri Lanka's constitution. Under such a mechanism, a person affected by a law would have the right to challenge the constitutionality of the law in question. The logic is simple: an organ created by the Constitution, a creature of the Constitution, cannot enact legislation that violates the supreme law.

The cumulative effect of the constitutional provisions discussed above is that the freedom of speech and expression, and the right to information that could be implied within such rights, receive inadequate protection.

THE JUDICIAL RESPONSE

Since the law is ultimately what the judges declare the law to be, it is important to examine how the Supreme Court of Sri Lanka, which has sole and exclusive jurisdiction with respect to constitutional interpretation, has expounded the law with respect to freedom of speech and expression and the right to information. The record has been mixed. While in several notable cases the court has protected freedom of speech, in many cases the court has also deferred to executive arguments in favour of restrictions in the interest of national security and the numerous exceptions recognised in the constitution.

The judgement of Sharvananda C.J. in the case of *Joseph Perera v. The Attorney-General* spells out the scope of the constitutional guarantee of freedom of speech and expression.[2]

"Freedom of speech and expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode. It includes the expression of one's ideas through banners, posters, signs etc. It includes the freedom of discussion and dissemination of knowledge. It includes freedom of the Press and propagation of ideas; ... There must be untrammelled publication of news and views and of the opinions of political parties which are critical of the actions of government and expose its weakness... One of the basic values of a free society to which we are

[2] [1992] 1 SLR 199

pledged under our Constitution is founded on the conviction that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. All ideas having even the slightest social importance, unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion have the protection of the constitutional guarantee of free speech and expression."[3]

In *Viswalingam v. Liyanage*, some readers of the newspaper *Saturday Review,* challenged the action of the Competent Authority appointed under Emergency Regulations to ban the newspaper and seize its printing press.[4] They argued that their right to receive information was implied in Article 14 (1) (a) and that their rights were violated by the arbitrary sealing of the press. The majority of the court rejected the argument advanced by the State that the petitioners lacked *locus standi* as readers of the newspapers.

The court held that:

> "Public discussion is not a one sided affair. Public discussion needs for its full realisation the recognition, respect and advancement, by all organs of government, of the right of the person who is the recipient of information as well. Otherwise, the freedom of speech and expression will lose much of its value."

An important judgment of the Supreme Court which dealt with the right to information is *Fernando v. Sri Lanka Broadcasting Corporation*.[5] The petitioner, who was a keen listener and participant in a non-formal education programme broadcast by the state radio station, the Sri Lanka Broadcasting Corporation, petitioned the Supreme Court challenging the sudden decision to discontinue the programme on the grounds that his freedom of speech and expression had been violated. He averred that the programme covered a wide range of important public issues and that its termination deprived him of an important source of information and also of the right to participate in the programme. Justice Mark Fernando, delivering the judgement of the three-judge bench, held that the petitioner's right had indeed been violated but declared that there was no ground to recognise "a right to free information simpliciter." Several subsequent cases approved this statement of the court. There is some doubt,

[3][1992] 1 SLR 199 pp. 222-225
[4][1984] 2 SLR pp. 123
[5][1996] 1 SLR 157

therefore, as to whether a right to information exists under Sri Lanka's present Constitution.

Despite the absence of a specific law on the freedom or right to information, some successful initiatives have occurred in recent years to compel the government to disclose important information to the public. These initiatives were a result of civil society activism and a responsive judiciary. While Sri Lanka's judiciary, when compared with India's, for example, is relatively conservative and deferential to the political branches of government, it has on occasion, delivered determinations that have fostered a culture of accountability and openness. A few examples are cited below.

Bulankulama v. The Secretary, Ministry of Industrial Development[6]

In the 1990s, plans by a US-Japanese consortium to undertake high intensity phosphate mining in the village of Eppawela sparked strong protests from villagers, scientists, environmentalists and human rights activists. The project would have displaced up to 12,000 people and potentially seriously depleted the non-renewable phosphate reserves of the island. Despite public protest, successive governments approved the project.

In 1999, seven residents of the area filed a fundamental rights application in the Supreme Court challenging the project.[7] The petitioners argued that their rights to freedom of movement and residence, of occupation and to equality before the law as guaranteed by the Constitution had been violated. They further argued that their right to information and public participation had been violated as the agreement between the Government and company had not been disclosed and no Environment Impact Assessment carried out, as was required by law.

In a landmark judgement on 2 June 2000, the Supreme Court ruled in favour of the petitioners. The court ordered the government to release the contract and to desist from entering into any agreement relating to the Eppawela phosphate deposit without having carried out and published a comprehensive study on the subject.

[6] [2000] 3 SLR 243
[7] S.C. Application No 884/99

The Supreme Court observed per Amerasinghe, J.:

> "The proposed agreement plainly seeks to circumvent the provisions of the National Environmental Act and the regulations framed there under. There is no way under the proposed agreement to ensure a consideration of development options that were environmentally sound and sustainable at an early stage in fairness both to the project proponent and the public. Moreover, the safeguards ensured by the National Environmental Act and the regulations framed there under with regard to publicity have been virtually negated by the provision in the proposed agreement regarding confidentiality. I would reiterate what was said by this court in *Gunaratne v. Homagama Pradeshiya Sabha (1998)*, namely, that publicity, transparency and fairness are essential if the goal of sustainable development is to be achieved.

Access to information on environmental issues is of paramount importance. The provision of public access to environmental information has, for instance, been a declared aim of the European Commission's Environmental policy for a number of years. Principle 10 of the Rio Declaration calls for better citizen participation in environmental decision-making and rights of access to environmental information, for they can help to ensure greater compliance by States of international environmental standards through the accountability of their governments. Principle 10 states as follows: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

In *Environmental Foundation v. Urban Development Authority,* the Supreme Court of Sri Lanka considered the right of the public to information regarding an agreement entered into between the Urban Development Authority (UDA) and a private company, E.A.P. Networks (Pvt.) Ltd. relating to the proposed development of the Galle Face Green, a famous seaside promenade in the heart of Colombo, into a mega-leisure complex.[8] Though the UDA in public

[8] SC FR App 47/2004

statements had assured people of continued public access to the green and that the development project would be "more transparent than glass" it refused to forward a copy of the agreement to the petitioner, a leading environmental NGO in the country. The court held that the denial of access to official information by the UDA amounted to a violation of the petitioner's right under Article 14 (1) (a) which states that "every citizen is entitled to the freedom of speech and expression, including publication." The court suggested that for the right to be effective there is an implied right to obtain relevant information from a public authority with respect to matters that should be in the public domain. The court added that such a right to information applied "where the public interest in the matter outweighs the confidentiality that attaches to affairs of state and official communications."

In *Edrisinha and the Centre for Policy Alternatives v. Dayananda Dissanayake,* the petitioners who were seeking directives from the court to the Commissioner of Elections to ensure free and fair elections, complained that the instructions which the Commissioner had claimed were issued to various public authorities to ensure compliance with the elections laws were inaccessible to the public.[9] The petitioners succeeded in obtaining and publicising directions, circulars and instructions issued by the Commissioner of Elections and the Inspector General of Police prior to the 10 October 2000 parliamentary elections. These circulars dealt with the conduct of public servants and election officials during the election campaign. A second petition sought to obtain clarification from the Commissioner of Elections with regard to the decisions he took in the aftermath of the parliamentary elections with respect to the annulling of votes at certain polling stations. In both these instances the petitioners were compelled to initiate legal action to obtain basic information relating to directions, standards and criteria adopted by important public officials in the exercise of their statutory duties.

GOVERNMENT PLEDGES

Most of Sri Lanka's media is concentrated in Colombo. The State owned media – comprising of the Sri Lankan Broadcasting Corporation, the Sri Lankan Rupavahini Corporation and the Associated Newspapers of Ceylon Limited, more commonly known as the Lake House newspaper group – is under the de facto editorial

[9] 2000 SC FR 265/1999

control of the government and serves as its mouthpiece. The private media is very much under the influence of political interests and its reporting is far from independent.

The People's Alliance (PA) coalition government, which was elected in 1994, had pledged to implement wide ranging media reforms. In a statement on the PA Government's Media Policy released on 13 October 1994, Dharmasiri Senanayake, then Minister of Information, recognised that the PA pledge of greater media freedom had "led to the strengthening of the pro-democracy vote."

"The PA in its election manifesto has promised media freedom, as an integral component of the policy towards renewal of democracy in Sri Lanka. Media democracy can best be ensured by:

(i) Freeing the existing media from government/political control

(ii) Creating new institutions, aimed at guaranteeing media freedom as well as raising the quality and standards of free media, both print and electronic

(iii) Promoting a new democratic media culture through new practices".

The Minister further pledged to "put an end to the abhorrent practice of intimidating and assaulting journalists" recognising that such threats were the results of attempt to expose public corruption or abuse of power.

The statement also promised to broaden the ownership of the State-owned Lake House group of newspapers and to grant the State media freedom to decide on news content.

As part of wide ranging legal reforms, the Minister further added:

> "In future amendments to the constitution, the government shall seek to widen the scope of this [Freedom of Expression] constitutional guarantee by including the Right to Information."

On 5 January 1995, the Media Minister set up a Committee to advise on the Reform of Laws affecting Media Freedom and Freedom of Expression, whose reports contained a number of far reaching recommendations for reform (discussed below). However, most of the Government's pledges as well as the recommendations of the Committee on Media Freedom have been ignored.

As expounded below, most of the Government's pledges as well as the recommendations of the Committee on Media Freedom have been ignored.

LEGAL FRAMEWORK

Sri Lanka, as stated earlier, has no Freedom of Information Act nor any legislation guaranteeing access to official information.

INTERNATIONAL STANDARDS AND ACCEPTED NORMS

Sri Lanka is a State Party to the International Covenant on Civil and Political Rights, article 19 of which guarantees the right to information:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputation of others;
   (b) For the protection of national security or of public order (ordre public), or for public health or morals

By international and comparative jurisprudence as well as by international human rights standards, freedom of information can be broadly defined as the right to seek and receive information and ideas of all kinds from both government and third parties without hindrance. Public policy with regards to the right to information should be driven by the principle of maximum disclosure. In particular, for information to fall outside the ambit of the principle of maximum disclosure, it must be the case that the information threatens to cause substantial harm to an aim prescribed by law, such harm being greater than the public interest in the disclosure.

Exceptions may include, the protection of privacy and commercial confidentiality; law enforcement, public order, safety, health and

morality; effectiveness and integrity of the government-decision making process; national security. In all circumstances, there should be a right of appeal against governmental decision not to disclose information, the onus of justification resting with the Public Bodies.

STATUTES

A number of Statutes limit access to information either directly or by imposing severe and unwarranted restrictions on the freedom of the press.

OFFICIAL SECRETS ACT NO 32 OF 1955

An Act to Restrict Access to Official Secrets and Secret Documents and To Prevent Unauthorized Disclosure Thereof

The Act makes it an offence if any person entrusted with any official secret or secret document communicates or delivers it to any person other than to whom he is authorised to communicate or deliver it or to whom it is in the interests of the State his duty to communicate or deliver it. Likewise, if any person who is not entrusted with, but who is otherwise having possession or control of, any official secret or secret document, does acts in the above manner, he too commits an offence.

For the purpose of the Act,

"Official secret" means –

(i) any secret official code word, countersign or password;

(ii) any particulars or information relating to a prohibited place or anything therein;

(iii) any information of any description whatsoever relating to any arm of the armed forces or to any implements of war maintained for use in the service of the Republic or to any equipment, organization or establishment intended to be or capable of being used for the defence of Sri Lanka; and

(iv) any information of any description whatsoever relating directly to the defences of Sri Lanka

"Secret document" means any document containing any official secret and includes –

(i) any secret official code or anything written in any such code; and

(ii) any map, sketch, plan, drawing, or blue-print, or any photograph or model or other representation, of a prohibited place or anything relating to the defences of Sri Lanka

SRI LANKA PRESS COUNCIL LAW NO 5 OF 1973

A law to provide for the appointment of a Sri Lanka Press Council, to regulate and to tender advice on matters relating to the Press in Sri Lanka, for the investigation of offences relating to the printing or publication of certain matters in newspapers and for matters connected therewith or incidental thereto.

The National State Assembly under the first Republican Constitution of Sri Lanka enacted the Sri Lanka Press Council Law in 1973.

To understand the issue, it is essential to delve, briefly, into the history of the law. The constitutionality of the Press Council Bill was challenged before the Constitutional Court in January and February 1973. Various petitions by individuals and organizations were lodged in the Constitutional Court alleging that the Press Council Bill was inconsistent with provisions of the Constitution. It was argued by the counsel for the petitioners that the Bill was an attempt to impose governmental control over the publication of newspapers and in particular to stifle criticism and free expression.

The petitioners argued vehemently that sections of the Bill had the effect of destroying the freedom of the press in that they seek to subject the press of the country to governmental control. It was also submitted that the wide powers conferred on the Press Council by the Bill to restrict the flow of information rendered it contrary to section 18 (1) (g) of the 1972 Constitution. Their arguments were brushed aside on the ground that though vast powers were vested in the Press Council, one must not assume that such powers would be abused. The exclusion of the government-controlled press and radio from the operation of the law meant that it was clearly contrary to the principle of equality before the law.

The petitioners argued that the provisions of the Sri Lanka Press Council Bill were inconsistent with the Constitution, but the Constitutional Court did not agree, and found the Bill to be not inconsistent with the provisions of the Constitution and thereafter the National State Assembly enacted it into Law.

Section 3 of the Law provides for the setting up of a Press Council, all the members of which would be nominated by the President and who could under section 4 be dismissed by him. These two sections have been subjected to cogent criticism on the ground that the Council is not independent of the government.

Section 9 confers on the Press Council the power to hold an inquiry regarding all alleged untrue, distorted or improper publications or breach of the code of journalists' ethics and to order an apology.

Sections 16(1) and (2) prohibit newspapers from publishing the contents or any part of the contents of documents sent to a Minister or Ministers by the Secretary to the Cabinet, and any matter which is said to be a decision or a part of a decision of the Cabinet, unless such news has been approved by the Secretary to the Cabinet. The restrictions imposed by Section 16 are very broad and sweeping, especially since 'leaks' from government sources is an important source of public information in modern journalism.

Section 16(4) prohibits the publication of any statement in any newspaper relating to monetary, fiscal, exchange control or import control measures alleged to be under consideration by the Government or by any Ministry, or by the Central Bank, the publication of which is likely to lead to the creation of shortages or windfall profits or otherwise adversely affect the economy of Sri Lanka, unless such matter has been approved for publication in the newspapers by the Secretary to the Ministry charged with the subject in question.

However the Press Council Law is not altogether restrictive of information process. It contains several praiseworthy features, such as the objective of ensuring freedom of Press, and that newspapers would be free to publish as news true statements of fact and any comments based upon true statements of fact. There are also provisions that enable the Press Council to inquire into complaints by persons or institutions which alleged wrongful publication of material that is untrue, distorted or improper. Such a provision enables the aggrieved party to obtain redress without recourse to the courts of law. Redress would take the form of a correction, censure of the newspaper concerned, or an apology by it. Section 32(1) protects newspapers and journalists from disclosing their sources of information.

The Law also provides for the Council to act on its own, even without being moved, in respect of any matter which prima facie is at

variance with the declared objects of the Law. There are however, very few instances in which the Council has acted on its own initiative. It has invariably been moved to act.

On balance, however it seems clear that the Press Council Law provides for unwarranted executive intrusion into the sphere of the media. Media persons and human rights activists have led the campaign for fundamental reform of the legislation.

PUBLIC SECURITY ORDINANCE NO. 25 OF 1947

This Ordinance provides for the enactment of emergency regulations or the adoption of other measures in the interests of the public security and the preservation of public order and for the maintenance of supplies and services essential to the life of the community. The Ordinance empowers the President to bring into operation the provisions of Part II of the Ordinance, if in view of the existence, or imminence, of a state of public emergency, he or she is of the opinion that it is expedient to do so for the above purpose. When Part II becomes operative, it gives the President power to enact emergency regulations which have the effect of over-riding, amending or suspending the operation of the provisions of any law, except the provisions of the Constitution.[10]

ADMINISTRATIVE RULES AND REGULATIONS

One of the main causes for the culture of authority and secrecy that exists in the public service is the Establishments Code, Volume 1 of the Government of the Democratic Socialist Republic of Sri Lanka. This Code, issued with the approval of the Cabinet of Ministers, replaced the volume issued on 15 December 1971 as amended.

Paragraph 6 of Chapter XLVII which deals with "The Release of Official Information to the Press or the Public" demonstrates the conservative approach of the Code to access to information. It states that a Secretary to a Ministry or Head of department may exercise discretion with respect to the release to the public of information that "may be of interest and value to the public".

Paragraph 6: 1: 3 provides that:

"No information even when confined to statements of facts should be given where its publication may embarrass the Government

[10] Article 155 (2) of the Constitution; S.7 of the Ordinance.

as a whole or any Government Department or officer. In cases of doubt, the Minister concerned should be consulted."

It is submitted that provisions such as these help create a mindset or attitude among public servants which is not compatible with values of transparency and public accountability. A comprehensive revision of the Establishments Code is, therefore, urgently required.

THE COMMITTEE ON MEDIA FREEDOM

On 5 January 1995, the Media Minister set up a Committee to advise on the Reform of Laws affecting Media Freedom and Freedom of Expression. Its mandate was to study and make recommendations for amendments to legislation and regulations pertaining to media freedom, freedom of expression and the public's right to information.

The following recommendations were made, among others:

¨ While the 1978 Constitution does not mention Freedom of Information, subsequent draft Constitutional amendments have included guarantees of freedom of publication and information. The Committee recommended spelling out the right to Freedom of Information in more details, as per previous (before March 1995) drafts. In particular it recommended adopting the following formulation:

> "This includes the freedom to seek, receive and impart information and ideas, either orally, in writing, in print, in the form of art or through any other medium of one's choice."

¨ The Committee identified part of the problem with the Emergency Regulations, under which censorship provisions are promulgated, as being the lack of public awareness of the content of those regulations. It recommended:

"[T]he Public Security Ordinance be amended to require that all emergency regulations which restrict the freedom of expression, assembly or association

(a) should besides being published in the Gazette be also published expeditiously in the national newspapers in Sinhala, Tamil and English"

¨ A Freedom of Information Act:

"Freedom of Information Act should be enacted which makes a clear commitment to the general principle of open government and

includes the following principles:

- disclosure to be the rule rather than the exception;
- all individuals have an equal right of access to information;
- the burden of justification for withholding information rests with the government, not the burden of justification for disclosure with the person requesting information;
- individuals improperly denied access to documents or other information have a right to seek relief in courts.

The law should specifically list the types of information that may be withheld, indicating the duration of secrecy. Legal provision must be made for enforcement of access, with provision for an appeal to an independent authority, including the courts, whose decision shall be binding.

The law should make provisions for exempt categories, such as those required to protect individual privacy including medical records, trade secrets and confidential commercial information; law enforcement investigations, information obtained on the basis of confidentiality, and national security.

The legislation should include a punitive provision whereby arbitrary or capricious denial of information could result in administrative penalties, including loss of salary, for government employees found in default.

Secrecy provisions in other laws must be subordinate to the freedom of information law or must be amended to conform with it in practice and spirit."

Following the report of the Media Freedom Committee, the Government appointed a Parliamentary Select Committee to review the recommendations of the Media Law Committee, a decision highly criticised as a delaying tactic.

DRAFT ACCESS TO OFFICIAL INFORMATION ACT, 1996

In 1996 the Law Commission of Sri Lanka prepared a draft Access to Official Information Act. The Act and its recommendations were finalised in November 1996.

While recognising in its recommendations the culture of secrecy intrinsic in Sri Lanka, the Commission judged the principle of maximum disclosure 'inappropriate' to Sri Lanka. It recommended

the establishment of guidelines for the exercise of discretion by government officials in disclosing information and saw the 'establishment of an open access to information regime' as an aim to be achieved 'at a future date'. The Commission concluded:

> "The recommendations and draft Act may be seen by the media and proponents of freedom of information as restrictive. However, the Commission believes that gradual and cumulative reform of this area of the law would be a better approach more likely to succeed."

The Preamble of the Act stated that it is intended "to complement and not replace existing procedures for access to information".

It recognised the right of Sri Lankan citizens to be given access to public information upon request if such information "affect[ed] the citizen requesting such information".

Access to information could be refused if it pertained to, or adversely affected, the economy, personal or commercial privacy, intra-departmental communications, law enforcement, personal safety, a financial institution, geological or geophysical information, privileged information, national defence, foreign policy and international relations.

The Act required Ministers to regularly publish a description of the government institutions assigned to their Ministries as well as a description of records, manuals and guidelines and contact details pertaining to those institutions.

The Act then relinquished to the Information Minister the power to decide, within one year of its enactment, the procedure for making and processing requests, the applicability and amount of fees, the time frame, and the language. Thereafter, the regulations would have to be placed before the Parliament for its approval "as soon as convenient".

Lastly, the Act provided for an Appeal Procedure either to the Supreme Court or to the Parliamentary Commissioner for Freedom of Information.

While the draft Act constitutes a first step towards putting the issue of freedom of information on the public agenda, it is seriously deficient, arguably counter-productive and falls short of internationally accepted norms on the matter.

The draft Act does not constitute overarching or comprehensive legislation on access to information. Indeed, it has no application to situations covered by other pieces of legislation. In the absence of clarification, it appears that the decision as to whether or not the information 'affects' the person requesting it is at the discretion of public officials with the onus of justification resting with the requestor.

The draft Act left far too much discretion to the Information Minister, and consequently to the party in power at the time, for working out the procedural details of its implementation. It did not guarantee fair procedures, reasonable fees and time limits, or internal appeal procedures. For many of the reasons cited above, media groups and other civil society groups rejected the Law Commission's proposed Bill and in recent months have prepared an alternative draft.

The introduction of the Bill was not pursued. In the years that followed, various civil society groups engaged in serious discussions on alternative freedom of information legislation. During the period when the government was led by President Chandrika Kumaratunga and Prime Minister Ranil Wickremesinghe, a space emerged which civil society groups decided to exploit. The government indicated a willingness to revive the initiative to introduce a Freedom of Information Act, though its initial draft was conservative. The Editors Guild, Free Media Movement and the Centre for Policy Alternatives presented an alternative draft which was more in keeping with international best practices. Thereafter a series of meetings were held under the chairmanship of the Prime Minister after which a compromise third draft was agreed to.

For Sri Lanka this was an unprecedented process of dialogue and engagement between government and civil society groups as law making is usually a closed, executive dominated process. Since compromise was necessary, the draft Bill that emerged from this process was certainly not ideal, but was a definite improvement on previous government sponsored initiatives. The draft could be criticised with respect to the exception clauses being too wide, the whistleblower clause being too narrow and the fact that that there was confusion about whether the Bill would trump existing legislation that contained secrecy provisions. The draft agreed upon at the final meeting with civil society gave pre-eminence to the Freedom of Information Act in the event of inconsistency with existing legislation, but in subsequent drafts that were made public, this was not the case.

The draft was presented to and approved by the Cabinet of Ministers in February 2004. Unfortunately, Parliament was dissolved soon afterwards as the cohabitation arrangement collapsed. Further progress on the enactment of this important piece of legislation was stalled.

The election of President Rajapakse in November 2005 signalled a change in the governance of the country. The new administration was less respectful of constitutional norms and practices and concentrated its energies on a vigorous military campaign to defeat the Liberation Tigers of Tamil Eelam. As part of this strategy, democratic freedoms such as media freedom and the right to dissent were curtailed and critics of the government's militaristic approach were labelled traitors. New draconian emergency regulations were introduced and the space for political pluralism shrank. Civil society groups that had campaigned for a Freedom of Information Bill realised that the priorities of the government and the general political environment were not conducive to the adoption of an effective freedom of information Act and took a strategic decision not to lobby with the government on this matter. It was generally believed that no Freedom of Information Act was better than a bad Freedom of Information Act.

Towards the end of Parliament's term in 2010, the issue of a Freedom of Information Bill surfaced again briefly when the Minister of Justice, Milinda Moragoda, who had recently announced the formation of a new political party, stated that the introduction of a Freedom of Information Bill would be a priority of this new party. Minister Moragoda invited several civil society activists and media personnel to a meeting on the day that Parliament was dissolved to discuss a draft bill that he had prepared. It was based on the document agreed upon in 2004, but with several additions that made it unacceptable to the civil society representatives present. However, the Minister claimed that the meeting with civil society was the beginning of a process of consultation, and he incorporated several suggestions made by civil society, revised the Bill and presented it to the Cabinet in 2010. The Cabinet did not approve the Bill, and unsurprisingly, given the strange timing of the initiative, nothing happened. The actions of Minister Moragoda fuelled speculation that while he knew that the chances of the Bill being approved by the Cabinet and enacted by the legislature were remote, he wanted to be identified with the sponsorship of such a Bill as part of his campaign

for re-election to Parliament. If Minister Moragoda thought that being identified with such an initiative might bolster his chances of re-election as a member of the ruling United People's Freedom Alliance (UPFA) coalition, he was disappointed. He failed to gain re-election to the Parliament.

CONCLUSION

The elections of 2010 in Sri Lanka can be interpreted as an endorsement of the policies of the Rajapakse Government of 2005-10. Apart from the policy towards the ethnic conflict referred to earlier, the approach of the government was to undermine Constitutionalism, Rule of Law, aspects of procedural democracy, and focus on a more authoritarian "dictatorship for development" approach spearheaded by the Presidency and its advisors and secretariat. A kind of populist, patronising politics, stronger than ever before, has taken root. If people want development in their villages they need to forge friendly relations with the local politicians and their cronies. The grant of local development projects as handouts to party supporters has become accepted as the legitimate norm. Patronage politics is stronger than ever before, and political cynicism is at an all time high.

Though attempts were made in recent years to promote development as a right, to highlight the connection between development and transparency, between citizen empowerment and the reduction in corruption, these have failed or been overshadowed by the dominant political culture described above. Those who continue to advocate for the Right to Information and legal reform to implement it more effectively, seem confined to the elite and their advocacy lacks resonance with the more cynical real politik view of the large majority of the population. The prospects, therefore, for a progressive Freedom of Information law that is compatible with international best practices look extremely bleak.

APPENDIX

THE RIGHT TO INFORMATION AND FINANCE

Introducing reforms to strengthen parliamentary control over public finances is a key area of governance and accountability that requires capacity building. The constitutionally questionable practice in recent years of the Executive President holding the finance portfolio has considerably undermined parliamentary control over public finances. Furthermore, the constitutional position of Members of Parliament vis-à-vis their parties and the electors, the absence of intra-party democracy and the erosion of traditions of deliberative democracy in the past two decades have contributed to the decline of Parliament as a watchdog mechanism in all areas including public finance. These broader institutional issues should not be forgotten.

At a more specific level, reforms to strengthen parliamentary control over public finance by making this aspect of the legislative function more visible, will be useful. The proceedings of various parliamentary oversight committees such as the Committee on Public Accounts (COPA) and the Committee on Public Enterprises (COPE) are held *in camera*, and are not open to the media or the public. There is, therefore, little public pressure on the committees to perform effectively.

THE SECOND TIER OF GOVERNMENT

The legal provisions governing the finances of the second tier of government, the Provincial Councils, contain many grey areas which remain the subject of some debate. The Role of the Governor, a nominee of the President, and other aspects of central-provincial relations including the role of the Finance Commission and the role of public servants appointed by central government authorities are some of these grey areas. In such a context, the citizen's ability to access information becomes more difficult.

WESTERN PROVINCIAL COUNCIL

An interview was held with a former Chief Minister of the Western Provincial Council, vis-à-vis access to financial information of Provincial Councils.

According to the interviewee, each provincial ministry has separate budget allocations which are based on budget proposals

submitted by each ministry and approved by the Council. Accurate and regular accounts of income and expenditure by each ministry are maintained in this way. Every member of the Council is given a copy of the annual accounts which are subject to query and to debate in the Council. Further, a report is published annually with all the data and activities relating to the Provincial Council which includes accounts of the institution. In addition, the annual audit reports of the Auditor General's Department are expected to be published but are invariably delayed. Apart from this however, there is no publication of the Council's accounts.

A practice was introduced during the tenure of the interviewee as Chief Minister where an internal audit was conducted within thirty days of completing a special project. All documentation relating to such projects were required to be maintained and to be tabled and made public if a member of the Council so requested.

The Western Provincial Council has no specific policy in place to facilitate public access to its financial information. However the publications and practices described above are in place and could be made use of by the public. In the respondent's experience, there have not been any requests for financial information by members of the public necessitating a specific policy in this regard. Any interested person could contact the Chief Secretary of the Provincial Council with regard to financial information. Alternatively, the Deputy Director (Finance) is generally in possession of all such information.

The interviewee observed that there was a general lack of interest on the part of the Sri Lankan public with regard to financial information. However transparency requires that such information is easily accessible by the public. He said that there was no difficulty envisaged in making information available within a short time and at no charge.

The publication of the annual accounts would give the public an accurate picture with regard to the allocation of funds.

THE THIRD TIER OF GOVERNMENT

Colombo and Kandy Municipal Councils

Unlike in the case of Provincial Councils, the third tier of government, local government, has existed in the country for a long period of time and has developed certain traditions and practices. As

such there are fewer legal challenges or questions with regard to their powers and functions.

Interviews were held with the Colombo Municipal Council Commissioner and Treasurer, and a former Mayor of the Kandy Municipal Council with regard to public access to financial information of the Colombo and Kandy Municipal Councils.

According to the respondents, both Councils maintain accurate and regular accounts of income and expenditure which are subject to annual audits. The accounts reflect all transactions entered into by the Councils and help give effect to the public's right to information with regard to public finance. However fraudulent transactions and dishonest accounting practices would not be reflected in these accounts.

In the case of the Colombo Municipal Council, details of these general accounts are freely available to the public subject to two exceptions. Personal information of rate-payers are not available to public scrutiny if the information is of a confidential nature, or if the information affects competing trade interests. All Colombo Municipal Council members are given copies of the monthly accounts which are also available to the public upon request. In addition, a rate-payer may access his or her individual accounts at any time.

Information regarding the expenditure and income of the Kandy Municipal Council becomes available to the public upon the publication of the Auditor General's report as well as through the publication of the annual statement of accounts. Any further details may be made available to a rate-payer or member of the public upon request.

The Colombo and Kandy Municipal Councils do not have specific departmental policies designed to facilitate access to financial information by the public. Access to financial information of the Colombo Municipal Council is through the means described above. The budget and accounts of the Kandy Municipal Council are required to be published by law. A newspaper notice is published after the budget is prepared inviting public scrutiny. This notice is given at least seven days prior to the publication of the budget in order that any member of the public or rate-payer may examine and suggest alterations, either by themselves or through a Municipal Councillor. Moreover, the respondents noted the absence of any requests from the public for financial information, but stated that such requests would in all probability involve a communication in writing for the purposes

of records. Information could be collected in person or by post from the Kandy Municipal Council and the person making the request would have to pay the costs involved such as photocopying charges and postage. Financial information of the Municipal Council could be obtained in a matter of minutes in the form of a print-out and no payment is required.

The respondents envisaged no difficulties with regard to making financial information of the respective institutions available to the public insofar as requests concerned general accounts. However, information in the data-base which contains confidential personal details of rate-payers would not be available to the public.

The claim by the interviewees that members of the public are not interested in access to financial information needs to be reviewed carefully. It could be the case that citizens do not request information because they do not think it likely that they will be able to obtain such information, or because they believe it will be unduly burdensome, rather than because they are uninterested. Therefore, it is important that a more transparent culture be created, not only by facilitating request-based access to information but also by providing for minimum obligations on elected institutions and government departments to make information accessible to the public.

While citizens' access to information relating to public finances is important, it is submitted that facilitating such access cannot be done by focusing on financial laws and regulations alone. The broader issues of governance highlighted in this paper will have to be addressed as well. The Sri Lankan governmental ethos is that of secrecy and authority. This is due to constitutional and legal provisions, traditions of governance and administration, and a gradual entrenchment of authoritarianism and a decline in traditions of deliberative democracy.

9

Literature Reviews, Annotated Bibliographies and Other Resources[1]

Prashant Sharma

BANGLADESH

Literature Review

Most papers available in the public domain have been authored by only a few individuals who have been at the forefront of advocating for an FoI Act in Bangladesh for many years. With links to the media as well as legal worlds, these individuals and organisations have brought the issue of FoI to the fore within the frameworks of human rights and media freedom.

Some papers trace the history of the growth in the demand for an FoI regime in Bangladesh, within a comparative regional framework, as well as in the context of the growing role of non-governmental organisations (NGOs) in Bangladesh over the last several decades. (Law Commission, 2003; Anam, 2009). Other papers provide comments and recommendations on the Draft Right to Information Ordinance which is an important element in gaining a

[1] This section provides a brief overview of the current status of literature written in English on Freedom of Information (FoI) in all the countries of the region (except for Afghanistan and Maldives on which no material was found) which is available for free in the public domain, primarily online. It is hoped that this section will allow those interested in the issue to get a sense of the nature of the current debate in the country as represented by the highlighted papers, as well as an indication of the possible gaps which might benefit from further research and scholarship.

historical perspective on the evolution of the process leading up to the enactment of the current Right to Information Act of 2009 (Article 19 et al, 2008). A historical perspective especially within the context of the growth of transparency laws across the world and their links to anti-corruption has also been provided (Iftekharuzzaman, 2009).

With the enactment of the Right to Information Act 2009 in Bangladesh, challenges of implementation have become an important point of debate. Some papers have focused on these emerging issues with a view to strengthen the FoI regime in the country even as it evolves from its yet nascent stage (Anam, 2009; Iftekharuzzaman, 2009). A rich description enriched by regional experiences in implementation is also available through the proceedings of a conference (RTI Forum, 2009). However, even as implementation issues are being debated in the country, strong criticism of the new law has also seen the light of day, especially with regard to the limitations of the institutional mechanisms of implementation (Kabir, 2009).

In sum, a lively debate on the importance of an effective FoI regime and the best ways to achieve it continue to take place in the country. While academic or quasi-academic debates seem to be lacking, sections of civil society, as well as the media have taken a deep interest in the issue. As the law is new, reports which will analyse its usage will no doubt emerge in the coming years. At the same time, despite the law being in place for just under a year, very little material in terms of the documentation of any case studies was found. However, with the formation of the Right to Information Forum which brings together a wide cross-section of stakeholders associated with FoI in Bangladesh, the coming period promises to keep the debate around effective implementation alive and vibrant in the country.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

Final Report on the Proposed Right to Information Act, 200—2003, August

Law Commission - Bangladesh

Available at: http://tinyurl.com/yh7hx7a

The report provides a government perspective on the legal-historical context and background within which the demand for an FoI regime in Bangladesh has evolved, as well as discusses the key features of a draft law which was under discussion at that point.

Submission on the (Draft) Right to Information Ordinance 2008 of Bangladesh

2008, March

Article 19, Global Campaign for Freedom of Expression, Shushashoner Jonno Procharavijan (SUPRO), Mass Line Media (MMC) and Bangladesh NGOs Network for Radio and Communication (BNNRC)

Available at: http://tinyurl.com/yabmo6h

This paper provides an analysis of the Draft Right to Information Ordinance which had been made public by the government in 2008. It compares the Draft Ordinance against international standards and makes recommendations for its improvement.

People's Right to Information: Hypocrisy Thy Name is Government

2009, May

Kabir, Nurul (Five part series published in *New Age* in May 2009)

Available at: Part I: http://tinyurl.com/yzpoj9r

Part II: http://tinyurl.com/ylopnja

Part III: http://tinyurl.com/yldtf48

Part IV: http://tinyurl.com/yzrqyvj

Part V: http://tinyurl.com/ykvhg33

This article, which appeared a series in a leading English language daily of Bangladesh a few months after the enactment of the now current Right to Information Act of 2009, critiques the law and the implementation mechanisms contained therein, and provides an important counter view to the perspective that a new freedom of information age has now dawned in Bangladesh as a result of the enactment of this Act.

Freedom to Know

2009, June

Anam, Shaheen (Published in Volume 3 Issue 6 of The Daily Star *in June 2009)*

Available at: http://tinyurl.com/yb3bn55

This article which was published in a leading English daily newspaper of the country gives a brief analysis of the way similar laws have evolved and are being implemented in other countries of the region. It then goes on to analyse the Right to Information Act of 2009 and provides pointers to its implications for Bangladesh, as well as the challenges of the future.

Implementing Right to Information in Bangladesh: Opportunities and Challenges

2009, June

Iftekharuzzaman

Available at: http://tinyurl.com/yd8j8y9

Perhaps the most comprehensive of the papers written so far, the document traces the history of the evolution of the FoI regime in Bangladesh, including international and regional influences, as well as goes on to identify the opportunities and challenges that lie ahead for Bangladesh in this context, with the enactment of the Right to Information Act of 2009.

Sharing Power with People - Proceedings of the conference on Right to Information: Law, Institution and Citizens

2009, July

Right to Information Forum, Bangladesh

Available at: http://tinyurl.com/y96atpb

The proceedings of an international conference with a focus on the challenges of implementing the Right to Information Law 2009 of Bangladesh, this document provides a rich perspective from civil society, government as well as regional and international luminaries associated with FoI. Issues discussed in the conference include the role of the courts and judiciary, challenges of implementation especially in rural areas, effective record management, and transforming cultures of secrecy.

SELECT MEDIA AND OTHER RESOURCES ON THE WEB

Road to RTI

The Daily Star, 29 March 2010

http://tinyurl.com/yhdwp87

CARRYING FORWARD THE RTI

The Daily Star, 23 February 2010

http://tinyurl.com/yk5age5

RIGHT TO INFORMATION: STATUS OF IMPLEMENTATION

The Daily Star, 23 February 2010

http://tinyurl.com/yhvlcds

Full implementation of Right to Information Act demanded

New Age, 23 October 2009

http://tinyurl.com/yephjlq

Unlocking the Power of Information

The Star, 26 June 2009

http://tinyurl.com/y8w57hl (PDF file)

http://tinyurl.com/ycmovr6

Ain o Salish Kendra (ASK)

http://www.askbd.org

Bangladesh NGOs Network for Radio and Communication (BNNRC)

http://www.bnnrc.net

Manusher Jonno Foundation

http://www.manusher.org

Transparency International, Bangladesh

http://www.ti-bangladesh.org

BHUTAN

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

Accountability and Gross National Happiness

Gurung, Meghraj 1999

Available at: http://tinyurl.com/ybzg5ss

This paper discusses the issue of accountability in the context of the conceptual framework of Gross National Happiness (GNH), an idea pioneered by the former King of Bhutan, Jigme Singye Wangchuk. It identifies the elements within the pre-democracy governance structures of Bhutan, and traces a causal relationship between accountability mechanisms and the realisation of the philosophy of GNH in the Bhutanese context.

DEMOCRATISATION FROM ABOVE: THE CASE OF BHUTAN

Hofmann, Klaus

2006

Available at: http://tinyurl.com/yfvayol

This short paper provides a brief political history of Bhutan, as well as traces the processes through which the country moved from being a monarchy to a constitutional democracy, albeit with the monarch as the head of state, similar to the United Kingdom. The paper provides clear and succinct insights into this movement, which was led by the King and the institution of monarchy, rather than inspired by popular demands for the same.

OPENING THE GATES IN BHUTAN - MEDIA GATEKEEPERS AND THE AGENDA OF CHANGE

Pek-Dorji, Siok Sian

2007, Centre for Bhutan Studies

Available at: http://tinyurl.com/yby9k2r

The paper traces the history of the development of popular media in Bhutan, both state-owned and private, and including print, radio, television and the internet. Given that the country did not have television or the internet till 1999, it provides an important discussion

on the tremendous changes in the information dissemination landscape in Bhutan in a relatively short period of time. The paper has important implications for the proposed RTI Act in Bhutan since it provides the contextual background to freedom of expression within which the new Act is likely to be brought in.

ROLE OF KUENSEL IN FOSTERING DEMOCRACY IN BHUTAN

Mehta, Sanjeev and Tshering Dorji

2007, Centre for Bhutan Studies

Available at: http://tinyurl.com/ylsdvw9

A more quantitative analysis on the issue of media freedom and democracy in Bhutan, this paper analyses the role that the state-owned weekly newspaper *The Kuensel* has played in terms of developing and disseminating ideas related to democracy, both at instrumental, as well as substantive levels.

Compilation of Articles Appearing in The Kuensel *on RTI in Bhutan (March 2008 – October 2009)*

2010

Sharma, Prashant

Available at: http://tinyurl.com/ykmtxcj

This paper is a compilation of all the articles which refer to the Right to Information in Bhutan and which have appeared in *The Kuensel* newspaper between March 2008 and October 2009. The compilation provides the text, author details, date of publication, and links to each article should the reader require the original reference.

SELECT MEDIA AND OTHER RESOURCES ON THE WEB

Association of Press Freedom Activists, Bhutan (APFA)

http://www.apfanews.com

Bhutan Broadcasting Service

http://www.bbs.com.bt

Bhutan News Online

http://www.bhutannewsonline.com

Bhutan Observer

http://www.bhutanobserver.bt

Kuensel Online

http://www.kuenselonline.com

Anti-Corruption Commission of Bhutan

http://www.anti-corruption.org.bt

Bhutan Centre for Media and Democracy

http://www.bhutancmd.org.bt

Centre for Bhutan Studies

http://www.bhutanstudies.org.bt

Ministry of Information and Communications, Royal Government of Bhutan

http://www.moic.gov.bt

INDIA

Literature Review

Compared to other countries in the region, a rich, varied and fairly voluminous amount of literature on FoI on India is available in the public domain. This could be attributed to the fact that the FoI regime in India is perhaps the most mature and evolved amongst the countries of the region due to a complex set of reasons, details of which is outside the purview of this note. Although the current FoI regime acquired a legal framework only in 2005 with the enactment of the Right to Information (RTI) Act, the extent of interest and usage of the Act far belies the fact that it has been in operation for less than five years.

Several papers provide rich and nuanced historical narratives of the social and political processes which led to the enactment of the RTI Act in India in 2005 (Goetz and Jenkins, 1999; Mander and Joshi, 1999; Roy and Dey, 2004; Baviskar, 2006; Singh 2007). While these papers in the main come from academic as well as activist perspectives, government perspectives on FoI in the country are also found in good measure which provide important documentation on

this issue both before the enactment of the RTI Act in 2005 as well as after (DRPSCPPGLJ, Rajya Sabha, Parliament of India 2005; SARC, 2006; CIC, 2008).

The RTI Act of 2005 incorporates the setting up of an appellate mechanism for the realisation of the right through the setting up of Information Commissions at both the state and central levels, the efficacy of which has also been a subject for exploration in several papers (CHRI, 2006; CIC, 2008). Although the RTI Act was enacted only in 2005, we already see the publication of some study reports which attempt to analyse different aspects of usage and implementation of the Act across the country (PWC, 2009; RaaG and NCPRI 2009; CHRI, 2009). Papers have also attempted to assess the Act as a stock-taking exercise so that limitations, successes and challenges can be identified, with a particular reference to the learnings which can be taken from the Indian experience for the world at large (Roberts, 2010).

In addition, a plethora of booklets and handbooks aimed at raising awareness exist in a variety of Indian languages. Documentation of case studies of experiences in the usage of the RTI also abound (CGG, 2009). However, many of these have not been included in this literature review and annotated bibliography by name due to the demands of brevity, but can be accessed through the 'Other Resources' section of this paper. It may be noted that the media has played a critical role in raising awareness about the RTI Act in India and interested individuals may find using the media search links provided in the 'Select Media Resources' section very rewarding.

Given the diversity and richness of ideas which have informed the public debate on the issue, it is somewhat disappointing to see that only limited academic work focused on FoI in India has been carried out (Goetz and Jenkins, 1999; Singh, 2007; Roberts, 2010). A greater number of research scholars may need to focus their work on conducting theoretical analyses of the implications of the RTI Act on social, political and economic processes in India. In addition, while some study reports (as mentioned above) have in part focused on the practice and implementation of the RTI Act, these have generally been at the national level, and often with an urban bias. With a country the size of India, national level analyses can at times obfuscate the tremendous regional variations which exist in the evolution of an effective FoI regime in India. Thus, regional or state level studies on

usage and implementation, especially focused on rural areas, is another aspect of the issue which would benefit greatly from further research. In addition, greater research on the analysis of the performance and decisions of Information Commissions both at the central and state levels, may also identify the challenges arising in the effective implementation of appellate mechanisms. Finally, research also needs to be carried out on the larger impact of the RTI Act on public service delivery, administrative functioning and corruption.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

The Movement for Right to Information in India: People's Power for the Control of Corruption

Paper presented at the Conference on Pan-Commonwealth Advocacy, Harare, Zimbabwe

Mander, Harsh and Abha Joshi

1999, January

Available at: http://tinyurl.com/ye2dy7l

This paper provides a rich and detailed historical perspective on the grassroots movement led by MKSS in Rajasthan demanding a right for ordinary people to access public information. Written many years before the enactment of the RTI Act in 2005, the paper discusses the importance of such an access to improved transparency in government functioning, including government efforts in this direction, and its implications on the lives of ordinary people, as well provides a rationale for the development of a legal framework towards the evolution of an effective FoI regime.

ACCOUNTS AND ACCOUNTABILITY: THEORETICAL IMPLICATIONS OF THE RIGHT TO INFORMATION MOVEMENT IN INDIA

Goetz, Anne-Marie and Rob Jenkins

1999

Third World Quarterly, Vol 20, No 3, pp 603-622

Available at: http://tinyurl.com/yfgk8m9

This paper provides a brief history of the grassroots movement

for transparency of government records led by the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan in the '90s. It then goes on to locate the debate around accessing freedom of information within the oft-used concepts of good governance, human rights, participatory development and anti-corruption, and provides a theoretical framework within which to understand the processes of change which are underway in India as represented by the MKSS experience.

FIGHTING FOR THE RIGHT TO KNOW IN INDIA

Roy, Aruna and Nikhil Dey

2004

Available at: http://tinyurl.com/ycqhntr

Authored by two of the key activists who led the grassroots struggle for public access to government held information, this paper provides a rich and personal account of the experiences and struggles which evolved from a demand for minimum wages being paid to the rural poor to a larger fight for the "right to know". This paper is essential reading for anyone who would like to understand the history of the RTI movement in India.

THIRD REPORT ON THE RIGHT TO INFORMATION BILL, 2004

Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (DRPSCPPGLJ), Rajya Sabha, Parliament of India

2005, March

Available at: http://tinyurl.com/ybabuws

This document provides details of the deliberations of a Committee of Parliamentarians which was tasked with analysing the draft Right to Information Bill of 2004 which was later introduced in Parliament for eventual enactment into the RTI Act of 2005. The report includes highlights of the minutes of all the sittings of the committee which included oral evidence provided by senior government functionaries and civil society leaders and activists. The report also provides a clause-by-clause analysis of the draft Bill and makes recommendations on the same. The report is an important document for anyone attempting to understand the complexity of approaches and processes which preceded the eventual enactment of

the RTI Act in 2005.

FIRST REPORT: RIGHT TO INFORMATION: MASTER KEY TO GOOD GOVERNANCE

Second Administrative Reforms Commission (SARC), Government of India

2006, June

Available at: http://tinyurl.com/yzzbcgf

As stated in the foreword, "The Second Administrative Reforms Commission has been constituted to prepare a detailed blueprint for revamping the public administration system." The first report of the Commission focuses on the then newly enacted RTI Act of 2005, is strongly supportive of it, even as it identifies the changes required in the existing legal framework for the effective implementation of the Act. It also discusses issues around the culture of secrecy in government and makes recommendations for bringing about reforms in the same, taking the RTI Act 2005 as a critical entry point.

IS KNOWLEDGE POWER?: THE RIGHT TO INFORMATION CAMPAIGN IN INDIA

Unpublished mimeo

Baviskar, Amita

2006

Available at: http://tinyurl.com/yhbt2yu

This paper analyses the role that the National Campaign for People's Right to Information (NCPRI) played in the process which eventually led to the enactment of the RTI Act in 2005. Apart from providing a rich historical narrative of the role of NCPRI, it also dwells upon the roles played by other organisations and individuals in the process, and goes on to discuss the reasons for the success of the campaign. It also raises important questions around the political economy of reform processes in India.

INDIA: GRASSROOTS INITIATIVES

Singh, Shekhar

2007

Chapter I in *The Right to Know: Transparency for an Open World (Editor: Ann Florini)*

COLUMBIA UNIVERSITY PRESS

This chapter in an edited volume which analyses the evolution of FoI regimes in India, China, Eastern Europe and Nigeria, provides a nuanced understanding of the political and social processes which led the enactment of the RTI Act in India. It gives a detailed history of the environmental movement which had a formative and definitive impact on the process, as well as documents the grassroots movement in India which played an extraordinary role in the same. The chapter also documents the institutional support mechanisms as well as the hurdles which impacted the process deeply, as well as identifies the challenges that lie ahead for the establishment of an effective transparency regime in the country.

REPORT OF NATIONAL COORDINATION COMMITTEE ON RIGHT TO INFORMATION ACT

Central Information Commission (CIC), Government of India

2008, July

Executive Summary available at: http://tinyurl.com/yff3zpe

Main Contents available at: http://tinyurl.com/yk5td4j

Full report available at: http://tinyurl.com/yhlswdb

Three years into the enactment of the RTI Act, the Central Information Commission formed a sub-committee to identify the hurdles arising in the effective implementation of the Act, including a review of rules and procedures across the country, record keeping, and public awareness. The report takes into account experiences and recommendations of state information commissioners as well as other institutions working on RTI to identify these issues as well as suggest ways to improve the efficacy of the RTI regime.

INNOVATIONS / GOOD PRACTICES (NATIONAL & INTERNATIONAL) IN IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT, 2005

Centre for Good Governance (CGG)

2009

Available at: http://tinyurl.com/yd6nea4

This paper provides a good overview of various innovations in the implementation of RTI being carried out in different parts of India including case studies from Andhra Pradesh, Bihar, Goa, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Meghalaya, Nagaland, Punjab, and Uttarakhand. Case studies also include various levels of government and implementing agencies such as the central government, state government, district administration and information commissions both at the state and central levels. A couple of case studies are also presented from Nepal and Honduras.

SAFEGUARDING THE RIGHT TO INFORMATION: REPORT OF THE PEOPLE'S RTI ASSESSMENT

RTI Assessment & Analysis Group (RaaG) and National Campaign for People's Right to Information (NCPRI)

2009, October

Executive Summary available at: http://tinyurl.com/ylaj9wv

Conducted over ten states and the National Capital Territory of Delhi, the People's RTI Assessment study was carried out over 2008-09. The report is based on interviews conducted with thousands of information seekers, information providers and the general public. The study also provides important data and analysis on the usage, processes of implementation, the status of proactive disclosures on the part of public authorities, as well as the performance of Information Commissions. It also studies the mediascape across the country in relation to the usage and promotion of the RTI Act, as well as documents several case studies. This study finally makes several recommendations for the improvement of the overall FoI regime in the country based on the evidence generated. A groundbreaking study both in its scope and scale, as well as the primary data generated, this document makes for critical reading in terms of gaining an evidence-based understanding of the current issues surrounding the RTI Act in India.

COMPLIANCE WITH THE RTI ACT: A SURVEY

Commonwealth Human Rights Initiative (CHRI)

2009

Available at: http://tinyurl.com/yce3tkc

Focused on one district in the western state of Gujarat in India, the study was designed to assess the compliance of public authorities with provisions of the RTI Act. Record management, proactive disclosure, processes set up to deal with information requests are some of the issues which were taken up in this study which surveyed 95 offices at various district and lower level offices in this particular district. The survey is important in that it focuses on a small geographical area, which is not a major urban centre, and therefore provides important insights into the ways in which the implementation of the RTI Act is being carried out in areas typically out of the purview of national media.

FINAL REPORT: UNDERSTANDING THE "KEY ISSUES AND CONSTRAINTS" IN IMPLEMENTING THE RTI ACT

Price Waterhouse Coopers (PWC)

2009

Executive Summary available at: http://tinyurl.com/yzmjzdw

Full report available at: http://tinyurl.com/yb5jy6g

Commissioned by the Government of India, this national level study conducted several thousand interviews with information seekers and providers, as well as held many focus group discussions with relevant stakeholders to provide a perspective on the issues arising in terms of the implementation of the RTI Act in India. The study makes several recommendations for improving the efficacy of the FoI regime in the country. While the spread and depth of coverage of questions being addressed is lower than in the RaaG study, this is an important document as it was the first large study commissioned by the government to assess the status of implementation of the RTI Act in India, and is therefore likely to inform government policy in the coming years on this issue in a significant way.

A GREAT AND REVOLUTIONARY LAW? THE FIRST FOUR YEARS OF INDIA'S RIGHT TO INFORMATION ACT

Roberts, Alasdair

2010, March

Available at: http://tinyurl.com/ya94lht

This paper provides a comprehensive overview and synthesis of various assessment studies carried out over the past few years on various aspects of usage and implementation of the RTI Act in India. Even as it discusses the challenges arising in implementation as documented through these studies, it also identifies innovations which have evolved in the usage of the Act to circumvent some of the hurdles arising in its effective implementation.

SELECT MEDIA AND RESOURCES ON THE WEB

Accountability Initiative

http://www.accountabilityindia.org

Centre for Good Governance

http://www.cgg.gov.in

Central Information Commission, Government of India

http://www.cic.gov.in

Commonwealth Human Rights Initiative (CHRI)

http://www.humanrightsinitiative.org

Pages specific to RTI in India within the CHRI website

http://tinyurl.com/awryo

http://tinyurl.com/y89k4o5

http://tinyurl.com/y947vns

http://tinyurl.com/ydl7fvf

Consumer Unity and Trust Society *(Newsletters on RTI)*

http://www.cuts-international.org/cart/Newsletters.htm

India Together *(RTI Resources)*

http://www.indiatogether.org/rti/

Kabir

http://www.kabir.org.in

Knowledge and Networking Portal on Right to Information

http://www.rti.org.in

RTI Times Newsletter (Archives)

http://www.rti.org.in/News_Letter.do

Indian Social Institute *(Human Rights News Bulletin focused on RTI)*

http://blog.isidelhi.org.in/?page_id=86

National Campaign for People's Right to Information

http://www.righttoinformation.info

People's Assessment of the Right to Information Act

http://www.rti-assessment.org/

Seminar Magazine

(Special Issue on Right to Information, July 2005)

http://tinyurl.com/ydz6h79

Society for Participatory Research in Asia (PRIA)

http://www.pria.org

Right to Information Act: Information Service Portal of the Government of India

http://www.rti.gov.in

NEPAL

Literature Review

Papers available in the public domain have been authored by a handful of individuals who have been at the forefront of advocating for an FoI Act in Nepal for many years. These individuals are mostly from the media world, with links to associations such as the Federation of Nepali Journalists (FNJ) and Nepal Press Institute. As a result, the framework within which the debate has largely been positioned relates to media freedom and freedom of expression, within the larger rubric of human rights. Only a few international organisations, such as the International Centre for Integrated Mountain Development (ICIMOD) and Article 19 have consistently supported the issue of FoI in Nepal.

Some articles trace the history of the growth in the demand for

an FoI regime in Nepal, particularly related to the evolution of the constitution of the country since 1990, the formation of the Citizen's Campaign for Right to Information as a platform for advocacy on the issue, finally leading up to the enactment of the Right to Information Act in 2007 (Dahal and Sigdel, 2007; Article 19, FNJ and FF, 2008). Brief comparative analyses with related laws in other countries of the region can also be found in some of the papers (Dahal and Sigdel, 2007). Some recent documents also describe in great detail the international standards related to FoI which are being used as a benchmark for the Nepali law (Article 19, FNJ and FF, 2007). A thorough analysis of the Right to Information Act of 2007 which points out lacunae as well makes recommendations for the improvement of the same is also available (Article 19, FNJ and FF, 2008). In 2008, rules and regulations related to the implementation of the Act were released. This regulatory framework has also been analysed in great detail and in consonance with international best practices. Recommendations have also been made to the government for its improvement (Article 19, FNJ and FF, 2008). Finally, Freedom Forum publishes a regular newsletter focused on freedom of expression issues in Nepal, details of which are provided in the next section.

In the attempt to seek out resources available in the public domain on FoI in Nepal, it was noted that relevant material is not available plentifully in the English language, despite there being a fairly strong RTI law in existence. While some reports in the media could be traced (which surprisingly seem to have tapered off in the last couple of years), mostly in the form of press releases and simple reportage, academic or quasi-academic literature was present only in a limited way.

While some papers in Nepali language are present, most have been authored by the same group of advocates who are at the forefront of RTI advocacy in Nepal. Although the Act and regulatory mechanism has been in place since 2008, no reports which attempt to track its implementation were found. Case studies were also absent for all practical purposes. In addition, the material which has been found, while detailed and thorough, also suggests that only a handful of individuals and institutions seem to be taking an active interest in FoI in Nepal. There is a significant absence of voices on this issue from an otherwise dynamic civil society in the country. While lack of awareness is cited as a possible reason for the low level of public interest, this

may well be related to the fact that mass media has been preoccupied with the current process of transition from a monarchy to republican democracy in Nepal and has not given enough attention to the direct linkages between an effective FoI regime and processes of democratisation.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

Right to Information in the Himalayan Countries: The Nepalese Initiative in *Sustainable Mountain Development Vol. 52, Spring 2007, ICIMOD, Kathmandu*

2007, April

Dahal, Taranath and Santosh Sigdel

Available at: http://tinyurl.com/ycy8pyb

This article provides a brief comparative description of the status of FoI related laws in the region as well as provides a short history of the movement demanding an effective FoI regime in Nepal.

Background Paper 3 on Freedom of Information

2007, December

Article 19, Federation of Nepali Journalists and Freedom Forum

Available at: http://tinyurl.com/yj8xvdj

This paper provides a thorough background of international best practices related to FoI while advocating for an FoI regime in Nepal which would take into account these fundamental principles in its evolution.

Memorandum on the Right to Information Act of the State of Nepal

2008, January

Article 19, Federation of Nepali Journalists and Freedom Forum

Available at: http://tinyurl.com/yktpnoy

This paper is a detailed and through analysis of the Right to Information Act of 2007 in Nepal. It points out the weaknesses, particularly in the context of international best practices and model FoI laws, and suggests changes to be made to the existing Act to make it more effective.

Memorandum on the Nepali Regulation on Right to Information 2008

2008, June

Article 19, Federation of Nepali Journalists and Freedom Forum

Available at: http://tinyurl.com/yj93vvt

This paper provides a critical analysis of the rules and regulations which form the bedrock of the implementation mechanism of the Right to Information Act 2007 in Nepal. While being on the whole appreciative of the regulations introduced by the government, it makes some recommendations to further strengthen the FoI regime in the country.

FREE EXPRESSION: A NEWSLETTER OF FREEDOM FORUM

Freedom Forum, Nepal

All issues available at: http://tinyurl.com/yf4jnx9

Last issue available at: http://tinyurl.com/yloyfnz

A regular publication of Freedom Forum, which has been at the forefront of RTI advocacy in Nepal, the newsletter provides an overview of freedom of expression issues in Nepal. This includes news clippings, data, opinion pieces and other references.

AN ACCOUNT OF RIGHT TO INFORMATION IN NEPAL

Undated

Dahal, Taranath

Authored for *Advocacy Forum for Revitalizing Equitable Societies in the Himalayas (AFRESH)*

This paper provides a comprehensive historical account of the evolution of the process which led to the enactment of the Right to Information Act 2008 in Nepal. This includes the constitutional and legal framework within which the demand for an Act grew, as well as a brief history of the way in which civil society developed and articulated this demand which eventually led to the enactment of the law.

Select Media and Other Resources on the Web

PM vows to protect freedom of press

The Himalayan Times, 19 February 2010

http://tinyurl.com/yfk93et

Restricted freedom

The Kathmandu Post, 5 December 2009

http://tinyurl.com/yk485lx

Citizen's Campaign for Right to Information

http://www.rtinepal.org

Federation of Nepali Journalists

http://www.fnjnepal.org

Freedom Forum

http://www.freedomforum.org.np

Transparency International Nepal

http://www.tinepal.org

PAKISTAN

Literature Review

The papers which exist in the public domain related to the Freedom of Information regime in Pakistan have been authored primarily by individuals associated with civil society organisations (CSOs) which have been advocating for a comprehensive FoI regime in Pakistan for several years, viz. Consumer Rights Commission of Pakistan (CRCP), Centre for Peace and Development Initiatives (CPDI) Pakistan, and to a lesser extent, Transparency International, Pakistan and Centre for Civic Education (CCE). While there has been some level of media reportage on the issue, it is restricted to a few journalists who seem to have a special interest in the issue, rather than a larger interest across the mediascape.

These papers in the main provide a narrative of the process leading up to the current situation in the country where a new FoI bill is currently under the consideration of the government led by Asif Ali Zardari (President) and Yousaf Raza Gilani (Prime Minister) (CPDI, 2008). Key features such as the ambit of the FoI ordinance of 2002, the responsibilities of public bodies under it, and the appellate

mechanisms available under the ordinance have also been dwelt upon in some of these papers (Salim, 2009). Even as the current situation is described, the argument for a stronger FoI regime is typically set against international and regional experiences and best practices within the overall framework of anti-corruption.

Several papers provide a description of relevant existing laws, some of which are opposed to (such as The Official Secrets Act 1923, The Press and Registration of Books Act 1867 and The Telegraph Act 1885), while others (such as National Electric Power Regulatory Authority (NEPRA) Act 1997 and Local Government Ordinance (LGO) 2001) are supportive of an FoI regime in Pakistan (CPDI, 2008, 2009). Specificities of the Pakistani case are also explored in terms of comparative analysis with laws of other countries as well as comparisons between various ordinances and draft bills which have been implemented or are being considered by governments in Pakistan over the last decade. Some, albeit limited, discussion on FoI and the institutions and processes of democracy in the country can also be found in some of these documents.

A bulk of the other material available relates to the draft Freedom of Information Bill, 2008 which is currently under consideration of the government. These documents typically analyse the draft bill clause by clause and make recommendations for changes in the same (CRCP, 2008). Authorship of these documents is again limited to the few CSOs which have been mentioned above.

Some references to the FoI regime in Pakistan have also been made in regional and/or international studies and reports, details of which are provided in the relevant section of the documentation for this workshop.

Although FoI ordinances and/or laws have been promulgated in some provinces of Pakistan, there has been no study which is focused on or has analysed the same. At the same time, there are precious few study reports which look at the implementation status of the current FoI regime at the federal government level which is based on an ordinance (CCE, 2007). Detailed case studies of successful (or unsuccessful) attempts to seek information under the current FoI regime are available in limited numbers (CPDI, 2009).

No scholarly or academic work focused on FoI in Pakistan has been published so far in any international peer-reviewed academic

journal or edited volume. In addition, no papers or articles have been found which provide a detailed and nuanced insight into the political, institutional and structural reasons behind the current status of the FoI regime in Pakistan.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

The Freedom of Information Ordinance 2002: 5 years on: Window yet to be opened

2007, October

Centre for Civic Education, Pakistan

Available at: http://tinyurl.com/ykyqn8k

This document is one of the only studies available on the implementation of the FoI Ordinance of 2002. The study covers 16 federal government ministries, including the Cabinet Division, which is the nodal government department for FoI. The study's findings are revealing in terms of the low levels of usage of the Ordinance, as well as issues of lack of resources, training, awareness and sheer apathy, amongst other things.

State of Transparency and Freedom of Information in Pakistan

2008, May

Centre for Peace and Development Initiatives, Pakistan

Available at: http://tinyurl.com/ykjnzzw

Perhaps the most comprehensive of documents available which provide a historical narrative of the evolution of the FoI regime in Pakistan, it positions the argument for an effective FoI regime in the context of anti-corruption and good governance, as well as provides the conceptual and legal underpinnings of FoI both at the international as well as national level. It further defines the positive as well as negative elements (legal, administrative, and social) which are impacting the evolution of an FoI regime in Pakistan. With a detailed analysis (including a comparative one with other countries in the region) of the current FoI Ordinance 2002, it concludes with nuanced recommendations to strengthen the FoI regime in Pakistan.

The World Bank Workshop "Freedom of Information in Pakistan: Drawing on International Experience" (Briefing Paper)

2008, June

The World Bank, Pakistan Country Office

Available at: http://tinyurl.com/yfjqrgr

While this document has much in common with the one above, where it differs is in terms of conducting a more thorough analysis of the underlying principles of any effective FoI regime, as well as provides some details of the experience of three other countries (one in the region) - India, UK and South Africa. It then goes on to provide a chronology of events leading up to the current situation vis-a-vis the FoI regime in Pakistan.

Freedom of Information Bill, 2008: Analysis and Recommendations

2008, July

Consumer Rights Commission of Pakistan

Available at: http://tinyurl.com/yzn3cll

This document is a key resource particularly as it is one of the first to evolve from a larger consultation of CSOs involved with FoI issues in Pakistan, academics and media representatives. The consultation was organised by CRCP to analyse the new FoI Bill 2008 being considered by the government in a more participatory manner, and to suggest recommendations for changes in a unified voice. The document, which also benefited from inputs from international sources, analyses the draft FoI Bill 2008 clause by clause and suggests changes where deemed necessary in an effort to make the proposed new bill more meaningful and implementable in a more effective manner.

CPDI Information Requests: Changing the Culture of Secrecy

2009, June

Centre for Peace and Development Initiatives, Pakistan

Available at: http://tinyurl.com/yhvtkr6

Part study report and part analysis of the ways in which the bureaucracy functions in Pakistan, this document provides a succinct background to the legal framework within which the FoI regime in Pakistan is evolving. This includes a description of current laws which hinder the principles of transparency. The paper goes further to explode

some commonly perceived myths about the functioning of the bureaucracy. It finally provides a series of very insightful (and rare) case studies in which the FoI Ordinance was used by CPDI to unearth information from the government and the implications of the same in each of the cases.

Freedom of Information

2009, October

Brig (R) Ahmed Salim

Available at: http://tinyurl.com/yzak7wb

This paper is focused on the implementation mechanisms and the enabling structure which is currently available in Pakistan with respect to FoI. It takes as its entry point relevant international conventions which support FoI, as well as provides details about the FoI Ordinance 2002, the FoI Rules 2004, the role of public bodies, as well as the appeal mechanisms currently available to citizens in case of denial of information. It goes further to give statistical details along with an analysis of the way in which the appellate mechanism has been functioning.

SELECT MEDIA AND OTHER RESOURCES ON THE WEB

Government taking appropriate steps to facilitate free flow of information

Associated Press of Pakistan, 10 March 2010

http://tinyurl.com/ye3fsh5

Suppression of Information

The Dawn, 28 January 2010

http://tinyurl.com/y8gh2e9

Freedom of Information – Oxygen of Democracy

The News International, 12 October 2009

http://tinyurl.com/y8akne7

The Right to Know

The Dawn, 29 September 2009

http://tinyurl.com/ygcj9su

Freedom of Information Ordinance 2002

The Nation, 16 August 2009

http://tinyurl.com/yea455c

Campaign for Freedom of Information, Pakistan

http://www.ourrighttoknow.org

Centre for Civic Education, Pakistan

http://www.civiceducation.org

Centre for Peace and Development Initiatives, Pakistan

http://www.cpdi-pakistan.org

Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org

Consumer Rights Commission of Pakistan

http://www.crcp.org.pk

Transparency International Pakistan

http://www.transparency.org.pk

SRI LANKA

Literature Review

The documents which exist in the public domain related to the FoI regime in Sri Lanka have been authored primarily by individuals associated with civil society organisations (CSOs) which have been advocating for a comprehensive FoI regime in Sri Lanka for a number of years, viz. Centre for Policy Alternatives (CPA), Law and Society Trust (LST), Pathfinder Foundation, and Sri Lanka Press Institute (SLPI). International organisations such as the Commonwealth Human Rights Initiative (CHRI) and Article 19 have also been active in developing resource material related to FoI in Sri Lanka, but these efforts have been sporadic and discuss the issue within regional or international frameworks.

It may be noted that most of the debate as reflected by the papers available is located within the reform of the legal and constitutional

framework of the country, with a particular reference to media law reform (Pinto-Jayawardene, 2005). Some resources which approach the issue of FoI from other perspectives, such as anti-corruption are also present (Edrisinha and Gosselin, 2001). However, the overarching theme which informs the discussion consistently is that of the security situation with respect to the conflict which has affected the country for many years now (Edrisinha and Gosselin, 2001). While there appears to be a gradual increase in media reportage on the need for the enactment of a comprehensive FoI law, this is limited to a few publications and authors which seem to have a particular interest in the issue.

Along with the above, the history of the evolution of the demand for an FoI regime has been documented, including the constitutional provisions, such as which support the enactment of an FoI law (Edrisinha, 2008). In addition, papers also discuss the important role played by the Goonesekere Committee on the Reform of Laws affecting Media Freedom and Freedom of Expression which was set up in 1995, as well as the process leading up to the Colombo Declaration of 1998 on Media Freedom and Social Responsibility (SLPI, 2008).

Draft laws have been proposed in Sri Lanka in the past, particularly at the instance of media associations such as the Editors' Guild of Sri Lanka, and some papers discuss and critique these drafts with a view to strengthening the same (Article 19, 2001). Very limited academic work has been carried out on FoI in Sri Lanka. The Law and Society Trust has published a few papers in their journal, but these are not available in the public domain without charge.

In sum, while only a limited amount of documentation on FoI in Sri Lanka exists in the public domain, it largely emanates from the legal and media fraternity, which results in the articulation of the need for a strong FoI regime in Sri Lanka within those terms. The issue would therefore benefit greatly if voices of social scientists or commentators from other fields and disciplines emerged. However, the fact that only the specific groups above are commenting on FoI may also indicate that currently it is only a few individuals and professional groups who are pushing for a strong FoI regime in Sri Lanka.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

Country Study – Sri Lanka

Part II, Chapter 4 in *Global Trends on the Right to Information: A Survey of South Asia*

2001, July

Edrisinha, Rohan and Vanessa Gosselin

Chapter on Sri Lanka available at: http://tinyurl.com/ycdhjcy

Complete document available at: http://tinyurl.com/ydtbpcg

This is a very comprehensive document primarily focused on the legal and constitutional framework within which demands for an effective FoI regime are being made in Sri Lanka. It engages with critical issues such as the human rights discourse particularly within a situation of conflict which continually informs the debate on FoI in Sri Lanka.

Memorandum on The Official Freedom of Information Act, 2001

2001, August

Article 19

Available at: http://tinyurl.com/yk9t6ax

In 2001, The Editors' Guild of Sri Lanka proposed a draft Official Freedom of Information Act. This paper provides a critique of the act by comparing it to international best practices, as well as makes recommendations for making some key changes to the draft.

Country Paper on Sri Lanka – Manusher Jonno Conference on Right to Information- National and Regional Perspectives

2005, December

Pinto-Jayawardena, Kishali

Available at: http://tinyurl.com/yfv32wn

This paper also addresses the issue of FoI within the current administrative and legal framework within Sri Lanka, with specific attention being paid to current laws which inhibit the establishment of a strong FoI regime in the country. It also discusses in detail a draft

law under discussion by the government which had the input of media practitioners, and academics, amongst others.

The Case for a Freedom of Information Act in Sri Lanka

2008, January

Edrisinha, Rohan

Available at: http://tinyurl.com/yzz4p54

A more recent articulation of the issues which inform the debate, this paper provides the argument for FoI within the context of making democracy more effective and elements of the legal framework in Sri Lanka which support or hinder the process of establishing a strong FoI regime in the country. It goes on further to give a brief overview of the attempts made so far towards the establishment of the same.

Background Paper – Colombo Declaration on Media Freedom and Social Responsibility

2008, October

Pinto-Jayawardena, Kishali; Sri Lanka Press Institute

Available at: http://tinyurl.com/yaq3brt

This paper takes as its entry point the Colombo Declaration on Media Freedom and Social Responsibility made in 1998, which had made some salutary recommendations on the issues related to media law reform, with a specific reference to FoI. Section 2 (pages 13-17) focus specifically on FoI ten years after the declaration, and provides a strong argument in support of the establishment of a strong FoI regime in the country.

SELECT MEDIA AND OTHER RESOURCES ON THE WEB

Lanka's Information Act: It's about you

The Sunday Times, 14 March 2010

http://tinyurl.com/y9musmr

Let the people have what's theirs

Sri Lanka Guardian, 3 March 2010

http://tinyurl.com/y8gh2e9

Coalition for Right to Information set up by professional group

The Island, 24 January 2010

http://tinyurl.com/yga9vtb

From 'media freedom' to Freedom of Information

The Island, 10 December 2009

http://tinyurl.com/yekvjly

Centre for Policy Alternatives

http://www.cpalanka.org

Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org

Law and Society Trust

http://www.lawandsocietytrust.org

Sri Lanka Press Institute

http://www.slpi.lk

Transparency International Sri Lanka

http://www.tisrilanka.org

SOUTH ASIA REGION

Literature Review

Recent years have seen a fair, if variable at the country level, amount of interest in FoI laws in the SAR. While there are several organisations and individuals who have been working on FoI issues in each of the countries, only a few, such as Commonwealth Human Rights Initiative (CHRI) and Article 19 have carried out work which focuses on the region. At the same time, global studies do document FoI in the region, even if they are not focused on the regional aspects of the debate.

Most of the regional and international literature locates the development of FoI laws by first establishing FoI within the human rights and rights-based approach frameworks, and then identifying ideal principles of FoI as they have evolved over the years (Article 19

et al, 2001). Some papers go on to provide country specific overviews or detailed studies within this framework (Article 19 et al, 2001). Other papers locate the issue of freedom of information within contexts of citizen participation, anti-corruption, or civil society movements (PRIA, 2003; UNDP, 2007; Ali, 2007). Some papers have also been identified which document case studies from a part of the region (CGG, 2009). Several workshops and conferences on FoI have also been held at the regional level over the last years, and proceedings of some of them are also available (UNESCO and ICSSR, 2008; RTI Forum, 2009).

While national media reportage in the region often makes references to FoI related developments in countries in the region even while discussing the issue at a national level, most of the papers available freely in the public domain tend to document individual country specific histories and events and in a single document. While some meetings and conferences at the regional level have been held, these processes and their implications for the development of a regional framework have not been documented adequately and the specificities of FoI issues at the regional level have not been debated in great detail. In addition, the importance of knowledge transfer and experience sharing is also an aspect about which little has been written about.

In sum, while some studies and reports on FoI in the SAR exist, the approach in the main remains one of collation and compilation with little analysis being conducted on the regional aspects of the debate. In that, most of the debate remains at the national level, and the development of regional thinking on FoI, which could strengthen the movement for more effective national regimes, is a gap which needs the attention of researchers as well as advocates of FoI in the region. Given that countries of the region have deep commonalities in their cultural and political histories, focusing more attention to the regional aspect of this issue may indeed yield rich dividends for FoI advocates.

ANNOTATED BIBLIOGRAPHY OF KEY RESOURCES

Global Trends on the Right to Information: A Survey of South Asia

2001, July

Article 19, Centre for Policy Alternatives, Commonwealth Human Rights Initiative, Human Rights Commission of Pakistan

Available at: http://tinyurl.com/ydtbpcg

One of the early documents which document the evolution of FoI in the SAR, the paper first identifies the international standards which have evolved over the years with respect to FoI, including the relationship it has with human rights frameworks. It also discusses global trends with respect to the growth of FoI. In three separate chapters, it then focuses on country studies on India, Pakistan and Sri Lanka with regard to the growth of an FoI regime in each of these countries. It finally makes recommendations in terms of strengthening the FoI regime in the region.

Legal Framework and Citizen Participation in South Asia Regional Report (India, Nepal, and Bangladesh)

2003, July

Society for Participatory Research in Asia (PRIA), Manoj Rai

Available at: http://tinyurl.com/ygdyu3n

This report is a part of a global research initiative undertaken by the Institute of Development Studies, the Ford Foundation and regional partners in East Africa, Latin America, South East Asia, Northern Countries and South Asia on the ways in which legal frameworks impact citizen participation. This particular report is focused on experiences in Bangladesh, Nepal and India, with a special reference to rural self governance mechanisms. It is within this rubric that the legal framework in these countries is discussed, with a section devoted to right to information.

Report of the South Asia Stakeholders Consultation, Asia Pacific Regional Human Development Report 2007

2007, February

UNDP, Asia Pacific Regional Human Development Reports Initiative (APRI), Human Development Report Unit (HDRU)

Available at: http://tinyurl.com/ygkos5p

The theme of the Asia Pacific Human Development Report for 2007 was 'Corruption'. It is within this framework that UNDP organised a stakeholder consultation to the identify challenges and priorities of all countries of the South Asia region, including Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan

and Sri Lanka. Access to information as an effective tool for anti-corruption developed as a key idea in this consultation and is reflected strongly in this report.

Freedom of Information in South Asia: Comparative Perspectives on Civil Society Initiative

2007, April

Ali, Mukhtar Ahmad

Available at: http://tinyurl.com/y9bw37o

This paper provides a socio-historical narrative of the growth of the demand for a legally enforceable right to information in South Asia, with a specific focus on India and Pakistan. The paper discusses the different evolutionary paths, as well as dwells to a limited extent on the shared cultural and legal frameworks that have an impact on the culture of secrecy in the region. It finally makes a case for strong FoI regimes in the region as a tool to oppose corruption.

New Delhi Declaration of Ministers of Social Development from South Asia

2008, March

Forum of Ministers of Social Development from South Asia

Available at: http://tinyurl.com/yly23ed

A political document, this declaration is a useful reference in that it provides a formal statement by all governments of the region to expedite legislation on the right to information in support of the overall aim of equitable social development. The declaration emanated from a meeting of ministers of social development of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, which was organised by the Indian Council for Social Science Research (ICSSR) and UNESCO.

Sharing Power with People - Proceedings of the conference on Right to Information: Law, Institution and Citizens

2009, July

Right to Information Forum, Bangladesh

Available at: http://tinyurl.com/y96atpb

The proceedings of an international conference with a focus on the challenges of implementing the Right to Information Law 2009 of Bangladesh, this document provides a rich perspective from civil society, government as well as regional and international luminaries associated with FoI, with a special emphasis on the South Asia region. Issues discussed in the conference include the role of the courts and judiciary, challenges of implementation especially in rural areas, effective record management, and transforming cultures of secrecy.

SELECT MEDIA AND OTHER RESOURCES ON THE WEB

Freedom of access to information in South Asia

The Daily Star, Bangladesh, 30 August 2008

http://tinyurl.com/y9hjjk2

Right to Information in South Asia

The News International, Pakistan, 26 March 2007

http://tinyurl.com/ya3x9n9

Commonwealth Human Rights Initiative

http://www.humanrightsinitiative.org

10

Good Practices Relating to RTI Implementation in India

Sapna Chadah*

INTRODUCTION

The Right to Information (RTI) is the right of every citizen to access information held by or under the control of public authorities. It is also the launching point for the realisation of other human rights - civil and political rights such as the right to life and liberty, freedom of expression, and equality before the law, and economic, social and cultural rights such as the right to adequate food, the right to water, the right to highest attainable standard of health, and the right to education.

In India, the RTI Act came into being in 2005, a landmark event that made the governance processes of the country accessible to its citizens. The Act is based on the principle that all government information is the property of the people. It takes democracy to the grassroot level and is also a step towards ensuring participatory governance in the country.

The impact of this Act can be seen on many different levels. In the political sphere, it contributes to the ability of citizens to become aware of and involved in the activities of government. Overall, this raises the level of political debate and leads to a more productive process of policymaking. In the economic sphere, greater transparency

*With inputs from Sujit Pruseth, Simi Mishra and Pranab Banerji

promotes a better investment climate. In the sphere of public administration, transparency improves the decision making process of public servants by making them more responsive and accountable to the public and controls corruption by making it more difficult to hide illegal activities. It also improves the legitimacy of and trust in the government in the eyes of the people, allowing for a more effective implementation of public policies.

It can be said that information is the basis of democracy. If people do not know what is happening in their society, and if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of society. Access to information not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process.

This legislation provides opportunities to civil society organisations (CSOs), as well as the media to be involved in governance and social transformation processes by using the Act as a method to monitor, review and evaluate government policies, programmes and schemes. In this manner, both the media and CSOs can infuse greater transparency and accountability in the administration of developmental programmes and arrest the abuse of power and misuse of public resources.

This paper compiles good practices in the implementation of the RTI Act in India across a wide array of central and state level activities. The compilation has classified these in the following manner:

1. Using information communication technologies (ICTs) to strengthen the implementation of the RTI Act;
2. Using the RTI Act to improve the access of marginalised populations to specific government schemes - specifically the National Rural Employment Guarantee Act (NREGA) and Public Distribution System (PDS);
3. Implementation of *suo motu* provisions of the RTI Act;
4. Good practices adopted by Information Commissions; and
5. Other good practices, including awareness generation.

1. Using information communication technologies (ICTs) to strengthen the implementation of the RTI Act

ANDHRA PRADESH INFORMATION COMMISSION (APIC)[1]

WEBSITE

APIC has a well-designed, comprehensive and functional website. It provides information about the roles and responsibilities, distribution of work, and the activities undertaken by each information commissioner, as well as the procedure to request for information. It also has sections on Frequently Asked Questions (FAQs), success stories, decisions on appeals, directory of all public authorities in Andhra Pradesh including details of Public Information Officers (PIOs), Assistant Public Information Officers (APIOs) and Appellate Authorities (AAs), links to other State Information Commissions (SICs), the Central Information Commission (CIC) and other RTI related web sites. This website has been developed and is maintained by the Centre for Good Governance (CGG).

TRACKING SYSTEM

APIC has implemented an internal file tracking system in which all applications for information are entered into an online database. Receipts are issued immediately in case the application is submitted personally. The status of each case is updated online regularly and the order itself is provided online after the disposal of the case. A similar system is in place for appeals and complaints as well.

STATUS OF APPEALS THROUGH SMS

A system has been developed by which the status of an appeal/complaint can also be made available to applicants by sending an SMS citing appeal/complaint number and year to a specific phone number. A response SMS is generated by the system and sent back immediately to the sender's phone number providing the current status of the appeal/complaint. This facility is available round the clock as it requires no human interface.

[1]See Report of National Sub Committee of Central Information Commission, July 2008, pp. 13-14; Andhra Pradesh Information Commission Annual Report 2007, pp. 9-10; Andhra Pradesh Information Commission Annual Report 2008, pp. 10-11.

ANNUAL/QUARTERLY REPORTING SYSTEM

This system, which has also been developed by CGG, generates all necessary reports for the commission, including yearly and monthly reports, register books, and status of cases disaggregated by commissioner. The system also allows district level data to be entered for each department. The system aggregates the data at the head of department, secretariat, and state levels. This system also provides analysis of rejected applications at various levels.

PUNJAB STATE INFORMATION COMMISSION (PSIC)[2]

PSIC has developed and adopted an information system in consultation with National Informatics Centre (NIC), Punjab and Technorite Consultants, Mohali, Punjab. To enable the storage and retrieval of huge volumes of information, a three-tier system has been developed and adopted.

LOCAL AREA NETWORK (LAN)

All PSIC computers have been linked up through a LAN allowing fast data transfers and data sharing.

Management Information Software (INCOMS)

This system can generate the following reports:

- Daily Case Register/ Cases registered within a certain period
- Allocation of cases to various benches
- Issue of Hearing Notice
- Details of cases in progress
- Cause List
- Status/History of a Case
- Department-wise Distribution of Cases
- Public Authority-wise Distribution

WEBSITE

The PSIC website contains information on the RTI Act, Punjab State Government Rules and Forms, cause lists and MIS, like number of appeals registered, and disposed of in the Information Commission

[2]See See Report of National Sub Committee of Central Information Commission, July 2008, pp. 13-14.

on a monthly basis. All orders given by the Commission are also available on the website. Facility to search the orders has also been provided.

INTERNAL TRACKING OF APPEALS

PSIC has implemented an IT system for tracking the appeals filed in the Commission. The status of each appeal is updated online. This system also generates all required reports for the Commission.

CHHATTISGARH E-PANCHAYAT PROJECT[3]

Chhattisgarh has an e-panchayat project which connects all 146 Janpad Panchayats and 16 Zila Panchayats in order to promote more effective monitoring of the implementation of rural development schemes, including the monitoring of finances. This project is being carried out in collaboration with the Chhattisgarh Directorate of Panchayats and National Informatics Centre (NIC). The expected benefits from this project include:

- Compilation of basic information of gram panchayats facilitating improved decision-making;
- Collection and compilation of data regarding resources, financial resources and income sources of gram panchayats;
- Compilation of gram panchayat funds received through government aid, people's participation and donations;
- On-line monitoring of rural development schemes down to panchayat level;
- On-line monitoring of beneficiary schemes, employment generation schemes and other government schemes; and
- Compilation of data regarding work schemes, administrative management and accounts.

BIHAR: PROJECT "JAANKARI"[4]

To facilitate the usage of the RTI Act by ordinary citizens, the Bihar government has launched the Jaankaari facilitation centre model.

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[3]See *The Right to Information and PRIs: Chhattisgarh as a case study*, authored by Sohini Paul and Charmaine Rodrigues, Commonwealth Human Rights Initiative, 2006. For more information, visit the website of the E-Panchayat Project at: http://epanchayat.cg.nic.in.
[4]See "Report on Project 'JAANKAARI': An ICT Initiative through Facilitation" authored by Chanchal Kumar. Available at: http://cic.gov.in/.

It is disarmingly simple in its conceptualisation and use. A call centre has been set up which has staff trained in RTI manning the lines. An applicant who wishes to file an RTI application calls the designated number and is charged a premium rate for the call, which is equivalent to the application fee for making an RTI application, in this case ten rupees. This does away with the need for the applicant to make the payment through other modes such as postal orders etc. The call centre staff receiving the call converts the applicant's oral request into an "electronic format", compatible with the RTI Act. Since issues involved vary with each request, it can at times be difficult to pinpoint the PIO dealing with the issue. To resolve this problem, a senior administrative officer is also present at the call centre to help in co-ordinating with PIOs and departmental heads. The official is well versed with the governmental system and its "Rules of Executive Business" which assigns specific work to a department and also mentions its delegated powers. The call centre staff itself is not from any government agency thus ensuring that there is no bias. Once the application has been filed and entered into the system by the call centre staff, a copy of it is sent to the applicant, and another to the concerned PIO. Citizens can follow up on their case using the same phone number. Information is sent directly to the applicant by the PIO. First and second appeal processes are also carried out following a similar pattern.

In addition to the RTI Application Number (RAN), an RTI Helpline Number (RHN) which provides information about the RTI Act has been operationalised. Both numbers have been widely publicised by the government. During the first two years of its existence, the call centre received 22,600 calls of which 7,070 were to submit applications under RTI, 3,016 calls for filing a first appeal and 1,400 calls for filing second appeals before the state information commission.

The advantages of the facilitation centre system are many.

ADVANTAGES TO CITIZENS

1. No need of physical movement to PIO office for filing RTI application;
2. Saving of time and resources in terms of travel time as well as for making necessary drafts or postal orders for paying application fees;
3. Government bears the cost of the Facilitation Centre, cost of

transmitting the application to the concerned PIOs as well as substantial cost on providing the premium call service;

4. The project keeps in mind differences in local culture when seeking to engage citizens;
5. Writing of the application is done by Facilitation Centre executive;
6. Limitations of illiteracy and linguistic variations can also be overcome by the Facilitation Centre executives, who screen and do the necessary handholding; and
7. A citizen need not know the dynamic "Rules of Executive Business" of the government i.e. which issue is to be referred to which department.

ADVANTAGES TO GOVERNMENT

1. Empowers the common man, resulting in better compliance;
2. Introduces transparency in government;
3. Announces the positive intentions of the government clearly;
4. Man-hour saving for individual departments by centralizing application process at Facilitation Centre;
5. Creates peer pressure and enabling environment for the government's delivery system; and
6. Project data analysis indicates areas for improvement.

HARYANA: HELPLINE FOR RTI[5]

The Government of Haryana is creating a helpline service for RTI which is focused on the rural poor, aimed at helping them obtain information as smoothly as possible. Similar in structure to the Jaankaari model in Bihar, the RTI helpline will be manned by a call centre. A team of qualified personnel, having full knowledge of government procedures will man a toll-free number with eight to 10 phone lines.

COMMON SERVICE CENTRES

Common service centres (CSCs) are single window outlets for many government services that are being opened under the National e-Governance Plan. The scheme envisages 100,000 CSCs or approximately one CSC for every 6 villages that will facilitate citizens with RTI applications. The report 'Understanding the key issues and

[5]See http://www.rtiindia.org/forum/11405-now-helpline-right-information-haryana.html.

constraints in implementing RTI Act' prepared by Pricewaterhouse Coopers has suggested that post offices in states be allowed to accept applications. As done by states like Bihar and Haryana, the report has urged the Centre to initiate a national level helpline and has urged setting up of an RTI portal. The study suggested that the Centre and states should earmark 1% of their budget for implementation of these recommendations. The report has suggested use of RTI complaint standard templates that will ensure quick and reasoned orders and reduce margin for error.

2. Using the RTI Act to improve the access of marginalised populations to specific government schemes, specifically NREGA and PDS

The Right to Information Act is not the only law that gives a right of access to information. Beyond the Right to Information Act, there are some stronger provisions in other laws which promote transparency.

The PDS (Control) (Amendment) Order, 2004, which entered into force on 29 June 2004, enables citizens to directly seek information from a fair price shop owner. Punishment for withholding information may extend up to three months imprisonment.

Another historic law, the National Rural Employment Guarantee Act (NREGA) has built in transparency prerequisites. In fact, the nodal Ministry for this Act goes one step ahead in facilitating transparency by reducing the time limit for disclosure of records requested under the Right to Information Act to seven days. The National Rural Employment Guarantee Act 2005 (NREGA) Operational Guidelines 2008 state that "Requests for copies of NREGS-related documents submitted under NREGA should be complied with within seven days. No request should be refused under any circumstances. In particular, no information should be withheld by invoking Section 8 of the Right to Information Act. All NREGA-related information is in the public domain." Other salient points which relate to transparency within the NREGA are:

- Key documents related to NREGA should be proactively disclosed to the public without waiting for anyone to 'apply' for them. A list of such documents should be prepared by the State Employment Guarantee Council, and updated from time to time. For the purposes of regular monitoring and reviewing the

implementation of this Act at the State level, every state government shall constitute a State Employment Guarantee Council. Whenever feasible, these documents should be made available on the Internet.

- Public access to key records and information must be ensured at all levels. Some of these include: updated data on demands received; registration; number of job cards issued; list of people who have demanded and been given/not given employment; funds received and spent; payments made; works sanctioned and works started; cost of works and details of expenditure on it; duration of work and person-days generated; reports of local committees; copies of muster rolls.
- NREGS-related accounts of each gram panchayat should be proactively displayed and updated twice a year. Summary accounts should be displayed through various means, including paintings on the walls at the Panchayat Bhawan, postings on notice boards and publication in Annual Reports available at cost price.
- Report Cards on local works, employment and funds should be posted by the gram panchayats on its premises and by the Programme Officer at the Panchayat Samiti/ Programme Officer's office, and for the whole district by the District Programme Coordinator at the District Programme Coordinator/Zila Parishad office.

Apart from transparency with respect to NREGA, the National Institute of Rural Development (NIRD) has released a publication, "Implementation of Rural Development Programmes - Role of PRIs in the context of the Right to Information Act"[6], which provides information about how to access information from panchayats regarding all major rural development schemes run by the Ministry of Rural Development (MoRD), Government of India. MoRD implements a number of rural development and poverty alleviation programmes, which support infrastructure in villages, offer employment and provide subsidised food grains, shelter and drinking water to villagers. It is primarily the responsibility of panchayati raj institutions to implement these schemes. However, the implementation role of gram sabhas and panchayats at village, block and district levels in relation to these programmes is often not known

[6]See *The Right to Information and PRIs: Chhattisgarh as a case study*, authored by Sohini Paul and Charmaine Rodrigues, Commonwealth Human Rights Initiative, 2006.

by villagers, and in many cases is not even known by elected panchayat members themselves. The NIRD publication is intended to fill this information gap by disseminating information about the role of panchayats (particularly the gram sabha) in the implementation of rural development programmes. It is directed both at the public and at elected panchayat members. It also includes a chapter explaining the salient features of the RTI Act.

3. Implementation of *suo motu* provisions of the RTI Act

Under section 4 of the RTI Act, every Public Authority must maintain its records systematically, and, as far as possible, computerise these records and connect them through a network all over the country. Further, each Public Authority must proactively publish complete details of its functioning, its powers, responsibilities, duties, the name of all its employees, their salaries, the documents held by them, the budget available, as well as the facilities for the common public to access information in all these offices. Public Authorities are also required to provide reasons for their administrative or quasi-judicial decisions to affected persons. Sections 4 (2), 4(3) and 4(4) of the RTI Act require Public Authorities to disseminate *suo motu* information widely in such form and manner as is easily accessible to the public, and place it to the greatest extent possible in an electronic format. Central as well as State Governments have repeatedly expressed their commitment to computerisation and adoption of information technology. Substantial funds have also been allocated under various projects and schemes of the Central and State Governments for this purpose.

KARNATAKA: THE BHOOMI PROJECT[7]

The Revenue Department of Karnataka has digitised and put its land records online for their electronic management. The Bhoomi Project arose out of the need to create a system that would prevent the inaccuracies that marred the manual system of maintaining land records as far as possible. This is a Central scheme implemented by the state Revenue Department through the Deputy Commissioners of various districts and land records of 177 *taluks* have already been computerised. Under the project, land records are updated and changes made online so that when farmers request a record of rights, tenancy and crops (RTC), the information is current. The software incorporates the updating of land ownership details in the business

[7]See Central Information Commission, Annual Report 2005-06, pp. 31.

process itself so that there is no lag in the update method. This system allows officials to add other information to existing information, and monitor all pending work through email. It also provides inbuilt help to recover data from a crashed system, and has an inherent state of the art security system to protect the system and records from any sort of manipulation. Today, farmers can directly access 20 million digitised land records that were earlier maintained by 9,000 village officials manually.

VARIOUS MINISTRIES AND DEPARTMENTS OF GOVERNMENT OF INDIA

The Ministries of Parliamentary Affairs and Mines, and the Departments of Bio-Technology and Administrative Reforms and Public Grievances (DARPG) have used their websites to disseminate information about their activities. DARPG has used its department website (http://darpggrievances.nic.in) to facilitate the lodging of grievances by any citizen through its website. The Ministry of Mines has reported that its existing Public Grievance Redressal and Monitoring System (PGRMS) is being upgraded to a more comprehensive monitoring system that will become operational shortly to users.

PUNJAB: PROACTIVE DISCLOSURE BY ZILA PARISHAD, LUDHIANA[8]

The Zila Parishad of Ludhiana district has provided the following information on its website proactively (http://ludhiana.nic.in/dept/local-zila-parishad.html):

- Composition of the Zila Parishad including the list of names and addresses of all the elected members;
- Names and addresses of Chairpersons and Vice-Chairpersons of all the Panchayat Samitis in Ludhiana district;
- Names and contact details of government officials of the Zila Parishad i.e. the Chief Executive Officer and his deputy among others;

[8]See *The Right to Information and PRIs: Punjab as a case study*, authored by Sohini Paul and Charmaine Rodrigues, Commonwealth Human Rights Initiative, 2006.

[9]See 'Innovations/Good practices in implementation of RTI' authored by Centre for Good Governance, Hyderabad, 2005, 2009, and 'Understanding the Key issues and Constraints in implementing the RTI Act', authored by Pricewaterhouse Coopers for Government of India, June 2009.

– List of properties owned by the Zila Parishad; and
– Important schemes being run by the Zila Parishad.

Besides this, the website also provides a brief write-up about the salient features of the Punjab Panchayati Raj Act, 1994.

ANDHRA PRADESH: INDIA'S FIRST TRANSPARENT OFFICE[9]

The Information Technology and Communications Department of the Government of Andhra Pradesh has launched India's first transparent office. Citizens can access documents, files, orders and status of applications and so forth, online, anywhere and anytime by visiting the office website.[10] Other departments in the State are expected to follow suit. Other initiatives of the department include:

- All Government Orders are being made available online.[11]
- The complete gazette is being made available online.[12]
- A Citizen to Government Interface to enhance responsiveness among public authorities has been developed by the Centre for Good Governance which enables citizens to register their complaints online and monitor the status of the complaints.[13]

NAGALAND TOPS RTI SURVEY LIST OF STATES

A National Assessment of the degree of compliance to *suo motu* disclosure provisions under RTI Act 2005 conducted by the Public Affairs Centre, Bangalore, has shown that Nagaland is at the top in terms of *suo motu* disclosure by its Public Authorities. The survey conducted in December 2008 analysed over 500 websites to arrive at the findings.

MADHYA PRADESH: SELF-DISCLOSURE OF PANCHAYATS[14]

In a significant move to empower people with information, Samarthan, a Bhopal based nongovernmental organisation, motivated 5 panchayats in both Sehore and Ajaygarh to prepare self disclosure manuals in accordance with the Section 4(1) (b) of the RTI Act 2005.

[10]See http://kmbank.ap.gov.in.
[11]See http://goir.ap.gov.in/Reports.aspx.
[12]See http://gazette.ap.gov.in.
[13]See http://webapps.cgg.gov.in/gms/welcome.do.
[14]See 'Innovations/Good practices in implementation of RTI' authored by Centre for Good Governance, Hyderabad, 2005, 2009.

These documents were prepared and were kept at the panchayat so that gram sabha members could review documents at any time. In addition, seven panchayats in Ajaygarh block have displayed cost and physical details of the development works undertaken during the year on notice boards. This contains information on the works undertaken, the budget, and the actual cost incurred. Five panchayats each in Ichchawar and Pawai blocks have displayed the list of persons who have availed of state benefits under different schemes.

MEGHALAYA MEMBER OF LEGISLATIVE ASSEMBLY (MLA) DECLARES INFORMATION *SUO MOTU*[15]

The MLA of Mawprem Assembly Constituency made a *suo motu* disclosure in the form of a booklet listing all schemes (physical and financial) taken up by him in his constituency under the MLA Scheme during the year 2004-05 and 2005-06.

4. Good Practices adopted by Information Commissions

The Central Information Commission has taken a number of innovative steps not only for the timely disposal of complaints/ appeals but also to generate awareness among the public. These steps by the information commissions are of vital importance in the context of their roles and responsibilities under the RTI Act and have a direct impact on the implementation of the RTI Act.

CENTRAL INFORMATION COMMISSION (CIC)[16]

The website of the Central Information Commission provides comprehensive information related to its activities to the public.[17] The website allows anyone to access information about the RTI Act, decisions of the CIC, status of Appeals and Complaints, tenders announced by the CIC, notifications, cause lists, and press releases.

In addition, the CIC is helping large segments of information seekers to reduce their cost by introducing the use of video conferencing for hearings which mitigates the need of outstation appellants to travel to Delhi for their cases.

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[15]*Ibid.*

[16]See Central Information Commission's Annual Report 2006-07, pp. 49.

[17]http://www.cic.gov.in

[18]See Andhra Pradesh Information Commission's Annual Report 2007, pp. 7-8 and its Annual Report 2005-06.

ANDHRA PRADESH AND UTTARAKHAND: PUBLICATION OF MATERIALS[18]

APIC in association with CGG, has printed a number of manuals and other material to generate awareness amongst public authorities as well as the citizenry. Copies of the RTI Act were printed and distributed to various Public Authorities along with the templates on the RTI Act as per Sections 4(1)(b) & 5(1) & (2) of the Act. In addition, the following manuals and guides were also published: Users guide on RTI Act; Manual for Public Authorities, Information Officers & Appellate Authorities; Citizen's Guide; Guide for Civil Society Organisations; and a Media Guide.

The Uttarakhand Information Commission has also brought out several publications both in English and Hindi for dissemination among officials and civil society. These publications are in the form of newsletters, guidebooks and manuals.

'KERALA STATE INFORMATION REPORTER': PUBLICATION OF JOURNAL[19]

The Kerala State Information Commission (KSIC) has been publishing a quarterly journal titled the 'Kerala State Information Reporter'. This journal contains all important judgments, rulings and orders of the State Information Commission for each quarter. This journal also highlights decisions that the State Information Commissioners consider interesting and which reflect a new point of law or a new situation which needs to be studied further.

APSIC: INNOVATIONS IN CASE DISPOSALS[20]

With the view to improve the functioning of the Information Commission, many innovations have been carried out, for example, based on the Secretariat Manual, District office Manual and Central Administration Tribunal's Rules, the Commission has categorised various disposals and fixed the time limits for the retention of disposals. Also, to avoid delays, the Commission has adopted a system of pre-scrutiny at the reception stage and is returning defective appeals/ complaints immediately upon receipt for rectification and re-submission.

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[19]See 'Understanding the Key issues and Constraints in implementing the RTI Act', authored by Pricewaterhouse Coopers for Government of India, June 2009.

[20]See Andhra Pradesh Information Commission Annual Report 2008, pp. 32.

MAHARASHTRA: DIVISIONAL BENCHES OF STATE INFORMATION COMMISSION[21]

In order to strengthen the delivery and reach of its services, the Maharashtra State Information Commission has introduced the concept of divisional benches. In this initiative, the State is divided into five regions and for every region a State Information Commissioner is appointed who is responsible for disposing of the appeals in his area. Five divisional benches have thus been set up in Pune, Mumbai, Aurangabad, Amravati and Nagpur to enable citizens to approach the most convenient bench.

ORISSA IS PRIORITISING PUBLIC INTEREST CASES[22]

The Orissa State Information Commission has decided to accord priority to disposal of public interest cases by putting an identifying mark on the case record as 'PIC' (public interest case). These cases are dealt with on a fast track basis, in comparison to cases which are individual in nature, on an *inter se* first-cum-first-heard basis, subject to the proviso under section 7(1) involving life or liberty of an individual.

ORISSA SIC SETS UP DIVISION BENCH FOR IMPARTIAL JUDGMENTS ON IMPOSING PENALTY[23]

The Orissa State Information Commission hears cases involving the imposition of penalty on erring PIOs/referred PIOs through a Division Bench so that the considered opinion of the State Commission can be reflected in the decision.

Additionally, the recovery of the cash penalty imposed on PIOs is also monitored at intervals by the Secretary, Orissa Information Commission who holds regular meetings with officials of the concerned Public Authorities.

5. Other good practices, including awareness generation

Punjab: Single Window Delivery Services at Suwidha Centre, Nawanshahr District[24]

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[21]See 'Understanding the Key issues and Constraints in implementing the RTI Act', authored by Pricewaterhouse Coopers for Government of India, June 2009.
[22]See 'Innovations/Good practices in implementation of RTI' authored by Centre for Good Governance, Hyderabad, 2005, 2009.
[23]*Ibid.*
[24]See *The Right to Information and PRIs: Punjab as a case study*, authored by Sohini Paul and Charmaine Rodrigues, Commonwealth Human Rights Initiative, 2006. Also see "Single window delivery services at Suwidha Centre" authored by Krishan Kumar, Deputy Commissioner, Nawanshahr district, Punjab.

SUWIDHA (Single User-friendly Window Disposal and Helpline for Applicants) Centres have been built in all districts of the state to provide district administration services to the citizens in order to streamline the delivery of government services through a single window for citizens. This initiative has the additional objective of changing the mindset of secrecy that government officers are habituated to. One such centre is at Nawanshahr with computerised facilities for providing around 100 services through 26 windows. One of the windows specifically provides information related to the RTI Act 2005, namely the list of Assistant Public Information Officers (APIOs), Public Information Officers (PIOs) and Appellate Authorities (AAs) in the district along with their telephone numbers and other contact details.

HARYANA: RTI COUNTERS IN EVERY DISTRICT

The Government of Haryana along with National Informatics Centre (NIC) has started a project to establish an RTI counter in every district of the state. This counter will be helpful to people who want to file RTI applications. After the opening of these RTI counters, applicants will not be required to visit departments again and again to get information. The information from the department will reach these counters from where it will be passed on to the applicants.

In addition, the state government has decided to create a Right to Information (RTI) Cell in the office of the Chief Secretary to ensure timely response to RTI queries. Department secretaries have been asked to designate one officer in each department as the nodal PIO who would be part of the RTI Cell and would co-ordinate with other PIOs to ensure the effective implementation of a web-based RTI system, as well as disposal of appeals.

GOVERNMENT OF INDIA: CAPACITY BUILDING FOR ACCESS TO INFORMATION[25]

Since the year 2006, the Government of India (DoPT) has been executing a UNDP funded project to build capacity for effective implementation of the RTI Act. This project covers all states and within each state 2 selected districts. Under this project, more than 75,000 stakeholders including resource persons/trainers, PIOs/APIOs, other government officials, representatives from NGOs and

[25]See http://www.rti.org.in/nia/.

media etc. have been trained across different states in India. However, this intervention is quite limited in its mandate. There is every need to upscale this initiative to cover every district in the country.

Some highlights of the project are:

1. Training and Capacity Building: Create a cadre of National, State, District and Block resource persons and provide training to key stakeholders at both the supply and demand sides;
2. Research and Documentation: Undertake action research and documentation on implementation of Right to Information Act and for building a knowledge bank of case studies and best practices;
3. Mass Awareness Campaign: Generate immense public awareness on Right to Information, particularly at the grassroot level, through the use of different media vehicles such as pamphlets/ brochures, print and electronic media, road shows/kalajathas etc.
4. Clearing House: Networking among practitioners and project implementation agencies and dissemination of best practices and experiences on the Right to Information.
5. Information Fairs/Information Audit: Information fairs or open houses for citizens to seek information from government agencies at State and District levels as well as audit of information requests and their disposal.
6. Dissemination and Advocacy: Sensitising and disseminating information on the RTI to key stakeholders through distribution of the RTI Act, user guides and manuals in local languages, seminars, advocacy workshops etc.
7. Multi-stakeholders workshops: Conducting workshops involving key stakeholders at National, State and District levels. Some key workshops planned include a Retreat of Information Commissioners, Media Conclave, Workshops with State Secretaries, District Collectors, NGO representatives etc.

MEGHALAYA: RTI ON WHEELS

To enhance mass awareness, a government vehicle carrying RTI related awareness materials in local dialects toured around Jaintia Hills and West Garo Hills districts in the state.

In addition, resource persons from the districts were engaged for the purpose of spreading awareness about RTI. Programmes were conducted during weekly market days and people of neighbouring

villages who visited the market were also exposed to RTI. Special attractions of the program were skits, street plays and songs performed by local youth to spread the message of RTI to the people.

UTTARAKHAND: RANKING OF PUBLIC AUTHORITIES ON BASIS OF COMPLIANCE

The Uttarakhand Information Commission (UIC) has developed criteria for reviewing the RTI compliance of Public Authorities in the state. Indicators which have been developed are:

1. Existence of RTI Cell
2. Registration of RTI applications
3. Usage of standard formats
4. Fee receipt book
5. Information Board
6. Contact details of PIOs, APIOs, AAs
7. Departmental RTI disclosure manual
8. Information on Annual report
9. Maintenance of records
10. Compliance to UIC's directions
11. Monthly progress report to the UIC
12. Training

Using this method, the SIC has ranked 76 Public Authorities in the state and has provided significant feedback to all departments (especially those lagging behind), and has also urged them to conduct training and improving procedures and systems to become RTI compliant.

ANDHRA PRADESH: PROACTIVE CONTACT WITH PUBLIC AUTHORITIES[26]

In order to ensure compliance of all public authorities with the Right to Information Act 2005, the Andhra Pradesh Information Commission has taken up a proactive role vis-à-vis the state administration all levels viz. secretariat, Heads of Departments, and District levels. For this purpose, the Commission has visited all districts in the state and conducted review meetings with Collectors,

[26]See 'Tracking RTI in 8 States', Society for Participatory Research in Asia (PRIA), 2007.

Superintendents of Police, First Appellate Authorities and Public Information Officers, and also reviewed their compliance with Sections 4 (1) (b) 5 (1) & (2) of the RTI Act.

CONCLUSION AND LESSONS LEARNT

Since the RTI Act was enacted, in 2005, attempts have been made in several states and at the centre to implement the Act in letter and in spirit. For the statutory 'right' to information to become a living reality, both the centre and the state governments have undertaken many innovative measures, some of which have been discussed in this paper. The lessons that emerge out of these experiments provide a set of general principles that need to inform any new institutional design or process.

The first principle relates to the ease and cost of obtaining information. Any measure that significantly lowers the transaction costs of seeking information to the citizen goes a long way in making RTI an achievable reality. The Jaankari system of Bihar places the least demand on the citizen in terms of costs related to time, physical movement, and information costs. All a citizen needs to access information is a phone. Similarly a mobile centre which reaches the doorsteps of villagers, especially in remote and difficult areas like those in the North-Eastern regions, provides similar advantages to citizens.

Second, the type of information and the manner in which it is made available are important to the citizen. She is interested in matters which affect her like land rights, amount of taxes to be paid and the status of her complaint. But she also needs confidentiality. Systems which allow citizens to individually access relevant information which is placed by public authorities in the public domain are extremely useful. The Municipal Corporation of Delhi's website, for example, enables the automatic calculation of property tax liability based on a set of parameters to be entered by the citizen, and generates a 'challan' or tax-assessment statement, which can then be paid either on-line or through designated bank branches. Similarly, the Bhoomi Project has become extremely popular by meeting the most important information requirement of farmers.

Other types of *suo motu* disclosures relate to information which may be needed by citizens for interfacing with the government. This would include step by step directions for the process to be followed,

names and contact numbers of concerned officials, required forms, and so on. This is information which is not person specific and is therefore increasingly being put in the public domain by municipalities, passport offices, railways, tax departments and others.

Any 'right' must in the end be justiciable. The Act therefore provides for sanctions to act as a deterrent. However, the process of providing justice must be quick and efficient. Various Information Commissions have therefore relied on improved case management systems where complaints can be monitored and tracked through various stages of processing leading to its satisfactory disposal. The tracking and monitoring systems of Andhra Pradesh, Bihar and the Central Information Commission are significant innovations in this regard. By expanding the geographical outreach of the Information Commission, the system followed by Maharashtra is also an attempt at increasing the speed of administration of justice. The training undergone by the staff of the Information Commissions, which should include an emphasis on motivation and changing of attitudes, as well as office-management procedures, is an area that perhaps need a little more attention.

Finally, since constant vigilance is the price for freedom, the role of NGOs, the media, the courts and civil society are critical. India is fortunate to have a very active and vigilant civil society movement, and the media has not been afraid to highlight deficiencies or deviations from democratic norms. Their role in the spread of awareness has been exemplary. Acts, rules, systems and procedures can all be subverted unless an atmosphere of freedom and accountability is allowed to prevail.

11

Workshop Documents

Prashant Sharma

PROCEEDINGS OF WORKSHOP: SUMMARY REPORT[1]

TUESDAY, 27 APRIL 2010

Session 1A: Inauguration

Conference Hall, 5 pm – 5.55 pm

Chairperson's Address

Mr. T.N. Chaturvedi, Chairperson, IIPA, highlighted the involvement of IIPA in issues related to transparency and governance over the decades and emphasised the need to strengthen the RTI Act in India including giving more powers to the Information Commission as well as the inclusion of the judiciary within the ambit of the Act.

Inaugural Address

Mr. Wajahat Habibullah, Chief Information Commissioner, Government of India, the Chief Guest of the workshop, gave a detailed presentation which pointed out the commonalities in the political history of the countries of the South Asia region, the relationship between RTI and democracy, and the conceptual underpinnings of an

[1]This document was prepared by Stephanie de Chassy, Charru Malhotra and Prashant Sharma. A longer version of this document which provides greater detail of the proceedings is available at: http://rtiworkshop.pbworks.com/Workshop-Documents.

effective RTI regime.[2] He further elaborated the roles that the media, information commissions, and civil society organisations could play in strengthening any given RTI regime. Finally, he emphasised the need for dissemination of best practices, improvement in record management and the usage of information technology in strengthening any RTI implementation mechanism.

Session 1B: Addresses by Guests of Honour

Conference Hall, 6.10 pm – 7.45 pm

Chair: B.S. Baswan, Director, IIPA

Speakers: Sherry Rahman, Member of National Assembly, Pakistan; Maria Elena Perez-Jaen Zermeño, Commissioner of the Federal Institute of Access to Public Information, Mexico; and Sanjay Pradhan, Vice President, The World Bank Institute

Discussants: Toby Mendel, Executive Director, Centre for Law and Democracy, Canada; Anisatul Fatema Yousuf, Additional Director (Dialogue and Communication), Centre for Policy Dialogue, Bangladesh; and Maja Daruwala, Executive Director, Commonwealth Human Rights Initiative, India

Ms. Sherry Rahman, Member of National Assembly, Pakistan, spoke of the importance of the regional aspect of the gathering, including the importance of sharing experiences. In this context she also brought up the South Asia Free Media Association (SAFMA) as a good example to learn from. She also gave a brief account of the genesis of the Pakistani freedom of information ordinance. She spoke further of the importance of right to information in holding the state accountable as well as its empowering nature. At the same time, she highlighted the limited usage of such Acts so far, and pointed out several challenges, including combating the "culture of secrecy" and resistance from vested interests, repealing restrictive laws which contravene the spirit of RTI Acts, limiting and redefining exemptions, and of providing protection to whistleblowers. She also encouraged the media to use RTI laws more effectively. Apart from suggesting the involvement of Parliamentary Committees in unearthing corruption, she also urged the participants to define a set of core values related to transparency during the workshop.

[2]Mr. Habibullah's presentation is available at: http://tinyurl.com/26lmrzk.

Ms. Maria Elena Perez-Jaen Zermeño, Commissioner of the Federal Institute of Access to Public Information, Mexico, gave the audience a detailed account of the Mexican freedom of information experience.[3] She recounted the genesis of the Federal Transparency and Access to Governmental Public Information Act of 2002, which regulates the right to information and right of protection of personal data in government agencies. She then spoke of the salient features of the Act, including the oversight and appeal structures which have been put in place. She then highlighted and provided details of a unique characteristic of the implementation of the Act, which allows information requestors to use an electronic web-based platform to seek information from 243 federal agencies. Ms. Zermeño also spoke in detail about aspects of proactive disclosure in the implementation of the Act in Mexico, and the differentiated rights to access information at the federal and state levels. Finally, even as she informed the audience of the broad profile of information seekers in the country, she provided the audience with an overview of the impact the Act is having on corruption since it came into being.

Mr. Sanjay Pradhan, Vice President, The World Bank Institute addressed the audience by highlighting the significance of the workshop, in its being possibly the first one of its kind in the region. He also spoke of the potential role of South Asia as a global knowledge hub in the implementation of freedom of information, especially given the tremendous interest of civil society in this issue. Mr. Pradhan also spoke of the importance of developing synergies between media and civil society around RTI to make an RTI regime more effective. He provided examples from Afghanistan and Bolivia, amongst others, where citizen groups have used technology effectively to put pressure on governments to deliver public services. He finally suggested various mechanisms thorough which the deliberations of the workshop could be taken further, including training programmes, web-based interactive platforms for knowledge sharing, institutionalising awards for exemplary work, highlighting innovations, and holding focused conferences. He also mentioned that the World Bank Institute could be approached to fund some of these activities.

The discussants for this session were Toby Mendel, Executive Director, Centre for Law and Democracy, Canada, Anisatul Fatema

[3]Ms. Zermeño's speech at the workshop is available here: http://tinyurl.com/2e3v46o. In addition, her presentation is available here: http://tinyurl.com/2feneoo.

Yousuf, Additional Director (Dialogue and Communication), Centre for Policy Dialogue, Bangladesh, and Maja Daruwala, Executive Director, Commonwealth Human Rights Initiative, India. The main issues arising from their interventions addressed several issues, including the need to develop platforms for knowledge and experience sharing, improving awareness and usage of RTI across the region, and the benefits that would accrue to all stakeholders from its increased usage. Several challenges and hurdles were also pointed out, which included the enactment of legislation where no freedom of information law exists, the independence of Information Commissions, resisting opponents, including the oft-heard "high cost of access" argument, and improving accessibility of the law for illiterates and the marginalised.

WEDNESDAY, 28 APRIL 2010

WORKSHOP OVERVIEW

Conference Hall, 9.30 am – 9.45 am

Dr. Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank, provided an overview where he identified the main objective of the workshop as developing a sense of community on the issue of access to information across the region by sharing experiences, even while acknowledging differences in the same. He also highlighted the importance of networking and collaboration to strengthen mutual support.

Session 2A: State of Transparency Regimes in South Asia (Bangladesh, Bhutan and Nepal) Conference Hall, 9.45 am – 11.15 am

Chair: R.S. Tolia, State Chief Information Commissioner, Uttarakhand, India

Speakers: Shaheen Anam, Executive Director, Manusher Jonno Foundation, Bangladesh; Tahmina Rahman, Director, Article 19, Bangladesh; Taranath Dahal, Chairperson, Freedom Forum, Nepal; and Phurba Dorji, Journalist, Business Bhutan

Discussants: Ralph Frammolino, Journalist, Progati, Bangladesh; and Ram Krishna Timalsena, Registrar, Supreme Court of Nepal

The session began with Ms. Anam giving the audience a detailed history of the processes that led to the enactment of the RTI Act

2009 in Bangladesh.[4] She also pointed out that with the passage of the law, now the focus needed to shift to awareness raising and implementation. Complementing Ms. Anam's presentation, Ms. Rahman then spoke on the status of implementation of the law, and highlighted the challenges which needed to be overcome.[5] These included strengthening the Information Commission, improvements in record management, involvement of the marginalised and the vulnerable in the usage of the Act, dismantling the "culture of secrecy" and training of public officials.

Mr. Dahal then made a presentation on the status of RTI in Nepal, highlighting the history of the RTI Act 2007.[6] He also pointed out that Nepal was going through a process of transition, including the drafting of a new Constitution, which has in part thrown up several challenges with respect to the implementation of the RTI Act in Nepal. These include a lack of awareness amongst the people, and a limited Information Commission. He also identified ways in which the RTI Act and its implementation could be strengthened, which include its usage by the media, by the incorporation of information communication technologies in its implementation, and by providing greater protection to whistleblowers, amongst others.

Mr. Dorji then made a brief presentation on Bhutan, and brought attention to the fact that it is has been a democracy only since 2008.[7] He informed the audience that the Right to Information is guaranteed in the Constitution and a bill to implement this right was being currently being drafted. Even as he provided highlights of this bill, he also mentioned the "culture of secrecy" which is prevalent in the government in Bhutan, and which the new Act would hopefully have an impact on.

The discussants, Mr. Frammolino and Mr. Timalsena, reemphasised the issue of changing the culture of government from one of secrecy to one of openness, as well as the critical role that the media (especially investigative journalism) could play in strengthening

[4] A paper authored by Ms. Anam for the workshop which provides the details of the process is available here: http://tinyurl.com/26ch9as.

[5] A paper documenting the status of implementation in Bangladesh authored by Ms. Rahman for the workshop is available here: http://tinyurl.com/2f7u4k6.

[6] The country paper on Nepal authored by Mr. Dahal for the workshop is available here: http://tinyurl.com/24d8zpe. In addition, his presentation is available here: http://tinyurl.com/2agnktg.

[7] A background note on the status of RTI in Bhutan authored for the workshop is available here: http://tinyurl.com/2ere5mw.

the RTI regime in the region. They also highlighted the development potential of such a right, where it could be used as a very effective instrument for poverty reduction.

Session 2B: State of Transparency Regimes in South Asia (Pakistan, Sri Lanka, Maldives and Afghanistan)

Conference Hall, 11.30 am – 1.15 pm

Chair: Toby Mendel, Founder, Center for Law and Democracy, Canada

Speakers: Mian Abrar Hafeez, Secretary General, Consumer Rights Commission, Pakistan; Rohan Edrisingha, Executive Director, Centre for Policy Initiatives, Sri Lanka; Mohamed Latheef, Ambassador for Human Rights, Maldives; and Rahela Siddiqi, Senior Adviser, Independent Administrative Reform and Civil Service Commission, Afghanistan

Discussants: Sameer H. Dodhy, Vice Chairman, SHEHRI-CBE, Pakistan; and Shyamila Perera, Project Director, Institute for Democracy and Leadership, Sri Lanka

Mr. Hafeez began the session by informing the audience about the history of the evolution of a right to information regime in Pakistan, including efforts at the provincial level, leading up to the Freedom of Information Ordinance, regulations for which were notified in 2004.[8] He also identified the limitations of the Ordinance and its implementation, including broad exemptions, and lack of awareness and usage. He also discussed the salient features of a new bill under consideration of the government, as well as dwelt upon the challenges that lay ahead, including awareness raising amongst in the public and capacity building of government officials.

Mr. Edrisinha described the situation in Sri Lanka for the participants, reminding them that the situation was not very positive there, with no RTI law being present or likely to be enacted within the near future.[9] As a result of the civil war in the country, governance and democratic norms were under severe strain, and this was reflected

[8] The Pakistan country paper commissioned for the workshop is available here: http://tinyurl.com/257b4vo. In addition, Mr. Hafeez's presentation is available here: http://tinyurl.com/22nru9n.

[9] Mr. Edrisinha's paper on Sri Lanka authored for the workshop is available here: http://tinyurl.com/2exq5v6.

in weak institutions. However, civil society had made several efforts in pressing for an RTI law, and continues to do so. In this effort, networking with similar organisations across the region, and raising awareness amongst the people about the potential of such a law would prove to be invaluable in creating the right conditions for the enactment of an RTI law.

Mr. Latheef gave an overview of the situation in Maldives where a struggle for a more meaningful democracy has been ongoing for several years, resulting in the current democratically elected government.[10] While Maldives too does not have an RTI law of any kind, the new Constitution of 2008 recognises Freedom of Information as a fundamental right. Mr. Latheef also added that a bill providing for effective implementation of this right is under consideration, and support from the media and citizen groups would be of tremendous help in its successful enactment and implementation.

Ms. Siddiqi appraised the participants about the situation in Afghanistan, where several efforts have been made to create and strengthen institutions related to anti-corruption.[11] While laws related to freedom of expression exist, and the Mass Media Law of 2009 does address the issue of access to information, it has not been implemented yet. Providing details of other efforts in bringing forth a culture of openness, Ms. Siddiqi also identified the limited capacity of government functionaries, lack of awareness amongst the citizenry, and a dominant culture of secrecy as the main hurdles to overcome. She further suggested that sharing of experiences and developing a culture of citizen participation would be of immense held in building a culture of transparency in government.

The discussants, Mr. Dhody and Ms. Perera, brought the attention of the audience to the importance of awareness raising, as well as the role that international agencies could play in the process. However, it was suggested that some caution was to be exercised in the latter so that the ownership remains with country based groups and not international actors.

[10] A paper authored by Mr. Latheef which provides details of the Maldivian situation is available here: http://tinyurl.com/25obrd2.

[11] Ms. Siddiqi's presentation is available here: http://tinyurl.com/2c47r6q.

Session 2C: State of Transparency Regimes in South Asia (India)

Conference Hall, 2.15 pm – 3.30 pm

Chair: K.K. Mishra, Chief Information Commissioner, Karnataka, India

Speakers: Shekhar Singh, Founder Member, National Campaign for People's Right to Information, India; Suresh V. Joshi, Chief Information Commissioner, Maharashtra, India; P.N. Narayanan, Chief Information Commissioner, Bihar, India; and D.N. Padhi, Chief Information Commissioner, Orissa, India

Discussant: Mr. Jagdeep S. Chhokar, Founder Member, Association for Democratic Reforms, and Professor (Retired), Indian Institute of Management, Ahmedabad, India

Mr. Singh began the session by recounting some of the highlights of the process of the evolution of the RTI Act in India.[12] He also provided a larger political perspective on the process and linked it to the differentiated political realities in each of the countries of the region, and the impact that this has on each RTI regime. He also spoke of the deep relationship between meaningful democracy and freedom of information, even as he spoke of the limitations of any RTI regime in terms of removing corruption completely.

Mr. Joshi spoke of the Maharashtra experience, where he highlighted the work that the information commission has been carrying out. He also spoke of a gradual shift occurring in the attitude of the bureaucracy towards releasing information. He then highlighted the need for more Information Commissioners in the state, emphasising upon the volume of the cases being handled despite efforts to decentralise the working of the Commission.

Mr. Narayanan highlighted the people friendly nature of the RTI Act and brought attention to the fact that government support in effective implementation of the Act is central to the issue. He also suggested that the media and voluntary organisations take up awareness and capacity building in a focused way to support the efforts to put in place an effective implementation regime.

Mr. Padhi highlighted the fact that RTI could be used with other

[12]The India country paper for this workshop authored by Mr. Singh is available here: http://tinyurl.com/262ut3c. In addition, his presentation is available here: http://tinyurl.com/25kmze3.

legal instruments for an effective transparency regime. He also spoke of some of the hurdles in implementation, including the variability of rules across states and clarifying the relationship between the central and state information commissions. He also gave the example of Orissa where cases in the Information Commission are prioritised according to the urgency of the matter. He suggested the usage of Management Information Systems to streamline processes involved in the implementation of the law.

Mr. Mishra made a presentation on the implementation experience in Karnataka, and highlighted the importance of following up on orders of the Commission.[13] He further listed the challenges being faced by the Commission due to the nature of information being sought, as well as suggested holding discussions with NGOs to seek ideas for improvement. He also informed the participants that a call centre system to accept applications would be set up in Karnataka soon.

The discussant, Mr. Chhokar, sought to bring the attention of the participants to issues related to implementation, and also the importance of the responsibilities of citizens to ask the right questions and use the information well. He also spoke of the need for transparency in the appointment of Information Commissioners.

Session 2D: Challenges and Opportunities before Governments

Conference Hall, 3.45 pm – 4.45 pm

Chair: R.C. Mishra, Secretary, Administrative Reforms and Public Grievances and Pensions, Government of India

Speakers: Mohamed Shihab, Minister of Home Affairs, Maldives; Sushil Ghimire, Secretary, Ministry of Information and Communication, Government of Nepal; Sanjida Sobhan, Coordinator (Governance), Manusher Jonno Foundation, Bangladesh; and Rajeev Kapoor, Joint Secretary, Department of Personnel and Training, Government of India

Discussant: Prakash Kumar, Director, Cisco Systems

Mr. Mishra highlighted the centrality of RTI to the strengthening of governance systems, as well as bringing the government and citizens

[13]Mr. Mishra's presentation is available here: http://tinyurl.com/252x5jj.

closer together. He also spoke of the challenge of effective usage of information. Mr. Shihab spoke of the Maldivian experience and listed changing the attitude of the bureaucracy inherited from a different governance regime as the greatest challenge in that context. Mr. Ghimire highlighted awareness raising as the greatest challenge for the government in Nepal. In addition, he also mentioned the problems occurring when RTI is in conflict with other laws of the land. Ms. Sobhan spoke of changing the cultural mindset of not disclosing information as a great challenge, and added that the mindset of citizens also needed to be changed, who saw the RTI as a tool primarily for media professionals.[14] She added that much could be achieved if political will existed.

Mr. Kapoor highlighted the potential of RTI to become a mechanism which provides feedback to the government.[15] He also mentioned that the Act could be used to give a fillip to streamline record management, reduce corruption and set up systems of social audit. He also added that RTI could change the very functioning of democracy, even though the challenges of lack of awareness, infrastructural limitations, attitudinal opposition, and trust deficit amongst stakeholders remained. He finally cautioned that a right balance would need to be found between the information seeker and provider, and information access and provision. The discussant, Mr. Kumar, added that softwares were now available which could analyse information being sought, which in turn could help the government in streamlining its systems.

Session 2E: Challenges and Opportunities before Information Commissions

Conference Hall, 4.45 pm – 5.45 pm

Chair: Mohamed Sihab, Minister of Home Affairs, Maldives

Speakers: Vinaya Kumar Kasajoo, Chief Information Commissioner, Nepal; Sadeka Halim, Information Commissioner, Bangladesh; R.S. Tolia, Chief Information Commissioner, Uttarakhand, India); and Shailesh Gandhi, Central Information Commissioner, India.

[14]Ms. Sobhan's paper on RTI implementation in Bangladesh is available here: http://tinyurl.com/283qxrz.

[15]Mr. Kapoor's presentation is available here: http://tinyurl.com/26neest.

The main challenges identified in the Nepal context by Mr. Kasajoo were raising awareness amongst the people, and strengthening the RTI law so that it overrides all other laws. Ms. Halim pointed to the importance of making Information Commissions financially, legally and politically independent. She also stressed upon the monitoring role of Information Commissions. Mr. Tolia recommended that the mainstreaming of a culture of openness was a critical need, and added that disposal rates of Information Commissions needed to improve greatly. He also emphasised upon the role of Information Commissions to act as role models and provide guidelines to public authorities with regard to effective implementation. Mr. Gandhi highlighted the potential of the RTI Act to bring in true democracy and participatory governance. He also brought to light the challenges facing Information Commissions, especially the opacity in selection processes and pendency.

Session 2F: Challenges and Opportunities before Media and Civil Society

Conference Hall, 5.45 pm – 6.45 pm

Chair: Hafizuddin Khan, Chairman of the Board of Trustees, Transparency International, Bangladesh

Speakers: Mahfuz Anam, Editor and Publisher, The Daily Star, Bangladesh; Dharmendra Jha, President, Federation of Nepali Journalists; Khushrukh Kabir, Coordinator, Nijera Kori, Bangladesh; Rukshana Nanayakkara, Deputy Executive Director, Transparency International Sri Lanka; and Dolly Arora, Professor, IIPA, India

Mr. Anam spoke of the opportunity that RTI provides to demystify power and bring citizens into the process of governance. He also spoke of the challenge for media and civil society to not limit itself to seeking information, but seek systemic changes through that information instead. Mr. Jha highlighted the limited interest that the media has taken in promoting and using RTI in Nepal. He also suggested that international donors and the government did not provide any technical support to civil society organisations (CSOs) in terms of building capacity with regard to this Act. Ms. Kabir spoke of the importance of encouraging marginalised and vulnerable sections of the citizenry to use the RTI, even as she recommended that more Information Commissioners should come from a civil society background. Mr. Nanayakkara highlighted the political situation in Sri Lanka, where it is extremely difficult for media and CSOs to

confront the government head-on. In such a situation, he suggested efforts be made to build trust between the government, media and CSOs, and build upon that to create an atmosphere conducive to the introduction of an RTI law. Ms. Arora spoke of the changes occurring in the grammar and practice of governance and jurisprudence as a result of RTI. She also mentioned the criticality of the media to take up 'real' issues of the people by using RTI. Finally, she also suggested that CSOs begin work on proposing systemic changes in governance through the use of RTI.

THURSDAY, 29 APRIL 2010

Session 3A: Access to Information in the Developing World: South Africa in Comparative Perspective

Conference Hall, 9.30 am – 10.15 am

Chair: Salman Akram Raja, Advocate, Supreme Court of Pakistan

Speaker: Colin Darch, Senior Information Specialist in the African Studies Library, University of Cape Town, South Africa

Mr. Darch gave a detailed presentation to the participants on the South African experience with respect to access to information.[16] He mentioned that while the South African Promotion of Access to Information Act is often touted as a model law, it has not had much success in terms of implementation. He offered many reasons for the same, including the absence of an Information Commission, the resilience of the culture of secrecy in South Africa, low usage by citizens, and the limitations of the legal and governmental institutional mechanisms which prevent effective implementation.

Sessions 3BB and 3CC: Breakout Group Discussions on Defining Priorities

Various Rooms, 10.30 am – 1.15 pm

The participants of the workshop adjourned in groups to conduct discussions on stakeholder, country and regional priorities.

Session 3D: Reporting by the Breakout Groups

Conference Hall, 2.15 pm – 3.45 pm

Chair: Ms. Shailaja Chandra, Former Chief Secretary, Government of National Capital Territory of Delhi

[16]Mr. Darch's presentation is available here: http://tinyurl.com/2ctv8v3.

The breakout groups were organised by theme (governments, information commissions, media, and civil society) and country (all the countries of the region). Highlights of their discussions are provided below.

THEMATIC BREAKOUT GROUPS

Governments

- Improve processes of appointment and training of information officers
- Increase resource allocation
- Improve proactive disclosure and monitoring
- Improve record management
- Make appointment of Information Commissioners transparent
- Increase awareness and involve the citizenry to a greater extent
- Promote effective exchange of ideas amongst the countries of the region

Information Commissions

- Improve oversight and monitoring roles
- Use technology and other tools for case management
- Push for transparency in the appointment of Commissioners, including defining norms
- Promote regional collaboration and experience sharing through increased interaction, using technology where required

Media

- Encourage beat coverage of RTI in all countries
- Training of reporters on use of RTI
- Greater collaboration amongst Editors on RTI
- Increase experience sharing amongst journalists on RTI
- Include RTI in curricula of journalism schools
- Institute awards for journalists for reporting on and usage of RTI

Civil Society

- Promote networks for advocacy and support mobilisation
- Create training and resource material
- Promote sharing of experiences both locally and regionally
- Conduct research studies
- Effect and promote a model disclosure policy for CSOs

Country Breakout Groups[17]

AFGHANISTAN

- Create and strengthen an effective legal framework
- Lobby to gain support from political leaders
- Conduct joint projects with India and other countries of the region
- Promote experience sharing amongst countries of the region
- Establish and support a regional lobby group

BANGLADESH

- Develop a strategic framework for implementation, including monitoring mechanisms
- Strengthen the Information Commission, including financial independence
- Improve pro-poor orientation and record management
- Create forums and hubs to collaborate regionally

INDIA

- Raise awareness amongst the citizenry, including greater emphasis on proactive disclosure and protection of whistleblowers
- Make public authorities more responsive, especially through training and education
- Ensure independence and efficacy of Information Commissions

[17] As there was only one participant for Bhutan, no breakout session was held for that country.

- Bring RTI on the SAARC platform and promote experience sharing across the region

MALDIVES

- Enacting a strong RTI law
- Set up decentralised systems for information access
- Set up independent Information Commissions
- Strengthen e-governance
- Raise public awareness
- Build capacity of civil society
- Develop regional cooperation, especially with regard to funding

NEPAL

- Strengthen the constitutional and legal safeguards for RTI
- Improve government capacity to implement the law
- Strengthen the Information Commission
- Create a platform for greater cooperation amongst stakeholders
- Develop regional knowledge hubs, possibly by using the SAARC platform

PAKISTAN

- Strengthen the law to bring it up to international standards
- Build capacity of government functionaries
- Promote proactive disclosure

SRI LANKA

- Build capacity of people to use existing laws containing disclosure provisions at local level
- Lobby with and sensitise government with regard to access to information
- Develop and support mass media campaign for legislation on access to information
- Identify and support champions within the government

- Support non-government agencies to negotiate and catalyse the demand for an information access law

Session 3E: RTI and Social Audits: The Indian Experience

Conference Hall, 3.45 pm – 4.30 pm

Chair: Yamini Aiyar, Director, Accountability Initiative, India

Speakers: Sowmya Kidambi, Social Development Consultant, Andhra Pradesh; and Anjali Bhardwaj, Satark Nagrik Sangathan (SNS) New Delhi

Discussant: Parshuram Ray, Director, Centre for Environment and Food Security, New Delhi

Ms. Kidambi spoke at length about the National Rural Employment Guarantee Scheme in India and the way in which RTI was used within it to ensure accountability. Describing the process with several real life examples, she highlighted the enabling role that RTI could play in carrying out social audits effectively. She also provided details of the process, including the training carried out for rural youth in using RTI, and the impact the social audit process has on empowering citizens and reducing corruption. Ms. Bhardwaj provided a brief history of SNS and described in detail the way the organisation used RTI during assembly elections in Delhi to hold elected representatives to account. The information received by using the RTI, coupled with analysis, and wide media coverage had a tremendous positive impact on not only making citizens aware about the responsibilities of their elected representatives, but also to hold them to account for their actions. The discussant, Mr. Ray, cautioned the participants about the efficacy of social audit processes by speaking of the limited scale of its use, as well as the dangers of the governance mechanism striking back by providing false or misleading information.

Session 3F: Finalising Recommendations and Workshop Resolution

Conference Hall, 4.30 pm – 5.15 pm

Chair: Yogendra Narain, Former Secretary General, Rajya Sabha, India

This session was devoted to discussions on the draft workshop resolution. The final workshop resolution is available here: http://tinyurl.com/2c3y59k.

Session 3G: Valedictory Session

Conference Hall, 5.30 pm – 6.30 pm

Chair: Shantanu Consul, Secretary, Department of Personnel and Training, Government of India

Speakers: B.S. Baswan, Director, IIPA; Shamsul Bari, Chairman, Research Initiatives Bangladesh; Shekhar Singh, Founder Member, National Campaign for People's Right to Information, India; Shailesh Gandhi, Central Information Commissioner, India; and Vikram K. Chand, Senior Public Sector Management Specialist, The World Bank

The Chair, Mr. Consul highlighted the efforts that the Government of India was taking in the effective implementation of the RTI Act. These included raising awareness amongst the people, emphasising on proactive disclosure of information, building capacity of public officials, strengthening Information Commissions, and finally building knowledge hubs on this issue. Mr. Bari spoke of India as a role model for the rest of the region in terms of RTI, and suggested that the momentum of the workshop should be carried on through other collaborations, which would strengthen the practice of democracy in the region. Mr. Singh provided the highlights of the recommendations arising from the workshop for government and information commissions, including building capacity and greater stakeholder and regional collaboration.[18]

Mr. Gandhi delivered the valedictory address, where he spoke of the deep relationship between accessing information and transparency to the democracy in real terms. He also dwelt on the role of a citizen in a democratic context, and emphasised the fact that all government functionaries are citizens first, and officials later. He finally exhorted the gathering to continue its efforts to support RTI in the interest of deepening democracy in their own countries, as well as across the region.

Mr. Chand finally thanked all participants for their contributions to the workshop.

WORKSHOP RESOLUTION

We, the supporters of the right to information, from Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka, having assembled in New Delhi, India in April 2010, while:

[18] Details of these recommendations are available earlier in this document.

Drawing Attention to the commitment made by the South Asian Association for Regional Cooperation (SAARC), at its ministerial meeting in 2008, to guarantee through appropriate legislation, the right to information for all citizens, from governments and public authorities, to eliminate arbitrariness and corrupt practices and improve governance at the regional, national and local levels;

Reiterating our belief that the right to seek and obtain information from government and other institutions affecting the public is a fundamental human right and must be guaranteed for all persons in the South Asian region and that governments and public bodies have the duty to promote, protect and fulfill the fundamental human right to information;

Recognising that the exercise of the right to information is an indispensable precondition for building truly participatory democracies, thereby ensuring accountable governance and greater justice for all, especially for the deprived and the marginalised; and

Taking note of the experience of implementing right to information laws in other countries including Canada, Mexico, South Africa and the United States of America represented at the workshop;

Determine the following priorities at the national and regional level to promote the establishment and evolution of a transparency regime:

1. Country/National Priorities:

1.1. Afghanistan:

1.1.1. Develop regulations for the mass media-related constitutional provisions;

1.1.2. Establish a lobby group for action on RTI at the national level; and

1.1.3. Adopt a strong RTI law and provide for the establishment of an independent Information Commission.

1.2. Bangladesh:

1.2.1. Work towards developing a strong political will and commitment to implement the RTI Act from the Government and strong leadership from the Information Commission to implement the RTI Act;

1.2.2. Ensure institution building of the Information Commission with adequate financial and human resources and development of its capacity;

1.2.3. Ensure appointment of suitable designated officers in all public offices with a secure tenure of at least three years and provide them adequate training;

1.2.4. Improve the Government's records management system and build web-based database for all public sector agencies;

1.2.5. Adopt a pro-poor strategy for spreading awareness about RTI and implementing the RTI Act;

1.2.6. Establish community e-centres at all levels for ensuring easy access to development-related information and public services; and

1.2.7. Build central and local monitoring mechanisms to oversee the effective implementation of the RTI Act at all levels and stages.

1.3. India:

1.3.1. Implement proactive disclosure provisions better and more effectively;

1.3.2. Undertake more public education and awareness raising programmes and incorporate RTI syllabus in the school and college curricula;

1.3.3. Ensure uniformity in the RTI Rules notified by competent authorities and that they conform to the letter and the spirit of the RTI Act; and

1.3.4. Establish effective linkages between RTI and mechanisms for redressing people's grievances about public service delivery.

1.4. Maldives:

1.4.1. Overcome the culture of secrecy steeped in the lingering feudal mentality;

1.4.2. Adopt an RTI law that covers the legislature, the executive, the judiciary and private bodies;

1.4.3. Establish the office of the Information Commissioner and ensure that appointments are made in a transparent manner;

1.4.4. Build the capacity of civil society to understand and promote RTI; and

1.4.5. Train the media to report on RTI and other issues objectively.

1.5. Nepal:

1.5.1. Provide feedback to the constitution drafting process for including RTI as a fundamental right in tune with international standards;

1.5.2. Strengthen and empower the Information Commission;

1.5.3. Reform the RTI regulations in collaboration with civil society organisations;

1.5.4. Ensure that Government proactively strengthens the capacity of public authorities, including local government bodies, to implement the RTI Act; and

1.5.5. Ensure effective collaboration between civil society and the media for awareness raising, modeling RTI usage, capacity building of CSOs and monitoring compliance with the RTI Act.

1.6. Pakistan:

1.6.1. Reform the RTI law to conform to internationally recognised standards;

1.6.2. Build capacity of designated officers in all departments;

1.6.3. Improve proactive disclosure in government departments;

1.6.4. Adopt similar standards of proactive disclosure for civil society organisations;

1.6.5. Create linkages with other civil society at the regional level to reform the RTI law;

1.6.6. Initiate a civil society campaign to disseminate information about the recent constitutional amendment incorporating RTI as a fundamental right; and

1.6.7. Encourage donor agencies to adopt self-disclosure policies.

1.7. Sri Lanka:

1.7.1. Build the capacity of people to use disclosure provisions contained in existing laws at the local level;

1.7.2. Use the term 'access to information' while dialoguing with Government to establish a transparency regime;

1.7.3. Involve the mass media in the campaign for access to information;

1.7.4. Identify champions within the Government to press for the adoption of the access to information law;

1.7.5. Identify interested actors outside the Government and include them in the campaign; and

1.7.6. Encourage multilateral agencies to persuade the Government to include transparency and accountability standards in the implementation of development projects.

2. Stakeholder Priorities:

2.1. Governments:

2.1.1. Change the prevalent culture from secrecy to openness;

2.1.2. Provide adequate resources to implement RTI in public authorities;

2.1.3. Improve records keeping with particular emphasis on the classification, indexing, digitizing and archivising of records and adherence to a record retention schedule;

2.1.4. Utilise the existing potential of Information Technology to proactively make information more accessible to people;

2.1.5. Train and incentivise government functionaries with appropriate qualifications to implement RTI effectively;

2.1.6. Regularly upload on websites important decisions and minutes of meetings and quarterly and annual reports of all public authorities;

2.1.7. Spread awareness about RTI amongst people at the grassroots level;

2.1.8. Mandate the inclusion of RTI in school and college curricula; and

2.1.9. Link RTI to good governance and anti-corruption strategies and enact whistleblower legislation;

2.2. Information Commissions:

2.2.1 Ensure financial, staffing and functional autonomy for Information Commissions;

2.2.2 Ensure transparent and norm-based process for appointing Information Commissioners;

2.2.3 Ensure security of tenure for Information Commissioners;

2.2.4 Ensure a non-arbitrary process for removal of Information Commissioners;

2.2.5 Adopt norms to regulate the working of Information Commissions;

2.2.6 Identify objective criteria for determining the number of Information Commissioners; and

2.2.7 Develop common software to enable the Information Commissions to work more efficiently.

2.3. Civil Society:

2.3.1. Develop an e-network and other participatory action forums for advocacy and support mobilization;

2.3.2. Develop and disseminate a comparative study on RTI-related best practices and challenges through a regional platform; and

2.3.3. Promote a pro-poor approach to RTI.

2.4. Media:

2.4.1. Encourage media houses to cover RTI as a regular beat;

2.4.2. Provide in-field training for working journalists to understand their respective RTI laws and draft RTI requests;

2.4.3. Conduct high-level briefings of news editors to demonstrate the news flow benefits of RTI and to encourage them to commit time and resources for their reporters to pursue RTI-driven projects;

2.4.4. Create and maintain a website, with links to other RTI resources, for tracking RTI-related developments throughout the region and acting as a journalists' forum for RTI;

2.4.5. Create an annual South Asia journalism award for the best RTI-based stories; and

2.4.6. Include RTI in the curricula of schools and departments of journalism in the region.

3. Regional Priorities:

3.1. Promote inter-governmental exchange of best practices for improving transparency regimes;

3.2. Create a regional platform for Information Commissions to regularly interact with each other and with Information Commissioners in other countries;

3.3. Promote more intensive exchange of expertise and experience on RTI between activists and civil society organisations in the region;

3.4. Develop a web-based database of all orders and decisions of Information Commissions in South Asia to be maintained by a regional RTI resource centre;

3.5. Develop guidelines on internal disclosure policies for civil society organisations;

3.6. Develop a regional mechanism to provide technical assistance on RTI and advocate for the adoption of best practice RTI legislation.

We Further Resolve to join hands and support the establishment and the evolution of a right to information regime in each country of the region, and to collaborate with other regions of the world to strengthen the transparency regime at the global level.

CONFERENCE HALL

Indian Institute of Public Administration

New Delhi

29 April 2010

Regional Workshop

TOWARDS MORE OPEN AND TRANSPARENT GOVERNANCE IN SOUTH ASIA

Organised by the Indian Institute of Public Administration (IIPA), New Delhi

In Collaboration with the World Bank

27 – 29 April, 2010
IIPA Conference Hall

WORKSHOP SCHEDULE

DAY 1			**TUESDAY, 27 APRIL, 2010**
4:00 – 5:00pm		**REGISTRATION**	
5:00 – 7:45pm		**INAUGURATION**	
Chair: **T.N. Chaturvedi** **(1A)**	5:00pm	Arrival of the Chief Guest	
	5:05 – 5:10pm	Welcome and Introduction to the Workshop	B.S. Baswan *Director, IIPA*
	5:10 – 5:15pm	Background and Objectives of the Workshop	Vikram K. Chand *Senior Public Sector Management Specialist, World Bank*

	5:10 – 5:20pm	Chairperson's Address	T.N. Chaturvedi *Chairman, IIPA*
	5:20 – 5:50pm	Inaugural Address by the Chief Guest	Wajahat Habibullah *Chief Information Commissioner, Central Information Commission, India*
	5:50 – 5:55pm	Vote of Thanks	Pranab Banerji *Professor of Political Science, IIPA*
	5:55 – 6:10pm	**TEA BREAK**	
	Address by Guests of Honour		
Chair: **B.S. Baswan**	6:10 – 6:30pm	Access to Information: A South Asian Perspective	Sherry Rehman *Member of National Assembly, Pakistan*
(1B)	6:30 – 6:50pm	Lessons from the Mexican Experience on Access to Information	Maria Elena Perez-Jaen Zermeño *Commissioner for Access to Public Information, Federal Institute for Access to Information, Mexico*
	6:50 – 7:10pm	The Role of the International Community	Sanjay Pradhan *Vice President, World Bank Institute*
	7:10 – 7:45pm	• Discussants 1, 2 & 3	Toby Mendel *Executive Director, Centre for Law and Democracy, Canada* Anisatul Fatema Yousuf *Director (Dialogue & Communication), Centre for Policy Dialogue, Bangladesh* Maja Daruwala *Director, Commonwealth Human Rights Initiative*
		• Open Q and A	
8:15 – 9:30pm		**DINNER**	**INDIA INTERNATIONAL CENTRE**

DAY 2		**WEDNESDAY, 28 APRIL, 2010**	
9:30 – 9:45am		**Workshop Overview**	**Vikram K. Chand**
9:45 – 11:15am		**State of Transparency Regimes in South Asia Plenary**	
Chair: **R.S. Tolia** **(2A)**	9:45 – 10:05am	Bangladesh	Shaheen Anam Tahmina Rahman
	10:05 – 10:20am	Nepal	Taranath Dahal
	10:20 – 10:35am	Bhutan	Phurba Dorji
	10:35 – 10:45am 10:45 – 11:15am	• Discussants 1 & 2 • Open Q and A	Ralph Frammolino Ram Krishna Timalsena
	11:15 – 11:30am	**TEA**	
11:30 – 1:15pm		**State of Transparency Regimes in South Asia** *(contd.)* **Plenary**	
Chair: **Toby Mendel** **(2B)**	11:30 – 11:45am	Pakistan	Mian Abrar Hafeez
	11:45 – 12noon	Sri Lanka	Rohan Edrisingha
	12:00 – 12:15pm	Maldives	Mohamed Latheef
	12:15 – 12:30pm	Afghanistan	Rahela Siddiqi
	12:30 – 12:40pm 12:40 – 1:15pm	• Discussants 1 & 2 • Open Q and A	Sameer H. Dodhy Shyamila Perera
	1:15 – 2:15pm	**LUNCH**	
2:15 – 3:30pm Panel		**State of Transparency Regimes in South Asia** *(contd.)* **Plenary**	
Chair: **K.K. Misra** **(2C)**	2:15 – 2:30pm	Indian National Case Study	Shekhar Singh
	2:30 – 3:10pm	Presentation and Panel on Experiences from Indian States (Maharashtra, Bihar, Orissa, Karnataka)	Suresh V. Joshi P. N. Narayanan D. N. Padhi
	3:10 – 3:15pm 3:15 – 3:30pm	• Discussant • Open Q and A	Jagdeep Chhokar
	3:30 – 3:45pm	**TEA**	

Chair: **R.C. Mishra** **(2D)**	3:45 – 4:25pm	Challenges and Opportunities before Governments	**Plenary Panel** Mohamed Shihab Sushil Ghimire Sanjida Sobhan Rajeev Kapur
	4:25 – 4:45pm	• Discussant • Open Q and A	Prakash Kumar
Chair: **Maria Elena Perez-Jaen Zermeño** **(2E)**	4:45 – 5:30pm	Challenges and Opportunities before Information Commissions	**Plenary Panel** Vinaya Kumar Kasajoo Sadeka Halim R.S. Tolia Shailesh Gandhi
	5:30 – 5:45pm	Open Discussion with Q and A	
Chair: **Hafizuddin Khan** **(2F)**	5:45 – 6:45pm	Challenges and Opportunities before Media & Civil Society	**Plenary Panel** Mahfuz Anam Dharmendra Jha Khushrukh Kabir Rukshana Nanayakkara Dolly Arora
	6:45 – 7:15pm	Open Discussion with Q and A	
8:15 – 9:30pm		**DINNER AT IMPERIAL HOTEL**	

DAY 3			**THURSDAY, 29 APRIL, 2010**
Chair: **Salman Akram Raja** **(3A)**	9:30 – 10:00am	Access to Information in the Developing World: South Africa in Comparative Perspective	Colin Darch
	10:00 – 10:15am	Open Discussion with Q and A	
	10:15 – 10:30am	Draft Workshop Resolution and Pointers for Breakout Groups	Venkatesh Nayak
10:30 – 11:30am	**Stakeholder and Regional Priorities**		**Breakout Groups**
(3BB)	***Group I*: Governments**		***Facilitator:*** Khwaja M. Shahid
	***Group II*: Information Commissions**		***Facilitator*: Sabita Bhandari Baral**
	***Group III*: Media**		***Facilitator*: Ralph Frammolino**
	***Group IV*: Civil Society**		***Facilitator:*** Kedar Khadka
	11:30 – 11:45am	**TEA**	
11:45 – 1:15pm	**Country and Regional Priorities**		**Breakout Groups**
(3CC)	***Group I*: Afghanistan**		***Facilitator*: Rahela Siddiqi**
	***Group II*: Bangladesh**		***Facilitator*: Sadeka Halim**
	***Group III*: Bhutan**		***Facilitator*: Phurba Dorji**
	***Group IV*: India**		***Facilitator*: Jagadananda**
	***Group V*: Maldives**		***Facilitator*: Mohamed Latheef**
	***Group VI*: Nepal**		***Facilitator*: Raghav Raj Regmi**
	***Group VII*: Pakistan**		***Facilitator*: Sameer H. Dodhy**
	***Group VIII*: Sri Lanka**		***Facilitator*: Anthony David**
	1:15 – 2:15 pm	**LUNCH**	
2:15 – 3:45pm **Plenary**	**Setting Priorities**		
Chair: **Shailaja Chandra** **(3D)**	2:15 – 3:45pm	Reporting of Stakeholder and Country Discussions including Ideas for Regional Cooperation on RTI	Facilitators
3:45 – 4:30pm **Plenary**	**Thematic Discussion**		

Chair: **Yamini Aiyar (3E)**	3:45 – 4:15pm	RTI and Social Audits: The Indian Experience	Sowmya Kidambi Anjali Bhardwaj
	4:15 – 4:30pm	• Discussant • Open Q and A	Parshuram Ray
4:30 – 5:15pm		**Presentation and Discussion**	
Chair: **Yogendra Narain (3F)**	4:30 – 5:15pm	• Finalising Recommendations and Workshop Resolution • Open Discussion	Venkatesh Nayak Shaheen Anam
	5:15 – 5:30pm	**TEA**	
5:30 – 6:30pm		**VALEDICTORY**	
Chair: **Shantanu Consul (3G)**	5:30 – 5:35pm	Welcome Address	B.S. Baswan *Director, IIPA*
	5:35 – 5:45pm	Opening Remarks from the Chair	Shantanu Consul *Secretary, Government of India, Department of Personnel and Training*
	5:45 – 6:05pm	Summing up • Civil Society and Media • Government and Information Commissions	Shamsul Bari *Chairman, Research Initiatives Bangladesh* Shekhar Singh *National Campaign for People's Right to Information, India*
	6:05 – 6:25pm	Valedictory Address	Shailesh Gandhi *Information Commissioner, Central Information Commission, India*
	6:25 – 6:30pm	Vote of Thanks	Vikram K. Chand *Senior Public Sector Management Specialist, World Bank*

LIST OF PARTICIPANTS

S.No	Name	Position	Affiliation	Location
1	A.H.M. Bazlur Rahman	Chief Executive Officer	Bangladesh NGOs Network for Radio and Communication (BNNRC)	Dhaka, Bangladesh
2	Amrita Lamba	Junior Research Fellow and Doctoral Candidate	Centre for the Study of Law and Governance, Jawaharlal Nehru University (JNU), New Delhi	New Delhi, India
3	Anil Dubey	Correspondent	Doordarshan	New Delhi, India
4	Anisatul Fatema Yousuf	Director, Dialogue and Communication Division	Centre for Policy Dialogue (CPD)	Dhaka, Bangladesh
5	Anjali Bhardwaj Sharma	Founder	Satark Nagrik Sangathan	New Delhi, India
6	Anthony David	Deputy Editor	Wijeya Newspapers Limited	Colombo, Sri Lanka
7	B.S. Baswan	Director	Indian Institute of Public Administration (IIPA)	New Delhi, India
8	Bhavna Bhatia	Regional Coordinator	World Bank Institute	New Delhi, India
9	Bibekananda Biswal	Chief Monitoring Officer, RTI Implementation	Information and Public Relations Department, Government of Orissa	Bhubaneswar, India
10	Charru Malhotra	Assistant Professor (Systems Analysis cum Programming)	Indian Institute of Public Administration (IIPA)	New Delhi, India
11	Colin Darch	Senior Information Specialist	University of Cape Town	Rondesbosch, South Africa
12	D.N. Padhi	Chief Information Commissioner	Orissa Information Commission	Bhubaneswar, India

13	Dharmendra Jha	1) President 2) Journalist	1) Federation of Nepali Journalists (FNJ) 2) Annapurna Post	Kathmandu, Nepal
14	Dolly Arora	Professor of Political Science	Indian Institute of Public Administration (IIPA)	New Delhi, India
15	Eszter Filippinyi	Programme Officer	Open Society Institute (OSI) -Right to Information Fund	Budapest, Hungary
16	Firoz Ahmed	Head, Governance, Bangladesh Resident Mission	Asian Development Bank	Dhaka, Bangladesh
17	Ghulam Dastgir Hedayat	Director, Case Tracking Department	High Office of Oversight and Anticorruption	Kabul, Afghanistan
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22	KK Misra	State Chief Information Commissioner	Karnataka Information Commission	Bangalore, India
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26	Khwaja M. Shahid	Director	Institute of Secretariat Training and Management	New Delhi, India

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28	M. Hafizuddin Khan	Chairman of the Board of Trustees	Transparency International-Bangladesh	Dhaka, Bangladesh
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30	Mahfuz Anam	Editor and Publisher	The Daily Star	Dhaka, Bangladesh
31	Maja Daruwala	Director	Commonwealth Human Rights Initiative	New Delhi, India
32	Mamta Pathania	Assistant Professor of Consumer Studies	Indian Institute of Public Administration (IIPA)	New Delhi, India
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37	Mohamed Hilmy	Under Secretary for Communications, President's Office	President's Office	Male, Maldives
38	Mohamed Jawad	Director	Ministry of Home Affairs	Male, Maldives
39	Mohamed Latheef	Ambassador for Human Rights	Maldivian Democratic Party	Male, Maldives
40	Mohamed Shihab	Minister of Home Affairs	Ministry of Home Affairs, Government of Maldives	Male, Maldives
41	Mohammad Sirajul Islam	Research Associate	Institute of Governance Studies (IGS), BRAC University	Dhaka, Bangladesh

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46	Parshuram Ray	Director	Centre for Environment and Food Security (CEFS)	New Delhi, India
47	Peter Evans	Senior Governance Advisor	Department for International Development	New Delhi, India
48	Phurba Dorji	Journalist	Business Bhutan Newspaper	Thimphu, Bhutan
49	Pranab Banerjee	Professor	Indian Institute of Public Administration (IIPA)	New Delhi, India
50	Prakash Kumar	Director, Public Sector Internet Business Solutions Group	CISCO Business Solutions Group	New Delhi, India
51	Prashant Sharma	Doctoral Research Scholar and Consultant, World Bank	London School of Economics	Geneva, Switzerland
52	Premila Nazareth	Founder Member	Right to Information Assessment and Analysis Group	New Delhi, India
53	R.C. Mishra	Secretary	Department of Administrative Reforms, Public Grievances and Pensions, Government of India	New Delhi, India
54	R.S. Tolia	State Chief Information Commissioner	Uttarakhand Information Commission	Dehradun, India
55	Raghav Raj Regmi	International Consultant	Development Consultancy Centre (DECC)	Kathmandu, Nepal

56	Raghavan Suresh	Director	Public Affairs Centre (PAC India)	Bangalore, India
57	Rahela Siddiqi	Senior Adviser to the Chairman	Independent Administrative Reform and Civil Service Commission (IARCSC)	Kabul, Afghanistan
58	Rajeev Kapoor	Joint Secretary (ATandA)	Department of Personnel and Training, Government of India	New Delhi, India
59	Ralph Frammolino	Independent Journalism Consultant	Progati	Austin, USA
60	Ram Krishna Timalsena	Registrar	Supreme Court of Nepal	Kathmandu, Nepal
61	Rohan Edrisinha	Director/Head, Legal and Constitutional Unit	Centre for Policy Alternatives	Colombo, Sri Lanka
62	Rukshana Nanayakkara	Deputy Executive Director	Transparency International Sri Lanka	Colombo, Sri Lanka
63	Sabita Bhandari Baral	Information Commissioner	National Information Commission, Nepal	Kathmandu, Nepal
64	Sachin Chowdhry	Assistant Professor	Indian Institute of Public Administration (IIPA)	New Delhi, India
65	Sadeka Halim	Information Commissioner	Information Commission Bangladesh	Dhaka, Bangladesh
66	Saharsh David	Project Director	Praja	Mumbai, India
67	Salman Akram Raja	Bureau Member, South Asians for Human Rights (SAHR)	Raja Mohammad Akram and Co., Advocates and Legal Consultants	Lahore, Pakistan
68	Sameer Dodhy	Vice Chairperson	SHEHRI-Citizens for Better Environment	Karachi, Pakistan
69	Sanjay Pradhan	Vice President	World Bank Institute	Washington DC, USA
70	Sanjida Sobhan	Coordinator, Governance and Focal Point for RTI	Manusher Jonno Foundation	Dhaka, Bangladesh

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74	Shaheen Anam	Executive Director	Manusher Jonno Foundation	Dhaka, Bangladesh
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76	Shailesh Gandhi	Information Commissioner	Central Information Commission, India	New Delhi, India
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92	Tanka Raj Aryal	Director	Citizen's Campaign for RTI	Kathmandu, Nepal
93	Tanmay Mohanty	CEO-cum-Managing Director	Luminous Infoways	Bhubaneswar, India
94	Taranath Dahal	1) Chairperson 2) Chief Editor 3) Chairperson	1) Freedom Forum 2) Independent News Service 3) Radio ABC FM	Kathmandu, Nepal
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