

# EMPOWERMENT THROUGH INFORMATION

The Evolution of Transparency Regimes in South Asia

Volume I: Essays, Status Reports, Case Studies



Shamsul Bari Vikram K. Chand Shekhar Singh

Editors

TAG

Transparency Advisory Group

RIB

Research Initiatives Bangladesh

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**Front cover picture from Pakistan:** *The Centre for Peace and Development Initiatives (CPDI) and other civil society groups in a protest rally demanding the enactment of an RTI Law for Punjab.*

**Back cover illustration from Nepal:** *A sketch, by Nepali artist Nem Bahadur Tamang, depicting Nepalese government offices “spewing” information after the enactment of the RTI law.*

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# 1.

## Editorial Note

Vikram K. Chand

### 1. The Context

South Asia has witnessed a dramatic increase in the level of public and governmental interest in improving transparency and accountability, particularly through right to information (RTI) legislation. Today all countries in the region have such legislation in place or are on the verge of enacting it. India passed its pioneering Right to Information law in 2005, which has proven to be a powerful instrument for bringing corruption to book, deterring malfeasance in government, improving systems and processes, and empowering citizens more broadly. According to a recent study, a staggering four million RTI applications are estimated to have been filed in 2011-12 in India at the central and state levels.<sup>1</sup> In 2007, Nepal adopted its own Right to Information law (ranked among the better laws in the world) as did Bangladesh in 2009.

Since then RTI has made further progress, particularly in Pakistan, Bhutan, Afghanistan, and the Maldives. Two major provinces in Pakistan, Punjab and Khyber-Pakhtunkhwa (KP), have enacted progressive laws in 2013 to promote access to information. The KP and Punjab RTI Acts in turn spurred federal level reform: a strong draft federal RTI law has been framed by the government and currently awaits final endorsement by the cabinet prior to submission to the National Assembly. If passed, this law will replace an older and far less comprehensive disclosure regime put in place in 2002 by the erstwhile military government. The Maldives in 2014 adopted an RTI law that has been ranked among the best ten such laws globally. The President of Afghanistan signed an access to information law towards the end of 2014: that law now awaits publication in the official Gazette. Bhutan has also framed a draft RTI law that was passed by the National Assembly in early 2014 (the lower house of the legislature), but later withdrawn from the National Council (the upper house) because of a procedural problem. Bhutan is, however, well on its way to having a full-fledged RTI regime. In Sri Lanka, the newly elected President has committed to passing an RTI law within the first 100 days of government following his victory.

### 2. The Transparency Advisory Group

The Transparency Advisory Group (TAG), which consists of senior officials, academics, and activists interested in RTI from all South Asia countries as well as Canada, UK, Australia, South Africa, Mexico, and the USA, has played an important role in developing standards for RTI in the region, promoting cross-state learning, and providing technical advice to governments on RTI. TAG emerged from a workshop held in Delhi in 2010 (in collaboration with the Indian Institute of Public Administration), which brought together key figures from across the region to discuss transparency issues for the first time. A subsequent meeting in Kathmandu helped leverage RTI experiences from across the region to benefit the RTI process in Nepal. The Kathmandu declaration adopted at the RTI Convention in Nepal called for several measures to strengthen RTI including the creation of a central nodal agency to implement RTI across government. The government has since taken steps to create such a unit housed in the Office of the Prime Minister and Council of Ministers (OPMCM). TAG members from around the world also visited Patna in March, 2012 and Thimphu, Bhutan in May, 2012 to share key lessons from

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<sup>1</sup> Right to information Assessment and Advocacy Group (RaaG) and Centre for Equity Studies (CES), *Peoples' Monitoring of the RTI Regime in India: 2011-13*, (New: RaaG, 2014), p. 45.

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international experience in promoting access to information with officials, the media, and the general public. A further meeting is planned in February, 2015 in Dhaka, Bangladesh where significant progress has already been made in implementing the country's RTI law.

A key function of TAG is to sponsor research on transparency issues to support RTI processes in the region and globally. The two volumes that constitute "Empowerment through Information" provide the first detailed examination of the evolution of RTI regimes across South Asia. Together the two volumes provide a unique perspective on the working of RTI across all eight countries of South Asia. Volume One examines the processes that led to the adoption of RTI regimes in the first place followed by an analysis of the current status of these regimes in different countries in South Asia. Volume One concludes with a set of case studies on how ordinary people have used RTI to effect change in their lives. Volume Two presents two empirical studies: the first comprises a comprehensive baseline survey on the implementation of RTI in Bangladesh, while the second focuses on an analysis of how RTI has been used in India based on a sample of nearly 4,000 requests filed by individuals. TAG meetings, and its publications (including these two volumes), have been supported by the Governance Partnership Facility of the World Bank.

### **3. Challenges Facing the Right to Information**

While the region has made considerable progress towards more openness and transparency over the last ten years, three broad challenges remain:

#### *Building up Institutions to Support RTI*

The creation of effective institutions to support RTI remains a challenge even in countries that have had RTI legal regimes in place for some time, particularly India, Bangladesh, and Nepal. In India, Information Commissions have been burdened by the incapacity to address their burgeoning case load, resulting in long delays in hearing appeals under the RTI Act. In both Bangladesh and Nepal, Information Commissions are expected to monitor and promote the implementation of RTI along with performing their adjudication functions. Strengthening Information Commissions is thus a pre-requisite for the effective implementation of RTI in India and the region as well. Newly established Information Commissions in Khyber-Pakhtunkhwa and Punjab provinces in Pakistan also need support to begin their work effectively.

Both the governments of Nepal and Bangladesh have now created institutional mechanisms to oversee the implementation of RTI within government, recognizing the relative inability of Information Commissions to achieve this objective on their own. The RTI cell in the Office of the Prime Minister and Council of Ministers (OPMCM) in Nepal and the Committee on RTI in the Cabinet Secretariat in Bangladesh are valuable entry points for facilitating better implementation of RTI in these two countries through the creation of systems for more effective proactive disclosure, better records management, reliable tracking of requests (and responses) filed under RTI as well as making civil servants and public information officers more aware of their obligations under the RTI Act and enhancing their ability to meet them.

#### *Strengthening Civil Society Engagement with RTI*

Civil society can play a crucial role in pressuring the state to implement RTI more effectively. Civil society organizations have played a vital role in prodding governments to become more transparent by filing RTI queries that have exposed corruption, mismanagement, or arbitrary decision-making. Civil society groups have been important for benchmarking the implementation of RTI through surveys, such as the ones conducted by the Right to Information Analysis and Advocacy Group (RAAG) in India in 2008, and again in 2014; assessments of the working of Information Commissions (e.g., by the

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Commonwealth Human Rights Initiative in India in 2013); and more general studies of the implementation status of RTI (e.g., by the Mannusher Jonno Foundation in Bangladesh). Certain groups, like Research Initiatives Bangladesh, have worked closely with marginalized groups to improve their access to information relating to social safety net programs. Civil society has also partnered with information commissions and some governments to promote RTI by running help desks in Nepal; working on the training of public information officers in Bangladesh; and suggesting new approaches to improving *suo motu* or proactive disclosure norms in India.

It is critical, however, to deepen the involvement of civil society organizations in the area of RTI across the region, whether through monitoring RTI implementation, partnering with governments to strengthen the RTI regime, or working with poorer communities to empower them through RTI. It is also important to work more closely with key segments of civil society, such as the media, that have remained relatively aloof from the RTI process, especially in Nepal, Bangladesh, and Pakistan.

### Leveraging Regional and International Experience for RTI

Cross-state learning has played a crucial role in the spread of RTI across South Asia. The Nepalese, Bangladeshi, Bhutanese, and Pakistan (provinces and federal) Acts were strongly influenced by Indian RTI legislation. As different countries build up their stock of experiences implementing RTI, the role of cross-state learning within South Asia and beyond is likely to increase correspondingly. The rapid spread of RTI across the region reflects different circumstances ranging from the demonstration effect of being in a region where transparency has become an important priority of governments as well as civil society; the importance of RTI as part of a process of widening civic participation, particularly in Bhutan, Maldives, and Pakistan; and the need for an effective instrument to promote greater public oversight over government spending and decision-making.

There is much to learn from international experience as well. Countries, such as Mexico, have put in place important innovations in their freedom of information (FOI) regimes, such as the creation of a portal for proactive disclosure, an electronic request filing system that makes tracking very easy, and a search engine ('Zoom') that allows one to search all FOI queries and responses (duly anonymized), which, in turn, makes it unnecessary to file a request oneself if the information needed is already available in the database. TAG has played a major role in facilitating this process of cross-regional and global exchange: TAG's core members are from the region but it has a host of associate members from Latin America, the United States, the United Kingdom, and South Africa.

## **4. Specific Steps to Institutionalize RTI**

### Baseline Studies

In countries, specifically Bhutan, the Maldives, Afghanistan, and the provinces of Pakistan, where the RTI act has recently been enacted or is in the process of being enacted, it is important to conduct a baseline study that can both inform strategies for the effective establishment of RTI regimes and also provide a context for future 'state of the RTI regime' studies. It is also important to regularly benchmark progress in implementing RTI laws in countries that have had a law in place for a reasonable period, particularly India (and its many states), Nepal, and Bangladesh.

### Awareness-Raising

Lack of awareness about RTI has been a problem reported from all those countries in the region where such laws are operational. For the benefits of transparency laws to be widespread and universal, especially in matters of service delivery and effective governance, it is important that more and more

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people, especially those belonging to traditionally disempowered groups, become aware of the function and uses of RTI.

## Diagnosing Problems in RTI

In India, Bangladesh and Nepal, where RTI regimes are now established, recent studies have shown that many curative steps need to be taken. Though some are common to all these countries, others are more specifically needed in one or another. One common problem is that transparency regimes, in the absence of effective grievance redress measures, have been flooded by applications that are actually requests for grievance redress disguised as requests for information. Recent studies in India have shown that nearly 50% of the RTI applications submitted in India relate to grievances about deficient service delivery. Though similar studies have not yet been carried out in Bangladesh or Nepal, anecdotal information suggests that the picture in the other countries is not very different. Therefore, it might be useful to help develop grievance redress laws and institutions in these countries, so that the pressure on the RTI regime is diverted and the RTI law can be used more effectively to empower people and to make governance more accountable and transparent. Another key problem is the growing pendency of appeals in information commissions across India, which could cripple RTI in the longer term. This problem needs to be addressed through a combination of remedies, particularly more effective proactive disclosure (thus minimizing the need to file a formal request), the use of information technology in managing appeals, and improving the capacity to accelerate case disposal.

## Promoting Proactive Disclosure

There is an expectation that the number of RTI applications filed in a country should reflect a bell curve over time. Initially, as awareness grows, the number of RTI applications might be expected to grow. However, as governments become more cognizant of the problems in their functioning that lead to people filing RTI applications, and as they become more proactively transparent, the bell curve should flatten and descend downwards as the need to file RTI applications declines. There are, however, two pre-requisites for this to occur. First, the functioning of departments should change and improve in response to the feedback gleaned through RTI applications filed and other means. Second, public authorities should proactively make information accessible even without being asked. Broadening the scope of proactive disclosure will also take pressure off governments and information commissions resulting from the crush of RTI applications filed by citizens seeking access to information that should be provided routinely without having to file an RTI request.

## Orienting Information Commissioners

The countries in the region have mostly adopted RTI laws which include the creation of independent information commissions. Recent assessments of the orders of information commissioners suggest that many of them are not always well versed with RTI laws or with legal procedures. This might partly be because most of them do not come from a legal background. Unfortunately, in none of the countries of the region is there an effective forum where new information commissioners can be oriented and can discuss various relevant nuances of the law and legal procedures. It would help if groups (like TAG), which have as members former and existing information commissioners from many countries of the world, could provide such a forum in the form of workshops and web interactions. A website could also be set up to provide easy reference to important orders of commissions and courts.

## Modernizing Record-Management

Various studies across the region have confirmed that proper record-keeping is a pre-condition for an effective RTI regime. Though computerization of records helps, it is equally important to classify

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records in a manner such that the public, which might not be familiar with the record-keeping practices of public authorities, could easily select and identify the information they need.

### Addressing the Gender Gap in RTI

A problem across the region is that the proportion of women using the RTI act is far smaller than that of men. Recent studies in India indicate that only 10% of the applicants were women. Therefore, special efforts need to be made to facilitate and encourage women to use the RTI act. Apart from awareness programs aimed at demonstrating to women how the RTI act would be relevant to their concerns, it is important to develop a better understanding at what inhibits them from exercising this fundamental right in the first place.

### Monitoring and Evaluation

There is a need to strengthen long term, sustainable capacity in existing social science and public administration institutions and professional NGOs to conduct research on RTI-related subjects as well as monitor the progress of RTI in each country as well as the region as a whole.

## 2.

# **An Overview of the Emergence of Information Cultures in South Asia**

Some thoughts about RTI regimes, dominant narratives, and democracy<sup>1</sup>

Shekhar Singh

### 1. Introduction

The idea of setting up an international group or network of persons interested in promoting a transparency culture in countries around the world emerged from the meeting “Towards More Open and Transparent Governance in South Asia” organised by the Indian Institute of Public Administration, and supported by the World Bank, in Delhi, in April 2010<sup>2</sup>. This meeting was not only attended by civil servants, professionals, academics and activists from all the countries of South Asia but also by delegates from Mexico, South Africa, Hungary, USA, and Canada. The group resolved, among other things, “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.”<sup>3</sup>

The ‘joining of hands’ envisioned in the resolution, manifested in the formation of a group of concerned individuals (information commissioners, civil servants, academics, activists and other professionals) who ultimately (in 2012) acquired the name *Transparency Advisory Group* (TAG).

The group that ultimately coalesced into TAG met in the interim in Kathmandu, Nepal, in March 2011, where there was further thinking on what needed to be done and how<sup>4</sup>. In the next meeting, in Patna, India, in March 2012, a clearer idea emerged of the nature of the group and of its priorities and the activities it needed to address. The Patna meeting was attended by many of the international experts who later became the founding members of TAG<sup>5</sup>. It is interesting to contrast the national priorities that were identified in the Delhi meeting (2010) and the Patna meeting (2012), almost two years apart (see Box 1 at the end of the paper).

Towards the end of 2012 a work plan was developed for TAG, which was discussed and approved in the TAG meeting held in Bangkok, in January 2013<sup>6</sup>. This work plan involved five major tasks:

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<sup>1</sup> I am grateful to Professor Kuldeep Mathur, Misha Bordoloi Singh, and Anjali Bhardwaj for their very helpful comments on an earlier draft of this paper.

<sup>2</sup> Detailed report and papers can be downloaded (accessed on 13<sup>th</sup> January 2015) from <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/>

<sup>3</sup> The full resolution can be downloaded (accessed on 13<sup>th</sup> January 2015) from: [http://transparencyadvisorygroup.org/uploads/Delhi\\_Workshop\\_Resolution\\_April\\_2010.PDF](http://transparencyadvisorygroup.org/uploads/Delhi_Workshop_Resolution_April_2010.PDF)

<sup>4</sup> Minutes of the meeting can be downloaded (accessed on 13<sup>th</sup> January 2015) from [http://transparencyadvisorygroup.org/uploads/Kathmandu\\_Meeting\\_Minutes\\_-\\_Final.pdf](http://transparencyadvisorygroup.org/uploads/Kathmandu_Meeting_Minutes_-_Final.pdf)

<sup>5</sup> For a list of participants and minutes of the meeting please access (accessed on 13<sup>th</sup> January 2015) [http://transparencyadvisorygroup.org/uploads/PATNA\\_MEETING\\_-\\_SUMMARY\\_OF\\_PROCEEDINGS\\_-\\_March\\_2012.PDF](http://transparencyadvisorygroup.org/uploads/PATNA_MEETING_-_SUMMARY_OF_PROCEEDINGS_-_March_2012.PDF)

<sup>6</sup> The complete work plan can be downloaded (accessed on 13<sup>th</sup> January 2015) from [http://transparencyadvisorygroup.org/uploads/TAG\\_work\\_plan\\_2012-13\\_-\\_1\\_Feb\\_2013.pdf](http://transparencyadvisorygroup.org/uploads/TAG_work_plan_2012-13_-_1_Feb_2013.pdf)

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1. to identify, collect, collate, edit, classify and publish case studies pertaining to the use (or abuse) of transparency laws and practices from each of the countries in the region;
2. to bring out an edited report on the state of the transparency regime, covering each of the countries of the region;
3. to broaden the national dominant narrative not to discredit or challenge the dominant narrative but to capture the reality more completely, adding to the richness of the prevailing dominant narrative;
4. to organise at least two regional meeting, the first in Bangkok, Thailand in the beginning of 2013, and another later in the year in some other suitable location; and
5. to deepen the transparency debate by developing an ongoing dialogue platform for TAG.

The first four tasks in the work plan have now been completed, albeit a year late. These two volumes contain the outputs related to the first three tasks, and the meeting in Dhaka, scheduled in February, 2015, the belated completion of the fourth task. The fifth task did not take off and the demand and need for such a dialogue platform will have to be re-evaluated.

### **2. Broadening the dominant narrative**

The first task was to broaden the dominant narrative<sup>7</sup> relating to the evolution of the RTI regime in some of the countries of South Asia. Accordingly, papers were sponsored in India, Bangladesh, and Nepal – the three countries of South Asia that had national transparency laws in 2013<sup>8</sup>.

#### Evaluating the dominant narrative: a theoretical framework

Mathur and Sharma both suggest elements of a theoretical framework within which a dominant narrative can be evaluated and analysed. Both evaluate and analyse the Indian dominant narrative, Sharma in his book (Sharma 2015) and Mathur in his paper in this volume (paper 4).

Of the many questions that can be asked of a process leading to the enactment of a transparency law, perhaps the most intriguing is why a government would knowingly and willingly pass a transparency law which essentially challenges the power of the government and goes against much or all of what governance has come to signify? Perhaps the anguish expressed by Tony Blair in his autobiography brings out this contradiction better than anything else:

*“Freedom of Information. Three harmless words. I look at those words as I write them, and feel like shaking my head till it drops off my shoulders. You idiot. You naive, foolish, irresponsible nincompoop. There is really no description of stupidity, no matter how vivid, that is adequate. I quake at the imbecility of it.*

*“Once I appreciated the full enormity of the blunder, I used to say - more than a little unfairly - to any civil servant who would listen: Where was Sir Humphrey when I needed him? We had legislated in the first throes of power. How could you, knowing what you know have allowed us to do such a thing so utterly undermining of sensible government?” Tony Blair (2010)*

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<sup>7</sup> A “dominant narrative” relating to a process is the narrative that most significantly influences people’s understanding of that process. However, it is impossible to define it precisely. For example, what proportion of influence will qualify to be called “significant”, in what time frame, etc. are essentially indeterminates. Besides, there is scope for dispute in what really is the dominant narrative and what all does it contain, or whether there is a dominant narrative at all.

<sup>8</sup> Though Pakistan has a national ordinance, from 2002, this never got converted into a law.

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The answer to this question is often the substance of dominant narratives, which throw up heroes (the marauding activists), and describe epic battles, and divine intervention through the sudden creation of favourable circumstances (or helpful crisis), to explain how the age-old battle between good and evil, or openness and secrecy, is finally won by the angels. In contrast, Mathur seems to suggest that there are many common errors that occur in accepting the dominant narrative to be an accurate and complete account of how the day was won and the RTI regime established despite an unwilling government. These include the following.

1. Such events do not usually occur as a result of an immediate cause. Whereas dominant narratives often highlight and romanticise the immediate cause, in the resultant hype the long-term causes are often forgotten.
2. Similarly, it is rare for there to be a single cause or a single set of causes that results in significant policy changes, as often projected by the dominant narrative.
3. Change is not always crises driven and therefore the tendency to look for an immediate crises, and then to attribute the change solely or primarily to that, is not necessarily accurate. Even drastic change can occur as a result of the interaction between an ideational processes and empowered institutions.
4. Nevertheless, all ideas are not necessarily incorporated into policy. Whether this happens is partly dependent on the merit of the idea, and partly on the pressure that can be brought to bear on the empowered institutions by “policy entrepreneurs” and others.
5. Often there are windows of opportunity that open up for a while and these can significantly facilitate the transformation of a good idea into an effective policy.
6. In this day and age it is rare to have significant ideas within a country which have not been influenced or impacted upon by thinking in other parts of the world. However, in many countries, despite this, national institutions and expertise are critical for the evolution of the idea within the national context and for its adaptation and transformation into a policy appropriate to the country. Having said this, a distinction must be made between international influence (which is quite prevalent and usually desirable), and international pressure, which usually has negative and even neo-colonial connotations.

### Broadening the dominant narrative in India

Mathur (2015)<sup>9</sup> identifies the Indian dominant narrative as having been propagated primarily by a few authors<sup>10</sup>. He questions its completeness on the basis of various principles (summarised above).

As is discussed by Mathur (2015) in this volume, and by others elsewhere<sup>11</sup>, the Indian dominant narrative suggests, and consequently people all over the world believe, that there was a huge grassroots movement in India that led to the passing of a very strong RTI law.

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<sup>9</sup> Mathur, Kuldeep (2015). “Evolution of the RTI Regime in India: Broadening the Dominant Narrative”, paper 4 in this volume

<sup>10</sup> He identifies the author of this paper as a major, if not the main, culprit who propagated a limited, simplistic, and misleading dominant narrative of the RTI regime in India.

<sup>11</sup> The importance of broadening the dominant narrative, especially about the evolution of transparency regime, is brought out very powerfully by Prashant Sharma in his recently published Ph. D thesis, presented to the London School of Economics. Sharma, Prashant (2015), *Democracy and Transparency in the Indian State: The Making of the Right to Information Act*, Routledge/Edinburgh South Asian Studies Series

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There was a grassroots movement in India, mobilised by the MKSS<sup>12</sup>, initially in the state of Rajasthan, which was demanding the right to information. Admittedly this grassroots movement educated the urban activists about the concerns of the poor people, the rural dwellers, the illiterate, and many other disadvantaged groups, so that those involved in drafting the law and lobbying for it could ensure that the law was as inclusive and, as far as possible, sensitive to the concerns of all groups. Also, the fact that there was a grassroots movement gave the demand for transparency an added respectability, especially political respectability. And undoubtedly a grassroots movement it made better copy for newspapers and bytes for television channels, than would a movement solely populated by upper middle class activists. But the actual drafting of the law, the lobbying with the government, and the step by step nursing of the bill, till it finally became law, was done by a group of activists, mainly urban, and wholly middle class.

The vision of thousands, perhaps hundreds of thousands, of people, mainly rural people, surrounding the Parliament and chanting “RTI, RTI”, thereby ensuring the passing of what has been assessed by the *Global RTI Rating*<sup>13</sup> as the third most powerful transparency law in the world, was misconceived. Therefore, in actual fact the dominant narrative, though not false, was only a part of the story, and a somewhat romanticised part, which many took to be the whole story.<sup>14</sup>

But then if it wasn't the masses, what made the government pass the RTI law. Why did a government that was known to be a centraliser of power and control, suddenly pass a law which could result in significantly disempowering them. It is interesting, in retrospect, to wonder why Manmohan Singh, the newly elected Prime Minister who was well known for his pro-market views, and many of his very powerful colleagues who were veteran politicians and seasoned administrators, allowed such a bill to pass into law.

At that time the public believed that the influence Mrs Sonia Gandhi wielded, as president of the Congress party, chairman of the ruling United Progressive Alliance and of the newly set up National Advisory Council, and her commitment to the RTI, carried the day. We were all very self-congratulatory<sup>15</sup> that the will of the people had prevailed, outsmarting the bureaucracy and outmanoeuvring the various powerful political leaders whom we knew did not in their heart of hearts want the RTI act.

Mathur (2015) reminds us that in the 1990s India had embarked upon a process whereby it progressively adopted a market-based economy. There was a corresponding change in the philosophy of governance in India and the state began to be more and more a “facilitator for business to operate and not an institution to intervene in society.” As others described it, the government started seeing itself less as a rower and more as a steerer of the nation. Pro-market institutions like the World Bank were already pushing the transparency agenda, as were many other bilateral donor agencies of the industrialised nations of Europe and North America. Therefore, in a climate where markets and public institutions, including civil society groups, were destined to have greater influence the seeds for a transparency regime had already been sown in the 1990s.

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<sup>12</sup> Mazdoor Kissan Shakti Sangathan

<sup>13</sup> [http://www.rti-rating.org/view\\_news.php](http://www.rti-rating.org/view_news.php)

<sup>14</sup> Many would argue that this is not the dominant narrative. They might well be right, but the paper under reference (Mathur 2015) suggests this to be the dominant narrative and so it is treated as one in this overview paper.

<sup>15</sup> The author is a founder member and former convenor of the National Campaign for People's Right to Information (NCPRI) which was involved in drafting the RTI law and lobbying for it.

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There is even a more cynical explanation. Multi-national corporations, which were constrained by strong codes of business “ethics” within their home countries, felt disadvantaged when operating within “emerging” economies. Consequently, in order to try and create a level playing field, they persuaded their governments and multilateral agencies like the World Bank to push for transparency laws. Sharma (2005) makes the point that in many countries, like India, which still have to choose between the private and the public sector for delivery of various goods and services, the RTI Act and the consequent exposures of scandals in the working of governments, are fuelling a growing cynicism about the integrity and ability of governments and thereby tilting the balance in favour of the private sector.

Sharma supports his argument by pointing out that whereas the government was comprehensively covered under the RTI Act, the private sector was deliberately left out and, in fact, the government fought hard, according to him, to make sure that the private sector was excluded.

Of course, it can be argued, and with some merit, that with section 2f of the Indian Act allowing citizens to access from any private body all the information that the government could access under any other law, the Indian transparency law covers the private sector far more effectively than transparency laws of other countries (like South Africa) which bring them directly under their cover. For if one was to directly access information from the corporates then the denial of information or the provision of false or incomplete information by the corporates would at best result in their being penalised under the respective transparency law. This would mean no penalty under most laws and a penalty of, at best, Rs. 25,000 under the Indian RTI law.

However, when the government asks them for information, they would be asking for it under one of the other laws that allow them to access such information from a private party, and most such laws, at least in India, have stringent provisions for denial of information or provision of false or incomplete information to the government. At the very least this would attract very substantial fines, could result in the suspension and cancellation of the corporation’s licence to operate, and could also result in criminal prosecution and imprisonment.

But, admittedly, despite nearly ten years having passed, 2f still remains essentially the least used section of the law.

Therefore, looking back one is no longer sure who outsmarted whom. Perhaps there was some victory in the details, but one can’t help wondering whether other more powerful agendas were already in motion, and those opposing the passage of the bill were secretly glad that someone else was fighting for it, and giving it the credibility and acceptability that it would never have got if it was pushed by international agencies and the corporate sector.

### *Broadening the dominant narrative in Bangladesh*

The paper on Bangladesh<sup>16</sup> does a similar assessment of the dominant narrative relating to the emergence of the RTI regime in Bangladesh. The dominant narrative identifies a handful of civil society organisations and their chief executives who “played the most significant advocacy role vis-a-vis the policymakers, which resulted in the enactment of the RTI act in 2009.” Essentially these were well-connected middle-class actors.

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<sup>16</sup> Hasan, Manzoor and Ashikur Rahman, “Evolution of the RTI Regime in Bangladesh: Broadening the Dominant Narrative”, paper 3 in this volume.

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The authors go on to identify the almost forgotten role of the Law Commission, especially one member of the Law Commission, which in 2002-03 not only brought the right to information centre stage but also formulated many of the core ideas which survived and are part of the final law passed six years later.

The author also painstakingly traces the debates in the constitutional recommendation commission which led to the right to information being declared a constitutional right way back in 1990. The author identifies the role of the judiciary and gives evidence of how, through their orders, they pushed for transparency. The bureaucracy is also seen as a mixed bag where some prominent senior bureaucrats were totally in support of an RTI law while others were opposed, though they were hesitant to speak out. The author has also traced records which suggest that transparency became a part of public government policy sometime in 2001 – 02.

All in all, the Bangladesh account also seems to fit within the theoretical framework developed by Mathur. Though the dominant narrative focused on the immediate and single set of causes, in actual fact the process that affected the final outcome had started many years earlier. Though the dominant narrative focuses on a few middle-class policy entrepreneurs, who might well have been significant players, there were others whose contribution has not been adequately recognised.

The authors also point out that there was a window of opportunity during the rule of the military backed caretaker government, and little resistance from the bureaucracy. In fact the authors identify some “silent heroes” among the senior bureaucrats who strongly supported the enactment of an RTI law. The bureaucracy was not unified in opposing the bill, suggesting that either individually or as a group they had a mixed agenda, as far as the RTI act was concerned.

### Broadening the dominant narrative in Nepal

In Nepal, the dominant narrative seems to fully put the responsibility of getting the RTI law enacted on to the shoulders of the community of journalists. The author<sup>17</sup> of the Nepal paper acknowledges that because of this, the general impression and understanding among the public is that the RTI act is solely or primarily for the journalists and does not concern them. This has caused problems in implementation and in developing a sense of ownership among the general public towards the RTI Act.

Nepal is also an example where you can see clearly the role of a window of opportunity. The fact that after many years of monarchy Nepal adopted a democratic form of government gave the opportunity to also introduce a transparency law. The author<sup>18</sup> also highlights how despite there being eight political parties in Parliament, they all supported the RTI Act.

Therefore, once again, the dominant narrative proves inadequate and suffering from many of the pitfalls identified by Mathur. It attributes the passing of the law to a single set of immediate reasons and focuses on the community of journalists as being the primary movers. Though the contribution of the journalists cannot be ignored, it is clear that things were happening from the 1990s when the right to information became a fundamental constitutional right. Subsequently, there were judicial

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<sup>17</sup> Bhattarai, Binod (2015) “Evolution of the RTI Regime in Nepal: Broadening the Dominant Narrative”, paper 5 in this volume.

<sup>18</sup> Bhattarai, Binod (2015), Op. cit.

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pronouncements, and political unanimity among the various political parties in a newly established democracy, all of which contributed to the passing of a strong RTI act.

There was pressure from international organisations and, what is referred to politely as a suggestion, from the World Bank, for becoming more transparent.

### **3. The need to broaden the dominant narrative**

But questions can be asked (and have, indeed, been informally asked) on why there is a need to broaden, question, dispute, or sometimes even to discredit, the dominant narrative? What difference does it make how we got the RTI law and how the regime was established? What matters is that we have it now and use it in the best manner possible.

#### *The importance of the evolution process*

The process by which an RTI regime is established, and evolves, in a country profoundly influences its nature and strength. Where the process is hesitant or weak, often the government ignores it and the nation is left bereft of a transparency law. Even where a law is enacted, an ineffective or inappropriate process often results in a weak law. In some countries the enacted or proposed laws are weak because the process involved in drafting these laws was not adequately participatory and consultative, or perhaps the demand for a strong and effective transparency law was not strident enough.

Apart from how strong the law is, the evolution process also determines the nature of the transparency law. Does it guarantee transparency as a fundamental, human, constitutional right? Does it cater to the needs and interests of the poor, the illiterate, the marginalised, special interest groups, and such others?

Given the nature of society in South Asia, the law must take into consideration the cultural, religious, ethnic, and economic diversity that is an essential part of most countries in the region. This not only means that all these groups must be facilitated to access information, but also means that some of them need to be protected and their privacy safeguarded.

#### *Owning the RTI law*

The process of evolution also determines how strongly the people own the law. The sense of ownership is desirable for many reasons, especially if the act is to be enthusiastically used, vigorously protected, and its implementation energetically pursued and closely monitored. Ownership not only brings about a continuing sense of responsibility on how to make the transparency law functional, effective, popular, and sustainable, but also inspires people to explore new ways in which the transparency law can contribute to governance. The sense of ownership facilitates new and imaginative uses of the transparency law, and fosters a commitment among civil society to be innovative (see the innovativeness and *jugaad*<sup>19</sup> inherent in the case studies reported in this volume).

When a law is owned by the public, there is also commitment and energy to do all that is necessary to ensure that the law achieves its objectives. In the case of transparency laws this sometimes means focusing on the backward and forward linkages. It is difficult for transparency laws to work unless there is proper storage and management of records. And such a system of storage and management, and possibly computerisation, is rarely set up in a vacuum and without pressure.

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<sup>19</sup> Making do with whatever is available

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There are testimonies from across the region that it was the fear of being penalised under transparency laws for delay or misplaced records that motivated many officers and departments to organise their records. In one of the meetings a senior minister in the government jovially remarked that whereas he did not know whether the public was having better luck at accessing government information, after the enactment of the RTI Act, at least ministers were finding it easier to get hold of files which were now better managed, properly maintained and relatively easily accessed.

A forward linkage could be the creation of legislation and institutions that can handle complaints and requests that result from public access to official information. This implies the setting up of new or improved statutory systems to deal with complaints of corruption, requests relating to lapses in the delivery of services and goods, and for the protection of whistle blowers, among others<sup>20</sup>.

### RTI and democracy

In South Asia, transparency laws are primarily seen as a means of preventing and controlling corruption, of exposing the misdeeds of the rich and powerful, and of improving the delivery of goods and services. However, a far more important effect of a transparency law is the empowerment of each member of the general public. It is one of the most effective ways to break down the hierarchical and colonial mind-set that most people of South Asia have historically inherited. The fact that the poorest of the poor, the disempowered, the destitute, without any “standing” in society, can ask questions about, and often from, the mightiest in the land, and they are legally obliged to answer, cannot but change the way in which the poorest of the poor look at themselves.

Case studies from Bangladesh, India, Nepal, and Pakistan, in this volume, demonstrate again and again how the RTI law is more and more being used by the poor and the disempowered to question the rich and the powerful. The “common-folk’s tales from the RTI” are no less than the tales of the individual David taking on an institutional Goliath, or perhaps the humble and down to earth tortoise bettering the high-flying hare!

There is a redefining of relationships between the rulers and the ruled, and this has profound implications for democracy. The voting masses have, from the beginnings of time, been condemned to formulate their political opinions and thereby exercise their democratic choices on the basis of government and political rhetoric, unrealistic and unfulfilled promises, and sometimes the “charisma” of individual leaders. With the coming of an effective transparency law, they can now for the first time hope to observe, first-hand and in real time, how governments function, how and why they make some decisions, and not others, and how well do they deliver on their promises. Clearly, over time if information about decision-making and implementation is effectively disseminated, preferably proactively, and in a manner that is easily understood, the influence at the hustings of political rhetoric, political promises, and even political charisma, will drastically reduce.

Such hands-on interface with the business of governments, a business that at the best of times is complex, opaque, full of gobbledygook, and mostly not understandable to an outsider, would slowly but surely start educating the general public so that they can better determine how governments are performing, how they could perform better, and what could be realistically expected of them. Over time, the public would begin to understand what is being done well, and what badly. And it would

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<sup>20</sup> In India, for example, the activists involved in drafting and lobbying for the RTI Act also helped draft the Lokpal and Lokayukta Law (setting up corruption ombudsmen at the national and state levels), the Whistle Blowers Protection Law, and the Grievance Redress Law. The first two were passed by Parliament and the third is in Parliament, awaiting passage

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become increasingly difficult for governments to fool the public, as is their wont, as they would have to publicly justify their decisions and indecisions, their actions and inactions, and their limitations.

It is only when the people of a country properly understand the opportunities available to, and the limitations confronting, their governments that they can collectively contribute to the bettering of the system of governance. Whereas all the nations of South Asia are democracies, the term “democracy” hides within itself multiple nuances. Therefore, if democracy has to be broadened and deepened, it needs a voting public that is better informed about the process of governance, and understands it realistically.

### Technology and the RTI

Whether need is the mother of invention, or whether inventions foster needs, is an age old and perhaps endless debate. However, the relationship between technology and transparency is a vibrant one, where both these phenomena can be observed. Computers, the Internet, cell phones, YouTube and social media, are all technological innovations that have facilitated transparency, and yet they themselves have gained support, evolved, and improved because of the bludgeoning demand for information. In fact, a recent but fast growing area attracting huge investments is the management of the large amount of information that is already in the public domain, to organise it in a way in which it is easily identifiable and retrievable, and most importantly to make people realise that they really need, or at least want, access to this information. It is quite possible that the management of information would become one of the most important and perhaps most lucrative businesses of the 21<sup>st</sup> century.

### Government dilemmas

Technological advancements and the brilliance and innovativeness that is usually found outside the government has demonstrated, like in the case of WikiLeaks, that today no information is safe from public scrutiny. Though the battle to protect secrets is being waged by almost all governments, it is unlikely that they will win. What perhaps is needed is a global discussion redefining what secrets are legitimate. Otherwise, official record-keepers would have to surgically or chemically enhance their brains so that they can carry all the secret information in their heads without having to commit it to paper or to any electronic device. But that would only work till somebody finds a way of reading minds. Alternatively, information would start getting destroyed soon after it was generated in order to prevent it from becoming public. However, such a state of affairs would certainly lead to the lack of institutional accountability and consequent anarchy.

At least some of the dilemmas regarding openness and secrecy in governance have been succinctly enunciated by Tony Blair, when he follows on from the earlier quoted passage and says:

*“Some people might find this shocking. Oh, he wants secret government; he wants to hide the foul misdeed of the politicians and keep from ‘the people’ their right to know what is being done in their name. The truth is that the FOI Act isn't used, for the most part, by ‘the people’. It's used by journalists. For political leaders it's like saying to someone who is hitting you over the head with a stick, 'Hey, try this instead', and handing them a mallet. The information is neither sought because the journalist is curious to know, nor given to bestow knowledge on 'the people'. It's used as a weapon.*

*But another and much more important reason why it is a dangerous Act is that governments, like other organisations, need to be able to debate, discuss and decide issues with a reasonable*

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*level of confidence. This is not mildly important. It is of the essence. Without that confidentiality, people are inhibited and the consideration of opinions is limited in a way that isn't conducive to good decision-making. In every system that goes down this path, what happens is that people watch what they put in writing and talk without committing to paper. It's a thoroughly bad way of analysing complex issues."*

*At that time, the consequences were still taking shape and it didn't impact much in 2005. It was only later, far too late in the day, when the full folly of the legislation had become apparent, that I realised we had crossed a series of what should have been red lines, and strayed far beyond what it was sensible to disclose."*(Blair 2010)

Compare this to the speech made by Manmohan Singh, the then Indian Prime Minister, in 2011, extracts from which are given below<sup>21</sup>.

*"Even as we recognize and celebrate the efficacy and the effectiveness of the Right to Information Act, we must take a critical look at it. There are concerns that need to be discussed and addressed honestly. I had mentioned last time the need to strike a balance between the need for disclosure of information and the limited time and resources available with the public authorities. A situation in which a public authority is flooded with requests for information having no bearing on public interest is something not desirable. We must, therefore, pool all our wisdom, our knowledge, and our experience to come to a conclusion on how to deal with vexatious demands for information, without at the same time hindering the flow of information to those whose demands genuinely serve public interest. Another concern that has been raised is that the Right to Information could end up discouraging honest, well meaning public servants from giving full expression to their views. I think we need to remember here that a point of view brought under public scrutiny and discussion in an isolated manner may sometimes present a distorted or incomplete picture of what really happened in the processes of making the final decisions. The Right to Information should not adversely affect the deliberative processes in the government. We must also take a critical look at the exemption clauses in the Right to Information Act to determine whether they serve the larger good and whether a change is needed in them. I am happy that there is a special focus in your conference on the exemption clauses of the Act and I would urge all of you to come up with concrete suggestions in this area. There are also issues of privacy. The Act does have provisions to deal with privacy issues but there are certain grey areas that require further debate".<sup>22</sup>*

Uncanny similarities? Just goes to show that even governments are beginning to realise that what information to share, with whom, when, and how are the new questions which will have to be conclusively answered, for they will not go away.

Therefore, with governments handing over more and more of their traditional functions and responsibilities to the private sector, and progressively encouraging market based economic models, the demand for transparency in governance runs the danger of being seen as a demand in support of multi-national corporations and globalising market forces, an ally of privatisation which helps

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<sup>21</sup> Another of Manmohan Singh's speeches is quoted in Volume II of this publication (RaaG 2014)

<sup>22</sup> Extract from the speech delivered by the Prime Minister of India, Dr. Manmohan Singh, at the 6th annual convention organised by the Central Information Commission, October 14 2011

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discredit governments<sup>23</sup>. The fact that technological innovations are making it almost impossible to keep government information secret is making transparency in governments an inevitability.

The important issues are: who accesses the information, and to what use it is put. And in order to ensure that the right to information, whatever other role it plays, continues to primarily serve the interest of the common people, and of social justice and equity, it is important that the common people accept ownership of transparency laws and processes and guard them jealously, all the while expanding them innovatively to serve the basic objectives of ensuring that governments function with integrity, efficiently, empathetically, and in pursuit of social justice. Just as transparency laws have the potential to help the private sector weaken governments, they equally have the potential of facilitating the people to rally behind the governments and strengthen them.

### *The need to broaden the dominant narrative*

Therefore, given all that is at stake, the existence of an RTI regime, the strength and nature of the transparency law, and the sense of ownership that people feel about it are all very critical matters. It is important to understand the evolution of an RTI regime in its stark totality. However, this is not always possible as in most, perhaps all, countries a dominant narrative describing the evolution of the RTI regime emerges, is broadly accepted, and trumps all other versions of reality. It is not that the dominant narratives are always or mostly false, but invariably they are incomplete and mostly misleading, if taken by themselves.

Also, it is sometimes important to record the contribution of many of the institutions and individuals who significantly contributed to the process but who were forgotten when the dominant narrative was crafted. Recording these promotes harmony within movements and within countries, and at least partly rights the wrong done to them. However, this is not easy to do, for very often it is difficult to find much published material about them. Sometimes this is because not much material was generated about them as they were not part of the dominant narrative, and often they were not a part of the dominant narrative because there was not much material available about them. Therefore, their stories require a painstaking "search and interview" operation if they are to be unearthed, which is expensive and time consuming, and only worth it if done within living memory. Perhaps this is why the essays relating to the dominant narratives, in this volume, have not been able to dig out many forgotten and "silent heroes".

Nevertheless, it becomes important to broaden and expose the dominant narrative, mainly because the false or misleading impression an incomplete dominant narrative creates, adversely affects the evolution of transparency regimes of other countries which are struggling to establish a regime and get a transparency law. Often, as dominant narratives are romanticised versions of what really happened, they discourage and demoralise. Some societies feel dispirited and are willing to settle for less because they (often wrongly) feel that the transparency processes in their country does not have the characteristics necessary to achieve anything better. Therefore, they feel that they should not expect a stronger law or a law which is sensitive to the needs of different segments of society, for in order to achieve that they would have had to have a far more spectacular movement and process.

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<sup>23</sup> In the last 25 years not only has globalisation and liberalisation, along with market economies, picked up enormously in popularity, but there has been an increasing spurt in the number of countries adopting transparency laws. One wonders if there is any connection between the two!

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Misleading dominant narratives discourage them from being ambitious and from actualising the real potential in the country.

The dominant narrative emanating from India, described earlier, is a good example of this. There is evidence to believe that this somewhat exaggerated and romanticised version of what happened in India has become an alibi for not demanding more of governments in other countries. Others fighting for transparency elsewhere have felt that as they do not have a grassroots movement like the one in India, they should not be over ambitious and should settle for whatever they're getting.

Similarly, the windows of opportunity highlighted in dominant narratives from Nepal and Bangladesh sometimes persuade people in other countries to wait patiently for such a window to open up in their own country, misled into believing that it is an essential condition for the enactment of a transparency law. While in actual fact it is just an incidental phenomenon that can facilitate the passage of such a law but is not presumed by it.

Therefore, the transparency movements across the world must practice transparency about themselves and must support efforts to try and demystify the movements and help develop the capacity to understand the real nature of policy change and what forces are working for, and what against, transparency.

### **4. The state of RTI regimes in countries of South Asia**

The second task taken up by TAG was to record and make public, periodically, the state of the transparency regimes in countries of South Asia. Towards this end two studies were undertaken, one in Bangladesh, conducted by Nielsen Bangladesh, which did a comprehensive survey of the state of the RTI regime in Bangladesh, using the methodology that had been developed by RaaG and used to conduct the People's RTI Assessment 2008<sup>24</sup> in India. The second study was undertaken by RaaG in collaboration with TAG, and analysed nearly 4000 of the RTI applications filed in India, as a random sample, to determine who uses the RTI Act in India, and for what. The reports of both these studies are in Volume II of this publication.

Apart from this, the progress of the RTI regime was monitored in the region and any changes were reported on the TAG website<sup>25</sup> and also communicated to the TAG members by email. The state of the RTI regimes in each of the countries of the region, as of the end of 2014, are described in this volume (papers 6 to 12).

When the current members of TAG met in Delhi, in 2010, only three of the countries (Bangladesh, India, and Nepal) had national transparency laws, and Pakistan had a national ordinance. Since then, two of the remaining four countries – namely Afghanistan and Maldives, have enacted national transparency laws. Bhutan almost got a law, and the bill is currently pending consideration by the National Council. Pakistan, in the meantime, has new laws for two of its provinces, Punjab and Khyber Pakhtunkhwa, the latter being a relatively strong law. And for Sri Lanka there is hope again, for their new government has promised that it will pass an RTI law within a hundred days.

#### State of the RTI regime in Afghanistan

The President of Afghanistan signed the Right to Information law on 30<sup>th</sup> November 2014. Though the law is not to the satisfaction of the RTI activists in Afghanistan, details are not yet known of its exact

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<sup>24</sup>Report at <http://www.rti-assessment.com/raag-rti-study-2005-2008.html>

<sup>25</sup><http://transparencyadvisorygroup.org/>

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form, as that will only be available when the law is published. It will also come into effect after it is published. However, it is not clear yet when it will be published<sup>26</sup>.

Clearly the main priority for Afghanistan now would be to publish and start implementation of the law as soon as possible. Presuming the final law has many or all of the weaknesses identified by the activists in Afghanistan, another priority would be to improve the law as soon as possible and before the government starts regretting its passage, as inevitably happens in most countries.

### State of the RTI regime in Bangladesh<sup>27</sup>

The RTI Act has completed five years in Bangladesh. Though it has not yet achieved all that it is hoped it would achieve, quite some progress has been made. Reportedly, most of the progress has been due to the most marginalised and disadvantaged communities in the country. Not surprisingly, the lack of interest by the government and poor leadership by information commissions have been major impediments in the growth of effectivity of this law. Along with it the lack of interest of the middle class, which is in contrast with many other countries, has also been a handicap. Perhaps the most critical symptom of government indifference is the lack of training to a large proportion of designated officers, and the fact that many designated officers still have to be appointed.

### State of the RTI regime in Bhutan<sup>28</sup>

After some years of debate and discussion, in February, 2014, The Right to Information Bill (RTI Bill) 2014 was passed by the National Assembly during its 2<sup>nd</sup> Session and forwarded to the National Council for deliberation during its 13<sup>th</sup> Session. The Chairperson of the National Council assigned the Foreign Relations Committee (FRC) for analysis and public consultations before tabling it to the House for adoption.

In May, 2014, the 9<sup>th</sup> sitting of the National Council of Bhutan voted to withdraw the Right to information Bill 2014. From the documents available it seems that this is not due to any disagreement over the bill but because of a disagreement between the Council and the government on certain procedural and protocol matters.

### State of the RTI regime in India<sup>29</sup>

The Indian national RTI law is nearing ten years. Statistically it has been very successful, with an estimated four million RTI applications being filed from across the country, with many of these coming from rural areas and from poor and disadvantaged people both in cities and in rural areas. Unfortunately, the proportion of women among the applicants is very small. Also, a large proportion of the applications are asking for information that should have, under the RTI Act or other laws, been provided proactively. The major constraints to the effectiveness of the RTI law are some of the information commissions which have huge backlogs and long waiting periods before appeals are heard.

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<sup>26</sup> For a detailed description of the situation in Afghanistan, see paper 6 in this volume.

<sup>27</sup> For a detailed description of the situation in Bangladesh, see paper 7 in this volume.

<sup>28</sup> For a detailed description of the situation in Bhutan, see paper 8 in this volume.

<sup>29</sup> For a detailed description of the situation in India, see paper 9 and 10 in this volume.

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### State of the RTI regime in the Maldives<sup>30</sup>

The RTI law which was ratified in January 2014 has come into force in July 2014. The Maldives Right to Information Act is ranked in the top ten global laws by the Centre for Law and Democracy.

Its implementation however still remains patchy, in part due to a lack of consistent public pressure and the prevailing and accepted environment of secrecy. In a further complication, one of the newly appointed Information Commissioners made a statement soon after the act was ratified, claiming that the appointment of many of the new Information Commissioners was against the spirit of the RTI Act. According to the law, Information Commissioners should not be high-ranking government officials, as the law also requires a review committee comprising of high-ranking officials and so could lead to a conflict of interest. Additionally, it seemed that government departments were slow to appoint Information Commissioners at all.

### State of the RTI regime in Nepal<sup>31</sup>

Nepal adopted its Right to Information (RTI) Act in July 2007, though the right itself had been guaranteed since the adoption of the 1990 constitution – making Nepal the first South Asian nation to have formal constitutional recognition of the right to information. There have been some achievements since the adoption of the law in 2007, mostly in terms of the institutional set-up: the National Information Commission was formed, an RTI regulation charted out, and some efforts were made to spread awareness among people to highlight the significance of RTI.

### State of the RTI regime in Pakistan<sup>32</sup>

With the passage of right to information (RTI) legislation in Khyber Pakhtunkhwa and Punjab, Pakistan now has five RTI or freedom of information (FOI) laws:

- i. The federal FOI Ordinance 2002
- ii. Balochistan FOI Act 2005
- iii. Sindh FOI Act 2006
- iv. KP RTI Act 2013
- v. Punjab Transparency and RTI Act 2013

These laws vary considerably in their provisions and in the extent to which they are consistent with internationally accepted best practice for such legislation.

Apart from the challenges of implementing the relatively new laws, there is also the challenge of replacing the national ordinance with a law and ensuring that the national law is far more powerful and effective than the ordinance. Similarly, some of the weaker laws also need to be amended and brought in line with the stronger Pakistani laws and best international practices.

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<sup>30</sup> For a detailed description of the situation in the Maldives, see paper 8 in this volume

<sup>31</sup> For a detailed description of the situation in Nepal, see paper 11 in this volume

<sup>32</sup> For a detailed description of the situation in Pakistan, see paper 12 in this volume

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## State of the RTI regime in Sri Lanka<sup>33</sup>

In 2004, President Chandrika Bandaranaike's cabinet approved a Freedom of Information Bill, that would probably have been passed, but Parliament was dissolved and the momentum behind the passage of the Bill was lost.

In 2010 the Leader of Opposition presented a redrafted version of the 2004 Bill in Parliament, as a private members' bill. However the Secretary General of Parliament objected, claiming that the Leader of Opposition could not present a private members motion; it was then re-presented by the Deputy Leader of Opposition. It continued to be opposed however, because the Chief Government Whip announced that the government was planning to present its own version of an RTI law very soon. After some discussion the opposition party agreed to withdraw their bill and await the government's next move. When none was forthcoming, they re-introduced their bill in Parliament in 2011. With the ruling party's MPs against them, the bill was defeated. The opposition tried once more to introduce the bill in Parliament in 2012, but was informed that they could not introduce the same bill in Parliament again, as it had already been defeated.

Therefore, till a few days back, the news from Sri Lanka was not very encouraging. However, the good news is that Sri Lanka has just had general elections and the new government has promised that they will pass an RTI Act within the first hundred days. Let us keep our fingers crossed.

## The South Asia region as a whole

Given the situation in the region, 2015 must be a year when countries with new laws are helped to establish effective implementation systems. It is important to carry out baseline studies so that the progress of implementation can be properly evaluated against scientifically collected empirical indicators. Even in those countries where the law has been in existence for some years, much needs to be done in terms of implementation. The Indian RTI regime seems to be collapsing under its own weight, with information commissions having huge backlogs and very slow rates of disposal.

In Bangladesh, Nepal and Pakistan the major challenge is to raise awareness about the law and to ensure that all segments of society, especially the poor and the disempowered, understand the value that the transparency law has to their lives.

The Maldives and Afghanistan have both passed their transparency laws, they have yet to activate them and they will face all the challenges that each of the countries in the region has faced in establishing a workable transparency regime. Bhutan is to take a deep breath and finally pass the long pending and extensively debated transparency law.

## **5. RTI case studies<sup>34</sup>**

And what is the role of case studies, essentially anecdotes and stories with elements of fiction, emotivism, and even added drama, in a volume of serious, academic papers about transparency? Perhaps more is to be learnt from the case studies included in this volume than from all the scholarly and researched based articles on different aspects of the transparency regime. On the one hand the case studies make one proud on how collective public intent has begun to prevail over strong and well entrenched vested interests. It also gives one hope in the inherent goodness of the system where

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<sup>33</sup> For a detailed description of the situation in Sri Lanka, see paper 8 in this volume

<sup>34</sup> Papers 13 to 16 in this volume

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despite many problems and barriers, at certain times the government can join hands with civil society groups and other stakeholders to pursue a common cause.

The success stories depicted in the case studies give hope that despite all their weaknesses, the existing systems and institutions have the potential of listening to the common person, acknowledging faults, and setting correctives in motion. There are some heart rending stories which while ending on a positive note where justice is finally delivered, nevertheless make one despair that people have to go through such trials and tribulations. Also, they make one remember that for every success story there must be thousands where people tried but failed, or did not have the wherewithal to even try and get basic justice.

Through such case studies, observers and analysts of transparency regimes can determine the direction that transparency laws are taking and the ways in which they are being used. This tells them much about the nature, strengths and weaknesses of the law and the processes and institutions that help implement it, but it also tells them an equal amount about the nature of reality in a country or province. For, there are few feed-back mechanism that so effectively capture the nature and effectivity of governance, than RTI laws. Public authorities need to periodically analyse the RTI applications they receive to understand what is working and what is not working in their organisations, and how effective their attempted correctives have been. Changes in the nature and frequency of RTI applications, where they are not due to frustration and cynicism, can be excellent indicators of the success or failures of attempted correctives. They can also indicate whether the RTI law is effecting any systemic changes in governance, or just servicing the few who manage to file and pursue an RTI application, thereby contributing to the creation of an “RTI divide”.

But, finally, the most amazing thing the case studies show is the imagination and innovativeness of the people. How they take the RTI law and use it for purposes that were never imagined nor anticipated. Some months back a police officer complained that his life was being made miserable by people filing RTI applications with the police. It seems that someone hit upon the idea to use the RTI Act to get the police to verify the antecedents of men they were considering as potential grooms for their daughters! One wonders if any of the marauding activists who dynamically penned and pushed the RTI Act ever imagined that an RTI application would soon become an essential part of marriage ceremonies.

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## Box 1

Country	National Priorities, as identified in the Delhi meeting, April 2010 <sup>35</sup>	National Priorities, as identified in the Patna meeting, March 2012 <sup>36</sup>
1. Afghanistan	<ul style="list-style-type: none"> <li>- Create and strengthen an effective legal framework</li> <li>- Lobby to gain support from political leaders</li> <li>- Conduct joint projects with India and other countries of the region</li> <li>- Promote experience sharing amongst countries of the region</li> <li>- Establish and support a regional lobby group</li> </ul>	Not represented
2. Australia	Not represented	<ul style="list-style-type: none"> <li>- Improve proactive disclosure, including through digital data;</li> <li>- Increase the ability to influence the political and public sector culture</li> </ul>
3. Bangladesh	<ul style="list-style-type: none"> <li>- Develop a strategic framework for implementation, including monitoring mechanisms</li> <li>- Strengthen the Information Commission, including financial independence</li> <li>- Improve pro-poor orientation and record management</li> <li>- Create forums and hubs to collaborate regionally</li> </ul>	<ul style="list-style-type: none"> <li>- Get the general public more interested in the RTI</li> <li>- Develop norms and practices for the Information Commission to make it more citizen-friendly and proactive</li> <li>- Repeal rules and laws that are in conflict with the RTI Act; Sensitising politicians</li> </ul>
4. Bhutan	Did not develop priorities	<ul style="list-style-type: none"> <li>- Sensitisation of people and government about the possibilities of the RTI</li> </ul>
5. Canada	Not represented	<ul style="list-style-type: none"> <li>- Amend Canadian law to bring it on par with more progressive laws</li> </ul>
6. India	<ul style="list-style-type: none"> <li>- Raise awareness amongst the citizenry, including greater emphasis on pro-active disclosure and protection of whistle blowers</li> <li>- Make public authorities more responsive, especially through training and education</li> <li>- Ensure independence and efficacy of Information Commissions</li> <li>- Bring RTI on the SAARC platform and promote experience sharing across the region</li> </ul>	<ul style="list-style-type: none"> <li>- Making the bureaucracy across all levels more responsive; Preventing any dilution of the Act</li> <li>- Digitisation of government records</li> <li>- Bringing the private sector more directly under the transparency regime</li> <li>- Record maintenance and digitisation; Training of PIOs and FAAs, activists, and rural applicants; Awareness generations</li> <li>- Developing the Right to Know as a value system</li> </ul>
7. Maldives	<ul style="list-style-type: none"> <li>- Enacting a strong RTI law</li> <li>- Set up decentralized systems for information access</li> <li>- Set up independent Information Commissions</li> </ul>	<ul style="list-style-type: none"> <li>- Creating awareness amongst citizens as well as state in support of a change from 'subjecthood' to 'citizenship'</li> </ul>

<sup>35</sup> Copy at <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/workshop.html>

<sup>36</sup> Copy at [http://transparencyadvisorygroup.org/uploads/PATNA\\_MEETING\\_-\\_SUMMARY\\_OF\\_PROCEEDINGS\\_-\\_March\\_2012.PDF](http://transparencyadvisorygroup.org/uploads/PATNA_MEETING_-_SUMMARY_OF_PROCEEDINGS_-_March_2012.PDF)

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	<ul style="list-style-type: none"> <li>- Strengthen e-governance</li> <li>- Raise public awareness</li> <li>- Build capacity of civil society</li> <li>- Develop regional cooperation, especially with regard to funding</li> </ul>	
<b>8. Mexico</b>	Not represented	<ul style="list-style-type: none"> <li>- Extending Access to Information (ATI) to all states and regions, as well as marginalised groups;</li> <li>- Moving from ATI to government accountability; Improving proactive transparency</li> </ul>
<b>9. Nepal</b>	<ul style="list-style-type: none"> <li>- Strengthen the constitutional and legal safeguards for RTI</li> <li>- Improve government capacity to implement the law</li> <li>- Strengthen the Information Commission</li> <li>- Create a platform for greater cooperation amongst stakeholders</li> <li>- Develop regional knowledge hubs, possibly by using the SAARC platform</li> </ul>	<ul style="list-style-type: none"> <li>- Strengthening the National Information Commission; Protecting the law from any dilution</li> <li>- Increasing demand side; Training of PIOs and First Appellate Authorities; Improving information management and proactive disclosure; Finding ways to penalise private bodies for non-compliance</li> </ul>
<b>10. Pakistan</b>	<ul style="list-style-type: none"> <li>- Strengthen the law to bring it up to international standards</li> <li>- Build capacity of government functionaries</li> <li>- Promote pro-active disclosure</li> </ul>	Not represented
<b>11. Scotland</b>	Not represented	<ul style="list-style-type: none"> <li>- Extending the right to Public-Private-Partnerships; Safeguarding the right</li> </ul>
<b>12. South Africa</b>	Not represented	<ul style="list-style-type: none"> <li>- Improving political will to support RTI;</li> <li>- Establishing a determinative intermediary body</li> </ul>
<b>13. Sri Lanka</b>	<ul style="list-style-type: none"> <li>- Build capacity of people to use existing laws containing disclosure provisions at local level</li> <li>- Lobby with and sensitise government with regard to access to information</li> <li>- Develop and support mass media campaign for legislation on access to information</li> <li>- Identify and support champions within the government</li> <li>- Support non-government agencies to negotiate and catalyse the demand for an information access law</li> </ul>	Not represented
<b>14. USA</b>	Not represented	<ul style="list-style-type: none"> <li>- Learning lessons from other countries with special reference to Information Commissions,</li> <li>- Single point of access and</li> <li>- Imposing penalties for non-compliance</li> </ul>

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### 3.

## Evolution of the RTI Regime in Bangladesh: Broadening the Dominant Narrative

Manzoor Hasan<sup>1</sup>, Ashikur Rahman<sup>2</sup>

### 1. Introduction

In recent times, nearly a hundred countries have introduced a national legal framework in order to safeguard individuals' right to seek and receive information from various sources, previously deemed to be 'secret' under various laws.<sup>3</sup> Such a law is known, in many countries, as the Right to Information (RTI) Act. In South Asia, Pakistan introduced its RTI Act in 2002, India in 2005, and Nepal in 2007. Bangladesh joined their ranks in October 2008 when the caretaker government (2008-09) of Bangladesh promulgated the Right to Information Ordinance through a gazette notification. Subsequently, after the general elections in December 2008, the Awami League government fulfilled its pledge and the RTI Act came into operation in March 2009.

The objective of this paper is to explore the known story, the dominant narrative, and to broaden it to include the many voices that have so far been left out. For example, it is widely held that the substantive activities related to the evolution and enactment of the RTI Act in Bangladesh, were undertaken by various civil society organizations and their leaders. In other words, it is commonly perceived that a handful of civil society organizations and their chief executives played the most significant advocacy role *vis a vis* the policy makers, which resulted in the enactment of the RTI Act in 2009.

Another notable characteristic of the dominant narrative is its 'middle-up' effort. What do we mean by this? The main effort to promote RTI in Bangladesh is believed to have coalesced around a larger group of urban-based middle-class actors. They are considered to be liberal in their outlook, and are an integral part of the Bangladeshi ruling elite. This group is also very well connected with other key Bangladeshi actors, such as civil service bureaucrats, and the print and electronic media. Given their strategic location within society these civil society actors also have substantial influence over two other significant groups: politicians and donors. Moreover, due to this middle up effort there was little or no traction of the RTI movement within the Bangladeshi society at large. This became gradually evident during the implementation stage as revealed by the very low number of applications from

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<sup>3</sup> For instance, Official Secrets Act 1923 Bangladesh

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## Acronyms

AL	Awami League
ASK	Ain O Salish Kendra
BEI	Bangladesh Enterprise Institute
BLAST	Bangladesh Legal Aid Services Trust
BRAC	Bangladesh Rural Advancement Committee
CHRI	Commonwealth Human Rights Initiative
CIC	Chief Information Commissioner
CPI	Corruption Perceptions Index
CTG	Care Taker Government
DBR	District BRAC Representative
DFID	Department for International Development
EU	European Union
IC	Information Commission
IFIs	International Financial Institutions
IGS	Institute of Governance Studies
IMF	International Monetary Fund
JICA	Japan International Cooperation Agency
LDCs	Least Developing Countries
MJF	<i>Manusher Jonno</i> Foundation
MKSS	<i>Mazdoor Kisan Shakti Sangathan</i>
Moi	Ministry of Information
NGO	Non-Governmental Organization
PSU	Partnership Strengthening Unit
RTI	Right to Information
TIB	Transparency International Bangladesh
UN	United Nations

citizens seeking information from public institutions.<sup>4</sup> It is, therefore, understandable that the existing dominant narrative on RTI, which was written by a small group of individuals, on the inception and evolution of RTI in Bangladesh, aligns very closely with their own experience and perspective. In this paper we have endeavored to include some thus far unrevealed facts, which will broaden that known dominant narrative. Our objective is to document the ‘untold story’ on the RTI experience in Bangladesh. This has been done by seeking out new actors and then documenting their experiences and perspectives on the inception and evolution of the RTI Act, 2009.

In section 2, we briefly discuss the research methodology of this paper. Section 3 discusses the known dominant narrative of the RTI experience in Bangladesh. Section 4 provides the main elements of our analysis where we broaden the dominant narrative on the RTI’s possible origin in Bangladesh, the

process that guided its formulation, and the dynamics behind its final enactment. In section 5 we offer our concluding observations.

## 2. Research Methodology

The research methodology for the broadening of the dominant narrative has two core components. First, we describe the specific aspects of the dominant narrative of the RTI Act – the *what*. Second, we state *how* the research was done. In relation to *what*, three specific dimensions have been addressed:

**Origin:** As already mentioned, the principal aim of this paper is to document the RTI’s ‘untold story’. This is important because without that narrative it will not be possible to identify the ‘missing links’. The broader narrative will identify new actors and institutions, which were primarily responsible for conceptualizing and advocating the idea of RTI within the policy space. Hopefully, it will also explain what their motivation was.

**Process:** This examination documents the ‘voice’ of the non-civil society actors who were closely involved, at different junctures, with the process that guided the formulation of the draft law. In

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<sup>4</sup>Please see: <http://english.rib-rtibangladesh.org/the-state-of-the-rti-regime-in-bangladesh-2/>

## Broadening the Dominant Narrative: Bangladesh

particular, this paper aims to identify the various public sector actors who played their respective roles in moving the process forward.

**Enactment:** This analysis includes an account of the political actors who played a pro-active role throughout RTI's 'untold story': (i) in incorporating the RTI agenda in their political party manifestoes, especially the Awami League and (ii) in ratifying the RTI Ordinance in the first session of the new Parliament in 2009. This description will hopefully bring to the readers' attention the political dynamics that placed the RTI Act in the statute book.

The three phases of this study are given below showing their respective activity and outcome:<sup>5</sup>

### *Phase I: Identifying Sources of Alternate Perspectives*

<b>No.</b>	<b>Activity</b>	<b>Outcome</b>
1.	Review existing literature	Identify lead players
2.	Review media reports (across the ideological spectrum) of the relevant periods	Identify journalists and other individuals critical as lead players, and to the process
3.	Review internal government papers relevant to the process	Identify who disagreed with the idea and/or process and for what reasons
4.	Review parliamentary/constitutional debates on the enactment of the RTI Act	Identify who disagreed with the idea and/or process and for what reasons
5.	Interview established lead players	Seek out names of <i>critics</i> of the lead players/ process
6.	Interview foot-soldiers of relevant civil society groups	Tease out the politics of the process from a bottom-up perspective; seek out names of dissonant voices
7.	Interview high-level civil servants involved in the process	Seek out alternate perspectives that may not have been documented; Seek out names of individuals who may not have agreed with the dominant perspective
8.	Interview politicians involved with the process	Seek out alternate perspectives that may not have been documented; seek out names of individuals who may not have agreed with the dominant perspective

### *Phase II: Interviewing the Silent 'Voice'*

Once the key individuals were identified during Phase I, we commenced the interview phase and sought answers to the what, why and when questions.

### *Phase III: Triangulation*

Once the answers were obtained the phase of triangulation commenced by seeking corroborative evidence. The aim of this phase was to enhance the broadening of the dominant narrative through the interweaving of various strands of evidence and analysis.

## **3. RTI Act 2009: The Dominant Narrative**

### The 'Known' Story

The impressive social indicators of the last couple of decades have placed Bangladesh in the high-achiever category. The paradox of sustained development and poor governance earned both fame

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<sup>5</sup> This approach was advocated by Sharma, Prashant (2013), "An Additional Note on Methodology", Transparency Advisory Group.

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and curiosity for Bangladesh. The various governance reports emanating from civil society organizations, research institutes and international organizations, which identified this 'paradox', received wide coverage, nationally and internationally (IGS, 2006). The print and electronic media also regularly disseminated the findings of such governance reports.<sup>6</sup> The advocacy campaign, based on such reports, became a constant pressure on the politicians to bring about policy and legislative changes in relation to governance challenges. It was in this context that the issue of limited access to information was put forward by many as an urgent reform issue.

Like other South Asian countries, Bangladesh too inherited the Official Secrets Act 1923 from the pre-1947 British period. Since then the mindset of past and present bureaucracy in Bangladesh has been largely molded by this and other secretive laws, rules and regulations. The ensuing culture of secrecy has become the norm, and the onus has fallen on the citizenry to prove that they are entitled to information when seeking the same from any institution or individual. Generally, citizens were (and still are) unsuccessful in obtaining information, and such decisions were not open to legal challenge. Citizens were not just turned away from public institutions without information but often they were not given any reason for such refusals.

It was in this context that academics and experts pointed out in many reports that 'sunlight is the best disinfectant' and in order to address poor governance, particularly the endemic nature of corruption in Bangladesh, greater transparency in the public sector is essential. In various governance reports one of the consistent recommendations, which have been put forward, has been the enactment of a robust right to information legislation.<sup>7</sup> Finally it bore fruit in 2009, in the form of the Right to Information Act.

The need for a new RTI Act was initially recognized by some civil society organizations, for example, Transparency International Bangladesh. One of the earliest initiatives was taken by two other organizations, Bangladesh Legal Aid Services Trust (BLAST) and *Ain O Salish Kendra* (ASK), in the form of a workshop, which was held in 1999 and supported by a regional organization, the Commonwealth Human Rights Initiative (CHRI). A number of civil society organizations were represented at the workshop, as was the Bangladesh Law Commission. The Law Commission then took the initiative to put together a working paper between 2002 and 2003, which was later finalized as the *Law Commission (2003), Final Report on the Proposed Right to Information Act*. This initiative by the Law Commission, however, failed to enact a law on access to information, as there was neither political nor bureaucratic commitment despite some civil society demand for such legislation.

Our research indicates that there followed a period of hiatus from early 2000s to 2005. In 2005 *Manusher Jonno* Foundation (MJF) took up the RTI baton.<sup>8</sup> MJF initially undertook an exercise to understand the perception of different actors vis-a-vis a future RTI legislation. MJF's analysis noted the fact that there was a serious misconception on the part of the media regarding such legislation. The proposed RTI law was seen by the media as a 'sword' in their hand, which would give them the legal strength to access 'secret' information. Journalists clearly, but wrongly, perceived this proposed law as a facilitator in the quest for investigative journalism given the greater freedom enjoyed by both print and electronic media since democratic politics resumed in 1991. This limited nature of the

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<sup>6</sup> For more discussion on this, please see: <http://www.economist.com/node/13184953>

<sup>7</sup> For more discussion on this, please see: <http://www.transparency.org/topic/detail/accessoinformation>

<sup>8</sup> *Manusher Jonno* Foundation (MJF) is an initiative designed to promote human rights and good governance in Bangladesh. For more details on MJF please visit <http://www.manusherjonno.org/>

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proposed legislation didn't reflect the views of the leading civil society organizations as they saw the future RTI law as a tool for greater transparency. This misunderstanding arose due to multiple objectives of transparency instruments – citizens having the right to seek information and journalists being able to uncover corrupt practices through in-depth scrutiny. The objective of such ideas, when implemented, is to promote transparency and ultimately good or good-enough governance.

Furthermore, MJF's analysis of the Law Commission's final report revealed that it lacked meaningful and broad-based consultation with relevant civil society and advocacy organizations. Besides, the Law Commission's final report also lacked a robust analysis of the transparency issues, rationale and objectives behind such a new legislation within the context of Bangladesh. Taking a cue from the Law Commission, MJF took its own initiative to mobilize various experts to put together an outline of a draft bill. MJF formed three core groups – Law Drafting Core Group, Policy Advocacy Core Group, and Awareness/Capacity Building Core Group – and produced a draft RTI law (Anam, 2010).

In January 2007 a dramatic change came about in Bangladesh. After experiencing prolonged political turmoil a state of emergency was declared on 11<sup>th</sup> January 2007 and a military backed Caretaker Government (CTG) assumed office, with Dr. Fakhruddin Ahmed as its Chief Advisor.<sup>9</sup> This government showed a very strong commitment to establishing good governance and started to implement a strong anti-corruption agenda by undertaking multiple initiatives, for example, the separation of the lower judiciary from the executive, ratification of the United Nations Convention Against Corruption, and strengthening of the Anti-Corruption Commission, among others. During the CTG period, MJF and other advocates of RTI found a natural ally to spearhead their own RTI agenda. In other words, the RTI advocates were presented with a 'window of opportunity' to formulate and promulgate an RTI Ordinance (IGS, 2010-11).

More specifically, after a draft RTI law was submitted to the Law Advisor of the CTG by MJF in 2007, the Ministry of Information (MOI) formed a working group to finalize the law, and included an MJF representative in the working group. After the completion of the draft legislation, under the leadership of the MOI working group, it was presented and discussed at various national and regional seminars and the feedback was noted and incorporated into the draft legislative framework. The draft was also put on the MOI website to solicit further feedback from the general public. The draft was submitted by the MOI to the Advisor for the Ministry of Law, Justice and Parliamentary Affairs in March 2007. The enactment of the RTI Ordinance was officially announced by the Chief Advisor of the CTG in December 2007 and was approved as an Ordinance by the President of the People's Republic of Bangladesh in October 2008.

A parallel development that took place was the mobilizing of non-government organizations, lawyers, civil society organizations, academicians, media (both print and electronic), and eminent personalities. They raised a concerted voice and created their own platform to express a clear demand for greater access to information. While laws promoting greater openness are expected to face resistance from various vested groups in any society where corruption is rampant and ingrained, the Bangladeshi experience was quite different. When the RTI Ordinance 2008 (and later the Act of 2009), came into being, surprisingly little resistance came forth from any quarter. The MJF-led intermediaries very

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<sup>9</sup> The Chief Advisor was a constitutional position. The title was given to the chief executive of an interim caretaker government, which was equivalent to that of the prime minister under an elected government. This particular provision of the Constitution has now been repealed.

## Empowerment Through Information-1

effectively managed to create a 'middle-up' demand for such a law without inviting any significant bureaucratic or political hostility (IGS, 2010-11).

In addition, a concurrent process that took place was the creation of the RTI Forum, composed of 40 different organizations and individual stakeholders, under the leadership of Shaheen Anam, Executive Director of *Manusher Jonno* Foundation. The Forum included organizations such as Transparency International Bangladesh, Bangladesh Enterprise Institute, Article 19, Commonwealth Human Rights Initiative (India), *Mazdoor Kisan Shakti Sangathan* (India), among many others. The main goal of this forum was to create 'grassroots' demand for a new RTI law, and to ensure its proper implementation. The Forum played a significant role throughout the period but its role became particularly critical during two specific periods: before the promulgation of the Ordinance in 2008 and, secondly, prior to the ratification of the Ordinance by Parliament in 2009. The Forum's activities ranged from raising public awareness of the various issues related to the RTI legislation to getting endorsement from political parties. In August 2008, an important seminar was organized, titled *RTI: Commitment of Political Parties*, which witnessed the participation of all major political parties. The Forum also actively lobbied politicians, particularly former parliamentarians, and met individually with various relevant ministers, such as the Law Minister and the Information Minister. The RTI draft law was scrutinized and finally cleared by the Cabinet on 20<sup>th</sup> March 2009, and was then put before Parliament. On 29<sup>th</sup> March 2009, the RTI Act came into force.<sup>10</sup>

Despite some shortcomings, the Bangladeshi RTI Act 2009 can be described as a progressive piece of legislation. During the process of drafting, intense negotiation took place between civil society organizations and some civil servants to incorporate as many well-known international best practices as possible. It has been noted by several observers that the real effectiveness in improving governance will ultimately depend on the extent to which citizens will demand information using the RTI Act, and the readiness on the part of the public servants to respond to such demands (Anam, 2010).

### Acknowledged Players

The dominant narrative has understandably identified some key players, who played a pivotal role in relation to RTI, from its inception to enactment. These are primarily civil society actors, Shaheen Anam, Executive Director of *Manusher Jonno* Foundation, being one of the leading figures under whose stewardship the RTI Forum had been formed. Furthermore, MJF coordinated the setting up of three core groups: (i) Law Drafting Core Group (ii) Policy Advocacy Core Group and (iii) Awareness/Capacity Building Core Group. These groups constituted eminent persons including legal experts, academics, NGOs, media personalities, and researchers.<sup>11</sup>

The contribution of foreign actors, such as Wajahat Habibullah - the former Chief Information Commissioner of India, is also recognized. He was invited by the Government of Bangladesh to give his opinion on the draft legislation. During his visit, Habibullah consulted politicians, business professionals, media and civil society representatives. He spoke highly of the process and strongly recommended the adoption of the proposed legislation. Furthermore, the role of the Chief Advisor of the CTG, Dr. Fakhruddin Ahmed, is also widely acknowledged. He played a prominent role in aiding the formulation of the RTI Ordinance. It is to be noted that Dr. Fakhruddin Ahmed made a personal

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<sup>10</sup> Ibid – see gazette notification date.

<sup>11</sup> For example, the Law Core group comprised of noted experts such as Shahdeen Malik, Sultana Kamal, Shamsul Bari, Asif Nazrul, Tanjibul Alam and Elena Khan.

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commitment in a seminar organized by MJF in 2007 that RTI would be enacted as an Ordinance under his tenure (Anam, 2010).

### **4. Broadening the Dominant Narrative**

In this section, we document our research findings from various interviews, literature review and newspaper articles, which have broadened the existing dominant narrative on the origin, process and the ultimate enactment of the RTI Act in 2009.

#### *Origin: Pinpointing the Unacknowledged Actors*

The analysis undertaken in this paper identifies some important gaps in the known story concerning the origin and evolution of the RTI Act in Bangladesh. First, while it is acknowledged that the Bangladesh Law Commission formulated a working paper and then a final report on a possible right to information law in 2003, it is not documented *why* such an initiative was undertaken in the first place and *who* played the key role in taking this initiative forward. Second, given the Law Commission's pro-active role in formulating the basic concept note, as contained in the final report, why did that process come to a sudden standstill?<sup>12</sup>

Generally, the Law Commissions in Bangladesh are known to be rather passive and traditional in their approach to law reforms. In August 2001, Justice A. T. M. Afzal was appointed the Chairman of the Law Commission with Justice Naimuddin Ahmed<sup>13</sup> and Justice Bimalendu Bikash Roy Chowdhury as members.<sup>14</sup> Ikhtedar Ahmed, a career bureaucrat, was then the Secretary to the Law Commission, and worked closely with Justice Naimuddin Ahmed on both the working paper and the final report. The Law Commission, with Justice Ahmed's persistent encouragement, included in the Commission's work plan for the year 2002 the idea of a new law on right to information in Bangladesh.<sup>15</sup> It is to be noted that Justice Naimuddin Ahmed was considered by his colleagues to be a liberal and progressive lawyer. On his retirement from the judiciary he took up several pro-bono activities including that of Bangladesh Legal Advisory Services Trust (BLAST), where he was the Vice-chair of the Management Committee. He made it a point to attend many of the roundtables on current issues and he was also well known for his strong views on various governance issues, in particular the negative impact of corruption in a society like Bangladesh. Our research also revealed that the working paper and the final report were largely the handiwork of Justice Naimuddin Ahmed.

In terms of chronology, the working paper was made public on 31<sup>st</sup> January 2002, and then after a period of eighteen months the final report was published on 4<sup>th</sup> August 2003. The preface to the working paper states "[T]his working paper, prepared on 31 January 2001 (sic), is circulated for

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<sup>12</sup>In this regard, it must be noted that even in India, earlier attempts were initiated by the bureaucracy for evaluating the scope of reforming or changing the colonial Official Secrets Act 1923, which allowed the authority to withhold any information from the citizens. More precisely, the Government of India formed a working group in 1977 to explore the possibility of amendment to the Official Secrets Act to facilitate greater dissemination of information to the citizens. This group, however, recommended no changes on the grounds that the Act only intends to protect national security and not to act as a constraint to information diffusion from public sector organs. A decade later, the Government of India formed yet another committee in 1989, which suggested restriction of areas where government needs to hide information, and allowing information accessibility in all other spheres. These recommendation, however, were not translated into any law (Mander and Joshi, 1999).

<sup>13</sup> Appointed on 25<sup>th</sup> May 1996.

<sup>14</sup> Appointed on 13<sup>th</sup> December 2000.

<sup>15</sup> These insights were derived from our interview with Ikhtedar Chowdhury, who was the Secretary of the Law Commission during the time interval when Law Commission produced a working paper on a possible 'right to information act' in Bangladesh in 2003.

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eliciting comments and opinions only. It does not represent the concluding views of the Commission. The Commission would be grateful for comments and opinions on the working paper before 24 March 2002.” The Law Commission solicited feedback from the population at large. The preface states “It may be helpful for the Commission, either in discussion with others concerned or in any subsequent recommendations, to be able to refer to and attribute comments submitted in response to this working paper. Any request to treat all, or part, of a response in confidence will, be respected, but if no such request is made the Commission will assume that the response is not intended to be confidential.”

It has not been possible to ascertain the exact number and identity of the individuals and organizations who contributed but the preface to the final report states “[T]he Law Commission prior to preparation of this final [report] had prepared a working paper which was distributed amongst member of the civil societies, lawyers community, journalist (sic), secretaries to the Government, different departmental heads and intelligentsia for eliciting public opinion on it. Many of the persons receiving [the] working paper came forward with concrete suggestion and opinion concerning the matter which in turn helped the Commission to enrich the final report.”

However, by the time the final report was completed and approved on 24<sup>th</sup> July 2003 and then made public on 4<sup>th</sup> August 2003, Justice Naimuddin Ahmed had retired. The final report was published under the signature of Justice A.T.M. Afzal, the then Chairman of the Law Commission, and Justice A.K.M. Sadeque, who was then the only other Member of the Law Commission.

After this very positive development, the process suffered a severe setback. As a matter of normal practice the Law Commission referred the final report to the Ministry of Information, as the ‘parent’ ministry. The MOI then referred the matter to the Ministry of Law, Justice and Parliamentary Affairs for further legal scrutiny. It is the responsibility of the ‘mother’ ministry to take necessary action. Our research has revealed that it was during this phase of the process that the momentum was lost. According to the then Secretary to the Law Commission, the Chairman of the Law Commission, Justice A. T. M. Afzal, accompanied by a member, Justice Sadeque, visited the Ministry of Law, Justice and Parliamentary Affairs to urge the Minister to take steps to draft the Right to Information legislation based on the recommendations contained in the Law Commission’s final report. Apparently, the Minister’s response was very lukewarm and non-committal.<sup>16</sup> According to the former Secretary of the Law Commission, “...unfortunately, the Final Report went into ‘cold storage’ and no further initiatives were taken by any of the government stakeholders. The issue of RTI disappeared into a black hole.” This has to be seen in the context of the government in office, which failed to undertake good governance reforms, such as the separation of the lower judiciary from the executive. The RTI initiative of the Law Commission also received very little support from the leading political actors of that period.

As the Law Commission’s bold initiative lost momentum, the civil society actors – a coalition of organizations led by MJF and *Nagorik Uddog*, took up the RTI baton. According to *Nagorik Uddog’s* Executive Director, Zakir Hossain, his organization had been advocating for an RTI law since the early 2000s. *Nagorik Uddog* had made its submissions to the Law Commission prior to the formulation of

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<sup>16</sup> During the mentioned time interval, Barrister Moudud Ahmed was in charge of the Ministry of Law, Justice and Parliamentary Affairs.

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### Box: Salient Points of the Final Paper

The two documents (working paper and final report) are nearly identical in relation to the salient points. The main difference between the two documents is the inclusion of evidence in the Final Report as submitted by individuals and organizations during the period 31<sup>st</sup> January 2002 and 4<sup>th</sup> August 2003.

In the preamble of the final report the Law Commission touches on the constitutional guarantees of freedom of speech and expression and the various international commitments regarding the right to freedom of opinion and expression, and the fundamental underlying right to access information. The preamble refers to various international instruments and best practices to establish good governance. It also alludes to a gamut of legislation hindering free flow of information, specifically the Official Secrets Act, 1923. Finally, the preamble concludes with a reference to NGOs in Bangladesh and the need to bring them within the ambit of any future RTI legislation. After an exhaustive preamble the final report proposes the short title, extent and commencement of the proposed act (Section 1). It proposes that other than certain exemptions the Act will apply generally (Section 2). Section 3 is the 'Definition' clause. Section 4 defines 'right to Information'. Section 5 deals with the important issue of disclosure of information by the public authority and Section 6 refers to citizens' right to access information from designated officers – provisions which are critical to the success of any right to information regime. Section 7 lists the various exemptions – eight in total. Proposed sections 8, 9, 10, 11, 12 and 13 deal with various penalties for non-disclosures, for example, illegal refusal, failure and delay to publish, non-compliance with Tribunal order and residuary penalty. Sections 14 to 23 elaborate on the various aspects of the Information Tribunal, such as location and composition, powers and procedure, remedies, appeal, representation, penalty and compensation. Finally, Section 24 deals with the important issue of the power to make rules.

Examining the various documents, particularly the final report, it suffices to mention that the Law Commission successfully identified some of the core issues in relation to a possible right to information legislation in Bangladesh. Even though the final report of the Law Commission went through various reiterations before it became an Ordinance and subsequently an Act, some of the central thoughts remained unchanged. The Law Commission, particularly Justice Naimuddin Ahmed, should be recognized for his valuable contribution in formulating the RTI legislation.

*Source: Authors' own compilation*

the Law Commission's final report. Inspired by the activities of organizations such as *Mazdoor Kisan Shakti Sangathan* (India) in 2003, *Nagorik Uddog* also created a network of organizations, which became known as Access to Justice & RTI Network. The network known as *Unmoychon* started a newsletter, the first issue of which came out in July 2003. In 2005 *Nagorik Uddog* launched a campaign under the new banner of *Tathya Adhikar Andolon* (right to information movement) replacing 'Access to Justice & RTI Network', and brought out a collection of published articles in January 2007. According to Zakir Hossain, *Nagorik Uddog* was on the street mobilizing public opinion rather than involved with the drafting of the statute. "Raising awareness was our main objective and it happened at the district level." *Nagorik Uddog* decided not to join the RTI Forum sponsored by MJF but continued with its own campaign.<sup>17</sup>

It appears that between the Law Commission initiative, which ended sometime in 2004, and the keen interest taken by the CTG to enact RTI legislation in 2007; much of the grassroots advocacy was led by MJF and *Nagorik Uddog*. *Nagorik Uddog's* campaign attracted prominent people, who went around the country speaking on the issue of RTI. There were, however, some fundamental differences in the

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<sup>17</sup> Our interviews reveal that MJF and *Nagorik Uddog* experienced organizational rivalry over the ownership of the 'RTI Agenda' and various details concerning the RTI movement. This possibly explains the decision of *Nagorik Uddog* to not join the RTI Forum, which allied closely with the MJF camp.

## Empowerment Through Information-1

way the issue of right to information was approached by *Nagorik Uddog* and others, particularly MJF.<sup>18</sup> It has to be noted that this difference didn't significantly affect the progress on RTI. On the contrary, the differences enriched and strengthened the movement and different organizations had their own space to play their unique role and contribute to the evolution of the RTI movement in Bangladesh. In other words, the RTI relay race had some strong runners: the non-governmental organizations (MJF, *Nagorik Uddog*, BLAST and ASK); the public sector (Bangladesh Law Commission, Ministry of Information, and CTG); the political parties; and finally, the media.

It is also worth mentioning that the major civil society players during late 1990s and 2000s were more focused on the issue of 'separation of judiciary' as the mantra for establishing 'rule of law' and improved governance in Bangladesh (IGS, 2006). Therefore, it was unlikely that the RTI issue would have received serious attention from civil society actors in the late 1990s or early 2000s. Hence, the early initiative of the Law Commission must be acknowledged as pioneering, even though the process came to a halt soon after. Subsequently, various civil society actors took up the mantle of RTI and steadily moved forward through a participatory process until a breakthrough came with the advent of the CTG in 2007.

The momentum was re-gained during the CTG of 2007-08, a period which presented a 'window of opportunity' for many pro-governance changes. The final phase came with the elections of December 2008, in which an alliance of political parties led by the Awami League was elected. The newly elected government decided to continue with the reform agenda, and one of the Ordinances ratified was the Right to Information Ordinance 2008. Civil society actors also played a critical role – they successfully persuaded the politicians to remain faithful to their election commitments. Thus, the broadening of the dominant narrative, in terms of the origin of the RTI agenda, reveals a rich milieu of actors reinforcing each other and making good use of the various opportunities as they emerged.

### Process: The 'Unknown' Story

As discussed above, the role of MJF and *Nagorik Uddog* from 2005 to 2009 was instrumental in enacting the RTI Ordinance. Interviews with key officials of the CTG revealed that various organizations, particularly MJF, took on the role of policy 'entrepreneurs' as they brought together a coalition of like-minded organizations and lobbied to create a forceful demand for an RTI law in Bangladesh. It must be stated that MJF was particularly effective in utilizing the CTG 'window of opportunity' during 2007-08.

Additionally, the MJF-sponsored RTI Forum became another source of public pressure. RTI Forum became a platform for like-minded personalities and organizations whose goal was promoting a strong transparency regime in Bangladesh. The current Governor of Bangladesh Bank, Dr. Atiur Rahman, Shaheen Anam of MJF, and Sultana Kamal of ASK (and a former advisor of CTG), among others, were members of the RTI Forum.<sup>19</sup> They lobbied with the then Law Advisor, and our interviews revealed that the Law Advisor was lukewarm towards the idea of having an RTI Ordinance.<sup>20</sup>

Our research has also revealed some 'silent heroes' within the bureaucracy. Some senior civil servants were supportive of the process and worked closely with MJF and other organizations. During the

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<sup>18</sup> MJF was more interested in policy entrepreneurship though strategic lobbying while *Nagorik Uddok* focused more on grass-root advocacy. Thus, there was noticeable difference in the manner in which these institutions tried to articulate the RTI Agenda.

<sup>19</sup> This was revealed to us by one of our interviewees.

<sup>20</sup> Barrister Moinul Hussein was the Law Advisor during the noted time interval.

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drafting of the ordinance and the attendant negotiations, some civil servants displayed a ‘status quo’ mindset as they repeatedly watered down some of the key provisions of the ordinance. The investigation also revealed that the roles of the then Secretary of Information, Mr. Jamil Osman, and Joint Secretary, Mr. Kamal Uddin Ahmed were extremely positive. MJF was the sole non-governmental interlocutor representing civil society during the drafting process.

It should also be noted that the final report of the Bangladesh Law Commission was taken into cognizance by civil society organizations when they were preparing the draft of the ordinance. A number of interesting changes appeared in the final document. For example, political parties were exempted from the ambit of the ordinance, and generally the number of exemptions had increased. For a better understanding of the changes that occurred between the civil society’s draft and the final ordinance/act, please see Table-2 below. Hopefully, the above discussion brings to light some unacknowledged actors and some untold stories about the process that emerged during the formulation of the RTI Ordinance in Bangladesh. In the best tradition of research, further in-depth investigation is required to unearth a fuller and more comprehensive description of the process and personalities involved. In this paper we have tried to convey an outline of a broader narrative on the RTI Act that clearly exists, and calls for further investigation.

**Table-2: Comparisons between the Draft and the Act**

Draft RTI Law (Civil Society Draft)	RTI Ordinance 2008 and RTI Act 2009
<ul style="list-style-type: none"> <li>• Included note sheets or their copies in the information list</li> <li>• Explicitly termed a political party as an information providing authority</li> <li>• Information providing authority extended up to Union level</li> <li>• Broader scope of publication of information by public authorities</li> <li>• Strong protection for whistleblowers</li> <li>• Higher rank accorded to Chief Information Commission</li>   <li>• Made Information Commission sole authority to appoint employees</li> <li>• Presentation and discussion of Information Commission's annual report in parliamentary standing Committee</li> <li>• Fewer numbers of exemptions from providing information</li> </ul>	<ul style="list-style-type: none"> <li>• Excluded note sheets or their copies from the information list</li> <li>• Political party not termed as information providing authority</li> <li>• Information providing authority extended up to Upazila level only</li> <li>• Reduced scope of publication of information by public authorities</li> <li>• Indirect mention of whistleblower protection</li> <li>• Did not specify rank and allowances of Chief Information Commission and other Information Commissioners</li> <li>• Government to appoint employees of Information Commission</li> <li>• Submission of Information Commission's annual report to the President who may or may not send it to Parliament</li> <li>• Greater numbers of exemptions from providing information</li> </ul>

*Source: Comparative Assessment compiled by late Farzana Naim, Director (Governance) and Ruma Sultana, Programme Manager, MJF.*

### Enactment: The Unrecognized Political Commitment towards RTI

The dominant narrative on the evolution of the RTI regime in Bangladesh states that after the promulgation of the RTI Ordinance in October 2008, certain civil society groups led by MJF lobbied with the major political parties to ensure that the Ordinance was ratified by Parliament. Given the fact that the CTG had passed a total of 154 ordinances, there was a real possibility that without strong

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political commitment, the final enactment of the RTI Act would not have been achieved. Thus, during late 2008 and early 2009, a group of civil society organizations, led by MJF, interacted intensely with the political parties, namely Awami League, Bangladesh Nationalist Party, Jatiyo Party and other left wing parties. Our interviews revealed that there were a handful of prominent politicians and policy makers who were closely consulted. They included Dr. Atiur Rahman, Dr. Abul Barakat, Saber Hossain, Asaduzzaman Noor, G.M. Kader, Amir Khasru, Shafiq Rahman, M.K. Anwar MP and Nazrul Islam Khan.

The dominant narrative alludes to some civil society actors having a strong role in implanting the demand for an RTI Act in the manifestoes of the political parties, especially that of Awami League. However, our research has brought to attention the possibility of an 'earlier RTI seed' within Awami League's electoral agenda. In the first version of its manifesto [while in the opposition] Awami League made a commitment for 'free flow of information' within Bangladesh. More specifically, after Awami League's electoral defeat in 2001, opposition leader Sheikh Hasina Wajed decided to formulate a draft electoral manifesto. Saber Hossain, a key political leader within Awami League, took a lead in this initiative, which was later included in the party manifesto by Dr. Atiur Rahman and Dr. Abul Barakat. Eventually, some of the key policy reforms, including free flow of information, became incorporated into the electoral manifesto of 2008. It is pertinent to state here that Bangladesh ranked as one of the most corrupt countries in Transparency International's Corruption Perceptions Index during Awami League's final year in office. This was followed by a heavy electoral defeat for Awami League in the 2001 general elections. It could be reasonably stated that Awami League finally realized the importance of a good governance agenda and, therefore, started to articulate some of the key policies prior to the 9<sup>th</sup> parliamentary general elections.

Furthermore, this probably also explains the ratification of the RTI Ordinance during the first session of the 9<sup>th</sup> Parliament. Prime Minister Sheikh Hasina, in her address to an international conference, *Right to Information: Law, Institution and Citizen*, held in Dhaka on 21<sup>st</sup>-22<sup>nd</sup> June 2009 stated: "...in our election manifesto, we...pledged to ensure free flow of information. That is why we have enacted the Right to Information Law on March 29<sup>th</sup> this year in the first session of the 9<sup>th</sup> Parliament. As we have enacted the law, we are now committed to implementing it. Our Constitution guarantees every citizen the freedom of thought, conscience and speech irrespective of religion, race, caste, and sex" (IGS, 2010-11). This speaks volumes and provides a clear indication, at least rhetorically, that Awami League was politically committed to the enactment and implementation of the RTI Act 2009.

### **5. Concluding Remarks**

This paper aimed to re-visit the 'known' story on the evolution of the RTI Act 2009 in Bangladesh. The intention was to broaden the dominant narrative, which has evolved over a period of time, concluding with the enactment of the RTI Act 2009. The broadening of the dominant narrative touches on questions such as: *How* did it all happen? *Who* are the unrecognized actors? *Who* played a crucial role in the formulation and drafting of the law? In the case of Bangladesh, it is widely perceived that the authorship of the RTI Act lies greatly with civil society leaders (IGS 2010-11). In particular, the dominant narrative identifies a 'middle-up' momentum in terms of the conceptualization of the law and the final enactment, with the mantle of leadership in the hands of civil society actors. In other words, unlike other countries' experience of significant grassroots mobilization of public opinion, which then produced a coalition of actors resulting in legislative changes, Bangladesh witnessed a more urban-middle-class-elite centric initiative. The present analysis intended to broaden the dominant narrative by documenting the 'untold story'. Hence, we aimed to provide new insights on

## Broadening the Dominant Narrative: Bangladesh

the early origin of the RTI agenda, the process that guided the formulation of the law, and the dynamics surrounding the ultimate enactment in 2009.

To this end, we have interviewed a wide range of personalities who helped us understand and articulate the broadening of this dominant perspective. The new evidence obtained from various sources has helped to connect the various dots, which fell outside the dominant narrative. The broadening of the dominant narrative has taken place by the inclusion of the lines created by the new dots, that is, the new events and personalities identified.

Consequently, this paper endorses three key issues that are relevant to any accurate narrative on the RTI evolution. These issues are:

- I. The role of the public sector – particularly the Bangladesh Law Commission – has been pioneering as it played a critical role in bringing the idea of a new law for greater access to information to the table. This was possibly an outcome of lessons drawn from international experience or through a process of ideation. In this regard, the role of Justice Naimuddin Ahmed, as a member of the Law Commission, was pioneering and courageous as he singlehandedly brought forth the idea of a new law on RTI to be conceived within the public domain. This early initiative was particularly interesting as it happened much before any initiative was taken up by civil society organizations for increased transparency through easier access to information.
- II. MJF played a critical role during the formulation and inception phase of the RTI Act. In particular, it functioned as a policy entrepreneur as it utilized the ‘window of opportunity’ that emerged during the CTG (2007-08) to ensure that the RTI law was adequately drafted and an Ordinance promulgated during that period. MJF also ensured the creation of a coalition of like-minded organizations and personalities, which facilitated the mobilization of an effective demand for the ratification of the Ordinance into the RTI Act 2009.
- III. It is often narrated that Bangladeshi civil society organizations had a prominent role in encouraging the Awami League government to enact the RTI law. Our research, on the contrary, revealed that the Awami League, as a political party, was already committed to free flow of information. This existing pre-condition probably ensured a swifter selection and ratification of the RTI Ordinance. The Ordinance was ratified during the first session of the 9<sup>th</sup> Parliament together with other ordinances from a longer list of 154, which were promulgated by the former CTG.

In light of the broadened understanding of the origin and involvement of actors in relation to the evolution of RTI legislation (at least within the bureaucratic machinery of Bangladesh), it is worth asking: is it normal for government organs to come up with new ideas, especially when such ideas are more likely to facilitate greater accountability of public servants? On this issue, the insights from the literature on ‘policy change’ provide contrasting views. Some scholars believe that governments or bureaucracies most often prefer policy change that can be taken as nothing more than ‘tinkering’ with existing policies (Howlett and Ramesh, 2003).

In contrast, others believe that governments or bureaucracies can assimilate new ideas and information based on the question of policy effectiveness as matters stand. Ultimately, literature

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suggests that usage of new ideas depends on the preferences and constraints of pivotal actors.<sup>21</sup> Ideas can also transcend national boundaries both through voluntary lesson drawing<sup>22</sup> or direct imposition – mostly through aid conditionalities (Dolowitz and Marsh, 2000). In the context of Bangladesh, the introduction of the Right to Information law has been a welcome development given the fact that the country has been suffering from poor governance for decades, and such laws can bring about greater transparency within key public institutions. Thus, one objective of the RTI Act is to change the nature of interaction between the state and its citizens, and to provide a real opportunity for citizens to demand and receive information on issues they consider important. It is also a major departure from the tradition of ‘secrecy’ that dominated the operation of the public sector.

Therefore, the enactment of the RTI Act in 2009 has raised the level of expectations, and many see such a reform measure as a trigger for further changes. On a broader note, we hope that this paper, which has documented the Bangladeshi experience, will help us understand the conditions in which tools such as the RTI Act are capable of emerging within the transparency regimes of comparable developing countries. Finally, we acknowledge the fact that this paper has only scratched the surface of this topic and many areas, such as the role of the media and development partners, have remained untouched. We hope that this paper will encourage others to delve deeper into various topics with greater rigour and unearth much more than what has been presented in this brief scrutiny.

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<sup>21</sup> It must be noted that there are numerous ways by which the ideation process can induce policy change: {I} the process of ideation can help bring into view the problems and issues that enter the policy agenda; {II} the ideational processes can change the assumptions that affect the key ingredients of reform proposals (Beland, 2009).

<sup>22</sup> The lesson-drawing end of the continuum is based upon the view that actors choose policy transfer as a rational response to a perceived process. The emergence of a problem or a general dissatisfaction with the status quo can drive actors voluntarily to engage in an active search for new ideas as a “cheap” means of solving the problem. The process of lesson-drawing starts with scanning programmes in effect elsewhere, and ends with the *prospective evaluation* of what would happen if a programme already in effect elsewhere were transferred to a different country (Rose 1993).

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## 4.

# Evolution of the RTI Regime in India: Broadening the Dominant Narrative

Kuldeep Mathur<sup>1</sup>

### 1. Introduction

The passage of the Right to Information Act in India in 2005 has been hailed as a radical if not a revolutionary policy change. It has been a significant departure from the established administrative practices that had a long history. After the US passed its Act in 1966, India was among many countries that followed in doing so. Initially, this movement was confined to some countries in the Western world but it gained momentum in other countries after 1990. In the two hundred and twenty years since 1766, when the first transparency law was passed in Sweden, till 1995, less than 20 countries had such a law (Singh, 2011). More than 90 countries around the world have now adopted Freedom of Information Acts of varying scope and degree of effectiveness to facilitate access to records held by government bodies and another fifty have pending efforts. A few countries have issued decrees or used constitutional provisions. Many countries have adopted other laws that can provide for limited access including data protection laws that allow individuals to access their own records held by government agencies and private organizations, specific statutes that give rights of access in certain areas such as health, environment, government procurement and consumer protection (Banisar, 2006). Significantly, this global expansion occurred across countries notwithstanding types of political or economic regimes.

However, the provisions of these legislations vary across countries and each country had its own context in which the Act was adopted. Also, the legislations, attempting to open up government decision-making for public scrutiny, were a product of a long drawn process and this process varied across countries.

### 2. Purpose

The purpose of this paper is to explore and examine the movement towards a transparency regime as it unfolded in India and identify the factors that ultimately led to the legislation. There is a widely believed narrative that recounts how the demand for citizens' right to information emerged in India. This narrative identifies a people's movement having origins in a rural setting, which initiated the demand that then led to the building of an alliance with urban social activist and others who in turn spearheaded the movement for the adoption of the Right to Information Act. There appears to be a lurking assumption of a linear process at work that led to the enactment of the Act.

This paper intends to broaden the dominant narrative by contesting the idea of a cause and effect relationship in the enactment of the Act. The dominant narrative appears to simplify the process of policy change and place exaggerated emphasis on the role of a cluster of immediate events that

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<sup>1</sup>I am grateful to Shekhar Singh and Prashant Sharma for very useful comments and suggestions.

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galvanized the demand for transparency, which was then accepted by the government. The paper contends that this is a limited vision and does not provide a full perspective on the way the transparency regime emerged in India. The purpose is to enrich our understanding of the manner in which the demand for transparency evolved and also to argue that policy changes occur due to a whole series of events that include processes that influence growth of new ideas, their assimilation by institutions and responses and initiatives of national authorities. This understanding, we hope, will help to enlighten us further on the way the regime is currently functioning and challenges it is facing. We also hope that a more comprehensive understanding of the Indian experience will provide opportunities to other nations and societies to learn from it to establish or strengthen their own transparency regimes.

Towards this end, an attempt will be made to review as wide a literature as possible that reflects on these issues in India. As discussed later, these issues may not be directly related to what has been labelled the 'right to information movement' but may also be those that can provide some insights into reasons why the movement unfolded as it did.

### **3. The Official Secrets Act 1923**

The Right to Information Act 2005, as mentioned in the beginning of the paper, has been hailed as a radical if not a revolutionary policy change. The reason is that the government had been working with a colonial Official Secrets Act 1923 justifying withholding any information from citizens as it deemed appropriate in a particular case. The government withheld information regarding several incidents like the Bhopal gas tragedy or the people's resistance to deforestation in the Himalayas or to the construction of the Sardar Sarovar Dam that triggered initial protest about the use of this Act. Demand from civil society organizations grew for the scrapping of this Act. The government made several statements to the effect that major changes were going to be brought about in the Official Secrets Act but it remains to be seen whether this is going to happen and to what extent. There have been, in the past, several attempts to amend the Official Secrets Act, but in the absence of genuine political and administrative will, and popular pressure, all these initiatives have come to naught. A Working Group was formed by the Government of India in 1977 to look into required amendments to the Official Secrets Act to enable greater dissemination of information to the public. This group recommended that no change was required in the Act as it pertained only to the protection of national safety and not to preventing legitimate release of information to the public. In 1989, yet another committee was set up, which recommended restriction of the areas where governmental information could be hidden, and opening up of all other spheres of information. No legislation followed these recommendations (Mander and Joshi, 1999)<sup>2</sup>.

The Official Secrets Act had created a culture of secrecy which embraced not only administrative practices but also political considerations. It was not repealed even after independence. The question asked (Sharma, 2012) is why "The state in India (across the colonial and the post-independence period), has zealously guarded its 'right' to produce and control information. In a radical and sudden departure from this position, it gives up this 'right' without making any incremental changes in policy." The Right to Information Act tended to be seen, to that extent, as radical if not revolutionary for it was perceived to have pierced a hole in this shroud that covered all actions of government.

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<sup>2</sup> There was an earlier attempt to examine this Act by the First Administrative Reforms Commission set up in 1966 but the recommendations of its Study Team were not included in the final Report of the Commission. (see Sharma 2012:177 and Srivastava 2009:114)

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## **4. Explaining Policy Change**

It is such a departure from a stable policy regime that has attracted attention of policy analysts around the world. Most of the scholars and other commentators have remarked that governments usually continue with policies and empirical evidence indicates that if a change occurs it comes through tinkering with policies that already exist. There is incremental change rather than a radical change. This is done without altering the overall shape or configuration of a policy regime (Howlett and Ramesh, 2003:237). It was widely believed that change in stable policy regimes occurs largely from exogenous factors and thus a 'crisis' was seen as an important factor in inducing such change. The notion that policy regimes would change only due to exogenous events or shocks arose from the assumption that such regimes were a form of stable or self-adjusting 'homeostatic' system. But this notion itself is undergoing a transformation.

In responding to policy challenges, Berman (2013) has argued that governments also assimilate new information as they reflect on the old. There is a process of learning as political actors interpret both past and present events and selectively screen information. This process emphasizes the role of ideas in political life for it is these that provide the framework of interpretation. It is ideas that push a policy debate forward and create choices.<sup>3</sup>

In policy literature the interaction between ideational processes and institutions is being underlined as a source of policy change. Beland (2009) has argued that there can be three ways that ideational processes can influence policy change. First, such processes help to construct the problems and issues that enter the policy agenda. Second, ideational processes shape the assumptions that affect the content of reform proposals. Third, these processes can become discursive weapons that participate in the construction of reform imperatives. In a comprehensive review of the literature, Beland (2009) further shows that ideas identify what the most pressing issues of the day are and this helps actors to narrow down the list of issues on the policy agenda. In other words, ideas participate in the construction of the social, economic, and environmental problems that political actors may address. Ideas can also take the form of economic and social assumptions that either legitimize or challenge existing institutions and policies.

Further, policy ideas are not restricted by any national boundaries. They frequently cross them and are carried by academicians, think tanks, international organizations and civil society institutions. Such frequent transfer of ideas has been helped considerably by modern means of communication. Another dimension of this diffusion of ideas is their coercive or non-coercive nature. Some of the transnational ideas are accepted because they come as part of aid conditionalities while others can be part of voluntary acceptance (see Dobbins, Simmons and Garrett, 2007). However, as Beland (2009:710) suggests, the recognition that many policy ideas spread beyond national borders should not obscure the fact that, as far as country-level politics is concerned, national boundaries and institutions remain central to the politics of policy change around the world. Despite the development of major transnational policy networks, national institutions and policy legacies still weigh heavily on the production of expertise and social learning.

Within the national boundaries, in Hall's (1993:280) explanation of policy change, 'issues of authority' are likely to be central to the process of paradigm change. Faced with conflicting opinions from the

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<sup>3</sup>However, all ideas are not influential and assimilated by the policy actors. Choices are made and how and why some are chosen and not others is a subject of another debate. The rest of the paper indicates the source of many ideas that became influential in the RTI debate.

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experts, politicians will have to decide whom to regard as authoritative, especially on matters of technical complexity...In other words, “the movement from one paradigm to another is likely to be preceded by significant shifts in the locus of authority over policy,” (quoted in Baumgartner, 2013:240). What is being argued is that the status quo weakens when there is a shift of authority over policy. An important element of the likelihood of policy change is related to the staying power of status quo. There can be various ways of weakening it but the shift in authority appears to be an important one.

It is for this reason that all ideas are not influential in shaping public policy. If national institutions and policy legacies are a defining factor so also is the role of those who have come to be known as ‘policy entrepreneurs’. They distinguish themselves with their desire to change the conventional way of doing things. Mintrom and Norman (2009:651) quoting Kingdon (1984/1995) noted that policy entrepreneurs “... could be in or out of government, in elected or appointed positions, in interest groups or research organizations. But their defining characteristic, much as in the case of a business entrepreneur, is their willingness to invest their resources — time, energy, reputation, and sometimes money — in the hope of a future return”. Mintrom and Norman (2009) further quote Kingdon to suggest that within policymaking contexts, policy entrepreneurs take advantage of ‘windows of opportunity’ to promote policy change. Increasingly this concept of policy entrepreneurship is getting integrated into studies of policy change, though much more needs to be undertaken to explain why such entrepreneurs are willing to invest their time, energy and other resources in promoting a change in a particular policy stream.

Two or three points emerge from the above review. One is that policy change is not merely crisis driven but is more of an interaction between ideational processes and institutions. Secondly, not all ideas get incorporated into policy processes. Only some do. This depends not only on the nature of ideas but also the influence that policy entrepreneurs exercise. In today's globalized world, diffusion of ideas is from various sources and so the policy community has also grown. Finally, despite the development of transnational policy networks, national institutions and policy legacies still weigh heavily on the production of expertise and social learning.

What needs emphasis is that rarely do policy changes take place due to a single cause. As somebody has pointed out, the origin of public policies is difficult to determine. Whole series of events influence the immediate reason to bring about change. Some of these events seem to be unrelated to the immediate cause but they provide a policy environment — a context — in which such a change is perceived as acceptable and legitimate. Acceptability and legitimacy are fundamental and critical to the sustainability of a policy change in a democracy. Policy change is a process that unfolds over time but is shaped and influenced by events whose origins can lie both in indigenous as well as exogenous factors.

In a globalized world, it is becoming increasingly difficult to discern the identity of the source of a specific policy change. There is now a free flow of knowledge and awareness of practices across the world and issues and their solutions are being framed globally though applied locally. Even protest movements in one country are inspired by such events in another country. Environmental protests are good examples of such an interaction. Thus change is knowledge driven and each country now usually makes a deliberate effort to learn from the experience of other countries before embarking on its own. However, it must be recognized that there is a political dimension to this learning too. For countries choose examples that suits their line of thinking and action. A consequence of the growing

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complexity in policy making is that a policy community is not confined to national actors alone. It is spread across borders leading to what is known as policy diffusion. This not a new phenomenon but the processes of globalization seem to have intensified it.

However, it is explicitly acknowledged that policy preferences and capacities are usually understood in the context of the society in which the state is embedded. Policy making styles reflect the governance styles in each country which in turn reflect the nature and context its society and state are placed in. To understand policy process and explore its dynamics, one has to look beyond the immediate cause(s) and also explore how a state solves problems and frames a policy in general.

### **5. Policy Shift in India: Towards Transparency**

There is now considerable literature that celebrates the role of grassroots movements in the adoption of the Right to Information Act 2005. In a way, the narrative is based on the reflections of the national group of urban activists and also the commentaries of foreign and national scholars and journalists (for detailed citations see Sharma, 2012). This paper will not attempt to elaborate on the narrative but would highlight the major issues relevant for our discussion. For referring to the dominant narrative, we will depend more on the writings of Shekhar Singh, who was one of the prime movers of the campaign and has written extensively on the subject. He has been recognised nationally and internationally for his contribution and continued interest in the adoption of the Act and in making it effective.

First, the Right to Information movement is seen to rise from the efforts of social and people's movements. These seem to have begun sometime in the 1980s. Singh (2011:54-55) points out that there were three kinds of stakeholders. One, 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 the paymasters, who claimed that they had worked for fewer days than they actually had, as these workers were denied access to the attendance register in which they affixed their thumb impression every day they worked, because these were government records. Second, the group that joined this movement was that of people fighting for the human rights of various groups and individuals in conflict prone areas of India. The third group of supporters was of environmentalists who were concerned about the rapid destruction and degradation of the environment. They were spurred by the success, though limited, of an earlier petition to the Supreme Court demanding transparency about the environment.<sup>4</sup>

These civil society activists were joined by urban activists consisting of intellectuals and civil servants of various hues. But the emphasis in the narrative has been on the role of the social movements of protest that were leading to a mass disaffection towards secrecy due to suppressive measures of the government. What provided greater momentum to the RTI movement was the beginning of a rural movement in around 1990 started by Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan, demanding access to information on behalf of wage workers and small farmers who were denied benefits of their rightful wages or their just benefits under government schemes. Singh (2011:55) suggests that MKSS transformed the movement and it metamorphosed into a mass movement. The

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<sup>4</sup>Environmental movement has been the precursor of the struggle for transparency and some of its activists joined the present movement for RTI too.

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*jan sunwais* (public hearings) it held are acknowledged as the core strategy that moved the Rajasthan government and caught the imagination of the people.

The second element of the narrative is the formation of the National Campaign for People's Right to Information (NCPRI) in 1996. As the demand for transparency spread, it was felt that a national body for coordinating efforts for the formulation of national legislation be formed and after a series of consultations, NCPRI was born and located in Delhi. It consisted of a few rural activists and their voice was that of Aruna Roy who led the MKSS movement in Rajasthan. There were also Delhi based journalists, eminent lawyers, and social activists like Shekhar Singh.

The narrative then goes on to elaborate on the role of the prominent members of the NCPRI in negotiating and bargaining with the highest echelons of the government to get the Right to Information legislated in 2005. They created a media upsurge which caught national imagination. The narrative also goes on to describe the strategies that they used to influence policy makers including the Prime Minister. This narrative is so prevalent that everybody believes that this is the correct way to view the process of the enactment of the RTI Act. We now intend to show that the movement may be a descendant of many ideas, institutional processes and international experiences which ultimately influenced the way the demand for transparency evolved and to explore the reasons of its acceptance by the state at the time when it did.

### **6. India: State and Democracy**

That the character of the political system is key to the way public policy is deliberated, formulated and implemented is a widely accepted notion.<sup>5</sup> With its size and heterogeneity, India is not an easy country to govern. In area and population, a few Indian states are larger than many sovereign states. The border areas in north-east and north-west have continued to be trouble spots since independence in 1947.

The country adopted a federal system of government but has been characterised to be one with a strong Centre. The reason is that national unity has always dominated the concerns of the government, and as a consequence of such thinking, in spite of the Constitutional provisions, there has been hesitant decentralization and reluctant opening up of the decision-making process.

India's adoption of a democratic parliamentary system of government with universal adult franchise occurred at a time when its literacy rate was 35% and more than half its population was living below the poverty line. Much of the government's effort has been to improve upon these indicators but progress has been slow though India has achieved much. The discourse on democracy also centred on the core Western liberal values of individual rights, freedom and equal opportunity and it is in this context that claims of failure of Indian democracy are often heard. Inability to achieve development goals as expected has also led the current discourse to be dominated by corruption and lack of capacity in government to deliver public goods and services effectively.

India faces a paradox. On the one hand, social conflict has increased, the economy has undergone difficulty and democratic institutions are constantly under pressure by the tide of protest and violence. Democracy in India, on the other hand, seems to have deepened and widened its reach. The proportion of socially and economically deprived who exercise the right to vote has increased. If there

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<sup>5</sup>What is interesting, though, is that the adoption of the RTI legislation has not known such political system boundaries.

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is turbulence at the electoral level, one reason is that the participatory base of the electorate has expanded since the 1990s (Yadav, 1999).

It is in this context that the movement towards RTI has been juxtaposed with the emergence of violent conflicts (read Naxalism) in certain regions of the country and an argument made that access to information is a democratic attempt to transform the state. Singh (2011:50) suggests that movements like the RTI movement try to make the system face up to its contradictions and to force the state to respond to the demands of the people.

### **7. State and Bureaucracy**

India's poor development record is embedded in a highly expanded role of the state. In Nehru's vision of planned development, the state occupied a pre-eminent position in the delivery of public goods and services. Accordingly, India became a highly interventionist state that pursued welfare and socialist objective by itself becoming an entrepreneur and by controlling and regulating the private sector. This has had the effect of the creation of a public sector with a huge army of employees whose interest lay in its self-perpetuation and in the acquisition of as much benefit as possible from administering the economy.

Faith of the policy-makers in the ability of the state to undertake the enormous task of development had stemmed from the perceived strength and efficiency of the bureaucracy that the British left behind. At a time when other developing countries were struggling to establish a professional and career based civil service, the standing of the colonial Indian Civil Service was exceptional. It had served the colonial masters well, and in the initial years of independence, it had provided tremendous support to the integration of the country, quelling riots that followed its partition. It had quickly assumed the role of upholding the law of a new sovereign state. These civil servants together with their successors, of the Indian Administrative Service, also became supporters of the Nehruvian legacy of state-led development. As a result, the inherited colonial structure of administration has remained relatively untouched, even when questions about its suitability have been raised.

In spite of several state initiated efforts, the administrative system has not undergone a radical change. There are examples of isolated cases of reform and many that have been triggered by international agencies. But these have yet to make an impact on the larger system. The result is that now it is the society and victims of ham-handed administration who are demanding administrative reform. In the recent past, these protests have widened to include dissatisfaction with the larger governance system and have been directed against the political leadership too. The recent protest, rallies in the major towns of the country for the passage of the *Lok Pal* (Ombudsman) Bill, was directed against the political leadership for its reluctance in supporting a legislation that creates a strong machinery to fight corruption. The movement towards greater access to information and bringing it into public domain needs to be seen as a way of bringing about governance change through grassroots efforts.

### **8. Role of Judiciary and Demand for Information**

It is now widely accepted that judicial pronouncements, particularly in cases of litigation about degradation of the environment, were among the first concerns about lack of information expressed in the public domain. Both Singh (2012) and Sharma (2012) go back to 1975 to cite the judgment of the Supreme Court which stated 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

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country have a right to know every public act, everything that is done in public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.” Another judgment coming in 1982 held that right to information was a fundamental right under the Constitution. It went on to say that the concept of an open government is a direct emanation from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1) (a). There were other cases also in the 1980s that upheld the right to know.

As a matter of fact, when the memory of the Bhopal gas tragedy was still fresh in the minds of the people, a public interest litigation was moved to relocate Sriram Food and Fertilizer Industry from a densely populated area of Delhi. It was argued that the industry dealt with hazardous chemicals and any mishap could be life threatening to the people living around it. During the hearings, it was discovered that the government had already formed a committee to look into this but its findings were not revealed. This prompted the Court to remark that someone should take up the issue of 'right to know' (Sharma, 2012:89).<sup>6</sup> The Court was in a way playing a positive role, going to the extent of prompting society to take up this issue.

Significantly, the Supreme Court also established that access to information was a right as guaranteed under the Constitution. It was not merely a largesse that a benevolent government provided to its citizens. Thus fight for this right was a struggle for democracy and not for mere good governance. This point is important to keep in mind for there is a distinction between the nomenclature of the Act passed by the NDA government in 2002 and the one passed by the UPA government in 2005. One is titled Freedom of Information and the other Right to Information. This changed the nature of the struggle after 2005 when the government began implementing it while the 2002 Act never got off the statute book.

A possible reason why the nomenclature of 'Freedom' was used during the NDA regime could be many fold. It has been reported that the NDA government had sent a team of officers abroad to learn from experiences of other countries which were possibly using the nomenclature of Freedom rather than of Right. This change was also embedded in the larger vocabulary of civil society movements. With increased awareness and civil society activism, the political discourse was changing and many of the struggles being spearheaded by civil society organizations were demanding citizens' rights whether they were in the field of food, work, or education (see Chandoke, 2007). The more significant impact was the Court pronouncement that made the right to information implicit within the meaning of right to free speech and expression under Art. 19(1).

As mentioned earlier, the 2002 Act never got off the ground. But what it demonstrated was that the government had the capacity to frame a law even though that may be ineffective and toothless in its provisions. It possibly alerted civil society organizations that in future each clause may have to be negotiated so that the Act does not become a toothless legislation. Its ineffectiveness must have also prompted the Congress party, which was in the opposition at that time, to promise a more effective legislation in its manifesto. The manifesto of the Congress party said: “All government agencies but particularly those that deal with citizens on a day-to-day basis must operate in a responsive and accountable manner. The Right to Information Act at the centre will be made more progressive,

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<sup>6</sup>Kalpavriksh, an NGO working on environmental issues, also involved in this case, responded to this and filed an affidavit seeking the Court's intervention to pronounce Right to Know as a fundamental right, albeit in the context of the location of hazardous industries in densely populated areas.

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meaningful and useful to the public. The monitoring and implementation of the Act will be made more participatory and the penalty clauses regarding delays, illegal denials and other inadequacies relating to the supply of information to the public will be operationalised soon. Protection will be extended to all “whistleblowers” through statutory means, if necessary.” This strong mention in the manifesto came very handy as the NDA lost the elections in 2004 and UPA, under the leadership of the Congress party, came to power in 2004.

The inclusion of the right to information in the manifesto of the Congress party for the 2004 elections had an added significance. This was that it seemed to be included at the behest of the leader of the party, Mrs. Sonia Gandhi, who provided it great support later at the time of negotiation with government. We will take this up in a later section.

### **9. Early Political Initiative**

The inclusion of RTI in the Congress party manifesto had a spread effect with other main political formations also including it in their own manifestos for elections that followed in 1998, 1999 and 2004. But an earlier attempt in 1989 by the National Front led by VP Singh cannot be ignored. In its election manifesto, the (later victorious) National Front coalition under the sub-heading “Open Government” stated that “The National Front commits itself to full freedom of the media, autonomous corporations for television and radio and elimination of practices that lead to direct and indirect arm-twisting of the Press. People’s right to information shall be guaranteed through Constitutional Provisions” (Quoted in Sharma, 2012:178-179). In a further reinforcement of the Prime Minister’s commitment to open government, Sharma (2012:179) quotes him saying that an open “system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the Government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable... In tune with our firm commitment for transparent functioning of our Government, we propose to suitably amend the Official Secrets Act so that the people have increased access to information.” This proclamation of the Prime Minister was followed up by a workshop at the Centre for Policy Research and setting up of an Inter-Ministerial Task Force to draft a Freedom of Information Bill. This task force consisted of bureaucrats at the joint secretary level. The task force also visited other countries to learn from their experience.

Nothing much came out of this effort as VP Singh lost power within a year, and after an intervening period, a Congress party led coalition formed the government in 1991 and stayed in power till 1996. During this period the demand for transparency in government was not raised as a political issue. There was a short period of instable coalitions, and elections were held in 1998.

Three national elections were held during the period 1998-2004. After one year in power in 1998, the BJP lost support and elections were held in 1999, after which the BJP, as the principal partner in the NDA coalition, formed the government for the full term before losing the elections in 2004 and giving up its place to the Congress party and its coalition, the UPA. The NDA coalition legislated the Freedom of Information Act in 2002 when several Congress led state governments had already legislated on the issue. It was probably because of this political configuration in which the NDA government found itself that it allowed its own legislation to lapse as it could not gain much political mileage in that scenario. The party manifestos of the three main political formations, the Congress party, the BJP and the CPI (M) included good governance and access to information, with varying degree of emphasis. However, it appears that the Congress party was prompted by the fate of RTI under the NDA regime and saw itself as the flag bearer of transparency in government. It had much to gain politically.

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### **10. State level Initiatives**

While the NCPRI was being formed in 1996 for embarking on a national movement for the right to information, some states had begun to take initiative to pass such legislation on their own. Tamil Nadu and Goa passed their Acts in 1997 without any civil society activities. They were promoted by the governments themselves. Other states — Rajasthan in 2000, Karnataka in 2000, Delhi in 2001, Assam in 2002, Madhya Pradesh in 2003, Maharashtra in 2003 and Jammu and Kashmir in 2004, passed their Acts when the NDA government led by Atal Behari Vajpayee was in power at the Centre. What is significant is that except for two states, Tamil Nadu and Jammu and Kashmir, all the states that had passed the RTI legislation much before 2005 were ruled by the Congress party. NDA coalition or its principal component, the BJP, was not in power in the states that had passed the legislation. While in most states, the Act was initiated by the government, Rajasthan and Maharashtra were exceptions. In Rajasthan, the movement was led by MKSS whose role is part of the dominant narrative in the passage of the national Act in 2005. The Maharashtra story was a little different. It had followed a zigzag path.

In 2000, a sustained advocacy campaign by social activist Anna Hazare forced the Maharashtra government to pass the Maharashtra Right to Information Act 2000. However, civil society groups were unhappy with the Act, criticising it for being too weak and demanding that it be replaced with better legislation. In 2001, the government formed a committee comprising senior serving and retired bureaucrats, jurists and a leading social activist, Anna Hazare, to draft a Freedom of Information Bill. Before the committee could submit its draft, the Maharashtra government repealed its 2000 Act and replaced it with the Right to Information Ordinance 2002. However, this Ordinance lapsed because, as stipulated in the Constitution, it could not be converted into legislation within six months of its issue. However, public pressure to enact a law continued. Consequently, in the budget session of the legislature of 2003, the Right to Information Act was passed and sent to the President for approval. For quite some time, Presidential assent was not given and Anna Hazare wrote a letter to the Deputy Prime Minister threatening to go on fast if this assent was not forthcoming. The assent finally came within 10 days of his letter (Commonwealth Human Rights Initiative, 2005).<sup>7</sup>

The passing of such legislation in the states was significant in two ways. One was political — it provided support to the Congress party in its effort to pass the legislation at the Centre. The party was able to project itself as a party that upheld democratic values of transparency and accountability more than the NDA and thus espoused the cause of open government. Another dimension was that these legislations provided a learning experience in framing the Central Act of 2005. It was possible to rectify many of the weaknesses of the state legislations. The role of these state initiatives has often been ignored in the dominant narrative of the emergence of the transparency regime in India.

### **11. Influencing Policy: National Campaign for People's Right to Information and the Government**

Even though the rural struggle for government stipulated wages began around 1990 in Rajasthan, it was transformed into a movement for the right to information only after the formation of the National Campaign for People's Right to Information (NCPRI). The protests and hunger strikes organized by the

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<sup>7</sup>Available at [http://www.humanrightsinitiative.org/index.php?option=com\\_content&view=article&id=505:maharashtra&catid=90:india-states&Itemid=433](http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=505:maharashtra&catid=90:india-states&Itemid=433)

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MKSS were based on local appeals, with slogans like '*hamara paisa hamara hisaab*' (our money, our accounts). It was the largely Delhi based intellectuals who formed the core group of NCPRI, whose activities and public statements caught national attention. Undeniably, the MKSS leadership was also part of this core group, but it was not wholly rural; it shared the identity of the urban group. Thus, from 1996 onwards, when the NCPRI was formed, its members as a group or as individuals took up the task of mobilizing public opinion and negotiating with the government.

It is pertinent to point out that the founding members of NCPRI were not civil servants alone but prominent lawyers, journalists and an academic who had also worked as an advisor to the government. Such a group commanded high prestige nationally and being Delhi based played a key role in reaching out to the national media and opinion-makers. In an interesting study, Sharma (2012) goes into great details in providing links that this group had with the policy makers in the government. There existed a kind of social bond among the people on both sides of the table. This generated empathy and patience to listen to the other's point of view. What is specially pointed out in this study is that members of the core group had close links with the bureaucracy at the helm of the government due to civil service camaraderie. This camaraderie was due to one being part of the same civil service group or being related to a member of this group.

However, social bonds do not always lead to policy changes. A large number of policy changes, espoused by similar groups of people or sometimes the same people, do not get accepted. There is a strong stability in status quo and it is only when that weakens that the opportunity to change policy arises. It does appear that one needs also to focus on the strategy to influence rather than their social bonding alone.

The Congress party was led by Mrs. Sonia Gandhi who had declined to be the Prime Minister after the victory of the alliance led by it in 2004. Drawing on the narrative presented by Sharma (2012:106-112), it seems her rejection of the position of Prime Minister raised her moral authority and gave her immense prestige to influence the government. She formed a National Advisory Council which consisted of members from civil society organizations, civil servants who had become social activists and also Aruna Roy who led the MKSS and who was also a member of the core group of NCPRI. This Council was to push for many welfare measures in the rural sector. As an undisputed leader of the Congress party and having the responsibility of implementing the provisions in the party's manifesto, Mrs. Gandhi commanded a lot of influence with the government.

On 16 August 2004, Sonia Gandhi, as the Chairperson of the NAC, dispatched a letter on the Right to Information to the government urging it to introduce an amended Freedom of Information Act in the Parliament at the earliest. All the background material needed for this letter had been prepared by NCPRI. The momentum began to build up. Not only were recommendations being made to the government by the NAC, but separate communications were also being initiated by the Chairperson of the NAC to the Prime Minister. The importance being attached to the issue by Sonia Gandhi could not be ignored (Sharma, 2012:109).

Despite Sonia Gandhi's obvious interest in the RTI legislation, sources in the government informed NCPRI members that resistance within the bureaucracy was mounting, and that the government might not table the bill in Parliament that year. Another influential person in the form of former Prime Minister VP Singh was mobilised who accompanied two members of NCPRI to meet the Prime Minister. At this meeting, the Prime Minister is supposed to have said that he was under great pressure and the bill would be introduced in the current session of Parliament. But the bill that was

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introduced by the government was to be effective only for the central government and not for the states. Another round of lobbying followed. Four members of the NAC sent a letter of protest to Mrs. Gandhi requesting her to intervene. It is believed that she did and the bill was finally passed after being made effective for the whole of India besides Jammu and Kashmir.

What this story tells us is that the status quo was weakened because there was a shift in the locus of authority. It needs to be recalled here that the UPA-1 led by the Congress party had formed the government after getting the election mandate of 2004. What was the defining characteristic of this government was the nomination of Manmohan Singh as Prime Minister by the leader of the Congress party, Mrs. Sonia Gandhi, who had publicly declined to accept the top post. There was a halo of sacrifice around her and public opinion swelled in her favour. But with the institutionalization of the National Advisory Council chaired by her and composed of social activists of various backgrounds, there was little clarity about how the governance system would function. Even in an earlier pre-government period, she had contacts with such groups to keep herself acquainted with ground realities. However, extension of these informal contacts into formal institutional framework was another matter and the political and administrative actors were not sure of their response to such a situation. Thus, it may be hypothesized that Mrs. Gandhi wielded moral authority that was widely accepted. In addition, this was also probably the first case in which the members of NAC were committed to and expected that Mrs. Gandhi would be influential. In a way this was a test case.<sup>8</sup>

While arranging meetings with Mrs. Gandhi, social bonding of civil servants in the NAC with those serving in government may have been helpful, but the fact that that appeal went to her as Chairperson of the National Advisory Council and one who commanded influence with government was important.<sup>9</sup> It was also important that some members of the NAC provided great support to the right to information movement in other capacities and became its voice in the Council. There were bureaucrats at critical levels of government who recognised the shift in authority and were willing to lend a helping hand. It showed that bureaucracy was not a monolith and there were changes occurring in the attitudes of its members that brought divisions within it.

### **12. Bureaucratic Resistance or Support: No Easy Answer**

This final act in which Mrs. Gandhi as Chairperson of the National Advisory Council intervened and where the Prime Minister is supposed to have told the members of the NCPRI, who went to meet him, that he was under great pressure, has raised some very critical issues about the role of bureaucracy in the entire unfolding of events ultimately leading to the passage of the RTI Act. The dominant narrative highlights the fact that the bureaucracy was resistant to the idea of opening up government and it was the support of the political class that ultimately led it to accept the idea and work for it.

Possibly some other events not directly related to the RTI movement could have had a bearing on the belief that has been generated about the role of bureaucracy. One event that is directly related is the failure of the effort to repeal the Official Secrets Act of 1923. The demand for this, as stated earlier, was generated by various issues raised in the environmental movements and particularly by the Bhopal gas tragedy. In spite of many efforts the Act was not repealed and has not been repealed. It is

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<sup>8</sup>This is in contrast to the events in UPA-II by which time probably the halo effect of sacrifice had been rusted considerably and the many issues that she and her NAC took up had wider implications of financial management and the strategy of economic development pursued by the government.

<sup>9</sup>Sharma (2012) presents details of the inter-connections among some serving and retired civil servants and some activists and argues that this was a great help in the passage of the Act.

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widely believed that this happened because of resistance offered by the bureaucracy, which was not ready to be open to public scrutiny. Another widely publicised event that further reinforced the intransigence of the bureaucracy in such matters was the public spat between the Urban Development Minister and the bureaucrats of his Ministry. The Minister, in the coalition government led by the BJP, in this case Mr. Ram Jethmalani, announced his intention to introduce a system in his ministry through which the general public would be able to pay a fee to access government records. He followed it up by issuing an office memorandum but this was scuttled with a counter coming from the Cabinet Secretariat after the top bureaucrats of his Ministry sought its support (See Sharma, 2012:104-05).<sup>10</sup>

More directly the failure to incorporate freedom of information in administrative reforms suggested over time have been seen as another reason to believe that the bureaucracy has been resistant to open government. The events directly related to the RTI movement further provided grist to the mill. These were failure to provide for freedom of information by the government when VP Singh was Prime Minister in 1989, then silence during the period before BJP came to power in 1998 and the fact that the Freedom of Information Act that the BJP government passed in 2002 was not notified.

The dominant narrative further builds on this story and places great emphasis on the support from the political class for the enactment of the RTI Act in 2005. This perspective fits well with the general perception of a rigid bureaucracy that has stalled any effort at reform since the First Administrative Reforms Commission was established in 1966. However, in this specific case, it is also a fact that greater access to the leadership of UPA, particularly the Congress party, was generated by the relationship between the membership of the NCPRI and bureaucrats occupying critical positions at that time. Sharma (2012) has argued that there was a kind of old school brotherhood between members of the NCPRI and top bureaucrats in the government which allowed NCPRI “privy to the thinking both within the government as well as political leadership”. He has based this argument on an elaborate analysis of the background and links of the present bureaucrats and past ones who were now members of the NCPRI.

Apart from this analysis of linkages among the serving and retired bureaucrats, several civil servants interviewed by Sharma (2012:196-198) have lamented the fact that they (also meaning government) have not been given due credit for the success in having the RTI Act passed. One of the respondents has gone on to say that 'We work silently. We are the unseen face of government. We cannot go outside and clarify our positions. We don't try to create an image for ourselves... If they make claims, want to take credit for all of that, it's up to them, we don't mind. We have done our work, and we are satisfied. We do our job, forget it, and move on.'

In concluding the last section, it was suggested that bureaucracy is not a monolith and there are divisions within it which may prompt different opinions. It is in this vein that Sharma (2012) has further argued that bureaucratic support or resistance were built up on reactions to specific provisions of the proposed Act rather than on the right to information itself. On the basis of interviews of some civil servants and examination of minutes of several committees, he remarks that a certain number of civil servants had clearly accepted the view that one cannot have an inclusive government without sharing information while there were some who were vehemently opposed to this idea. Building on this

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<sup>10</sup>The same Minister had another spat with bureaucracy when he accused it of suppressing the report of Law Commission regarding the appointment of Central Vigilance Commission. See The Statesman 3 September, 1998.

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insight from the civil servants, Sharma (2012) then goes on to identify certain specific provisions that elicited contrary reactions. He has identified four such provisions:

- a. Review and appellate mechanisms in the cases of denial of information;
- b. The nature of sanctions on officials that wilfully deny information;
- c. The nature and extent of exemptions to the law, especially whether internal deliberations of the government should be publicly accessible; and
- d. The definition of a 'public authority', and whether such a law should be applicable to private entities as well.

On the basis of the analysis of the provisions of the Act, Sharma (2012:201-220) suggests that "in the cases where the power of the bureaucracy was being curtailed significantly, viz. the nature of appellate mechanisms, individual sanctions on erring officials, and the exemption of internal deliberations from disclosure, sections of the bureaucracy did indeed offer resistance, but eventually had to capitulate. However, on the one issue which does not appear to affect the bureaucracy directly, that of the inclusion of the private sector within the ambit of the RTI Act, the views of the bureaucracy won the day."

In concluding this section, one could first make a larger point. The political leadership in 2004 was conscious of the many failures of enacting the Act in the past, but was also acutely aware of the demands for information emanating from strong civil society movements and prodding by the Supreme Court. The lobbying by the NCPRI also contained an appeal to government to act decisively and clear the obstacles being put up by the bureaucracy. Such factors tended to strengthen the will of the political leadership to enact the Act and be seen as a progressive government nationally and internationally.<sup>11</sup> Then, it must be recognised that there were divisive voices within the bureaucracy which helped in weakening the resistance. Finally, there is also some merit in the argument that bureaucratic resistance was probably nuanced and not directed at the idea of opening up the government in principle.

### **13. Liberalization and Governance Reforms: Changing Global Discourse**

The dominant narrative seems to locate the trigger of policy change that brought about the Right to Information Act 2005 on local factors. It treats it as a home grown activity with an autonomy of its own. This impression has been strengthened as the narrative goes on to reinforce the role of the local rural movements. Singh (2011:45) emphasizes that "the impetus for operationalizing 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." The reason he gives for this is that the RTI Act of 2005 is widely recognized as among the most powerful transparency laws in the world; he further argues that even The World Bank, which has revamped its disclosure policy, still lags behind the Indian law, at least in coverage and intent.

This theme in the dominant narrative takes us to explore our understanding of indirect and direct influence of the international context and its institutions. In examining the indirect influence, we need to look at the kind of ideas that were emerging in the field of economic and governance reforms that were being undertaken around the world and were being diffused globally. With regard to direct

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<sup>11</sup>This urge to seek international recognition became particularly prominent with the adoption of neo-liberal economic and governance reforms.

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influence, we need to focus attention on the effort of the RTI movement to shape the provisions in the Act in light of other countries' experiences.

Worldwide thinking about the path to be followed for development began to change drastically following the collapse of the welfare state. Thinking about the role of the state began to change and it began to be widely believed that greater role should be given to the market in development. Country after country began to be incorporated in the fold of liberal economic reforms and efforts to create market friendly institutions. India was not left far behind (for international diffusion of liberalization see Simmons, Dobbit and Garret 2006). The core features of this model were the acceptance of the pre-eminent role of the market in the development strategy and the contraction of the role of the state in providing public goods and services.

Good governance was included in this agenda. This inclusion had a very significant implication. It was that the pursuit of good governance became essentially a pursuit of establishing such institutions and processes that would facilitate the functioning of markets. The state began to be seen as a facilitator for business to operate and not an institution to intervene in society. This led to a shift in the perspective of governance. It began to be seen as an activity in which the three actors — the state, the market and civil society participated in policy making and delivering public goods and services.

Apart from this, the strategy of development within the liberal framework was dependent, to a great extent, on the infusion of capital and technology from sources outside the country. India had to become an attractive destination for foreign direct investment and import of latest technology if such a strategy of development was to succeed in the country. Demands for good governance practices began to grow as global corporations began to be considered key partners in efforts to promote development. For, unless India was showcased as having adopted best practices prevalent elsewhere, it could not be seen as an attractive investment destination.

At the time that ideas about creating market friendly institutions were gaining momentum, seeds were being sown for new direction towards administrative reforms and designing such institutions. In 1992 Osborne and Gaebler, drawing from the experience of the American government, forcefully articulated the idea of 'Reinventing Government' — an idea that made a huge impact on policy makers and scholars across the world. This was the time when governments, facing financial crunch, were struggling to find resources to implement welfare programmes and became very receptive to part with some functions of state to the private sector and lessen their own burden. The two authors distinguished between steering and rowing — between policy decisions and service delivery, and argued that "governments that focus on steering actively shape their communities, states and nations. They make more policy decisions. They put more social and economic institutions into motion," (Osborne and Gaebler, 1992:32). In contrast, governments preoccupied with service delivery often abdicate this steering function. The rowing function can be outsourced, contracted out while the governments direct their attention to the steering function which has to be performed in partnership with other actors in society. They strongly advocated that the governments shed their role of monopolizing the functions of steering and rowing and seek partnership with the other actors in society to perform them. This had a strong impact on the practice of public administration and an approach labelled as 'new public management' emerged.

It needs to be emphasized that new public management ushered in some important principles that have a bearing on our discussion. One is that the objective of organizations charged with delivering goods and services is to perform and yield results. The output is important, not the way it is achieved.

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Thus the structure of the organization should be such that can be successful in doing so. The organizational models can vary from semi-autonomous non-departmental bodies, public-private partnerships or contracting out of services, etc. Each of these organizations is responsible for the functions allotted to it and all are accountable to those who are the stake-holders in the enterprise.

In interpreting many of these ideas in the global discourse, international donor agencies had a significant role to play. Even though there were variations in understanding the terms of liberalization and good governance, it was generally agreed that market and civil society needs to play greater role in development and that transparency and accountability were integral components of the good governance agenda. Each donor agency then interpreted the meanings in their own way, without losing the essentials, and shaped their loan conditions.

### **14. Economic Reforms and Changing Governance Discourse in India**

What is significant is that as global discourse was changing towards a market friendly approach to development and highlighting the place of good governance in improving development performance, Indian policy makers, as expressed through the objectives of various Five Year Plans, were expressing similar concerns in their vision of development in India.

In 1991, facing a foreign exchange crisis, India accepted the structural adjustment programme offered by the IMF and went through major economic reform of liberalization and deregulation of the economy. This began to change the perspective on governance too. The Eighth Five Year Plan (1992-1997) asked for a re-examination of the role of the state and that of the public sector. Reflecting global processes, it said "The Eighth Plan is being launched at a time that marks a turning point in both the international and domestic economic environment. All over the world centralized economies are disintegrating. On the other hand economies of several regions are getting integrated under a common philosophy of growth guided by market forces and liberal policies," (Eighth Five Year Plan 1992-1997, Objectives and Orientation para 1.1.6). It pointed out that the role of the state is to provide an environment in which market friendly institutions can grow and sustain themselves. Indeed, the Eighth Plan made a plea for greater role of the voluntary sector as well as the market forces. The Ninth Plan continued to expand on the reform objectives set by the Eighth Plan. It went on to suggest that "Our development strategy must be oriented to enabling our broad based and varied private sector to reach its full potential for raising production, creating jobs and raising income levels in society. A vigorous private sector, operating under the discipline of competition and free markets, will encourage efficient use of scarce resources and ensure rapid growth at least cost. Our policies must therefore create an environment which encourages this outcome," (Ninth Five Year Plan 1997-2002, Objectives para 1.10).

At this time a comprehensive discussion of the challenges to good governance was provided by the National Human Development Report (2002) published by the Planning Commission, Government of India. It emphasised that "human deprivation and inequalities are not merely there for economic reasons; rather they go hand in hand with social and political factors rooted in poor governance,"(2002;115). In an important statement, the report went on to say "To a large extent, the task of development administration would become easier if procedural steps are taken to make available information, as a matter of right, to the citizens. In this context, there is a strong case for a replacement of the Official Secrets Act by the Right to Information Act," (2002; 129). In laying down what it called 'India's Governance – Recent Score Card', it assessed the concerns and challenges in three broad categories. These consisted of Economic Governance, Political Governance and Civil

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Governance (see Appendix 1). The Report pointed out that a useful approach to analyse the issue of governance, whether it is restricted to economic, political or civic governance or looks at the system in its entirety, is to view the process of intermediation as involving a continuous interplay of three elements, each representing a specific set of deliberate arrangements.

The Tenth Five Year Plan, 2002-2007, adopted the framework on governance developed by the Planning Commission in its National Human Development Report cited above. It recommended that with the acceptance of market liberalism and globalization, the state will yield to market and civil society in many areas where it, so far, had direct but distortionary and inefficient presence. The Tenth Plan framed its strategies on the basis of this background. What is significant is its emphasis on “the universally accepted features of good governance are the exercise of legitimate political power; and formulation and implementation of policies and programmes that are equitable, transparent, non-discriminatory, socially sensitive, participatory, and above all accountable to the people at large,” (Tenth Five Year Plan 2007-2012:177). This idea of and specific mention of accountability is carried forward by the Eleventh Five Year Plan (2007-2012). In its first chapter entitled Vision and Strategy it mentions that the vision for the Eleventh Plan must include “an improvement in governance. Over the years, the governments at the Centre and the States have launched a large number of initiatives at substantial public expense to achieve the objectives of growth with poverty alleviation and inclusiveness. Experience suggests that many of these initiatives have floundered because of poor design, insufficient accountability and also corruption at various levels,” (Eleventh Five Year Plan 2007-2012:5).

Thus, with the adoption of policies of liberalization, India also began to focus on issues of good governance. In 1992 itself the plea to change the role of state and its orientation began to be made. As each Plan document began to unfold its ideas on good governance, transparency and accountability began to emerge as the key issues for improved implementation of government programmes. One could possibly surmise that when the Right to Information Act 2005 was being mooted, there was already some of kind of receptivity of such an idea among the policy makers. The Human Development Report published by the Planning Commission in 2002 was making a strong plea for its enactment a good three years before the Right to Information entered the statutes in 2005. But this was also the year when the Freedom of Information Act 2002 was enacted but never came on the statute book for it was not notified.

### **15. Indian Initiatives to learn from International Experience**

One needs to emphasize that liberalization processes contributed significantly to Indian policy makers opening up to ideas and experiences of governance in other countries, particularly the developed ones. Sharma (2012:281) quotes Pranab Mukherjee intervening in a debate on Freedom of Information Act in 2000 by referring to a globalised world and the need of transparency in entering into international contracts. India was aspiring to be a regional power and consciousness of governance practices in other countries was growing. This was also because India was striving for high rates of economic growth and setting its eyes on all the accoutrements of a Western developed state. In this aspiration bench-marking governance also became significant. Adoption of information and communications technology (ICT) for governance was seen as critical to this ambition. Transparency in government dealings became an outcome of such an approach and began to be considered willingly.

Major policy changes were occurring because of influences emanating from thought and experience of other countries. The ideas were being diffused not only through processes of globalization but

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through aid or loan giving agencies which were incorporating some of these ideas in their initiatives. Thus it must be recognised that at the time the demand for the right to information was gaining public attention in India, there were a growing number of countries adopting some principles of open government and drafting legislations. While this knowledge was in public domain, more direct efforts were made by the government to learn from this international experience by soliciting information on the provisions of the legislations through seminars, discussions and visits of study teams abroad.

This interest was evident when the government sent a team of officers abroad to learn from international experience before formulating the Bill on Freedom of Information Act 2002. When the Bill was being considered in a Parliamentary Committee, government requested several of the embassies located in Delhi to send copies of their legislations. It was on the basis of this information that a comparative statement was prepared (Sharma 2012:253-54). The interest in international experiences continued with civil society organizations invoking best practices from abroad in the formulation of the RTI Act 2005. A number of international agencies and foundations joined in to commission papers, sponsor seminars or support travel abroad of key individuals to expand the perspective on the practices of other countries or provide intellectual back-up for the argument of open government (For details see Sharma, 2012). The letter that Mrs. Sonia Gandhi sent to the Prime Minister recommending the passage of the Right to Information Act was based on a draft of the bill prepared by the members of NCPRI. Baviskar (2007) suggests that this draft was then circulated around the world through Shekhar Singh's connections with the International Task Force on Transparency, initiated by Stiglitz as a part of the International Policy Dialogue, in order to get feedback.

Looking to international experiences for framing domestic policies has been a well-established practice in India. Even the framing of the Constitution was open to practices elsewhere. It does appear that whenever there is a major effort at new policy formation, such a practice is invoked. During the 1950s and 1960s the framing of the Second and Third Five Year Plans bear testimony to the international expert advice that was solicited by the Planning Commission and came through the funding from the Ford Foundation (see Rosen, 1985). The strategy that ushered in the Green Revolution in agriculture also bears a similar imprint. In the last two decades the role of international foundations and agencies supporting research and improved developmental practice has increased in India. A number of think tanks in India receive international support, thus making it easier to learn from international practice. Therefore, it is no surprise that the policy community in this case too included people and institutions from outside. What comes as a surprise then is the celebration of the RTI movement as a completely home grown movement without reference to international influence. In fact, Mendel (2010:341) celebrates the fact that "experience with the right to information in India reflects a unique combination of successful integration of approaches of other countries and a creative ability to build on and adapt these to fit with wider Indian experience."

### **16. Some Concluding Comments**

The campaign for Right to Information in India has been an unusual one. Unlike many other countries it proclaims its genesis in a social movement that was struggling for the right to get wages in rural schemes as promised by the government. It was a struggle to fight corruption and make the functionaries accountable. As it gathered momentum, it transformed itself into a struggle for the right to livelihood and was taken up by influential urban activists who formed a group that could take this campaign forward. The core members of the group consisted of eminent lawyers, civil servants, media

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personalities and social activists who had links with policy makers in one form or another. It is this campaign carried out at two levels over about a decade and half that led to the passage of the Right to Information Act in 2005.

The purpose of the paper was to broaden this dominant narrative and not to dispute it. A survey of literature on policy change yielded insights on how a stable status quo regime gets weakened and leads to adoption of a new policy. This led us to characterize the introduction of the right to information as a radical policy departure from the Official Secrets Act 1923 (which has not yet been repealed) and not an incremental one. We also highlighted the way domestic politics played out with changing government as the RTI movement was gaining momentum. The mobilization of the commitment of top political leadership has been an important part of the struggle and appears critical in the passage of the Act. However, the role of the bureaucracy is a puzzle. We have found it a divided house with some bureaucrats becoming instrumental in the passage of the Act. The Five Year Plan documents from 1992 onwards endorsed the idea of transparency and accountability in governance to improve development performance. This also showed that the policy perspectives were changing as the demand for information gained momentum. From the evidence we presented, the RTI movement and the Act itself was not a purely home-grown affair but embedded in an international context of changing views on role of state and governance. The actors in the movement and the government actively sought to learn from experiences of several Western countries already armed with this provision.

Yet, as Florini (2007:3) points out, citizens seeking information - and governments wanting to open up — find themselves up against powerful forces: entrenched habits, protection of privilege, and fear of how newly released information might be used or misused. There is another challenge that emanates from the context of liberalization of economies and the precepts of good governance as expressed in the framework of new public management (NPM). In espousing the cause of market friendly development, there is going to be increasing private investment in the delivery of public goods and services. It is possible, therefore, that in seeking open government, institutions that have heavy private investment could not be considered public authorities and could be kept out of its purview even though they were delivering public goods and services. Thus as more and more countries adopt principles of NPM, freedom of information laws face a challenge as the private sector is kept out of their ambit. The RTI Act continues to face this challenge in India where it is not yet decided whether the institutions under discussion are public authorities or not for purposes of the RTI Act 2005. There is a fear that less the government and more the private sector, more the secrecy. In a way NPM is a challenge to democratic accountability (see Roberts, 2012).

In a similar vein, Mendel (2010:340) is of the opinion that the adoption of progressive right to information is often a struggle, but it is only a first step. The fact that such legislation seeks to alter the balance of power in favour of citizens and away from officials often leads to bureaucratic resistance which is sometimes of a serious nature. Within a year after the passage of the 2005 Act, efforts at changing some provisions began to be made.<sup>12</sup> This raises questions of sustainability of such a policy change and sustainability of a transparency regime. Mendel (2010:343) emphasizes the need

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<sup>12</sup>Addressing a convention of Information Commissioners in 2012, the Prime Minister called for maintaining a fine balance between the right to information and the right to privacy which stems out of the Fundamental Right to life and liberty. He was also concerned about frivolous and vexatious use of the RTI Act in demanding information that may not serve any useful public purpose. He also raised the issue of including Public-Private Partnerships within the purview of the Act for such disclosure may discourage private investment (see The Hindu, October 12, 2012).

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to change the culture of secrecy, which embraces not only administration but political leadership in general. Efficient and broad proactive disclosure systems should be put in place voluntarily without political considerations. It is too early to say that the 2005 Act has done that and what we need to realize is that continuous vigil by civil society groups has to be maintained to sustain a transparency regime.

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## 5.

# Evolution of the RTI Regime in Nepal: Broadening the Dominant Narrative<sup>1</sup>

Binod Bhattarai

### 1. Dominant narrative

Nepal was among the first countries in the world to include the Right to Information (RTI) as a Fundamental Right in its 1990 constitution. At the time only around 13 countries in the world had laws guaranteeing their citizens the right to seek information held by public authorities, and no inter-governmental agency had recognized this right (Mendel 2008:3). RTI literature in Nepal describes the law as being both “revolutionary” and a “landmark” but little is known about the process leading to the inclusion of the provision in the statute, or the motivations of those who drafted the constitution, leading to its inclusion. The discourse leading to the enactment of the law has also largely remained in parliamentary records.

Generally, there is little or no literature (including media reports) on the genesis of the RTI in Nepal. What does exist suggests that there was some understanding that it was about free expression, and among journalists and media it was understood to be a tool that could help assist them in doing their jobs with greater ease. Similarly, there was very little or no media coverage on RTI during the making of the 1990 constitution. At the time there were only two broadsheet newspapers; both were under government control and both mainly reported routine events, and rarely discussed political or governance issues. There were no op-ed articles in these newspapers while the constitution was being drafted.<sup>2</sup> Private newspapers, meantime, were largely preoccupied with the political transition, and even if they had reported on RTI, no records were publicly available.

There was scattered coverage of RTI and the need for legislation after the constitution was promulgated. The few write ups of the period that could be obtained suggest that the dominant thinking was that it would make journalism easier and because the journalist would be better informed they would inform the public and thereby fulfil their right to information. This is the conclusion that can be drawn from the few articles that were available, particularly those written by journalists.

The journalist community became more visible as advocates of RTI after it was included as a Fundamental Right in the Constitution. However, this visibility also overshadowed the substantial advocacy that was taking place in the courts, where lawyers were using the constitutional provision in litigation. Journalists (and media) advocacy for an RTI law picked up after the mid-1990s and the

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<sup>1</sup> I am indebted to Tara Nath Dahal who opened up his collection on RTI activism and advocacy for this research, and Vinaya Kumar Kasaju who even shared his diaries, in addition to being available for numerous interviews. I also thank Raghuji Pant, who dug up his own collection on RTI legislation, and Ram Krishna Timalsena for sharing his books and papers on RTI with me. Similarly, I thank all individuals who have been interviewed in this paper for agreeing to see me and talk about RTI and its evolution in Nepal. A special thank you is due to Meera Rajbhandari Amatya who helped me scour the libraries to dig up information on RTI in Nepal.

<sup>2</sup> The author had attempted to find articles on RTI in the archives of the newspapers but found none between April and September 1990.

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Federation of Nepali Journalists (FNJ) remained one the most vocal advocates for legislation until it was enacted in 2007. The involvement of journalists, particularly the FNJ, is evidenced by the several early drafts of the bill that were produced at their initiative.

An undated paper by Suresh Acharya on the RTI and the “proposed bill” refers to a draft in Parliament and explains that the meeting he was addressing was being organized to draw attention to the draft law.<sup>3</sup> At the time the FNJ, Nepal Press Institute, Press Council Nepal and the Nepal Bar Association had drafted and submitted a draft bill to the government. And Acharya’s paper called on the government to take the draft to Parliament. Such advocacy by the FNJ influenced the dominant narrative that the RTI Act was a law that would ease information access for media and therefore was of interest to journalists and media. This has thus remained the general public’s understanding of the law – that it is a law primarily for use by journalists.

In short, though there was pressure from both lawyers and journalists, it is not clear whether that was by itself enough to explain why the RTI Act was included in the statute when it was, given that it was still evolving globally. Therefore, the following two assumptions have been postulated to provide a contextual foundation to understanding the evolution of the information regime in Nepal.

Nepal changed from an absolute monarchy to a multiparty democracy, with the King’s role reduced to a constitutional head, in 1990. Protests that culminated in April 1990 brought an end to three decades of direct royal rule where freedom of expression and speech – both in law and practice – were limited. The successful political movement that brought multiparty democracy to Nepal began in late 1989, in the wake of the waves of democratization in Eastern Europe, and the collapse of the Berlin Wall. It was a period where openness and citizen rights had become trendy.

It was no different in Nepal, a country that had just dislodged the old order of an absolute monarchy. The political agreement was to have the King as a constitutional head of state, and a prime minister elected by Parliament as the head of government. The King had formed a caretaker government of the political parties to oversee the transition, including the drafting of the constitution. The royal household was still a power center as it was the King – also the commander in chief of the army – who would promulgate the new constitution (instead of an elected Constituent Assembly). This delicate political balance of the day possibly provides one explanation as to why RTI was included in the statute: One could speculate that it was the desire of the political parties whose representatives were involved in drafting the constitution to untie every knot possible to ensure a permanent end to the information vacuum they had endured in 30 years of direct royal rule.

Another explanation why RTI found a place in the constitution could be that the people involved in drafting the statute understood the value of having a free press in a democracy. This may have convinced them that anything that helped make information more accessible was good.

There was also a political benefit that could be derived from such a transparency provision in the Constitution. It could be a strong symbol of the changes that had taken place in the political arena. Possibly, the drafters of the statute were aware that substantive changes from a democracy would

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<sup>3</sup> Suresh Acharya, President FNJ. (Undated). *Suchanako Haq ra prastabit bidhyek ko masauda (Chalpathaka lagi adhar patra)* (Right to Information and the proposed draft bill – approach paper for discussion). The main features of the FNJ draft he was referring to were that public institutions would include all legally registered organizations; the law was not only for media use but the right ‘had to be provided to all citizens’ (which was constitutionally guaranteed, by the way); and it also sought punishment for errant information officers. In the paper, Acharya goes on to say, an RTI law was needed to ‘manage’ the right guaranteed by the constitution and to make journalism a ‘professional and prestigious profession’.

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take time to materialize. Therefore, unshackling information would be particularly important for people who had always been forced to live with “fear after speech” in a period of history that was marked by arrests and detention of journalists and people who expressed themselves, particularly in terms of opinions against the political system and the leadership of the day.

One of the earliest references to RTI came in the form of a recommendation of the Press Council Nepal. The Council had organized a function to recommend media policies and laws to the government. It had given to government drafts of the press and publications bill and regulations, and additional recommendations. One such recommendation was that “the rights (sic) to information should be guaranteed...”<sup>4</sup>

The right to seek information from government also marked a major departure from the culture of secrecy in government during 1962–1990 when Nepal functioned in what can be called a guided democracy, where political parties were banned, non-party elections were held and the King remained at the helm of all state affairs – despite the presence of a Parliament of representatives elected on the basis of universal franchise. The changes in the arena of free expression and information were therefore likely to have an immediate effect on the public mindset, while the more tangible transformation in livelihoods and social welfare could have taken much longer to materialize.<sup>5</sup>

In this context it is interesting to note an article that appeared in *The Rising Nepal*, one of two broadsheet newspapers in the country at the time. The article provided an insight into the general understanding of RTI at the time, when it was considered to be something that would help journalists to obtain information. The article said,

“When an official was unwilling to talk to me recently on a certain matter, I reminded him of the people’s right to information provided by the Constitution. I told him that he was trying to deny, by not meeting me what was constitutionally guaranteed. He agreed to see me, though reluctantly, and to speak.”<sup>6</sup>

The article appeared about six months after the Constitution had been promulgated. It discussed press freedoms in a democracy – the RTI was mentioned only in the first paragraph – and ended with a call for strict enforcement of provisions in the constitution, relating to the media and the press, for enabling it to contribute to democracy. The understanding that RTI was something that was of greater concern to journalists and media remained an underlying strand in the discourse leading to the enactment of the law. This (perhaps inadequate) understanding of the RTI law also explains why much of the advocacy for legislation was led mainly by media-related organizations.

Not just journalists but also some lawyers seemed inclined to understand RTI as something related to media. In an undated paper Harihar Dahal advocated having a provision in the constitution combining the freedom of expression, freedom of printing presses and publication and the right to information as a “right to freedom of communication”.<sup>7</sup> But there were also voices advocating RTI as a right for all citizens, and not just the media. One among them was Raghuji Pant, a journalist turned politician, who

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<sup>4</sup> *The Rising Nepal* (newspaper), 18 July 1990. The headline of the news story read, ‘Govt. Committed to Provide Full Freedom of Press’

<sup>5</sup> The reason to resort to these explanations is the lack of data, information and narratives on the formative period of the RTI regime in Nepal. The assumptions have been put together based on conversations with individuals associated with the RTI movement or those who were in some ways related to the discourse.

<sup>6</sup> Gopal Sharma. ‘The Role of the Press in Consolidating Democracy’. *The Rising Nepal*, 13 March 1991. Page 4.

<sup>7</sup> Harihar Dahal (undated). The paper says that the law for RTI and privacy were not prepared even 12 years after the 1990 statute took effect. Therefore, the paper could have been written sometime in 2002.

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in an untitled paper argues that RTI is a principle not just related to the press but also a right of the people to obtain information.<sup>8</sup> However, both Dahal and Panta, in contextualizing their arguments, discuss the restrictions that were there on the press and media before 1990, which again leads to the earlier described understanding of the RTI law as being a means to end controls on information and ensure free expression.

This paper attempts to broaden the dominant narrative summarized above by bringing together scattered information that could explain the evolution of the RTI law in Nepal. The article is based on literature reviews and interviews with key informants. The reviews included several undated seminar papers on RTI, and where possible every attempt was made to try to trace when the paper could have been discussed based on other references in the paper. This attempt to trace the narrative of almost 20 years in a country that does not have a culture of research and documentation was not easy. This is why there is anecdotal information that has not been triangulated with other evidences.

This paper has eight sections. Following the discussion on the dominant narrative on the evolution of RTI in Nepal, it reviews the history of how it was included as a Fundamental Right in the Constitution of the Kingdom of Nepal in 1990. It then looks into advocacy and activism for a law among journalists, the political context and the parliamentary debates. A section of the paper analyses the different litigations and verdicts of the Supreme Court and how lawyers and the bench were working towards expanding the information regime in Nepal. Another section also looks at the early efforts of the government to become more transparent, which could also have possibly contributed towards agreement by all for having an RTI law in Nepal.

### **2. Genesis of RTI in Nepal**

RTI was included as a Fundamental Right (Article 16) in the 1990 constitution. Prior to this there was a legal provision for seeking information but its use remained restricted to a court of law. As Madhav Kumar Basnet (2065)<sup>9</sup> (2008/09) argues, the first legal provision that allowed Nepalis to seek information was the Supreme Court Regulations 2013 (1956/57) that gave the right to seek and obtain copies of litigations,<sup>10</sup> and its use was limited to the courts. Similarly, Tanka Aryal (2013) also writes about the Country Code 2020 provision using which concerned parties could obtain copies of official documents.<sup>11</sup> According to Sher Bahadur Dhungana:

“Clause 211 under the heading Court Procedures in the Muluki Ain (Country Code) 2020 states that ‘the copy of documents at the office/court where the case is heard should be given to any concerned asking for it. Similarly, Column 17 under the heading ‘Paper Check’ of the (Country Code) reads as follows: Anyone concerned can take the copy of the government papers with the office/court.”<sup>12</sup>

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<sup>8</sup> Raghuji Pant. (Undated) *Suchanako Haq: Baak tatha prakshan swatantratama sambaidhanik pratyabhuti*. The paper mentions that it had been 10 years since the 1990 constitutional guarantee was put in place, and that Nepal did not still have an RTI law. So it could have been written sometime in 2000.

<sup>9</sup> This is the Nepali Vikram Sambat or YEAS. It is 57 years ahead of the Gregorian calendar

<sup>10</sup> Basnet also writes that if it is to be understood that RTI is a right that encompasses the rights to freedom of speech and publications, then this was there in Nepal’s first constitution (*Nepal Sarkar ko Baidhanik Kanoon, 2004*). See: Madhav Kumar Basnet, 2065. (2008) *Suchanako haq ra yessambandhi Nepali Kanoon: choto tippani* (Right to Information and Nepali Law: A Short Note) Media Addhyan-3, Martin Chautari, Kathmandu. Pages 157-205.

<sup>11</sup> Tanka Aryal (2013), “Assessing the legal regime for implementing the Right to Information in Nepal”, in Freedom Forum (2013), *Towards Open Government in Nepal*. Page 172.

<sup>12</sup> Sher Bahadur Dhungana. (2013). ‘Experiences and challenges of information in the implementation of the Right to Information.’ In Freedom Forum (2013), *Towards Open Government in Nepal*. Page 108.

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From the records available it can be concluded that RTI was included in the 1990 statute only after substantial discussion among the members of the Constitution Recommendation Commission (CRC). The first debate centered on whether RTI should be included as a Fundamental Right or a Directive Principle. This was discussed in the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> meetings of the CRC.<sup>13</sup> B.N. Upadhyay, Chief Justice of the Supreme Court, had chaired the Commission that had eight others as members. The eight were mainly lawyers affiliated with different political parties, and some without party affiliations.<sup>14</sup> The opinions of four including the chair of the Commission favored having RTI as a Directive Principle: their argument was that it would be difficult to implement the provision if it were a right and wanted only implementable rights included under Fundamental Rights. Five others who advocated for its inclusion as a right were Madhav Kumar Nepal, Nirmal Lama, Bharat Mohan Adhikari, Laxman Aryal and Daman Nath Dhungana.<sup>15</sup> They argued that the right could be implemented after making a law. The RTI provision was eventually included as a Fundamental Right on the strength of the majority.<sup>16</sup>

Records of the constitution-drafting discussions do suggest that there was a strong desire among members to ensure that information was easily available. An expert on RTI and a former Registrar at the Supreme Court Ram K. Timalnsena has reproduced excerpts of the deliberations of the CRC where in one instance Aryal says that the government should publish information *suo motu*, and also suggests that RTI was related “to the means of mass communication”, suggesting that the understanding was that RTI would make it easy for media to obtain and disseminate information.<sup>17</sup> He added, “Except for matters related to national security, the government must not control information required for an open society... In reality, we have not (yet) known about the deaths of men and women who were killed at the time of the People’s Movement. After obtaining the information on such deaths, the government did not disseminate the same to the public.”<sup>18</sup> This argument clearly suggests the belief that had RTI been in place the information would have found its way into the public domain.

One member who favored openness was Madhav Kumar Nepal, a leader of the Communist Party of Nepal (Unified Marxist Leninist). According to Timalnsena, Nepal had argued that the government needed to clarify incidents taking place in the country, and that the people needed to know what the government was doing. He had also suggested that the government should be penalized for deliberate failure to provide information.

Before the commission reached a decision Daman Dhungana – a lawyer nominated to the Commission by the Nepali Congress Party – had suggested that international provisions on RTI be reviewed. This task was entrusted to Ramananda Prasad Singh, another member. Following the review, Singh proposed the first draft of the provisional text that said, “subject to provisions requiring non-disclosure relating to positional and official secrets and security, all citizens shall have the right ask

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<sup>13</sup> Ibid. Page 179.

<sup>14</sup> Dr. Ram K. Timalnsena. Right to Information: Philosophy, Law and Practice. Kathmandu. Page 147. (The CRC members were Pradhyumna Raj Bhandari, Ramananda Prasad Singh, Laxman Aryal, Mukunda Regmi, Daman Dhungana, Nirmal Lama, Bharat Mohan Adhikari and Madhav Kumar Nepal).

<sup>15</sup> Madhav Kumar Basnet, 2065 (2008). *Suchanako haq ra yessambandhi Nepali Kanoon: choto tippani*. Media Addhyan-3, Martin Chautari, Kathmandu. Page 179.

<sup>16</sup> Basnet. M.K cites Regmi 2061:388, Page 179.

<sup>17</sup> Vinaya Kasajoo (2013) says that RTI was included in the constitution at the initiative of Aryal. This, however, could not be verified independently even though the deliberations of the CRC do suggest that Aryal was an advocate for the right and was also the person who drafted Article 16. (Draft ESP Policy Brief on the Right to Information, November 2013. Unpublished.)

<sup>18</sup> Timalnsena. 2003. Page 149.

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and receive, and be adequately informed.”<sup>19</sup> This draft was acceptable to the Chair but not to five members following which Laxman Aryal was asked to draft a version representing the position of the five. The draft by Aryal, as explained by the Chair, was of the type where “(if) I need information, I need certain copies, I can ask for it and the state has to provide it.” He said he favored the draft prepared by Singh.

Of interest in the discussion is what the Chair had to say as part of his argument, and that also provides some insight into the understanding of the RTI at the time. “At present, the journalists ask (for information), at first the government says it does not have it, then (the journalists petition the court...)”<sup>20</sup> The excerpt, again, suggests that the thinking about RTI at the time was related to journalists accessing information, and not a right that all citizens could use. In another instance, the Chair had asked, “if there are gunshots at a certain place and the government does not give the information, then what will be our (meaning court) resolution? ... We have to go to court? By that time four-five months would have elapsed.”<sup>21</sup> This statement alludes to timeliness of information, which is important in journalism. Yet another excerpt of the comments, made by the Chair during the deliberations, suggests that his understanding of the right was something that was applicable only to journalists. Here’s what he had to say:

“If it is called Fundamental Right, we (courts) have to be able to enforce it. If we say it is a right to seek and obtain information from government information media, if the government does not provide all information, (the right) will be meaningful only if we can enforce the right...

“The right will not be meaningful if we are to enforce the right in six months or a year. If news one year old is put on radio and television today, how meaningful will it be; I feel there is no need for us to retain what other countries have as a trial...” (Madhav Kumar Basnet, 2065, Page 205.)

Aryal had been asked to draft the position of the five members favoring RTI as a Fundamental Right at the 15<sup>th</sup> meeting (Regmi M, 2061:388). It was the 16<sup>th</sup> meeting where there was a discussion on whether it should be a Fundamental Right or a Directive Principle (Regmi M, 2061: 389). The final draft on the Fundamental Rights was approved at the 47<sup>th</sup> meeting of the Commission.<sup>22</sup>

The understanding of RTI at the time – recognized by the Chair as a “fourth generation right” – was that it was of greater concern to media and journalists. But a review of RTI petitions made at the National Information Commission (NIC) after 2008 suggests that journalists have not been among those who have found it necessary to use the RTI to seek information. Instead, other groups such as members of the general public, students, government officials and businessmen have put it to greater use.<sup>23</sup> Between 2008 and 2012 there were 411 information denial petitions that reached the National Information Commission (NIC). Of these 27 requests were made by journalists.

Apart from what went on inside the chambers where the constitution was drafted, there is yet another anecdote as to how RTI was included in the 1990 constitution. As the story goes, some of the drafters

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<sup>19</sup> Madhav Kumar Basnet, 2065 (2008). *Suchanako haq ra yessambandhi Nepali Kanoon: choto tippani. Media Adhyan-3*, Martin Chautari. Kathmandu. Page 204. (Translated by author.)

<sup>20</sup> Ibid. 2065 (2008). Page 202. (Translated by author.)

<sup>21</sup> Ibid. Page 202. (Translated by author.)

<sup>22</sup> Mukunda Regmi, 2061. *Sambaidhanik Bikas ra Nepal Adhirajya ko Sambidhan 2047*. Part 2 (No publisher listed). Pages 1375-76, 1506.

<sup>23</sup> Freedom Forum. 2013. ‘Empowering Citizens through Right to Information: Success Stories from Nepal’, Page 2. The information is based on applications made to the NIC between 2008-2012.

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of the constitution, Laxman Aryal and Bharat Mohan Adhikari, had travelled to the United States to study the constitutional systems. And Daman Nath Dhungana had gone to the United Kingdom.<sup>24</sup> The three could have read or learnt about RTI during their visits and that may have also influenced their positions in the constitution-drafting discussions. In the case of Aryal the study tour is said to have taken him to different universities in the United States to participate in discussions on constitution making. (At the time US universities were discussing constitutions of the newly democratizing Eastern European countries). In the US he is said to have attended different conferences on Freedom of Information (FOI) laws. If this is true, one could argue that this exposure to contemporary thinking on FOI in the emerging democracies may have influenced his advocacy for inclusion of RTI by the proponents as a fundamental right.

As the deliberations of the CRC above suggests, the outcome was not an easy “I propose – we accept” decision. These differences of opinions were also fairly predictable: those representing different political parties in the negotiations seemed more on the side of having RTI as a Fundamental Right compared to members without clear affiliations.<sup>25</sup> This gives credence to the assumption that the desire to unshackle controls on information that existed before 1990 was a primary motivation leading to the inclusion of RTI as a fundamental right.

### **3. Journalists and RTI activism**

Journalists and media development organizations remained at the forefront of activism for an RTI Act in Nepal. Having experienced information controls first hand before 1990, for this group democracy provided the opportunity to unshackle the hold of public officials over information. Those were the times when, according to Dahal (undated), public officials were under no obligation whatsoever to provide information that was not published by the public agency. This was legal under the *Kagaz Jaanch Mahal* (clause for inspecting documents) under the Muluki Ain (Country Code) 2020 section 17 (sub-clauses 6 and 7). Such documents could be obtained only with the approval of the head of office; the said officials were also not obligated to provide copies of documents classified as “secret”.<sup>26</sup> A former chief justice Keshav Prasad Upadhyaya has elaborated the restrictions under Gopaniyata Sambandhi Ain 2039 (Secrecy Act 2039), where he says sections 5,6 and 7 prevent anyone other than the concerned party to examine documents held by the government.<sup>27</sup>

There had also been numerous instances before 1990 when journalists were jailed for publishing information that the rulers of the day did not want to see in print.

The early advocates in the media community were introduced to FOI in the 1990s when several teams from the FNJ had visited Sweden as part of an exchange program organized by a Swedish<sup>28</sup> university where they had opportunities to attend seminars on free expression and free information.<sup>29</sup> Vinaya Kasaju, who in 2008 was appointed as the first head of the National Information Commission (NIC),

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<sup>24</sup> Ramjee Parajulee. 2003. *Democratic Transition in Nepal*, Rowman & Littlefield Publishers Inc.

<sup>25</sup> Timalseña (2003) explains the backgrounds of the different members.

<sup>26</sup> Harihar Dahal (undated).

<sup>27</sup> Keshav Prasad Upadhyaya, 25 September 1998. (unpublished paper)

<sup>28</sup> Sweden has had a FOI law since 1766 .

<sup>29</sup> Kasaju was on the second trip that included 12 journalists of which six were based in the districts. The three-week visit lasted from 1 October 1994 to 1 November 1994. Source: Personal diary of Vinaya K. Kasaju

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had brought back literature on FOI and had written about the need for a similar law in Nepal in different newspapers.<sup>30</sup>

Raghuji Pant, a member of the Communist Party of Nepal (Unified Marxists-Leninists), then journalist and general secretary at FNJ, had also traveled to Sweden. After the 1994 election, Pant was appointed press advisor to Prime Minister Man Mohan Adhikari. After some months in office he had telephoned Kasaju – who lived and worked out of Palpa in Western Nepal at the time – to consider moving to Kathmandu for drafting an RTI bill.<sup>31</sup> However, the minority CPN-UML government did not last long and with that ended what could have been one of the first efforts by journalists to draft a bill.

The first draft of the RTI Bill had appeared in the pigeonholes of the Members of Parliament in 2049<sup>32</sup> (1993) but it never reached the floor of the house as it was deemed to be restrictive rather than designed to provide information. The restrictive clauses allowed almost “every bit of information to be withheld without violating the provision of the bill”.<sup>33</sup> Among others, the bill made the minister the final arbitrator for government documents and the board of directors of public bodies for information related to them. A team led by the FNJ drafted another bill (the second bill) and the draft was handed over to the government.<sup>34</sup> This ‘Public Information Bill 2002’ then went through two government ministries (Communication and Law and Parliamentary Affairs) before it eventually reached Parliament.<sup>35</sup> However, the bill was not discussed because Parliament was dissolved in May 2002.

Timalsena (2003: 292) has listed a number of shortcomings in the bill drafted by the FNJ, starting with the name “Public Information”. He said the bill had class based and not content based exemptions, it did not have a provision for an agency such as the NIC, did not name the court for appeals, and also had a sweeping provision stating that documents that the law requires to be kept secret should not be disclosed.

While the FNJ had begun advocating for the law in the mid-1990s there was little or no continuity to its articulations largely for lack of institutional capacity for continuous follow-up and lobbying for legislation. But because RTI was an integral part of speeches of the FNJ leadership of the time (which was covered fairly widely by media), it did contribute towards the public’s understanding of the law as one that was for journalists (and not the people at large).<sup>36</sup>

### **4. The political context and the drafting of a RTI bill**

In October 2002 King Gyanendra sacked the prime minister for failing to hold an election and appointed a new government. This ended the possibility of the bill being discussed by Parliament as

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<sup>30</sup> Some of Kasaju’s articles were *Sarbjanik jivan ma gopaniyata* (Privacy in public life). *Shree Sagarmatha Dainik*. 24 July 1996. *Bureaucracy, prajatantra ra pardarshita* (Bureaucracy, democracy and transparency). *Shree Sagarmatha Dainik*. 22 September 1996. *Kina Kunthithit cha parajatantra ma su-suchit hune hak*. (Why is the right to be informed being curtailed in a democracy?) *Kantipur*. 2 May 1997. *Abibhekti swatantrara ra gopaniyata ko haq*. (Rights to expression and privacy), *Gorkhapatra*. 22 August 1997.

<sup>31</sup> Personal communication: Kasaju. Jan 2013.

<sup>32</sup> This is the Nepali Vikram Sambat or YEAR. It is 57 years ahead of the Gregorian calendar.

<sup>33</sup> Nirala. Page 228.

<sup>34</sup> Those involved in drafting the bill were Gokul Pokhrel, Suresh Acharya, Tara Nath Dahal, Bhesha Raj Sharma and Yub Raj Pandey. R.K. Nirala was on the team as an expert.

<sup>35</sup> Tara Nath Dahal and Chiranjibi Kafle say the FNJ had begun the process of drafting the 2002 bill in 1997. In *Freedom Forum*. 2013. ‘Towards Open Government in Nepal: Experiences with the Right to Information’, Page 4.

<sup>36</sup> Activities of FNJ leaders have generally been widely covered by media, and when they mentioned RTI it was likely to be carried by the media. That said, the scope of this study did not allow a thorough content study to arrive at a definite conclusion.

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the FNJ had hoped. The new government then sent the draft to the Nepal Law Commission for a review. Thereafter the bill was lost in the escalating conflict and resulting political instability.<sup>37</sup>

The legislative process on RTI began again after the restoration of Parliament in April 2006. Freedom Forum, a group that was advocating for the bill, had sent a letter to the prime minister, speaker of parliament and the information minister requesting them to make the law. The bill was scheduled for discussion in Parliament but was withdrawn as “it failed to incorporate important features and principles of RTI”. Thereafter a task force was formed to review the existing draft.<sup>38</sup> Bhoj Raj Ghimire was the Chief Secretary at the time, and was among the strongest advocates of RTI. According to Tara Nath Dahal, “it was his interest in the law that made it possible to have one because there still was major opposition in the bureaucracy.”<sup>39</sup> Dahal remembered one instance when the task force for drafting the bill had held a meeting with government secretaries. “Out of about 19–20 of the secretaries attending only three spoke in favor of the bill, others said it was not time for such an act, or put forth some other reason,” said Tara Nath Dahal. “It was the Chief Secretary who had intervened at the meeting and chided his colleagues saying their outlook was anti-democratic and not in line with the system the country was working to build.”

However, the bureaucracy of the day was also not in a position to openly oppose the law. This was because of the political changes that had brought the political parties back to power. It was unpopular to talk about control after what had happened under the direct rule of the King where, among other things, politicians had been put under house arrest or jailed and the media had been silenced. In fact, Ghimire, the chief secretary after 2006, had himself been shunted to the reserve pool at the Ministry of General Administration during the King’s rule and someone else had been made the chief secretary. No wonder the chief bureaucrat stood on the side of openness.

The committee that drafted the bill had also held meetings with heads of security agencies and had asked for written suggestions on six areas related to the bill. The questions related to

- Types of agencies to be included under the definition of “public bodies”
- Types of information that could be withheld in the “public interest”
- The process for requesting and obtaining information
- Sanctions against agencies and individuals who refuse to provide information
- The institutional arrangement for operationalizing the RTI, and
- Other suggestions.

The task force received 22 institutional responses and one response from an individual, Lal Deusa Rai, a journalism educator. The response from the Nepal Army asked the task force to have a clear definition of public bodies and public interest. It also suggested that the information seeker would need to have a “reasonable” reason for requesting information, in addition to making the obvious recommendations about information concerning national security and sovereignty. It also responded to other queries, and on sanctions it recommended action by superiors before seeking legal redress. This was a contrast to what can be found in at least one paper that accuses the army of not being “very supportive” of RTI legislation, and the argument for this was “because they did not show interest

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<sup>37</sup> The conflict in Nepal intensified between 2001 and 2006 when it came to an end.

<sup>38</sup> Sustainable Mountain Development. Vol. 52. Spring 2007. Page 35.

<sup>39</sup> Interview with author, 16 May 2014, and various dates.

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to disclose information during the conflict.” The same paper also says that the army has not opposed RTI legislation efforts formally.<sup>40</sup>

The written comments were fairly straight forward, but according to Tara Nath Dahal officers from security agencies, including the army, were not very keen on having a law that provided all information, as the task force had proposed during interactions. The police in their written suggestions wanted RTI requirements applicable only up to the Ilaka<sup>41</sup> level, possibly because record keeping requirements below that were inadequate. It also wanted non-governmental organizations (NGOs) brought into the RTI ambit.

The Armed Police Force<sup>42</sup>, in addition to exempting national security and sovereignty among others, also wanted information “related to security agencies” outside the scope of the RTI law. Another security agency, the National Investigation Department, had a list of seven types of information that it said should be exempted. Together with matters related to sovereignty, national indivisibility, and national security, it also wanted all “secret information related to law and order, that affecting bi- and multilateral interest, information related to diplomacy, and national interest” kept outside the scope of the RTI. In a nutshell, the recommendations provided were vague and broad and it was difficult to discern what they actually meant. This gives reason for arguing that the language of the suggestions was a result of the general unwillingness among the agencies to open up. The NID also had a comment saying that “the journalism sector should be made responsible for disseminating information” – another comment that relates to the dominant understanding of the use of RTI in Nepal at the time.<sup>43</sup>

“Government agencies were not in a position to fully oppose the RTI law, because the politics had just changed and parties that favored openness were in government,” said Tara Nath Dahal. “Their opposition to the bill could be read between the lines of the suggestions they had made.” One example fitting Tara Nath Dahal’s assertion came from the Ministry of Environment, Science and Technology. It suggested an exemption that was close to absurdity: it wanted “materials that cannot be made public based on the nature of the document”<sup>44</sup> exempted.

Most government agencies, generally, had guarded suggestions, buried largely under words with very broad meanings. The Ministry of Foreign Affairs suggested “the country’s foreign policy and the policy and strategy for addressing special subjects or matters of foreign policy, and relations between two states” as some areas for exemption, among others. While seemingly straightforward, such a provision could mean either nothing or everything depending on interpretation. While responses of most government agencies were similar in terms of wording and suggested restrictions, one from the Election Commission of Nepal was different. The commission suggested the following in terms of the sanctions, where it advocated two standards – one for government agencies and another for NGOs and the private sector:

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<sup>40</sup> Ram Krishna Timalena. ‘Some questions about RTI in Nepal and brief answers thereof’. Country Paper - Nepal. Regional Workshop. *Towards More Open and Transparent Governance in South Asia*. New Delhi, 27-29 April 2010

<sup>41</sup> An administrative division comprising of 4-5 villages, lower than the district level offices. Nepal has 927 Ilakas. (Source: [http://planetnepal.org/wiki/Administrative\\_divisions](http://planetnepal.org/wiki/Administrative_divisions)) Another source says there are 976 Ilakas ([http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/06/25/000356161\\_20130625140421/Rendered/PDF/788120WPOP13300all0estimate0Poverty.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/06/25/000356161_20130625140421/Rendered/PDF/788120WPOP13300all0estimate0Poverty.pdf))

<sup>42</sup> This is a para-military unit that was formed during the conflict years and is positioned between the police and the army.

<sup>43</sup> Report of the Task Force formed to draft the RTI Bill. Page 109. 2006.

<sup>44</sup> Ibid. Page 115.

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- When information has been sought from a government agency, issue a warning to the person assigned to provide information (for not providing it).
- When information has been sought from NGOs and the private sector, consider fines/cancellation of permits/stop facilities (provided by government) and terminate agreements.
- Make those responsible for not providing information liable for compensating the victims.<sup>45</sup>

The Department of Information (DOI), a line agency under the information ministry seemed to believe that RTI was about a tool for journalists than for the general public. Its comments also spoke about an underlying fear that it could manage public information and media effectively once controls on information were loosened. It said a “pre-condition” to RTI was an accountable and responsible media – without explaining why – and that when journalists seek and disseminate information they are not doing it as a special right but are doing based on the right (RTI) they have obtained from the people, indicating both confusion and lack of adequate understanding of the purpose of the new law.<sup>46</sup> On matters of restrictions, the DOI referred to “reasonable restrictions” in the constitution and had eight additional suggestions including information exchanged between local and central level agencies, “internal deliberations” of the government and information on matters that are work-in-progress, among others.

The Department of Printing recommended a set of restrictions: documents that were secret, matters related to Article 40 of the constitution that require an oath of secrecy, matters the Civil Service Regulations require to be kept secret,<sup>47</sup> and matters that could cause financial loss to the Nepal government, among others. None of these were elaborated, however. It also had different suggestions on how to deal with sanctions against those not providing information. These included “widely publicizing the denial”, “taking corrective measures”, “departmental action for repeat offenders” and then an “appropriate sanction depending on the type of information denied.”

According to Timalseña, Nepali administration practice allows the head of office to affix a “secret” stamp on a document and file it with other secret documents. Also the information obtained while on the job cannot be disclosed even after retirement.<sup>48</sup>

The Office of the Prime Minister and Council of Ministers (OPMCM) responded to the task force’s request for suggestions recommending the exclusion of NGOs from the scope of the law. It did not elaborate. Among its suggestions for exemption from the RTI Act, it recommended, among others, “information that could result in contempt of court, the policy decisions of the government and documents that the government has decided to keep ‘secret’ ”. Again, the second suggested restriction is very broad, indicating intent to block effective information. On the mechanics of operationalizing the RTI, the OPMCM suggested the need to take into account the provisions in the Country Code 2020, particularly the clauses related to obtaining official documents. None of the government agencies seemed aware of the Supreme Court verdict on the Arun III project that had the most detailed procedure for obtaining information. It was this verdict (discussed below) that laid down the rules on how citizens could obtain information from government agencies that served as a precedent to similar cases reaching the bench.

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<sup>45</sup> Ibid. Page 96.

<sup>46</sup> Ibid, Page 100.

<sup>47</sup> Section 46 of the Civil Service Act prohibits government officials from disclosing information obtained in the course of duty.

<sup>48</sup> R. K. Timalseña. 2010. Country Paper.

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The lone public agency that clearly articulated the inclusion of political parties under the RTI regime was the Nepal Telecommunication Authority. It also made very specific recommendations to the task

### **Box: Section 3 of the RTI Act and exemptions**

- a) (Information) which seriously jeopardizes the sovereignty, integrity, national security, public peace, stability and international relations of Nepal.
- b) (Information) which directly affects the investigation, inquiry and prosecution of a crime.
- c) (Information) which seriously affects on the protection of economic, trade or monetary interest or intellectual property or banking or trade privacy.
- d) (Information) which directly jeopardizes the harmonious relationship subsisted among various cast or communities.
- e) (Information) which interferes on individual privacy and security of body, life, property or health of a person. (Source: RTI Act 2007. [www.lawcommission.gov.np](http://www.lawcommission.gov.np))

force to refer to information laws of India and the United Kingdom for understanding the type of restrictions on information that could be adopted.

The Ministry of Education and Sports gave very detailed recommendations to the task force, particularly on the question of restrictions. It wanted exemptions on work in progress, opinions of different officials towards making a decision (wanted only final decision to be disclosed), and matters that the head of office decided not to disclose, among others. In terms of sanctions against officials not providing information it deemed complaint to an official above the concerned officer as adequate. It also termed information that could not be given under the Country Code 2020 as something to be exempted. It said that all officials should be brought together in a public hearing format for providing information.<sup>49</sup>

The Nepal Law Reform Commission had a list of 12 recommended restrictions. While many were similar to those made by other government agencies, it recommended for specific protections “for third party trade and intellectual property and other protections accorded by law”, “records and documents of the decisions of the Council of Ministers” and matters that are barred from disclosure by the existing law on secrecy of documents.<sup>50</sup>

Generally, some common suggestions of different government agencies for exemption from the RTI Act were included in the final draft, particularly matters relating to national security, sovereignty, etc. The drafters, however, failed to include a clear “public interest override”<sup>51</sup> to the restrictions in Section 3 of the law (Box-1). The OPMCM wanted “policy decisions” of government exempted that would have left little for the public to ask for. Similarly, most government agencies were one on keeping international relations out of the ambit of the RTI. The RTI does not provide exemption to public policy, and foreign policy is public policy, but some could argue that it is exempted under “international relations of Nepal”. However, there is already a precedent where NIC did require the Ministry of Foreign Affairs to provide information on the Rome Statute.<sup>52</sup>

There were some industry-specific-interest related recommendations for exemption. The Federation of Nepalese Commerce and Industries had seven, of which one was “information that could adversely

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<sup>49</sup> Report of the Task Force formed to draft the RTI bill. Page 116-117. 2006

<sup>50</sup> Report of the Task Force formed to draft the RTI bill. Pages 132-134. 2006

<sup>51</sup> Tanka Aryal. 2013. ‘Assessing the legal regime for implementing the Right to Information in Nepal.’ In Freedom Forum. 2013. Towards Open Government in Nepal. Page 170-186.

<sup>52</sup> Freedom Forum. 2013. ‘Empowering Citizens through Right to Information: Success stories from Nepal’, Pages 20-21.

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impact anyone’s industry or trade and livelihood” and information that could cause “damage to public property”. The restriction above was, perhaps, a reference to the impact of strikes and closures that Nepali industry had faced during the conflict years. A similar recommendation came from the Gorkhapatra Sansthan, the corporation that publishes the government owned papers, where it wanted information sought by mass media to be free of any charges, while information sought by individuals could be charged<sup>53</sup>— still another evidence of the understanding that RTI was a tool for media and journalists

The lone individual, Lal Deosa Rai, who had submitted recommendations to the task force, had suggestions that were similar to the vague recommendations discussed above if not a step ahead. He wanted all subjects covered under ‘reasonable restrictions’ in the constitution – “cabinet papers, internal working papers, information that would affect the government’s ability to manage the economy, trade or commercial secrets” – exempted from RTI.

There was at least one recommendation for including political parties in the ambit of the law and it was not opposed. “They were not in a position to oppose the inclusion publicly because the public opinion at the time favored making political parties more professional and transparent,” said Tara Nath Dahal. The comments of members of political parties in the parliamentary discussions give an indication of their position, which was generally positive (See: Parliamentary debates). However, political parties are not known for being transparent and none of them have so far made the proactive RTI disclosures that the law requires.<sup>54</sup>

### **5. The parliamentary debates**

The Interim Parliament was formed in 2007 and it included the Maoists, who later also joined the government. “When I became minister, I looked for laws that had remained held up and found two, one on working journalists and another on RTI,” said Krishna Bahadur Mahara, the minister for information and communication at the time. “Many from the journalism sector had suggested that these laws were needed, and I also wanted to do something to show change and took them up.”<sup>55</sup>

The minister discussed above came from the Maoist party and his interest to “show change” can be contextualized in terms of the political context. Generally, the 1990s was a period marked by political instability as Nepal worked towards establishing and strengthening democratic institutions – there were 12 governments between 1990 and 2002.<sup>56</sup> The first elected government remained in power for about three years. The period between 1994 and 1999 was marked by a number of unstable minority and coalition governments, none of which was able to rule for more than a year. The situation, therefore, was not conducive to making new policies and laws, which also, perhaps, explains why it took almost 17 years for Nepal to enact an RTI law, after it was included as a Fundamental Right in the statute. The legislative focus during the early 1990s was on opening up the economy, and some could argue that it was the instability after 1994 and not the intention of policy makers that delayed the law.

The evolution of the RTI regime in Nepal therefore needs to be understood against this background, as well as the low awareness of the law among potential stakeholders. Records of the debates in

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<sup>53</sup> Ibid. Pages 123 -126 and 129.

<sup>54</sup> Also see R. K. Timalsena. 2010. Country Paper.

<sup>55</sup> Interview with author, 8 September 2013.

<sup>56</sup> Seira Tamang and Carmen Malena. Page 16. ‘Political Economy of Social Accountability in Nepal. Program for Accountability in Nepal’. <http://siteresources.worldbank.org/NEPALEXTN/Resources/223554-1296055463708/PoliticalEconomy.pdf> (accessed on 11 January 2014).

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Parliament during the early attempts to make a law were not accessible owing to filing and storage issues, and debates in Parliament in 2006 and 2007 were not widely covered by media. The little coverage that existed wasn't aimed at spreading awareness. It is possible that the coverage was largely overshadowed by other events that were being covered, particularly the peace process.

There were 34 amendment proposals to the bill tabled in Parliament in 2006. Dilendra Prasad Badu, the then information and communication minister, had tabled this bill that was later withdrawn, revised and re-submitted. Most of the amendments did not find a way into the bill, but the proposals were interesting because they indicated the thinking among the parliamentarians of the day. One amendment proposed related to the composition of the NIC and the member wanted one of the commissioners to be the "president of the women's journalist group". This suggests once again that the proponent understood the right to be one related with journalism because appointing a woman commissioner was somehow not deemed to be sufficient.

A substantial amendment proposed was the inclusion of a clause for protecting whistleblowers, which was not included in the draft tabled in Parliament even though it was included as Clause 29 in the version that was sent by the ministry to the cabinet.<sup>57</sup> In another example, the draft bill that was sent to Parliament had recommended a team of three – prime minister, speaker and the information and communication minister – to recommend names of the chief commissioner and other commissioners at the NIC. However the bill finally tabled in Parliament had the following in the committee: speaker, information and communication minister and the president of the FNJ.<sup>58</sup> Yet another proposed amendment suggested the deletion of a clause that would have allowed private companies to deny information.<sup>59</sup>

The bill finally tabled in the Parliament also marked a major change in the government attitude towards providing information, particularly in terms of what type of information could be denied. The 1992 draft bill had 19 categories of such information (a few legitimate such as personal information) while the draft taken to Parliament in 2006 came with only five types of information that could be denied. Of these, one is debatable – information "that jeopardizes the harmonious relationship subsisted among various caste or communities" – which is one that is based on the assumption of harmony that is found in most Nepali laws, without attempting to define the harmony.

The RTI law (2007) was enacted at a time when there was broad political will and therefore there was very little need for advocacy and lobbying. When the RTI Bill was considered in 2006 the political situation was somewhat similar to 1990: a massive political change (some call it a change in regime) had taken place in the country where the political parties and the Maoists (who had launched a 'People's War' against constitutional monarchy in 1996) had jointly begun a process of abolishing the monarchy and setting up a federal republic.<sup>60</sup> Responding to a question on why the Maoists – generally

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<sup>57</sup> Undated compilation of amendments by the Bills Section of the Legislature Parliament.

<sup>58</sup> The original recommendation was changed because of conflict of interest since the government would eventually appoint the commissioners, and the prime minister would administer the oath to the chief commissioner (Clause 18). However, there was no debate on the potential commissioners and the sectors they could come from and the FNJ was possibly included because it was closest to the advocacy to the bill at the time.

<sup>59</sup> Section 35 of the bill version sent to the Bills Committee of the Cabinet. The section said private companies would not be compelled to provide information under this law.

<sup>60</sup> Nepal's last King, Gyanendra, had begun ruling through handpicked prime ministers in November 2002 before taking charge as a direct ruler in February 2005. Following coordinated protests of the political parties that were represented in Parliament before 2002 and the Maoists, the King was forced to step back and restore the dissolved Parliament. This set the stage for negotiations between the government and the Maoists, and the process culminated in the Comprehensive Peace Accord in November 2006.

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believers in centralism and sharing of information on a need to know basis – had agreed to the openness and transparency that defined RTI, Krishna Bahadur Mahara, information and communication minister in 2007 said,

“When I became minister, there were two bills that were held up in parliament, the RTI bill and the bill on Working Journalists. Many people in the journalism sector who met me said these two bills should be enacted without delays. Prior to 2007 we had a monarchy that was more closed and non-transparent than us, we wanted to end non-transparency and make things open. That’s why we said, other than a few sensitive issues (such as those related nationalism and national security) everything else should be transparent... There was no opposition to RTI in the party.”<sup>61</sup>

The bill Mahara was referring to was initially drafted during the term of Dilendra Prasad Badu as Information Minister. This draft was withdrawn from Parliament and resubmitted as a new bill.

What is of interest in terms of the narrative associated with the RTI Bill in Nepal – that it was something that would make information access easy to journalists – can also be traced in the speeches made by politicians from different parties in Parliament. One of the speakers in Parliament on 10 January 2007 was Raghuj Pant of the UML party. He spoke about how journalist organizations had waited for the bill for 15 years and had also drafted a version of it and clarified that this was a bill that was not only of interest to media, but also for the general public. Then he reverted to a line of argument suggesting that this was a bill “demanded by journalists for a long time” and so it should be adopted, recollecting that he himself had been engaged in the campaign as a journalist. These were some of his reasons to welcome the bill.<sup>62</sup>

Another speaker, Hom Nath Dahal from the Nepali Congress Party, prefaced his three-minute intervention stating that the RTI should have been one of the first bills that Parliament should have passed after Jana Andolan-2 (People’s Movement-2). His reason was “because journalists had been in the forefront of the movement for taking the rights of the people despite the dangers they faced.” In the speech he referred to information on large projects and tenders and said because there was no right to information journalists were unable to get the information on them. Later, he also said there were many areas where journalists could not get access and added that the bureaucracy was used to keeping information to itself.<sup>63</sup>

The third speaker of the day was Narayan Man Bijjukche, leader of the Majdoor Kisan Party (in Parliament as an independent owing to party size). He also began by praising the role of journalists in the 2006 movement. Then he went on to criticize the categorization of his party’s publication – *Majdoor* – from Kha (B) to Ga (C) in the Nepal Press Council’s categorization. (This category is a basis for handing out government doles in the form of public service advertisements to newspapers and other media.) His parting line was “let us not pass this bill in a hurry, let us discuss it and make it better”, possibly also hinting to what he thought needed to be done in terms of the categorization.<sup>64</sup>

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<sup>61</sup> Interview with author. 8 September 2013.

<sup>62</sup> Raghuj Pant. 2007. House of Representatives. Meeting -107. Full description of the proceedings. 10 January 2007, Wednesday. Pages 3711-3713.

<sup>63</sup> Hom Nath Dahal. 2007. House of Representatives. Meeting-107. Full description of the proceedings. 10 January 2007, Wednesday. Page 3713-3714.

<sup>64</sup> Narayanman Bijuchhe. 2007. House of Representatives. Meeting-107. 2007. Full description of the proceedings. 10 January 2007, Wednesday. Page 3714-3715.

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This once again underscores the dominant understanding that RTI was related to the media and journalists.

Another speaker that day was Hari Acharya, an independent member. His major concerns were appointing women as spokespersons (possibly meaning information officers) and considering the possibilities of locating the NIC outside Kathmandu Valley.<sup>65</sup> Responding to the statements by the members, Dilendra Prasad Badu, the information minister, explained how the bill had been drafted, and also said the bill was a major recommendation of the High Level Media Commission. The government had formed this commission after the 2006 political changes to recommend media policy. He added that the bill had made provisions for the NIC, not there in earlier versions.<sup>66</sup>

Nepal's Interim Constitution allowed the Communist Party of Nepal (Maoist) to join Parliament, which was renamed as the Legislature-Parliament, on 15 January 2007. On 18 July 2007, the new Minister of Information and Communication, Krishna Bahadur Mahara, presented the revised RTI Bill in Parliament.

This was an unprecedented period in Nepal's political history, where there were eight political parties in Parliament (the seven parties that were in Parliament before 2002 and the Maoists that were brought into Parliament as part of the peace process). Therefore, the RTI Bill remains unique in terms of the support it had from all the large political parties of Nepal.

Members who commented on the bill included Raghuj Pant, who explained that the new draft had made adequate protections for whistleblowers and also refuted the accusation by a member of the Nepal Majdoor Kisan Party that the bill was a copy of the one in India and was therefore "cultural invasion".<sup>67</sup> Another speaker in the discussion, Hom Nath Dahal, highlighted the inclusion of NGOs as public bodies and said they would also be required to make information public. There were fewer references to the RTI and its use in journalism at this time but the speakers did refer to media and journalists.

Narayan Prasad Regmi, a member of the Communist Party of Nepal (Maoists), then joined the debate saying that the 21<sup>st</sup> century was one where the human brain, opinions and information was replacing labor and capital and said he was particularly pleased because the bill was introduced by a minister who was a communist – because communists had always been accused of being against freedom of information.<sup>68</sup> Another member of the Nepali Congress spoke about how the courts had made decisions and issued "guidelines" on seeking information, which he said lawyers had used in the absence of an RTI law when they needed information. The minister responded to the MP's questions explaining that the bill had incorporated suggestions of not only Members of Parliament but also of experts who had been invited to the discussions carried out by a sub-committee. The bill was approved by the Legislature-Parliament<sup>69</sup> the same day.<sup>70</sup>

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<sup>65</sup> Hari Acharya. 2007. House of Representatives. Meeting-107. 2007. Full description of the proceedings. 10 January 2007, Wednesday. Page 3716.

<sup>66</sup> Dilendra Prasad Badu. 2007. House of Representatives. Meeting-107. 2007. Full description of the proceedings. 10 January 2007, Wednesday. Page 3716.

<sup>67</sup> Legislature Parliament Second Session. Full details of the proceedings. 18 July 2007. Pages 558-560.

<sup>68</sup> Narayan Prasad Regmi. 2007. Legislature Parliament Second Session. Full details of the proceedings. 18 July 2007. Pages 562-563.

<sup>69</sup> This is what the parliament is formally known as – *byabasthipika samsad* in Nepali

<sup>70</sup> Krishna Bahadur Mahara. 2007 Legislature Parliament Second Session. Full details of the proceedings. 18 July 2007. Pages 563-564.

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## 6. The judicial impetus for RTI

The information regime in Nepal had already begun expanding in the 1990s but this was taking place outside the media glare, in the courts of law. Between 26 March 1991 and 12 September 2006 there were at least 21 litigations at the Supreme Court where the constitutional provision was invoked.<sup>71</sup> A review of some of the Supreme Court verdicts on these litigations suggests that the bench had begun operationalizing the RTI by dismantling a fundamental obstacle there was in law that gave authorities the discretion to deny information. The hurdle was that the Country Code 2020, Section 17, on obtaining official documents, had two clauses that said the head of the government office concerned was not obliged to make available “secret” unpublished information.<sup>72</sup>

Among the first court verdicts on a case invoking the RTI was a March 1992 decision where the bench had ruled against the petitioner seeking information. The information requested concerned the appointments of ambassadors by the monarch that had been challenged by Radheshyam Adhikari. He had sought the information on the advice provided by the government to the King after a newspaper article said that the monarch had made the appointments unilaterally. The court did not require the government to provide the information and instead ruled that RTI is not “an absolute right” but comes with limitations set down by law and that in this case there were clear constitutional articles that imposed limits on transparency in the communication between the government and the constitutional monarch.<sup>73</sup> The government, therefore, was not required to provide the information that the court said was protected: *kanoon bamojim gopya rakhnu parne suchana jankari dina kasailai kar lagdaina* (No one is compelled to provide information that the law requires to be kept a secret.)<sup>74</sup>

The first instance where the bench upheld the right to information was the 15 December 1992 decision of the Supreme Court where it asked the government to disclose a controversial agreement between Nepal and India (Dahal, Ghimire, Sharma, 2065 (2008): 224-240). The verdict established that the contested information, – “agreed minutes” between Nepal and India – was a treaty, something the petitioner had a right to know.<sup>75</sup> The verdict also laid down the principle that “relations between States are based on transparency and democracy and that the Government of the day can not conclude an agreement with a foreign power under a different and an informal instrument in order to avoid parliamentary and constitutional scrutiny.”<sup>76</sup> The court also ruled that the partial information the government had provided in the *Nepal Gazette* was inadequate, and ordered it to provide the agreed minutes to the petitioner.

This was an important case, as the court not only ruled in favor of the petitioner<sup>77</sup> but also defined information in the public interest. It said, “all types of work by government that will affect the entire

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<sup>71</sup> Dahal, Tara Nath, Ghimire, Rishiram, Sharma Subash: 2065 (2008). *Sarbocha Adalat bata Pratipadit Suchana ra Sanchar Sambandhi Najirharu*. Freedom Forum.

<sup>72</sup> Harihar Dahal (undated).

<sup>73</sup> Dahal, Tara Nath, Ghimire, Rishiram, Sharma Subash: 2065 (2008). *Sarbocha Adalat bata Pratipadit Suchana ra Sanchar Sambandhi Najirharu*. Freedom Forum. 211-223.

<sup>74</sup> Radheshyam Adhikari vs. His Majesty’s Government Council of Ministers. Writ No. 989. Decision date 30 March 1992. In Tara Nath Dahal, Rishiram Ghimire (Eds) 2013. *Sarbocha Adalatbata bhayeka Suchana ra Sanchar Sambandhi Faisalharu*. Freedom Forum. IMS. Page 268.

<sup>75</sup> Timalseña (2003), Page 169 also has analyses of different court verdicts, including Bal Krishna Neupane vs. Prime Minister Girija Prasad Koirala and others. This case is better known as the Tanakpur Case.

<sup>76</sup> Surya P. Subedi. 1997. ‘When is a treaty a treaty in law? An analysis of the views of the Supreme Court of Nepal on a bilateral agreement between Nepal and India.’ *Asian Yearbook of International Law*. Volume 5. Martinus Nijhoff Publishers. Pages 209.

<sup>77</sup> Bal Krishna Neupane vs. Prime Minister Girija Prasad Koirala, Writ No. 1851, decided on 15 December 1992.

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country or certain groups of ordinary people directly or indirectly are matters of public interest.”<sup>78</sup> It added that it was the duty of government to inform the people about such decisions and it was also a right of citizens to demand such information. The court said there was no reason to keep the (contested) document a secret and that it should be made available to the petitioner if so demanded.

In another case<sup>79</sup> the Supreme Court laid down a precedent on how organizations can respond if they do not hold the requested information. This case involved the Election Commission that had been unable to provide the requested information because it was not required to have it. The court said in the event someone requested information on matters of public interest from an organization, and if the person or organization required to provide the said information is another entity then it should inform the information requester or respond with reasons why the request could not be entertained.<sup>80</sup>

The turning point in judicial interpretation of the constitutional provision on RTI came on 8 May 1994 when the Supreme Court issued a verdict favoring the petitioners who were seeking information from the government on the Arun III Hydroelectric Project. This was a project that was being promoted by the government and the World Bank where both parties were reluctant to provide activists and journalists the information they sought.<sup>81</sup> The petitioners, Gopal Siwakoti and Rajesh Gautam, had sought information from the Ministry of Finance (Writ number 2050:3049. Decision date: 2051/1/25 8 May 1994) on the project, particularly the costs involved and the potential benefits. Supreme Court Justices Keshab Prasad Upadhyay and Hargovinda Singh Pradhan not only decided in favor of the petitioners but also issued a guideline on the procedure for seeking and receiving information. The court also ruled that the guideline would remain in effect until Nepal had a proper law to replace it.<sup>82</sup>

The verdict said:

1. The information seeker should write an application and ask for a list of related documents (on matter) he/she is seeking information from the defendant (in this case government).
2. If the defendants provide the list in seven days, the applicant should ask for an inspection of the documents.
3. If the demand is made according to Clause 2 (above), the defendant should set a place, date and time when (for the inspection) and inform the applicant within three days.
4. If the applicant wants to make a note of or copy the documents after inspection, he or she should request the designated authority for the same.
5. If in the absence of rules for providing copies, the copies should be certified at cost and given to the applicant.
6. If the defendants have to deny the list, full or in part, or to allow inspection or provide copies, they should indicate the reason and inform the applicant within three days.
7. If the applicant is not satisfied with the outcome of Clause 5, and is denied copies, and is not satisfied with the reasons for denial, he or she can petition the Supreme Court within seven days of the receipt of information on the denial.
8. The procedures for dealing with the petition (regarding #7) shall be according to the procedures of the Supreme Court.

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<sup>78</sup> Dahal and Ghimire. 2013. Page 273.

<sup>79</sup> Purendra Aryal et. al vs. Election Commission. Writ No. 2270. Decision date: 2050/1/2, Page 301.

<sup>80</sup> Dahal and Ghimire. 2013. Pages 303-323.

<sup>81</sup> Binod Bhattarai. 2001. 'The fight to be informed: Search for project facts in Nepal', Water Nepal 8 (12. March 2000-June2001.)

<sup>82</sup> Ibid 322.

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(Sources: Arun Concerned Group, 1994: 22-23 and Dahal, Ghimire and Sharma 2065 (2008): 276)

In the decision the court also recognized the difficulties caused by the lack of a law on secrecy of documents, and drew the government's attention towards making an internal regulation or a legal provision, or enacting a law as soon as possible.

The tendency of public officials to use RTI provisions in the constitution to get information on decisions and matters affecting their jobs also began around this time. There was a lawsuit where an employee of a security agency (National Investigation Department) who had been dismissed had sought information on the dismissal. In this case the court did not think it necessary to issue an order requiring the agency to disclose reasons because that fell under the restrictive clauses of the RTI, and also because law relating to the agency categorically said it did not need to publicize the regulations and the terms of employment.<sup>83</sup>

The Supreme Court had heard yet another case where the RTI provision in the constitution was invoked (alongside many other constitutional provisions). This concerned a decision by Prime Minister Man Mohan Adhikari to call a fresh election, which was challenged. In its decision the bench said it was against the spirit and principles of democracy and accountability, and against the spirit of Article 16 to not disclose the motivation behind a call for fresh elections, especially by using "legal or technical reasons" as alibi.<sup>84</sup>

Another case of information denial had reached the Supreme Court in 2052<sup>85</sup> (1995).<sup>86</sup> In this case the petitioner said he was denied information on an Action Plan on water resources development signed by Nepal and India even though news to that effect had been published in the state-run *Gorkhapatra* daily. On this the joint bench of Justices Mohan Prasad Sharma and Govinda Bahadur Shrestha ruled that there was no reason for keeping the Action Plan a secret and ordered the Ministry of Water Resources to provide copies of the document to the petitioner. The decision said, "The Constitution of the Kingdom of Nepal 1990 envisions a democratic polity and an accountable government. (Therefore) the government's work has to be transparent" and ordered the Ministry of Water Resources to make the document available.

The RTI provision in the constitution was also invoked in another litigation against the government on a decision to grant public land – with forests and areas of historical significance – to a new medical college in Chitwan. The court, referring to previous decisions on RTI required the defendant to provide the information that was sought. This case eventually resulted in the annulment of the government decision, which was what the petitioners were demanding. The decision was decided based on laws on natural resources.<sup>87</sup>

Despite various verdicts favoring access to information and detailing how the government should respond to such requests, the court continued to receive petitions from people who were denied

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<sup>83</sup> Subarna Pokhrel vs. His Majesty's Government including the Office of the Prime Minister and Council of Ministers. Writ no. 2411. Decision date: 1 May 1995.

<sup>84</sup> Rajiv Raj Bhandari et al vs. Prime Minister Man Mohan Adhikari, and the Office of the Prime Minister and Council of Ministers. Writ no's: 3105, 3108, 3112, 3113, 3114, 3118, 3120. Decision date: 28 August 1995.

<sup>85</sup> Nepali year, explained earlier.

<sup>86</sup> Balkrishna Neupane vs. His Majesty's Government and the Office of the Prime Minister and Council of Ministers. Writ no: 3108. Decision date: 1 November 1995. Page 398.

<sup>87</sup> Yogi Narahari Nath vs. Prime Minister Girija Prasad Koirala and the Council of Ministers. Writ no. 6127. Decision date: 29 April 1996, pages 399-418.

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information. Once such case was Kashi Dahal vs. His Majesty's Government, and the Office of the Prime Minister and Council of Ministers and it concerned information on the historical and archaeological materials that were being removed during the reconstruction of the Maya Devi Temple in Lumbini.<sup>88</sup> In its decision the court upheld the right of the petitioner to demand information and added that there was inadequate evidence of disclosure even though the defendant had said that the information had been provided. It also issued an order to the Archaeological Department and the Lumbini Development Trust to make public the "real" information on the matter.

Another writ invoking RTI that reached the Supreme Court in 2001 sought information on the assets of King Birendra, who was killed with his entire family in a shootout at the royal palace on 1 June 2001. While upholding the right of citizens to demand information, the court quashed the writ under another constitutional clause that barred questions on acts done by the King in any court of law (Constitution 1990: Article 31).<sup>89</sup>

The contents of treaties between Nepal and India are fairly well known but there was one petition in court asking the government for the copies of the original official texts. This case wanted copies of treaties between Nepal and India (including British India). On this, the court decided that the petitioners seemed well informed about the matter under discussion and did not think it necessary to uphold the request.<sup>90</sup> Instead, the special bench of three justices hearing the case<sup>91</sup> wrote a decision discussing the importance for keeping some types of information outside the RTI realm. In the decision the court said that Article 16 provides for all citizens the right to demand and receive information on matters of public interest but the provision does not force anyone to provide information that the law requires to be kept secret. It referred to the Treaty Act 2047, Section 12, that allows the government to decide which treaties to publicize, and decided that this was not an infringement on the right provided by Article 16. It added:

"Both secrecy and access of citizens to information are important in their own ways. On one hand it is urgent to ensure unrestricted flow of information to citizens, on the other it is more important to keep some types of information secret for national and public interest. Whether information should be made public or kept a secret is determined by what is more important (public interest for providing or keeping a secret). Therefore, there is need to determine a clear boundary between the state's special right to secrecy and citizens right to information. This should ensure the state's broad social, national interest is secured and on the other hand individuals and groups are enabled unrestricted access and use of information."<sup>92</sup>

### **7. Early government efforts towards openness**

Transparency as an instrument to ensure accountability became a part of public government policy sometime in 2001/2002. This could have been influenced by the litigations seeking information and advocacy for RTI in the 1990s. However, there is no evidence to establish a direct link. "When we began the second generation economic reforms we realized that a major obstacle was non-transparency", said Madhav Prasad Ghimire who was a joint secretary at the Ministry of Finance at

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<sup>88</sup> Writ no: 2779. Decision Date: 6 November 1996. Pages 410-418.

<sup>89</sup> Jhanka Kandel vs. Prime Minister Girija Prasad Koirala and others. Decision date: 6 August 2001.

<sup>90</sup> Yogi Narahari Nath vs. Council of Ministers and Phanindra Nepal vs. His Majesty's Government, Council of Ministers. Writ nos.: 3193/2054 and 3940/2056. Decision date: 26 June 2003. Pages. 421-434.

<sup>91</sup> Hari Prasad Sharma, Dilip Kumar Paudel and Khil Raj Regmi.

<sup>92</sup> Yogi Narahari Nath vs. Council of Ministers and Phanindra Nepal vs. His Majesty's Government, Council of Ministers. Writ nos.: 3193/2054 and 3940/2056. Decision date: 26 June 2003. Page. 433.

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the time.<sup>93</sup> This move towards transparency translated into Immediate Action Plans (IAPs) the government prepared for assuring donors on how it would target development assistance while the conflict in Nepal was escalating. These IAPs were discussed and agreed with donors, and therefore, it would be logical to assume that donors might also have influenced the process of making the public sector more transparent and amenable to the idea of easier information access. In one of the early IAPs, on the section of transparency, without reference to RTI the government said it would:

“Publish annual budget and report of actual expenditure by local bodies and by line agencies analyzed by districts at least quarterly, and

“Making arrangement for posting of budget allocation and expenditure at DDC/VDC offices, health posts, schools,” beginning Fiscal Year 2002/03)<sup>94</sup>

These are also some basic documents that the RTI Act requires the government to publish and update regularly under Section 5(3). This therefore shows that some change had begun to take place in how the bureaucracy functioned.

The transparency was extended to publishing action plans of all Priority-1 government projects in the Red Book (published with the budget) for bringing “transparency to high-priority investment activities.”<sup>95</sup> The IAP 2004 went a step further and the government promised to “Publish annual plans of high priority projects with each trimester’s budget allocation and output indicators.” It also committed to “Publicly release audit reports of the Auditor General”.<sup>96</sup> The IAP 2006 committed to enact a fiscal transparency act.<sup>97</sup> By 2007 when RTI lawmaking process began again after Parliament was restored, the political stakeholders – as the parliamentary debates show – were convinced on the need for the act while the bureaucracy was still hesitant.

Bureaucracies generally thrive in a culture of secrecy, and therefore the resistance to making information accessible was expected. This was reflected in the early drafts of the law that were prepared by government officials – particularly the first draft –that had a long list of restrictions. According to Ghimire, “there was less opposition from the political side, and (there was) more from the bureaucracy... People in the bureaucracy have information and also know they can manipulate it to influence decision makers. So they want to hide information... Bureaucrats were also afraid about whether or not they would be able to manage information or the negative and positive reactions once the information became public.”<sup>98</sup> After the RTI was enacted, Nepal enacted the Good Governance Act (2008), which also takes into account the needs for accountability and transparency and complements the RTI provisions.

### **8. Conclusions and discussion**

Nepal was the first among South Asian nations to include Right to Information as a fundamental right in 1990; but didn’t have a law to operationalize this right for 17 years. The process of formulating the law now in place began in 2006. The law was reviewed by the Centre for Law and Democracy (CLD) in

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<sup>93</sup> Interview with author on 9 September 2013. Ghimire was Chief Secretary when the RTI legislation was enacted; in 2013 he was a minister in the election government formed in 2012 to hold the November 2013 election.

<sup>94</sup> Immediate Action Plan 2002 (undated).

<sup>95</sup> Immediate Action Plan 2003 (undated).

<sup>96</sup> Immediate Action Plan 2004 (undated).

<sup>97</sup> This document says it is a World Bank ‘suggestion’.

<sup>98</sup> Interview with author. 9 September 2013.

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2011 and was rated 17th among the 90 countries whose information laws had been assessed.<sup>99</sup> The use of the right to information by citizens has remained low, owing largely to the low awareness and knowledge and the general public perception that the law was for journalists and media, which was also evident even in the parliamentary debates on the draft bill. The RTI Act in Nepal came into force in August 2007 (it was authenticated and published on 21 July 2007). However, the NIC was formed only in June 2008, and the RTI Rules 2065 were adopted only in 2009.

In early 1990 when Nepal included RTI as a Fundamental Right in the constitution the country had just emerged from mass protests that had caused a change in the political order. The new political leaders had endured controls on information in the former regime and possibly it was this that caused them to have RTI included as a basic right. A review of the deliberations of the CRC suggests that the leaders representing different political parties were the stronger advocates for having RTI included as a Fundamental Right than those that did not have strong political affiliations.

Those were the early years after democracy was introduced in Nepal and the environment was conducive for change. Freedom House had rated it as “free” in terms of both political and civil liberties in 1991 and 1992. Therefore, information access was not an issue particularly for journalists. However, given the history of information control that Nepal had come through, a law for ending possible government controls on information was a concern many journalists shared and that explains why journalist associations led the advocacy for an RTI law. A byproduct of this advocacy has been the widespread belief – that remains to date – that RTI is a law for use by media and journalists. One could even argue that this very thought of further empowering the media – about which there have been questions about professionalism – is what could have caused officialdom to delay legislation.

Information gathered in the course of this research suggests there were at least three earlier drafts of the bill. The fourth one was eventually adopted. The government, sometime in 1992/93, drafted the first bill. Many, including members of Parliament, opposed it because it sought to withhold more information than was expected from a proper RTI Bill. The government did not table this bill in Parliament.<sup>100</sup> Another one was drafted by FNJ and the Nepal Press Institute. This *Suchanako Haq Sambandhi Bidheyak 2057* was handed over to the government at a public function in 2002 and the government had assured that it would take it to Parliament. But Parliament was dissolved before it could be tabled. The Law Commission drafted another bill in October 2003.

The next attempt to draft the bill was made in 2006, after another political movement that resulted in the restoration of Parliament, and formation of a government led by the political parties. A task force appointed by the government prepared a draft in 2006 and this one was eventually enacted in 2007.<sup>101</sup>

The task force’s draft had included political parties under the definition of public agencies while excluding NGOs. NGOs were included in the bill following deliberations by the parliamentary committee.<sup>102</sup> Many stakeholders had recommended the inclusion of NGOs to the task force but they

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<sup>99</sup> <http://www.law-democracy.org>

<sup>100</sup> Raghu Pant. (undated). *Suchanako Haq: Baak tatha prakashan swatantratama sambaidhanik pratyabhuti*.

<sup>101</sup> The task force was formed on 17 September 2006 and it submitted its report to the government in 19 November 2006. Its TOR included reviewing the draft presented by the ministry on 17 September 2006 the draft presented in the 21<sup>st</sup> Session of Parliament, the draft prepared by the Federation of Nepalese Journalists and the practice in other countries.

<sup>102</sup> Report of the parliamentary committee signed by Bal Bahadur Rai, dated 18 July 2007. The Parliament had formed a sub-committee of the following individuals to review and finalize the draft: Raghuji Pant, Radheshyam Adhikari, Narendra Bahadur Bam and Bhakta Bahadur Shaha.

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had been excluded from the final draft.<sup>103</sup> It was the parliamentary committee deliberations that also decided that the information officer would have a maximum of 15 days to provide the requested information (the bill had 30 days).

The task force<sup>104</sup> was made up overwhelmingly of journalists, and this suggests the thinking that the law was one concerning media and journalism. Many would suspect that this was what caused the inclusion of a journalist in the committee to appoint the chair of the NIC. To put the record straight, the task force had not recommended the chair of the FNJ as one of the three members of the committee comprising of the speaker of Parliament and the minister of information and communication. It had recommended a committee headed by the prime minister with the speaker and the minister of information and communication. The change was made in the parliamentary committee when it was realized that the prime minister would also be making the appointment as Nepal did not have a president at the time, and there could be reasons for interests to conflict. There is no evidence that this resulted from demands of journalists because the FNJ president at the time was unaware of such a request.<sup>105</sup> Activists now say that the appointment should be made by the President,<sup>106</sup> and also that the representation of the FNJ be reconsidered to ensure that there are no conflicting interests when the time comes for journalists to report on the NIC. The law is silent on how the shortlist is to be prepared or the process, which could be another limiting factor given the influence of partisan politics on appointments to public bodies in Nepal. The last time the appointments were made based on names that reached the committees from the major political parties.<sup>107</sup> Only the information minister at the time, Krishna Bahadur Mahara, had gone across party lines to recommend the Chair who was known to be closer to the UML and not the Maoist party.

Though perhaps a coincidence, two of the first three commissioners at NIC had a journalism background. The third was a lawyer. “We completed one term but we were not appointed democratically, transparently,” said Vinaya Kumar Kasajoo, the chief commissioner. “The three commissioners can look at all information in government irrespective of the level of secrecy. People with such powers must be individuals who are trusted by a majority of the people.”<sup>108</sup> According to Kasajoo, the commission must be open and transparent and commissioners need to be interviewed in public and their performance must be evaluated once every six months.

What has remained hidden in academic and legal texts is the long and continued push for RTI at the courts. This battle was taking place in the courtrooms, and as a result, Nepal had a sort of an expanded information regime way back in May 1994 when the court decided in favor of the petitioners seeking information from the government on a hydroelectric project supported by the World Bank. Information that the activists were able to obtain as result led them to challenge the basis of the project loan – that also drew the attention of the World Bank’s Inspection Panel – before it was eventually cancelled. The verdict had provided clear guidelines on how information could be sought until there was a proper law, but for some reason this did not figure in many of the recommendations

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<sup>103</sup> Tara Nath Dahal, interview with author, 11 September 2013.

<sup>104</sup> Kashiraj Dahal was the coordinator and Rajendra Nepal, was member secretary. The members were Murari Kumar Sharma, Shiva Gaule, Tara Nath Dahal, Babita Basnet and Bal Krishna Chapagain.

<sup>105</sup> Bushni Nisturi. Interview with author. 20 January 2014.

<sup>106</sup> Vinaya Kasaju. Interview with author. 17 January 2014.

<sup>107</sup> Interview with Bishnu Nisturi, a member of the committee that made the recommendations. 20 January 2014.

<sup>108</sup> Vinaya Kasaju. Interview with author. 10 Sep 2013.

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made by government agencies and others to the task force that had asked them for suggestions on the procedure for seeking information.

The implementation of the RTI Act in Nepal was evaluated at a conference in Kathmandu in March 2011, and most of the issues that were flagged were related to the law itself and some definitions, appointment and functioning of information officers, their training and information management, and the low public awareness. It was not possible to get the total number of RTI requests made at NIC since its establishment. As a proxy indicator, the number of complaints reaching NIC between 2008-12 suggests that the number of requests could either be low or that Nepali public officials were providing all the information requested! According to Freedom Forum, there were a total of 411 complaints reaching NIC between 2008 and 2012.<sup>109</sup>

The weak implementation of RTI is explained by a number of factors. First is the general political instability in Nepal and a general lack of rule of law, which is exacerbated by the impunity with which breach of law happens in Nepal.<sup>110</sup> Other problems identified by Mendel include onerous requirements placed on public officials, a culture of secrecy and “confusion about where the proper lines between openness and confidentiality lie.” The implementation level problems include the long lists for prohibiting disclosure in other laws, in addition to the exemptions in the RTI Act.<sup>111</sup> Further, unlike other countries, NGOs in Nepal have not made much effort to ensure effective implementation of the law, for various reasons including low awareness of their obligations under the law, and fear that competitors and opponents, among others, could use the law as political or social weapon against them.<sup>112</sup>

Nepal has come a long way in terms of building an enabling environment for free expression. Different laws related to the media – though they need to be reviewed and updated to match the changing times – and the RTI Act provide a solid foundation for free flow of information. Irrespective of how it came to be, the RTI Act in Nepal remains one of the most powerful tools the citizens now have to make public institutions accountable and responsive. The onus for ensuring that institutions remain accountable now rests with the people of Nepal, for such public accountability is the cornerstone of democratic governance. Free expression and media rights have been articulated in Nepal’s previous constitutions in one way or another but they were never implemented in the true democratic spirit. The RTI law – despite the shortcomings that still remain – gives ordinary citizens a power they never had before. The power given to them by law has also been tested and it works – to a large extent.

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<sup>109</sup> Freedom Forum (undated). ‘Empowering Citizens through Right to Information: Success Stories from Nepal’, Page 2

<sup>110</sup> Toby Mendel. (ND). *Implementation of Right to Information in Nepal: Status report and recommendations*. In Towards Open Government in Nepal: Experiences with the Right to Information. Page 37. (Pages 26-70)

<sup>111</sup> Vinaya Kumar Kasaju. (ND.) ‘Implementing the RTI law in Nepal: Experience, challenges and future strategies of the National Information Commission’, in Towards Open Government in Nepal: Experiences with the Right to Information. Page 80 (Pages 71-94)

<sup>112</sup> Toby Mendel. (ND). *Implementation of Right to Information in Nepal: Status report and recommendations*. In Towards Open Government in Nepal: Experiences with the Right to Information. Page 37. (Pages 26-70)

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## 6.

# State of the RTI Regime in Afghanistan<sup>1</sup>

Rahela Sidiqi

### 1. Introduction

The President of Afghanistan signed, on 30<sup>th</sup> November 2014, the Right to Information law. Therefore, finally Afghanistan also has an RTI Act.

In the last year, the Lower House of the Afghan Parliament approved a draft law, which was subsequently sent for approval to the Upper House. The Upper House made some changes to the draft, and then sent it to the President's office for approval. However, right to information activists were not satisfied with the changes made by the Upper House, and sent a letter to the president in protest. It is not yet clear what the final law looks like and this will only be known when the law is finally published.

This briefing note provides an overview of the situation with regard to RTI in Afghanistan, including the background and context of the current draft RTI law, its main features, the current status and the challenges faced in bringing about a sound RTI law. It ends with a number of key recommendations for stakeholders.

### 2. Background

For many years the people of Afghanistan have been facing numerous challenges, notably the on-going conflict and the need to build a functioning state that meets the needs of its citizens. The predominant desire among the citizens is to establish democratic norms of governance and help their country to rapidly develop socioeconomically and politically. Lack of access to information has been recognised as a major hindrance to the citizens' ability to make the government accountable for the provision of essential services, such as health and education. Indeed, even within government departments, middle management staff and government employees in general face difficulties in accessing information. This issue of lack of access to information was brought up in various discussions and consultation forums, such as human resource seminars, small RTI working group meetings, and all form of governance related consultations, meetings, and discussions.

### 3. RTI movement in Afghanistan

The RTI movement in Afghanistan was initiated by Afghan activists from various organizations after participating in different SAARC<sup>2</sup> conferences related to transparency and RTI, in 2007 and 2008. Participants learned about the approaches being adopted by other SAARC countries to combat corruption and promote transparency in the provision of services to their citizens. They also learned about the importance of transparency in empowering citizens to make government accountable, enabling them to question their governments about poor performance, or to demand from their governments what was rightfully theirs.

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<sup>1</sup> As of December, 2014

<sup>2</sup> South Asian Association for Regional Cooperation, an economic and geopolitical organisation of eight countries that are primarily located in South Asia.

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As a result, at the Afghanistan National Development Strategy (ANDS) Conference in 2009, the Department of Anti-Corruption was tasked with developing an RTI law. The basis for this law was Article 50 of the Afghanistan Constitution, which guarantees the citizens' right to access information held by government 'in accordance with the provision of law'.

### **4. Development of the draft RTI law**

The process of developing an RTI law received impetus in 2010 through the support of the Independent Administrative Reform and Civil Service Commission (IARCSC)'s Senior Advisor, Rahela H. Sidiqi, who discussed the matter with the Minister of Culture and Information, Dr. Makhdoom Rahim. As a result, an RTI law committee was formed comprising civil society members and representatives of relevant government departments. The committee reviewed relevant legislation in Afghanistan, along with the RTI laws of other countries such as India and Bangladesh. This review process took several months, leading to the eventual development of a draft RTI law for Afghanistan. In early 2012 the draft was sent to the Ministry of Justice for review and editing, and subsequently to the cabinet. However, this process took several months.

From the cabinet, following approval, the draft RTI law should have been sent to Parliament for its approval, but wasn't. This led to civil society organizations launching a petition in 2013 urging the government to send the RTI law to Parliament and demanding approval of the law by the end of March, 2013. The main organization involved was Avaaz, in cooperation with Youth in Action, led by Syed Ekram Afzali. The Afghanistan member of the South Asia Transparency Advisory Group (TAG) shared the petition with her network and it was signed by hundreds of additional people, including Afghan Women Support Forum (AWSF) members based in the UK, Rasa Advocacy & Skill-building Agency (RASA), Afghan Women Network (AWN) and Equality for Peace and Democracy (EPD). Following this petition, the draft law was again sent to the cabinet by the Ministry of Justice and approved by the Council of Ministers in the first quarter of 2014, as a first draft. On 15 April 2014 an amended version of the draft RTI law was submitted for parliamentary approval.

In terms of stakeholder involvement, development of the RTI law was initiated in the Anti-Corruption Department, but administratively it was based in the Ministry of Culture and Information (MOCI). The MOCI redrafted the law with the participation of the Anti-Corruption Department, Ministry of Justice, Attorney General's Office, Independent Human Rights Commission, AWN, and the Independent Committee of Media.

### **5. Key features and analysis of the draft RTI law**

The draft Afghanistan RTI law is consistent with international best practice for such legislation in some respects, but falls short in others.<sup>3</sup>

Objectives - Article 2 of the draft law lists its aims. These are primarily to:

1. Ensure the right of the citizens of the country to information held by government organizations;
2. Regulate the way information is requested and provided;
3. Observe the International Covenant on Civil and Political Rights; and
4. Ensure transparency and accountability in the performance of government

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<sup>3</sup> This analysis is based on that carried out by the Centre for Law and Democracy (CLD): 'Afghanistan: Comments on the draft Access to Information Law', (April 2013).

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organizations.

However, the right to information from public bodies is limited by Article 5 to where this will 'serve a right or shall bring ease to the performing of relevant duties'. This is problematic both because it undermines the fundamental right of citizens to access all information (unless exempt), and on a practical level because it will be difficult for information officers to determine whether the information requested is to serve a right or improve a service.

Scope - In terms of scope, the draft law defines information as 'any record or data' but does not clarify that this could be in any form, not just physical documents; it applies to a broad range of public bodies but not to private bodies carrying out public functions, or to those substantially controlled or funded by public bodies; and it grants the right to information only to citizens of Afghanistan.

Proactive Disclosure - Article 15 of the draft law lists ten types of information that public bodies must proactively disclose at least once a year. There is scope for this list to be improved and expanded, by including financial information (budget, expenditure, etc.), for example.

Application Procedures – The application procedures detailed in the draft law have considerable scope for improvement. A lack of clarity appears to be the major issue – for example, it is not specifically spelt out that requesters do not have to give a reason for requesting information, or that a receipt must be issued to them when they submit an application, or that the public body must strive to provide information in the form stipulated by requesters. There is no mention of what to do if a public body does not hold the information requested. A fee is to be charged for issuance of RTI application forms. A timeline of 15 working days is set for responding to RTI requests, extendable by a further 3 days 'if reasonable excuses exist'; requests from media outlets must be responded to within 48 hours (something which could be difficult to do in practice). These examples highlight the need for greater clarity and for some shortcomings to be addressed.

Exemptions - The list of exemptions includes protection of some arguably legitimate interests, but also some that are problematic, e.g. information that 'violates the human rights of citizens' or poses a threat to 'the prestige or dignity of a person'. There is no severability clause and no public interest over-ride.

Oversight and Appeals - The oversight and appeals procedures laid out in the draft law provide for internal complaints to the public body concerned and external complaints to the Access to Information Oversight Commission. The nine-member Commission comprises government officials, civil society activists, and journalists. The Commission is administered by the Ministry of Culture and Information. It must respond to complaints within ten working days and its decisions are binding. While on the whole this is a sound oversight mechanism, it too has significant weaknesses, like the inclusion of government representatives in the Commission, undermining its independence.

Sanctions and Protections - With regard to sanctions, the law lists violations that would lead to these being applied - refusing to provide information without reasonable justification, failing to provide information in the stipulated time, etc. Sanctions include warnings and salary cuts. There is no protection for officials or commissioners who disclose information in good faith pursuant to the law, nor is there any protection for whistle-blowers.

Promotional Measures – Public bodies are required under the draft law to appoint information officers, report on their activities, and improve records management. The Commission is tasked with

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giving advice to requesters, conducting training, and reporting on RTI implementation to the President and National Assembly. There is no specific requirement to raise awareness amongst the public.

### **6. Challenges and Opportunities**

The process of developing an RTI law was a new one in Afghanistan, and hence was always likely to take some time. Related to this was a lack of technical expertise on RTI. A second challenge was that, without sustained advocacy by civil society organizations there was a danger that the next parliament may postpone approval of the draft RTI law. Thirdly, it is anticipated that some changes might have been made in the draft RTI law by the new parliament; it is possible these changes would not been acceptable to the public and civil society organizations.

Turning to opportunities, there is support for the RTI law among individuals within the government, as well as of course among civil society organizations. An anti-corruption caucus has been formed in Parliament, which supports the process of civil society advocacy in Parliament. Raising awareness about transparency, and transparency advocacy, have also been pursued in various fora. The Afghanistan TAG member raised the issue of the pending RTI law in the EPD (Equality for Peace and Democracy)<sup>4</sup> Accountability and Transparency meeting on 13 April 2014, and on 27 March 2014 in the Afghanistan ‘sharing forum’ conference organized by the British and Irish Agencies Afghanistan Group (BAAG)<sup>5</sup>, in the presence of an Afghan delegation from civil society organizations. At the meeting Mrs. Suraya Subhrang, the commissioner for women’s rights with the Independent Human Rights Commission (IHRC) mentioned that advocacy with the Parliament was under way for approval of the RTI Law. EPD is itself engaged in this; so too Youth in Action, which has actively pursued the passage of an RTI law with the parliamentary anti-corruption caucus.

Additionally, international organizations such as Integrity Watch are actively involved in the advocacy process. However, the media has not been pushing the RTI issue in a sustained manner: though it was mentioned a few times on TV and in some newspapers, there has been no consistent coverage. While the RTI law was still pending the approval of the Upper House, civil society organizations could start raising awareness about the benefits of this law at a grassroots level; and continue to do so after approval.

### **7. Conclusion and Recommendations**

It has been almost four years now that different stakeholders in Afghanistan have been striving for the passage of an RTI law. Finally all this effort has borne fruit and the President has signed the law on 30<sup>th</sup> November 2014. Noticeable shortcomings have been identified in the existing draft of the RTI law; though till the new law is published it will not be clear how many of them, if any, have been addressed.

RTI law implementation will be an even bigger challenge than its drafting or passing, for Afghan citizens as users of the law, and for the government tasked with its effective implementation. This is why it is so important for different stakeholders such as the government, media, civil society organisations and the international community/donors to participate and cooperate for the implementation of the RTI law.

Specific recommendations for these are as follows:

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<sup>4</sup> <http://www.epd-afg.org>

<sup>5</sup> <http://www.baag.org.uk>

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- The **Government** should establish the information commission as soon as possible to be responsible for enforcement of the RTI law, and to liaise between the government and the citizen. The Justice Department and Attorney General's Office in particular should provide effective cooperation and support to the information commission to ease the process of RTI implementation.
- The **Media** should take a proactive role in terms of highlighting the issue of lack of citizens' access to information and the benefits of RTI for empowering citizens to obtain their rights. Raising awareness through the media should take place through different means and approaches, such as debates, role-play, theatre and the news.
- **Civil Society Organisations** should play a major role in terms of continuous advocacy and educating citizens about the positive impact of the RTI law, when it is implemented.
- **International Community-Donors** should invest in educating citizens about their right to access information; this should be carried out as soon as possible in order to facilitate and ease the process of implementation of the law.

## 7.

# State of the RTI Regime in Bangladesh

Shamsul Bari<sup>1</sup>

### 1. Introduction

Bangladesh's Right to Information Act, 2009, completed five years of operation on 1 July 2014. When the 9th Parliament of Bangladesh adopted the Act on 29 March 2009, in its first session, with only a few changes to the Right to Information Ordinance 2008, which was earlier promulgated by an interim caretaker government, many saw it as the harbinger of a new era in the country. Some called it the most revolutionary law passed by Parliament since it turned the constitutional provision which proclaims that "all powers of the Republic belong to the people" into a justiciable legal right for citizens to claim. The will of the government to adopt a law that allows citizens to monitor its own work and that of all public-funded NGOs, was widely acclaimed. It raised hope that through its use the pervading culture of official secrecy in the country would gradually diminish, leading to transparent and accountable governance.

Five years on, are those expectations being met? Has implementation been satisfactory? Is there more transparency in governance? Are people able to access relevant information from public authorities? Is there greater interaction between citizens and the government? What challenges face its implementation? What lessons can be drawn from experience gained so far? What is the way forward? This paper will seek to find answers to these and other related questions by observing developments from the beginning of the RTI regime in 2009 till the end of 2014.

It should perhaps be underlined at the outset that given the revolutionary nature of the objectives of the RTI Act, no one expected that they would be achieved quickly. Everyone understood that changing the age-old culture of official secrecy and the overly secretive mind-set it created among public officials was by no means easy. Moreover, unlike India, where the adoption of its RTI Act 2005 was preceded by a long-drawn peoples' movement to fight corruption in public offices, there was no such ready-made demand-side in Bangladesh to put the law into practice immediately. So the real question to ask should perhaps be whether a good beginning has been made that shows promise?

The answer would perhaps lie somewhere between "yes" and "no". While important gains have been made in some areas and there are hopeful signs of progress in others in more recent times, many shortcomings which marked the beginning have continued to stifle progress. Among recent developments which give hope to RTI enthusiasts and activists, who not very long ago felt unsure about the future, two stand out prominently. One, the government, after its initial apathy, has begun to pay greater attention to its implementation. It has set in motion a number of promising initiatives to ensure cooperation across government offices for proper implementation of the Act.

And two, the Act has begun to catch the imagination of more people from other walks of life than mainly those belonging to marginalized and disadvantaged communities who were its prime movers in the initial period. A third development may perhaps be added to this. It relates to positive changes taking place in the work of the Information Commission (IC) which was earlier criticised by many for

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its failure to undertake imaginative, robust and proactive initiatives to take the law forward and for not being very citizen-friendly. These developments will be elaborated in the later part of this paper. It may simply be added here that if these trends continue and the measures initiated by the government together with the Information Commission bear fruit, there is reason to hope for a more effective RTI regime in the country in the not too distant future. They will also remove many concerns raised in this paper about shortcomings observed in the implementation of the Act so far.

It may be useful to begin with reiterating the fact once again that the main credit for the overall progress of RTI in Bangladesh so far belongs to members of some of the most marginalized and disadvantaged communities of the country. This will help us to situate the context of various issues raised in this paper. For, they were the first to come forward to make use of the law. Of course, they were sensitized in this regard by some committed NGOs and RTI activists of the country whose contributions must be duly recognized, but without their willingness to file the RTI applications this would not have been possible.

They were soon convinced that they had little to lose and much to gain by using the law to access many benefits under the government's poverty alleviation programmes which are normally denied to them by dishonest practices of public officials. By doing so, they not only managed to avail the benefits but also to help the same officials to learn to deal with RTI applications for the first time. And even though they suffered indignities from many of these officials, who are generally not known for their courteous behaviour towards ordinary people, they persevered and helped to develop a nascent RTI regime in the country. Additionally, complaints from many of them to the Information Commission provided the latter with early experience in adjudicating disputes between demand and supply sides of the regime. An RTI culture, however rudimentary, had thus begun to evolve.

The progress would have been even greater if two important stakeholders had been more forthcoming and proactive. The most important of these, of course, was the government. If it had made it amply clear, through its acts and utterances, right from the beginning, that it really cared for success of the law, the attitude of public officials towards it would most likely have changed and improved. On the other hand, a more proactive and visionary Information Commission would have found means to charter new ways to deal with many obstacles and challenges encountered on the path and to attract more people to make use of the law. Equally importantly, the participation of the middle and educated classes, professional groups, the media, political parties, many NGOs and civil society generally, would have nudged the fledgling RTI regime generated by the marginalized communities to move forward.

### **2. Areas where progress has been made**

The preponderance of the marginalized population among the earliest RTI applicants can be deduced from the fact that a very large number of complaints lodged with the Information Commission (IC) from the early days of implementation originated from them. If many government officials, who were earlier extremely reluctant even to accept their applications, were now formally engaging with them, it was due to their perseverance in putting the law to use. Many of these officials later openly admitted that they learnt about the law and their responsibilities under it more through dealing with RTI applications than by sitting through training sessions arranged by the government, IC and others.

The above would not have been possible though without the commitment and dedication of many RTI activists and "animators", sensitized, trained and supported by a few NGOs in the country. With their

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help the people concerned were not only made aware of the law but in many cases assisted to complete the entire application and follow-up processes. They were also given the necessary moral support to overcome the initial fear of possible retaliation by concerned authorities. On the latter issue, a World Bank-funded survey conducted by The Nielsen Company (Bangladesh) Limited and released in June 2013, showed that 13.1% of those interviewed had claimed that fear of repercussion from authorities was an important reason for not resorting to RTI (Cf. Nielsen 2013, p. 5).

**Nature of information sought by ordinary applicants:** To minimize people's fear of possible adverse reactions by concerned officials, in the initial years the animators/facilitators counselled them to apply for less sensitive information which would be less likely to draw their ire. Examples would be: rules for obtaining benefits under the Vulnerable Group Feeding (VGF) and Vulnerable Group Development (VGD) programmes, old-age pension, maternity benefit, "one family, one farm" benefits, agriculture cards, etc. Gradually, seeking slightly more sensitive information, bearing on transparency and accountability issues, was introduced. An example would be to ask for the list of persons who were given a particular safety-net benefit in a given period and how and by whom the recipients were chosen. The latter query would normally cause consternation among concerned authorities as often their own family or extended family members were the beneficiaries.

Of late, however, there appears to be a gradual scaling-up of RTI applications from service/benefit-oriented issues to more transparency and accountability-related issues as well as issues which relate to society at large and not simply to personal benefits. This development too has been helped by some NGOs. It has been highlighted in a World Bank/UKAID supported study titled *Empowering Communities through Right to Information* undertaken by Research Initiatives, Bangladesh (RIB), a Bangladeshi NGO, focussed on poverty alleviation of marginalized communities, published in July 2014. [See [www.rib-rtibangladesh.org](http://www.rib-rtibangladesh.org)]

An equally popular subject for RTI applications by disadvantaged communities is the list of medicines meant to be provided free of cost to indigent population at government hospitals/clinics. The latter, however, would often charge for them. Interestingly, in many such cases, soon after receiving their RTI applications the concerned officials would call the applicants in and offer them the medicine free of cost if only they would not insist on getting a written response. In most cases the applicants were happy to oblige and not pursue the matter further. And when the lists of free medicines were provided after initial refusals, some would put them up on notice boards at hospitals/clinics or other prominent places for all to see. In some reported cases, the applicants were given preferential treatment whenever they presented themselves at the hospital/clinic. Some other reports indicate that applicants who became known as RTI-savvy were subsequently received and treated more politely by concerned authorities. Moreover, those they recommended as worthy claimants for the benefits were given preference over others. The impact of such positive experiences on people normally used to harsh and impolite treatment from public officials requires no elaboration.

It would, therefore, not be an exaggeration to say that at the grassroots level at least an RTI culture has begun to emerge in Bangladesh. It is still at a nascent stage and would need the help of supporting NGOs for some more time. That such a development is impacting positively on the supply side too is evident from the fact that a growing number of public officials involved in dealing with RTI applications from these people are beginning to accept them as part of their normal duty. This too augurs well for the future.

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### 3. Some notable examples

To further illustrate the above developments, it may be useful to cite a few examples. They may help to demonstrate how public officials are learning to deal with ordinary applicants.

In a symptomatic case, a very ordinary woman in northern Bangladesh, enthused by her new-found knowledge about the RTI Act, decided to ask the local police station for the list of cases filed with it on violence against women in the previous six months. She also wished to see the files in order to learn about actions taken on them. As could be expected, the police took no action on it either at the first instance or on appeal. As a result, she filed a complaint with the Information Commission which rightly admonished the police official concerned at the hearing and asked him to provide the information within a week. This was duly complied with and the matter got so much local publicity that it is said to have led to a difference in the behaviour of the police at the particular station towards ordinary people. Many believe it has also sent a critical message to all other neighbouring police stations.

The next example is in many ways a landmark case for RTI in Bangladesh. It deserves to be described in slightly greater detail as it demonstrates the promising prospects of RTI in Bangladesh, if properly nurtured. In this case, thousands of people gathered in an open field in Dhonbari in Modhupur, in the Tangail district of Bangladesh, on a date in March 2012, for a public hearing on corrupt practices of government officials in the region. It was jointly organized by Organisation of Landless People and *Nijera Kori*, a well-known main-stream NGO of Bangladesh. Before the hearing, the landless members had used the RTI Act to collect information on various government programmes that are supposed to benefit the poor.

According to a newspaper report on the hearing, the Landless Organisation presented a report exploring and identifying the various discrepancies in the 40-day Employment Generation Programme of the government, which is meant to assist the hardcore poor particularly the day and farm labourers in overcoming their poverty and job crisis during the lean period. Each allegation of corruption and mismanagement in the report was accompanied by testimonies of labourers, landless people and other affected groups. After each allegation, the convener declared, "Is there anyone who disagrees with the testimonies presented?" Every time, the question was met by a deafening "No".

The report explained that the landless members and *Nijera Kori* staff had worked ceaselessly on the public hearing for eight months. First, they filed 19 applications for information on different government projects, out of which 18 were granted information. But when it came to the request for details on the 40-day Employment Generation Programme, the application was refused and the members were harassed. It was only after they appealed that the information was finally granted to them.

The newspaper report went on to add that the investigation had exposed corruption at all levels of implementation of the programme and that: "The investigation teams also found that a total of 364 people were denied their rightful wages during the programme period, which means that the rate of corruption in the two unions is as high as 90 per cent. A majority of people were only made to work for 35 days instead of the designated 40, and the wages for the last five days went to the pockets of the local administration. They also identified a number of influential and well-off people who didn't work even for a single day, but collected wages every week from the bank."

After the landless members had presented their evidence, representatives from government banks, the Mayor of Dhonbari, the Project Implementation Officer (PIO) and the Union Nirbahi (Executive)

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Officers were asked to defend themselves and justify their position in front of the people. Needless to add, they had little to say in their own defence. It has been reported that the impact of the hearing both on the people who had gathered and the public officials who came, some albeit grudgingly, was immense. It made an indelible impression in the minds of the people and took the RTI law in the area many steps ahead. For more examples on RTI, see Bangladesh case studies elsewhere in this volume.

### **4. Key factors that retarded progress**

While the positive developments elaborated above are indeed heartening, they are still of a limited nature. The fact remains that the law is yet to catch the imagination of the population at large in a significant manner. To set a firmer basis for progress and growth, a great deal more has to happen and the principal stakeholders will have to be more proactive and committed. Outlined below are some areas of concern.

#### *The government's indifference*

The main disappointment in this regard was the almost total indifference of the government towards the Act, though, fortunately, there are signs of change in this regard in more recent times. There was hardly any serious gesture from the government for about four years to show its commitment to the successful implementation of the Act. Without such a gesture, the attitude of those who are supposed to make it work, the public officials in particular, could not be expected to be very enthusiastic. This is because most of them see the law as a tool to harass them and to bring their work under public scrutiny. The government seemed not to be either aware or fully convinced about the benefits that a successful RTI regime could bring to democracy and good governance and thereby to its image and reputation.

An example of the government's seeming lack of commitment to promote the avowed objective of the Act would be the manner in which the post of the Chief Information Commissioner (CIC) was filled following the retirement of the previous CIC in 2013. The same thing happened in the selection of the two new commissioners in 2014. The selection process did not follow the procedure provided in the Act itself, or if it did, it was not transparent. In other words, there was no transparency even in dealing with a transparency instrument. There was hardly any publicity on a matter of such public interest. Had the government filled the posts in a transparent manner, it would have demonstrated not only the importance it attached to transparency in its work but also its commitment to selecting only experienced and independent-minded commissioners through consultation with relevant stakeholders. Critics, however, argued that the selection process actually demonstrated government's intention not to create an overly independent and effective Information Commission. This was, however, not aimed at the quality and integrity of the selected commissioners but only the process employed in their selection.

#### *Non-appointment of DOs and lack of training of those appointed*

The law requires that all public authorities falling within the purview of the RTI Act 2009 would appoint, within 60 days after the law came into force, Designated Officers (DOs) who would provide information sought by citizens under the law. According to a figure reported in the September-November 2014 newsletter of the Information Commission, in the five years since the law has been in force, only 20,000 DOs have been appointed, which is about 52 percent of what should have been the case. The fact that 48 percent of DOs have not been appointed even five years after the law came into

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force shows how the law is treated by many government authorities and even some NGOs. The fate of RTI applications can easily be gauged from this.

Even among DOs appointed so far, awareness about the law remains dismal. This has been highlighted in the Nielsen survey referred to earlier. Among 507 DOs covered in the study, only 54% had sufficient knowledge of the RTI Act, 40 % had only scanty knowledge, and 6% none at all (Cf. Nielsen 2013, p. 39). Other surveys have also shown similar results.

As for training received by DOs, in the first four years, the Nielsen survey found that only around 28% of them had received any. Among those who received training, 38% stated that they had almost forgotten whatever they learnt since they did not have to handle any RTI applications thereafter (Cf. Nielsen, p. 41). This clearly underlines the importance of dealing with actual RTI applications in order to internalise the theoretical knowledge gained at trainings. A more disturbing revelation was that 96% of those who received training had not received any RTI application up to the time of the survey (Cf. Nielsen 2013, p.7). The RIB study referred to above provides the same picture from a more recent perspective.

A more detailed report and analysis on the appointment and performance of DOs is contained in a study led by former Secretary to the Information Commission and newly appointed Information Commissioner, Mr. Nepal Chandra Sarker, titled *Country Analysis on the Status and Implementation of RTI in Bangladesh*. It was submitted to *Manusher Jonno* Foundation (MJF), Bangladesh, in October 2013.

### Indifference of the educated classes

On the demand side, a serious lacuna is the general indifference of the educated and well-to-do classes. Many of them are still not aware about the law or did not care to learn about it, or if they did, they have neither fully understood the scope nor the objectives of the law. There are many others though who know about the law but appear to feel that they are better off doing things the old way, whereby information is got through personal connections or influence-peddling. It is rather surprising that the same people who are normally prepared to take to the streets against the government for any alleged misdeed or corruption do not feel enthused to use the law to fight the same. One explanation is perhaps the general disbelief that there is any serious intent on the part of the government to change the deep-rooted culture of official secrecy and the secretive mindset of public officials.

The Nielsen survey found that 77% of interviewees were not aware of the Act. Even among the 23% who claimed to be aware, less than one-fifth were well informed. Another 68% stated that they had only partial knowledge of it. The others only knew of its existence (Cf. Nielsen, p. 4). This should be a matter of concern for all. The *Manusher Jonno* Foundation report, referred to above, depicts a similar picture.

The Nielsen survey also found that 13.4% of the respondents saw the lack of positive attitude of public authorities towards ordinary citizens as an important reason for not using RTI (Cf. Nielsen 2013, p. 5). Among 82 RTI applicants covered by the survey, 60% claimed that the concerned officers were not very co-operative during the submission of RTI requests and 35% claimed that they had to visit the offices several times as they rarely found the concerned officers in the assigned offices (Cf. Nielsen 2013, p. 34). This has also been confirmed by the *Manusher Jonno* study. Whatever may be the

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reasons, the fact remains that even those who could have made use of the law on their own are not using it.

With regard to the general indifference of civil society, including many NGOs, and professional groups – lawyers, political parties and the media – it is interesting to note that many of them had shown a great deal of interest and support when the need for RTI was broached before the Act was passed. The media had, in fact, led the publicity preceding the adoption by the then caretaker government of the RTI Ordinance, 2008, which later became the RTI Act, 2009.

It would appear that there was a general expectation in the media that an RTI law would make it easier for journalists to obtain information from public authorities. When they discovered that using the law for this purpose would entail greater investment of time and energy, their interest flagged. Hopefully this will change when the value of RTI is more firmly established in the minds of the people and success stories become popular news. To some extent this may have begun to happen already.

However, irrespective of the shortcomings of the government or the Information Commission in taking the law forward more vigorously, the fact remains that it is the failure of the citizens to make use of the law which is mainly responsible for its tardy progress.

A lesson that proponents of RTI in countries yet to adopt it could learn from the Bangladesh experience is that it is almost imperative to prepare the public sufficiently about their responsibilities under the law before pushing for its formal adoption. Ideally it should be preceded by a peoples' movement to establish transparency and accountability in the work of the government, as was the case in India. Unfortunately there was no such movement in Bangladesh. It came into existence not because of public pressure, but because it was *a la mode* internationally and an externally influenced caretaker government took it upon itself to promulgate it as an Ordinance. The only public pressure, if one may call it so, came from some influential members of civil society who had strong links with the ruling elites. The lack of a full discussion in Parliament before the Ordinance was subsequently adopted as an Act also explains the lack of a sense of ownership on the part of the government and why many parliamentarians appear not to be very conversant with the scope and objectives of the law.

### The lack of proactive leadership from the Information Commission

In the absence of a demonstrable commitment on the part of the government, the success of RTI in Bangladesh necessarily devolved on the Information Commission. Unlike India, where the required ground work had been done before the RTI Act came into force, in Bangladesh it had to be built up from the bottom, both for the demand side and the supply side. As there was no clearly designated government department/ministry entrusted with the job, it fell upon the Information Commission to play the chief role in coordinating implementation with the help of other stakeholders, including civil society. This required the IC to play a proactive leadership role. Unfortunately, this did not happen, at least to the extent necessary.

The Information Commission must, however, be credited for doing a good job in many regards at the beginning. It successfully secured the necessary government support in setting up a functioning Information Commission with the required paraphernalia, including infrastructure, office space, equipment, staff, website, etc. This was no easy task when the right to information concept was so new and there were hardly any well-wishers among the bureaucracy. Additionally, it was able to quickly frame the rules and regulations to implement the Act and make it operational. It also

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undertook extensive awareness-building activities throughout the country. The annual reports of the Commission are replete with description of these activities.

Despite this good beginning, however, the Commission was unable to create through its dealings and actions, the necessary confidence in the minds of citizens that it was prepared to help them in every possible way to apply the law in as easy and unencumbered a manner as possible and enjoy its multifarious benefits. It failed to show that it was willing to apply the law and its rules to promote its use and not to restrict it so that the basic objectives of the law are enhanced. Apart from creating a more citizen-friendly atmosphere at complaint hearings, the latter could have been advanced, among other things, by a careful use of the penalty clause provided in the Act to chastise recalcitrant officials. So far in more than five years only 2 of them have been penalized. This point has been further discussed in a later section of this paper.

The fact that the RTI Act has not generated either a sizable volume of demand for information (see below) or the commensurate number of complaints to the IC is evident from the relatively few complaints received by the Commission since its formation. This, of course, is not the fault of the Information Commission and can only be attributed to the lack of engagement of citizens to make use of the law in large numbers. This has been dealt with at length in this paper. But even among the small number of those who had made use of the law, many were often deterred by their experience at the application filing stage or at the complaint resolution stage at the Information Commission. A cursory glance at the statistics of complaints dealt with by the IC so far demonstrates this amply. According to information provided by the IC, 790 complaints were received by it in more than five years since its inception up to the end of 2014. Of these, 398 were resolved through complaint hearings, 351 were dealt with through written communications and 22 were rejected because of improper application submission and 01 is pending.

The written communication method to deal with complaints was resorted to apparently because the IC had found most of them defective and saw no reason to meet the complainants face to face. Instead, they decided to advise them in writing to reapply after necessary corrections. The fact that more than 40% of the complaints were thus treated as defective and non-cognisable deserves serious review and identification of corrective measures. An equally important concern is the fact that most of those who were thus dealt with have reportedly not pursued their application further. Thus they were most likely lost from the process and perhaps would never return. It calls for serious introspection and possibly a full-fledged research to find out, among other things, whether the Commission was overly strict in interpreting the law and unwilling to bend it in favour of the complainants. Critics have argued that if the IC could be lenient in the use of the penalty provision against the supply side, as evident from its poor record in this regard, the same leniency in favour of the demand side would have had a beneficial impact on the latter. In any case, the text of the law makes it amply clear that the Act is meant to empower citizens to monitor the work of public authorities and hence in its application it is the spirit of the law and not small technicalities that should deserve greater attention of the IC. A more accommodating IC would have encouraged more people, particularly the under-privileged and illiterate among them, to make greater use of the law. Many NGOs engaged in helping the latter have reported the negative impact on applicants of the restrictive interpretation of the law and its rules by the IC. These will be elaborated further in the subsequent sections of this paper. What may be added here is that there appears to be appreciable change in the dealings of the IC with complainants at complaint hearings though the number of complaints dealt with through written communication, without any face to face hearing, continue to be large.

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### **5. Some other problems faced in the implementation of the Act**

That awareness and understanding about the law and its objectives is not widespread among citizens is also borne out by the fact that the very large number of applications reportedly received by government offices throughout the country during the period covered by the four annual reports of the IC so far appear to be largely un-related to the Act. The 2010 annual report mentioned some 25,410 RTI applications received by government and NGO offices throughout the country. This was rightly criticised by knowledgeable observers as an unrealistic figure. Indeed on closer look it turned out that most of the applications had little or nothing to do with RTI. The statistics appear to have included letters normally sent to government offices by citizens seeking information on mundane matters of various kinds, such as train and boat timings, how to apply for public service examinations, how to obtain a passport or register a gun, etc. Either those who used the Act to obtain such information were not well-informed about its objectives or the officials who provided the Commission with the figures misled it, knowingly or unknowingly.

Perhaps as a result of the above criticism, the number of RTI applications cited in the 2011 annual report dropped to 7,616, i.e., less than one-third of the number reported for the previous year. However, here too, upon closer look, it appeared that many of the applications had little to do with the RTI Act though they were apparently made on RTI application forms. The 2012 annual report put the figure for RTI applications received by government offices and NGOs throughout the country at 16,475. The same figure for 2013 is 11,727. Even if one overlooked the nature of applications included in the statistics, a total of 61,420 RTI applications in a period of more than four years is by all accounts a very small figure for a population of over 150 million. Clearly the Act has not caught on.

The argument that most of the applications recorded in the annual reports of the IC have/had little relevance to RTI is well supported by statistics. 99% of the applications shown in the 2010 report, 97.5% of those shown in the 2011 report, 95.90% of those shown in the 2012 report and 96.15% of those shown in 2013 reportedly received positive response and generated barely any complaints to the Commission. It is obvious that most of these applications were not related to the basic objectives of transparency and accountability of public officials. For, it is hard to believe that the same public officials who were so used to guarding all official information close to their chest before the law was enacted would now be so generous as to dispense them so very willingly.

The above figures also explain why the Commission received such few complaints from the general public. The few that it received were, as has been said before, generated by the work of NGOs and RTI activists. However, the 2013 annual report of the IC and subsequent information received from it show that there is an increase in the number of applications/complaints originating from the more educated and middle classes in recent years. Since such applicants normally apply on their own, without help from NGOs or RTI activists, this is a positive development indeed. Another promising development is the fact that 277 complaints were received by the IC in the year 2014 alone, which is more than double of the average number of complaints received annually by the IC in the previous four years. This would perhaps indicate that the figures are catching up both in terms of filing of applications and lodging of complaints. However, the fact that out of these 277 cases only 162 were taken into cognisance by the IC and 115 were rejected as defective should be a matter of serious concern for reasons discussed earlier.

It is not clear, however, if the figures reported in the publications of the Information Commission on RTI applications include all those generated by NGOs working at the grassroots level. The numbers

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would not, however, be very high. This is because most of the NGOs have to depend on very limited resources they get primarily from foreign donors. However, the results obtained by them are extremely significant. As has been said before, it was their efforts which had actually set the RTI ball rolling in Bangladesh. A tentative figure would be about 10,000 to 15,000 applications generated over the years so far. Many of the applicants, however, did not pursue the entire RTI process as in many cases they obtained the desired results just by asking and did not wish to pursue the matter further, for example, by asking to receive written responses. Thus they did not perhaps figure in the statistics. Unfortunately, the lack of proper coordination in the work of the concerned NGOs in the country and their weak link with the Information Commission makes it difficult to obtain a clearer picture in this regard.

Information obtained from NGOs engaged in helping people to make use of the RTI Act shows that the number of applications to public authorities as well as complaints to the IC would have been higher if a significant number of applications/complaints had not been rejected by the concerned authorities and/or by the IC as faulty and non-cognisable. A key reason for such rejection is the requirement that the applications must be addressed to specifically named designated officers (DOs) or appeal authority, as the case may be. Any mistake in this regard, either because the name was not correctly spelt or mentioned or the DO concerned had moved elsewhere, resulted in refusal to accept the application and/or its return as undeliverable. In a country where officials are changed or transferred very frequently, this requirement has had extremely negative consequences on prospective applicants. Not only did the applications become dead letters but the applicants themselves were discouraged and compelled to abandon their pursuit. The problem is further accentuated when the offices concerned fail to appoint DOs or replace them.

Since the law has so far been largely used by disadvantaged, illiterate people at the grassroots level, the requirement to use only the government approved format for an RTI application is also hugely problematic. Where the applicants are helped by NGOs or RTI activists, this can be met without much difficulty. But for those who do not have such help, a simpler process is clearly called for. In India an application made simply on a post card with basic elements of the information sought and the particulars of the applicant is considered sufficient.

The above are some reasons why 17.3% of the respondents in the Nielsen survey cited bureaucratic hurdles as a key factor for not using RTI (Cf. Nielsen 2013, p. 5). The more recent RIB study also confirmed this trend. Unless these and some other unreasonable requirements are removed, the problem is likely to continue. The negative impact of the restrictive interpretation by the IC of RTI rules and regulations has been clearly demonstrated in the decisions of the IC on complaints it dealt with over the last five years. This has been duly discussed elsewhere in this report but it may be useful to simply recall here that over 40% of all complaints received by the IC were considered faulty and non-cognisable.

A recurring problem mentioned by complainants in the earlier years, particularly those belonging to marginalised communities, was the intimidating atmosphere at complaint hearings of the Information Commission. Similar allegations were made about unfriendly dealings by IC officials with the public in general. There appears to be a perceptible change in this regard in recent times. However, it would be useful for the IC to bear in mind in all its activities that since the basic objective of the law is to empower citizens *vis-a-vis* public authorities, it necessarily calls for a people-friendly Information Commission. As most of the officials of the IC, including two of three of its commissioners, are either

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on lien from government or are former bureaucrats, this is a difficult task. It is encouraging, however, that the present Commission appears to be making efforts to overcome this difficulty.

Some complainants, particularly those living at a distance from Dhaka, are also deterred by the cost of travelling to Dhaka and paying for accommodation and other costs to attend complaint hearings. The problem is accentuated when the hearing is postponed because of non-attendance by the respondent. When this happens it sends a negative message to prospective complainants. Alternative mechanisms for the hearings, such as teleconferences or ad hoc hearings at different regional centres of the country, among others, could be considered.

The RTI Act clearly provides for penalties to be imposed on public officials reneging on their responsibilities under the Act. However, the IC appears to be very reluctant to impose penalty or other sanctions prescribed in the law. In fact in five years it has imposed penalties only in two cases, though there was scope for penalty in many others. While being lenient to defaulting officials in the initial stages was understandable, the propensity not to make use of this important measure meant to punish those who have knowingly disregarded the law cannot but have a detrimental effect on implementation. In fact the penalty clauses are there primarily to advance the objectives of the law, particularly to change the negative mind-set of the bureaucracy. Moreover, when public officials are shown such leniency by the IC it is legitimate for ordinary citizens to ask why the same leniency cannot be shown to them when they make simple and unintended mistakes in the application process.

### **6. Lessons learnt and future directions**

An important lesson from the RTI experience of Bangladesh is the inherent drawback of adopting a legislation of such a revolutionary nature without preparing the people first through a participatory process. It has shown how the time gained by shortcutting the process must necessarily be made up by a longer process of interaction between citizens and the government until both sides come to see its importance in national life. Bangladesh is going through such a process now. The process has not only become longer but perhaps more difficult.

The difficulty is further compounded by the fact that after having adopted the RTI Act, the government appeared to feel that it had done its job and had no further responsibility towards it. In fact by enacting the law it ended all public and international pressure, however limited, that preceded its adoption. This means that the ball is clearly in the court of the citizens now. Unless they play with it properly it is unlikely to reach its desired goal. It is heartening, however, to note that the government is at last waking up to its responsibility and has begun to take important initiatives to take the law forward to which we shall return in a short while.

The need for citizens to play a key role in promoting the Act would remain for as long as it does not become a much used instrument. It, therefore, calls for concerted efforts on the part of all citizens' groups to develop a strategy in this regard. Experience gained so far indicates that the most important task is the generation of a continuous flow of RTI applications pouring into government and other public offices. Such a development, over time, will contribute towards changing the disposition of public officials towards ordinary citizens seeking information from them. It is also a better way of bringing awareness about the law to them, much better than making them sit through many workshops and training sessions which are both time and money consuming. The need, therefore, is for more NGOs and social activists to come together to help the process. Perhaps lesser time and

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resources spent on seminars and workshops and more on helping people to make the applications, appeals and complaints will yield better results.

The importance of holding awareness building and training sessions for public officials on RTI cannot, of course, be denied. But in the process it must always be underlined that the RTI Act is meant for the benefit of all concerned, including government officials, since they too have vital interest in ensuring that all public work is conducted in a lawful and systematic manner. In neighbouring India a number of government officials have taken recourse to the law to settle their grievances on such matters as promotion, transfer, provident fund, retirement benefits etc. A deep-seated mistaken notion that seems to work in the minds of many public officials in Bangladesh is that the law is meant to harass them as it provides citizens with the opportunity to probe and query their work. This must be dispelled by all means.

Side by side, efforts should be geared up to develop a close working relationship between civil society and the Information Commission. A main objective here should be to enhance the visibility of the IC and its activities, as well as to help it turn into a truly people-friendly institution. The joint efforts of civil society and the Information Commission will also carry greater weight in convincing the government about the importance of paying regular attention to the needs of RTI, in particular to ensuring the cooperation of the bureaucracy in the implementation of the law. Civil society and the IC could also jointly develop and implement a strategy to convince citizens and the government alike about the role RTI can play to promote good governance and democracy. More media articles and coverage about the close link between RTI and the latter would help.

The Nielsen survey has revealed the importance of the role of the media in creating RTI awareness among DOs. 72% of the DOs had claimed to have become aware of the RTI Act from newspaper reports and articles. This figure thus exceeded awareness generated through government memorandum (47%) and training (23%) put together (Cf. Nielsen 2013, p. 6). It puts into question the emphasis being given by the government, the IC and some NGOs on awareness-building and training sessions for government officials. Other means of publicity should also be considered. When asked to give suggestions for improving awareness of the RTI Act, its rules and procedures, 48% of the DOs suggested that television coverage would help a great deal, while 11% stated that radio could also play a role (Cf. Nielsen 2013, p.7).

When people who had never used the RTI Act were asked for suggestions to raise awareness about it, the most popular response was publicity via television and other popular media, with 15.7% of the respondents suggesting it (Cf. Nielsen 2013, p. 27). Among those who had made use of RTI, 35% had learnt about it through newspapers, and 25% through television (Cf. Nielsen 2013, p. 29). Media should therefore be seen as an effective vehicle for the promotion of RTI.

While pursuing the above strategies, other areas should also be identified. One such area would be the development of an effective proactive disclosure policy for public offices to follow. In fact of late a great deal of attention is being given in this regard with extensive collaboration between the government, the IC, The World Bank and many NGOs. It would be best if the drawing up of a standard proactive disclosure list is preceded by a research on the types/categories of information sought by citizens since the RTI law was enacted which are amenable to proactive disclosure.

There is a need, however, to exercise some caution in this regard so that proactive disclosures of non-sensitive information do not make the authorities feel that by doing so they are off the hook. They

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must be made to realize that transparency requires unveiling of layers after layers of information that people have been denied for a long time. Unveiling only the first layer(s) will not end their responsibilities under the law. The more sensitive type of information will for a long time to come be accessible to people only by asking for it. Till such a time when transparency in the work of the authorities is firmly established, the need for individual applications to access more sensitive information will continue. Proactive disclosure can, therefore, not be the solution except in a few areas/matters.

A positive development in this respect is the fact that a number of key government ministries/ departments have undertaken to fulfil their responsibilities under article 6 of the RTI Act. These include developing/updating websites and uploading new information, publication of annual reports and development and adoption of disclosure policies. NGO *Manusher Jonno* Foundation provided support in this regard. The MJF study mentioned earlier provides more information in this regard.

Civil society should also seriously consider developing a strategy to bring together more enlightened sections of society and engage them in identifying innovative uses of the law. Given the long tradition of their social consciousness, they are likely to participate in mechanisms designed, for example, to monitor the compliance of any proposed new legislation of the government with the transparency and accountability objectives of the RTI Act. Another area would be monitoring the contents of important public agreements/contracts entered into by the government. Transparency watch-dog mechanisms should be considered for all these purposes. In all this, the role of the RTI Forum, which was established soon after the Act came into force and which sought to continue the cooperation between NGOs and other civil society groups forged in the course of activities undertaken before the adoption of RTI Ordinance/Act, is critical. Unfortunately the Forum has not been very effective so far in demonstrating unity of purpose *vis-a-vis* the IC and concerned public bodies, which is essential for any pressure group to succeed.

### **7. Some promising developments of more recent times**

Questions were raised in the introductory part of this paper on how the RTI Act has fared since it came into force more than five years ago. A preliminary answer that was provided stated that while some progress was made, it is barely quantifiable. This has been further amplified in this paper. No one will contest that the impact of the Act on governance is still very negligible. It has certainly not become more open. The secretive mindset of public officials has largely remained intact. Closer citizen-government interaction is still a pipe dream.

However, the picture is not all bleak. Mention has been made of some promising developments on the demand and supply sides as well as that of the Information Commission. As a result many who were earlier disillusioned about the state of affairs surrounding the RTI regime in the country are now beginning to be more hopeful about the future.

A particularly important development, which has been briefly mentioned earlier, is the fact that, unlike in the initial years, many complaints are now being received by the Information Commission from the middle and educated classes, indicating that more and more of them have begun to make use of the law. This is also evident from the nature of the subjects on which applications are being filed today. A close look at complaint cases dealt with by the IC in 2013 and 2014 shows that people are asking for such information as: settlement of *khas* (government) land, lease of water bodies, land registration, the role of RAJUK (Dhaka City Development Authority), the work of authorities dealing with

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agriculture, fisheries, local government, rural development, cooperatives, NGOs, sport associations, revenue departments, etc. This is a significant departure from the safety-net-related and service or personal benefit-oriented applications which were the hall-mark of RTI applications coming from the marginalised communities. Moreover, as the latter have to depend on NGOs and RTI activists to file their applications/appeals/complaints, it may be deduced that more and more people who do not need such help are now applying on their own. Among other things, it is likely to ensure an enlarged and sustained flow of RTI applications in the future.

The increasing number of applications from the middle and educated classes also means increasing interaction between them and public officials. The latter will not have the comfort any more of dealing mainly with more docile and submissive information seekers from the marginalized communities. The developments also show increasing number of DOs willing to provide information sought by applicants. Some have cited this as reason for the decline in the number of complaints ending up with the IC. This is another indication of the growing maturity of Bangladesh's RTI regime.

The above development has been reflected in the studies/surveys referred to earlier. The Nielsen survey found that at least 25% of RTI applicants felt no constraints in obtaining information they sought and were pleased with the experience (Cf. Nielsen 2013, p. 34). The fact that over 95% of the applications included in the annual reports of the Information Commission were responded to positively, (though critics have contested this figure, as discussed elsewhere) perhaps also indicates that more and more public officials have begun to take RTI applications more seriously. The positive responses recorded in the RIB study as well as that of *Manusher Jonno* Foundation referred to earlier indicate a similar trend. Some see this as the proverbial light at the end of the tunnel.

Another development of some significance is the attention being given to the abuse of Section 7. The latter serves as the exemption/exclusion/non-disclosure clause that enables public authorities to deny disclosure of information on grounds specified in the section. A study/survey was undertaken in this regard by Management and Resources Development Initiative (MRDI), a local NGO. As part of the exercise, meetings were held in six divisional headquarters of the country to discuss application of the section. Participants in these meetings included those from the Information Commission, government departments, NGOs, as well as social elites and the general public. The study identified potential areas of abuse though no specific cases were cited. A roundtable meeting was held in Dhaka in October 2014 to discuss the study which recommended a few amendments to the section. It was agreed that further discussion should take place among concerned stakeholders before proceeding further on the matter. It may be mentioned, however, that a provision of Section 7 requires public authorities to consult the Information Commission first before resorting to any of its sub-sections to deny access. If this is adhered to, the problem of abuse of the section and the need for any amendment to it can be avoided at least till such time as the Information Commission has developed a sizeable jurisprudence on the subject.

It is, however, interesting to note that the idea of amending Section 7 has generated some debate on the matter. Apart from the concerned NGO, it appears that there are people from within the government and the Information Commission itself who favour amending the section. On the other hand, there are those who argue in favour of caution, lest the exercise opens up the door for introduction of other more restrictive amendments by those who feel aggrieved by some of the more positive aspects of the Act. Whether Section 7 requires amending or not, discussions on it so far have highlighted the importance of gaining sufficient experience through practice before considering

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amendment to any aspect of the law. However, the fact that a debate has arisen at all may be considered as a positive development in the sense that it indicates there are people who are seriously concerned about the many exemptions provided in Section 7. It is another example of the growing interest of the middle class in the Act.

But perhaps the most promising development in the field is the proposed linkup between the digitalization policy of the government, which is presently under implementation, and the government's strategic plan for the implementation of RTI which is discussed at length in the paragraphs below. The policy aims at using ICT, like mobile phones, internet and other technologies, to coordinate the vast range of government activities in the most vital sectors like agriculture, education, health, land administration, etc. It has been variously referred to as "Digital Bangladesh" and "Vision 2021". With support of the UNDP, the government's Access to Information (A2I) project has already made impressive progress towards achieving many of the above objectives. The two areas where the developments have an important bearing on RTI are: one, office automation, linking all government offices electronically with central monitoring, digital file management system and record keeping etc; and two, the establishment of Union Council Information and Service Centres (UISC). Those involved with the project are reportedly exploring ways and means to use ICT to help RTI applicants with the entire RTI process, from drafting of applications, identifying DOs, sending applications by email to the DOs, to helping with appeals and submission of complaints to the Information Commission. The idea is that all these could be done under one roof at the UISCs which have been set up in almost all the unions of the country. It is similar to the *Jankari* Programme instituted by the state of Bihar in India. If fully implemented, it will be a big shot in the arm of the RTI regime in Bangladesh.

The strategic plan for the implementation of RTI, mentioned above, is part of the government's "National Integrity Strategy of Bangladesh" adopted in October 2012. The basic goal of the latter, inter alia, is to establish good governance and fight corruption in the country. As an integral part of this strategy, the government has undertaken a World Bank-supported project, titled "Connecting Government with Citizens: Strategic Plan on Implementing Right to Information Act Bangladesh" which is being implemented by the Cabinet Division that acts as the secretariat of the Bangladesh cabinet.

A meeting held in this regard in early 2014, in which key government ministries, the Information Commission and members of civil society participated, led to the adoption of a Draft Strategic Plan for the implementation of RTI throughout the country. Among other things, the draft plan foresees the development of institutional arrangements under the overall leadership of the Cabinet Division to coordinate the response of government offices to the implementation of the RTI Act. It also foresees the selection of "a suitable national agency ..... as custodian of RTI in Bangladesh for mainstreaming RTI activities across government." It goes on to suggest that "the government could consider designating the Ministry of Public Administration (MoPA), Cabinet Division or the Ministry of Information as a coordinating agency for RTI across government." It further adds that "(t)he MoPA is likely to have more traction than the Ministry of Information by virtue of its own role as a cadre controlling authority of Bangladesh." The plan thus reflects a serious undertaking by the government to promote respect for the Act across all government offices in the country. It is clearly a big departure from the government's earlier lukewarm attitude towards the Act.

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Following adoption of the Draft Strategic Plan, a Working Group has been established (notification number 04.221.085.00.01.025.2010.611 dated 22 June, 2014; see [www.cabinet.gov.bd](http://www.cabinet.gov.bd)) with the Additional Secretary, Coordination, of the Cabinet Division as its head. Other members include the Additional Secretary Information Ministry, Secretary to the Information Commission, a representative of The World Bank and Deputy Secretary (Administrative Reform). It is clearly a very high powered group which has been tasked with chalking out effective measures for the progressive implementation of the plan.

The efforts of the Working Group have already resulted in the formation of a 15 member Advisory Committee for the implementation of the RTI Act at the district level throughout the country. This was made public through gazette notification number 04.00.0000.221.14.043.14-643, dated 11 September 2014. The committee is headed by the district commissioner and includes, among others, the police super, the civil surgeon, other district administrators, district information officer, president of the press club, district bar association and members of civil society organizations, including a representative of women and NGOs. Broadly speaking, the task of the committee, which is supposed to meet once a month, is to coordinate the implementation and overall promotion of the RTI Act.

By any account, it is a commendable initiative and, if it works out well, can be most beneficial for the healthy growth of the RTI regime in the country. It provides an opportunity and a challenge for civil society, RTI enthusiasts and NGOs working in the field to develop their own strategy to work hand in hand with the government and at the same time ensure preservation of the integrity of the law. They must be vigilant in monitoring the meetings of the district advisory committees so that they do not turn into a forum for discussion on difficulties faced by public officials under the Act which may subsequently lead to calls for amendments.

The above discussion on positive developments will not be complete, however, without mentioning some changes reportedly taking place in the Information Commission. It seems that the commission is slowly coming out of its overly cautious and tepid approach observed in the past. It has begun to undertake important initiatives to popularize the Act and bring awareness about its tremendous reach to different sections of the people. It has successfully liaised with the concerned government departments to introduce RTI awareness into text books of educational institutions. It has identified specific groups of people, including teachers and students, for the next phase of its awareness building and training programmes. It is working hand in hand with the working group set up under the government's strategic plan for the implementation of RTI across government offices in the country. Additionally, it has been able to deal with more than double the number of complaints in 2014 compared to the previous years.

More importantly, there are reports of more polite and friendly dealings of the IC with people taking part in the complaint hearings. All this indicates a definite coming of age of the Information Commission. Though It has a long way to go before it is able to establish itself in the eyes of citizens as a good guardian of the law. To do that it must also remove the obstacles and difficulties faced by RTI applicants. It must resort to making use of the penalty clause whenever appropriate against defaulting public officials for not fulfilling their responsibilities under the law. It will need to develop its capacity to correctly interpret the many intricate provisions of the law which will become all the more necessary as more and more people from the educated classes take recourse to the law.

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### **8. Conclusion**

In concluding, it may be reiterated that after a tardy beginning, the RTI Act 2009 of Bangladesh has begun to come of age, albeit very slowly. While awareness about the law and its use is still very limited, there are signs that more and more people are beginning to make use of the law, some still with the help of NGOs but many on their own. There are also promising developments on the side of the government as well as the Information Commission.

Steady progress will, however, only come if there is continuous growth in demand for information which will keep the demand and supply sides, as well as the Information Commission, mutually engaged in the process. But a big worry here is that a sizable number of the demands so far are due to efforts of some committed NGOs who help people to use the law. As these NGOs largely depend on external support for their activities, there is a danger that if this dries up, their good work in promoting RTI would be adversely affected: something that should not be allowed and indigenous support must be organised.

The heart-warming scenes of joy, surprise and excitement when RTI applications, filed by marginalized communities, are successful, are too precious to lose. The many benefits they have got from using the law include vulnerable group feeding (VGF) and development (VGD) cards, old age pension, maternity benefits, and many others. This has reportedly led many of them to proclaim that, despite their historically low status in society, they now feel that they are equal to all other citizens of the country, with equal rights. RTI has thus implanted a new sense of citizenship in them. Nothing else would perhaps have done it so convincingly. Some say that RTI is also helping them remove the “poverty mind-set” they inherited through neglect and deprivation over centuries and to replace it with confidence and courage.

It is important, therefore, for the government to ensure that together with the other important initiatives it has undertaken to help the implementation of RTI in the country, it must also find ways to support NGOs and others to continue their useful work in helping poverty groups to use the RTI Act. Such help will be needed for some more time so that the groups are able to overcome the many drawbacks they suffer due to their lowly status and gain some more experience and confidence. The NGOs could be engaged, for example, in providing support to RTI applicants who would like to use the facilities at Union Council Information and Service Centers (UISC) for filing and follow-up of their RTI applications.

On their part, civil society too should make concerted efforts to involve corporate bodies and the business community to fund this work. If the stakeholders of the RTI Act, including citizens, public authorities, the Information Commission and the government, were to play their respective roles in its promotion and implementation, everyone would win. For democracy, good governance and participatory development gain most from successful practice of RTI in any country.

Five years is perhaps not a very long time for a revolutionary law like the RTI Act to strike deep roots in a country long used to official secrecy and the restrictive mind-set of public officials. It certainly has not happened in Bangladesh yet, but a beginning has been made. Given the fact that there was hardly any preparation of citizens and public officials to play their respective roles under the Act before it was passed, the progress made so far is not insignificant. If the pace picks up with successful implementation of the various initiatives referred to in this paper, RTI in Bangladesh will have a bright future indeed.

# State of the RTI Regime: Bangladesh

## Sources

In writing this report, publications and websites of the Information Commission, Access to Information (A2I) Office of the Government and key NGOs engaged in the promotion of RTI in Bangladesh were consulted. Their website addresses are as follows:

Access to Information (A2I): [www.a2i.pmo.gov.bd](http://www.a2i.pmo.gov.bd)

Article 19: [www.article19.org](http://www.article19.org)

D-net : [www.dnet.org.bd](http://www.dnet.org.bd)

Democracy Watch: [www.dwatch-bd.org](http://www.dwatch-bd.org)

Government of Bangladesh: [www.portal.gov.bd](http://www.portal.gov.bd)

Information Commission: [www.infocom.gov.bd](http://www.infocom.gov.bd)

*Manusher Jonno* Foundation (MJF): [www.manusherjonno.org](http://www.manusherjonno.org)

Mass-line Media Centre (MMC): [www.mass-line.org](http://www.mass-line.org)

MRDI: [www.mrdibd.org](http://www.mrdibd.org)

*Nagorik Uddog*: [www.nuhr.org](http://www.nuhr.org)

Nijera Kori: [www.nijerakori.org](http://www.nijerakori.org)

Research Initiatives, Bangladesh (RIB): [www.rib-bangladesh.org](http://www.rib-bangladesh.org)

TIB: [www.ti-bangladesh.org](http://www.ti-bangladesh.org)

## 8.

# State of Emerging RTI Regimes: Bhutan, Maldives, Sri Lanka

Misha Bordoloi Singh

### Overview

Of the eight countries in South Asia, as of 1<sup>st</sup> January 2015, only two, Bhutan and Sri Lanka, do not have any national transparency laws or (as in the case of Pakistan) national transparency ordinances. Afghanistan and the Maldives are the two most recent entrants, with the RTI law coming into force in Maldives in July 2014. In Afghanistan, the President signed the law in November 2014, though it has not been published nor come into effect as 2015 begins.

Given the nascence of the RTI regimes in these countries, it has not always been easy to find material on the state of the transparency laws or, indeed, indigenous experts who could write an analytical piece on the current status of the RTI regime. We were fortunate that for Afghanistan we were able to persuade a very senior, well-informed and competent former Afghani official to write an analytical state of the RTI regime paper (included in this volume). However, for Bhutan, Maldives and Sri Lanka we had to ourselves study the sparse material available, and construct an analysis and status report, which is presented in this paper.

Fortunately, for all these countries we were helped by experts from within the country and elsewhere, who brought to our notice relevant material and sent us their own thoughts and analysis.

Given the fact that two of the countries discussed in this paper, namely Bhutan and Sri Lanka, still have to pass a transparency law, and the Maldives has just recently passed theirs, it was thought important to understand the political and historical background leading up to the current status of the RTI regime in each country. Therefore, an effort is made to describe how governments in these three countries have themselves evolved to the point where they are hopefully on the verge of enacting a transparency law, or of beginning to implement it.

### State of the RTI Regime in Bhutan<sup>1</sup>

#### 1. Background

In only its sixth year of democracy<sup>2</sup>, Bhutan is flush with opportunities. It is making a concerted effort to create a successful system of governance that will positively impact its now famous happiness index, and the right to information has become a hotly contested issue in this context. In February, 2014, The Right to Information Bill (RTI Bill) 2014 was passed by the National Assembly during its 2<sup>nd</sup> Session and forwarded to the National Council for deliberation during its 13<sup>th</sup> Session. The

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<sup>1</sup> The author is grateful to Venkatesh Nayak of the Commonwealth Human Rights Initiative, New Delhi, for providing access to various material on Bhutan.

<sup>2</sup> <http://www.bbc.co.uk/news/world-south-asia-12480707>

## State of the RTI Regime: Bhutan, Maldives and Sri Lanka

Chairperson of the National Council assigned the Foreign Relations Committee (FRC) for analysis and public consultations before tabling it to the House for adoption.

In May 2014, the 9<sup>th</sup> sitting of the National Council of Bhutan voted to withdraw the Right to Information Bill 2014<sup>3</sup>. Interestingly, this withdrawal aroused mixed feelings in the people of Bhutan.

Though all transparency legislation proposed within the South Asian region has faced opposition, in Bhutan the opposition is not just from within the government<sup>4</sup>. In an interesting development, members of the media and civil society have spoken out against the enactment of an RTI Act for a number of different reasons. This paper will attempt to explore these reasons, and examine the current state of affairs and possibilities for the future.

### **2. Political Background**

Bhutan adopted a system of absolute monarchy in 1907, crowning Ugyen Wangchuck the Druk Gyalpo or the Dragon King of Bhutan (Wolf, 2012). Wangchuk was originally the governor of a province called Tongsa, but power struggles between the two river valley provinces of Paro and Tongsa led to a civil war and Tongsa, with Wangchuk at its helm, won the conflict. He then solidified his base in central Bhutan, and after a series of conflicts in the late 1800s, defeated his rivals and created a unified state of Bhutan (Worden, 1993). The government of Britain recognized Wangchuk's ascension, and in 1910 Bhutan and Britain signed the Treaty of Punakha, a subsidiary alliance that allowed Bhutan to be treated the same way as Indian princely states<sup>5</sup> and left the control of foreign affairs in the hands of the British government. After India achieved independence in 1947, it also recognized Bhutan as a sovereign country (Wolf, 2012:4).

This period marked the beginning of a modernization drive spearheaded by Bhutan's monarchs. In 1953, King Jigme Dorji Wangchuk created the nation's National Assembly. Initially a unicameral house, it was the first step towards the plan for democratizing Bhutan (Wolf, 2012). It was followed by an edict in 1965 that created the Royal Council of Advisors, and another in 1968 that created a cabinet. Crucially, in 1971, the same year that Bhutan was admitted into the United Nations, the King passed an edict empowering the National Assembly to remove him and any of his successors from power through a two-thirds majority vote. King Jigme Dorji Wangchuk was succeeded in 1972 by his son King Jigme Singye Wangchuk, who began the process of drafting Bhutan's constitution in 2001. Remarkably, the King also commanded Bhutan's High Court Chief Justice to draft an RTI law for Bhutan, much before the constitution had been drafted and electoral politics began<sup>6</sup>.

Until 1999, the Cabinet that had been created by His Majesty consisted of a Council of Ministers headed by the King, who led the decision-making process. In 1999 however, the King took another step towards democratization and dissolved the Cabinet, creating in its place the Lhengye Zhungtshog, or Council of Cabinet Ministers, meant to serve as the nation's highest executive body (Wolf, 2012). The King removed himself from the council, and from the process of decision-making, and the National Assembly appointed six new ministers to the Lhengye Zhungtshog. It would eventually be headed by

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<sup>3</sup> <http://www.nationalcouncil.bt/withdrawal-of-the-right-to-information-bill-2014-by-the-national-council/>

<sup>4</sup> <http://www.bhutannewsnetwork.com/2013/09/pdp-mps-reluctant-to-rti-law/>

<sup>5</sup> At this time India was a colony of Britain, and many former independent kingdoms were included under British rule as princely states. In essence the royal families of these states were allowed to retain control of their kingdom, but under the protection of the British government.

<sup>6</sup> <http://www.thebhutanese.bt/bhutans-rti-story/>

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a prime minister, but until the election a chairman was selected, who enjoyed a term of one year before passing chairmanship to another member of the council.

Once the constitution had been finalized in 2005, King Jigme Singye Wangchuck announced, to general surprise, that the country's first democratic elections would be held in 2008, at which point he would abdicate in favour of his son, Jigme Khesar Namgyel Wangchuck, who would become the first constitutional monarch of the Kingdom of Bhutan (Muni, 2014). Further shock followed when in 2006 the King announced he would be abdicating immediately, and handing power over to his son. In 2007, a royal edict lifted the ban on the formation of political parties, and these were now encouraged in the lead up to the elections<sup>7</sup>. And finally in 2008, after a long and unusual journey and almost 80% turnout, Bhutan elected its first democratic government<sup>8</sup>.

Legislative power in Bhutan today rests with the bicameral parliament – the lower house is the popularly elected National Assembly, and the upper is the National Council (Mathou, 2000). The executive branch consists of the Prime Minister and the Lhengye Zhungtshog, which is comprised of as many ministers as is needed to run the government efficiently. The King is the head of state, and is closely advised by the Je Khenpo, or the Chief Abbot of the Central Monastic Body of Bhutan (the Dratshang Lhentshog)<sup>9</sup>.

### **3. The RTI**

The first draft of Bhutan's RTI law was completed in 2007<sup>10</sup>. The Druk Phuensum Tshogpa (DPT) won a large majority of the seats in the National Assembly in the 2008 elections, and as they had included the RTI as one of their election promises, there were high hopes that the RTI law would be passed without delay. Further, though both the National Council and the opposition (People's Democratic Party) announced their support for the legislation, the government seemed reluctant to follow through. Despite the fact that just a few months after the elections the PM had promised that the RTI Bill would soon become law, a year passed with no action taken. Finally the government announced that they would definitely pass the law before their term ended. However, in their final year they declared that though the right to information would not become law, it would at the very least be introduced in Parliament<sup>11</sup>. Unfortunately, this didn't happen either, and by the time the DPT lost the 2013 elections to the People's Democratic Party (PDP), no movement had been made on the RTI law at all.

In February 2014, the new government passed the RTI Bill in its second session, with 32 members (out of 40 present) voting for it, four abstaining, and four voting against. The Bill was then sent to the National Council for discussion and approval<sup>12</sup>. In May 2014 however, the National Council recommended that the RTI Bill be withdrawn, as procedural lapses had prevented the Foreign Relation Committee (FRC) from carrying out an in-depth study of the Bill<sup>13</sup>. The FRC had been asked by the Chairperson of the National Council to analyse the Bill and to discuss it with stakeholders before tabling it for adoption. The National Council felt that passing the Bill without such an analysis and

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<sup>7</sup> [http://www.nytimes.com/2007/04/24/world/asia/24bhutan.html?\\_r=0](http://www.nytimes.com/2007/04/24/world/asia/24bhutan.html?_r=0)

<sup>8</sup> <http://www.theguardian.com/commentisfree/2008/mar/27/1>

<sup>9</sup> <http://www.bhutanaudit.gov.bt/About%20Us/Mandates/Constitution%20of%20Bhutan%202008.pdf>

<sup>10</sup> <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/bhutan.html>

<sup>11</sup> <http://www.thebhutanese.bt/bhutans-rti-story/>

<sup>12</sup> [http://zeenews.india.com/news/south-asia/bhutans-national-assembly-passes-rti-bill\\_909509.html](http://zeenews.india.com/news/south-asia/bhutans-national-assembly-passes-rti-bill_909509.html)

<sup>13</sup> <http://www.nationalcouncil.bt/withdrawal-of-the-right-to-information-bill-2014-by-the-national-council/>

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discussion would render it meaningless, and would erode the public's faith in the legislative procedure.

### So, what happened?

After making their recommendation, the National Council (NC) released a document titled *Obstruction of the National Council from Conducting its Parliamentary Duties*<sup>14</sup> that explains in detail the reasons behind their directive that the RTI Bill be withdrawn, and discusses the 'procedural lapses' in depth. It seems that at the end of the previous government's term, the Cabinet Secretary and Committee of Secretaries (CoS), in essence Bhutan's bureaucratic service, issued instructions that all requests for information made by the National Council to any government ministry, department or agency, must be routed through the Cabinet Secretary, and cannot be complied with until approval has been given. The Council's requests for information about the RTI Bill never received approval.

The report points out that not only does this system add an unnecessary layer of bureaucracy and promote inefficiency, but is also entirely unconstitutional. There appears to have been no real need for such a step in any case, as the National Council never had any trouble communicating with other government departments and had functioned for five years with almost no administrative glitches. In fact this new system severely hampered the council, adding time and unnecessary complication to its functioning, and in the case of the RTI Bill, not allowing it to function at all. The NC document goes on to relate a number of occasions when the chairperson of the council approached the PM in order to amend this system and restore the access the NC had previously enjoyed. However, despite assurances that meetings would be held and the issue would be addressed, nothing happened.

Eventually the PM directed the minister, or Lyonpo, of Information and Communication to make a presentation on the RTI Bill to the NC; however by this time the new parliamentary session had already begun and the NC could not have held the necessary discussions with stakeholders that were an integral part of its passing the Bill. The minister was however asked to clarify certain details about the Bill:

*"NC: To whom has the Bill been presented and consultations done?"*

*Lyonpo: About 32 consultative meetings have been held by then and presentations made to officials of different agencies in ministries, dzongkhags<sup>15</sup> and local governments.*

*NC's observations: It is ironic that while issues such as the RTI Bill has been publicized widely by the Ministry for public consultations, public awareness and feedback, the National Council, which is the actual institution that is required to deliberate and adopt the Bill is denied a simple presentation."*

And,

*"NC: Who approved these presentations and consultations?"*

*Lyonpo: No approval is necessary from the Prime Minister or Minister of MoIC. The concerned department did the presentations and consultations.*

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<sup>14</sup> <http://www.nationalcouncil.bt/wp-content/uploads/Obstruction%20of%20the%20NC%20from%20conducting%20its%20Parliamentary%20Duties.pdf>

<sup>15</sup> Dzongkhags are administrative divisions, correlating to districts.

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**NC's observation:** *NC sought presentation from the same department, whose officials were willing. While no approval was needed for presentations to others, approval was necessary for NC, one of the two highest law-making institutions!"*

Though the NC could have passed the Bill without the presentations and consultations, it felt the need to take a stand on the issue. Such a system appeared tantamount to interference, and in fact the NC clearly labels it as obstruction, and states that the CoS committed a breach of privilege, and in order to prevent this situation from continuing, the RTI Bill had to be withdrawn. The document goes on to say that without the consultations and analyses, the likelihood of the RTI Bill being rejected by the NC both in its own sitting and the joint sitting would be quite high, and it was therefore better to withdraw the Bill.

The NC also passed a resolution calling for the government's attention to the issue of the obstruction of its functioning<sup>16</sup>.

### RTI and Public Perception

To the surprise of many in the global pro-transparency community, the people of Bhutan were not as supportive of the right to information as expected. Voices within both civil society and the media advised caution on the issue of transparency, and some even welcomed with relief the delay in the passing of the RTI Act. When members of the Transparency Advisory Group participated in a conference organized by the Government of Bhutan, in Thimpu, in May 2012, they were faced for the first time with critics and opponents from the general public<sup>17 18</sup>.

There are several points of concern raised over the implementation of an RTI Act:

- **Does Bhutan actually need an RTI Act?**

There are concerns that the RTI Act is being pushed not by a genuine need for transparency, but because of external interests and agendas. It is suggested that the people of Bhutan do not suffer from a lack of information, and that stray instances of secrecy are not reason enough to enact such a controversial legislation. In essence some believed that information is not kept secret and therefore there is no real need for transparency legislation at this time.

- **What are the implications of such an Act?**

There is a feeling that the RTI Act could have a detrimental effect on the functioning of Bhutan's government, and that its implications have not been fully understood. There are some reservations about repealing laws or clauses within laws that contradict the RTI Act without fully understanding what such an action would mean for governance.

- **Can we afford it?**

The costs of modernizing Bhutan's record keeping facilities, which would be essential under the RTI Act, appear daunting, and there is concern that the nation simply cannot afford to implement a law that would require such enormous financial investment.

- **But, what is transparency?**

Some members of the public have expressed concerns that the mindset required to create a transparent government does not exist amongst either the people or the bureaucracy in

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<sup>16</sup> <http://www.nationalcouncil.bt/wp-content/uploads/Resolution%20Obstruction%20of%20the%20NC%20from%20conducting%20its%20Parliamentary%20Duties.pdf>

<sup>17</sup> <http://www.kuenselonline.com/the-rti-bill-need-for-caution/#.VKqas8Yb7wx>

<sup>18</sup> <http://yesheydorji.blogspot.in/2013/09/my-feedback-on-proposed-rti-bill.html>

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Bhutan. It is suggested that enacting the law before such a mindset has been created – through training and public awareness – will undermine the nation’s ability to function effectively.

- **Is transparency actually a good thing?**

There are also concerns that transparency isn’t always a good thing, and there are fears that enacting an RTI law would lead to a fall in the quality of governance. It is postulated that ministers and civil servants may not feel comfortable giving honest opinions, especially on sensitive and controversial issues, and this would hamper the functioning of the government. There are also concerns that if the law were to cover communications from foreign governments, such governments would then be reluctant to share information or opinions on issues of mutual interest with Bhutan.

These concerns are not limited to Bhutan of course, and have been voiced in many other countries, though usually from within the government or bureaucracy. Civil society has largely been supportive of greater transparency, often risking official censure to do so. The situation in Bhutan is therefore rather unique, and poses an interesting challenge for global advocates of transparency – for the first time they must convince a populace rather than a government to cease opposition and embrace the right to information.

Fundamentally though, there is a pervasive belief in the government and the royal family. Bhutan was a reluctant democracy – the royal family decided to modernize and change the system of government more in response to international developments than internal pressure (Muni, 2014). As a result, perhaps there isn’t a feeling of ownership over the government amongst citizens, or of the right to demand information or accountability. In addition, the Royal Family are still extremely popular, and actively endorse and participate in the new government, giving it credibility and perhaps an aura of untouchability (Wolf, 2012).

On the other side of the debate are those members of Bhutanese society who believe that the RTI Act is already a necessity, that corruption and secrecy are rampant<sup>19</sup>. There have been some high profile cases of corruption that have already been exposed and discussed in the media, in areas ranging from land acquisition to the Bhutan Lottery.<sup>20</sup> There seems to be a growing awareness of the nepotism within the higher echelons of Bhutanese society, and of the transformation of that nepotism into corruption since the advent of democracy.

In the words of one journalist:

*“In the past the complaint was of a few families dominating business in Bhutan but now with democracy the only change is that a few more families have joined the fray. For these connected few it is unusually easy to get licenses, clearances and woe betides any bureaucrat who stands in their way. These influential few even have the power and connections to bend laws and policies in their favor. In the middle of all of this there is an increasing clamor that the past be kept in the past and so only those corruption cases after a certain date are investigated.*

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<sup>19</sup> <http://bhutanimedia.blogspot.in/2010/09/right-to-information.html>

<sup>20</sup> <http://www.thebhutanese.bt/winds-of-corruption/>

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*This in short is a call for an amnesty over corruption cases. Amnesty is granted to child soldiers in Africa, who are kidnapped by armed factions and then asked to fight or die. Amnesty is not for people in the position of power who were well aware that they were breaking laws.”*

- Editorial, the Bhutanese, March 24th, 2012

Though Bhutan is in fact a democracy, the criteria that have to be met to stand for office essentially exclude the majority of the population – you require a college degree, which in Bhutan is still not a common occurrence, and is very often restricted to members of the elite class. Some local elections were postponed by almost three years, because eligible candidates could not be found<sup>21</sup> <sup>22</sup>. In the 2013 election, the PDP credited their surprise win to the rising discontent and public anger at corruption and government wrongdoing.

It is possible then that the climate of faith and deference is starting to fade, and the need for transparency will become more pronounced and obvious. This might well be the best way for the RTI Act to come to the fore in Bhutan – hard fought and therefore valued and used, ensuring it has a much greater chance of success.

### **State of the RTI Regime in the Maldives<sup>23</sup>**

#### **1. Introduction**

The Maldives is a collection of 1196 islands, of which perhaps ten percent are inhabited. These islands are the tips of the fierce and gigantic sub-marine mountain range, the Chagos-Maldives-Laccadive Ridge, located in the Indian Ocean - Arabian Sea area. The population is believed to have descended from the Dravidian people of South India and Sri Lanka, members of which are thought to have found their way to the islands on fishing boats (Romero-frías, 1999). Maldives is believed to have been Buddhist for a long period, until the conversion of the island's kings and subsequently its population, to Islam in 1153, creating a sultanate on the archipelago that has had an unbroken line of 93 sultans and sultanas (Phadnis & Luithui, 1981). In 1953 the Maldives briefly became a very short-lived republic, surviving only until 1954, when the Sultanate was reestablished, which was once again, and more lastingly, disbanded in 1968 when the islands declared themselves a republic. They created a presidential form of government, but there have been numerous coups and changes in government since the republic was created.

Its current government (and many earlier ones) has been considered authoritarian and this has had an impact on the implementation of laws like the Right to Information Act. Though ratified in January 2014, the act still has not been implemented in any meaningful way. The country is also actively awaiting new presidential elections, which were postponed by the serving president in 2013.

#### **2. Colonial Period**

Maldives' isolation and lack of exploitable natural resources meant that it never came under colonial control to the same extent as its closest Asian neighbors - India and Sri Lanka. In the 16<sup>th</sup> century the

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<sup>21</sup> <https://freedomhouse.org/report/freedom-world/2012/bhutan#.VKrBY8Yb7ww>

<sup>22</sup> <http://www.election-bhutan.org.bt/2011/noti/notFLTEng.pdf>

<sup>23</sup> The author is grateful to Venkatesh Nayak of the Commonwealth Human Rights Initiative, New Delhi, for providing access to various material on the Maldives. This paper benefitted greatly from the insights of Aiman Rasheed of "Transparency Maldives".

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Portuguese took over the islands, ruling from their colony in Goa for almost 15 years (Chapin Metz, 1994). Ultimately a local hero by the name of Muhammad Thakurufaan organized a popular revolt and drove the Portuguese out of the Maldives. They subsequently remained independent, except for a four-month colonial experiment by the Dutch, until 1887 when the Sultan signed a treaty officially creating them as a British protectorate. As per the agreement, the British controlled the Maldives' foreign policy and external affairs, and the Sultanate remained the head of the government, and in charge of all internal affairs. They had similar status to princely states in India.

Until World War II the interference in the Maldives' polity was limited. During the course of the war however, the British Empire built its first military base on the Maldives, as part of its strategic defense of the Indian Ocean and South Africa against the Japanese. Named Port T, the base was built on Gan Island, and was equipped with runways and refueling facilities. The entire island was stripped of vegetation and the locals were forcibly moved to other islands. No formal agreement was ever made with the Sultanate, the right to build the base was just assumed under treaty signed in 1887. It wasn't until the early 1950s that there was any effort to formalize the base. As Britain began to lose its colonies and therefore its influence in the south Asian region they needed a foothold to remain militarily effective in the area. After Sri Lanka refused to allow them to continue their military presence at Trincomalee harbor, the British renewed their relationship with the Maldives and ensured the continuity of the base on Gan Island.

Dissension and tension led to the emergence of a separatist movement in the southern islands (those around Gan) and creation of the United Suvadiva Island Republic. The movement lasted from 1959 to 1962, when gunboats sent from Male (the capital) eliminated the secessionist leadership and reestablished the central government's authority.

### **3. Independence and after**

In 1965 the Maldives signed an agreement with the British and gained independence. The Sultanate continued until 1968, when a national referendum abolished it in favour of a republic. The Maldives Majlis or legislature elected Ibrahim Nasir as President in November 1968 for a four-year term. Once in power Nasir amended the constitution, extending the presidential term to five years and creating the post of a Prime Minister. Economic problems – the fall in exports of dried fish to Sri Lanka and the withdrawal of the British base at Gan chief amongst them – led to increasing unpopularity of Nasir's largely authoritarian rule, and in 1978 he fled to Singapore allegedly with millions of dollars from the treasury (IBP USA, 2012:35).

Maumoon Abdul Gayoom was elected to replace Nasir in 1978, and was initially viewed as a positive force in the country. He invested in the smaller islands and in tourism, and under his leadership the Maldives joined the International Monetary Fund (IMF) and the World Bank. As Gayoom consolidated his hold on the Maldives, his rule became increasingly authoritarian<sup>24</sup> - he often won elections with 95% of the vote (Chapin Metz, 1995) - and there were three attempted coups in 1980, 1983, and 1988. The first two were relatively harmless, but the third in 1988 posed a serious threat. Gayoom escaped by running from house to house looking for safety and appealing to the Indian Prime Minister, Rajiv Gandhi for aid. India immediately sent 1600 troops to the Maldives and brought the situation under control.

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<sup>24</sup> <http://bigthink.com/As-I-Please/the-danger-that-the-maldives-will-drift-back-into-dictatorship>

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He remained entrenched throughout the first decade of the 21<sup>st</sup> century, though there was evidently some liberalization - the formation of political parties was legalised in 2005 for example<sup>25</sup>. Finally in 2008 a mass popular movement culminated in a fair and free election, and he was voted out of power. Maldives got its first multiparty election, a new constitution, and democratically elected parliament and president - Mohamed Nasheed.

And then, in 2012, to the amazement of the world Nasheed was suddenly removed in a swift and bloodless coup, which was supported by his vice president, Mohamad Waheed Hassan. Waheed became President on Nasheed's resignation, and ruled until Abdulla Yameen Gayoom, the younger brother of the former dictator<sup>26</sup> was elected in 2013, amid accusations of ballot box stuffing and intimidation<sup>27</sup>, though simultaneously declared fair and free by many international observers including the United Nations. The coup is said to have been supported by the Maldivian elite and family of the former dictator, partially to regain control of tourist revenues<sup>28</sup>.

### **4. Political Developments since 2012**

In December 2012, the government under interim president Waheed passed the Freedom of Peaceful Assembly Bill, which was in fact anything but. The Bill restricted the right of people to protest in or outside government buildings, for example, and also made it illegal to document any protests at all – essentially curbing the freedom of the press<sup>29</sup>. Also since the 2012 coup, attacks on journalists have been on the rise, and several pro-opposition TV channels have been victims of arson<sup>30</sup>. Ahmed Rilwan, a young journalist, was allegedly abducted at knifepoint in August of 2014, and the police have made no progress on his disappearance<sup>31</sup>, despite widespread protests and international condemnation. Maldives had been moving up on the world rankings on press freedom (specifically the Reporters without Borders Press Freedom Index), going from 144<sup>th</sup> of 179 countries in 2006, to 52<sup>nd</sup> post the 2008 elections<sup>32</sup>. As of 2013 however, they had dropped to 103<sup>rd</sup>.

In both 2012 and 2013, Maldives did not appear on Transparency International's (TI) Corruption Perception Index, as the TI could not secure even the most basic information required to make their assessment<sup>33</sup>. There appears to be no data for 2014 either. In 2011, however, they were 134<sup>th</sup> out of 189 countries, and there are allegations of corruption in every branch of the government<sup>34</sup>. It was even branded the single most serious threat to the "infant democracy in the Maldives" by the Auditor General Niyaz Ibrahim in November 2014<sup>35</sup>.

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<sup>25</sup><http://www.acauthorities.org/sites/aca/files/countrydoc/Transparency%20in%20Political%20Financing%20in%20Maldives.pdf>

<sup>26</sup> [http://latimesblogs.latimes.com/world\\_now/2012/02/maldives-president-resigns-mohamed-nasheed-protests.html](http://latimesblogs.latimes.com/world_now/2012/02/maldives-president-resigns-mohamed-nasheed-protests.html)

<sup>27</sup> <https://www.opendemocracy.net/civilresistance/stephen-zunes/maldives-serial-coup-in-progress>

<sup>28</sup> <https://www.opendemocracy.net/civilresistance/matt-mulberry/democratic-decline-in-maldives-will-world-wake-up>

<sup>29</sup> [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp3\\_l205403462\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403462_text)

<sup>30</sup> <https://freedomhouse.org/report/freedom-world/2014/maldives-0#.VKdKzMYb7ww>

<sup>31</sup> <http://www.independent.co.uk/voices/comment/ahmed-rilwans-disappearance-is-a-perfect-illustration-of-the-maldives-ongoing-troubles-9721718.html>

<sup>32</sup> <https://www.opendemocracy.net/civilresistance/matt-mulberry/democratic-decline-in-maldives-will-world-wake-up>

<sup>33</sup> <http://minivannews.com/politics/maldives-absent-from-corruption-perceptions-index-for-second-consecutive-year-72722>

<sup>34</sup> Ibid.

<sup>35</sup> <https://raaije.mv/26880>

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### 5. The RTI

By the mid 2000s, the government of the Maldives had embarked on a process of democratic reform that included the creation of political parties, freedom of the press, and transparency legislation. Led by the then President Mamoan Abdul Gayoom, a Freedom of Information law was tabled in the People's Majlis in 2007, but was defeated by one vote. Seemingly unfazed, the government subsequently introduced the RTI Regulations by executive order in 2008, which applied to all branches of the executive, and made it mandatory for government departments to provide people access to the information they held, and details of their functioning<sup>36</sup>. These regulations were to come in to force in 2009<sup>37</sup>.

Before the process could be completed however, public demonstrations culminated in the Maldives' first multi-party election, and the promulgation of a new constitution. The new constitution appears to grant all its citizens the right to acquire and impart knowledge, information and learning as a fundamental right (Article 29). It also ensures that a right to a transparent trial (Article 42) is considered a fundamental right as well<sup>38</sup>.

Once in power, and in keeping with the fundamental rights granted in the new constitution, President Nasheed appointed Information Officers in each department to handle requests under the Regulations, and created a Right to Information Cell within the Ministry of Home Affairs that was to handle the implementation of the RTI Regulations<sup>39</sup>. It conducted training programs for officials, to sensitize them to the requirements of the Regulations, and to impress upon them the need for transparent governance<sup>40</sup>. And in 2009, a Right to Information Bill was reintroduced in parliament, and sent to a Social Affairs Committee for detailed consideration, but before it could be passed and implemented, President Nasheed was forced to resign. New elections were called, and in 2013 and Abdulla Yameen Gayoom came into power.

President Gayoom's government introduced an allegedly much improved version of the 2009 Bill in parliament in 2013, and it was passed by an almost unanimous vote<sup>41</sup>. The president went on to ratify the Bill in January 2014, making the Maldives the 99<sup>th</sup> country in the world to enact transparency legislation<sup>42</sup>. The law came into force in July 2014, and is ranked in the top ten global laws by the Centre for Law and Democracy<sup>43</sup>. The passing of the law is believed to have been a result of pressure created by the advocacy and campaigning of NGOs, the Civil Society, and the public<sup>44</sup>.

Its implementation however still remains patchy, in part due to a lack of consistent public pressure and the prevailing and accepted environment of secrecy<sup>45</sup>. In a further complication, one of the newly appointed Information Commissioners made a statement soon after the act was ratified, claiming that the appointment of many of the new Information Commissioners was against the spirit of the RTI

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<sup>36</sup> <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/Maldives.html>

<sup>37</sup> [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/maldives/Maldives-RTIBill-CHRI-prelimanalysisreco-Apr2011.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/maldives/Maldives-RTIBill-CHRI-prelimanalysisreco-Apr2011.pdf)

<sup>38</sup> <http://www.maldivesinfo.gov.mv/home/upload/downloads/Compilation.pdf>

<sup>39</sup> [http://www.humanrightsinitiative.org/programs/ai/rti/international/laws\\_papers/maldives/Maldives-RTIBill-CHRI-prelimanalysisreco-Apr2011.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/maldives/Maldives-RTIBill-CHRI-prelimanalysisreco-Apr2011.pdf)

<sup>40</sup> <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/Maldives.html>

<sup>41</sup> <http://www.freedominfo.org/2013/12/maldives-parliament-oks-access-information-law/>

<sup>42</sup> <https://blog.transparency.org/2014/07/10/campaign-for-transparency-in-maldives-pays-off/>

<sup>43</sup> <http://www.rti-rating.org>

<sup>44</sup> <https://blog.transparency.org/2014/07/10/campaign-for-transparency-in-maldives-pays-off/>

<sup>45</sup> Personal communication, Aiman Rasheed, Transparency Maldives, 2014.

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Act<sup>46</sup>. According to the law, Information Commissioners should not be high-ranking government officials, as the law also requires a review committee comprising of high-ranking officials and so could lead to a conflict of interest. Additionally, it seemed that government departments were slow to appoint Information Commissioners at all<sup>47</sup>.

These however are the teething problems that all new transparency regimes face, and there is growing international interest and local awareness. Groups like Transparency Maldives have been working hard to create a demand for transparency and inspire people to use the new law.

According to Aiman Rasheed of Transparency Maldives “Maldives is a relatively well-off country in comparison to neighbours with regards to poverty and hunger. The prevailing forms of corruption in the Maldives tend to be grand corruption as opposed petty corruption (Global Corruption Barometer 2012 and 2013). This means that the factors that brought about RTI in countries such as India do not exist in the Maldives hence, there's no internalisation within the public of RTI as a vehicle for better services, reduced corruption and good governance”<sup>48</sup>.

### **State of the RTI Regime in Sri Lanka<sup>49</sup>**

#### **1. Introduction**

When British colonial rule ended in 1948, Sri Lanka emerged as a modern nation state, unfortunately divided between the majority Buddhist Sinhalese population and a minority Hindu Tamil one (Nubin, 2003). Initial discomfort and mistrust burgeoned into active separatism, progressed to acts of terrorism, and eventually to full-fledged civil war. The war lasted a quarter of a century and led to hundreds of thousands of deaths on both sides of the conflict (Nubin, 2003). It also had other detrimental side effects on the polity, economy, and society of Sri Lanka. As with all societies that find themselves at war, transparency took a back seat, and the government was allowed unprecedented powers of secrecy, detention, censorship and surveillance. However, as is also often the case, once the war was over the government was loath to give up its powers and open its records to the people.

In Sri Lanka, this is currently the situation. Five years after the Sri Lankan government comprehensively won the war, there remains a reluctance to relinquish wartime powers and adopt principles necessary for the success of a modern democracy (DeVotta, 2011). In May 2010, the government created the Lessons Learned and Reconciliation Commission (LLRC) that aimed to assess the conflict and understand the mistakes made, specifically –

*“It has become necessary to reflect on the conflict phase and the sufferings the country has gone through as a whole and learn from this recent history lessons that would ensure that there will be no recurrence of any internecine conflict in the future and assure an era of peace, harmony and prosperity for the people.”*

- LLRC website, [www.llrc.lk](http://www.llrc.lk)

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<sup>46</sup> <http://minivannews.com/news-in-brief/information-officers-appointed-against-rti-act-says-information-commissioner-89705>

<sup>47</sup> *ibid.*

<sup>48</sup> Email to the author dated 17<sup>th</sup> January 2015.

<sup>49</sup> The author is grateful to Venkatesh Nayak of the Commonwealth Human Rights Initiative, New Delhi, for providing access to various material on Sri Lanka. Rohan Edrisinha & Paikiasothy Saravanamuttu were kind enough to provide a brief description of the state of the RTI regime in Sri Lanka.

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However, this body too has been criticized for its lack of transparency and inclusiveness<sup>50</sup>. There have also been concerns about the increasingly dictatorial measures adopted by the President, Mahinda Rajapaksa, who appears to be consolidating his power by appointing members of his family to influential posts within the government, and is currently managing a number of key ministries directly (DeVotta, 2011). In this climate then, it is perhaps unsurprising that Sri Lanka has not as yet enacted a Right to Information law, though one has been introduced in Parliament on two separate occasions.

### **2. Pre-Civil War Sri Lanka**

#### Colonization

Sri Lanka holds the somewhat dubious distinction of being colonized by the Portuguese, the Dutch, and the British. Initial contact with the Portuguese was made in 1505, and in 1517 they built their first fort (Ross & Savada, 1988). Sri Lanka at the time was divided into seven warring kingdoms, and the Portuguese took advantage of this to establish a strong hold on the coastal areas of the island, though they never ventured too far inland. The main draw of Sri Lanka was cinnamon, which they harvested and transported back to Europe by the shipload (De Silva, 1981).

Their rule ended in 1652 after six years of conflict with the VOC, or the Dutch East India Company. The Dutch had made a deal with one of the ruling Sinhala kings, who aided them in their efforts to expel the Portuguese in exchange for a monopoly over the spice trade. The Dutch then consolidated their hold on the island, extending their influence from the south and west coast of the island – though such actions were against the treaty they had signed with the Sinhalese. They retained power and influence over the area until 1792, when the British began to expand their control over Southeast Asia in order to prevent the French, with whom they were fighting a war in Europe, from gaining further colonies. Though they displaced the Dutch with relative ease, it was only in 1815 that they managed to subdue the last remaining Sri Lankan kingdom, and establish their authority over the entire island (De Silva, 1981).

#### British Rule

As characteristic of British colonial rule elsewhere in Asia, in the modern period the colonial government employed a policy of 'divide and conquer' in Sri Lanka. As political reform led to the creation of a representative government under British rule in Sri Lanka, or Ceylon as the British called her, the early 20<sup>th</sup> century saw Sinhalese and Tamils unite to contest the British government. In 1919 major Tamil and Sinhalese leaders united to form the Ceylon National Congress that worked to pressure the British government for more constitutional reforms (De Silva, 1981). The British responded by encouraging communal politics, and created the 'Colombo Seat' in Parliament, that could only be held by one community and so created competition between them. They also followed a deliberate policy of favoring the minority Tamil population in matters of education and civil service appointments, increasing the tension and resentment between the two communities (De Silva, 1981).

The situation was further aggravated in 1931 with the Donoughmore Reforms, which did away with communal representation and introduced universal adult franchise in its place (Ross & Savada, 1988). The Tamils aggressively opposed this move; they realized that universal adult franchise would reduce them to a minority within the newly created governing body, State Council of Ceylon. They demanded

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<sup>50</sup> <http://www.bbc.co.uk/news/world-asia-16214783>

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instead a 50-50 representation – 50% Sinhalese and 50% other minorities, but this demand was not met by the colonial authorities.

Independence came in 1948, peacefully and without bloodshed. As the British retreated from their colonies in South Asia after the Second World War, Ceylon was granted dominion status. Ceylon kept its colonial name and dominion status until 1972, when it remade itself as the Republic of Sri Lanka (Ross & Savada, 1988).

### Escalation of Communal Tensions

The first Prime Minister of Sri Lanka was Sinhalese leader D. S. Senanayake, with prominent members of the Tamil leadership as part of his cabinet. When he died in 1952 his son Dudley Senanayake became head of the party and eventually prime minister. His term in office was marred by riots over the withdrawal of the government subsidy on rice (the riots were largely free from race or religion divides), and he stepped down from office in 1956<sup>51</sup>. S. W. R. D. Bandaranaike became the next Prime Minister in 1956, on a mandate that included the defense of what he termed the ‘besieged Sinhalese culture’. In a crucial and controversial move, Bandaranaike introduced the Official Language Act No. 33 of 1956<sup>52</sup> (‘affectionately’ titled the ‘Sinahala Only Act’), which recognized Sinhalese as the official language of the Sri Lankan government. This was said to have forced many Tamil civil servants from their posts, as they were not fluent in Sinhalese (Rinehart, 2013). Unsurprisingly, this aggravated tensions between the communities (Brown & Ganguly, 2003).

The law was eventually amended, and Bandaranaike responded to protests by attempting to draft an agreement with Tamil parties, but it was not very effective in the face of rising opposition by the Buddhist clergy and other elements within the Sinhalese camp. Tensions escalated further when Bandaranaike was assassinated by an extremist Buddhist monk, ostensibly because of his failure to maintain the hardline nationalist Sinhalese agenda (Rinehart, 2013). His widow came to power after the assassination, and continued the pro-Sinhala policy – she enacted a law that required all entrance exams for universities to be held in Sinhalese, and she was instrumental in the release of a new constitution that severely restricted the rights of Sri Lankan Tamils (Rinehart, 2013).

Over the next twenty years communal politics and violence on both sides served to further polarize the communities. The Tamil population began to articulate a demand for an independent state<sup>53</sup>. It also led to the emergence of hardline terrorist organizations like the Janatha Vimukthi Peranuma (JVP) and the Liberation Tigers of Tamil Eelam (LTTE) – who became the government’s main opposition in the civil war (DeVotta, 2011). The LTTE maintained high standards of training and discipline and began to wage a successful and bloody war against the government, and against other Tamil organisations that opposed their ideology or methodologies. They set up a de facto state in the north and east of the island and fought for an independent Tamil state with suicide bombings, assassinations, military ambushes and guerilla warfare (Hoffman, 2013). In 1983, civil war was officially declared.

### **3. The Civil War**

The civil war in Sri Lanka raged from 1983 to 2009, and saw millions of Tamils flee the country. It is suspected that India initially supported the LTTE, providing them with intelligence, supply drops, and

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<sup>51</sup> [http://members.tripod.com/~jvp\\_srilanka/history/71st1.html](http://members.tripod.com/~jvp_srilanka/history/71st1.html)

<sup>52</sup> [http://www.commonlii.org/lk/legis/num\\_act/ola33o1956180/longtitle.html](http://www.commonlii.org/lk/legis/num_act/ola33o1956180/longtitle.html)

<sup>53</sup> <http://www.thenation.com/article/will-sri-lanka-drive-tigers-extinction#>

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training<sup>54</sup>, but as the LTTE became more extremist and violent they were forced to withdraw their support and placed the LTTE on a list of terrorist organizations. In 1987 India sent the Indian Peace Keeping Force (IPKF) into Sri Lanka to support the Sri Lankan government's efforts against the LTTE (Ross & Savada, 1988). This did not seem to end well however, and in the eyes of some India antagonized both the LTTE and the Sri Lankan government. Amid accusations of human rights violations, growing violence and mounting casualties, India withdrew the IPKF in 1990<sup>55</sup>. A number of cease-fires were agreed to and subsequently violated over the following decades. By the time Mahinda Rajapaksa came to power in 2005, it seemed the LTTE could never be defeated (DeVotta, 2011).

Rajapaksa extended the tenure of General Fonseka just before he was due to retire<sup>56</sup> and, together with Rajapaksa's brother General Gotabaya, they launched what proved to be the final offensive against LTTE strongholds in the north and east. They had the aid of a number of defectors from the LTTE, including Colonel Kasruna<sup>57</sup>, one of its former military leaders. By 2009 the LTTE were defeated<sup>58</sup> and its leader, Prabhakaran, was dead<sup>59</sup>. Sri Lanka's all-consuming civil war was over.

### **4. Post Civil War Sri Lanka**

After the war, Sri Lanka has often declared that it was the first nation that had eradicated terrorism on its own soil<sup>60 61</sup>, and indeed, this may well be so. However, its people paid a high cost – casualties are estimated at over 100,000<sup>62</sup>, millions more were injured or forced to leave Sri Lanka, and allegations of human rights violations were made on both sides.<sup>63 64</sup> Further, the government was reluctant to loosen its grip, and decided not to give up wartime powers (DeVotta, 2011). Sri Lanka had been looked on as the most promising of the new independent Asian nations, indeed as the most democratic, and there was great hope that once the war had ended she could finally realize her potential (Peebles, 1990).

Transparency was one of the most prominent casualties of the post-conflict political climate, and Sri Lanka became an increasingly dangerous place for journalists with opinions that conflicted with the official government line. Journalists were known to have been killed, or forced to flee, and as a result self-censorship became common practice<sup>65 66</sup>. According to the Free Media Movement, there have been 138 attacks on journalists and media institutions recorded during the past decade<sup>67</sup>.

### **5. The Rocky Road to the RTI**

In 2004, President Chandrika Bandaranaike's cabinet approved a Freedom of Information Bill, that would probably have been passed, but Parliament was dissolved and the momentum behind the

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<sup>54</sup> <http://www.sundaytimes.lk/970119/plus4.html>

<sup>55</sup> <http://nesohr.org/inception-sept2007/human-rights-reports/StatisticsOnCiviliansAffectedByWar.pdf>

<sup>56</sup> [http://www.sangam.org/taraki/articles/2006/12-2\\_Triumvir\\_Rajas.php?print=sangam](http://www.sangam.org/taraki/articles/2006/12-2_Triumvir_Rajas.php?print=sangam)

<sup>57</sup> <http://www.frontline.in/static/html/fl2107/stories/20040409007200400.htm>

<sup>58</sup> <http://www.voanews.com/content/a-13-2009-05-16-voa15-68734572/357880.html>

<sup>59</sup> <http://archive.indianexpress.com/news/lte-admits-prabhakaran-is-dead-finally/465127/>

<sup>60</sup> [http://businesstoday.lk/cover\\_page.php?issue=239](http://businesstoday.lk/cover_page.php?issue=239)

<sup>61</sup> [http://defence.lk/new.asp?fname=20100522\\_09](http://defence.lk/new.asp?fname=20100522_09)

<sup>62</sup> <http://www.abc.net.au/news/2009-05-20/up-to-100000-killed-in-sri-lankas-civil-war-un/1689524>

<sup>63</sup> <http://www.hrw.org/node/77143/section/6>

<sup>64</sup> <http://www.amnestyusa.org/our-work/countries/asia-and-the-pacific/sri-lanka>

<sup>65</sup> <https://cpj.org/killed/asia/sri-lanka/>

<sup>66</sup> <http://www.ft.com/cms/s/2/3012db08-4613-11e3-b495-00144feabdc0.html>

<sup>67</sup> <http://www.asianews.it/news-en/A-Black-January-for-information:-Sri-Lanka's-false-press-freedom-27018.html>

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passage of the Bill was lost<sup>68</sup>. The war escalated soon after and the Bill was put on the back burner. Nevertheless, there was a growing awareness amongst the political elite and the media that the Right to Information was important and needed.

In 2010 the Leader of Opposition presented a redrafted version of the 2004 Bill in Parliament, as a private members' bill. However the Secretary General of Parliament objected, claiming that the Leader of Opposition could not present a private members motion; it was then re-presented by the Deputy Leader of Opposition. It continued to be opposed however, because the Chief Government Whip announced that the government was planning to present its own version of an RTI law very soon. After some discussion the opposition party agreed to withdraw their bill and await the government's next move<sup>69</sup>. When none was forthcoming, they re-introduced their bill in Parliament in 2011. With the ruling party's MPs against them, the bill was defeated, and journalists recall President Rajapaksa stating that Sri Lanka did not need an RTI Act because he could tell them whatever they wanted to know<sup>70</sup>. The opposition tried once more to introduce the bill in Parliament in 2012, but was informed that they could not introduce the same bill in Parliament again, as it had already been defeated.

Subsequent comments made by high ranking government officials indicated that the RTI Act was not likely to be enacted any time soon, in spite of the fact that the government appointed LLRC made a strong recommendation for such a law to be passed without delay<sup>71</sup>. In 2012, Secretary to the Ministry of Media and Information, Charitha Herath, made a statement at a South Asian Association for Regional Cooperation (SAARC) meeting in Colombo, declaring that Sri Lanka had no intention of passing transparency legislation. Their reason – such legislation would threaten national security<sup>72</sup>.

In September 2014, Media Minister Keheliya Rambukwella made a statement in support of the government's blocking of transparency legislation on the island, adding that Sri Lanka had a high level of media freedom and therefore had no need for such laws<sup>73</sup>. Ironically this statement came only a few months after the editor of a major newspaper was removed from his post – allegedly under pressure from the government for being too vocal in his support for media rights and press freedom<sup>74</sup>.

Unfortunately, corruption in Sri Lanka appears to be on the rise, according to reports by international organisations like Transparency International<sup>75</sup>, and the country has ranked poorly in international indices on corruption and press freedom<sup>76</sup>. There are also frequent mentions of favouritism, bribery and misappropriation of government funds in the media<sup>77</sup>. Many such activities were directly related

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<sup>68</sup> <http://www.cpi.org/blog/2012/08/no-right-to-information-in-sri-lanka.php>

<sup>69</sup> <http://www.thesundayleader.lk/2012/05/27/right-to-information-act/>

<sup>70</sup> <http://www.cpi.org/blog/2012/08/no-right-to-information-in-sri-lanka.php>

<sup>71</sup> <http://www.thesundayleader.lk/2012/05/27/right-to-information-act/>

<sup>72</sup> <http://www.cpi.org/blog/2012/08/no-right-to-information-in-sri-lanka.php>

<sup>73</sup> <http://www.ft.lk/2014/09/16/right-to-information-act-is-a-must/>

<sup>74</sup> <http://www.ifi.org/nc/news-single-view/backpid/50/category/asia-pacific-1/article/editor-forced-to-resign-as-sri-lankan-media-campaign-for-right-to-information/>

<sup>75</sup> [http://www.transparency.org/news/pressrelease/20121205\\_sri\\_lanka\\_placed\\_79th\\_in\\_global\\_corruption\\_perception\\_index](http://www.transparency.org/news/pressrelease/20121205_sri_lanka_placed_79th_in_global_corruption_perception_index)

<sup>76</sup> <http://www.ceylontoday.lk/52-52748-news-detail-why-doesnt-sri-lanka-have-a-right-to-information-act.html>

<sup>77</sup> <http://www.dailymail.co.uk/indiahome/indianews/article-2384462/Sri-Lankas-president-remember-man--political-dynasty--island.html>

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to members of the Rajapaksa family and their supporters, who appeared to be using government resources to strengthen their position<sup>78 79</sup>.

Additionally, there appeared to be an illegal and growing suppression of the Tamil population by the government<sup>80</sup>. Abductions and disappearances were common in Sri Lanka, as were instances of police and military violence<sup>81</sup>. Allegations of torture in police stations and other human rights violations continued to be leveled at the Sri Lankan government<sup>82</sup>. The United Nations Human Rights Committee (UNHCR) recently expressed concerns over the government's refusal to withdraw the Prevention of Terrorism Act 1978 (PTA), which gave it unprecedented powers during the war, including the ability to imprison people without trial for up to 18 months<sup>83</sup>.

There was also the sensitive and crucial issue of information about the war itself. Thousands of civilians vanished during government offensives against the LTTE, and their families were desperate for information on what happened to them<sup>84</sup>. The last few years of the war were conducted in almost complete secrecy, as the government refused to let international stakeholders into the country, removed NGOs from the area altogether, and banned media coverage<sup>85</sup>. No one really knows how many were killed, or under what circumstances, though allegations of executions, rape and torture are rampant<sup>86</sup>. Transparency could mean information for the families of those killed or missing, something that the government was often accused of wishing to avoid at all cost, as they remained adamant that the army did not commit any war crimes<sup>87</sup>.

On a positive note, 2014 also saw the launch of campaigns designed to create public awareness and eventually exert pressure to enact an RTI law. Activists, opposition parliamentarians and journalists all signed petitions demanding that the government pass the law immediately<sup>88</sup>. Transparency International Sri Lanka and the International Centre for Ethnic Studies (ICES) have recently organized meetings of civil society activists and politicians in order to generate more interest and commitment. There were also attempts to get opposition parties to include the RTI as part of their manifesto ahead of the elections.

Meanwhile, The Asia Foundation (<http://asiafoundation.org>) did a study on citizen's access to information in South Asia and came up with recommendations for Sri Lanka (see Box at the end of the paper).

**Post Script:** The results of the Sri Lankan national elections have brought in a new President, who has reportedly promised to bring in an RTI law within the first hundred days.

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<sup>78</sup> <http://www.ceylontoday.lk/45-52834-news-detail-when-politics-becomes-a-family-business.html>

<sup>79</sup> <https://www.colombotelegraph.com/index.php/i-am-disgusted-by-the-favouritism-and-nepotism-chandrika-tells-aththa/>

<sup>80</sup> <https://www.greenleft.org.au/node/54932>

<sup>81</sup> <http://colombogazette.com/2014/10/07/un-rights-committee-reviews-sri-lanka-4/>

<sup>82</sup> <http://gvnet.com/torture/SriLanka.htm>

<sup>83</sup> <http://colombogazette.com/2014/10/07/un-rights-committee-reviews-sri-lanka-4/>

<sup>84</sup> <http://test.ceylontoday.lk/41-65396-news-detail-making-rti-a-reality-in-sri-lanka.html>

<sup>85</sup> <http://www.hrw.org/en/news/2009/10/22/sri-lanka-us-war-crimes-report-details-extensive-abuses>

<sup>86</sup> <http://www.hrw.org/en/news/2009/10/22/sri-lanka-us-war-crimes-report-details-extensive-abuses>

<sup>87</sup> <http://www.thehindu.com/news/international/article1701700.ece>

<sup>88</sup> <http://www.ucanews.com/news/activists-demand-a-right-to-information-bill-in-sri-lanka/70871>

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## Box

### Sri Lanka: Country Recommendations\*

#### Demand Side

- **Advocate for greater proactive disclosure of information by the government.**

In the absence of a formal RTI law in Sri Lanka, civil society advocacy can focus on encouraging proactive disclosure of information by the government. Proactive disclosure preempts legal requests for information and avoids the costs of formal filings and administrative procedures by ensuring that information seekers have ready access to public information. Proactive disclosure produces transparency, and can be achieved using a variety of means, ranging from publications and official gazettes to publicly accessible notice boards, radio and television announcements, and official websites. Some important steps in this direction are already being made in Sri Lanka.

- **Utilize transparency provisions in existing laws.**

Building on existing government efforts to disclose information online and through citizen charters at the level of local government, CSOs can utilize transparency provisions in existing laws to bring more information into the public domain. For example, they could create a database of key information pertaining to ministries and public services, operate help lines and facilitation centers, and publish handbooks and guides. By demonstrating the benefits of easy access to information, these pre-legislative activities will strengthen the demand for an RTI law.

- **Create greater awareness among stakeholders of the value of information disclosure.**

On the demand side, CSOs can also play a role in spreading greater awareness of the value and importance of information disclosure, particularly where the information is related to services that directly affect the public.

- **Work with journalists and the media to promote proactive disclosure by the government.**

Efforts to encourage and promote greater proactive disclosure of information by the government should include working with journalists and the media. Stories emphasizing the value of information disclosure and highlighting proactive efforts by government can serve not only to educate the public, but also to recognize those agencies or officials who are setting a positive example of information disclosure.

- **Set an example of voluntary information disclosure by civil society organizations.**

CSOs can also set a positive example by voluntarily disclosing information about their programs, annual budgets, etc.

#### Supply Side

- **Promote greater proactive disclosure of information.**

Government departments should be encouraged to proactively disclose key categories of information that are particularly relevant to people's lives. It is recommended that the publication and dissemination of information assume a variety of forms, including leaflets, public meetings, libraries, mobile phones, television, and radio. Putting up display boards in public offices also strengthens the dissemination process and helps to empower citizens with critical information.

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## 9.

# State of the RTI Regime in India

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### 1. Introduction: *SWARAJ*<sup>2</sup>eluded India

India attained freedom from its colonial rulers in 1947 and opted for democracy. Lokmanya Tilak, along with many others, visualized independent India as *Swaraj* leading to a more equitable India. However, a quick glance of India in terms of governance and livelihood of its citizen shows that there remains much to be desired.

Lack of basic amenities including healthcare, educational facilities, and even food and water for a large section of the population is a harsh reality indicating the failure of the governance system. The decline in the governance structure and the growing corruption raise the spectre of the earlier geographical colonisation giving rise to neo-colonisation<sup>3</sup> of India, with the 'affluent elite' being the willing accomplices of the colonisers.

Conceptually, a democratic system ought to ensure a governance structure that ideally takes care of all sections of society in a fair manner, and ensures that the weakest are at least given enough to lead a decent life. When power structures, whether in government or outside, become instruments to serve the needs of particular sections, organisations—whether governmental, private or of the NGO sector—become vehicles for serving the interests of the few. This leads to a predominance of 'public interest' action by the state as well as private organisations being directed more to benefit the advantaged segment.

### 2. Way Forward: Right to Information

If we conclude that most organisations are unable to work for better governance in a sustained manner, then is there hope? The hope lies in using and reinforcing the majesty of the individual citizen. Empowering the individual citizen to ensure greater accountability and transparency in governance can bring significant change. Earlier, there was no vehicle available for the individual citizen to influence governance. In a system reeking with corruption and becoming increasingly insensitive to the problems of its disadvantaged citizenry, Right to Information (RTI) has shown promise of empowering them to get accountability and acting as a check on the government.

The RTI is available to every citizen, and can be used by individuals without requiring them to get into a group. This lays emphasis on the individual being at the centre of democracy. Whenever there are

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<sup>1</sup> The author has been a practicing RTI activist and part of the RTI movement for five years from 2003 to 2008. He was the Convener of the National Campaign for People's Right to Information (NCPRI) for over a year during this period. In September 2008 he was appointed Central Information Commissioner. After retirement in July 2012 he continues being an RTI activist. Also, he is the only RTI activist who has been a Central Information Commissioner, who worked with a paperless office and ensured that most cases were settled in less than 90 days.

He gave many landmark decisions as a Commissioner. Many comments in this paper reflect his perceptions based on his extensive and varied experience.

<sup>2</sup>*Swaraj*, Self-rule

<sup>3</sup>Vakrushev, 1973

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key issues which expose lack of governance in terms of proper public policy, or corruption, citizens can come together and act. This will build a stronger and more ethical civil society instead of a democracy that is a hand-maiden of power groups.

The Act came into existence on October 12, 2005, and has since made a significant impact on the nation and shows promise of changing the face of Indian democracy.<sup>4</sup> It is assumed by most commentators that RTI will continue to become stronger and will fuel major changes in India's democracy. Most people in power had not realized the enormous hopes the RTI Act was unleashing. The various provisions of the Act were crafted with civil society participation and these have empowered the individual citizen in an unprecedented manner. For instance, the provisions of the law provide for personal penalties up to Rs.25000 to be imposed on the officers if they do not provide information within a 30-day period without reasonable cause.<sup>5</sup> The Information Commissions have been devised as independent authorities and citizens are not required to give reasons for seeking information. Denial of information is allowed based on ten exemptions which are defined in the law.<sup>6</sup> In terms of its provisions, it is rated as one of the best laws in the world.<sup>7</sup>

Within its first year, the government decided to amend the law but strong citizen protests compelled it to backtrack. The courts have been expanding the scope of the exemptions in the last three years. If citizens are not vigilant the RTI Act could be emaciated in the next few years. There is much written about the history of the RTI and hence the historical evolution of RTI in India has not been mentioned here.<sup>8</sup> The objective of this paper is to look at some of the key issues relating to the RTI Act in India, its current state and the major challenges it faces. An attempt is being made to analyze, understand and define some of the main components of RTI and consider their contribution to the current and future scenario.

### **3. The RTI Act**

This paper hopes to deal with the issues regarding the objectives of the Act and the actions of some institutions when dealing with these. Hence it is considered necessary to briefly look at some of the important provisions of the Act.

The Preamble lays down that it is:

*“an Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”<sup>9</sup>*

*“WHEREAS the Constitution of India has established democratic Republic;*

*“AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;*

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<sup>4</sup>Singh, 2010

<sup>5</sup>Section 20(1) of the Central Act

<sup>6</sup>Section 8 (1) of the Central Act

<sup>7</sup>Mendel, Freedom of Information: A Comparative Legal Survey, 2008

<sup>8</sup>Global Trends on the Right to Information: A Survey of South Asia, July 2001

<sup>9</sup> The RTI Act No 22 of 2005. Available at [rti.gov.in/webactrti.tm](http://rti.gov.in/webactrti.tm)

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*“AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;*

*“AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;*

*“NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”<sup>10</sup>*

It is clear that the objective was to make public authorities transparent and accountable to citizens. It was also identified that it was meant to empower citizens by making them informed and also to contain corruption. It recognized certain inconveniences and harmonized conflicting interests in the provisions of this Act.

In Section 2 it defines “information” as being held in any form by a public authority and defines “right to information” as a right to take photocopies or digital copies of records in any form, right to inspect work, documents or records or take samples of materials. It places the duty on all public authorities to give information to citizens and thus defines “public authority” in Section 2 (h):

*“...means any authority or body or institution of self-government established or constituted—*

- (a) by or under the Constitution;*
- (b) by any other law made by Parliament;*
- (c) by any other law made by State Legislature;*
- (d) by notification issued or order made by the appropriate Government, and includes*

*any-*

- (i) body owned, controlled or substantially financed;*
- (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”*

The Act further assures citizens and obligates all the public authorities under Section 4 to:

- 1) Maintain all records in a systematic manner and to computerize and network its operations so that access to records could become easy.
- 2) Publish most information which citizens would want suo moto.
- 3) Publish all relevant facts while formulating important policies or announcing the decisions that affect the public.
- 4) Provide reasons for its administrative or quasi-judicial decisions to affected persons.

According to the Act, all offices of public authorities are to have designated Public Information Officers (PIOs) to receive applications for information and provide information to the citizens within 30 days of it being sought. In case the information is not available with the public authority the PIO is mandated to transfer the application to the concerned public authority within 5 days. Information can only be refused if it is covered by the exemptions specified in Section 8 or 9 of the Act. It also states that the applicant does not have to give any reasons for seeking information and is only required to provide personal information necessary for contacting him/her. If a PIO fails to give information without reasonable cause within 30 days he is liable to be penalized at Rs. 250 per day of delay subject to a maximum of Rs. 25000/-. The application fee has to be reasonable (in most cases it is Rs. 10/-) and the fee to be charged for providing information also has to be reasonable (generally Rs. 2 per page). If information is provided after 30 days this charge cannot be levied.

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<sup>10</sup>The RTI Act No 22 of 2005

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If an applicant does not get the information within 30 days he can file a first appeal to a first appellate authority who is a senior officer in the same organization. The first appellate authority has to make a decision within 30/45 days. If the applicant is not satisfied with information obtained even at this stage, he can go in a second appeal to the Central or State Information Commission depending on whether the public authority is financed by the central or state government.

Section 8 and 9 deal with the information that may be denied.

- “8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*
- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;*
  - (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;*
  - (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;*
  - (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*
  - (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*
  - (f) information received in confidence from foreign government;*
  - (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;*
  - (h) information which would impede the process of investigation or apprehension or prosecution of offenders;*
    - (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:  
Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:  
Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;*
    - (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:  
Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*
- (2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to*

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*information, if public interests in disclosure outweighs the harm to the protected interests.*

- (3) *Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:*

*Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."*

Section 9 exempts information which would involve infringement of copyright that is not held by the State. The Information Commissioners are envisaged as eminent persons who could act independently to monitor the working of the Act apart from reporting directly to Parliament. They have been given the position and salaries which place them in the rank of the highest public servants. They have the right to summon records, impose penalties on individual PIOs, order certain information to be published and also order compensation to be paid to applicants. They are the final appellate authority and their orders can only be challenged in a writ in a High Court. Section 22 declares that the provisions of this Act will apply in case of any inconsistency with any earlier law. Thus when a citizen seeks information under the Right to Information Act, earlier laws or rules cannot be quoted to deny the information. In Section 24 an exemption has been given to certain "intelligence and security organisations". Thus this is a comprehensive Act, rated amongst the best laws worldwide in terms of its provisions. Despite certain impediments, it has demonstrated its efficacy in the last eight years by its widespread usage and citizen empowerment.

### **4. Obligation of Public Authorities**

The pivot of the RTI Act remains Section 4, which mandates that all public authorities undertake certain actions which facilitate citizens to get most of the information without having to file specific applications. This allows easy access to citizen's right to information.

It must be noted here that most offices of public authorities have computers, but they insist on using the computers basically as electric typewriters and do most of their work on paper files. Occasionally, corruption in Government offices occurs by claiming that relevant paper files are untraceable. When money is paid, some files surface, and when adequate bribes are given, the paper files can be made to disappear permanently. Records on such files are altered, removed or substituted at will. Most of this will not be possible if the entire work is done on computers and stored on servers with adequate backups in a different city. Transferring files electronically not just intra but interstate would barely take time and decisions could be taken faster. Presently the government spends a large sum of money in storing paper files, many of which cannot be found, or could get destroyed easily.<sup>11</sup>

In the last eight years if Section 4 (1) (a) "to computerise and network all government work" had been implemented, it would have changed the governance structure. This compliance alone would make providing most of the information easy and would ensure a significant containment in corruption. This

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<sup>11</sup> I sought information in December 2012 from the Maharashtra state government about how many IAS officers' annual appraisal reports had been received in the last five years. In response to my RTI query the PIO informed me on 11/01/2013 that all these reports had been burnt and destroyed in a fire in the Secretariat. Another case in point is the missing file of the infamous Coalgate scam.

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would lead the citizens to develop enhanced trust in government institutions. Since information would be available online the excess workload on PIOs could be minimized.<sup>12</sup>

Section 4 (2) of the Act explicitly states,

*“It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.”*

Section 4 (1) (b) requires suo moto declaration of

*“(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;*

*(xiii) particulars of recipients of concessions, permits or authorisations granted by it;”*

This requirement in the law has not been implemented significantly by most organisations.<sup>13</sup> Many of them complain about the increased work load of providing information to citizens, without realizing that this can easily be avoided by going digital.<sup>14</sup> Also this would significantly reduce corruption and improve delivery of services to citizens. Many applications are turned down by offering some excuse or frivolously claiming exemption under Section 8.<sup>15</sup>

Toby Mendel (2009) states that, “The longer-term goal should be for all information that is clearly not covered by an exemption and which may be of public interest to be available over the internet. This both fosters the right to know and also promotes efficiency since it should reduce the need for individuals to resort to requests to get this information. These benefits have been recognised in the Indian legislation which not only provides for extensive specific proactive disclosure obligations but also calls on public authorities to make a constant endeavour to provide as much information available proactively as possible, so as to minimise the need for the public to have recourse to requests to obtain information.”<sup>16</sup>

The Information Commissions and most of the other offices have not taken this simple step of going digital.<sup>17</sup> Pralhad Kachare<sup>18</sup> (personal communication, September 10, 2013) observes that since the higher bureaucracy has not shown much interest, record management and information management, which is the basis of RTI request processing, is unattended. If section 4 is followed industriously it

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<sup>12</sup>As a Central Information Commissioner, I ensured digitisation at the workplace, and hence the time to search any file and work on it was considerably reduced.

<sup>13</sup>Section 4 changes welcome addition to RTI Act: <http://www.governancenow.com/news/regular-story/section-4-changes-welcome-addition-rti-act>

<sup>14</sup>National Rural Employment Guarantee Act (NREGA) has successfully digitalised data of millions of beneficiaries. Please refer to <http://nrega.nic.in/netnrega/home.aspx>

<sup>15</sup> Personal observations as an RTI activist and information commissioner

<sup>16</sup>Mendel, Implementation of the Right to Information: Ideas for India from Canada, Mexico and South Africa, 2009

<sup>17</sup>An interesting Exception: The Municipal Corporation of Greater Mumbai (MCGM) has set up a Technical Advisory Committee for complying with RTI requirements focussing on Section 4 disclosures. This is perhaps the first time a major public authority has decided to form a committee with citizen participation to improve its RTI compliance. Last year out of 6,82,000 RTI applications received by the Maharashtra state public authorities, about 100,000 were received by MCGM. MCGM intends to go digital and also update its website. Over a 1000 officers are also expected to be trained in RTI. For more details refer to <http://www.mcgm.gov.in/irj/portal/anonymous/qlTechnicalAdvisoryCommittee>

<sup>18</sup>Pralhad Kachare, Director, Center for Right to Information

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would also help gain trust of the people in controversial and sensitive issues as done in many other countries.<sup>19</sup>

Going digital would also help instil a sense of trust among citizens. Delays and cost escalations can be minimised under Section 4 as all records will be accessible to citizens. Besides reducing the additional cost of paper and space it would also help in providing accurate reports. Milind Deora<sup>20</sup> has emphasised that this Act will not increase but reduce the cost of implementation for the government and will ensure quality service to the people of India.<sup>21</sup>

Parliament's promise to the citizens remains unfulfilled as Section 4 states:

*“(1) Every public authority shall*

*(a) maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;”*

This promise has not been actualized, since there has been a considerable neglect by most public authorities in the implementation of Section 4 of the RTI Act. The various Information Commissions, who should have taken the lead in complying with Section 4, have themselves not set an example they can be proud of. In this matter they have not set any example worth emulating, and consequently the most important aspect of the RTI Act remains unfulfilled. If this had been done, citizen's Right to Information would have been serviced very easily.

If all government departments decide to start working on computers and banish paper files, their efficiency would increase. They would save millions of rupees worth of paper and space, apart from being able to give information readily to citizens.<sup>22</sup> Since most of the data is manually provided by many officers there are glaring inaccuracies in the data in the reports of many government departments. At CIC the reports on RTI applications received are based on data sent by public authorities. Many public authorities do not send data, and hence the only conclusion that can be drawn is that the actual number of RTI applications will be larger than what is reported.<sup>23</sup> If all this work was done on computers, reporting would be correct and would not require any additional work. This would also have the added bonus of reducing corruption. It would reduce the trust deficit with citizens, and the number of problems faced by government departments would be much lower.

### **5. Information Commissions**

The RTI Act has created Information Commissions for the central government and state governments and bestowed them with sufficient powers to implement the provisions of the Act. The Central Information Commission (CIC) has jurisdiction over central government authorities, and the State Information Commissions (SIC) have jurisdiction over the respective state authorities. The law

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<sup>19</sup>Whereas safety analysis and site evaluation reports in US, UK and Canada are displayed on websites, Nuclear Power Corporation refused to give these for the Kudankulam power plant despite an RTI request. These had to be ordered to be given and displayed by an order of the CIC. For details see [http://articles.timesofindia.indiatimes.com/2012-05-02/india/31537694\\_1\\_rti-act-disclosure-citizens](http://articles.timesofindia.indiatimes.com/2012-05-02/india/31537694_1_rti-act-disclosure-citizens)

<sup>20</sup>Milind Deora, Member of Parliament

<sup>21</sup>Milind Deora, Transcript of speech in Lok Sabha, May 2005

<sup>22</sup> The author has often discovered glaring inaccuracies in the data in reports of many government departments.

<sup>23</sup> The author has witnessed that some of the data given by many departments and Information Commissions is based on no relationship with reality.

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mandates the appointment of one Chief Information Commissioner and up to ten other Information Commissioners in each commission.

The Commissions run autonomously without being subjected to directions by any other authority. The law stipulates that Information Commissioners be given salaries, allowances and status which place them on par with the highest public servants. To ensure their independence, the removal of an Information Commissioner has been made possible only on grounds of proven misbehaviour or incapacity after this is confirmed by the Supreme Court.

The Commissioners have the power to adjudicate on complaints and second appeals in case complete information has not been provided in 30 days by the PIO, or false information has been given, or the RTI law has been violated in other ways. They can direct information to be provided to an applicant and also order for certain information to be displayed on websites or display boards. They can summon officials to give evidence on oath, and requisition any record from any office or court. No record can be withheld from the Commission. The Commission has also been given the power and authority to direct public authorities to provide access to information in a particular form and order them to compensate the applicant. The Commission has the power to penalize a Public Information Officer (PIO) Rs. 250 per day if information has been delayed or denied without reasonable cause, and also recommend disciplinary action against a defaulting officer for persistent failure.

Information Commissioners have played a vital role in expanding the limits of transparency. The Central Information Commission ruled that file notings<sup>24</sup> have to be provided under RTI. The government decided to amend the law in 2006 to counter this. However it backtracked owing to a resolute Commission and growing public opinion by citizens across the nation to oppose any amendment to this Act. On October 14, 2009 the government discussed amending the RTI Act before an assembly of over 60 Information Commissioners from the centre and states. The assembled Commissioners thwarted the move and ultimately released the minutes of the meeting publicly.<sup>25</sup> The CIC gave a ruling in June 2013 declaring six major political parties as public authorities subject to the RTI.<sup>26</sup> The central and state Commissions have given some landmark decisions not favoured by the government.

A significant issue drawing the attention of RTI activists and users is the assaults and murders of RTI activists in different parts of the country. There are demands that RTI activists should get special protection. The CIC passed a resolution<sup>27</sup> in 2011 stating:

*“ 2. This Commission, therefore, resolves that if it receives a complaint regarding assault or murder of an information seeker, it will examine the pending RTI applications of the victim and order the concerned Department(s) to publish the requested information suo motu on their website as per the provisions of law.*

*3. This Commission also resolves that it will take proactive steps in ascertaining the status of investigations/prosecutions of the cases involving information seekers and endeavor to have these processes expedited.”*

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<sup>24</sup>File notings are opinions expressed on the file by government officials.

<sup>25</sup>For details refer to Singh, Shekhar: "The Genesis and Evolution of the Right to Information Regime in India, *Transparent Governance in South Asia* (2010)".

<sup>26</sup> For details refer to [http://www.rti.india.gov.in/cic\\_decisions/CIC\\_SM\\_C\\_2011\\_001386\\_M\\_111222.pdf](http://www.rti.india.gov.in/cic_decisions/CIC_SM_C_2011_001386_M_111222.pdf)

<sup>27</sup> For details refer to [www.cic.gov.in/cic\\_netizen/cic\\_minutes.asp](http://www.cic.gov.in/cic_netizen/cic_minutes.asp)

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If this resolution is pursued across the country it could act as a strong deterrent to people attacking RTI activists and users.<sup>28</sup>

Activists are however voicing dissatisfaction with the performance of the Commissions. Prominent reasons include the arbitrary and obscure manner of selection,<sup>29</sup> reluctance by Information Commissioners to penalize PIOs, unsatisfactory compliance of Commissions' orders, lack of commitment by Information Commissioners<sup>30</sup> and lack of implementation of Section 4. Many of the Commissions fare poorly in performance and accountability.<sup>31</sup> Amit Bhargava and Bhaskar Prabhu (personal communication, September 18, 2013) reiterate that citizens' expectations of cases being completed within 90 days remain a distant dream. In most of the Commissions there is a delay of 6 to 36 months before decisions are taken<sup>32</sup> as there is a lack of commitment. Some of the smaller states have many Commissioners with not much workload. In many Commissions cases of prominent activists are taken out of turn whereas others are neglected.

The following corrective measures should be undertaken:

### Putting in place an appropriate process of selection of Information Commissioners

1. The Government should advertise openings to appoint Information Commissioners, depending on the need, at least six months in advance. Eminent individuals could apply or be nominated by others.
2. A search committee consisting of (possibly) two Members of Parliament, the Chief Information Commissioner, one Vice Chancellor, one Supreme Court judge and two RTI activists could be formed to shortlist a panel which could be three times the number of Commissioners to be selected. These could be announced with the minutes of the meeting at which the shortlisting is done. The search committee members could be picked from a large panel in each category.
3. An interview should be conducted by the search committee in public view, to give citizens and the media the opportunity to hear the views of the prospective candidates. Citizens could give feedback and views to the search committee. Subsequently, the search committee could present its recommendation for twice the number of Commissioners to be appointed. Based on these inputs, the final decision to select the Commissioners could be taken by the Committee, as per the Act, consisting of the Prime Minister, Leader of Opposition and one Minister. (A similar process could be adopted for State Commissions with MLAs instead of MPs and a High Court judge instead of a Supreme Court judge).

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<sup>28</sup>The author has observed compliance to this resolution twice so far.

<sup>29</sup>There is no process to select Commissioners. The law prescribes a selection committee comprising of the Prime Minister, Leader of Opposition and a Minister for the Central Commission and a similar committee with the Chief Minister for the states. Largely the Information Commissioners are selected due to political patronage and hence a prevalence of retired bureaucrats as Commissioners.

<sup>30</sup> Most Commissioners do not work for even 40 hours a week and have a lackadaisical approach to their work. This is resulting in a backlog of pending cases, due to which applicants are often made to wait for over a year at the Information Commissions. Whereas some Information Commissioners have demonstrated a disposal of over 5000 cases a year, some Commissioners like those in Kerala, Haryana and Punjab dispose less than a 1000 cases in a year. In some of the smaller states Commissioners often do not have more than 200 cases in a year.

<sup>31</sup>An attempt was made to get Central Information Commission to adopt a citizen's charter, but the Commission refused to accept any accountability. For further details refer to <http://cic.gov.in/CIC-Minutes/CC-Note-5-Feb.pdf>

<sup>32</sup> Among the few exceptions to this is Mr. Ratnakar Gaikwad, Maharashtra Chief Information Commissioner who now meets the 90-day limit.

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### Review of accountability

1. The Information Commissions should set targets for disposals. I suggest 5000 per Commissioner per year. An attempt should be made to increase this target number.<sup>33</sup>
2. Performance review should be done every six months and the Commission should forecast the expected receipts and disposals for the next two years, factoring retirements. This information should be displayed on their websites.

### Disposal of cases

1. Commissioners should ensure disposals within 90 days for over 95% of the cases. This, if adhered to, can reduce the number of appeals. Fast disposal, getting adequate Section 4 compliance and levying penalties for defaults should be priorities. This would reduce the percentage of irrational refusals.
2. Adequate staff must be provided to the Information Commissioners. For Commissioners disposing over 6000 cases, a staff of about 18 to 20 trained persons should be provided. About half of these could be fresh lawyers to be employed on a two-year contract.
3. There should be regular interactions with citizens and public authorities to improve their performance.
4. Information Commissions must develop best practices and templates for their orders. Training programs must be developed and implemented for both Commissioners and staff.
5. Commissions must go completely digital and display most of their internal digital files on their website.
6. Commissions should appoint consultative committees that have RTI users and officers of public authorities.
7. A Citizen's Charter should be adopted by all Information Commissions guaranteeing certain minimum service to citizens.

### Focus on proactive disclosures

A survey by RTI Assessment and Advocacy Group (RaaG) has shown that over 50% of the RTI applications seek information which should have been declared suo moto by public authorities in compliance with their Section 4 obligations. It is evident that if public authorities meet their Section 4 requirements around 50% of the RTI applications would not need to be filed and this would also reduce the load on the Information Commissions. Section 19 (8) (a) of the RTI Act states when hearing an appeal:

“In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,-

- (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including
  - (i) by providing access to information, if so requested, in a particular form;
  - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
  - (iii) by publishing certain information or categories of information;

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<sup>33</sup> Some work practices for Information Commissioners for disposing over 5000 cases each year have been documented and also recorded at <http://www.karmayog.org/redirect/stred.asp?docId=25546>

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- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- (v) by enhancing the provision of training on the right to information for its officials;
- (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;"

Thus using the powers given in (i) and (iii) above, the Commission can order public authorities to provide access to information in a particular form as also publish certain information or categories of information.

Unfortunately this power has not been used adequately by Commissions and, when used, they have not strictly enforced compliance.

### **6. RTI Movement and the Citizenry**

There are no dominant organisations or individuals involved in the spread of the RTI movement. Across the nation, individuals and various organisations champion the cause of RTI and educate others on how to utilize it. Committed individuals and NGOs conduct lectures, workshops and clinics training citizens on the process of filing RTI applications. A culture has developed whereby most of the proliferation of the knowledge of RTI is done free of cost by people.

Sandeep Jalan<sup>34</sup> (personal communication, September 17, 2013) mentions that, "The RTI movement has reached almost every corner of our country, thanks to information technology and relentless efforts by committed individuals." TSR Subramanian<sup>35</sup> (personal communication, September 18, 2013) states that, "I have no doubt that RTI has contributed significantly over the past decade or so, to greater transparency in public affairs. It is my belief that more information about public matters has been received by the public through eight years of RTI, than through 65 years of Question Hour in Parliament. I do not say this lightly; indeed I have written about this, nearly in these terms in my forthcoming publication. In the Parliament, all answers are in general vague terms, the intention being to hide as much as possible, and to disclose as little as possible; in the case of RTI, while occasionally the objective could be the same, the system lends itself less room for generalities; specific answers, in accurate detail are required to be given if the question is specific."

RaaG<sup>36</sup>, in 2008, conducted a study among randomly selected inhabitants of ten state headquarters, and Delhi, to assess the state of RTI in India. This study reveals that nearly 65% respondents suggested that access to information, especially government information, would significantly help them solve many of their basic problems. In rural areas and district headquarters the overall percentage was similar, with nearly 65% of the FGDs (Focused Group Discussions) concluding that access to information was helpful. The justification and rationale for the RTI Act is not the demand for the Act (as many might not have yet heard of it, or know how to use it), but the demand for information, especially as a means of empowerment to address some of the basic problems facing the people. Of the randomly selected urban respondents (from state capitals and the national capital), 45% claimed that they knew about the RTI Act. Also in nearly 40% of the 140 FGDs in district headquarters and 20% of the over 400 FGDs organized in villages, at least one or more persons knew about the RTI Act.

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<sup>34</sup> Advocate and RTI activist

<sup>35</sup> Former Cabinet Secretary

<sup>36</sup> For details see <http://rti-assessment.org>

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Another study by PricewaterhouseCoopers,<sup>37</sup> also in 2008, revealed that 13% of the rural and 33% of the urban population was aware of RTI.

The awareness about RTI is growing steadily across the country. In most situations citizens are representing their cases without any professional help. There are few instances where some help is taken from voluntary agencies or individuals. Citizens are empowered and have developed confidence and the wherewithal to argue their cases. Purnima Upadhyay<sup>38</sup> (personal communication, September 20, 2013) shares that now information can even be procured without using RTI, since the officer is aware that the seeker can file an RTI application. Earlier even simple information could not be obtained, because public servants did not believe they were answerable to individual citizens. But now citizens have started using RTI, which is changing the power equation with new-found respect for individual citizens.

The kind of information for which RTI applications are filed in India would be obtained easily on websites or on the telephone in western democracies. Citizens have used the Right to Information in many innovative ways. RTI has been used to get ration cards to obtain food grains through the public distribution system, to expose frauds in contracts, to ensure water supply<sup>39</sup>, to expose fake doctors in government hospitals<sup>40</sup>, to expose illegal buildings, to receive pension<sup>41</sup>, to expose reasons for delay of stipends for research scholars<sup>42</sup> among many other cases. RTI has exposed arbitrariness and corruption in many places.

A study<sup>43</sup> (Peisakhin, 2010) conducted in Delhi revealed that people who used RTI were able to get their ration cards in the same timespan as those who paid bribes. It shows that transparency leads to the poor being empowered to battle corruption.<sup>44</sup> In the last few years, there has been a sudden rise in exposure of corruption. This gives a perception that corruption has suddenly increased in India. The truth perhaps is that corruption existed but was not exposed. Now with RTI, thousands of citizens have independently become vigilant investigators who are now exposing corruption with substantial support from the media. The author estimates that over 6.0 million applications would have been filed in 2013.

An issue of concern here is the labelling of RTI activists as 'blackmailers'. Also it is alleged that RTI is used to arm-twist and extort money.<sup>45</sup> It must be remembered that the 'blackmailers' usually trouble only those who have undertaken some illegal activity. In any field of activity, such aberrations will

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<sup>37</sup> PricewaterhouseCoopers (PwC) in association with IMRB (market research partner) conducted this study taking into account the feedback of over 2000 information seekers and over 200 information providers across public authority (PA) at Centre, State, and local levels in 5 States. It also includes feedback of 5000 citizens with respect to their awareness of the RTI Act. For more details see <http://rti.gov.in/rticorner/studybypwc/Executive%20Summary.pdf>

<sup>38</sup> An RTI activist working with Khoj (voluntary organisation working in tribal areas of Melghat region of Amravati district since 1996).

<sup>39</sup>The area of Bindapur in Delhi had been without water supply for over a decade. Money had been spent on the scheme to supply water but no water ever reached, and nothing was being done. After an RTI was filed, the Government moved to allocate the required funds and ensure that Bindapur got its water supply.

<sup>40</sup> [www.rti.india.gov.in/cic\\_decisions/SG-23072009-04.pdf](http://www.rti.india.gov.in/cic_decisions/SG-23072009-04.pdf)

<sup>41</sup>Basla Devi was an illiterate widow who did not get the pension she was entitled to when her husband died 18 years ago in service. Using RTI, she managed to get her pension. See <http://indiankanoon.org/doc/1102642/>

<sup>42</sup> Stipends for research scholars at IIT Mumbai were delayed routinely. Amit Jariwala enquired about the procedure for paying the stipends. When providing information the institute realized the main cause being the accounting procedures and manpower shortage. This led to a software being developed to solve the delay.

<sup>43</sup>(Peisakhin, 2010)

<sup>44</sup>(Peisakhin, 2010)

<sup>45</sup> As Information Commissioner the author cleared 20,400 cases in his tenure and can say with some authority that less than 5% were not genuine and meant to extract money or harass a PIO.

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occur. Even other laws are being misused by a small percentage and RTI is unlikely to be an exception. The RaaG study has established that such applications constitute barely 1 to 2% of the total. Derogatory remarks by prominent personalities<sup>46</sup> belittling this great empowerment tool of citizens are uncalled for.

### **7. Political Parties and Right to Information**

The RTI Act mandates “public authorities” to provide information to citizens and denial of information can only be based on Section 8 and Section 9 of the Act. A public authority has been defined in Section 2 (h):

*“public authority” means any authority or body or institution of self government established or constituted,—*  
*by or under the Constitution ;*  
*by any other law made by Parliament;*  
*by any other law made by State Legislature;*  
*by notification issued or order made by the appropriate Government,*  
*and includes any--*  
*body owned, controlled or substantially financed;*  
*(ii) non-Government organisation substantially financed,*  
*directly or indirectly by funds provided by the appropriate Government;’*

Even though this definition is lucid, many public private partnerships and various organisations have resisted coming under the ambit of the RTI Act. The Prime Minister’s Relief Fund and the Chief Minister’s Relief Fund of Maharashtra amongst many others, refused to accept that they were ‘public authorities’.<sup>47</sup> Most political parties have refused to consider themselves as public authorities under the Right to Information (RTI) Act. The recognition as a public authority will bring them under compulsion to respond to queries from citizens under the Act regarding their funding and functioning. Information about these aspects, so far, has remained outside public scrutiny. Once in public domain this information could pose a serious challenge to these parties, particularly if they are not functioning in an acceptable way.

In June 2013 the CIC gave a decision<sup>48</sup> that six major national political parties were ‘public authorities’ as per the RTI Act and would therefore be liable to provide information as per the provisions of the Act. The political parties claimed the CIC decision was not based on the law. The government brought an amendment to the RTI Act excluding political parties from its ambit. However, due to mounting public pressure, Parliament chose to refer the Bill to a Parliamentary Committee, which invited suggestions on the proposed amendment to the RTI Act and approved it.

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<sup>46</sup> The Prime Minister made a statement at the CIC convention in 2012 that “frivolous and vexatious” RTI applications were causing worry. For details see <http://www.cic.gov.in/convention-2012/Speeches/PMspeech.pdf>

<sup>47</sup> Citizens generally believe that the money which they donate to these relief funds is used to render assistance to those affected by huge calamities or disasters. The author, besides ensuring that these bodies be recognized as public authorities also managed through RTI to receive information from Maharashtra Chief Minister’s fund. This information revealed that money from this fund was utilized for music programs, sports competitions, foreign trips, etc. Two and a half million rupees were used to build a gymnasium in the Governor’s house. Also this money had been provided to the Press Club of India in Delhi to build toilets. For details see <http://www.thehindu.com/todays-paper/press-club-of-india-toilets-built-from-cms-relief-fund-rti/article3503314.ece>; and <http://www.outlookindia.com/printarticle.aspx?237679>

<sup>48</sup> [www.rti.india.gov.in/cic.../CIC SM C 2011 000838 M 111223.pdf](http://www.rti.india.gov.in/cic.../CIC SM C 2011 000838 M 111223.pdf)

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The statement of objects and reasons given for amending the Act were:

1. The Right to Information Act, 2005 was enacted by the Government for setting out a framework for effectuating the right to information for citizens and to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.
2. The Central Information Commission in one of its decision dated 03.06.2013 has held that the political parties namely AICC/INC, BJP, CPI (M), CPI, NCP and BSP are public authorities under section 2(h) of the said Act. The Government considers that the CIC has made a liberal interpretation of section 2(h) of the said Act in its decision. The political parties are neither established nor constituted by or under the Constitution or by any other law made by Parliament. Rather, they are registered or recognised under the Representation of the People Act, 1951 and the rules/orders made or issued there under.
3. It has also been observed that there are already provisions in the Representation of the People Act, 1951 as well as in the Income-tax Act, 1961 which deals with the transparency in the financial aspects of political parties and their candidates.
4. Declaring a political party as public authority under the RTI Act would hamper its smooth internal working, which is not the objective of the said Act and was not envisaged by Parliament under the RTI Act. Further, the political rivals may misuse the provisions of RTI Act, thereby adversely affecting the functioning of the political parties.
5. In view of above, the Government has decided to amend the RTI Act to keep the political parties out of the purview of the RTI Act, with a view to remove the adverse effects of the said decision of the CIC. It is also necessary to give retrospective effect to the proposed amendment with effect from the date of the said decision of CIC, that is, 3<sup>rd</sup> June 2013.
6. The Bill seeks to achieve the above objects.

Let us examine the reasons given by political leaders in Parliament and before the public for amending the law.

Para 2 indicates that the decision of the CIC is not in consonance with the law. In that case if a decision by any statutory body or court is not as per the law, it can be challenged in a writ before the High Court. But it appears understandably that the amendment is being moved, because the government believes that the CIC decision is unassailable under the law.

Para 3 states there are enough regulatory provisions in the Representation of People's Act and the Income Tax Act requiring adequate disclosures to the Election Commission and the income tax authorities. The veracity of the affidavits of assets and the statement of expenses is questionable as there is scope for manipulation. Also there is no evidence that the income tax department verifies the details given in the affidavits with the income tax returns of the candidates and it is generally believed that the affidavits are at variance with the income tax returns. It must be noted here that RTI will only give citizens access to information on records, and most of the black money may not get exposed. Yet continuous public gaze and scrutiny by thousands of individual citizens will help to bring down the arbitrariness and corruption in political parties. It may also bring greater democracy in their functioning.

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Para 4: If the RTI Act is applied to political parties, their functioning will be seriously affected and political rivals may misuse the RTI provisions. Many organizations are able to cope with RTI without being overwhelmed. To claim that even a small regional party will find it difficult to cope with RTI queries does not appear to be a credible argument. As to the contention that rival parties will be able to misuse RTI provisions, one can state that no such 'misuse' has been reported in the last eight years in any organization which could seriously harm public authorities. Some inconvenience and embarrassment may occur but these would only improve them.

If the RTI Act is applied to political parties one of their fears is that they will be questioned on why they chose a particular candidate for elections. RTI requires only the records to be provided<sup>49</sup>. If there is no process adopted then none need be provided.

Political parties do not want to be answerable to the Information Commissions. Firstly, the answerability in RTI is towards citizens of India, and that too only in terms of providing information on records. This information to be disclosed is subject to certain exemptions in Section 8 of the Act, to ensure that no major harm can come to any public authority by disclosure of information. In the last eight years during which RTI has been implemented, there has been no instance of any organization having been put to great harm or being rendered dysfunctional. Certain arbitrary or corrupt actions may be uncovered and these should be corrected.

When RTI was first introduced the police and the army wanted to be exempted from its ambit, failing which, they said they would not be able to perform their duties. No harm has befallen these two entities and the exemptions have adequately safeguarded these and other institutions. The Parliamentary Committee after a show of holding public consultations recommended that the amendments should be passed. Citizens have protested that the Committee has not taken any cognizance of their arguments. Citizens are hopeful that Parliament will drop these amendments and the political parties will abide by the RTI Act.<sup>50</sup>

However, the Supreme Court has ruled in Civil Appeal no. 9017 Of 2013 at para 38 "Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i)." In view of this ruling on what constitutes 'substantial funding' the CIC decision declaring political parties as 'public authorities' liable to give information under the RTI Act would be struck down by any Court, on the grounds that the political parties are not 'substantially funded.' The amendment was not passed and presently the major political parties are refusing to adhere to the legally valid order of the Commission in a show of defiance for the rule of law.

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<sup>49</sup>For instance: Citizens enquired about the process for selecting four Information Commissioners (including the author). The only information provided was that the Prime Minister, Leader of Opposition and one other Minister met and selected the four people. Since no process had been adopted, none was provided.

<sup>50</sup>[http://articles.timesofindia.indiatimes.com/2013-12-30/india/45708338\\_1\\_rti-act-rti-amendments-political-parties](http://articles.timesofindia.indiatimes.com/2013-12-30/india/45708338_1_rti-act-rti-amendments-political-parties)

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### **8. Privacy and RTI**

The denial of information under the RTI Act can only be based on Section 8 and 9. One of the most frequently used exemptions is Section 8 (1) (j). PIOs have often claimed this exemption to deny information relating to individuals as well as Institutions.

Section 8 1 (j) exempts *“information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

*Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”*

Most denials under Section 8 (1) (j) are based on norms of denial of personal information which are arbitrary or not in consonance with the law. It is to be noted that this section is specifically concerned about “personal information which has no relationship to any public activity” or “unwarranted invasion of the privacy of the individual”. It cannot be applied when the information concerns institutions, societies, organizations or corporates. This shows that privacy to some extent could only be maintained by an individual and no other body could display this characteristic.

The CIC<sup>51</sup> in May 2009 stated, *“Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to institutions, organisations or corporates. (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates).”*

In a similar vein the US Supreme Court<sup>52</sup> in 2011 held that, *“ We reject the argument that because ‘person’ is defined for purposes of FOIA (Freedom of Information Act) to include a corporation, the phrase ‘personal privacy’ in Exemption 7 ( c) reaches corporations as well. The protection in FOIA against disclosure of law enforcement information on the ground that it would constitute an unwarranted invasion of personal privacy does not extend to corporations. We trust that AT&T will not take it personally.”*

Thus Section 8 (1) (j) can only be applied when the information applies to an individual, not to any Institution or Corporate. However many decisions of the CIC and other Commissions violate this simple principle as they apply this exemption arbitrarily.

In M/s Sanitex Chemicals the CIC ruled: *“It has been the consistent view of this Commission in several of its decisions that ITRs, being personal information, are exempted from disclosure in terms of section 8(1)(j) of the RTI Act. Even the modified request of Shri Shetty, for all practical purposes, amounts to disclosure of ITRs filed by M/s. Sanitex Chemicals. I, therefore, find no infirmity in the orders passed by CPIO and Appellate Authority that the information requested for by the Appellant is not disclosable. Hence, the appeal is dismissed.”*<sup>53</sup> A decision by the Patna High Court also accepts denial of information

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<sup>51</sup>Decision No. CIC/SG/A/2009/001990/5042 for details see [http://www.rti.india.gov.in/cic\\_decisions/SG-06102009-14.pdf](http://www.rti.india.gov.in/cic_decisions/SG-06102009-14.pdf)

<sup>52</sup>*Federal Communications Commission v AT&T inc. No.09-1279 of 1 March 2011*

<sup>53</sup>[www.rti.india.gov.in/cic\\_decisions/LS-30122008-02.pdf](http://www.rti.india.gov.in/cic_decisions/LS-30122008-02.pdf)

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under Section 8 (1) (j) for information regarding a private agency which conducted an examination for posts of sessions judges.<sup>54</sup>

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. There have been laws framed in India and various Supreme Court judgements regarding privacy issued even before the advent of the RTI Act. The concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. David Banisar<sup>55</sup> states, "The definitions of privacy and what is sensitive personal information vary among countries and individuals on the basis of past experiences and cultural understandings. Some cultures focus on community rights over individual rights; others, such as countries in Europe, are sensitive to privacy rights because of abuses going back to World War II."

Besides the social, cultural and even governance conditions such as widespread corruption may also affect the balance between individual and community requirements for making laws. Therefore referring to the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the citizen's fundamental right to information in India. It is required that Section 8 (1) (j) be applied as defined in the RTI Act. Parliament has framed the law and its exemptions after deliberating on Indian conditions and the objectives of its law.

A plain reading of Section 8 (1) (j) shows that information may be considered exempt under the following two circumstances:

*a) Where the information requested is personal information and the nature of the information requested is such that, it has apparently no relationship to any public activity or public interest;*

**or**

*b) Where the information requested is personal information and the disclosure of the said information would cause unwarranted invasion of privacy of the individual.*

Most of the information available with government departments is likely to be information relating to a public activity, and hence condition a) described above will usually not apply. However public authorities which are not government authorities, but may be substantially financed NGOs are likely to have such information which could claim exemption being personal information which has no relation to any public activity. There can be certain information with public authorities as well which may not have any relation to public activity, e.g., records of phone tapping or personal letters which may fall in the hands of public authorities during a raid.

It would be worthwhile to glance at the Supreme Court judgement in *R.Rajagopal and Anr. v State of Tamil Nadu*<sup>56</sup> where the *ratio decidendi*<sup>57</sup> says:

*"28. We may now summarise the broad principles flowing from the above discussion:*

*(1) The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone." A citizen has a right to safeguard the*

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<sup>54</sup>Joint Registrar (Judicial)-cum-Public Information Officer vs State Information Commission and Others, Patna High Court [CWJC No. 15814 of 2009], decision date 28/07/2010.

<sup>55</sup>Banisar, David, The Right to Information and Privacy: Balancing Rights and Managing Conflicts (March 10, 2011) World Bank Institute Governance Working Paper. Available at SSRN: <http://ssrn.com/abstract=1786473> or <http://dx.doi.org/10.2139/ssrn.1786473> (Banisar, March 2011)

<sup>56</sup>*Rajagopal v. State of Tamil Nadu*, 1994(6) SCC 632

<sup>57</sup>*Ratio decidendi* is Latin for "the reason" or "the rationale for the decision". It is "the point in a case which determines the judgment" (Black's Law Dictionary, page 1135 (5th ed. 1979).

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*privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.*

*(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of decency (Article 19(2)) an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offense should not further be subjected to the indignity of her name and the incident being published in press/media.*

*(3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties.”*

Thus as per point (1) in the above case, matters relating to privacy are generally those relating to family, marriage, procreation, motherhood, child bearing and education among others. This is not an exhaustive list but is indicative. However as per point (2) even publication based upon public records would normally be considered unobjectionable, unless it violates decency. Public records are defined by the Public Records Act as any record in any form with a government agency. Based on this understanding, there would be very little information which could be denied under a). However any disclosure which can be construed as an unwarranted invasion of privacy could be denied as per condition b). In many other Supreme Court judgements delivered before the advent of the RTI Act, it has been stated that matters of privacy relate to actions and activities within the house of a person, apart from the matters mentioned in point (1) in the Supreme Court judgement quoted above.

Keeping this in mind that information available in ‘public records’ when applying for a ration card, government job, license, permit, authorization or passport is not covered by this exemption even though it is personal information, since it relates to a public activity. Nor can disclosure be considered an unwarranted invasion of privacy unless it relates to matters relating to an individual’s activities at home, or relating to her body, marriage, sexual preferences, child bearing, etc.

Indian Parliament intended that Section 8 (1) (j) would be used sparingly since it was aware that there are a number of fraudulent transactions and declarations made by persons to get unjust enrichment. It must be remembered that the preamble of the Act has categorically mentioned ‘containing corruption’ to be one its objectives. This is not the objective for all laws worldwide and must be kept in mind when interpreting the provisions of the Act. Most people when seeking such information are expecting to unearth some wrong doing based on hearsay or suspicion.<sup>58</sup> Realising that there may be

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<sup>58</sup>As a Commissioner the author witnessed the unravelling of many illegal acts through RTI applications. For instance it was brought to attention that some of the doctors in government hospitals had fake degrees and yet Delhi Government continued their services. For details see [www.rti.india.gov.in/cic\\_decisions/SG-23072009-04.pdf](http://www.rti.india.gov.in/cic_decisions/SG-23072009-04.pdf)

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some confusion in such a matter amongst PIOs, Parliament went further and provided an acid test just for this exemption when it said:

*“Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”*

This was to indicate to PIOs that only in very rare cases could information be denied under Section 8 (1) (j). This proviso requires that before denying information on grounds of Section 8 (1) (j) it should be recorded that the information would have been denied to Parliament or State Legislature. It also recognizes the sovereignty of the Indian citizen and acknowledges that the legitimacy of Parliament is derived from it.

It is observed that most Information Commission orders, and some Supreme Court judgements do not even address this proviso when allowing refusal of information based on Section 8 (1) (j). Given this proviso, it is imperative that when any denial of information is made on the basis of Section 8 (1) (j), a comment must be included in the decision recording that the information would have been refused to Parliament or State Legislature.<sup>59</sup> The satisfaction for denial of information in Section 8 (1) (j) has been set strictly in the law, which is being arbitrarily neglected.

Section 8 (2) of the Act states *“Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”* It is important to note that only if it is established that an exemption applies is there any need to consider whether a larger public interest in disclosure exists. Many decisions mechanically state that there is no larger public interest in disclosure of information if they come to the conclusion that the information is exempt as per the provision of Section 8 (1) (j), without addressing the specific public interest claim of an applicant. They do not even examine the public interest argument given by the applicant. It is clear that there is no need of any public interest to be established if no exemption is established.

The broad principles concerning the law of privacy were summarized by the apex court in the case of *Rajagopal v. State of Tamil Nadu*<sup>60</sup> which stated that the disclosure in the case of public servants must be routine and only rarely can the right to privacy be claimed. A similar thought is expressed in the ADR/PUCL judgements when the Supreme Court had ruled that all citizens have a right to know about the assets of those who want to become public servants.<sup>61</sup> As a consequence of this decision all candidates standing for elections have to declare their assets. Section 8(1) (j) is being used in a peculiar way recently when information is being sought regarding a public servant. Information was denied in the *Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors*<sup>62</sup>. Deshpande sought information about an Enforcement Officer working in the Regional Provident Fund Commissioner's office regarding his service records in terms of memos and punishments awarded to him, gifts received by him on his son's wedding as also his assets and liabilities. Relevant excerpts from the case<sup>63</sup> are given below. In the CIC ruling it was stated:

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<sup>59</sup> If a query from Parliament requires disclosures which would be an unwarranted invasion on the privacy of an individual, or would be transcripts of private telephone conversations it should be denied to Parliament and the citizen.

<sup>60</sup> *Rajagopal v. State of Tamil Nadu*, 1994(6) SCC 632

<sup>61</sup> *Union of India Vs. Association for Democratic Reforms & Another*, 2002

<sup>62</sup> *Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors*. [Special Leave Petition (Civil) No. 27734 of 2012 (@ CC 14781/2012)] <http://judis.nic.in/supremecourt/imgs1.aspx?filename=39615>

<sup>63</sup> [http://www.rti.india.gov.in/cic\\_decisions/LS-22052009-04.pdf](http://www.rti.india.gov.in/cic_decisions/LS-22052009-04.pdf)

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“5. Advocate Wachasunder has made a strong plea for disclosure of information on the remaining paras. His first and foremost submission is that information has been wrongly denied in terms of clause (j) of section 8(1) as information can be denied only when it has no relationship with public activity or interest. Shri Lute, being an Enforcement Officer, has been vested with the authority to prosecute employers for alleged violation of law and, therefore, his actions fall in the domain of 'public activity' and evoke public 'interest'. He has also assailed the denial of information on the ground of 'unwarranted invasion of privacy'. It is his plea that a true meaning needs to be assigned to this expression. As Shri Lute is an Enforcement Officer, the society expects him to be of transparent integrity and conduct, and therefore, information sought by the Appellant cannot be construed as unwarranted invasion of privacy.

6. He would further submit that as per clause proviso appended to clause (j), any information which cannot be denied to the Parliament or a State Legislature, the same cannot be denied to the Appellant. His poser is: can this information be denied to the Parliament or a State Legislature? He answers this in the negative and pleads for disclosure.”

After recording the above the CIC however, denied the information on the following ground:

“13. The question for consideration is whether the aforesaid information sought by the appellant can be treated as 'personal information' as defined in clause (j) of section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No. CIC/AT/A/2008/000628 (Milap Choraria Vs. Central Board of Direct Taxes) and the Commission vide its decision dated 15.06.2009 held that "the Income Tax returns have been rightly held to be personal information exempted from disclosure under clause (j) of section 8(1) of the RTI Act by the CPIO and the Appellate Authority; and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts - (i) relating to the personal matters pertaining to his service career; and (ii) Shri Lute's assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the 'personal information' as defined in clause (j) of section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest.”

It is interesting to note that the Milap Choraria case on which the above decision was based, did not relate to information about a public servant at all. Yet it became the basis for the CIC decision in this case. The Commission made no attempt to consider whether information being sought about a public servant would be subject to a different standard from that of an ordinary citizen or whether the 'personal information' had any relation to public activity. The decision did not state that it had applied the proviso and come to the conclusion that this information would not be provided to Parliament, nor did it explain how public interest was not likely to be served by disclosing the information in the case of a public servant.

Girish Deshpande approached the Supreme Court ultimately in SLP (C) no. 27734 of 2012. The Supreme Court after recording the facts of the matter and its history reproduced para 13 of the CIC order, given above. In para 11 of the judgement the Court reproduced Section 8 (1) (e), (g) and (j) of the RTI Act, but forgot to mention the proviso to Section 8 (1) (j) when it stated:

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*“13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8 (1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.*

*14. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8 (1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.*

*15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8 (1) (j) of the RTI Act.*

*16. We are therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.”*

The Girish Deshpande judgement has given no reasoning for its decision. It appears to be based on accepting the CIC decision which ironically relied on an earlier CIC decision wherein the issue was not related to personal information about a public servant at all. Neither the CIC order nor the Supreme Court judgement have given appropriate reasons based on Section 8 (1) (j) of the RTI Act, nor did they record that in their opinion the information sought would be denied to Parliament. Further, they did not consider the *R. Rajagopal* decision of the Supreme Court nor the ADR/PUCL judgement before deciding on the matter of disclosure of details of a public servant and whether there was a larger public interest in disclosure.

The Supreme Court’s statement, that the issue is between and employer and employee, fails to notice the vital detail that the employer is the government which represents ‘we the people’. Its statement that the petitioner cannot claim the information as a right is incorrect. The petitioner was exercising his legal right, and rejection should have been based on the law. This significant tool for exposing corrupt officials and those who have obtained jobs and various benefits by fraudulent methods will be blunted if Section 8 (1) (j) is given this meaning and it would thwart one key objective of the RTI Act of ‘containing corruption’.

The proper interpretation of Section 8 (1) (j) upsets sections of society that feel it does not seem to safeguard their interests and appears to be contrary to the prevailing notions in Western democracies. It may be argued that the wording of the RTI Act in India is appropriate and would benefit the nation by reducing corruption. The harm to a small section would be negligible, unless they were indulging

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in wrongdoing. Gandhi in one of his notes towards the end of his life states, "I will give you a talisman. Whenever you are in doubt, or when the self becomes too much with you, apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to him. Will he gain anything by it? Will it restore him to a control over his own life and destiny? In other words, will it lead to *swaraj* (self-governance) for the hungry and spiritually starving millions? Then you will find your doubts and yourself melt away."<sup>64</sup>

Considering the status of poverty in India, and reading the exemption for privacy in a manner to satisfy the requirements of a few, is questionable. The phrase "unwarranted invasion of the privacy of an individual" is being interpreted in a manner not in consonance with the law, or with earlier Supreme Court judgements. This unwarranted expansion of exemption is not designed to safeguard the poor whose rights are being denied. To ensure that the poor of India get their fair share of the nation's resources, corruption needs to be brought down. Not only is the establishment expanding the scope of Section 8 (1) (j) far beyond what is stated in the law, but is now interpreting it to protect even public servants without regard to the position of the Supreme Court's various pronouncements before the advent of the Act and the Act's specific proviso in Section 8 (1) (j).

### **9. Response of the Bureaucracy to RTI**

Though there have been some bureaucrats championing the cause of transparency and RTI, not all are comfortable about it. It is known that most people in power do not like to become accountable and transparent. TSR Subramanian<sup>65</sup> (personal communication, September 18, 2013) states, "When in 1997, I was Cabinet Secretary, and had worked towards RTI, I recall that I had consulted informally a number of joint secretaries and secretaries in the various ministries. Uniformly, their advice was that this should not be encouraged, as it would inhibit free expression of views by civil servants on files, on matters where decisions were yet to be taken. This perspective was overruled by me, and we went ahead with the RTI idea. In retrospect, I believe that those in government who would write their views freely, without any other considerations, still continue to do so; but a number of others, are more circumspect in expressing their opinion on files, for fear of their disclosure in course of time.

Taking into account the fact that file notings are done in advance of a decision, when issues are open, and the consequences are not clearly seen, nor all relevant facts are available, the officer indeed takes a chance in expressing strong views one way or the other; and he may be found to have been 'wrong' by events or in course of time. The system, which is inquisitorial in nature, may not take a balanced view on opinion expressed in advance, and may attribute motives; this is a safeguard that is not inbuilt in the system, inhibiting the officer from expressing his views freely and fearlessly. It should also be added that the ethos of governance has changed considerably in the past decade or so; there is not much room for a decent debate on files—dissent is not encouraged—decisions are taken and handed down for implementation."

The dishonest have an aversion to RTI because there is a possibility of its exposing some arbitrariness or corruption by them. Honest officers also fear that some of their decisions may appear to be unpopular or not right in view of some subsequent events, and this exposes them to an unfair risk. The basic mind-set of accepting transparency and disclosing information to the people has yet to evolve. For most people in power, the concept that citizens own the information and hence have a

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<sup>64</sup> "A Note", Mahatma, Vol. VIII, p.89

<sup>65</sup> Former Cabinet Secretary

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right over it is alien. This change in the basic approach to RTI will perhaps take some time, since it requires internalizing a basically different role for themselves of truly being public servants.

The RTI Act clearly states that the citizen need not give any reason for seeking information.<sup>66</sup> Justice Katju's statement quoted earlier reflects the ingrained belief in most public servants that they do not really owe information to the sovereign citizen of India, and that they are not serving the people. In the first few years of the RTI Act coming into effect, there was considerable fear amongst PIOs of being penalized and hence there was greater respect for the law. Subsequently because of the slow disposals of matters at the Information Commissions and the negligible cases where penalties were being imposed, there has been some slackening in providing information. Besides, as Pralhad Kachare<sup>67</sup> (personal communication, September 10, 2013) points out, "...there is no great enthusiasm or focus from the higher ranks of bureaucracy to meet Section 4 requirements of proactive disclosures, getting operations computerized and giving information." Despite these roadblocks consistent asking of information and pressure from citizens and media is bringing about an acceptance in the government that some of the information will have to be shared with citizens. Over a period of time, it is expected that bureaucrats will adjust and get conditioned into accepting RTI and the empowerment of the individual citizen and the consequent sharing of power with them. This requires a change in attitude which will perhaps take time.

Citizens are not able to understand why officers should not take decisions fearing RTI queries. Even if citizens did not seek the details of these earlier, politicians such as ministers have always had access to these, even while these are in process. The contention that officers are comfortable with politicians having access to decision making, but are uncomfortable when citizens have the same access can be accepted to be logical, if an assumption is made that the politicians and bureaucrats know what is good for people, but the *demos* are not mature enough to understand this. Citizens are believed to be mature enough to choose who should govern, and the elected representative claims legitimacy because of this choice. The political class and bureaucrats appointed and approved by the political establishment run the government in a manner beneficial to citizens, if citizens give them a free hand and do not ask to be informed about the processes of taking the decisions.

This was the situation for 58 years, from 1947 to 2005, and it has not delivered a satisfactory outcome. The premise that citizens seeking transparency over the process and the decisions would harm governance defies the very fundamentals of democracy. Many honest officers say that RTI is helping them to avoid corrupt demands from political and other influential people. If decisions are not arbitrary or corrupt, RTI should be no deterrence to decision making. It certainly puts pressure on officers to take decisions keeping the poorest citizen and real public interest in mind.

### **10. Conclusion**

Right to Information has taken root in India and citizens are increasingly using it to empower themselves. The spread of RTI is increasing steadily and this has the potential to transform Indian

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<sup>66</sup>When the author meets several government officers at the various workshops he asks them whether this clause appears reasonable. Most of the officers feel that this clause is unreasonable and that it needs to be changed. The author then poses a question to them whether, if they wish to withdraw any money from their bank account, they would like to give the reason for withdrawing their own money. There is unanimity that such a requirement would be unreasonable since the money belongs to them. He then tries to explain that the information also belongs to citizens and therefore they cannot be asked to provide reasons for seeking it. There is some appreciation but it does not really get internalized.

<sup>67</sup>Pralhad Kachare, Director, Centre for Public Policy at Yashwantrao Chavan Academy of Development Administration (YASHADA)

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democracy from an elective democracy to a participatory and fairer democracy. The law has been propagated and popularised primarily by citizens working as groups and NGOs, or even as individuals. It has been growing from strength to strength. However this status paper, while acknowledging this, also seeks to draw attention to certain dangers and obstacles.

The bureaucracy and the political class is not too enamoured with the Act, as argued earlier, and there are possibilities of them either trying to amend its provisions or using other devices to weaken it.

The information commissioners should be safeguarding this Act, but are certainly not at the forefront of this. Many commissioners have no real commitment or faith in transparency and this is also a consequence of the fact that information commissioners are generally selected as an act of political patronage. Their indifferent attitude coupled with lack of attention to compliance with Section 4 of the RTI Act (proactive disclosures) has led to an increase in the number of RTI applications being filed. This in turn is increasing the load on the commissions which do not really feel responsible for delivering the results of the RTI Act to citizens.

The Supreme Court appears to be interpreting the RTI Act in a manner that will constrict its scope. It appears that the overriding aspect of the law in Section 22 has been weakened. On the other hand Section 8 (1) is being interpreted in a manner that denies much information which would expose corruption and arbitrariness. Public information officers and commissioners are following these judgements enthusiastically. When we compare the Supreme Court's pronouncements on RTI after 2011 with the earlier ones of Justice Mathew, SP Gupta, R. Rajagopal, or the ADR or even the Bhagat Singh judgement, it is difficult to reconcile them. If the trend of such interpretations continues, the RTI Act could become progressively weaker.

Citizens need to be aware of these dangers and continue to defend their right, failing which RTI could have a reversal in its onward march. If they are not vigilant there can be a regression. They must keep a constant vigil to actualise their right. Public authorities must make most disclosures voluntarily as per the requirements of Section 4. If they computerised and networked their operations, this could be achieved very easily and providing information would be very easy. The nation is at the cusp of a very interesting phase in its democracy and the right to information is a very vital part of this.

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# 10.

## State of the RTI Regime in India: Summary Report of a People's Monitoring Exercise (2011-13)<sup>1</sup>

Anjali Bhardwaj, Amrita Johri, Shekhar Singh

Given below are the major findings of the study "People's monitoring of the RTI regime in India" (2011-13). This study, jointly carried out by the Right to information Assessment and Advocacy Group (RaaG) and the Centre for Equity Studies (CES), was supported by the United Nations Development Programme, New Delhi. It was completed in October 2014.

These major findings for 2011-13 have, wherever relevant, been contrasted with findings of the study "Safeguarding the Right to Information: Report of the People's RTI Assessment" carried out by RaaG and the National Campaign for People's Right to Information (NCPRI) and partly supported by Google.org. This study was completed in 2009.

### I. Valuing the RTI

1. 77% of the people interviewed through street corner surveys thought that access to government held information could be helpful in various ways.
2. 58% felt that access to government held information was helpful in solving individual problems.

#### Valuing the RTI: Comparable data and findings from 2005-08\*

- Nearly 65% of the urban sample thought that access to government held information could be helpful in various ways.
- Similarly, 65% of the focus group discussions in rural and semi-rural areas also concluded that access to government held information would help in resolving some or all of their most pressing problems.

#### Clearly the number of people valuing the RTI are going up since the early days!

\*The data and findings for 2005-08 are from a similar study titled *Safeguarding the Right to Information: Report of the People's RTI Assessment*, done by RaaG and NCPRI, completed in 2009. The abstract report for this study can be downloaded from <http://www.rti-assessment.com/raag-rti-study-2005-2008.html>

3. 83% of those who had heard of the RTI Act, in the state headquarters and in Delhi, stated that the RTI Act was relevant for them.

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<sup>1</sup> Copy of this report can be downloaded from <http://www.rti-assessment.com/raag---ces--rti-study-2011-13.html>

## People's Monitoring of the RTI Regime: India

### II. Awareness of the RTI Act

4. There is poor awareness about the RTI Act, worse in rural areas than in urban areas. In 64% of the rural focus group discussions (FGDs) and 62% of urban FGDs, no participant had heard of the RTI Act!
5. In the state headquarters and in Delhi, only 39% of the respondents interviewed through street corner interviews said that they had not heard about the RTI Act.

#### Awareness: Comparable data and findings from 2005-08

- 55% of the respondents in the state headquarters (including Delhi) did not know about the RTI Act. 60% of the respondents in district headquarters did not know about it.
- However, in almost 80% of the rural FGDs not a single participant who knew the RTI Act, or had even heard about it.
- Both in rural and in urban areas, newspapers were the most common source of information about the RTI Act. Television was the next, closely followed by NGOs.

#### There is a significant improvement in the levels of awareness in 2011-13.

6. In rural areas, newspapers were the most common source of information about the RTI Act, while in urban low income settlements, television was the most common source of information about the RTI Act. Overall, newspapers were the most common source of information about the RTI Act for both rural and urban RTI applicants.

### III. Profile of users, use of the RTI Act, and nature of information sought

7. **Gender concerns:** The participation of women in the RTI process, especially as applicants, has been minimal, with a national average of 8%, and two states – Assam and Rajasthan - recording 4%. Bihar recorded an abysmal 1%, though with a truncated sample. Many reasons can be attributed for this gender imbalance, but there is no scientific understanding of why so few women file RTI applications. If RTI is a means of empowerment, then there should be a special focus on ensuring that women are aware of the RTI Act and willing and able to use it.
8. **The rural-urban divide:** Only 14% of the applicants were from rural areas, even though over 70% of India's population lives in rural areas. Though the sample might have a bias in favour of urban areas, even after adjusting for such a bias, the proportion is too small. If an estimated four million RTI applications were filed in India, in 2011-12, then this would suggest that over half a million of the applicants were from rural areas.
9. **Grievance redress mechanisms:** 80% of respondents in rural FGDs, and 95% in urban FGDs, said that they wanted to use the RTI Act in order to seek redress of their grievances. Analysis of RTI applications showed that at least 16% of the applicants were seeking information that was aimed at getting action on a complaint, getting a response from a public authority, or getting redress for a grievance.
10. Only 5% of the RTI applications were from public servants seeking information about their service matters.
11. The most commonly sought information related to decisions taken, action taken or proposed to be taken, norms prescribed by public authorities, basis of decisions, financial and public resources, schemes and programmes, and human resources.

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12. Most RTI applicants sought information in the form of a response to a query (73%) as opposed to copies of documents and records (47%), with 20% seeking both.

<b>Table 1: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA</b>								
<i>What does the information sought relate to?</i>								
	2011-13						2005-08	Variation
	AP	ASS	DEL	RAJ	CEN	Average	Average	2011-13 over 2005-08 (%)
	Percentage							
<b>Norms</b>	20%	11%	40%	19%	33%	<b>25%</b>	<b>18%</b>	<b>+7%</b>
<b>Delays</b>	3%	2%	3%	3%	2%	<b>3%</b>	<b>5%</b>	<b>-2%</b>
<b>Decisions</b>	48%	76%	60%	55%	44%	<b>57%</b>	<b>40%</b>	<b>+17%</b>
<b>Action taken/proposed to be taken</b>	42%	43%	51%	40%	27%	<b>41%</b>	<b>28%</b>	<b>+13%</b>
<b>Dates of decisions/action/occurrences</b>	11%	7%	14%	5%	10%	<b>9%</b>	<b>8%</b>	<b>+1%</b>
<b>Basis of decisions</b>	12%	10%	13%	15%	17%	<b>13%</b>	<b>13%</b>	<b>0%</b>
<b>Lapses</b>	1%	4%	7%	5%	4%	<b>4%</b>	<b>8%</b>	<b>-4%</b>
<b>Discrepancies in records</b>	1%	0%	1%	0%	0%	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Schemes/benefits/concessions/privileges</b>	11%	12%	24%	13%	21%	<b>16%</b>	<b>15%</b>	<b>+1%</b>
<b>Financial and public resources/facilities</b>	21%	18%	19%	19%	23%	<b>20%</b>	<b>24%</b>	<b>-4%</b>
<b>Compensations and rehabilitation</b>	1%	5%	1%	2%	2%	<b>2%</b>	<b>3%</b>	<b>-1%</b>
<b>Travel and cost of travel</b>	0%	0%	0%	0%	5%	<b>1%</b>	<b>1%</b>	<b>0%</b>
<b>Socio-economic status/parameters</b>	0%	3%	3%	7%	5%	<b>4%</b>	<b>2%</b>	<b>+2%</b>
<b>Natural resources/occurrences</b>	1%	3%	0%	1%	1%	<b>1%</b>	<b>2%</b>	<b>-1%</b>
<b>Human resources</b>	19%	21%	22%	16%	20%	<b>20%</b>	<b>19%</b>	<b>+1%</b>
<b>Physical resources/objects</b>	12%	13%	23%	19%	6%	<b>15%</b>	<b>17%</b>	<b>-2%</b>
<b>Land</b>	11%	8%	14%	15%	1%	<b>10%</b>	<b>6%</b>	<b>+4%</b>
<b>Housing/buildings</b>	1%	3%	9%	2%	2%	<b>3%</b>	<b>4%</b>	<b>-1%</b>
<b>Moveable assets</b>	0%	2%	1%	1%	3%	<b>1%</b>	<b>1%</b>	<b>0%</b>
<b>Roads</b>	1%	0%	0%	1%	0%	<b>0%</b>	<b>4%</b>	<b>-4%</b>
<b>RTI applications</b>	3%	3%	1%	3%	2%	<b>2%</b>	<b>4%</b>	<b>-2%</b>
<b>RTI systems</b>	1%	2%	0%	0%	1%	<b>1%</b>	<b>2%</b>	<b>-1%</b>
<b>Non-RTI communication</b>	3%	2%	12%	15%	4%	<b>7%</b>	<b>4%</b>	<b>+3%</b>
<b>Awareness/cognisance of facts/events</b>	3%	29%	3%	1%	3%	<b>8%</b>	<b>3%</b>	<b>+5%</b>
<b>Enquiries/investigations/assessments</b>	11%	60%	17%	29%	13%	<b>26%</b>	<b>18%</b>	<b>+8%</b>
<b>Examinations</b>	4%	0%	1%	3%	4%	<b>2%</b>	<b>4%</b>	<b>-2%</b>
<b>Existence/location of an entity</b>	7%	5%	12%	5%	10%	<b>8%</b>	<b>7%</b>	<b>+1%</b>

*Less than 0.5% is shown as 0%*

## People's Monitoring of the RTI Regime: India

### Profile of users: Comparable data and findings from 2005-08

- An estimated 2 lakh (200,000) RTI applications were filed from the villages of India in the 2007-08.
- In the same period, an estimated 8 lakh (800,000) applications were filed in the urban areas, making a total of 10 lakh (1 million) applications in this period.
- Overall, 95% of the applicants were male and 5% were female.
- The proportion of scheduled caste or scheduled tribe applicants was similar to the proportion of their population in the country.
- 30% of the rural applicants and 15% of the urban applicants were from below the poverty line/came from antyodaya families.

**The number of applications has gone up at least four times in the last three or four years. The proportion of women to men applicants has improved only slightly and still remains abysmally low.**

13. 7% of the 'applications' were technically not RTI applications but a complaint, a grievance or a cry for help.

#### IV. Ease and certainty of access to information

14. **Ineffectual first appellate process:** Except for first appeals filed with the central government or Delhi government, there is less than 4% chance of getting any information by filing a first appeal.

15. **Threats to applicants:** 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.

16. **Reducing the need to file RTI applications:** 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 public information officers (PIOs) as they have to deal with a large number of RTI applications in addition to their normal work.

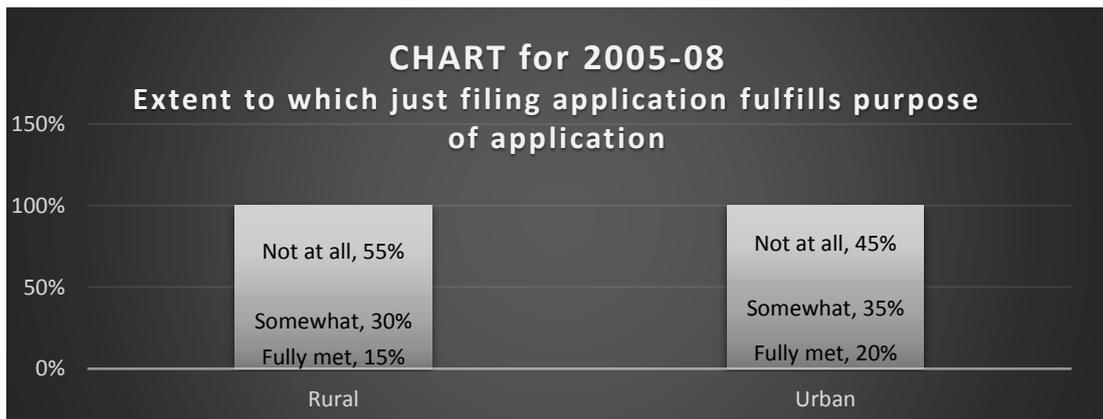
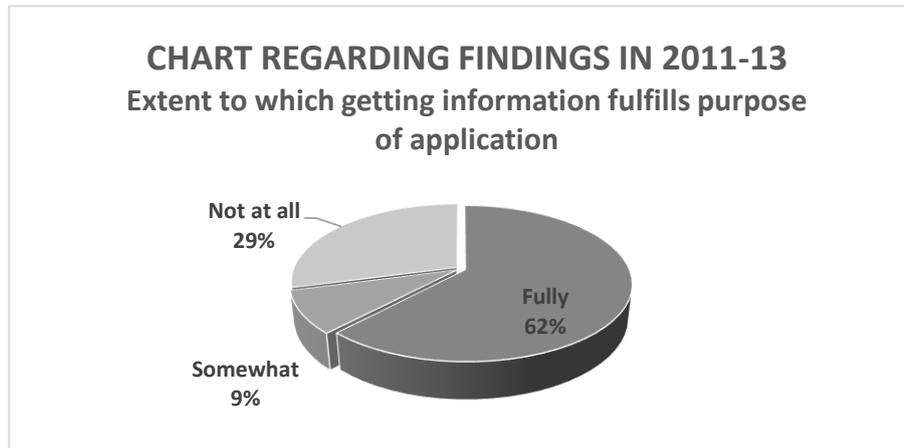
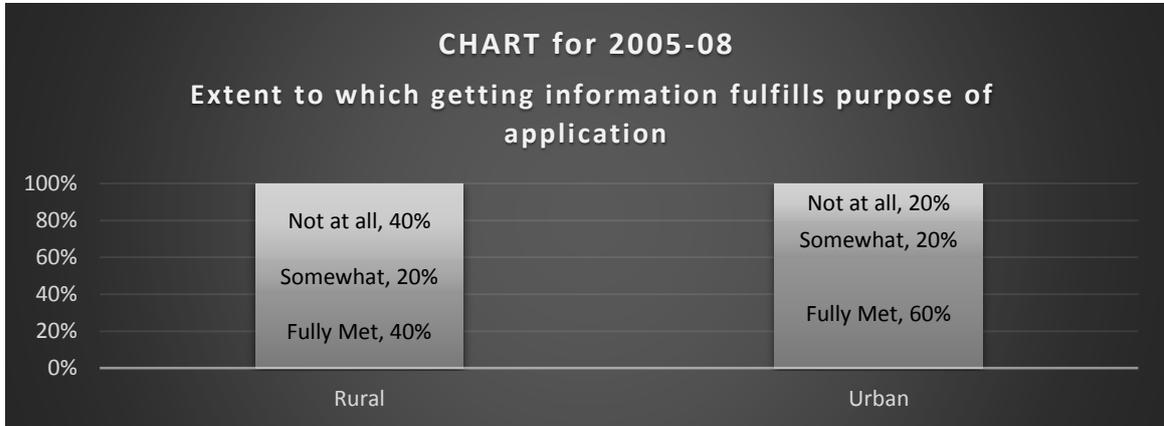
17. **Success rate:** How often we get information in response to an RTI application differs from public authority to public authority. Therefore, we got 87% of the information requested from state and central nodal agencies, but only 45% from sample of PAs in various states and the Central Government.

18. The success rate claimed for RTI applications also varies, depending on who provides the information. When we asked our sample public authorities (PAs) what their own records indicated, they claimed that they had provided the asked for information in response to 81% of the RTI applications received. However, we received only 45% of the various bits of information we had asked for from these very sample PAs. On the other hand, the urban applicants claimed that only 44% of the requested information was forthcoming.

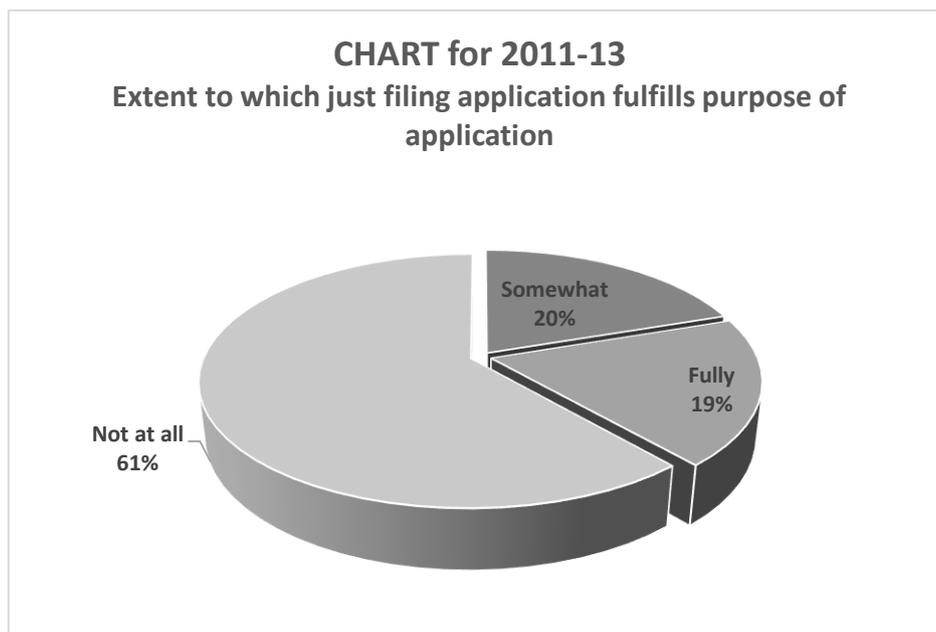
19. According to government data, 87% of the information that was sent was sent in time, and the remaining 13% sent late. For applications filed by RaaG with sample PAs, 41% of the information was received in time. A little over 50% of the information received was in time for applications filed by the RaaG team with nodal departments.

## Empowerment Through Information -I

**20.** In terms of providing the asked for information, based on the government's claims Delhi performed the best with a 94% record and Andhra Pradesh was the worst with a 64% record, Assam was a little better with 65%. Our experience, based on the RTIs we filed with a sample of public authorities, was that the Central Government provided 51% of the information asked for, followed by Delhi with 45%, and Bihar came in last with a meagre 21%.



## People's Monitoring of the RTI Regime: India



### **V. Public authorities of the government**

- 21. Proactive disclosures:** Nearly 70% of the RTI applications seek information that should have been proactively made public without citizens having to file an RTI application. 49% sought information which should have been proactively provided under section 4 of the RTI Act (or other similar sections in other laws), while 18% sought information that should have been proactively provided to the applicant without her having to file an RTI application either because they were responses that should have been given as per prescribed office procedures<sup>2</sup> or under other laws.
- 22.** Despite a very strong provision for proactive (suo motu) disclosure under section 4 of the RTI Act, there is poor compliance by public authorities. This forces applicants to file applications for information that should be available to them proactively, and consequently creates extra work for themselves, for the concerned public authorities, and for information commissions. 65% of the PA premises inspected did not have a board with the required proactive disclosures and 59% did not have any publications or other material available in their office which the public could inspect in order to access the information that should be proactively available.
- 23.** 23% of PA websites analysed did not have a link to section 4 (proactive) disclosures
- 24.** 10% of PA websites analysed did not provide information on the name of the PIO of the PA
- 25. Record management:** One major constraint faced by PIOs in providing information in a timely manner is the poor state of record management in most public authorities.
- 26.** Though many, including the Prime Minister of India, have argued that the RTI Act is being extensively misused, actually the facts are otherwise, as can be seen in the table below.

<sup>2</sup> See point 66 of <http://darpg.gov.in/darpgwebsite/cms/Document/file/CSMOP.pdf>

## Empowerment Through Information - I

**Table 2: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA**

<i>Problematic Applications</i>									
2011-13							2005-08	Variation	
	AP	ASS	DEL	RAJ	CEN	Average	Average	2011-13	over
							2005-08 (%)		
	Percentage								
<b>Vexatious</b>	0%	0%	1%	0%	0%	<b>0%</b>	<b>0%</b>	<b>0%</b>	
<b>Frivolous</b>	1%	0%	0%	0%	0%	<b>0%</b>	<b>0%</b>	<b>0%</b>	
<b>Unclear</b>	0%	0%	0%	1%	0%	<b>0%</b>	<b>0%</b>	<b>0%</b>	
<b>Voluminous</b>	1%	2%	3%	1%	0%	<b>1%</b>	<b>2%</b>	<b>-1%</b>	
<b>Infringement of privacy</b>	0%	1%	0%	1%	1%	<b>1%</b>	<b>0%</b>	<b>+1%</b>	
<b>Long time span</b>	1%	1%	2%	1%	2%	<b>1%</b>	<b>1%</b>	<b>0%</b>	
<b>Complaint - not RTI</b>	4%	0%	2%	1%	2%	<b>2%</b>	<b>0%</b>	<b>+2%</b>	
<b>Grievance - not RTI</b>	2%	0%	3%	3%	2%	<b>2%</b>	<b>1%</b>	<b>+1%</b>	
<b>Asking for help - not RTI</b>	2%	4%	2%	6%	3%	<b>3%</b>	<b>2%</b>	<b>+1%</b>	
<b>Others</b>	0%	0%	0%	0%	1%	<b>0%</b>	<b>0%</b>	<b>0%</b>	
<i>Less than 0.5% is shown as 0%</i>									

### VI. Public Information Officers of the government

**27. Training of PIOs:** Nearly 45% of the PIOs have not received any training on the RTI Act. In fact, the PIOs interviewed identified lack of training as their number one constraint. A much larger proportion of non-PIO civil servants, who have to provide information to the PIOs or function as first appellate authorities, have not been oriented and trained towards facilitating the right to information.

**28.** All PIOs interviewed were aware that they were the designated PIOs.

**29.** 91.5% PIOs stated that they were aware of the provisions of the RTI Act.

**30.** 38% PIOs spent less than 2 hours a week on RTI related work, while 39% spent less than 5 hours a week. Despite this, the former Prime Minister and many other senior government functionaries expressed the opinion that the RTI was consuming too much time.

**31.** Request for voluminous information was the major difficulty faced by PIOs in responding to RTIs, followed by unclear applications.

### VII. Information Commissions

**32. Delays and pendency:** There are huge and growing delays in the disposal of cases in many of the information commissions, with pendency of cases growing every month. At the current levels of pendency and rate of disposal, an appeal filed today with the Madhya Pradesh SIC would be taken up for consideration only after 60 years, while the West Bengal SIC would come to it after nearly 17 years! The main reasons behind the delays seem to be the paucity of commissioners in some of the commissions and the low productivity of some of the other commissioners, mainly due to inadequate support. The additional fact that there is no legally prescribed time limit for disposing second appeals not only allows ICs to be indifferent about delays but also prevents appellants from approaching the high court.

**33.** Pendency in 23 commissions for which data was available

## People's Monitoring of the RTI Regime: India

34. , was 198,739 as of December 31, 2013.

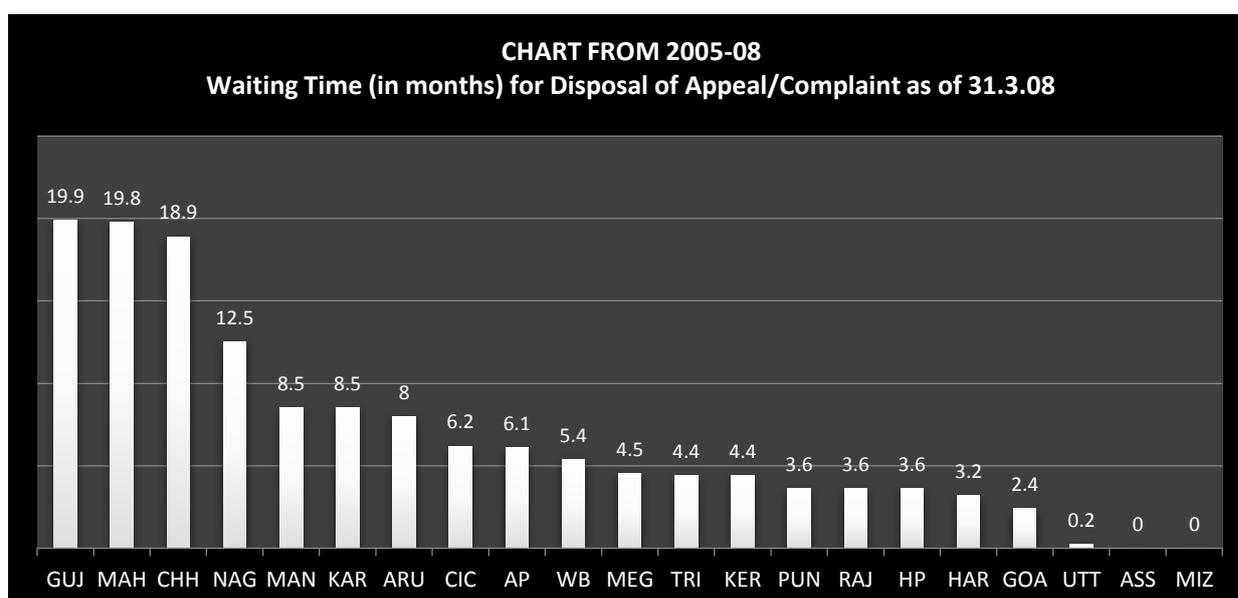
35. **Enforcing orders:** Often, orders of information commissions are not heeded to by the concerned public authority, and even penalties that are imposed are not recovered. Many commissions do not have effective methods of monitoring or enforcing compliance.

36. **Imposing penalties:** A very small proportion of the penalties imposable under the RTI Act (less than 3.7% on the basis of our current estimate) 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 both the willingness of PIOs to make information available, and the number of appeals and complaints that land up with information commissions.

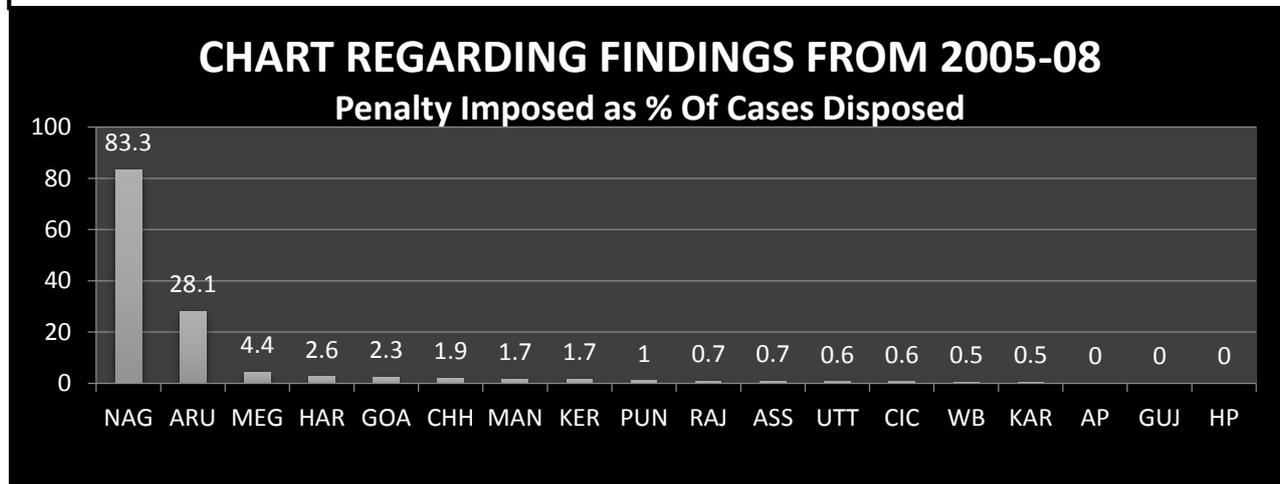
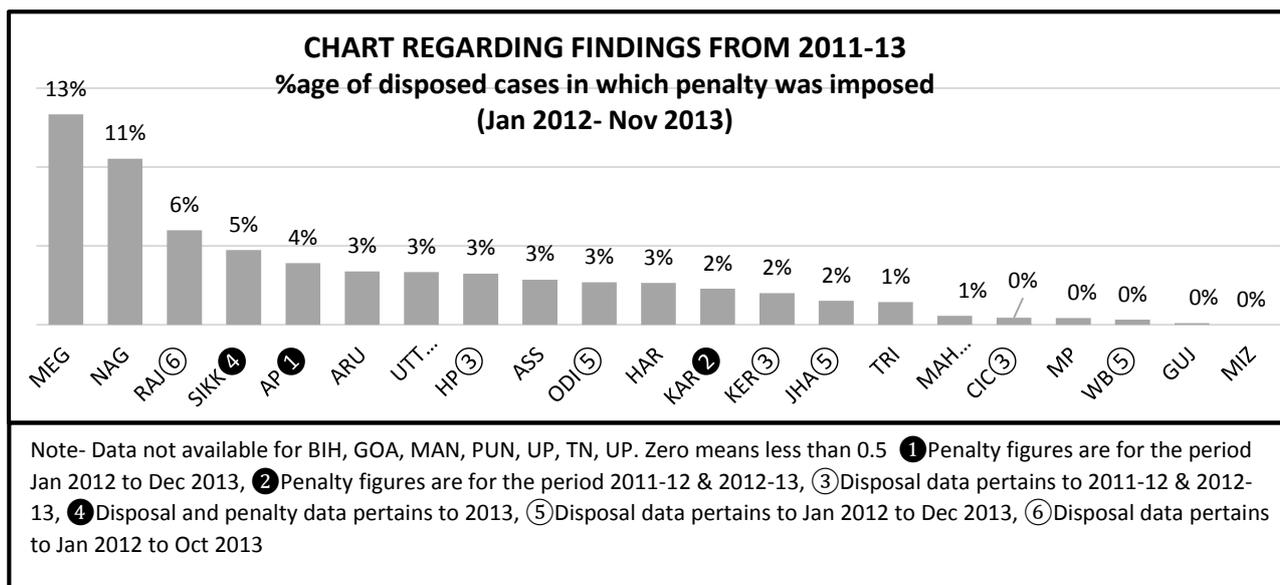
37. **Practicing transparency:** Unfortunately, many of the information commissions do not themselves follow the requirements of section 4 of the RTI Act. Most of their websites are outdated with very sparse details and much of the required information missing.

IC	Pending as on 31-12-2013	Monthly disposal rate reported by ICs	Time before new appeal is heard
MP	14,977	21	60 years & 10 months
WB	8,506	40	17 years & 10 months
RAJ <sup>③</sup>	13,538	341	3 years & 4 months
ASS	1,378	43	2 years & 8 months
KER <sup>④</sup>	5,789	213	2 years & 3 months
AP <sup>①</sup>	12,456	681	1 year & 6 months
UP	48,442	3,044	1 year & 4 months
CHH <sup>②</sup>	3,867	256	1 year & 3 months
KAR	14,686	1,027	1 year & 2 months
CIC <sup>③</sup>	26,115	1,986	1 year & 1 month
MAH	32,390	2,560	1 year & 1 month
GUJ	8,017	898	9 months
ODI	4,234	488	9 months
ARU	38	10	4 months
HAR	1,537	464	3 months
PUN	1,484	522	3 months
UTT <sup>④</sup>	1,076	392	3 months
HP <sup>④</sup>	205	92	2 months
NAG	3	2	1 month
MEG	1	4	0
MIZ	-	1	-
SIKK	-	11	-
TRI	-	3	-

Note- Data not available for BIH, GOA, JHA, MAN, TN  
<sup>①</sup> Figures provided by the Commission in response to RTI did not mention the year, <sup>②</sup>As of December 31, 2012, <sup>③</sup>As of October 2013, <sup>④</sup>As of March 31, 2013



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- 38. Independence of commissions:** Many information commissioners feel that their dependence on the government for budgets, sanctions and staff seriously undermines their independence and autonomy, and inhibits their functioning.
- 39. Composition of commissions:** 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. Since the inception of the RTI Act, 87% of the chief information commissioners (CICs) and 60% of the information commissioners (ICs) across the country have been former civil servants. Only 5% of the CICs and 10% of the ICs have been women.
- 40.** In the 26 information commissions for which data was available, a total of 389,372 appeals and complaints were received between January 2012 and November 2013.
- 41.** Two commissions were non-functional – Manipur since March 2013 and Assam since March 2014. ICs of Rajasthan and Madhya Pradesh were not functioning for over one year each between January 2012 and December 2013.

## People's Monitoring of the RTI Regime: India

### Information commissions: Comparable data and findings from 2005-08

- The functioning of information commissions, especially in terms of back logs and delays was alarming in 2005-08. However, it has significantly deteriorated in 2011-13.
- This might partly be due to the fact that the number of appeals and complaints received per annum has gone up from an average of 35,000 in 2005-08 to 195,000 in 2011-13.
- However, there are other factors, especially the hesitation of commissions to impose penalties on errant PIOs, that have led to a huge increase in the numbers of denials and a consequent pressure on information commissions.
- The continuing failure of the first appeals system aggravates this further.
- Besides, no norms have been adopted for disposal rates by information commissioners. This, along with the fact that there are also no norms for budgetary and staff support to information commissions has significantly slowed down the rate of disposals from those that would be required if delays were to be kept within reasonable bounds.

### VIII. Nodal Agencies

- 42. Rationalising rules:** All state and union territory governments (a total of 34), all the high courts (23) 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 90 different sets of rules in the country. In addition, the 28 information commissions also have their own procedures, as formulated by the appropriate governments, resulting in a total of 118 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.
- 43.** 24 of the states and all seven union territories charge the same application fee as the Central Government - ₹ 10. Arunachal Pradesh and Haryana charge ₹ 50, and Gujarat ₹ 20. Though courts and legislative assemblies also have their own rules for fees, these are not being discussed here.
- 44.** Andhra Pradesh exempts applicants from paying any fee for applications filed with public authorities at the village level, ₹ 5 for other applications filed with mandal (sub-district) level, public authorities, and ₹ 10 for the rest.
- 45.** Seven states also charge a fee for first appeals and five of them also charge a fee for second appeals.
- 46.** The Central Government and all states and union territories charge ₹2 per page for providing photocopies of documents, except Arunachal Pradesh, which charges ₹ 10.
- 47.** The RTI law lays down that people coming from below poverty line (BPL) families would not be charged any fee. However, Karnataka and Chhattisgarh restrict this to a hundred pages and fifty pages of photocopies respectively, and Bihar to ten pages. In Madhya Pradesh and Uttarakhand, information can be accessed by members of BPL families free of cost only if the information is about their own family.

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48. Cash, demand drafts, bankers' cheques, and Indian postal orders are the most commonly accepted modes of payment for fee and other costs. Money orders are accepted only by Chhattisgarh.
49. The Central Government has restricted the length of RTI applications to 500 words. Four states - Karnataka, Bihar, Chhattisgarh, Himachal Pradesh, and Maharashtra have restricted the length to 150 words per application. These states also insist that one RTI application can seek information only on one subject, and in Himachal Pradesh only about one calendar year. Our studies found that the average length of applications in 2005-08 was 139 words, and in 2011-13 it was 116 words.

### **IX. International experiences**

50. **Information publication scheme:** There is an Information Publication Scheme provided for in the statute in Australia and later adopted by UK too. In this scheme the Information Commission asks each agency to publish on its own, information on its functioning. The Commission guides the agency and approves the publication scheme. A significant function of the Australian Information Commission is to oversee the information publication scheme for agencies, which stipulates that an agency must publish a range of information including the information about what the agency does and the way it does it.
51. **Political parties and the RTI:** Nepal has included the functioning of a political party and any NGO with full /part government funding in the agencies whose information can accessed.
52. **Selecting information commissioners:** Process of appointment of information commissioners is comparatively more participatory and open in Canada and Scotland. Both countries go through a series of approvals by the Parliament of candidates who are competitively short-listed. The transparent process helps in legitimizing the position to a much greater degree than appointments that are seen to come through deliberations of the Prime Minister or government alone.
53. **Implementing IC orders:** The orders of the Information Commission are binding on the agency in UK. If necessary, it can issue what are known as enforcement notices which, if not implemented, are treated as contempt of court for the purposes of punishment. The Canadian Commissioner has the power to take cases to court if the government refuses to respect her recommendations (i.e. the burden does not depend on the requester to do this), and this happens in about half of the cases where her recommendations are refused. There are delays in the appeal system for there are no time limits set.
54. **Accountability to Parliament:** Information Commissions in Canada and UK submit a detailed annual reports of their activities to the Parliament. This makes them accountable to the Parliament and also helps in making their activities transparent and available for public scrutiny.

## 11.

# The State of the RTI Regime in Nepal

Taranath Dahal and Krishna Sapkota

### 1. Brief Review up to 2010

Nepal adopted its Right to Information (RTI) Act in July 2007, though the right itself had been guaranteed since the adoption of the 1990 constitution – making Nepal the first South Asian nation to have formal constitutional recognition of the right to information. The Act was passed by Parliament in 2007 to ensure people’s fundamental right to seek, receive and impart information on any matters of public importance held by public agencies, and was the outcome of over a decade of campaigning by civil society organizations.

There have been some achievements since the adoption of the law in 2007, mostly in terms of the institutional set-up: the National Information Commission was formed, an RTI regulation charted out, and some efforts were made to spread awareness among people to highlight the significance of RTI. Unfortunately, however, the country has not witnessed any substantive progress regarding the implementation of RTI legislation. Until 2010, three years after the Act was adopted, the volume of requests for information from public agencies was low, while compliance with both reactive and proactive disclosure of information was not encouraging. No effective mechanism was envisaged to monitor requests filed for information.

RTI is meant to be a tool to bring about positive changes in people's livelihoods, in terms of developmental, economic and social wellbeing. It promotes openness and a culture of information sharing. However, most stakeholders had failed to recognize this fact. Roughly 400 public bodies, out of a total of some five to six thousand, had appointed information officers (IOs), as required by section 6 of the Act during this period. Although central government ministries and departments had largely complied with this obligation, in local government institutions, including district development committees (DDCs) and village development committees (VDCs), compliance was much weaker.

Further, none of the actors usually associated with the implementation of the right to information, whether from the demand side (the media, the general public, civil society) or the supply side (the government, public bodies, the oversight body), was very actively engaged on this issue in Nepal. In the initial years of RTI use, numerous applications requesting information went unaddressed by concerned agencies. In fact most of the applications were unheard - until the National Information Commission was moved on the issue. There were no effective promotional activities to publicize the RTI at the people's level, which resulted in sluggish implementation of the Act. Likewise, ministers, concerned public and non-governmental entities and political parties that came under the purview of RTI Act were averse to their responsibilities regarding implementation of the people’s right to know. The reluctance on the part of government officials, who felt that the information generated in their offices was not subject to the RTI Act, was also a bottleneck limiting the implementation.

Nepal’s ongoing political transition, which began in 2006, has remained a major challenge to the effective implementation of the RTI. The first phase of the transition ended in May 2012 after the term

## Empowerment Through Information -I

of the Constituent Assembly – elected in 2008 – ended without the promulgation of a constitution. RTI implementation remained on the sidelines of the political agenda throughout this period.

Nonetheless, this period did offer the legislative and institutional mechanism of the RTI the space to realize its essence and emerge as a tool for the citizenry. There were growing campaigns promoting requests for information, networking, and capacity strengthening of civil society organisations (CSOs), as well as spreading awareness amongst journalists and activists.

### **2. Post-2010 Implementation Status of RTI**

With the passage of time, Nepal's nascent Right to Information movement, spanning over seven years, has seen a spate of landmark achievements. Civil society groups have made several attempts to seek information using the RTI. They have carried out public awareness programs and trainings and orientations followed by policy dialogues and advocacy on the law and also supported citizens seeking information. Moreover, Freedom Forum – the pioneering civil society organization on the right to information in Nepal – has so far produced nearly 100 RTI strategic activists in various parts of the country, and set up RTI support centers at their central office to facilitate citizens requesting information under the RTI Act. Similarly, the Forum played a catalytic role in establishing a Society of Information Officers Nepal (SION), an organization of public information officers at central government agencies, and imparted capacity building training to more than 54 information officers.

In a similar vein, a collation of nine CSOs including Freedom Forum and Citizens' Campaign for Right to Information (CCRI) have used their resources across the country to increase the demand for information and build capacity of national institutions working on RTI in Nepal. All in all, a wave has been created from the bottom-up, and RTI use is being expanded in multiple areas of local governance, development, justice, and opportunities.

Importantly, the NIC has also engaged its efforts in creating a suitable environment for RTI practices by activating both the demand and supply side through promotional and protection activities. Despite this however, it is still facing implementation issues, including inadequate public awareness especially in the lower-strata, in addition to poor compliance by public authorities with demands for information. It is yet to reach the target groups in a way that can trigger changes in the day-to-day life of poor and disadvantaged people.

The movements had presumably begun to explore a sustainable solution to deficiencies in governance, and in democratic institutions and processes, by helping to provide, as a right, improved access to information. This would enable citizens to demand evidence-based accountability and engage in the decision-making process. One of the important promises made by the right to information was to transform the traditional supply-driven governance model, and put citizens at the centre-stage of governance. It has not been amply practiced as a governing policy by public agencies, despite (or perhaps because of) being popularly recognized across the country as a tool to expose irregularities, corruption and under performance of public agencies.

### **3. Increasing requests for information**

Promoting a proactive demand side, and making public authorities responsive, transparent, and accountable through the RTI is increasingly gaining momentum in many areas of public life. The country is now in a position to take pride in the burgeoning RTI movement, despite the fact that there is not a discernible enough impact on public affairs. The gradual rise in the practice of requesting information from public agencies, a more recent phenomenon, has offered ample opportunity for

## State of the RTI Regime: Nepal

both demand and supply sides to develop synergies for greater public accountability and open governance.

The reality is that the use of the RTI, which is crucial to make functions of the state open and transparent and to strengthen democracy, is handicapped by a reluctant supply side, and inadequate activism on the part of the demand side. In this context, information request campaigns have been put in place to expedite the practice of RTI and contribute to the development of a culture of information disclosure. The Kathmandu-based demand for information has been decentralized to the villages of Nepal with increasing interventions. The RTI gained roots at the local level, when anti-corruption activists started campaigns to debunk malpractices rife in the use of public resources. Citizens have started demanding information from different public agencies to claim their services, entitlements and rights at both local and central levels. Major areas where information requests have been made include exposing misuse of public resources, RTI among youth (exam answer sheets in particular), information in the public's interest, RTI for protecting whistleblowers, RTI and democracy and RTI in local governance.

### **4. Some Success Stories**

Disclosure of a multi-million rupee/dollar VAT scam is so far the most successful civic initiative using the Right to Information Act in Nepal. An information request under the RTI Act was filed at the Ministry of Finance on May 8, 2011 demanding copies of the ministry-commissioned report on the VAT scam. The information was requested based on a special tip-off that the report contains evidence of fake invoices used by 518 business firms to evade VAT of almost NRs. 10 billions. After a six-month-long battle for the information, the ministry eventually disclosed the names of tax-evading businessmen. The government has so far collected over Nepali Rs. 6 billion in the process of taking action against most of the companies. The scandal exposed policy level corruption and an illicit nexus among government, political parties and business entities.

It took nine months to obtain information from the Nepal Oil Corporation (NOC) – the monopoly state company that deals with various petroleum products. The NOC has a history of huge losses and almost every attempt to raise prices to match international rates has been met with widespread protests because of the lack of transparency in how NOC conducts business. Against this backdrop, the information request was made demanding the number of coupons and volume of fuel distributed, names and addresses of individuals receiving free coupons and certified copies of the policy/directive for distributing free coupons and volume of oil and LP gas purchased, and dated cost and selling prices. Bowing to the RTI, the NOC provided a 101-page document with cost prices of petroleum products purchased on different dates, selling prices fixed at 10 different depots and the information it had earlier sent to the Nepal Information Commission (NIC). This case established that no public agency was beyond the scope of the RTI law.

The role of RTI has been substantial in bringing transparency to the education system and has caused teachers to be more diligent while grading students – because there is the likelihood of the answer sheets being released under the RTI Act. Some students initiated the use of RTI in this regard, when the marks they received were far lower than they had expected. In the case of Bijay Aryal, a BBS 1<sup>st</sup> Year student, and four others who wrote to the information officer at Tribhuvan University (TU) seeking access to answer sheet, the Supreme Court upheld the decision of NIC that an applicant can request for his/her own answer sheets. The concession made was that the identity of the examiner

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be kept confidential. Thus, the NIC's orders on accessing answer sheets substantiated the use of RTI in bringing about reforms in the examination system.

Creating sufficient pressure on the government to disclose various investigation reports through information requests has been another landmark success in Nepal. Whether it be the case of the investigation on the murder of journalist J.P.Joshi, or the report of the investigations on civil disorder in Kapilvastu district, or the probe report prepared by the judicial commission on investigation of the properties of all individuals who have held public offices after 1990, the information request has proved to be crucial in bringing publicly important information to people's domain.

The RTI Act of Nepal has a provision to protect whistleblowers, requiring employees of public bodies to provide information on corruption or irregularities, and providing them protection from official action when they do so. This provision was tested in the decision of school authorities against two whistleblower school teachers. In both the cases, the RTI was very effectively used to protect them - Pushpa Karki, a teacher at Saraswoti Lower Secondary School in Dhangadhi, and Devendra Pratap Singh, a teacher at Budhanilakantha School in Kathmandu. Karki was penalised for disclosing information on irregularities taking place at her school to the media, while Singh was fired from his position as Head of the Department of Social Sciences for requesting information on recruitment and promotion of employees. Both of them were reinstated to their positions.

Some six RTI applications were filed at the Parliament Secretariat during the Constituent Assembly (CA) tenure. In response, the secretariat provided some information, which included actions and expenses of the CA and its committees, a 223-page report containing information about the bills passed in three years by the Legislative Parliament, and bills in the pipeline. Interestingly, the Parliament Secretariat also provided information about the expenses, including salaries, allowances and perks of parliamentary members during the first CA tenure, which added up to NRs. 2.93 billion.

Similarly, Chitra Dev Joshi, a judge at Syangja district, received justice after seven years of struggle. He had been sacked by the Judicial Council on the charge of using impolite words for King Prithvi Narayan Shah at a public program. Joshi sought information from the council about the documents they held containing evidence of his guilt. The information revealed that the recording of the speech did not provide enough grounds for dismissal, and he was eventually reinstated in his position with the SC's verdict ruling that the dismissal was illegal.

### **5. Policy Reforms**

Importantly, the government also seems to have realized the strength of a freedom of information legislation, in that it could influence the multi-faceted transformation of society by strengthening the relationship between the state and its citizens. Evidence of such a realization is the substantive reforms suggested by the government in the RTI Regulations, 2009. The second amendment to the regulations has broadened the scope of the RTI Act thereby further promoting citizens' access to information of public concern and importance, and also promoting responsive governance – the primary objective of the RTI Act. Additionally, the government appears to have envisaged policy reforms in more than a dozen significant areas, providing a robust backing for the implementation of the RTI Act.

The reforms made the application and appeal process more inclusive and practical by legally defining the terms 'complaint' and 'application', facilitating the legal process to directly report to the National Information Commission (NIC) in case the information request application is not entertained or the

## State of the RTI Regime: Nepal

applicant is not provided with information. Likewise the amendment has enabled applicants to file appeals with the head of the concerned public agency within seven days in case he or she is not provided with the information as demanded. Public bodies under the RTI Act are obliged to classify, update and disclose information in a proactive manner on a regular basis.

The amendment has also brought four additional areas under the ambit of proactive disclosure that include:

- a) Foreign aid, loans, grants and technical assistance received by any public agencies;
- b) Programmes executed by public agencies and their progress;
- c) Lists of information classified and protected by public agencies and the interval of time set for the protection of such information and;
- d) Records of information request applications submitted to the public agency and types of information provided to requesters.

This particular intervention is crucial to promote transparency in foreign aid, and improve the record management and dissemination system – a crucial objective of RTI implementation. The new rule has also obligated the NIC to dispose of appeals, complaints and applications registered by a requester on the basis of the demands, claims, and evidence presented by the requesters, along with all other evidence.

Other amendments include the designation of information officers from among senior administrative officials at public agencies, and setting up a nodal agency, through a cabinet order, to emphatically implement the RTI Act, and designating a thematic expert as a member of each classification committee. The amended policy has opened up a myriad of doors and windows to harness this advantage for better practice of RTI in Nepal.

Another positive development has been the decision by the government to set up a nodal agency for coordinating RTI implementation at the Office of the Prime Minister and Council of Ministers (OPMCM), and an RTI Implementation Monitoring Unit at Ministry of Information and Communications. The First National Convention on Right to Information in Nepal held in 2010 had recommended that the government set up a high-level central nodal agency with the responsibility of supporting and monitoring implementation across public bodies. In order to draw the attention of broad-based stakeholders including the government, civil society organizations, media, legal practitioners and academics, the forum organized the first-ever convention, and came up with the 47-point Kathmandu Declaration, which also served to mainstream initiatives being made for the implementation of RTI in different sectors.

However, the operational part of the mechanisms is still sluggish. RTI principles have also been included in the government's governance reform strategy, which however, remains to be implemented.

### **6. Information Classification**

The government made two attempts to constrict the scope of the RTI Act by classifying information, and failed on both counts following civil society protests. The most recent attempt was made in 2012, when it tried to classify 140 types of information as secret. The government was forced to withdraw the effort following a Supreme Court order in response to petitions made by CSOs. Generally, government agencies have been hesitant in meeting even the proactive disclosure requirements of

## Empowerment Through Information -I

the law, but some ministries have made efforts to be open. Notably, the Ministry of Finance stood out by publishing a document to meet the requirements of Section 5 (proactive disclosure) of the Act.<sup>1</sup> The report was published in September 2012.

### **7. Five-Year National Strategic Plan on RTI**

The National Information Commission (NIC) has come up with a five-year National Strategic Plan of Action (2013-18) for the RTI, acknowledging its importance in ensuring good governance through greater transparency and accountability of public bodies. The National Plan has been formulated keeping in mind the necessity to recognize the RTI as a tool for combating corruption, and minimizing irregularities and misconduct. This action plan sets out a strategy, almost a road map, for the NIC, government bodies, and civil society in order to meet their obligations under the RTI Act.

The document includes a context, significance of RTI in Nepal, situation of RTI in Nepal, justification for a strategic action plan on RTI in Nepal, and the way forward for the protection, promotion and implementation of RTI in Nepal. The plan also highlights the different roles played by various actors of RTI in Nepal, including the NIC, public bodies, and civil society organizations. The action plan aims to identify and distinguish the role of different RTI stakeholders and prioritize their activities in order to minimize duplication of effort and maximization of available resources. This strategic action plan is expected to enhance openness, transparency, and accountability for good governance from state level supply side along with enhanced responsiveness to information requests, more effective demands for information by citizens and civil society, and a more effective and efficient NIC for protection, promotion and implementation of RTI in Nepal.

### **8. Other progress updates**

- Appointment of information officers much higher when compared to previous years.
- Practice of proactive disclosure of information in line with the RTI has also increased over the years.
- RTI has been explored as a cross-cutting issue of development and governance in Nepal.
- Donors' commitments have increased in the realm of accountability and transparency through RTI interventions.

### **9. Remarks on Current Implementation Status of RTI**

"The current implementation of the RTI legislation is moderate which is somehow obvious in the formative days. The information request, a crucial and constructive act to pile pressure for its implementation, has been confined to a handful development workers and activists", said Dr Ram Krishna Timilsina, an RTI expert. He noted, "For the RTI to deliver its promised results, it should be reached out to target people who are really suffering due to bad practices of governance, poor service delivery and deep-rooted culture of secrecy."

Nepal's RTI Act came into effect on 20 August 2007. Following seven years of its enforcement, the legislation is still being tested to see if it can be an effective instrument in the fight against corruption, and if its claims for making state functionaries open and transforming society will materialize.

"The established paradigm and practice of logo-centrism (centralist notion) is being challenged by a growing demand for information from the bottom" said Nepal's noted RTI activist Taranath Dahal.

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<sup>1</sup>*SuchanakoHakSambandhiAin 2064 koDafa 5(3)*

*BamojimPrastutGariyekkoArthaMantralayaSangaSambandhitSarbanjanikBibaran.* (Information on the Ministry of Finance related to Section 5(3) of the RTI Act 2007)

## State of the RTI Regime: Nepal

"The right to information law has enabled every citizen with a powerful weapon to demand accountability and proactive transparency from public bodies. With the RTI law in place the power has been shifted to the citizens but it depends on the use."

Sharing his experience in requesting strategic information from diverse public agencies, Dahal, also the Chairperson of Freedom Forum, an organization crusading for the right to information, claimed, "A vibrant demand side is always important for RTI to function as one cannot reach the fathom of its power without requesting information".

The RTI has notionally opened up people's access to important information that could affect their lives, but in practice they are weak and helpless. "There is no real awareness among public at local level to go through the information request process. Likewise, the frontline government nodal officers are also not much aware on the process to provide information in line with the Act", said Nodanath Trital, an RTI campaigner, who has so far registered 500 information requests.

The right to access public records and documents is the beauty of the right to information law and the most basic tool that citizens have for holding their state accountable is the power to demand information.

"Demanding information and using them for public goods has offered me an opportunity to become an active citizen. My experience shows that RTI is a tool to make democracy function since its use engages both information providers and requesters", Trital added.

Likewise, another RTI activist and journalist Babita Basnet said that though the reach of RTI has been on the rise of late, it has to be used for the empowerment of weaker section. She added, "The decentralization of information with RTI legislation in place has expanded its scope of information-enabled participatory governance at the local level as well."

Now is the time to activate the demand side, to request for information and make the proactive disclosure provisions of the RTI law an indispensable component of the governance policy of every public agency. The establishing of 'information culture' requires mutual accountability of the demand and supply side, so a collaborative approach is imperative to sustain the movement and distribute its fruits to larger sections of society. It becomes even more effective when it touches the base of the poor and disadvantaged people of the country.

## 12.

# State of the RTI Regime in Pakistan<sup>1</sup>

Iffat Idris

### 1. Introduction

In April 2010 the World Bank and the Indian Institute of Public Administration (IIPA) organized a regional workshop titled 'Towards More Open and Transparent Governance in South Asia' in New Delhi. As part of the preparation for that workshop, assessments were carried out of the state of right to information (RTI) in each country in the region. The Pakistan Country Paper detailed the federal Freedom of Information (FOI) Ordinance 2002, the role of key stakeholders such as civil society organizations and the media, and made recommendations for how the country's FOI regime could be strengthened.<sup>2</sup> An interim report detailing progress on RTI in Pakistan was prepared in January 2013, prior to the TAG annual meeting held in Bangkok that month (a presentation on RTI developments and challenges was made via video conference at that meeting); that interim report was again updated in June 2013.<sup>3</sup>

This paper is an update of the 2010 paper and interim 2013 reports. There has been very significant progress in relation to RTI in Pakistan, particularly over the past year. So much so, that there is now considerable momentum to establish an effective RTI regime in the country. However, there are still major challenges which need to be overcome. The paper details developments since 2010 and assesses the opportunities and challenges. It concludes with recommendations for priority steps to strengthen RTI in Pakistan.

### 2. Background

Pakistan was the first country in South Asia to pass RTI legislation in the form of the 2002 Freedom of Information Ordinance. However, the fact that it was introduced by a military ruler (President Musharraf), at a time when elected assemblies had not been restored, undermined its legitimacy and credibility. It also suffered from numerous shortcomings in design, diverging significantly from accepted best practice with regard to RTI/FOI legislation. It was limited in scope, had numerous exemptions, did not over-ride other legislation (such as the Official Secrets Act), and had a weak enforcement mechanism (the Federal Ombudsman). The application procedure was also difficult.

The combination of lack of legitimacy and poor design meant the FOI Ordinance 2002 was widely rejected by civil society. Only a few civil society organizations have persistently tried to obtain information under the Ordinance: the total number of FOI requests made in Pakistan is a few hundred. Even for that limited number, compliance by government entities has been weak. Requirements for proactive disclosure, designation of FOI officers, awareness-raising among the public, automation of record management systems and so on, have not been implemented. The Federal Ombudsman has largely proven ineffective in enforcing the Ordinance's provisions.

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<sup>1</sup> November 2014

<sup>2</sup> Copy of paper available at <http://www.iipa.org.in/www/iipalibrary/transparentgovernance.iipalibrary.in/index.html>

<sup>3</sup> See: [http://transparencyadvisorygroup.org/uploads/FOI\\_in\\_Pakistan\\_Update\\_Paper\\_2013\\_-\\_3\\_June.pdf](http://transparencyadvisorygroup.org/uploads/FOI_in_Pakistan_Update_Paper_2013_-_3_June.pdf)

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Of the provinces, Sindh and Balochistan have ‘copycat’ FOI legislation, which suffers from the same shortcomings and has been equally ineffective. In 2010 neither Khyber Pakhtunkhwa (KP) nor Punjab had FOI/RTI legislation.

### **3. Developments since 2010**

#### Constitutional Right to Information

In 2010 the right to information became a constitutional right in Pakistan through passage of the 18<sup>th</sup> Constitutional Amendment.

The 18<sup>th</sup> Constitutional Amendment was passed by the National Assembly on 8 April 2010, the Senate on 15 April 2010, and was signed into law by President Zardari on 19 April 2010. The 18<sup>th</sup> Amendment has several significant measures which strengthen democratic governance, including devolution of key functions from federal to provincial governments.<sup>4</sup> The insertion of Article 19-A makes access to information a fundamental right of all citizens. Article 19-A states: ‘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 combination of guaranteeing the right to information for all citizens and devolution of substantial powers and responsibilities to the provinces means that the onus for actually providing citizens with RTI rests largely with provincial governments. As will be seen in this paper, considerable progress has been made on the RTI agenda in the provinces of Khyber Pakhtunkhwa and Punjab, but less at federal level or in the other two provinces. A further significant impact of Article 19-A is that it provides a strong foundation for civil society organizations to demand information from public bodies and to advocate for the establishment of RTI regimes by federal and provincial governments. There have been cases of citizens/CSOs submitting information requests in Punjab and KP solely on the basis of the constitutional right they enjoy under Article 19-A (i.e. prior to provincial RTI legislation).

#### Khyber Pakhtunkhwa

The province of Khyber Pakhtunkhwa has been the boldest in progressing on RTI.

As of 2010, Khyber Pakhtunkhwa did not have any RTI legislation and the then provincial government showed little interest in the issue. Advocacy efforts by CSOs and others received a negligible response. The situation changed in April 2013 when an interim government was appointed to oversee elections due in May. The interim Information and Education Minister Musarrat Qadeem had a civil society (activism) background and expressed strong interest in getting an RTI Ordinance promulgated under the interim government. A draft KP RTI Ordinance was prepared and discussed in cabinet where there was some support for it. However, the interim Chief Minister was discouraging: he felt any such legislation should be passed by an elected government.

The May 2013 elections led to a new coalition government assuming power in KP, headed by Pakistan Tehreek-i-Insaaf (PTI). PTI’s leader is charismatic former cricketer Imran Khan, and the party has long advocated greater transparency and accountability in public office and an end to corruption. The new KP Government committed to passing RTI legislation within its first 100 days in office. In July the KP cabinet approved a draft KP Right to Information bill but this had numerous shortcomings. These

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<sup>4</sup> The 18<sup>th</sup> Amendment abolishes the concurrent legislative list and increases the powers and responsibilities of the provincial governments; removes the power of the President to declare emergency rule in any province unilaterally; provides for the appointment of the Chief Election Commissioner through consensus between the government and opposition; and means that the courts can no longer endorse any suspension of the constitution.

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appeared to stem more from the new government's haste to get an RTI law passed and from lack of awareness of what is needed for a strong RTI law, than from any desire to thwart RTI. Following criticism from civil society groups, the media and others, the KP Government revised its RTI bill. The revised bill also benefited from technical support by international experts on RTI legislation, and thus was a much stronger bill.

In August the Khyber Pakhtunkhwa (KP) Government promulgated the KP Right to Information (RTI) Ordinance 2013. As noted, this was a very strong law, consistent with accepted best practice and, when scored and ranked using the CLD-AIE framework, scored 138 points placing it in top position globally. The high level launch of the KP RTI Ordinance in Peshawar was attended by the KP Chief Minister, as well as Imran Khan and other senior PTI leaders and received wide media coverage.

The KP RTI Ordinance was referred to a parliamentary committee for review, and a few changes were made, one of which weakened the law (addition of a penalty for 'misuse' of information). The final KP RTI Act was approved by the Provincial Assembly in October 2013. Despite the changes, the KP law overall remains extremely strong, and would score 137 points on the CLD-AIE framework. The CLD-AIE ranking of RTI legislation only applies to national governments, and hence the KP provincial law cannot be formally included – but if it were, its score would place it in top position globally.

The main features of the KP RTI Act 2013 are as follows:

- It covers a wide range of public bodies and types of information;
- It has a very extensive proactive disclosure list;
- It has a limited and clearly defined list of exemptions, and a public interest over-ride;
- It details procedures for requesting, transfer of requests, and so on;
- It has provision for urgent requests, relating to the life or liberty of a person, which must be responded to within two working days;
- It sets up an independent KP Information Commission to promote, monitor and enforce RTI implementation by public bodies;
- It has strong sanctions for officials found to be obstructing the law;
- It has a whistle-blower protection clause;
- It takes precedence over other laws.

The most significant 'negative' feature of the KP RTI Act is that it makes it a criminal offence to: 'Use the information obtained for malafide purposes with ulterior motives, with facile, frivolous design' [Section 28 (e)]. This could deter potential requesters from seeking information. In addition the Peshawar High Court is not covered under the RTI Act, though it does apply to the subordinate judiciary.

Passage of RTI legislation is the first and often easiest step in setting up an effective RTI regime: implementation tends to be far more challenging, and requires sustained political will, resources and capacity. With regard to political will, the reason the KP Government initially promulgated an RTI Ordinance was to allow rapid implementation – a strong indication of its commitment to RTI. The KP Government remains very keen to move forward on implementation. Pakistan Tehreek-i-Insaaf (PTI) campaigned on a platform of transparency, accountability and curbing corruption in public office. Its election in KP represents the first opportunity it has had to form a government; the long-term outlook for the party is heavily dependent on its performance in KP – success there will greatly enhance its future prospects in other provinces and at federal level, while failure could send it (permanently) back into opposition. The provincial government has already garnered kudos within Pakistan (and further

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afield) for its strong RTI law – if it can set up an effective RTI regime this will be a big achievement for the party. [The challenges involved in RTI implementation, both direct and indirect, are discussed in Section B.]

Initial progress on RTI implementation in KP has been good. The KP Information Commission was established by March 2014, with Sahibzada Muhammad Khalid Chief Information Commissioner, and Abdul Matin and Professor Kalim Ullah serving as the other two Commissioners. The Commission has its own budget, office, staff and website. Public Information Officers have been appointed (594 are listed on the Information Commission website) and the Commission has started training them, as well as carrying public awareness raising activities. Rules for the KP RTI Act have been drafted and are currently undergoing review. One of the first reported RTI requests in KP was submitted by Zahid Abdullah, an RTI activist with the Centre for Peace and Development Initiatives (CPDI): he asked the Deputy Commissioner (DC) of Nowshera district to provide details of the official vehicles in his use, and the DC ordered logbooks for these to be provided to him. However, another Peshawar-based NGO, Centre for Governance and Public Accountability reported that out of 48 RTI requests submitted on 16 January 2014 to District Education Officers, only eight had given a response within the stipulated ten working days.<sup>5</sup> As of 6 November 2014, the KP Information Commission had received 175 complaints, of which 100 had been dealt with.

### Punjab

Punjab's progress on RTI has been somewhat less rapid than KP's, even though Punjab has been engaged on the RTI issue for much longer. The previous Pakistan Muslim League (Nawaz) (PML-N) government in Punjab headed by Chief Minister Shahbaz Sharif had long been talking about passage of FOI/RTI legislation. Various draft bills were produced and a long-drawn process of stakeholder consultation was undertaken. However, this did not translate into passage of an actual bill under the last government (i.e. before the May 2013 elections). On 12 March 2013 the out-going cabinet did approve a draft Punjab Freedom of Information Bill, but given that an interim government was to take over in April to oversee the elections, there was never any possibility of that bill being submitted for Assembly approval during that term.

For the record, the draft Punjab RTI bill approved by the out-going cabinet was a strong law. Positive features included: extensive proactive disclosure requirements, wide scope, defined and limited exemptions and public interest over-ride, establishment of an independent Punjab Information Commission, and defined procedures including no justification for requesting information. A tentative assessment of the draft Punjab bill based on the CLD-AIE framework for RTI legislation, found it would score around 105 points, placing it in equal 18<sup>th</sup> position globally.

The interim government to oversee elections in Punjab was headed by Najam Sethi, editor-in-chief of the *Friday Times* and a regular – and popular – analyst on a current affairs programme.<sup>6</sup> In television interviews subsequent to his appointment as Chief Minister, Najam Sethi pledged to get the FOI Bill promulgated as an ordinance. It would still need to be ratified by the new Punjab Assembly (post-elections) but as an ordinance this would be more straightforward than trying to get a bill through from scratch. More importantly, promulgating it as an ordinance would place the law on a stronger

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<sup>5</sup> 'In limbo: RTI Commission incomplete as deadline looms', *Express Tribune*, 27 February 2014.

<sup>6</sup> *Aapas ki baath*, weekly current affairs discussion programme on Geo TV. Najam Sethi is the analyst who is questioned on current events by host Muneeb Farooq. The popularity of the show is attributed to the frank and accurate analysis of events by Najam Sethi, but this has also led to him facing death threats. So much so that often the show is recorded from his heavily guarded home rather than the studio.

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footing, and make it harder to reject – especially given its many positive features. Unfortunately, Najam Sethi's efforts were blocked by the Law Department (it needed more time to improve the drafting/language of the law), and then by the Governor – to whom the Ordinance was sent to sign. The Governor refused on the grounds that the decision should be taken by the new government and assembly.

Following elections in May, PML-N returned to power in Punjab, again with Chief Minister Shahbaz Sharif. It was widely expected that the government would quickly submit the draft Punjab FOI bill, approved by the previous cabinet, in the Punjab Assembly. However, when the issue came up for cabinet discussion objections were raised about establishment of an independent Punjab Information Commission. These were based on reluctance to set up 'yet another' commission, and the costs and effort involved in that; instead, it was proposed that the already functioning Punjab Ombudsman Office be designated the appellate/enforcement mechanism for RTI in Punjab. The Chief Minister referred the issue to a special committee constituted for this purpose, which included an RTI activist and the Punjab Ombudsman. After much debate, and advocacy in favour of the Information Commission by CSOs and the media, the Information Commission was retained.

In the meantime, the Government of KP promulgated the very strong KP RTI Ordinance. The real spur for an RTI law in Punjab appears to have been this 'overtaking of Punjab by KP'. This placed Punjab under great pressure to act, and on 4 October 2013 the Government of Punjab promulgated the Punjab Transparency and Right to Information Ordinance. Both retention of the Punjab Information Commission and replacement of FOI with RTI were welcomed as positive moves by RTI activists.

The RTI Ordinance was presented to the Punjab Assembly Information Committee and a number of amendments were made which strengthened the law, e.g. addition of the requirement for Public Information Officers (PIOs) to issue a receipt to requestors when they submit an RTI request. The Punjab Transparency and RTI Act was approved by the Assembly in December 2013.

The main features of the Punjab Transparency and RTI Act are:

- It covers a wide range of public bodies and types of information;
- It has a very extensive proactive disclosure list;
- It has a limited and clearly defined list of exemptions, and a public interest over-ride;
- It details procedures for requesting, transfer of requests, internal review, and so on;
- It has provision for urgent requests, relating to the life or liberty of a person, which must be responded to within two working days;
- It sets up an independent Punjab Information Commission to promote, monitor and enforce RTI implementation by public bodies;
- It has strong sanctions for officials found to be obstructing the law;
- It takes precedence over other laws.

The Punjab law is not as strong as the KP law, scoring 123 points on the CLD-AIE framework. The main areas where the Punjab law lags behind that of KP are exceptions and refusals, appeals, and sanctions. The KP law, for example, has a whistle-blower protection clause which the Punjab law lacks; the public interest over-ride in Punjab only applies at the appeal stage when a case goes to the Punjab Information Commission, whereas in KP the Public Information Officer can apply it; the Punjab law does not have any provisions for consulting third parties in the case of potentially confidential information – the KP law does have such a requirement; in the appeals process, the KP law specifies that the government bears the burden of demonstrating that it did not act in breach of the rules – the

## State of the RTI Regime: Pakistan

Punjab law does not specify this. Despite such differences, the Punjab Transparency and RTI Act is still a strong law, and would rank in 6<sup>th</sup> place globally.

The Punjab Transparency and RTI Act came into force immediately (it was signed into law by the Governor on 16 December 2013) but allowed public bodies sixty days to appoint Public Information Officers (PIOs). As of July, only 50 PIOs had been designated for Lahore, while names of those appointed in other districts were still awaited.<sup>7</sup> The Punjab RTI Act does not place a time limit on establishment of the Punjab Information Commission. In March 2014 the members were notified – Chief Information Commissioner Justice (retd.) Minhas Hussain Mazhar with IG (retd.) Ahmed Raza Tahir and Mukhtar Ahmed, an RTI activist, as Information Commissioners. However, as of November 2014 the Commission had no office or staff, and individual Commissioners worked from their own homes; the budget for the PIC was only approved by the Chief Minister in early November.

Despite these constraints, the Punjab Commission has started work. Of 480 complaints received by early November 185 had been decided. Particularly noteworthy was a complaint made to the Commission against the Executive District Officer (EDO) Education in Vehari. The complaint was made by a teacher who had asked the EDO for a copy of the seniority list of teachers in the district, and details of an enquiry report against the teacher. The Commission upheld the complaint and imposed a fine of 60 days' salary on the EDO for his failure to provide the requested information.<sup>8</sup>

The challenges involved in RTI implementation in Punjab are discussed in Section B. It is relevant to note here that efforts have been underway in Punjab for several years to promote transparency and accountability in the public sector, with the goal of increasing efficiency and effectiveness in the delivery of services. These include efforts (irrespective of RTI legislation) to promote proactive disclosure by different departments, so that they make service delivery information available to citizens and disseminate it on their own. Citizen feedback mechanisms based on use of mobile phones and call centres are being set up to get proactive feedback from citizens on the quality of services and issues faced in these. Such feedback will enable departments to identify problems and improve their service.

Access to information depends on ready availability of information. Various initiatives are underway in different departments/sectors to set up management information systems which will allow such ready access. One example is the Land Record MIS being set up by the Department of Revenue. Land records in many districts have been computerized and this was expected to be complete in all areas by 2014. Internal accountability is also being promoted through use of GPS enabled smart phones, which aim to improve management of service delivery performance through real-time monitoring of staff and the quality/coverage of services offered, thereby enabling managers to make timely interventions regarding resource allocation and staff incentives.

The Government of Punjab's push to use ICT and other mechanisms to enhance transparency and improve services provides an enabling environment for implementation of the Punjab Transparency and RTI Act. However, a note of caution should be added: the above measures *directly* improve public sector efficiency and effectiveness. RTI does so in a more indirect manner – empowering citizens to demand rights and entitlements – and hence public officials might not be as ready to embrace RTI as these other 'modernizing' initiatives.

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<sup>7</sup> Abdul Manan, 'Born to be neglected: Fate of Right to Information Act hangs in Balance', *Express Tribune*, 2 July 2014.

<sup>8</sup> Waseem Abbasi, 'Punjab Official Fined for Denying Access to Information', *The News*, 25 October 2014.

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### **Box 1: 'National Assembly, Presidency block information'**

'In two reported cases, the National Assembly refused to provide information about the attendance of lawmakers who are seen more on talk shows than in the parliament. Interior Minister Chaudhry Nisar Ali Khan has voiced concerns over the absence of the ministers who do not attend the assembly session to respond to questions about their ministries, let alone the lawmakers. However, Speaker Sardar Ayaz Sadiq, who also belongs to the PML-N, has refused information requests of citizens seeking attendance record of their lawmakers.

'Centre for Peace and Development Initiatives (CPDI) that went to the appellant authority, Federal Ombudsman, against the refusal of National Assembly, failed to get relief as the Ombudsman declared that attendance is a 'private record', an argument given by the assembly in support of its decision of not sharing the record. The Ombudsman's decision earned condemnation when brought to light by The News.

'Pakistan Institute of Legislation Development and Transparency (PILDAT) also tried its luck and went into appeal when the attendance record was refused by the assembly. Contrary to its previous decision, the Ombudsman ruled in favour of the complainant and ordered the assembly to give the requested information. Instead of complying with the Ombudsman's directives, the assembly secretariat filed representation to the president against this decision.

'The assembly has now filed representation to the president against the ombudsman's decision ordering the release of attendance information. Ironically, the Presidency that has to decide on the assembly's representation is itself blocking information about the expenses incurred on the Haj of the president, his staff and relatives. The president was asked for information under the FOI law.'

*Source: Coalition for Right to Information (CRTI), 2 January 2014; <http://www.crti.org.pk/?p=431>.*

### Federal Government

Pakistan was the first country in South Asia to adopt RTI legislation, with the 2002 Freedom of Information Ordinance applicable to the federal government. Despite being pioneering, the law itself was weak and its numerous shortcomings led to poor implementation and even weaker demand from citizens. The recent example of FOI requests made to the National Assembly and President (see **Box 1**) illustrate both the difficulties in accessing information from federal bodies and the limited powers of the Wafaqi (*Federal*) Ombudsman to enforce compliance.

A ruling in early 2013 by the Federal Tax Ombudsman in response to an FOI complaint made against the Federal Bureau of Revenue (FBR), resulted in the FTO issuing an order for the requested information to be provided, and for the FBR to implement the provisions of the FOI Ordinance 'in letter and spirit' (see Box 2). This is a (rare) positive example of action being taken to enforce FOI provisions.

Talk of reforming the federal law has been underway for several years. Parliamentarians Sherry Rehman, Nuzhat Sadiq and Doniya Aziz all submitted private members' bills proposing new legislation. Sherry Rehman was Information Minister in the last PPP-led federal coalition government. However, commitments by PPP to reform the FOI Ordinance 2002 came to naught. Following the May 2013 elections, PML-N came to power at the centre; it too has signaled its commitment to passing new RTI legislation. There has also been momentum for reform of the federal law because of passage of the KP RTI law.

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### **Box 2: Federal Tax Ombudsman orders Federal Bureau of Revenue to provide information under FOI Ordinance**

For cases related to the Revenue Division, complaints in relation to FOI requests are to be made to the Federal Tax Ombudsman. Waheed Shahzad Butt filed a complaint with the FTO against the Federal Board of Revenue (FBR), after it refused his FOI request to provide information related to its functioning.

Mr Butt had asked the FBR to provide details about the total number of cases in which appeals were filed before the first appellate authority (from July 2011 to date); revenue involved in the cases; the number of appeals cases (in the same period) in which written arguments/comments were furnished. The FBR refused to provide this information. Upon the complaint being taken up by the Federal Tax Ombudsman, the FBR filed a reply stating that the data requisitioned pertained to privileged/confidential information regarding taxpayers. The words 'Not admitted' were recorded against the Requestor's contentions.

Federal Tax Ombudsman (FTO), Dr Shoaib Suddle ordered the Federal Board of Revenue (FBR) to implement provisions of Freedom of Information Ordinance 2002 in letter and spirit for providing information to the people. The FTO asked the FBR to appoint an official to ensure its compliance and submit compliance report within 30 days.

Other key points noted by the FTO in its order included:

- The Departmental contention that access to information requested by the Requester was denied as it was confidential/privileged has been examined and found to be misconceived. The information sought does not relate to any taxpayer's declared/assessed income or his wealth statement. It simply relates to an assessment's fate generally while it is in appeal before the first appellate authority with and without a Departmental representative.
- Freedom of Information (FOI) enables citizens to ask for publicly-held information as a matter of right. Its purpose is to ensure transparency and promote good governance by making government more accountable and open.
- It is abundantly clear that as per Freedom of Information Act and the Constitution the respondents are bound to disclose information requested by the requester. The disclosure of the requested information cannot be denied without being in violation of the law and the Constitution.
- The routine business of a public functionary cannot be allowed to be cloaked in the veil of secrecy or privilege. As a rule, information of public interest must be disclosed with minimum delay when a valid reason for its disclosure is given. Only as an exception should privilege be claimed on justifiable grounds permissible under the law.
- When an exemption is claimed from making a disclosure, the scales of justice have to tilt a bit towards permitting disclosures in order to balance the public right to information against narrowly construed interests of a government agency. No doubt where there are two competing interests involved, the Federal Tax Ombudsman is expected to perform a balancing act by weighing both interests and deciding how much and when to tilt.
- In the present case, the data/documents requested by the Requester do not fall within any of the exemptions provided under the FOI Ordinance. No exemption can be claimed on the basis of any other law. The provisions of the Freedom of Information Ordinance 2002 also have overriding effect over the provisions of the Income Tax Ordinance, 2001 as given in Section 3 of the FOI Ordinance (a non-obstante provision).
- Finally, Article 19-A of the Constitution of Pakistan enshrines the right to information as a Fundamental Right, subject to regulation and reasonable restriction.

Source: *The News*, 9 January 2013.

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In November 2013 the Senate Committee on Information and Broadcasting approved a draft federal RTI law, but this was even weaker than the existing law (scoring 63 points on the CLD-AIE framework compared to 66 points for the FOI Ordinance 2002) and was heavily criticised by CSOs. In July 2014 the Senate Committee approved a revised draft, which was not only an improvement but is considered to be an 'ideal' law, including all international best practice provisions for such legislation. For example, the draft RTI Act 2014 applies to all public bodies as well as publicly funded NGOs, reduces the time for public bodies to respond to information requests to just 10 working days, has a limited list of exemptions, sets up an independent Pakistan Information Commission, has strong penalties for non-compliance, and gives protection to whistleblowers. The draft was agreed by all parties in the Committee, but adopted as a government bill (by PML-N). It was supposed to be approved by the cabinet prior to submission before the National Assembly. However, as of November 2014, the bill had yet to be tabled in the National Assembly.

### **4. Opportunities and challenges**

As seen, Pakistan has made considerable progress with regard to right to information over the past year: two provinces (KP and Punjab) that previously had no RTI legislation now have very strong RTI laws. While there is strong potential to move the RTI agenda further ahead in Pakistan, there are also significant challenges which must be overcome. Some of these relate directly to RTI implementation, while others stem from the wider political, security and development context in Pakistan.

#### RTI legislation

**Momentum for Reform:** RTI has for many years been a 'non-issue' in Pakistan: a few CSOs and activists have called for reform of the weak federal FOI Ordinance and the Sindh and Balochistan FOI laws. But there has been negligible progress on this. The recent passage of strong RTI laws in both KP and Punjab has already led to greater awareness of the issue (at least among civil society groups, the media, legislators and senior bureaucrats), and this in turn has created momentum for reform of existing weak laws. As noted in Section A, a revised federal bill has been prepared (albeit also weak).

As KP and Punjab move ahead with RTI implementation there will be a continuous flow of stories/developments relating to RTI coming from those two provinces. This in turn will make it harder for the federal government or Sindh/Balochistan provincial governments to do nothing: it will increase the pressure on them to also move ahead on RTI (not be left behind). This is a huge opportunity but, critically, it is dependent on the KP and Punjab RTI Acts being implemented effectively.

#### RTI implementation

**Supply Side Challenges:** Passage of RTI legislation is just the first step in establishing an effective RTI regime. This has to be followed by implementation, which is arguably much harder and entails overcoming capacity and resource constraints and a bureaucratic culture of secrecy.

Implementation of the KP and Punjab RTI Acts is a major task, involving many steps and entities across government. The KP/Punjab Information Commission have been set up but there is no precedent of an information commission in Pakistan, so lack of capacity/technical expertise is an issue. Both laws require all public bodies to proactively disclose an extensive list of types of information: institutional, organizational, operational, budget, procurement, decision-making processes and so on. For many

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public bodies simply collating this information will be a huge challenge, not to mention ensuring that it is kept updated and is readily comprehensible.<sup>9</sup>

Public bodies are also required to appoint and train Information Officers: their tasks include responding to RTI requests submitted by citizens, helping citizens facing difficulty in making requests, transferring requests to other bodies where relevant, and so on. It is reasonable to assume that current levels of awareness of RTI are very low among KP/Punjab/Pakistani civil servants: given this, building their capacity to be able to implement the law properly will require considerable effort. Moreover, the numbers of personnel and public bodies involved are extensive and cover all levels of government. A final supply side challenge relates to automation of records – a requirement under the law, as well as for information officers to be able to respond in a timely manner to RTI requests. This too will be a huge task, entailing assessment of records management needs, development of a suitable records management system, installation and training of public officials to use this.

Resistance to transparency from the bureaucracy is another challenge. As with many other parts of South Asia that experienced colonial rule, the traditional mindset among public officials in Pakistan is to hold on to information – information is equated with power, so releasing information is perceived as ceding power. There is also fear of punitive action if information is released: ‘The Civil Service Rules state that every document not made public by the government is secret.’<sup>10</sup> Among some there will also be a fear of transparency and the accountability that it brings. Mindset change is needed to

### **Box 3: Supreme Court Struggles to Get Documents Out of Ministries**

The Supreme Court asked the government to provide three documents: notification for the creation of a political cell in the ISI, official material relating to the political cell under the late President Ghulam Ishaq Khan, and the report of the Mehran Bank Commission.

a) ISI Political Cell Notification – On 4 June 2012 the Attorney General told the Supreme Court this would be produced at the next hearing, but on that occasion said he could not trace it. The Director Law, Ministry of Defence, said the notification was issued by the Cabinet Division and he would try to get a copy but, at the next hearing on 16 July, he too said he could not trace it and that the Ministry of Defence had no such notification.

b) Mehran Bank Commission Report – The Ministry of Law told the Supreme Court that the report was not available. Hamid Mir, a well-known anchorperson with Geo TV, produced a copy of the report, but on being asked to authenticate this by the Supreme Court, the Law Ministry refused to do so on the grounds that it did not have the original.

c) Political Cell under President Ghulam Ishaq Khan – A notice was issued to the Secretary to the President on 4 October 2012. At the next hearing (15 October), he requested more time. On 17 October he stated that no concrete information was available about any such cell, but efforts were being made to trace any such file and he would be consulting the Military Secretary to the President in this regard. On 18 October, the Director Legal, President House, filed a statement on behalf of the Military Secretary to the effect that the records available in the President’s Secretariat (Personal) had been searched and no such documents found.

Source: <http://www.thenews.com.pk/Todays-News-13-18712-Three-crucial-documents-not-presented-by-government-in-SC>

<sup>9</sup> An analysis of proactive disclosure compliance (under RTI Acts) by public bodies in KP and Punjab, found that this was generally low: ‘State of Proactive Disclosure of Information of Khyber Pakhtunkhwa and Punjab Public Bodies: January-March 2014’, (Coalition for Right to Information).

<sup>10</sup> Mohsin Syed, Director Law, Government of Punjab.

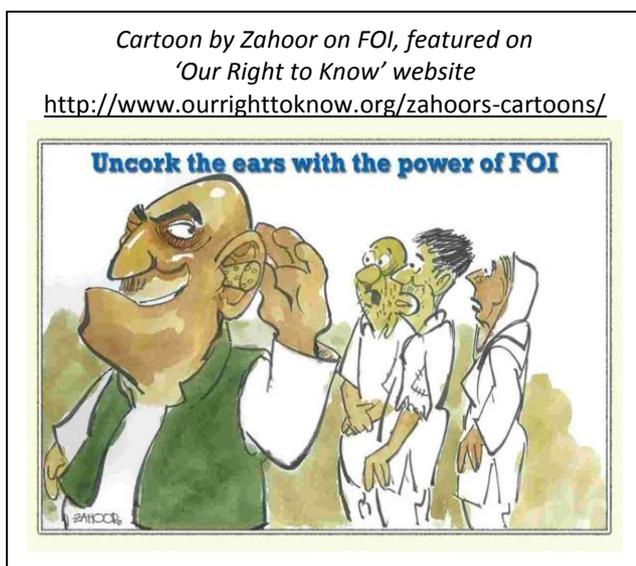
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overcome these attitudes: 'RTI will never be implemented in Pakistan unless you do civil service reform: it is not a political issue but a bureaucratic issue.'<sup>11</sup> The case study given in **Box 3** illustrates both the systems and mindset challenges faced in trying to access information.

A third challenge is resource constraints. RTI implementation requires considerable investment of resources: in setting up and running Information Commissions, continuous training of information officers and other civil servants, public awareness raising, setting up RTI systems and procedures, automation of records management systems, and so on. Given the wider development (and security) challenges facing KP/Punjab, both the resources and effort that governments are able to devote to RTI implementation will be limited.

### Demand Side Challenges – Civil Society

The 2010 paper noted that freedom of information has not been an issue that has galvanized mainstream civil society in the country, largely because of the shortcomings of the 2002 FOI Ordinance. Activism on FOI has been confined to a handful of CSOs whose strategy has been to make use of the FOI Ordinance 2002 in the belief that this will generate the momentum for reform and effective implementation.



In the past almost four years, there has been slight progress. The 'traditional' CSOs – notably the Centre for Peace and Development Initiatives (CPDI), the Centre for Civic Education (CCE) and the Consumer Rights Commission of Pakistan (CRCP) – are still engaged on FOI/RTI. Their activities include submitting FOI requests and monitoring compliance, holding awareness-raising seminars, preparing model FOI legislation and so on. However, a few new entities have also emerged, e.g. FOI Act Network Pakistan (Sindh), and RTI Research Centre Pakistan, which runs a website ([www.rtipakistan.com](http://www.rtipakistan.com)) providing information about political parties and politicians,

and conducting online polls on various issues (despite the name, it does not appear to be focused on RTI per se). In KP the Centre for Governance and Public Accountability (CGPA) is working on RTI promotion among the general public.

In terms of strategy, there have been two new developments. Firstly, there have been moves towards combined action by civil society organizations on RTI. The 2010 paper noted the obvious 'competition' between different CSOs engaged on the RTI issue, something that prevented them working in a unified manner and undermined their effectiveness. In December 2012, a large number of CSOs engaged on RTI (either directly or indirectly) joined together to form the Coalition for RTI (see **Box 4**). The first CRTI Steering Committee meeting, on 24 December 2012, agreed that the coalition would adopt one Model RTI Law and advocate the enactment of right to information laws in line with the model law.

CRTI has provided a forum for CSOs to present a joint position to federal/provincial governments on RTI issues: as a collective body, it carries more weight than individual CSOs. The main FOI/RTI

<sup>11</sup> Zafarullah Khan, Centre for Civic Education.

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### **Box 4: Members of Coalition for Right to Information**

Centre for Civic Education	Centre for Governance and Public Accountability
Centre for Investigative Reporting in Pakistan	Centre for Peace and Development Initiatives
FOSI	Individual Land
Intermedia	Liberal Forum Pakistan
Lok Sujag	Pakistan Foundation Fighting Blindness
Shehry	Society for Alternative Media and Research
Society for Human Rights and Prisoners Aid	The Network for Consumer Rights Protection
Civil Action Research	Institute for Research, Advocacy and Development
Sustainable Education and Environmental Development	

organizations in Pakistan – CPDI, CCE and Intermedia – are also the most active within the Coalition, but participation in it definitely encourages smaller CSOs to engage on the issue, gives them more ‘clout’ and is a source of support for them. In addition to pushing for stronger laws, the Coalition has been promoting public awareness and use of FOI/RTI laws. One example is its’ establishment of the Annual RTI Champion Award ‘to protect and promote citizens’ right to information held by public bodies’.<sup>12</sup> Awards fall into three categories: for citizens, journalists and CSOs. The awards ceremony will be held on International Right to Know Day (28 September) each year and covers all five federal and provincial FOI/RTI laws in Pakistan.

It should be stressed that civil society groups have closely followed the process of drafting RTI legislation in both KP and Punjab, and have actively submitted comments on earlier drafts and pushed for improvements. As noted this has been done under the auspices of the Coalition for RTI, as well as by CSOs in their individual capacity. This is in sharp contrast to passage of the federal FOI Ordinance, which involved negligible stakeholder consultation. The involvement of CSOs, the media and others in the legislative drafting process greatly enhances ownership of the new laws, and thus increases the changes of their successful implementation.

Secondly, CSOs are engaging in more ‘creative’ initiatives to promote RTI awareness among stakeholders and the general public. For example, under an extension of the Free and Fair Election Network (FAFEN) initiative, district level groups are being supported to carry out monitoring of government operations, e.g. functioning of a school, a police station, implementation of a construction project. This includes technical support (by CPDI) in making freedom of information requests. The program is designed to build local demand and capacity for freedom of information. CPDI is also carrying out a sustained engagement with small district RTI groups, aimed again at building local capacity. Recent (2013 onwards) initiatives by CPDI to promote RTI include training of students at three universities in Islamabad-Rawalpindi (Iqra, Quaid-e-Azam and Fatima Jinnah), and a winter camp at Murree involving ‘student RTI champions’ identified from six districts in Punjab. Following

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<sup>12</sup> For more details see the Coalition website: <http://www.crti.org.pk/wp-content/uploads/2014/03/RTI-Champion-Award.pdf>.

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passage of the KP RTI Act, CPDI is also planning to carry out demand side work in Mansehra, Abbotabad, Peshawar and Mardan involving competitions. All these mark a change from the 'traditional' approach of conducting (usually one-off) orientation workshops on RTI for large numbers of people.

Despite this progress, RTI is still far from becoming a mainstream civil society issue – it remains an issue that engages a few CSOs. Awareness of RTI among the general public also remains very low. A strong demand side is critical to establishment of a strong RTI regime in KP, Punjab and elsewhere in Pakistan: strong demand provides the push for supply side measures – in the absence of demand from citizens, public bodies could well not bother making the effort to put RTI systems in place, train staff and so on. As Ahmad Bilal Mehboob from the Pakistan Institute of Legislative Development and Transparency, pointed out: 'The RTI will only be helpful when it changes into a public movement – awareness is key for it to become a movement.'<sup>13</sup> Once the KP and Punjab Information Commissions are fully set up and carrying out their awareness-raising role, this should boost use of RTI by citizens.

### **Box 5 Use of FOI in Investigation into MPs' Income Tax Returns**

Umar Cheema, an investigative reporter with The News and founder of the Centre for Investigative Reporting in Pakistan (CIRP) conducted an investigation into the income tax returns of Members of Parliament filed in September 2011. In the report he details the research methodology used:

'The major challenge in undertaking this study was to access relevant data about taxpayers, which is still treated as confidential, despite the recognition of the right to information as a fundamental right under Article 19-A of the Constitution. In view of this, efforts were made to obtain information and insights through multiple formal and informal sources.

'Firstly letters were sent to all MPs at their postal addresses....Each addressee was asked six questions (related to possession of an NTN, filing of income tax)

'Secondly, an information request was submitted to the Election Commission of Pakistan for the nomination papers of MPs, in order to collect details of their NTNs and CNICs essential for accessing the tax record.....The ECP did grant access to nomination papers.

'Thirdly, information was collected from the Federal Board of Revenue website, which hosts Taxpayers Facilitation Portal.... and PRAL that hosts computerized tax return details of all the filers.

'Fourthly, an information request was submitted to the FBR under Freedom of Information Ordinance 2002. The objective was to verify whether the MPs whose record was not found in PRAL and Taxpayer Facilitation Portal were registered with the tax authorities or not... The FBR did not respond to the request.

The significant information was accessed through informal sources in the FBR who volunteered to support this research in view of its potential to promote a fair and just tax system in Pakistan.

In the acknowledgements the author expresses gratitude to the Secretary ECP Ishtiaq Ahmed Khan: 'He is one of the few bureaucrats who acknowledge and encourage the citizens to exercise their Right to Information under Article 19-A of the Constitution of Pakistan.'

Excerpts taken from *Representation without Taxation: An Analysis of MPs' Income Tax Returns for 2011* (CPDI, CIRP).

<sup>13</sup> 'Launching the RTI: Imran says 'real interference' in K-P starts now', *Express Tribune*, 18 August 2013.

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## Demand Side Challenges – The Media

The media in Pakistan have not shown any great interest in the RTI issue, and certainly cannot be described as active campaigners for strong RTI.

The 2010 Pakistan RTI paper listed a number of reasons for lack of media interest in RTI (or FOI): lack of awareness; a weak tradition of investigative journalism among the media in Pakistan; reliance on personal contacts and other sources for information; and a perception that FOI was not really relevant to the interests and concerns of ordinary citizens. These factors are all still relevant. While there is a stronger tradition of investigative journalism (stoked by the highly competitive nature of the media in Pakistan), this is still dependent on contacts, paid sources and the like. The MPs' income tax returns case study (see **Box 5**) highlights how RTI/FOI can be useful in investigative journalism, but also the limitations faced in this. Journalists are also reluctant to use FOI/RTI requests because these take time, involve considerable effort and expense, and because this will disclose whatever investigation they are engaged on.

A handful of journalists are active on the FOI/RTI issue, including Umar Cheema, an investigative journalist with *The News*, Adnan Rehmat of Intermedia, Intikhab Hanif, a Lahore-based journalist with *Dawn*, and Mazhar Abbas.

As with CSOs, so the media closely followed the drafting of RTI legislation in KP and Punjab, reported on this and carried articles by RTI activists calling for improvements to the drafts. However, again as with CSOs, RTI has not yet become a mainstream media issue – one that interests and galvanizes the print and electronic media. There appears little prospect of this situation changing in the near future.

## Donor Interest

A few donors are specifically working on promotion of RTI/FOI in Pakistan. These include the World Bank, The Asia Foundation and Open Society Foundation Institute. The Bank has supported a number of conferences and policy dialogues on FOI/RTI (e.g. the RTI Conference held by CPDI in September 2011), as well as the FAFEN initiative to build district level demand and capacity for RTI. It is also supporting a number of governance related programs at provincial level, e.g. Governance Support Projects in FATA/KP and Balochistan, and the Punjab Public Management Reform Program (PPMRP). Specific interventions vary, but overall the Bank's strategy is to identify and avail opportunities to strengthen both supply and demand sides for RTI. The Asia Foundation has supported a project for sensitization of media personnel on RTI; in the past it has also provided support to CPDI. Another donor that is now engaging on RTI is DFID, largely through its sub-national governance programs in KP and Punjab.

There is still a relative dearth of donor interest in RTI, reflecting both a general shift away from governance programs among most donors (as compared to the early 2000s when governance was a donor priority), and the numerous other problems in Pakistan demanding donor attention, not least repeated large-scale natural disasters and on-going conflict in parts of KP, FATA and Balochistan. However, passage of strong legislation in KP and Punjab, particularly if this is followed by steps to implement the laws, should lead to greater donor engagement on the issue and increased funding/technical support.

## **5. Wider Pakistan context: implications for RTI**

To date this paper has focused on the opportunities and challenges involved in RTI implementation, as in measures required to make RTI laws effective in practice. RTI implementation is also impacted

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by the wider Pakistan context. Over the past decade there have been major developments on the political, security and other fronts in Pakistan – some positive, others negative - with corresponding implications for RTI in the country.

Pakistan's political system has shown an overall massive strengthening of democratic governance. Military rule under General Musharraf gave way through elections in 2008 to civilian rule, which continued after the 2013 elections. As the process of transfer of power to civilian governments via the ballot box becomes entrenched, so the prospect of another military takeover is becoming ever more remote. The country thus appears to have finally broken the cycle of alternating civilian-military rule that has characterised it pretty much since independence.

The 2013 elections were historic in Pakistan. They came after a civilian elected government completed its full term in office – the first time this has happened in the country's history. The election process – a Chief Election Commissioner appointed through government-opposition consensus, handover to caretaker interim governments at federal and provincial level to oversee free and fair elections, watched by an active media plus social media – generally worked well. While there were problems (notably terrorist attacks/election-related violence and allegations of electoral malpractice), voter turnout was high (around 60%) and the overall result – victory for PML-N at federal level and in Punjab – was widely accepted (with the exception of PTI: see below). For Pakistan, this is major progress on the path to democracy.

Moreover, with PML-N forming both federal and Punjab governments – that too without having to resort to unwieldy coalitions - it has a clear hand to make and implement policies to address the many pressing issues facing the country. PTI, with around 30 seats in the National Assembly, is in a position to form an active and questioning opposition – checking potential abuses of power. PTI is leading a coalition government in KP: it thus has the opportunity to demonstrate that it can form an effective government, creating pressure on PML-N to deliver at federal level and in Punjab, and positioning PTI for potentially a real stab at power in the next elections. In sum, there is a new dynamism in Pakistani politics, voters have choices, and politicians are under real pressure from the public to show results.

Since August 2014 PTI has been conducting a series of marches, demonstrations and sit-ins across the country in protest at government inaction over allegations of electoral rigging in 2013. Some see the protests as further strengthening democratic governance, but others view PTI's failure to accept the election result and its resort to street power as a threat to Pakistan's nascent democracy. As of November 2014, with the government refusing to accept PTI's main demand that Nawaz Sharif step down until rigging allegations are investigated, and PTI refusing to give up its protests, the impasse continued. The army continued to rule out any military interventions to resolve the crisis.

RTI is all about empowering citizens and enabling them to hold public officials and government accountable and to demand their rights. The strengthening of democracy in Pakistan, and the growing pressure on politicians to deliver, is therefore highly conducive to the establishment of RTI regimes. Indeed, the progress made in RTI in recent years stems directly from the democratic norms taking root in the country. Democratic governance is a necessary condition for RTI and as this becomes stronger so too will RTI. The increased competition between political parties – and particularly the rise of PTI with its vigorous anti-corruption stance – also bodes well for RTI. If one party moves forward on the issue others will have to follow; this has already been seen with PTI in KP and PML-N in Punjab. The fact that PML-N has a majority government at federal level places it in a good position to pass a new federal RTI law.

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A further sign of strengthened democratic governance is seen in the judiciary. In Pakistan this institution has traditionally been compliant to the executive, but since the mid-2000s the superior judiciary has increasingly asserted its independence and issued many rulings against the government of the day and even the army.<sup>14</sup> Judicial autonomy has also been strongly supported by lawyers and other civil society groups, as well as the media. In December 2013 Iftikhar Chaudhry was succeeded as Chief Justice by Tassaduq Hussain Jilani; he is seen as a less controversial figure, but is widely respected as a practitioner of the law. Judicial independence and activism reflects the growing rule of law in Pakistan. For RTI the implications are that laws are not merely 'pieces of paper' but have to be followed through and implemented. In the event that governments fail to implement RTI laws, the judiciary represents a 'final resort' mechanism for RTI activists to force compliance should other avenues (Ombudsman, Information Commissions) be exhausted.

One of the most significant developments in Pakistan over the past decade has been the exponential growth of the media, in particular electronic media. News reporting in Pakistan has been completely transformed: in place of this being wholly state-controlled and heavily censored, there is now live footage of news developments, hard-hitting interviews with leaders and politicians, and vigorous debate. The media has been a powerful force for transparency and accountability. It was the media which showed the Chief Minister of Punjab's daughter harassing a bakery employee; the man was later picked up by police and elite forces and beaten up. The scandal led to the Chief Minister's son-in-law having to present himself for arrest at a police station – a true first for Pakistan.<sup>15</sup> Numerous other scandals and abuses of power have been exposed by the media (e.g. Pakistan Steel Mills case, Hajj corruption scandal, ephedrine pharmaceuticals case involving then PM Yusuf Raza Gilani's son). The media is also a powerful harbinger of public opinion; it played a critical role, for example, in turning the public against the Pakistani Taliban (e.g. by showing footage of the Taliban beating a 17-year old girl in public in Swat).

The rise of the 'fourth estate' (including electronic media) in Pakistan, as with the strengthening of democracy, creates a highly conducive environment for RTI. The push by the media for transparency and accountability directly ties in with the objectives of RTI. While the media are not, as seen earlier, very active on the RTI issue, they can and are reporting on RTI developments, keeping track of whether governments are fulfilling their commitments, and thus creating pressure on the supply side. The media could also potentially play an important role on the demand side by raising public awareness of RTI and encouraging citizens to submit RTI requests (e.g. by reporting stories where RTI requests have led to people getting rights/services/other benefits).

So far these are all positive developments in Pakistan with positive implications for RTI. However, there are two major negative developments with corresponding implications for RTI: the huge deterioration in the security situation in the country, and the growing economic and development challenges Pakistan faces.

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<sup>14</sup> Examples include the Supreme Court's demand from the army/ISI that it provide details of so-called 'missing persons'; its hearing cases related to the privatization of state entities and award of rental power contracts; its repeal of the National Reconciliation Ordinance (NRO) promulgated under President Musharraf; its repeated demand that the government write to the Swiss authorities in relation to corruption charges against then President Zardari, and its subsequent dismissal of Prime Minister Yusuf Gilani; and its action against former Army Chief and President Pervez Musharraf following his return to Pakistan. The Supreme Court ordered Musharraf's arrest following his return to Pakistan in April 2013, on charges of treason in relation to his attempt to dismiss the senior judiciary in 2007 and imposition of emergency rule.

<sup>15</sup> <http://dawn.com/2012/11/20/bakery-torture-case-shahbaz-sharifs-son-in-law-indicted/>

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For many decades the main national security threat to Pakistan was considered to be external – India. Today the major threats facing Pakistan are all internal, with the biggest religious militancy. While the roots of Islamic militancy emerged several decades ago, the 9/11 attacks and subsequent actions by the US/West (notably the invasion of Afghanistan and Iraq, drone attacks) and the Musharraf government (support for the US, military operations in the tribal belt) greatly exacerbated this. Over the past decade Pakistan has suffered numerous terrorist attacks with thousands killed – in all parts of the country and from all walks of life. Military operations in FATA, the Swat Valley, parts of Khyber Pakhtunkhwa and Balochistan, and even Islamabad (Lal Masjid) have also led to many deaths, as well as tens of thousands of people being displaced from their homes and triggered ‘revenge’ attacks by extremists. The urban landscape in towns and cities across Pakistan has altered radically, filled with security barricades to counter the still present terrorist threat.

Terrorist attacks by militant groups persist in all parts of Pakistan, including the major cities of Karachi, Lahore, Peshawar and Quetta. In March 2014, under the new PML-N federal government elected in 2013 and consistent with the party’s campaign pledge, talks commenced with the Taliban. However these stalled in April, reportedly due to in-fighting between different TTP factions, and finally came to a halt in June when TTP gunmen attacked Karachi airport. Soon after, the army launched a major operation [Operation Zarb-e-Arb] in North Waziristan to deal with the militant threat ‘once and for all’. Fighting is on-going.

The danger of increased instability in Afghanistan following the US pull-out also poses a major threat to Pakistan. Other security challenges facing the country are armed insurgent groups in Balochistan, and rising crime levels – particularly in the biggest city of Karachi. Kidnappings for ransom are becoming increasingly common. The dire condition of the country’s police and judicial system offers little hope of perpetrators being caught and punished, while the rising poverty and economic hardship make further increases in crime levels certain.

Pakistan’s economy did well in the early years of the 21<sup>st</sup> century, but has since been badly hit by the global economic downturn as well as security and other challenges at home. The energy crisis – the growing gap between supply and demand manifested in protracted ‘load shedding’ (power cuts) – is already having a massive negative impact on productivity and economic growth, and looks set to get worse. Lack of infrastructure and corruption are other serious impediments to growth: Transparency International’s Corruption Perceptions Index ranked Pakistan 134 out of 176 countries in 2011; its ranking dropped to 139 in 2012. Massive floods in 2010 and (on a smaller scale) in 2011 took their toll on infrastructure, livelihoods and development. With each successive disaster the task of recovery and reconstruction becomes that much harder. Human development indicators for Pakistan are correspondingly low: the country is off-track to meet most of the Millennium Development Goals by 2015. The poor have been particularly badly hit by high food inflation. The last government was widely considered to have failed to address the major challenges facing Pakistan – this was reflected in its resounding defeat in the 2013 elections.

These are very serious challenges for any country, let alone a developing one with limited resources and capacity like Pakistan. The implications for RTI are that these pressing issues will be a priority for federal and provincial governments: RTI could well be seen as less important and be neglected in the effort to stop terrorist attacks, respond to large-scale natural disasters, promote economic growth and improve human development indicators.

## State of the RTI Regime: Pakistan

One could argue that increased transparency becomes even more important for a country facing the challenges Pakistan does. Indeed, such challenges could be a spur to establish and strengthen RTI. In relation to security, for example, it is important for the public to know what agreements have been reached with foreign governments, what steps are being taken to curb extremist groups, what treatment is being meted out to suspected terrorists, what resources are being allocated on security operations and what is the impact on funding for services such as education and health (is this being cut), and so on. These are valid and pressing questions that will engage the public, CSOs and the media – RTI could serve as a powerful tool to obtain the answers to these. Similarly in relation to development and people accessing the rights, services and benefits to which they are entitled, RTI could again serve as a powerful tool for this (e.g. helping local communities know what resources have been allocated for local services, details of tendering processes and contract awards, the procedure involved in getting social security payments, and so on).

This is correct in theory. The problem in Pakistan is that public awareness of RTI is very low, media interest is limited, and RTI systems are yet to be established. Hence for now the media, CSOs and others pushing for transparency use mechanisms other than RTI, and ordinary people rely on traditional avenues to secure entitlements (i.e. contacts, patronage, bribes....). In future, as both demand and supply sides get stronger, we could see RTI being used in relation to the security, development and other challenges facing Pakistan. A critical requirement for this (elaborated in the concluding section) will be making RTI relevant to the interests and needs of ordinary people, so they see that tangible benefits can be derived from it. Ultimately, this leads back to the importance of establishing strong RTI regimes.

### **6. Conclusions and recommendations**

The environment with regard to RTI in Pakistan has changed drastically: from a stalemate situation basically since 2002, there has suddenly been a huge leap forward. Two provinces – including the most powerful, Punjab – have passed very strong RTI laws. The consultation process in the build up to this has ensured widespread ownership and thus legitimacy of the RTI legislation. Both the KP and Punjab provincial governments have signaled their commitment to implement the new laws and both have shown some progress on RTI implementation. A very strong draft federal RTI bill has been adopted by the government to replace the FOI Ordinance 2002, and awaits passage by the National Assembly. In short, it would not be an exaggeration to say there has been an ‘RTI revolution’ in parts of Pakistan. There is now considerable momentum to move the RTI agenda forward in all parts of the country.

At the same time, it is important to stress that many of the factors impeding RTI in the past – bureaucratic resistance, lack of interest in RTI by mainstream civil society and the media, lack of public awareness – are still valid. Passage of RTI legislation is very much the first – and some would argue the easiest - step in setting up an RTI regime. The implementation challenges are daunting: setting up RTI systems, training PIOs, establishing information commissions, improving records management, and so on. Overcoming these will require sustained political will, resources and capacity. This would be difficult in any country, but in Pakistan – which faces so many other pressing issues (security, law and order, lack of power, poor development and so on) – it becomes even more so.

The critical question then is: how, despite the challenges in relation to RTI implementation and the wider Pakistan context, to avail the current opportunities to establish RTI in Pakistan?

## Empowerment Through Information -I

The answer really lies in effective implementation of the KP and Punjab RTI Acts. Just as passage of the KP RTI Act was the spur to finally get a Punjab RTI law passed, and just as the KP and Punjab laws have created impetus for reform of the federal FOI Ordinance 2002, so strong implementation in KP and Punjab will generate pressure and demand for RTI at federal level as well as in other provinces. At the same time, of course, strong implementation – whereby citizens and public officials start seeing tangible gains from RTI in terms of accessing entitlements, pushing accountability, enhanced efficiency and so on - will ensure sustained pressure and demand in KP and Punjab themselves for RTI.

How to ensure effective RTI implementation in KP and Punjab?

Responsibility for this rests primarily with the respective provincial governments, but also with civil society groups, the media and the general public (as well as donors). All have a role to play. Specific recommendations on the supply side include:

- The KP and Punjab Information Commissions need to be given the necessary resources and support to function properly;
- Some nodal entity within each government (e.g. the Information Department) should be identified to coordinate and support RTI implementation by public bodies;
- The Commission and/or nodal entity should produce RTI guidelines, SOPs and training manuals to support *all* public bodies and ensure consistent RTI implementation across government. This centralized approach will reduce inefficiency and duplication of effort (i.e. if public bodies each produce their own manuals, SOPs, etc.);
- Public bodies should develop phased roll-out plans for RTI implementation, with priority steps to be carried out in the short-term, e.g. appointing and training PIOs, developing systems for proactive disclosure of information, and others in the medium to long-term, e.g. automation of records management. Such a phased approach is pragmatic (given the resource and capacity constraints), whilst holding public bodies to their responsibilities under RTI legislation;
- The political leadership in both provinces should continue to stress its commitment to RTI implementation, and work to address any issues that arise;

On the demand side:

- Public awareness and pressure for RTI needs to be raised by making RTI relevant to the needs and concerns of ordinary citizens – they should be encouraged to see it as a tool that can empower them and help them secure their rights and entitlements;
- The media should be sensitized about the significance of RTI and its potential applications. The growing electronic media channels need programming content. By making RTI relevant to the interests of ordinary citizens, the media can be encouraged to make it a regular topic in discussion programmes;
- Civil society organizations have begun to formulate a collective stance on RTI. This positive development should be fostered, and CSOs supported to build the demand side as well as maintain pressure on the supply side to implement RTI.

For all the above, it will be useful to share lessons and experiences from other countries, and particularly from other countries in the region.

## State of the RTI Regime: Pakistan

In conclusion, despite the many challenges facing Pakistan, there is significant potential to move the RTI agenda forward and there are clear steps that can be taken to turn this potential into reality. Should RTI take root in KP and Punjab, there is a very strong likelihood that it will become established across Pakistan.

## 13.

# RTI Case Studies from Bangladesh: A case book of ground realities

Ananya Raihan

Editor

### 1. Background

Five years have passed since the enactment of the Bangladesh Right to Information (RTI) Act 2009. A number of civil society organizations, community-based organizations, NGOs and social enterprises have been engaged in various types of activities to make the RTI meaningful for the public. The most significant engagement was awareness and capacity building, both on the supply and demand side. It was understood that without pro-active implementation of the provisions of the RTI Act, the common people were not going to benefit from it. Thus, these organizations initiated programs for pro-active engagement with citizens for filing applications seeking various kinds of information related to public interest, as well specific personal needs. This case book presents a journey from the application process to filing complaints with the Information Commission.

The case studies provide very useful insights, which can be used to take the implementation of the RTI Act forward and promote the exercise of citizens' rights in the establishment of transparent and accountable government and prevention of corruption. Some of them are highlighted below.

There are different ways in which the impact of the RTI Act has been manifested. In one case, for example, an ordinary citizen was able to obtain public information from a government official without even making a written request under the RTI Act [see case 7]. The Project Implementing Officer of Lemshikhali Union Parishad, in Kutubdia *upazila* of Cox's Bazar district responded to the verbal request of Rafiqul Islam when he learned from him of his responsibility to disclose information under the RTI Act. While it is generally preferred to rely on written applications and responses, this case illustrates how the RTI Act can trigger change within a bureaucratic culture.

The RTI Act is a powerful tool for advocacy, which was shown by BELA on the issue related to the illegal construction of the BGMEA building. The use of the RTI Act contributed to the efforts to show that the building had been erected in violation of a number of laws including environmental laws. On the other hand, this process led to strengthening the implementation of the RTI Act within public agencies by compelling RAJUK to appoint a designated officer. When an RTI application is made and pursued, it can result in government agencies promoting better compliance with the Act.

A number of case studies have shown how corruption was prevented through the application of the RTI Act. Mosharaf's experience [case 10] proved that the RTI Act helped to realize rights and address instances of corruption by contributing to the use of existing redress mechanisms.

## RTI Case Studies: Bangladesh

Though Mosharaf failed to receive due justice through the BMET online complaint system, he was able to receive justice through using the RTI Act. The RTI can thus serve as a vehicle for obtaining

<b>List of terms and abbreviations</b>	
<b>AC</b>	Agricultural Cards
<b>BDT</b>	Bangla Desh Taka – the currency pf Bangladesh. One US \$ = to approximately 80 BDT
<b>BELA</b>	Bangladesh Environment Lawyers Association
<b>BGMEA</b>	Bangladesh Garment Manufacturers and Exporters Association
<b>Bigha</b>	Local land measurement = 1,337.8 sq m
<b>BMET</b>	Bureau of Manpower and Employment Training
<b>BDPC</b>	Bangladesh Disaster Preparedness Centre
<b>CARITAS</b>	Catholic Relief, Development and Social Services Organisation
<b>FAIR</b>	Friends Association for Integrated Revolution
<b>GO</b>	Government organisations
<b>Khas land</b>	Government-owned land
<b>NGO</b>	Non-governmental organisations
<b>MJF</b>	Manusher Jonno Foundation [independent organization providing funding and capacity-building services toother organization]
<b>MRPC</b>	Migrant Rights Protection committee
<b>PAR</b>	Participatory Action Research
<b>PARITRAN</b>	A NGO for Dalit Rights based in Satkhira
<b>RIB</b>	Research Initiatives, Bangladesh
<b>RAJUK</b>	Rajdhani Unnoyon Kartipokkho [Dhaka City Development Authority]
<b>SAFE</b>	Social Activities for Environment
<b>TIB</b>	Transparency International, Bangladesh
<b>UAO</b>	Upazila Agricultural Officer
<b>UBALMF</b>	Bhaluka Upazila Adivasi Land Mortgage Forums
<b>Union Parishad</b>	Union Council
<b>Upazila</b>	Sub-district
<b>VDP</b>	Village Defense Party or para militia to act in case of national emergency
<b>VGD</b>	Vulnerable Group Development
<b>VGF</b>	Vulnerable Group Feeding

information when other administrative systems have been exhausted. Furthermore, the Act had an impact on the accountability of the private sector.

The quality of government-released information can be improved by comparing it with facts and realities on the ground. Even when the authorities release information, it may need to be verified. SAFE was able to understand the full picture of the minimum wage standard in the shrimp processing plants in Khulna by doing its own research and analyzing it against the government's information. Furthermore, this information strengthened the arguments of SAFE for the comprehensive implementation of minimum wage. Thus, RTI can be a useful tool to enhance fact-based advocacy by civil society organizations (CSOs).

A number of case studies showed that awareness campaigns on their own are not adequate for making the RTI Act effective. One needs to guide

people who can benefit from using the Act to access sensitive information, which can be used to protect their rights. A significant number of applications from the marginalized communities who were supported by NGOs have poured into government offices over the last two years – relating mainly to government programs on safety-net, livelihood, health, housing and the like. An example of this success is that people who are entitled to vulnerable group feeding (VGF) cards are now getting them just by filing carefully crafted RTI applications, which was not possible previously without bribing the authorities.

## Empowerment Through Information -I

An important lesson from the case studies is that it is essential to patiently follow through and track applications up to the Information Commission. In a number of instances, the intervention of the Information Commission produced results.

The empowerment paradigm – from knowing to action – is a continuum. The cases that follow demonstrate that mobilization and collective effort provides good results.

### **2. Fighting corruption using the Right to Information Act<sup>1</sup>**

#### Background and problem

Abu Bakar Siddiq Sikder, a 50-year-old farmer, resides in Kutubdia, Ward No. 2, No.1 North Dhurung Union under the Chittagong district. He is educated and a conscious human being well known for his social commitment, and a member of the Disaster Preparedness Committee of Bangladesh Disaster Preparedness Centre (BDPC), which runs *Roddur* Project with the support of *Manusher Jonno Foundation* (MJF). He has therefore participated in a number of training programs and meetings on human rights, disaster preparedness, social accountability, good governance and the right to information.

There is a 5.5 km road connecting Dhurung Bazar to North Dhurung, in Kutubdia *upazila*. This road is of huge importance for the local people as it is the only way to go to the *upazila* or district proper. However, due to poor maintenance, this road had become almost unusable causing great hardship to the people. Finally, construction work to rebuild the road started in 2010, and the entire development work was given to a few contractors.

However, Abu Bakar was not satisfied with the standard of the construction work in a particular portion, known as Azam Sharak. He was convinced that the concerned contractor was not working as per the plan and design, and so asked to see the plan, but his request was refused. He then went to the office of Local Government Engineering Department (LGED) and asked for it again, but was once more refused. At this point he reminded them of the RTI Act, which makes it mandatory for all authorities to provide information to those who request it.

#### Application for information

Applicant and Authority: Abu Bakar decided to file an application, but before doing so he went to the designated officer of the local office of the LGED and told him about his intention to file a formal request for information using the RTI Act. On learning about his intention, the designated officer agreed to show him the plan and design on the same day.

#### Description of the case

Abu Bakar collected the plan and design of the other portion of the road from the other contractors. An examination of the documents confirmed that design specifications were not followed, and materials not used in required proportions. Also, a small roller machine was used for compaction, rather than the bigger one that should have been used, as per the plan.

Armed with this information, Abu Bakar, along with few conscientious local people demanded that the construction be done as per specifications. However, the contractors ignored the protests and the work continued. Abu Bakar then informed the people representing different sections of the

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<sup>1</sup> Case collected by BDPC.

## RTI Case Studies: Bangladesh

community about the activities of the contractors, and called a meeting at Ward No 1, North Dhurung Union on 29 November 2010. People from all walks of society attended this meeting spontaneously. In the meeting it was resolved that the construction work must either be carried out as per the contract, or they would have to force it to stop. Eventually, under the leadership of Abu Bakar, the local people halted the construction work, and a formal letter was sent to the concerned offices at the *upazila*, district and division level and also to the Prime Minister's Office.

### Results

In response to the protest and movement, the designated officer of the district office initiated an investigation. The investigation findings confirmed corruption in the construction work, leading to the cancellation of the earlier tender, and the award of a new one to complete construction of the all-important road. The construction work was completed after 3 months, and this time was in accordance with the conditions of the contract.

### Conclusion

Abu Bakar's statement in this regard is worth mentioning. He said, "If people are united and conscious then it is possible to fight against corruption." Bangladesh needs RTI activists like Abu Bakar across the country. His story inspires us to be responsive and oppose all forms of corruption.

### **3. Success helps to build confidence in RTI<sup>2</sup>**

#### Background and problem

Mallikbari village is situated 10 km north-west from Bhaluka *upazila* and 45 km north-west from Mymensingh district. There are six *Adivasi* Land Mortgage Forums (UBALMFs) under Bhaluka Upazilla, namely Mallikbari-1, Mallikbari-2, Uthura Maduary; Dakatia-1, Dakatia-2 and Kachina forum. Approximately 203 members represent these six forums. Members of the forums deal with land related problems by forming Advocacy Networking and Lobby Committees (ANLC). These committees coordinate the work of the forum to initiate advocacy, network, link with government organisations and NGOs, and use the RTI Act in order to access the various services provided by the government.



*Shila's card for the Food for Work Program*

The forums had been actively trying to make the local government institutions transparent, and to make them address the problems in the areas designated under the Union *Parishad*. The community was not aware of what development activities were undertaken by the Union *Parishads* and the how much financial resources were available for such development activities. They had been trying to get hold of the budget of the Union *Parishads*, but found it impossible to access it through informal channels. Thus, the forums decided to apply for a copy using the RTI Act.

#### Application for information: Applicant and Authority

Toronikonto, chairperson of Mollikbari-1 forum, submitted six applications to the Union *Parishad* of Mollikbari Union on 8 June 2011, assisted by the ANLC. She asked what financial resources were available or allocated to the Union *Parishads* for various safety net programs.

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<sup>2</sup> Case collected by Caritas

# Empowerment Through Information -I

## Description of the case

The forum unfortunately failed to get the information requested due to a change of the chairperson at the time of submission of application. The chairperson of the forum discussed the issue at the next ANLC meeting and it was decided to resubmit the applications to the newly elected chairperson of Mollikbari Union, and accordingly the application was resubmitted on 12 September 2011.

## Result

The newly elected chairperson of the Mollikbari Union, Sarwar Jahan Emran, discussed the matter with the members of the forum and assured them that he would look into the matter and take necessary action to provide the information asked for. After discussing the issue, he suggested that the forum members prepare a short list of questions about safety-net programs in their areas. The forum members of Mollikbari-1 prepared this list and submitted it to the chairperson of Mollikbari Union *Parishad*. The chairperson provided information about budgetary allocation for various safety-net programs and also promised to allocate safety net benefits to the target people, as identified by the forums.

Accordingly, 17 families have been selected and provided with the benefit. Six of the families received VGF cards, two families received disability allowances, and three families received widow allowances.

## Impact

The forum members are happy to get the support from the Union Parishad and they are now more confident about using the RTI Act. They have come to believe that it is an Act for the poorest of the poor, which is helping them to access the facilities being offered by GOs and NGOs.

## **4. Use of RTI to obtain GO and NGO facilities<sup>3</sup>**

### Background and problem

Bolorampur village is 1.5 km from the Dhobaura *upazila Sador*, and 55 km northeast from the Mymensingh district. Soibali Mrong (45), wife of Bhaskor Sku (49), is a member of the Bolorampur forum, which was formed in 2009 and consists of 31 members. She is an active member of the forum. Soibali has three children aged 22, 18 and 16, and all three are pursuing studies at different levels. The children of the village are all very studious.

Soibali is a housewife involved with agricultural activities such as homestead and vegetable gardening. Her husband is involved in NGO work. The forum members received training on leadership, human rights, good governance, advocacy and lobbying, legal awareness and mediation. This training helped to generate confidence, solidarity and unity amongst the members of forum and the village. The RTI Act was discussed in forum meetings in 2009 and 2010 as a regular agenda of the forum, which enabled Soibali to learn and use the RTI Act.



*Monoka is showing her card for Old Aged Pension Program.*

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<sup>3</sup> Case collected by Caritas.

## RTI Case Studies: Bangladesh

### Application for information: Applicant and Authority

Soibali is a unique person, who has dedicated her time to filing RTI applications with various authorities on behalf of citizens, and thereby has tried to address their problems.

### Description of the case

Soibali discussed using the RTI Act with the other forum members. She applied to the AC (land) on 03 April 2011 to understand the process of registration, and received the information from him in writing. This information was discussed in the forum, and the decision was taken to acquire more information to facilitate the process of land registration. Accordingly, she submitted five further applications, to the Tribal Welfare Association, Livestock Department, Fisheries Department, Agriculture Department and Union *Parishad*, and received the information from them. She disseminated this information to forum members, and used them to get benefits from the concerned departments. Subsequently, she organized another 10 to 20 forum members, and helped them submit applications to related departments, in order to create pressure on the departments to fulfill their obligations. As a result she was able to acquire the information needed to complete eight mutations in favour of forum members at the AC land office, received 10 VGF cards for the poorest women of the forum from the Union *Parishad*, received vaccines from the Livestock Department for the forum members, enlisted poor students for a stipend from the Tribal Welfare Association and also received subsidies from the Fisheries Department. Soibali works with the RTI Act regularly now, and enjoys it very much.



*Soibali writing out RTI applications to be filed at the Union Parishad and other offices*

## **5. Info Lady Liza: Facilitator of RTI Action<sup>4</sup>**

### Background and problem

'Info Lady' Ambiatul Liza provides different services to groups of professionals in the villages of Ghagra union under Purbadhola upazila of Netrokona district. She operates 11 groups of 6 categories, of which one farmer group is located in Meghshimul village. She usually uses offline audio-visual content on various issues (agriculture, adolescent health, sustainable technology, etc.) developed by Dnet <sup>5</sup> as a tool to educate the public.

In the village of Meghshimul, 'Info Lady' Liza told a group of farmers about the RTI Act, and the fact that every citizen of Bangladesh has the right to get information by using this Act. She also informed

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<sup>4</sup> Case collected by Dnet.

<sup>5</sup> Dnet is a Social Enterprise of Bangladesh, established in January 2001 in order to promote 'access to information and knowledge' for all citizens through interactive digital media in achieving constitutional, national and international developmental objectives. Dnet is playing a vital role in implementing the Right to Information Act, 2009 especially in rural areas where the masses hardly have opportunities to practice their basic rights. 'Promoting Info Lady for Building Inclusive Information and Knowledge System', a project of Dnet funded by 'Manusher Jonno Foundation' has been a pioneer in building capacity among the rural masses for the proper implementation of the Act.

## Empowerment Through Information -I



*Info Lady sharing information on her laptop with farmers*

them that they could apply to any government and non-government organization for information using the prescribed form. For better understanding of the issue, Liza told them that farmers could obtain information regarding the procedures to get subsidized fertilizers provided by the government by using the Act. This information had a great impact on the farmers, who needed such subsidies but so far had no idea how to access them.

### Application for information: Applicant and Authority

A member of the group named Rahmat Ali, a 57 year old farmer, sought help from the Info Lady on applying for information regarding the procedure to get subsidized fertilizer, using the RTI Act. Info Lady Liza advised Rahmat Ali to go to the *upazila* agricultural officer, and helped him fill out the relevant forms. Farmer Rahmat Ali first initiated the utilization of the RTI Act in the area.

For farmer Rahmat Ali, fertilizer subsidies were desperately needed. He had 3 sons and 2 daughters who wanted to continue studying, but he was finding it increasingly difficult to support them from his small piece of agricultural farmland. He was also struggling to grow better crops, as he didn't have the capital needed to invest in his farm.

### Description of the case

It is important to note that a large number of the farmers participating in these groups expressed their lack of awareness about the subsidized fertilizer scheme run by the government, or of other schemes, like farmer training. At this stage, Rahmat Ali asked Info Lady Liza to assist him in preparing his application. The Info Lady therefore made an application on behalf of Rahmat Ali to the *upazila* agricultural officer on 16 September 2012. They applied for information regarding the procedure to acquire subsidized fertilizer from the government.

### Impact

The card changed Rahmat Ali's livelihood. He described his experiences to other group members and neighbors in RTI camps organized by Dnet, where people from Info Lady's group meet. Within the next three months a large number of farmers from the village became aware that the government provided subsidized agricultural inputs (like seeds, insecticides) and training for farmers. By January 2012, five farmers had received training and another four were enjoying agricultural inputs from the *upazila* agricultural office, which was once a distant dream for them. The farming community now is working hard to prove themselves as model farmers with the help of the Info Lady and the RTI Act.<sup>6</sup>

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<sup>6</sup> This case study was compiled as a part of periodic assessment of the Info Lady program by the Monitoring and Evaluation team. The case was developed by interviewing the Info Lady, beneficiaries and other stakeholders.

## RTI Case Studies: Bangladesh

### **6. Harijans use RTI Act 2009<sup>7</sup>**

*“You have become the leader of Harijan? I will see how you will go to the Information Commission?”*

#### Background and problem

Laxman Kumar Roy, a resident of Darinaricha *Harijan* Colony, Ishwardi, Pabna and a member of the *Harijan*<sup>8</sup> caste, is working as an animator with an NGO named FAIR. Beside this, he is studying for a BSS (Hons.) in Political Science at a local college. He is very passionate about resolving various social problems and enhancing the dignity of his caste. With this in view, Mr. Roy is building awareness regarding the utilization of the RTI Act. He has had to face a number of challenges, including risk to his life.

#### Application for information: Applicant and Authority

Laxman Kumar Roy, with four other people of his caste named Dhiren Bashfor, Dipok Bashfor, Sohag Bashfor and Bijoy Bashfor applied for information from a number of government agencies on various issues of concern to the *Harijan* community, using the RTI Act. Specifically, they applied for information from the *upazila* animal husbandry department, *upazila* fisheries' officer, *upazila* cooperative office, Bangladesh sericulture board, fire service and civil defense station, digital phone exchange of Iswardi, *upazila* commander and Ansar VDP (village-based para militia) office, food department, girls high school, Iswardi post office and Poursava (municipality).

#### Description of the case

The idea was to make the authorities in his *upazila* aware of the RTI, and make them responsive while acquiring information, which might help resolve some long standing demands of the *Harijan* community. He made applications to the above mentioned authorities using the RTI Act, asking for a detailed list of the names and salaries of permanent and temporary janitorial staff of the Iswardi *Pourasava* (Municipality). They also asked for the number of VGD allocated cards for the *Harijan* community and a list of the beneficiaries. He was trying to ascertain whether members of his caste were being deprived of their rights and benefits under various government schemes.

#### Result

The authorities did not respond within the time limit stipulated in the RTI Act. Thus, Laxman decided to lodge an appeal with the higher authorities of those agencies on 26 January 2012. However, the appeal authorities did not respond within the stipulated time either.

#### Involvement of the Information Commission

Left with no other alternative, Laxman along with the other applicants filed a complaint against all 11 departments with the Information Commission. The Commission, upon the receipt of the complaint, called both parties for a hearing.

Soon after, Laxman received a phone call from an unidentified caller. The voice on the line threatened him and tried to dissuade him from pursuing his complaint.

*“Now a days you have become so brave, right? You have become the leader of Harijan? I will see how you would go to the Information Commission?”*

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<sup>7</sup> Collected by FAIR.

<sup>8</sup> *Harijan* is a term popularized by Mohandas Gandhi for referring to Dalits, traditionally considered to be untouchable.

## Empowerment Through Information - I

After receiving this threat, Laxman filed a general diary, or complaint, at the Iswardi police station. The next day *Ittefaq*, a national newspaper, along with another local newspaper, carried the news about the threat.

### Resolution by the Commission

The Information Commission hearing took place on 18 July 2012. Laxman Kumar, along with four other members of the *Harijan* caste, was present at the hearing. The Information Commission admonished the defaulting departments and ordered them to provide the information Laxman had demanded. The authorities eventually provided the information, and Laxman has been working on follow-up action using the information he received.

### Impact

The *Harijan* community now has the belief that they are eligible to apply for any important information to any authority.

## **7. Natural disaster and fight for rights using the RTI Act<sup>9</sup>**

### Background and problem

River erosion and floods are eternal companions of the people living in the basin of the Brahmaputra and Jamuna rivers. Because of these calamities, every year the livelihood of the inhabitants of the area suffers greatly and they cannot overcome their chronic poverty. The government has a number of schemes for the population of the river belt, but the benefits of these schemes seldom reach the intended beneficiaries. It is not often possible for them to know what entitlements there are, let alone claim them. This situation makes them dependent on government agencies and NGOs, and leaves them open to exploitation.

This case is from Kunchkhali Char of Fazlupoor Union of Phholchhari Thana, Gaibandha district. Friendship (an NGO) tried to mobilize the local population to make them aware of their rights and entitlements and help them to exercise these rights. Towards that objective, Kunchkhali Char Union Committee decided to try and ensure the proper distribution of VGF cards for the beneficiaries of the Union.

### Application for information: Applicant and Authority

On behalf of the Kunchkhali Char Union Committee, a group of beneficiaries filed an application with the designated officer of the Kunchkhali Union *Parishad* at the end of 2012. The information they sought was about the allocation of VGF cards and the names of beneficiaries.

### Description of the case

After receiving the application, the chairperson called the committee members and wanted to know the purpose behind the submission of the application. The committee members responded that they wanted to ensure that the right people get the entitlements as per allocation for the Union. The chairperson told them that there was no need to file the application, and requested a list of genuine beneficiaries for allocation of VGF cards. The committee decided to provide the list instead of going

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<sup>9</sup> Case collected by Friendship.

## RTI Case Studies: Bangladesh

through the information seeking process, because the ultimate objective of filing the application was to use the information to ensure that the authorities gave the benefits to the right people.

### Result

Based on the list of beneficiaries provided by the committee, 15 vulnerable families received VGF cards, of which ten were headed by males and five by females. They were all beneficiaries of the NGO as well.

### Conclusion

One objective of using the RTI Act, to access sensitive information, is to ensure the appropriate exercise of rights.

## **8. RTI brings transparency to the distribution of grains<sup>10</sup>**

### Background and problem

The Food and Disaster Management Ministry implements a safety-net program called Vulnerable Group Feeding (VGF) to provide food security for vulnerable groups, particularly in the aftermath of natural disasters such as cyclones, floods and droughts, as well as when work is unavailable. VGF is designed to provide one or more months of food ration to households in a period of distress or when acquiring food becomes difficult for them. In order to access the program, beneficiaries need to have a VGF card.

Mr. Rafiqul Islam is a farmer who lives in Lemshikhali Union *Parishad*, in Kutubdia *upazila* of Cox's Bazar district. He used to work as a salt panner, but lost his business after the severe cyclone of 1991 created major financial losses for him. Since then Rafiqul has been involved in farming, and in his free time he provides social services for the poor in his community, and when a local NGO partner of the Manusher Jonno Foundation, the Bangladesh Disaster Preparedness Centre, organized a training program on social accountability and good governance in 2009, Rafiqul made sure to attend. At this training session he learned about the RTI Act and how ordinary citizens could access government-held information.

Rafiqul believed that due to a lack of information about VGF allocations, the actual beneficiaries were deprived of what was rightfully theirs. In November 2009, Rafiqul heard that the government was planning to distribute rice free of cost in the Lemshikhali Union *Parishad* under the VGF scheme. Initially, instead of applying for information through the RTI Act, he called on the Project Implementation Officer (PIO) of Kutubdia *upazila* to inquire about the quantity of rice that each VGF cardholder would receive. However the PIO did not give him any information.

### Application for information: Applicant and Authority

After the PIO refused to give him the information he wanted, Rafiqul visited the PIO's office and stated that he was well informed about the RTI Act, and it is the duty of the PIO to inform citizens about government initiatives. On hearing this, the PIO informed him that 10 kilogram (kg) of rice had been allocated per person, and, allocation came for 2,725 inhabitants of Lemshikhali Union *Parishad*. Though Rafiqul did not make a formal RTI request, he received the information he had asked for from the concerned government official -because he was aware of his right to information under the RTI Act.

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<sup>10</sup> Case collected by BDPC.

## Empowerment Through Information -I

### Result

On the day that the rice was being distributed at the UP office, people who had queued up for the food grain were informed by the chairperson that each person with a VGF card would be entitled to 7 kg of rice. When Rafiqul informed the people that the PIO had told him that each person was entitled to 10 kg, they demanded the full amount. The UP chairperson argued that it was not possible for him to provide the entire amount, as he had to consider the costs for transportation and other related expenses.

However, since the people were aware of what had been allotted to them, they staged a protest. As a result the chairperson was compelled to distribute 9.5 kg of rice to each person.

### Impact

Awareness of RTI Act itself can be adequate to serve the ultimate purpose of seeking information.

## **9. RTI Act helps to implement minimum wage in the shrimp processing industry<sup>11</sup>**

### Background and problem

The Government of Bangladesh declared the minimum wage for workers in the shrimp processing industry on 21 November 2009. The main purpose of setting up the minimum wage for laborers in this industry was to protect the socio-economic security of laborers in the formal sector. Minimum wage is one of the essential components of the labor law. SAFE, a partner NGO of the Manusher Jonno Foundation (MJF) works to monitor the implementation status of the minimum wage in this industry.

It is the responsibility of the office of the deputy chief inspector to regularly monitor whether shrimp processing plants are complying with the minimum wage regulations. SAFE wanted to identify the number of processing plants in Khulna not complying with these laws, so that it could help the workers in these plants.

### Application for information: Applicant and Authority

Asad, an employee of SAFE, sought information from the Khulna Department of Labor on the number of shrimp processing plants that implemented minimum wage. He asked for this information after attending an MJF training session on the use of the RTI Act. On 15 July 2010, Asad went to the office of the designated officer (deputy chief inspector) in person and requested the information under the RTI Act.

### Description of the case

The designated officer however refused to receive the application, and Asad was forced to find another way to file his application. He subsequently requested the information through the postal service with a registered letter instead. He waited for 20 working days but there was no response.

He then appealed to the appellate authority (Chief Inspector, Department of Labor) with another registered letter. In response, the Chief Inspector sent a notice to the Deputy Chief Inspector, Department of Labor, Khulna Division, to provide the information to Asad. The concerned department (office of the deputy chief inspector) communicated with Asad over the phone and told him to send a

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<sup>11</sup> Case collected by SAFE.

## RTI Case Studies: Bangladesh

general letter requesting the desired information. He sent a letter to the Deputy Chief Inspector as instructed, but this was also ineffective.

### Involvement of the Information Commission

On 30 September 2010, Asad filed a complaint with the Information Commission. Coincidentally, that same day he received a letter from the concerned department with the requested information (though it was not mentioned that the information was given under the RTI Act), but it was partially incorrect. Asad had wanted to know the numbers of shrimp processing plants complying with minimum wage, and was informed that all 39 processing plants were implementing the minimum wage. However, the real situation was different. Out of 39 processing plants, 36 were implementing minimum wage only partially, which is a violation of the policy.

On 31 January 2011, Asad received a notice from the Information Commission. He was told to attend the hearing on 15 February 2011. He informed the Information Commission about the receipt of partially correct information, and raised two points of objection. First, he was given incorrect information. Second, he found that three of the 39 shrimp processing plants had been out of operation for more than a year. Asad had wanted a complete and accurate list so that he could monitor the implementation status of minimum wage payments within the industry.

In fact it was subsequently found that not all plants were implementing the minimum wage fully. Implementation of minimum wage applies to each grade of the salary scale, which had not happened. Moreover, it is the duty of the office of the chief inspector to monitor the status of minimum wage implementation, which it didn't appear to be doing.

### Result

Asad could not attend the first hearing of the Information Commission and applied for an extension, and the next hearing was scheduled for 07 March 2011. At that hearing Asad submitted proof and documents in support of his complaint, leading to a third hearing that took place on 21 March 2011. The Chief Information Commissioner ordered the Deputy Chief Inspector to provide accurate information by Tuesday of the next week, and Asad finally received the information on 27 March 2011.

### Impact

This request for information has made the office of the Deputy Chief Inspector, Department of Labour, Khulna Division, more active. This is because after getting this information SAFE demanded that the office of the deputy chief inspector monitor the implementation status of minimum wage as it was supposed to do. As a result of using the RTI Act, at present all shrimp processing plants (under the SAFE program area) are fully implementing the government declared minimum wage for their laborers.

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### **10. Illegal construction of the BGMEA Tower and the use of the RTI Act<sup>12</sup>**

#### Background and problem

In 1998, the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) started the construction of a new building in Hatirjheel<sup>13</sup>, Dhaka. The construction of the BGMEA Tower was contested by those who considered it a violation of the existing regulatory framework and urban planning norms. The site of the BGMEA Tower forms a part of the Hatirjheel, a low lying flood plain that is at the heart of the capital city and is essential to drainage of the city in the monsoon months. Environmentalists were concerned that the land used in the building's construction lacked formal registration, and therefore environmental clearance. It did not follow the Urban Development Act, 1953 or the Water Body Preservation Act. Additionally, the high-rise structure was built on land that is government-owned, without approval from RAJUK (Rajdhani Unnayan Kartipokkho), the city development authority. This particular piece of land had been set aside for the Begunbari-Hatirjheel integrated development project, the main objective of which was to drain stagnant water out from the city quickly during the rainy season. Thus, the BGMEA Tower built on the canal became one of the main reasons for chronic and severe water-logging in Dhaka city. The Bangladesh Environmental Lawyers Association (BELA), urbanization experts, academics, and environmentalists have repeatedly called on the government to demolish the BGMEA building because it stands in the middle of the canal, in defiance of the law, and creates severe problems for the city's population. BELA decided to use the RTI Act to gather information that proved that the structure was illegal, and subsequently pursue public interest litigation.

#### Application for information: Applicant and Authority

BELA appointed a lawyer to take over the case and submit an application for information to the designated officer of RAJUK.

#### Description of the case

The use of the RTI Act has been quite encouraging throughout the entire process. On 08 July 2009 a lawyer from BELA submitted an information request under the RTI Act to RAJUK. The information request encompassed the approval of the BGMEA building plan, the rationale behind allowing BGMEA to construct a building in a public body of water, and the processes involved, etc. Following the RTI Act request, BELA waited for 20 working days, but no information was provided. On 17 December 2009, BELA submitted another information request. This time additional information was sought to determine whether RAJUK had appointed a designated officer (DO) following the stipulations of the RTI Act. This attempt failed as well. Then an appeal was made to the Secretary, Ministry of Housing & Public Works (MOHPW) as the appellate authority. This was also unsuccessful.

#### Involvement of the Information Commission

BELA then made a complaint to the Information Commission (IC). In response to this complaint, the IC ordered RAJUK to provide the name of the designated officer and higher appellate authority. Additionally, the IC ordered RAJUK to inform the Commission about the actions taken in response to BELA's complaint within seven days, or face legal action. RAJUK remained silent, violating the order of the IC. On 22 July 2010, a legal notice was sent to the chairperson of RAJUK.

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<sup>12</sup> Case collected by Manusher Jonno Foundation.

<sup>13</sup> <http://www.hatirjheel.org/background/>

## RTI Case Studies: Bangladesh

### Result

Finally all these efforts resulted in RAJUK handing over the requested information to BELA on 19 September 2010. The collected information clearly indicated that approval for the sale of the land was given upon fulfillment of some legal conditions, which were not followed afterwards. A report was published in a daily newspaper called The New Age on 02 October 2010.

The BGMEA building was reportedly built without the permission of RAJUK. This report drew the attention of public authorities along with many other stakeholders. Accordingly, a legal case was initiated in the High Court. This case turned into a movement to ensure that proper procedures are followed and public land is used in the best interest of the people. The lawyers of BELA submitted the documents to the court that were collected through the use of the RTI Act.

In the court ruling it was noted that the BGMEA had no ownership of the land on which the building was constructed and therefore the authorities must evict it. The demolition of the BGMEA building was ordered as it was deemed to be in violation of several laws. Concerned offices were given time to move to other locations. Further, BELA found that RAJUK had not nominated a DO as required by the RTI Act, and BELA made a separate complaint to the Information Commission. After receiving an order from the Commission, RAJUK was finally forced to appoint a DO.

### **11. Online complaint of a migrant worker is acknowledged<sup>14</sup>**

#### Background and problem

Mosharaf Hossain hails from Mohammadpur Union of Doudkandi *upazila* in the Comilla district, and heads a family of 12. Because of his family's economic situation, he decided to send his three sons abroad for work with the hope that their income would help improve their finances. In order to send them abroad, Mosharaf sold his land and his house, and took out a loan at a high interest rate. Altogether, he gathered BDT 309, 000, which he gave to a recruiting agency called Messrs Al-Mokhles Trade Enterprise in 2007. He also gave the agency the passports of his three sons, all of whom were eagerly awaiting their new life abroad, where they could earn enough money to support their family.

Unfortunately, the recruiting agency swindled Mosharaf Hossain. After Mosharaf submitted the passports and paid the recruiting agency, nothing happened. Days, months and years went by, but there was no response from the recruiting agency. By 2010, Mosharaf had given up hope and his family's economic condition had worsened.

At this point Mosharaf came across AHRDT (Assistance for Human Resource Development with Technology), a partner organization of RMMRU (Refugee and Migratory Movements Research Unit) that works with MJF. He registered as a member of the committee for protecting the rights of the migrant workers called Migrant Rights Protection Committee (MRPC) and learned about migration issues. He learned that the Bureau of Manpower Employment and Training (BMET) of the Government of Bangladesh takes complaints online if a potential migrant worker is cheated by any agency. He sought help from the MRPC and AHRDT, and in August 2010, filed an online complaint with BMET against the recruiting agency that had cheated him. He presented himself at BMET as many as four times for a hearing, but never received any information indicating that he had received a fair judgment.

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<sup>14</sup> Case collected by Manusher Jonno Foundation.

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Meanwhile, in January 2011 MJF organized a one-day workshop on the RTI Act in Doudkandi, Comilla. The members of the local MRPC and AHRDT attended the workshop. They learned how the RTI Act could be used to redress the denial of people's rights and realized they could use it to help solve the problems of the migrant workers in their localities who sought information.

### Application for information: Applicant and Authority

Mosharaf also learned about the RTI Act and with assistance from MRPC and AHRDT, in March 2011, he filed an application seeking information about his complaint to BMET. He also asked for a copy of the judgment on his case. However, he did not receive any response from the BMET in the stipulated time period.

### Involvement of Information Commission

Having received no response from the BMET, in April 2011, Mosharaf appealed to the Information Commission. The Information Commission organized a hearing, where it was proved that BMET was in violation of the RTI Act by not giving Mosharaf the information he had asked for.

### Result

This time he was successful. In May 2011 he received a letter from the Director General of BMET regarding his complaint. It indicated that the complaint lodged by Mosharaf had been proved correct and the recruiting agency was ordered to pay Mosharaf BDT 252,000 by 15 June 2011, or face legal action in line with the Immigration Ordinance of 1982.

## **12. Landless Dalit family gets access to khas land<sup>15</sup>**

### Background and problem

Paritran had been working as a partner organization of Manusher Jonno Foundation (MJF) since 2006. After being trained by MJF, Paritran decided to use the RTI Act to accelerate the establishment of rights for the *Dalit* (or Harijan) community, ensuring their access to government services. Initially, Paritran provided training to 480 members of 32 *Dalit* communities of eight unions under the Manirampur upazila of Jessore. Series of meetings were organized to train them in the use of the RTI Act. Accepting their fate of isolation and living an indigent life, members of the *Dalit* community had forgotten that they had the same rights as any other citizen of the country, especially when it came to government services. Against this unfavourable backdrop, a group of young volunteers took up the challenge to understand the RTI Act and use it to improve the wellbeing of the *Dalit* community.

From 2009, Paritran began celebrating the 'Right to Information' Day in order to create awareness about the RTI and facilitate access to government services. At the stage of identifying problems faced by the *Dalit* community, the most important problem identified was lack of access to *khas* land. Members of the *Dalit* community receive promises from political leaders before the national and local government elections but the commitment has always been forgotten as soon as the election is won.

Anjali Rani, mother of Tripti Das from Rishi Para of Bhojgaati said, "I heard that the government gives land to poor, 33 households of the para have no lands. Our fate will never shine on us and we will never get some land so that we can change our lives. No body looks after us". Paritran took the initiative and prepared a list of landless households from eight unions.

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<sup>15</sup> Case collected by Paritran.

## RTI Case Studies: Bangladesh

### Application for information: Applicant and Authority

32 members of the *Dalit* community submitted petitions to the land office of all eight unions to get information about available *khas* land in the *upazila*.

### Description of the case

The applications of the *Dalit* community were ignored, but the community members refused to become disheartened. They went to the *upazila* land office and office of the executive officer of the *upazila* and submitted the same application. Here fortunately, they received the information within the stipulated time.

Investigations based on the information about the availability of *khas* land showed that most of the land was occupied by unauthorized tenants. Paritran and the Shocheton Nagorik Committee convened by Transparency International Bangladesh (TIB) organized an advocacy meeting on 10 June 2012 to present the situation of the *Dalit* community and create consensus on the steps to be taken for giving *khas* land to landless *Dalits*. In the meeting, Upazila Nirbahi Officer (UNO) pledged to distribute *khas* land to 10 *Dalit* families within two months. The UNO suggested submitting official applications for allocating *khas* land to the identified *Dalit* families and even ensured that illegally occupied land would be reclaimed by the administration through evictions.

The community group together applied for the allocation of *khas* land for 21 families. On 28 September 2012, the 'Right to Information' Day was observed jointly by Paritran and the *upazila* administration, where the UNO gave the example of using the RTI Act to get information about *khas* land and how it helped to start a process of allocation of land to *Dalit* families.

### Result

The UNO reassured everyone that at least five families would receive around one *bigha* of land and they would be included in the list. Currently, local government and union land offices are actively working for their settlement.

### Conclusion

It is very encouraging that the collective efforts produced results not only in terms of getting access to the required information, but also achieving the ultimate outcome: establishment of entitlement.

## **13. Fighting corruption in the distribution of free medicine<sup>16</sup>**

### Background and problem

Aleya Begum, a resident of Saidpur, in northern Bangladesh, wished to help a poor patient in her neighborhood obtain free medical services from the local hospital, which she knew was available for indigent patients. She took the patient to the hospital and found to her dismay that the hospital refused to provide free medications and also treated her and the patient with rudeness and disrespect. She was eventually forced to pay for the medicines. When Aleya Begum described her experience to her PAR group's weekly meeting, the group recommended that she file an application under the RTI Act asking the hospital authority for information. Specifically to ask whether the government had provided the hospital with free medicine for distribution to indigent patients, what were the names

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<sup>16</sup> Case collected by Research Initiatives, Bangladesh.

## Empowerment Through Information -I

of these medicines and how many medicines had been provided by the government for free distribution in the last month.

### Application for information: Applicant and Authority

On 28 September 2011, Aleya Begum, with the help of an RTI animator attached to her group, filed an application with the designated officer of the hospital, asking for information under the RTI law.

### Description of the case

Within a few days of the submission of the application she received a phone call from the hospital, asking her to go and see the designated officer. She was warmly received by the officer who praised her for her initiative to help a poor patient and was promised the information she sought. True to his word, official concerned provided Aleya with the information she had asked for.

### Result

Aleya Begum shared her experience in the PAR group's weekly meeting. She informed the group about all the medicines they were entitled to get for free from the government hospital, and they decided to publicize the list of free medicines among the local population. This experience significantly increased the interest and belief of the local population in the power of the RTI law.

### Conclusion

The empowerment paradigm – from knowledge to action – is a continuum. Mobilization and joint effort provide good results. In this case, information about entitlements reaffirmed a sense of hope. The PAR groups have taken the initiative to inform others so that increasingly the public is made aware of their entitlements and can demand their rights.

## **14. Police response to queries from ordinary people<sup>17</sup>**

### Background and problem

In the women's PAR action group meeting in Saidpur, a town in northern Bangladesh, a discussion took place on the amount of bribe money normally required for filing a complaint in the local police station. They found that almost all of them had to pay different amounts of money to the police station. They decided to write an RTI application in this regard to the designated officer of the police station.

### Application for information: Applicant and Authority

On 12 July 2011, Tahera Begum, one of the PAR group members, with the help of her group animator Kamrun Nahar Ira, submitted an application to the police station on this issue. As there was no designated officer, the application was submitted to the duty officer.

### Description of the case

When Tahera Khatun, with Kamrunnahar Ira, went to the police station at first the officer on duty declared that he would not accept their application. Tahera then told him about the RTI Act and how it enables people to access information from public authorities. After learning a bit about the law, the police officer accepted the application but did not provide any receipt as required under the law. He

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<sup>17</sup> Case collected by Research Initiatives, Bangladesh.

## RTI Case Studies: Bangladesh

however said that an acceptance letter would be provided in the evening after the officer in charge (OC) returned to office. Animator Kamrun Nahar Ira went to the station that evening only to learn that their application could not be found anywhere. Having no other means, she sent another application through registered mail on 30 July 2011. As per the law, when 20 working days passed without any answer, an appeal was filed in the name of Tahera with the appellate authority, the police superintendent, again through registered mail. When they still did not receive a response, they submitted a complaint to the Information Commission on 25 October 2011.

### Role of the Information Commission

The Information Commission summoned both Tahera Begum and the police officer concerned to attend a complaint hearing. After hearing both the sides, particularly how the applicant was harassed and badly treated at the police station, the Information Commission ordered the police officer concerned to provide the information within one week's time upon return to their home town. Local media reported the matter and gave it wide publicity.

### Result

This is what Ira, the animator, who helped the submission of the case, had to say about its impact: "In our area ordinary people avoid police stations for fear of harassment and insult. This incident was the first step toward removing such fear. It served as a tonic for the people. They are no longer afraid of government offices. This case has encouraged them to seek information through the RTI Act. People have understood that RTI Act is such a strong and effective tool that through its application even a marginalized woman like Tahera Begum could force the police to answer her queries. This incident is an example of how RTI Act can empower women through its application."

## **15. Combating illegal collection of toll<sup>18</sup>**

### Background and problem

In the Chittagong Hill Tracts (CHT) area of Bangladesh, collection of toll or levy on daily goods from the sellers is a common practice for market owners. However, this practice does not follow any rules or regulations. Milon Chakma, PAR group member of CHT, wanted to know what the actual rules and regulations regarding this system were.

### Application for information: Applicant and Authority

Thus, on 16 October 2011 Milon Chakma submitted an application to the designated officer of market fund office, asking for information on the exact amount of toll applicable on a particular item and all associated regulations.

### Description of the case

Twenty working days passed without any response. After that Milon submitted an appeal to the chairperson, Hill Districts Council, Khagrachari. The chairperson ordered that the necessary information be provided, after which Milon Chakma got the information he had requested.

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<sup>18</sup> Case collected by Research Initiatives, Bangladesh.

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### Result

Group members went through the information in detail and found the irregularities and deviations in toll collection. To make common people aware of these irregularities, they made many copies of the document and hung them in important public places all over Khagrachari.

After this document became public knowledge, everybody was aware of the irregularities of the market authority in the collection of toll. "This information is very important to the poor vendors who sell their goods at the local market. Now they know the exact amount they have to pay and as a result the collectors can no longer charge extra from them," said Milon.

### Conclusion

Proactive search for information and its dissemination can reduce the scope of corruption.

## **16. Fighting corruption in allocation of Agriculture Input Assistance Card<sup>19</sup>**

### Background and problem

Mohammad Saud Khan is a nomadic river gypsy belonging to the *Bede* community in Munshiganj district, and has been farming along the River Padma for a long time. However, due to lack of proper agricultural facilities including seeds, fertilizers, and equipment, as well as natural calamities, the yield from his land has always been very poor.

He repeatedly sought help from the local agricultural officials, and was promised financial support if money was ever officially sanctioned. His hope and trust in the government quickly faded and he gave up on any possible assistance. In 2010 he joined the Right to Information project of the RIB as an animator and heard that there was a government scheme through which agriculture cards were provided to poor farmers. In 2010, the Government of Bangladesh introduced an agriculture Input assistance card to provide cash subsidies to poor small and medium farmers.

The program streamlines the agriculture subsidy system for increased productivity. With a card, a farmer has the option to open a bank account with a minimum sum of 10 BDT only, and the subsidy for irrigation assistance can be transferred to the account. Saud felt that he had been denied this assistance because he belongs to the lowly *Bede* community. After learning about the RTI Act, he discovered a way to access government information.

### Application for information: Applicant and Authority

Saud Khan decided to file an application at the *upazila* agriculture office seeking documents describing the rules to obtain agriculture cards for farmers and a list of the recipients of the card from his area. It is to be noted that the office had not appointed a designated officer. Saud Khan submitted the application to an officer of the UAO.

### Description of the case

Despite the absence of any designated officer, an officer remarkably agreed to accept the application. Though Saud Khan did not receive the information within the stipulated time period, initially he did not file an appeal, and decided instead to wait. Fortunately, the wait was worth it, as he subsequently received a response.

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<sup>19</sup> Case collected by Research Initiatives, Bangladesh.

## RTI Case Studies: Bangladesh

Saud Khan was called to the *upazila* agriculture office where he was informed that his name would be added to the list of beneficiaries. Subsequently, he was informed that he had been granted BDT 800 - for one bag of fertilizer and 2 kg seeds - as financial assistance from the government, and a few days later he received the money. He said, "I did not know until now that the right to information can be so powerful."

### The role of the Information Commission

Since Saud Khan had not received all of the information within the time limit under the RTI Act, he finally decided to file a complaint with the Information Commission and the Commission organized a hearing on 15 February 2011. Interestingly, just a few days before the hearing he got the asked for information.

During the hearing Saud Khan described his complaint in detail, as well as the information he was seeking. He said that since he could not get the information he requested from the *upazila* agriculture office within the timeframe stipulated in the law, he had filed the complaint at the information commission.

The *upazila* agriculture officer stated: "After Mr. Saud Khan applied for the information we started collecting it. Because the RTI Act was new and we were not really aware of it, we did not furnish all the information in a proper manner. Now we are aware of it so we will furnish all information requested."

The Information Commission admonished the *upazila* agriculture officer for not caring to learn about the law when it was announced by the government and asked him to put the information requested on the notice board of his office for all to know about it.

### Result

Saud Khan, despite being a representative of the *Dalit* community, received the information. He also received the much awaited support for his agricultural practice. Unfortunately, he was not keen to go further with the list, and check whether other people like him are deprived of their entitlement. It is also a lesson for the authority that it is not wise to ignore the law and better to be prepared for providing information asked by the people.

## **17. Dalits get information on Social Safety Net Programs of the government<sup>20</sup>**

### Background and problem

The Government of Bangladesh has introduced an old-age pension scheme for poor senior citizens of the country within its Social Safety Net Program, known as Boyoshko Bhata (old age pension allowance) for low-income households, since 1997. The scheme provides for a payment of BDT 300 per month to extremely poor people aged 62 years and above living in rural areas. Members of the *Rabidas* community in Saidpur, Nilphamari, who live in chronic poverty and face problems that seriously affect their livelihood, were barely able to benefit from this scheme, even though they were eligible. None of the poor senior citizens in the *Rabidas* community in the area were allocated old age pension, and in the past, whenever they approached the local authorities they were told that the

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<sup>20</sup> Case collected by Research Initiatives, Bangladesh.

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benefits would be allotted to them in the near future. Despite assurances given during election campaigns and other occasions, the benefits did not materialize.

### Application for information: Applicant and Authority

With the adoption of the RTI Act and its subsequent implementation, Munna Das, an animator of the Right to Information Project of RIB, became interested in using RTI for addressing this problem. Munna belongs to the same community from Kundal Village of Saidpur *upazila*, Nilphamari. He wanted to know who was receiving old age pensions, how they were selected, and why other senior and poor citizens from their community were not receiving similar benefits. He started consulting the community to find out if they really wanted to know why they were not receiving benefits that they were rightfully entitled to.

Munna decided to submit an information request to the Saidpur Social Welfare Officer for information relating to the old age pension scheme. Accordingly, he lodged an application for the list of old age pension holders and the modus operandi for selecting them.

### Description of the case

A few days after submitting the application, he visited the social welfare officer (SWO) of Saidpur *upazila*. The SWO informed Munna of his inability to furnish the list, but added that if he provided a list of people with their photos for their inclusion as recipients who deserved the pension, the SWO would consider them. Accordingly, Munna submitted a list of five applicants, four of whom were granted old age pensions by the SWO. The 4 recipients immediately received BDT 1200.

### Result

Munna not only received information about the pensions (although the list was not provided), but was able to help four poor *Rabidas* families with their entitlement of government old age allowance scheme.

## **18. Dayamoy gets gratuity and provident fund<sup>21</sup>**

### Background and problem

Dayamoy Chakma retired from Proshika Human Development Centre after eight years of service there. An amount of BDT 150,327 was due to him from Proshika Human Development Centre as gratuity and provident fund. He was informed that he would be paid within three months after his retirement. When he did not get the money within the time promised, he wrote to the concerned authorities and was told he would receive it on a certain date. This continued for some time. Dayamoy persevered with his efforts and finally got an amount of BDT 25, 000 only. No assurance was given to him about the rest of the amount due to him, and he thought that he would never get his money back, especially as five years had already passed.

### Application for information: Applicant and Authority

In early 2012, Dayamoy came to know through a friend that a former worker of Proshika had been able to get the entire amount due to her from Proshika by using the Right to Information Act. Encouraged by this news, he sent an RTI application to the Proshika head office with the help of Ripon Chakma, an information activist. He asked for policy and rules of Proshika relating to provident fund

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<sup>21</sup> Case collected by Research Initiatives, Bangladesh.

## RTI Case Studies: Bangladesh

management of Proshika workers and all decisions on which savings under gratuity and provident fund of Dayamoy Chakma had been stalled and a list of the decision makers with their designations.

### Description of the case

Proshika authorities sent some information within the 20 working days prescribed under the law. However, Dayamoy Chakma filed an appeal, as the information provided was incomplete. After receiving the appeal, Proshika authority contacted him and told him to come to Dhaka to get the rest of the amount due to him, which was BDT 125,327.

### Result

In Dhaka, Dayamoy received the total amount by cheque. He was overwhelmed with joy that he had received the money through only two applications under the RTI Act, when he had almost given up hope of ever getting his money back. He still cannot believe that a law can be so powerful that it could not only help him to get his money back but also worked as a check against corruption.

## **19. Canteen reopens<sup>22</sup>**

### Background and problem

Students of Zia Hall of Dhaka University suffered a great deal because the hall canteen where they used to eat was closed for three months. As a result, many students were compelled to leave the hall and make other living arrangements, where they would get food. It was known that unruly behavior of some students and the indifference of the hall authorities in dealing with the problem, were the reasons for closure of the canteen and the consequent suffering of the students. They could not protest against these irregularities as this might get them into trouble. The matter was discussed by a students' group in July 2012, where they agreed to apply under the RTI law asking the authorities for copies of decisions based on which the canteen was closed and when it would be reopened.

### Application for information: Applicant and Authority

Based on the decision of the student group of Zia Hall, Shameem Hossain submitted an application to the designated officer of the University of Dhaka to get copies of the decision to close the canteen and to find out when it was scheduled to re-open.

### Description of the case

Within ten working days of submission of the application, Shameem Hossain received a phone call from the designated officer who requested Shameem to see him in his office. As Shameem was in his village on vacation, he informed the concerned officer that this would not be possible. The officer then discussed the matter in detail over the phone, and informed Shameem that there was no written decision to close the canteen; that he regretted the closure of the canteen and assured him that it would be reopened when the university itself reopened after the vacation.

### Result

When the university reopened, Shameem went to visit the canteen with some of his friends on 28 August 2012. They saw that it was not only open but the standard of food had also improved. The

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<sup>22</sup> Case collected by Research Initiatives, Bangladesh.

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incident made Shameem popular as an RTI activist. He now considers the Right to Information Act to be a truly effective weapon for citizens' protests.

### **20. Elimination of illegal fees in school<sup>23</sup>**

#### Background and problem

Collection by school authorities of additional sums of money beyond what they are entitled to from parents of children studying or seeking admission in local schools is a well-known problem throughout Bangladesh. A group of RTI activists/animations in Khagrachari wanted to do sometime effective to stop this evil practice.

#### Application for information: Applicant and Authority

After discussing the matter thoroughly, members of the RTI group decided to send an RTI application to the *upazila* primary education office asking for information on what action was being taken by that office about the illegal collection of additional fees from students of a school in the area. Accordingly RTI activists Ripon and Milon discussed the matter with the *upazila* education officer and apprised him of their intention to submit an RTI application in this regard. The officer assured them of quick action.

#### Description of the case

Following this, a networking seminar was organized by Transparency International Bangladesh (TIB) on 25 January 2012. The participants included the *upazila* education officer, local NGOs like Alo, Jabarang Women Welfare Association, Trinomul, , Ananda and PARHA (Participatory Action Research of Human Advancement) Trust and national NGOs like BRAC. The Right to Information Act and its usage was discussed at length during the seminar.

#### Result

When he took the floor, the *upazila* education officer informed the gathering that the headmaster of the school concerned had agreed to return the money collected by him in an irregular manner voluntarily and that he had already done so by going to the houses of each of the parents. He had apparently collected the money from students in the name of a certificate giving ceremony after the year-ending exam. The *upazila* education officer further told the gathering that submitting an RTI application would have harmed the honor and reputation of the headmaster and he thought that instead of using RTI measures against him it was better to deal with him the way he did. This was accepted by the participants who were positively impressed by the immense power of the RTI Act.

### **21. Lack of confidence in RTI application<sup>24</sup>**

#### Background and problem

Transparency International, Bangladesh, started an initiative to sensitize various government agencies about the existence of the RTI Act and prepare them for the creation of a mechanism to provide information by creating demand. Accordingly, a number of applications were filed with various agencies.

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<sup>23</sup> Case collected by Research Initiatives, Bangladesh.

<sup>24</sup> Case collected by Transparency International, Bangladesh.

## RTI Case Studies: Bangladesh

### Application for information: Applicant and Authority

Mr. Rezaul Karim, a student and a member of Youth Engagement and Support (YES) group of TIB, filed an application on 29 July 2012. He requested information about the budget for construction and repair works at Gazipur Government Vaowal Bodore Alam College. The idea was to unearth corruption in the construction works.

Initially, the college did not have any designated officer. Subsequently, to address the query a teacher was appointed as the designated officer.

### Description of the case

Initially, the college authorities did not respond to the information request, as it did not have a designated officer. Rezaul tried to explain the RTI Act and he demanded that he had the right to ask for this information. Subsequently, the college authority appointed a lecturer as the designated officer. The designated officer of the college received the application and discussed the matter with the college authority and informed Rezaul that it was not possible to provide the information asked for. Instead, the officer offered him a list of the number of students and teachers in the college, and went on to threaten Rezaul, telling him that if he pursued the matter he would face adverse consequences. Apprehending the consequences, Rezaul refrained from filing an appeal to the authority. He knew that the decision to refuse the information was taken with the consent of the appeal authority, so, there was no point in appealing to the college principal.

### Result

The only achievement from the intervention is that the college appointed a designated officer. However, the college authority now knows about the existence of the law and that people can ask for information. It is perhaps also a testimony to the fact that it is the lack of the rule of law, which made the college authority disregard the need to comply with the provision of the law.

### Conclusion

The case raises questions about the appeal procedure, whether it is appropriate that the institutional head is also the appellate authority. It also suggests that more work needs to be done for the promotion of the law and to make the authorities responsive.

## **22. Proactive response is there: It is not a lost cause<sup>25</sup>**

### Background and problem

The Department of Environment is an important entity in the country for preserving the environment. The department implements projects and its budget is significant. It is important to ensure that the allocated funds for the department are utilized with efficiency and transparency. Access to the documents related to budgetary allocation and process of project implementation is an essential instrument for public participation in ensuring transparency.

### Application for information: Applicant and Authority

Ms. Zinat Ara Afroze of Climate Finance Governance (CFG) of TIB decided to conduct a social audit of the activities of the department. She submitted an application to the designated officer of the

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<sup>25</sup> Case collected by Transparency International, Bangladesh.

## Empowerment Through Information -I

department of environment in Dhaka, on 23 May 2012. Ms. Afroze asked for approved project proposals and project implementation manuals.

### Description of the case

Ms. Afroze prepared an application following the format given in the regulations of the RTI Act and went to the department. To her surprise, she was able to find the designated officer very easily. The designated officer welcomed her, received the application and provided her with an acknowledgement letter. The due date for the information was 01 June 2012. She received a phone call from the department on 25 May 2012 that the information she had asked for was ready for collection. This was also a pleasant surprise for her.

### Result

The application for seeking information was honored and the applicant received information as per the provision of the law.

### Conclusion

Proper motivation, training, and institutional procedures can ensure appropriate implementation of the RTI Act.

## **23. Information partially disclosed<sup>26</sup>**

### Background and problem

Land development and housing is a booming economic activity in Bangladesh, particularly in Dhaka. Despite the presence of an authority, 'Rajdhani Unnoyonn Kortripokkho', the ecosystems surrounding Dhaka city have almost been destroyed by the un-planned filling of lowlands and water bodies. Against this backdrop various business groups, especially those with political influence, have received permission for land development and construction of housing estates in violation of the law.

In May 2012, the media published a report about an exclusive deal struck with an Indian conglomerate, Sahara India Pariwar, which apparently allowed the group to acquire huge amounts of land for a housing project, something which is against the law in Bangladesh. Transparency International Bangladesh decided to investigate the matter, so that such a dubious deal could be prevented.

### Application for information: Applicant and Authority

Dr. Iftekharuzzaman, Executive Director of TIB, formally made a request to Rajdhani Unnoyon Kortripokkho (RAJUK) asking for information related to the deal, on 28 May 2012. Dr. Iftekharuzzaman submitted the application to the designated officer of RAJUK.

### Description of the case

Dr. Zaman filed the application to get a copy of the Memorandum of Understanding (MoU) between the Ministry of Housing and Public Works of Bangladesh Government and Sahara India Pariwar. He further asked about the procedures for allocation of land to a foreign company. Also, such a big project would have had to be accompanied by a feasibility study elaborating the cost-benefit analysis, and he wanted a copy of this report.

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<sup>26</sup> Case collected by Transparency International, Bangladesh.

## RTI Case Studies: Bangladesh

The reply from RAJUK was prompt – Dr. Zaman received the copy of the MoU within a week after filing the application. However, the other two documents were not provided to him. He tried to convince RAJUK of the importance of the information, that it was about protecting public interest and had nothing against the RAJUK itself, but no further information was received.

### Result

RAJUK provided partial information in response to the submission of Dr. Iftekharuzzaman. Providing partial information is allowed under the RTI Act. However, there should be proper justification under Section 7 of the law or as per definition of the 'Information' (Section I).

### Conclusion

When there is a dubious practice, the authorities are reluctant to provide full information fearing a scandal. However, the culture of refusal is being challenged by the NGOs through such intervention for protecting public interest.

## 14.

### **Case Studies from India: Some of the many different ways in which the RTI Act is being used**

Misha Bordoloi Singh, Bincy Thomas  
Editors

#### **1. How the RTI gives a sense of empowerment to even the poorest of the poor**

##### *The peanut vendor's case*

A very poor man who sold peanuts on the roadside used the Right to Information (RTI) Act to acquire a copy of the district commissioner's official car log book. The commissioner is the top official of the district, and resides in a mansion under constant police guard. The log book lists the details of each trip made by his official car and the purpose of the trip, presumably to verify that the commissioner's car was only used for official work, as it is supposed to be.

Unfortunately, it is not uncommon for senior officials to misuse their official vehicles for personal purposes. This peanut vendor sat and sold peanuts outside the gates of the commissioner's mansion and often saw the car filled with family members and guests of the commissioner, patently not on official business. Ordinarily a poor person like him would have had neither the guts nor the ability to question the commissioner, and he would certainly not have received an answer. The RTI Act changed all that; he now felt empowered enough to demand information from a government servant about his misuse of public funds, information that he believed he was entitled to. Though the misuse was a comparatively small matter, this case study highlights how the RTI Act has had an impact in changing the way the poor and oppressed view themselves in relation to the rich and powerful, and how the rich and powerful have to keep up with the changes.

#### **2. How the mere filing of an RTI application sometimes resolves the issue about which information was being sought**

##### *Getting security clearance<sup>1</sup>*

Bashir Ahmad Bhat runs a small vegetable shop at Chadoora in Central Kashmir's Budgam district. In 2010, he decided to perform the holy pilgrimages of Hajj and Umrah, and to this end applied for a passport. The stipulated time period for receiving a passport passed and Bhat was told that the Crime Investigation Department (CID) had not dispatched their report on the verification of his identity to the regional passport office. With no way forward, Bhat could do nothing but wait for the CID to do their duty.

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<sup>1</sup><http://www.greaterkashmir.com/news/2011/Nov/18/vegetable-vendor-gets-passport-in-40-days-courtesy-rti-65.asp>

## RTI Case Studies: India

In August 2011, Bhat's son Bilal Ahmed came into contact with local RTI activists, who advised him to file an RTI application under the Jammu and Kashmir Right to Information Act 2009, to find out the status of his father's passport application, and to put pressure on the CID. Bilal prepared his RTI application and went to the CID headquarters in Srinagar to file it. However the guard at the gate refused to let him enter and informed him that the RTI does not apply to the CID. Undeterred, Bilal made his way to the State Information Commission (SIC) and filed a complaint under section 15 of the Act and sent his application to the CID via speed post. The SIC meanwhile sent an official notice to the CID, demanding an explanation as to why they had refused to accept Bilal's application.

After this things began to happen quickly. Within a day of receiving his application and the notice from the SIC, the Inspector General of the CID sent Bilal a response, stating:

"Please refer to your RTI application regarding passport case of Bashir Ahmad Bhat son of Ghulam Muhammad Bhat bearing No: Z-xxxxx/10 has been cleared from CID headquarters and sent to Regional Passport Office Srinagar."

Though not exactly an answer to the questions he had asked in his application, it was precisely the outcome he had hoped for. Though the CID had not elaborated on why the verification of Bhat's identity had taken so long, Bilal speculates that it was because of his family's tragic history. Bilal had had a brother called Muhammad Sultan Bhat, who had become a militant and been killed in 1996, and though neither his father nor he had ever been involved in militancy, Bilal believed that they were held in suspicion by the CID. The RTI Act allowed them to overcome the bias of local intelligence agencies and access the rights and facilities every citizen of the country is entitled to.

### The bicycle thief

This is the heart-warming story of a fifteen-year-old boy in the Northern Indian state of Punjab, who had lost his father at a young age, and was supporting his mother and two younger siblings and putting himself through school by delivering newspapers on his bicycle before his classes started early each morning. Then one day while he was in school his bicycle was stolen. The boy was distraught, and accompanied by an older friend, made his way to the police station to file a complaint. However, as often happens in India, the police refused to register a formal complaint. He was heartbroken, for without a bicycle he would not be able to deliver newspapers, and without that all important source of income he would not be able to support his family or complete his education.

Some of his friends then took him to a local NGO that suggested that he file an RTI application with the police. They helped him draft the application, asking the police why they refused to register a formal complaint about the theft of his bicycle and that if they did not register a formal complaint, then how they expected him to get his bicycle back.

Happily this story ended well. A week later two policemen arrived at the very modest home of this young boy with two brand new swanky bicycles and asked him to pick one. When he protested that neither of the bicycles was his — his had been old and somewhat decrepit — they pleaded with him to please pick one of these and to withdraw his RTI application!

## Empowerment Through Information -I

### The passport case

An interesting phenomenon in India is that often the filing of an RTI application is enough to resolve the problem or grievance about which information was being sought. The applicant does not have to wait to receive the requested information and then use it to seek justice.

An example of this is the case of an 80-year-old woman whose husband had died recently and who had applied for a passport to go spend time with her children who lived abroad. She came to one of our RTI awareness camps and told us that though seven months had passed since she had applied for a passport, she had not yet received it. Whenever she went to the passport office to try and find out what the hold-up was, she was accosted by touts who offered to get her the passport if she was willing to pay a hefty bribe. She wanted to know if the RTI could help her get the passport without paying a bribe.

We helped her to file an RTI application asking why she had not yet received her passport, who was responsible for the delay and what action the government intended to take against the responsible officer. We told her that she would have to go once again to the passport office to submit her RTI application along with the prescribed fee.

She was back at the camp the next day, and initially we thought that perhaps they had refused to accept her RTI application. However, she was jubilant and had come to share her experience with us: she said that when she arrived at the passport office and gave her RTI application with the prescribed fee to the concerned official, the official read her application, asked her to wait for a minute, went inside and came back with her passport, which he then handed to her – with the request that now that she had got her passport, she should not file the RTI application!

### Delhi roads

One day a young software engineer walked into the office of an RTI NGO, wanting to know if the RTI could help him ensure that the road leading to his house is properly repaired and maintained. He often returned from office after dark on a motorcycle, and because the stretch of road leading to his residential colony was full of potholes, he had come close to having a terrible accident more than once. He claimed that though the road was repaired periodically, the potholes reappeared soon afterwards, presumably because the material used for repairs was substandard.

He was advised that under the RTI Act he could not only seek information but also demand samples of the materials being used to repair the road, and have the samples analysed in one of the laboratories designated for this purpose. If the material being used was found to be substandard, he could then file a complaint against the contractor and the supervising officials.

Some months later the young engineer dropped in again and told the NGO that as advised he had asked for a sample of the materials when he noticed road repairs in progress a couple of weeks after he visited them. Two days after he filed the RTI application he was visited in person by the contractor who was carrying out the repairs. The contractor asked him why he wanted the sample. When the engineer told him that he was fed up with the potholes appearing within a few days of the repairs, the contractor promised him that this time no such thing would happen. The next day the contractor came back with his workers and covered the road again and since then many months have passed and the potholes have not reappeared.

### **3. How the RTI Act exposes the high and mighty**

#### A House for India's President<sup>2</sup>

Retired Colonel Suresh Patil is a passionate campaigner for the rights of those in the armed forces. He started an NGO called Justice for *Jawans*<sup>3</sup> which campaigns for the rights of soldiers and war widows, and works to ensure their welfare and just treatment by the government. In 2012 he made a very disturbing discovery. It seemed that Mrs. Pratibha Patil, the then President of India, had been allocated 261,000 square feet of land within the Khadki army cantonment in Pune. On this land was to be built a bungalow 4,500 square feet in dimension, at government expense, for her private use upon retirement. The building was to be fortified, and two defense bungalows were demolished to make the land available.

In sharp contrast, within the cantonment itself, *jawans* of the Territorial Army were housed in appalling conditions. 800 of them were posted in Pune, but there was residential accommodation for only 14. As a residential posting, *jawans* were entitled to bring their families with them, but with such extremely limited accommodation this had become near impossible. Those who decided to bring their families to live with them anyway were forced to live in slum-like conditions, without any running water or electricity. All because there was an acute shortage of space and funds to create adequate housing for the young men who often sacrifice so much for the ideals of their nation.

In such a situation, the actions of the Indian President created outrage. Colonel Patil filed an RTI application with the President's Office, seeking information on what benefits the President was entitled to upon retirement, under the President's Emoluments and Pension Act, 1951, and the President's Pension Rule, 1962. The reply he received made it clear that the President's proposed retirement home was being built illegally.

According to the information received, the President was entitled to a residence that was comparable to a residence allotted to a union minister, a government-owned bungalow (around 4,500 sq ft), if it was available. If it was not, she was eligible for a rented bungalow no bigger than 2000 square feet in any part of the country, hired at government expense. She was not allowed to build a home on government land.

Already unpopular for her extravagant travel expenses (also made public through the use of the RTI Act) and the allegations of corruption against members of her family, this story created a wave of disapproval and anger. Her office continued to deny any wrongdoing or illegality but she was further discredited when Colonel Patil discovered a letter sent from the President's Office that appeared to demand the allocation of the cantonment land.

The issue also became linked to the mistreatment of war widows and veterans, and pressure began to mount on the President. Soon after the story broke, President Patil publicly surrendered the land and the newly constructed bungalow. The land can now, hopefully, be used to build some of the housing desperately needed by the nation's *jawans*, but the costs of construction will never be recovered.

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<sup>2</sup>[http://articles.economicstimes.indiatimes.com/2012-04-28/news/31453504\\_1\\_post-retirement-home-president-patil-pune](http://articles.economicstimes.indiatimes.com/2012-04-28/news/31453504_1_post-retirement-home-president-patil-pune)

<http://indiatoday.intoday.in/story/pratibha-patil-land-grab-charges/1/184202.html>

<sup>3</sup> A *jawan* is a soldier in the Indian Army.

## Empowerment Through Information - I

### The Minister avoiding imprisonment using a false medical certificate

The Supreme Court of India had convicted a state minister for contempt of court and sentenced him to one month's imprisonment. It is not unknown for powerful and influential people to escape prison sentences by getting false medical certificates that allow them to check into a hospital and spend the length of the sentence in comfort. This is exactly what the minister did, and spent his one month imprisonment in a hospital.

An RTI activist filed an application and sought a copy of the medical records that allowed the minister to spend the jail term in a hospital. Initially the government refused to give the documents, citing the exemption of privacy, but on appeal the government was forced to part with the information, proving that the minister had been admitted under false pretense. Consequently, it has now become almost impossible for people to get false medical certificates in order to avoid imprisonment.

### Judge's travels<sup>4</sup>

An RTI application asking for details of expenses incurred by the government on the foreign travel of judges of the Supreme Court, and their families, has revealed some interesting results.

An RTI application shows how judges have gone for holidays at government expense. Ironically the urge to travel starts at the top. The then Chief Justice Balakrishnan, after taking over as Chief Justice, made at least seven trips abroad in 2007, traveling First Class with his wife, with the air fare alone costing over Rs. 3.9 million. For instance, during his 11-day trip to Pretoria, South Africa, in August 2007, the Chief Justice took the following route - Delhi, Dubai, Johannesburg, Nelspruit, Capetown, Johannesburg, Victoria Falls, where the judge finally didn't go, and returned via Dubai to Delhi.

The air fare alone cost Rs. 570,000 and did not include the stay or entertainment allowance, which would itself have been over Rs. 80,000. Government rules permit travel only by the shortest route, yet the Prime Minister's Office, which sanctions these trips, did not ask why the Chief Justice wanted to go to tourist destinations like Nelspruit, Capetown or Victoria Falls.

Union Law Minister HR Bhardwaj says, "They also need comfort, they also need to go out. Why they should be deprived of it." And what about government rules that say judges cannot be accompanied by wives on work tours? "How can you deprive the wife? You are a woman. You should understand," Bhardwaj tells the woman correspondent who interviewed him.

Former chief justice YK Sabharwal's foreign travel was no different. The judge attended three conferences in 2005 in Edinburgh, Washington and Paris. While the conferences lasted 11 days, Sabharwal was out for 38 days with 21 days converted into a private visit.

The travel plan includes a detour from Washington to Baltimore, Orlando and Atlanta, before re-joining the conference route in Paris. The First Class air fare for Sabharwal's entire trip was paid by the Central Government.

Other judges too have travelled abroad costing the exchequer huge sums of money. Supreme Court judges Justices PP Naolekar and AK Mathur could not find a direct flight to Bangkok in November 2007.

Interestingly, rumours have it that after the story of judges' foreign travels was carried by the media, the expenses on judges' foreign travels have gone down by more than half!

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<sup>4</sup> <http://www.rtiindia.org/forum/4258-judges-holidaying-public-expense.html>  
<http://ibnlive.in.com/news/judges-junk-rules-for-junkets-with-wives/65630-3.html>

## RTI Case Studies: India

### UPA ministers fly high with 751 foreign trips in 2 years<sup>5</sup>

The Prime Minister's Office's directive last year asking ministers to avoid frequent foreign tours to conserve foreign exchange seems to have gone with the wind. UPA II ministers made at least 751 visits abroad within two years of the formation of the government in May 2009. Of these, airfare expenditure details of only 260 trips are available—over Rs120 million.

Information accessed under the RTI shows that between May 2009 and June 2011, the PMO received 777 proposals for foreign tours from about 40 ministries. Only 26 of these were rejected by the PMO. The government woke up to the situation in mid-2010 and put in a stringent procedure to check overseas travels by ministers. While 378 proposals for foreign tours were cleared between May 2009 and July 2010, the figure for the next one year is 371 — little reduction in the number. Altogether, UPA ministers spent about 3,000 days abroad in the two years.

Besides airfare, there was expenditure on accommodation, food, etc. However, these details couldn't be accessed for any of the 751 trips — which would have shown the total cost borne by the national exchequer on the foreign travels of our ministers.

### Tax tribunal head visits hometown at government cost

An RTI reply has revealed that the President of the Customs Excise and Service Tax Appellate Tribunal (CESTAT), travelled eight times to his hometown Goa from Mumbai and Delhi on government expense for non-existent official meetings.

The query was filed by Pune resident Kunal Mahamuni. The reply put the CESTAT President's travel allowance for the trips from Delhi and Mumbai during May 8, 2009 to January 3, 2011 at Rs 230,000. The reason for the trips was shown as meetings with the Goa commissioner for creating a unit. But the commissioner, in another RTI reply, denied holding any meetings with the President to discuss the formation of the tribunal. Last month, Mahamuni complained to the Chief Justice of India and CAG about this.

The RTI reply on the President's trips said: "The hon'ble president, for constituting the circuit bench at Goa, convened meetings with the commissioner for ascertaining proper place during the period March 16, 2009 to October 31, 2010." But the commissioner said: "As per records, there was no meeting held with the president for this."

### Retired cops using orderlies in Tamil Nadu<sup>6</sup>

While the police department claims that it had abolished the orderly system in 1979 through a government order (GO), a reply to an RTI enquiry has revealed that even retired senior officials still enjoy the services of orderlies.

A list from the police headquarters show that as many as 55 retired senior officials, from the ranks of DGP to IG, still use orderlies at their homes apart from hundreds of serving officers who do so.

"Even for us, sitting in the headquarters, it has been a difficult process to keep track on orderlies, because orderlies are never officially sanctioned. So the list may not be complete," a senior police official disclosed.

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<sup>5</sup>[http://www.dnaindia.com/india/report\\_upa-ministers-fly-high-with-751-foreign-trips-in-2-years\\_1632634](http://www.dnaindia.com/india/report_upa-ministers-fly-high-with-751-foreign-trips-in-2-years_1632634)

<sup>6</sup><http://www.deccanchronicle.com/channels/cities/chennai/retired-cops-use-orderlies-200>

Wed Sep 12, 2012

## Empowerment Through Information -I

In the reply to the RTI application it was initially said that the orderly system was abolished in the year 1979. But the reply also attached a list of officials as an answer to the question of details of retired senior officials who were enjoying the services of orderlies. The list showed that as many as 22 retired Directors General of Police, 16 retired Additional Director Generals of Police and 17 retired Inspectors General of Police still had men or women from the police constabulary at their disposal to do menial jobs at their homes.

Sources said that some officials ask men from the department to polish their shoes, take care of their dogs and even make pickles at home, thus treating the orderlies like slaves.

“Yes, a GO dated September 9, 1979 by the Tamil Nadu government had abolished the orderly system officially. But the police officials had been somehow finding a way to get orderlies deployed at their houses. Usually the officials ask the local police station or special units to send men home to do their personal work.

Unless all units and police stations inform about orderly deployment to a single cell, which does not exist, it is very difficult to get the details of orderlies used by police officials,” confessed an official.

### *A plot of land for the judge’s wife*<sup>7</sup>

The Lokayukta (anti-corruption ombudsman) Of the state of Karnataka, a retired judge of the Supreme Court of India, has been telling television channels that his wife had bought the 4,012 sq feet plot at Nagawara from the Vyalikaval House Building Co-operative Society at an “outright sale”. But the sale deed of the land clearly states that the society had “allotted” her the site out of turn.

Following media stories titled ‘When it came to owning plots, even Lokayukta was ignorant of law’, various television channels have been following up the story that brought to light how the Lokayukta, despite being a former Supreme Court judge, had given law the short shrift to procure land in the city for himself and his wife. First, in 1994, he obtained a 9,600 sq-ft site in his name from the Karnataka State Judicial Department Employees House Building Co-operative Society. Then, in 2006, his wife was allotted land by the Vyalikaval House Building Co-operative Society. Both allotments violated the model bye-laws of house building cooperative societies as the judge had been the owner of a house in Vasanthnagar since 1985.

The judge had told the media that the site in his wife’s name was bought at an auction conducted by the Vyalikaval HBCS. On Friday, he told the electronic media that his wife bought the land in 2006 in an “outright sale” conducted by the society, which financially was in dire straits during that time. But paragraph six of the sale deed, executed on October 11, 2006 between the Vyalikaval HBCS and the judge’s wife, tells a different story. The society put it down in writing that the judge’s wife was a member of the society and had applied for a plot in layout formed by it. The sale deed states in no uncertain terms that the Lokayukta’s wife was granted the plot on the basis of her application: “The committee of management of the society has considered the application of the purchaser, who is eligible for the allotment of site and accordingly, allotted site bearing BDA No. 252 in the layout...”.

If the sale deed is telling the truth, then the judge’s explanation to TV channels doesn’t hold water. “It is clear from the sale deed that his wife was a member of the society and had applied for a site. The

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<sup>7</sup> [bmfeedback@indiatimes.com](mailto:bmfeedback@indiatimes.com)

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judge must now substantiate with proof the explanation he gave to TV channels on Friday, about his wife purchasing the plot at an outright sale,” senior advocate Kumar S said.

A paragraph in the sale deed (above), which explains the payment details, states that the judge’s wife’s association with the society was not a sudden development. It reads: “...in pursuance of the said allotment and in consideration of a sum of Rs 20,06,250 paid by the purchaser from time to time to the vendor society (Vyalikaval HBCS)...”

#### **4. How the RTI Act is used to get information that should in any case have been in the public domain without the use of transparency legislation**

##### Locating cell phone towers<sup>8</sup>

The residents of the Nilesh Society at Kandarpa in Dahisar suddenly began to feel unwell in the years before 2010. They started to experience headaches, insomnia, hair loss and joint pains, among other symptoms. Initially baffled by the concentration of illness, IIT-Bombay professor Dr. Girish Kumar teamed up with Harish Pandey of the New Link Road Residents’ Forum to try to understand what was happening.

Both noted that three cell phone towers had been constructed on top of the Victor Shelter building, which was less than 30 feet from Nilesh Society, and suspected that the residents were suffering from radiation poisoning. They brought in Wilcom Technologies Pvt Ltd, an IIT-B incubated firm, to measure the radiation levels in one resident’s flat and made a shocking discovery. According to their readings, the combined radiation measured in the living room, kitchen, master bedroom and another bedroom, especially near the windows, was alarmingly high.

Pandey then filed an RTI application with the local civic body and discovered that there was no official record of any permission given to mobile telephone operators to build towers on the Victor Shelter building. However, this came as no surprise him. As recently as the year before, RTI applications had revealed that mobile towers erected near the Ganpat Patil Nagar slum, at a height of barely 25 feet, were constructed illegally. Those towers exposed everyone who even passed by them at street level to high levels of radiation and created amongst residents the same medical problems as were later noticed in Nilesh Society.

The towers at the Ganpat Patil Nagar slum were ultimately dismantled, but this was not a common result. Pandey and Kumar were not hopeful that the towers near the Nilesh Society would be removed; for them it was just another example of the indifference of telecom companies and the government to the suffering of people who are forced to live close to these towers.

Further, as reported by Neha Kumar, Director of Nesa Radiation Solutions, the Indian government has adopted a level of radiation for its safety guidelines that is higher than that accepted internationally. The only avenue that residents have to protect themselves is to install radiation proof window shields, which offer them some protection. But until the government acts on the information revealed by the RTI Act and removes the illegal cellphone towers, the residents of Nilesh Society, and all other

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<sup>8</sup><http://timesofindia.indiatimes.com/city/mumbai/No-civic-nod-for-3-cell-towers-atop-building-RTI/articleshow/11248029.cms>  
<http://newlinkroad.wordpress.com/2011/12/26/forum-exposes-illegal-hazardous-mobile-towers/>

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communities where illegal towers have been built, will continue to suffer the effects of radiation poisoning.

### Free education for Delhi's poor children

For the last nearly fifty years land was being given at subsidised rates to private schools in Delhi, India, on a contractual obligation that these schools would reserve 15% of their seats for children from economically disadvantaged families, and that these children would be provided free education. However, most schools did not honour this obligation and got away with it entirely as the public was both unaware of the obligation and unclear about whether the schools were honouring it or not.

It was only in 2002 that, using the Delhi RTI Act, some activists started asking schools for details on how many such children had been admitted, and also started informing the public of their right to free education. In the last ten years, because of the use of the RTI Act, nearly a hundred thousand poor children are now studying free of charge in some of the best private schools in Delhi.

## **5. How the RTI Act can be used to expose corruption and thereby facilitate remedial action**

### Taking on the Fair Price Shop

In Saldi village (population 3000), 225 km from Gandhinagar, the capital of Gujarat, a remarkable young man decided to use the RTI Act to tackle the village's fair price shop. Fair price shops receive subsidized grain and fuel from the government, and are meant to sell it at subsidized rates to anyone who has a ration card. Such cards are issued to members of the below poverty line (BPL) community, as well as to other groups.

Bhadresh Wamja, an 18-year-old, second year commerce student came from an affluent family, categorized as APL, or above poverty line, and so had never used the fair price shop, though he and his family were entitled to. Bhadresh became interested in the shop after hearing his friends complain about how it never had any stock of wheat, rice or kerosene to sell. Intrigued, Bhadresh went to speak to the shopkeeper, who told him that the reason the shop was always empty was because it had not received supplies from the government for several months. Unimpressed by the shopkeeper's story, Bhadresh decided to use the RTI to find out what was actually happening.

On 11<sup>th</sup> February 2011, he filed an application with the *tehsildar*<sup>9</sup> of Lilia *taluka*<sup>10</sup> asking for a list of all stock that had been sent to the Saldi village fair price shop between August 2010 and January 2011. The response was quick – the *tehsildar* ordered the fair price shopkeeper to give him the information within 15 days, an order that the shopkeeper promptly ignored. Bhadresh and the *tehsildar* then spoke again, and the *tehsildar* arranged an inspection of the shop – ostensibly in order to put pressure on the shopkeeper. However, the day before the inspection Bhadresh spotted the shopkeeper emptying his shop of many large sacks of grain. He caught this on camera and waited for the *tehsildar* to arrive.

To Bhadresh's surprise, the *tehsildar* did not go to the shop the next day; he came to his house, and tried to persuade him to give up on his RTI application, and not to get involved in such matters. It seemed that the *tehsildar* and the shopkeeper had reached some kind of understanding. Bhadresh,

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<sup>9</sup> A *tehsildar* is a revenue administrative officer in India and Pakistan in charge of obtaining taxation from a *tehsil*. The term is of imperial Mughal origin made of *tahsi*", an Islamic administrative derived from Arabic, meaning "revenue generating; collection" and *dar*, Persian for "holder of a position", together meaning tax collector.

<sup>10</sup> A *taluka* is another name for a *tehsil*.

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fortunately, was unmoved. He had already received threats from the *tehsildar*, and was facing pressure from his own family to drop the issue, but was determined to persevere.

Bhadresh was in touch with an NGO called *Mahit Adhikar Gujarat Pahel*, which ran an RTI helpline, and he now contacted them for further guidance. They advised him to file a police report detailing the threats he had received, which he did, and further that the information he was seeking was supposed to be published *suo moto* at the deputy *tehsildar's* office, and that therefore should be his next port of call.

Bhadresh eventually made his way to the office of the district supply officer, who held all the details relating to the fair price shop in Saldi. Here, to his indignation and shock, Bhadresh discovered that his village shop was supplied with 8,306 kg of wheat as regular supply and 1,599 kg as extra wheat between August 2010 and January 2011. Further he discovered that the shopkeeper claimed to have distributed all the wheat he was allocated to cardholders in the village. When Bhadresh shared this information with the members of his village, they were outraged, and for the first time openly and actively began to support Bhadresh. The threats became fewer as the group became larger and eventually the *tehsildar* could no longer ignore the situation, or the villagers' demands for justice. He was forced to inspect the shop, and the cards issued to villagers, which showed very clearly that they had not received any ration at all – in sharp contrast to the claims made by the shopkeeper. The *tehsildar* was forced to write a report against the shopkeeper, and the district supply officer started an inquiry as well. Most importantly though, the shop began to supply rations to everyone immediately, and the shopkeeper even put up a list of prices and stocks outside his shop, as he was required to do under the law.

Bhadresh's actions, and the changes made in the functioning of his village's fair price shop, inspired similar actions by people in other villages. The Food, Civil Supplies and Consumer Affairs Department subsequently sent an order to all *tehsildars* and fair price shops in Gujarat directing them to proactively disclose ration supply information on the shops' walls and at the *tehsil* level. Though there are concerns that shopkeepers will not abide by the order, the *Mahit Adhikar Gujarat Pahel* has started a campaign across 22 villages to educate the public about their rights, and following Bhadresh's example, they have become fierce in demanding and safeguarding them.

### Repairing a village bridge

In the early days of the RTI, teams of RTI activists visited villages in many parts of the country to spread awareness about the Act and its relevance to the life of the average villager. During one such visit, the people of the village told the activists that the bridge spanning the stream next to their village had broken six years ago. They had been petitioning the government every year to have the bridge repaired, but the officials had told them that the government had not yet allocated the required funds. As a result they had to travel an extra ten kilometres every day in order to go to the neighbouring town or to catch a bus from the main road. Could the RTI help them to get funds released to have their bridge repaired?

The RTI activists helped them to draft an RTI application asking the government for reasons why the bridge had not been repaired so far and also when they could expect the government to sanction the required funds. This RTI application was addressed to the district commissioner who had the authority to sanction the required funds.

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Lo and behold, in fifteen days they got a most surprising reply where the commissioner's office informed them that as per official records the funds for the repair of their bridge had been sanctioned five years ago and that the bridge had already been repaired. In fact, last year additional funds had been sanctioned to repaint the repaired bridge! However, as their RTI application suggested that the bridge had not actually been repaired, an inspection team was being sent to enquire into the matter. The inspection team found that the local officials had pocketed the sanctioned money and had certified on paper that the bridge had been repaired. Therefore, action was initiated against the guilty officials and the bridge was finally repaired in reality!

### *The mystery of the orphan overbridge<sup>11</sup>*

Both Pune Municipal Corporation (PMC) and the National Highways Authority of India (NHAI) deny control over or responsibility for a faulty over bridge on the Mumbai-Bangalore bypass, but no one knows who went and did repair work on the spot in the dead of the night, after an RTI was filed demanding answers.

An over-bridge linking Sus and Pashan on the Mumbai-Bangalore bypass near Pashankar Auto has become what can only be described as an orphan bridge. The PMC has claimed that the bridge was not constructed by them and so they are not responsible for its repair. On the other hand, the NHAI has denied performing any repair work on it as well, since the bridge falls under the jurisdiction of the PMC. The NHAI say it was handed over to the PMC after they constructed it.

## **6. How the RTI Act can make elected representatives more accountable**

### *Monitoring the attendance of elected representatives in committees and assemblies/Parliament*

An RTI group in Delhi is monitoring the performance of our elected representatives in the various state (provincial) assemblies and in the national Parliament. It builds up report cards of each one of the elected members on various parameters, including their attendance in the assembly/Parliament, the issues they raise, the work they do in committees and how effectively they use the funds allocated to them for the development of their constituencies. They then publish these report cards in leading national and regional newspapers in the lead up to the elections, so that the voters can assess the record of their elected representatives.

The success of their approach is witnessed by the numerous phone calls and messages they get, some of them angry and others questioning the information that they have made public, all of which they have officially got from the government by filing RTI applications. Interestingly, one elected representative berated them on the phone saying that if they had told him in advance that they were going to monitor his attendance and make it public, he would have made sure that he attended the assembly more often!

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<sup>11</sup> <http://www.punemirror.in/article/2/20110617201106170715493543981d24a/The-mystery-of-the-orphan-overbridge.html#ftr2>

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### **7. How the RTI Act can identify threats to our physical health**

#### *Over 1,100 Children Used As Guinea Pigs, Reveals RTI Query<sup>12</sup>*

Nearly 40 doctors and 18 hospitals in Indore, from both the government and the private sector, are being investigated for malpractices in clinical trials conducted by them. This follows shocking revelations of the details of some of these medical trials.

For instance, over 1,100 children have been used in clinical trials from which doctors in a leading government medical college earned lakhs of rupees. In one shocking case, out of the nine subjects of a trial on the possible use of the drug 'Tadalafil' in pulmonary hypertension (otherwise used for male erectile dysfunction), seven were women and one was a 17-year old boy, all from poor families.

Replying to an RTI application filed by health activists, the Madhya Pradesh legislative assembly gave details of clinical trials conducted by various doctors in MGM Medical College and associated M Y Hospital amounting to lakhs of rupees in the period 2005-10. The doctors earned between 4 to 5 million rupees each. In comparison, the take-home salary of the senior-most professor at MGM Medical College is Rs. 75,000 per month. Clearly, the clinical trials are the dominant source of income for these doctors.

According to an editorial in the latest issue of the Monthly Index of Medical Specialties (MIMS), during 2005-10, of the 2,365 patients enrolled for clinical trials in five medical colleges in Madhya Pradesh, just six doctors in MGM Medical College and associated M Y Hospital recruited 1,521 patients; the bulk of them (1,170) were children.

"In the case of 15 clinical trials, instead of obtaining permission from the on-site ethics committee of the medical college, permission has been obtained from strange non-verifiable entities claiming to be ethics committees located thousands of kilometers away in Pune or Ahmedabad", as pointed out MIMS editor Dr. C M Gulati.

After the issue of clinical trials was raised in the assembly last year, two committees were constituted, one by the secretary of medical education and another by the health department headed by chief medical and health officer Dr. Sharad Pandit. While the medical education committee is yet to submit its report, Dr. Pandit has submitted a preliminary report, which has raised concerns about ethics committees being constituted against norms. Dr. Pandit's committee noted how a trial located in the medical college got approval from the ethics committee of a private hospital and other such irregularities.

Members of Swasthya Adhikar Manch, a network of NGOs who had filed several RTI applications to expose the manner in which clinical trials were being conducted, have expressed concern over the lack of any government action. "The issue was raised last year. The accused doctors continue to hold their positions. They can easily influence the poor patients who they enrolled for the trials and manipulate documents. They should have been transferred to ensure free and fair probe," said Amulya Nidhi, one of the members of the Manch.

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<sup>12</sup> Posted by: "Ashish Dey" [ashishdey55@yahoo.com](mailto:ashishdey55@yahoo.com) [ashishdey55](http://ashishdey55)  
Sun Jun 5, 2011 7:55 am

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### Indore hospital uses children as guinea pigs<sup>13</sup>

Paras Sacklecha, an Independent MLA from Ratlam, has found through an RTI application that the Nehru Hospital in Indore has subjected at least 1883 children to drug trials - a fact that has not been acknowledged till now. Worse, these figures may have been manipulated, so the number of children tested could be far larger.

"The doctors have taken advantage of illiteracy and poverty of the wards of kids who were subjected to drug trials. Fake records have been provided. There is no record of what happened to these kids. Whether they are dead or alive," said Paras Sacklecha.

The possible forging of these records means that no one can locate these children. Sacklecha sought their addresses under the Right to Information (RTI) but they were denied to him. The records also contain other inconsistencies - in 12 cases children who were said to have undergone the trials were born much later than the dates provided for the trials.

### RTI: Steroids in many unbranded ayurvedic medicines<sup>14</sup>

Findings from an RTI application have revealed toxic levels of steroids and metallic contents in many unbranded ayurvedic medicines that are freely available in the market. The application filed by chemical consultant and RTI activist Dr. A Shenoy had asked for the details of steroid and metal content of ayurvedic samples sent to KEM's Ayurveda Research Centre (ARC) over the past five years. Results showed that out of the 244 samples analysed, 96 (39.34%) had tested positive for steroids like betamethasone, dexamethasone and prednisolone.

## **8. How the RTI Act can be used to scrutinise charitable trusts and people's institutions**

### Armed with RTI, man gets justice against a charitable trust

After 11 years of doing the rounds of the charity commissioner's office, Qamar S Qazi has emerged victorious in his fight for justice. The 77-year-old Mazgaon resident used the Right to Information (RTI) Act to expose fraud in an educational charitable trust, which, he alleged was done in collusion with some of the junior staff members at the office of the charity commissioner.

Qamar Qazi, a former assistant commissioner of Customs, was a trustee of Anjuman Tarakki Achara, a charitable educational trust based in Bhendi Bazaar. He was illegally removed from the board by a new management committee, which submitted fake documents to the charity commissioner's office.

The committee submitted two fake attendance lists of a no-confidence motion with forged signatures, many of them fictitious while others of dead persons, to oust Qamar Qazi. Last week, based on Qamar Qazi's complaint, the Dongri police arrested the Chairman of Cancer Aid Research Foundation, a former corporator, and a Bombay Municipal Corporation engineer.

"It's a big victory for the RTI Act. I was able to expose the fraud only because I could get incriminating documents from the charity commissioner's office," said Qamar Qazi, who despite bypass surgery stretched himself to the limit in his pursuit for justice.

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<sup>13</sup> [INDIA](#), Updated Jul 15, 2011 at 09:17am IST

<sup>14</sup> <http://www.expressindia.com/latest-news/rTI-steroids-in-many-unbranded-ayurvedic-medicines/890597/>

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On discovering the forgery, Qamar Qazi lodged a criminal complaint against the existing trustees at the additional magistrate's court, Mazgaon. The court directed the Dongri police to investigate the case. The police report confirmed forgery. The court then ordered the police to file a chargesheet. Qamar Qazi also filed an RTI query with the joint charity commissioner's office asking for the status of the case.

The joint commissioner not only initiated a probe, but also said in his report that some members who were shown present in the list were not there. Also, the members did not sign the minutes of the meeting, the report stated.

"The police randomly checked with 48 members from the attendance list and found that 34 neither took part in the meeting nor signed the no-confidence motion papers," Qamar Qazi said. Though summons were issued and an opportunity was given to the accused to present their case and submit the original papers, there was no response from their side, he added.

### Traditional democracy turns 'democracy'<sup>15</sup>

The Dorbar Mawsynram Dongrum (Mawsynram Dongrum Village Council's) decision to punish 28 odd families in the form of "social boycott" for their alleged non-cooperation with the village council has exposed the so-called traditional democracy which can also be dubbed "democracy", say learned citizens of the State of Meghalaya.

The alleged nonconformist residents of the Mawsynram Dongrum area, who happen to be above the poverty line (APL) and below the poverty line (BPL) beneficiaries, have questioned the village fair price shop dealer as to why they have been deprived of their quotas of rice for 72 months and sugar for 90 months. These households have unearthed the anomalies through an RTI petition filed at the Supplies Department where the report clearly listed that the approved village fair price dealer acquired their food grains during 2002-09.

Interestingly, the defaulting fair price shop dealer is the wife of the village chief. The fair price shop dealer had earlier agreed in a village dorbar to compensate the rightful beneficiaries for the food grains that they were entitled to, but did not receive. But on Monday the village council decided to take punitive action against the potential beneficiaries for their alleged defiance (or for accusing the wife of the village chief of diverting food grains to the black market).

Speaking to media representatives over phone on Wednesday, the village chief said, "Yes, the village council has taken a decision to take punitive action against these families for not conforming to the village practices and laws."

The chief, however, subsequently said that, "The punitive action will be decided by the village executive committee on Thursday evening". This new statement was made by the village chief fearing reprisal from the district administration.

A functionary of the dorbar told this correspondent that the village council had already taken a decision to socially boycott the 28 families and the reversal is "due to fear (of the Chief) of being caught for his manipulative maneuvers".

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<sup>15</sup> Posted by: "anjumanara Begum" [begum\\_anjumanara@yahoo.com](mailto:begum_anjumanara@yahoo.com) [begum\\_anjumanara](mailto:begum_anjumanara), Thu Jul 7, 2011 8:34 pm <http://www.sentinelassam.com/meghalaya/story.php?sec=2&subsec=8&id=81283&dtP=2011-07-07&ppr=1#81283>

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Nevertheless, when asked whether the type of punitive action in the form of social boycott had been endorsed, the Chief went round the mulberry bush by putting the onus on the executive committee and the dorbar, besides claiming that the proposed punitive action was endorsed by the majority of the residents.

Observers feel that the Mawsynram Dongrum village council's decision to take punitive action against the villagers who dare raise questions on their rights is nothing less than what can be expected from the ruthless and barbaric Khap panchayats of some North Indian states, but is misplaced in the village councils of Meghalaya.

Reacting to the developments, RTI activist and convener of Mait Shaphrang Movement, Michael Syiem said "This is an instance of blatant misuse of power by the village council."

Former State Home Minister RG Lyngdoh termed the council decision "a chauvinistic approach by the grassroots traditional form of governance".

Additional Superintendent of Police (ASP) Vivek Syiem rushed to Mawsynram to investigate the matter. He held parleys with a number of elderly residents of the area.

Meanwhile, the Civil Society Women's Organization (CSWO) wrote to the National Human Rights Commission on Wednesday on the issue, stating that "this is a direct contravention of the Constitution of India and human rights directives of Rights to Food, and we appeal to your kind office to intervene with the Government of Meghalaya".

### **9. Using the RTI Act to extract bribes**

#### *PIO demands cash for information, gets 2 years in jail*

In perhaps a first, Ratnagiri sessions judge V M Airekar on Tuesday sentenced a public information officer (PIO), to two years' imprisonment for demanding and accepting a bribe from activist Prashant Harpekar. The judge also imposed a fine of Rs 10,000 on the officer, who will have to spend an additional three months in jail if he fails to pay the fine.

The activist had sought information from the Ratnagiri *tehsil* office, in Maharashtra state, on the allocation of food grains to self-help groups and cooperative societies from July 2007 to August 2008 under the public distribution system.

Harpekar was told that he could collect the information after paying Rs. 750 as the cost of photocopy. However, when he went to the office, he was asked to pay Rs. 1,450. Harpekar lodged a complaint with the anti-corruption bureau against the PIO on October 13, 2008. "He was caught accepting a bribe of Rs. 700 for providing the documents to me under the Right to Information (RTI) Act," Harpekar said.

Ever since the Act came into force six years ago, RTI activists have been complaining about non-cooperation of PIOs. The activists are also upset that the information commissioners have done little to take the erring PIOs to task. "Most PIOs refuse to give out even routine information," an RTI activist said. "If somehow they agree to provide us with the information, they sit on it and take too long."

Though the law came into force in 2005, several government offices are still without PIOs, said the activist. "As a result, no information is available from these offices. The chief information commissioner must ensure the landmark legislation is implemented in letter and spirit," he added.

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"While there are clear provisions for imposition of penalty on erring officers, most PIOs get away with paltry fines or worse, just warnings," the activist said.

### **10. Using the RTI Act to expose violation of government rules and norms**

#### Politicians call the shots on transfers of cops<sup>16</sup>

The extent of interference of state politicians in transfers of police officials in Maharashtra has become evident from the number of recommendations made to the Director General of Police's (DGP) office by various ministries in the two years between January 1, 2009 and January 1, 2011. A request for information filed by activist Jeetendra Ghadge under the Right to Information Act (RTI) reveals that as many as 231 requests for transfer of police personnel were made by the chief minister, home minister and legislators. Of these, 54 recommendations were approved by the DGP's office. Most of these came from the home department.

Confirming the increase in interference of politicians in transfers of officials, retired joint commissioner of police, YC Pawar said, "Interference by politicians largely depends on senior authorities. Between 1970 and 1990, meddling by politicians was not much. However, it increased considerably thereafter".

In the two years between 2009 and 2011, two additional superintendents of police, 11 deputy superintendents of police, 13 police inspectors and 10 assistant police inspectors were transferred on recommendation made by the home minister's office. Twelve police sub-inspectors were transferred on recommendation from the chief minister's office.

"The DG's office looks into transfers of posts like the additional superintendent of police, deputy superintendent of police, police inspectors and personnel below these ranks," said Ghadge. "The fact that they receive recommendations from the home department indicates that the department wants absolute control of police in Maharashtra, right from a constable to the DGP," he alleged.

Dr BK Upadhyay, inspector general of police establishment said, "Usually, application for transfer is made along with recommendation of a minister or an MLA. But the recommendation is considered only after evaluating various pros and cons of the application." Upadhyay added, "A police establishment board, comprising five senior authorities of the DG office, scrutinises the application, and sees if the tenure of the official is complete or not, whether or not it [the recommendation] fits within the rules and regulations, and whether or not it is genuine case. Only then the recommendation is considered."

#### RTI query reveals 4000 officers flouted transfer norms

Lokpal, the anti-corruption ombudsman, may be the buzz of the times but in a striking example of how existing policies to stem corruption are routinely subverted, RTI replies from the ministry of corporate affairs show that some of its officers have stayed put in the same posting for more than 35 years.

In a separate reply, the Department of Personnel and Training (DoPT), Government of India, said it had no documents to answer whether it was empowered to act against departments flouting the rotation transfer policy (RTP). In answer to an RTI query about how many officers across departments had stayed beyond RTP stipulations, DoPT said it had 132 pages of the information and the applicant

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<sup>16</sup> Hindustan Times, Mumbai, August 03, 2011

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could pay for whatever copies he wanted. At an average of 30 names per page, that is 4,000 officers who have overstayed.

RTP was mooted as a safeguard against corruption, the logic being that if a person is in the same office for too long, he/she is more likely to bend rules. As per the rules, a central staffing scheme (CSS) officer in the rank of undersecretary, deputy secretary or director cannot stay in one ministry for more than five years and in case of section officers/assistants, for more than seven years.

As per a list furnished by the corporate affairs ministry, seven officers have been in the ministry for more than 16 years at a stretch. One of its officers has been there since 1972 – for 39 years. There are five officers who have spent more than 30 years in the ministry – two of whom were transferred last year but are yet to be relieved.

Citing the list, RTI activist Dev Ashish Bhattacharya had asked DoPT what was being done on the matter and also asked what action had been taken against the ministry of corporate affairs for not relieving two officers who are in the ministry since 1977 – but were transferred in 2010 to the ministry of rural development. DoPT cited four reminders for relieving the officers but on the query about what action it was empowered to take against ministries or departments flouting DoPT directions, the CPIO said, "No document to answer your query."

Incidentally, a DoPT office memorandum prescribes a time limit of "45 days within which CSS officers under transfer... must be relieved of their duties in their present ministries/departments. It was also laid down in the CSS (amendment) Rules 2010 that if an officer is not relieved within 45 days or such further period... the officer shall be deemed to have been relieved... shall not be entitled to draw any salary and allowances for the period of such overstay".

### RTI exposes nepotism in Gujarat courts<sup>17</sup>

An RTI query has revealed major irregularities in the appointment of clerical staff in a district court in Gujarat, with most of them being relatives of judges.

Four years after 80 vacancies for stenographers, clerks and peons were filled up, questions are being raised over the transparency in which these appointments were made. Response to an application filed by RTI activist Janki Prasad Shah revealed that 32 of the total 80 selected candidates failed to match the age criterion of 18-25 years. It also revealed that one selected candidate was 48 years old and 18 candidates had not passed the government-approved typing examination, a pre-requisite to apply for the job.

Notarised official documents provided by the Dahod District court show that about half of the chosen candidates are either related to judges or other judicial officers. "More than 700 applications were from the district itself. Although all of them were eligible, it was already decided who would be chosen," said Janki Prasad Shah.

Interestingly, many of the full-time appointees were already working on an ad-hoc basis. Documents also revealed that they appointed themselves for the posts. Although Raju Solanki's name figured on the list of peons, it was arbitrarily removed a couple of days later.

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<sup>17</sup> [INDIA](#), Updated Jul 15, 2011 at 09:55am IST

## RTI Case Studies: India

Both Raju Solanki and Janki Prasad Shah have approached the Gujarat High Court which supervises all judicial appointments. When contacted, the Registrar General of the High Court said that their demand for nullifying the appointments will be forwarded to the Chief Justice

### *Citizens have the right to know how judges are appointed: CIC<sup>18</sup>*

The Supreme Court's denial of an RTI request for details of correspondence between the law minister and the Chief Justice of India about the procedure for appointment of judges has led the Central Information Commission (CIC) to ask whether citizens have no right to know how their judges get their jobs.

"It cannot be anybody's case that the change in the procedure of judges should happen completely outside the notice or the knowledge of the citizens of India and that (they) should not be given an opportunity to articulate their views. The objective of the RTI Act is precisely to help create an informed citizenry (which) can hold the state and its instrumentalities to account," Chief Information Commissioner Satyananda Mishra wrote in his order.

"...The procedure of appointment of judges or any proposal for modifying that procedure should necessarily be available in the public domain so that the citizens know what is transpiring among the major stakeholders, in this case, the Government of India and the CJI..."

The order came on an appeal filed by RTI activist Subhash Agarwal to access written communications between the CJI's office and then union law minister Veerappa Moily on the proposal to modify existing procedure with an aim to appoint judges who meet high standards of competence and integrity.

This is the second time that the CIC has confronted the SC about judges' appointments. It had earlier ordered that the process of appointment should not be a closed-door affair of the collegium — an order that saw the SC appeal to itself and successfully get a stay on the CIC's decision. The matter was then referred to a constitution bench.

### *Parents can now inspect school's infrastructure<sup>19</sup>*

The last time Sarita Kumari, a resident of Kalyanpuri, went to her daughter's school in the same locality, she was informed that the six toilets in the school are functional and clean. But Kumari's daughter Meena, who studies at a government secondary school, regularly complains about the pathetic state of sanitation facilities there.

In an order passed by the Central Information Commission (CIC) on Wednesday, parents and NGOs have been given the right to inspect the infrastructure available at the school.

"This is a very important order as it will enable us to compare the ground reality with what the school claims to provide," said Saurabh Sharma, member, JOSH, an organisation working in the field of education. Following the recent order, the Directorate of Education (DoE) sent out a circular in October 2011 which forbade NGO workers or citizens to enter schools without permission and also said that no one would be allowed to conduct any inspection or interaction in school.

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<sup>18</sup> <http://www.financialexpress.com/news/citizens-have-the-right-to-know-how-judges-are-appointed-cic/895901/>

<sup>19</sup> <http://www.hindustantimes.com/India-news/NewDelhi/Parents-can-now-inspect-school-s-infrastructure/Article1-836710.aspx>

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On Wednesday, however, Information Commissioner Annapurna Dixit ordered that schools will have to present all records to the parents.

"I direct the DoE to issue fresh circular giving lists of both records and the physical facilities which can be inspected by any citizen," the order says.

Dixit, however, made it clear that the information seeker shall not be free to question the school authorities about infirmities or inadequacies at the time of inspection.

### **11. Using the RTI Act to fight court cases**

#### *RTI Act proves to be a potent weapon for litigants<sup>20</sup>*

For the public who were in the dark about the goings-on in the administration, the landmark 'The Right to Information (RTI) Act, 2005,' proved to be a boon. Empowered with the Act, they could make the officers accountable after getting hold of official information. For litigants who are in the habit of taking the officials to task using public interest litigation (PIL), the RTI has proved to be a powerful weapon.

After the passage of the Act, more and more clients are approaching advocates with information obtained under the RTI Act. They file petitions based on the significant information officially sourced under the Act. As this information carries weight in trials, the party to the petition or advocate starts work two months before filing the case by filing RTI applications. "The RTI Act is a boon for litigants. Prior to the RTI Act, documenting evidences against government and its officials for their failure to do their lawful duty was a laborious task. Nowadays, this difficulty has been reduced because of the RTI Act," said R Gandhi, another advocate.

Official information obtained under the RTI Act is widely used in almost all types of cases, including civil, criminal, service, labour, PIL etc. Sensitive cases seeking transfer of investigation or direction to register FIR or those involving encroachments, the National Security Act or the Goondas Act also use it. It is seen that many PILs quoting RTI details are granted immediate relief by the court which appreciates the details. "Eighty percent of PILs are filed with information obtained under the RTI Act. Even a client from a remote area comes along with RTI details, which assist the case to be disposed at the earliest. The court also gives immediate relief by appreciating such details," advocate R Alagumani said.

Even prisoners, who have been languishing in jails, have come out of custody by using the Act. For instance, in 2008, the government released some prisoners who were imprisoned for up to seven years by granting a remission of sentence. Subsequently, four prisoners in Madurai Central prison who were not released though they met the same conditions as the prisoners who were released, filed petitions at the High Court bench under the RTI Act. In August, three among them were released after a favourable order from the court. Now, the petition filed by the other prisoner, Velmurugan, is pending before the court, said Alagumani.

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<sup>20</sup> Source: The Times of India, [http://articles.timesofindia.indiatimes.com/2013-1017/madurai/43143124\\_1\\_rti-act-goondas-act-national-security-act](http://articles.timesofindia.indiatimes.com/2013-1017/madurai/43143124_1_rti-act-goondas-act-national-security-act)

## RTI Case Studies: India

### **12. The Government using the RTI Act to seek information from itself**

#### *An assistant secretary seeking official reports from the chief secretary*

An assistant secretary of the Rajasthan Legislative Assembly (RLA) has filed an RTI application with the Chief Secretary of Rajasthan asking for a copy of the 'Review Report' on the enlisted recommendations in the 78th report by Public Accounts Committee (2004-05). The mentioned report was to be sent within six months after re-evaluation by Chief Accountant General for which the applicant has already sent six reminders. Via this RTI application he seeks the aforementioned 'Review Report'.

### **13. Some profound uses of the RTI Act**

#### *Impact of government schemes*

An applicant wanted to know what steps have been taken since independence to eradicate the rich - poor gap, what have been the results of these steps, what good has this done to the scheduled castes/tribes (SC/ST) and other backward classes (OBC). If they have not been affected then wants to know the reasons.

#### *Rationale for traffic rules*

An RTI applicant asked the government why it is that in a flight you are allowed to remove your seat belt as soon as the flight takes off, but the law insists that in a car you wear it all the time.

# 15.

## RTI Case Studies from Nepal

Taranath Dahal

### 1. Foreword

It took more than 17 years to establish the legal provisions of the Right to Information (RTI), though the citizens' right to access information of public concern and importance was enshrined as a

Abbreviations	
CSOs	Civil Society Organizations
CIAA	Commission for Investigation of Abuse of Authority
CA	Constituent Assembly
DOR	Department of Roads
DDC	District Development Committee
DEO	District Education Office
HSEB	Higher Secondary Education Board
IRD	Inland Revenue Department
ICC	International Criminal Court
LPG	Liquefied Petroleum Gas
MOF	Ministry of Finance
NIC	National Information Commission
NPC	National Planning Commission
NOC	Nepal Oil Corporation
NGOs	Non-governmental Organizations
OPMCM	Office of the Prime Minister and Council of Ministers
RTI	Right to Information
SLC	School Leaving Certificate
SMC	School Management Committee
VAT	Value Added Tax
VDC	Village Development Committee

fundamental right in the constitution of Nepal. During this interval of time, the Supreme Court sometimes made landmark decisions on RTI and four ordinances were drafted stressing the need to formulate the RTI Act. However, awareness and knowledge on RTI among people was still very low. Nevertheless, after one year of the historic people's movement of 2006, the RTI Act was promulgated.

However, the legal and institutional setup alone was not enough to make the RTI come to life, and it remained largely unused. A need was therefore felt to make the demand side effective and proactive, and to use the RTI to make public agencies responsive, transparent and accountable. Realizing this, a strategic campaign was launched on seeking information with the use of RTI laws. Many success stories came out of this campaign, and it also spread awareness about the RTI

and the powerful tool that it is, in various parts of Nepal.

In the course of making various public agencies adhere to and implement the RTI Act internally, we went through a long struggle, which has yielded some very interesting stories. In the initial years of RTI use, numerous applications requesting information were ignored by the concerned agencies. However, an unrelenting campaign of information seeking in parallel with capacity building on RTI brought forth gradual progress.

Most applications made in the initial period went unheard till the National Information Commission (NIC) was moved on the issue and stepped in. This situation was an indication of the absence of a culture of information sharing and can be seen throughout the case studies, though there was gradual improvement as time went on.

## RTI Case Studies: Nepal

For the compilation of successful RTI stories, more than 50 cases were shortlisted by our initial study. General trends emerged in our search for case studies, across sectors and interest groups. For instance, there are several cases where applicants are seeking copies of answer sheets from the same board of examination, and it was found that other examination boards had received similar queries. An RTI case relating to the Tribhuvan University went as far as the Supreme Court, and after the SC decision came in favour of the applicant, it built up pressure on other boards of examination to initiate change. There are several other cases of information being sought from government bodies at the local level, but only selected success stories are included here. The stories are categorized into six sections, though all of them inspired people to use the RTI and contributed to augmenting good governance to a great extent in the state. There are 18 such case studies included in this book.

Rigorous groundwork was done to prepare these case studies. I express my gratitude to my research fellow Yekraj Pathak and all Freedom Forum colleagues including Executive Director Krishna Sapkota for this. Equally complimentary is the editing of the success stories volume. My friend Binod Bhattari contributed to presenting the case studies in this form. And, heartfelt thanks go to all who contributed with help and suggestions in this work.

### **2. Overview**

Nepal's Right to Information Act came into effect on 20 August 2007. Although the 1990 Constitution included RTI as a fundamental right, it was practically useless for the lack of a law. The Interim Constitution of Nepal 2006 continued with the provision (Article 27). Following the restoration of democracy in 2006,<sup>1</sup> the government began formulating the RTI Act in 2007. The National Information Commission (NIC) was formed six months after the enactment of the RTI Act. The RTI regulations were enacted in 2009.

Nepal's ongoing political transition, which began in 2006, has remained a major challenge to the effective implementation of the RTI Act. The first phase of the transition ended in May 2012 after the term of the Constituent Assembly – elected in 2008 – ended without promulgating a constitution. RTI implementation remained on the sidelines of the political agenda throughout this period. Civil society advocacy has therefore been vital for operationalizing the law. In this regard Freedom Forum, a major civil society group, has been advocating for, and testing RTI implementation in Nepal.

The government made two attempts to constrict the scope of the RTI Act by classifying information, and failed on both occasions following civil society protests. The most recent attempt was made in 2012, when it tried to classify 140 types of information as secret. The government was forced to withdraw the effort following a Supreme Court order to petitions made by civil society organizations (CSOs). Generally, government agencies have been hesitant in even meeting the proactive disclosure requirements of the law, though some ministries have made efforts to be open. The Ministry of Finance stood out in this respect when it published a report to meet the requirements of section 5 (proactive disclosure) of the Act.<sup>2</sup> The report was published in September 2012. Another positive development has been the decision by the government to set up a nodal agency for coordinating RTI

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<sup>1</sup> Between February 2006 and April 2006 Nepal was under direct rule. Democracy was restored following a movement of the political parties and the Maoists (then engaged in a 'People's War') after which Parliament, dissolved in 2002, was reinstated.

<sup>2</sup> *SuchanakoHakSambandhiAin 2064 koDafa 5(3)*

*BamojimPrastutGariyekoArthaMantralayaSangaSambandhitSarbanjanikBibaran.* (Information on the Ministry of Finance related to section 5(3) of the RTI Act 2007.)

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implementation in the Office of the Prime Minister and Council of Ministers (OPMCM). RTI principles have also been included in the government's governance reform strategy, which however, remain to be implemented.

Meanwhile, civil society groups have made several attempts to seek information using the RTI Act. They have carried out public awareness programs, and training and orientations on the law and also supported citizens in using the Act to seek information. The media has widely covered information disclosed through RTI appeals and this has assisted the process of building awareness. It was not possible to record all the information provided by public agencies proactively following the enactment of the law, but there are records of nearly 300 complaints made at the NIC following denials, which is an indication that information is not easily available. The following table shows the type of information sought by different citizen groups.

**Table 1: Information appeals at NIC filed by citizen groups (2008-2012)**

Year	Govt. officials	Students	Businessmen	Legal practitioners	Judges	General public	Journalists	Total
2008/09	3	1	-	-	-	6	2	12
2009/10	10	11	-	3	1	11	3	39
2010/11	9	14	6	2	-	13	3	47
2011/12	22	20	4	4	-	57	2	109
2012/13	17	15	7	5	-	25	3	72
<b>Total</b>	61	61	17	14	1	112	13	279

Source: NIC

From the data it appears that members of the general public filed the largest number of complaints with the NIC. Students and government officials were also actively seeking information. Significantly, the number of journalists making RTI requests was low. The NIC data (Table 1) is based on complaints and does provide an indication of who is seeking information and also shows that there are denials, which is why the complaints reach the Commission.

Most of the appeals reaching the NIC were adjudicated in favor of the applicants. This publication is an attempt to analyze some RTI cases where citizens were able to obtain information. It includes only cases that reached the NIC, and among those only ones that were unique either in terms of information sought or the agency that was involved. The lengths of the case studies also vary based on information sought and the complexities during the information seeking process.

All the success stories presented here have their own importance and substantially showcase the power of information and its multiple effects in different sectors. The stories (cases) were selected after detailed research and observation of the use of RTI as a tool to access strategically important public information, and are spectacular in terms of demonstrating how public agencies can be held to account. Considering that there are nominal publications about RTI in Nepal, Freedom Forum has carefully presented the process involved and the achievements made from the information requests. The process is to demonstrate the struggle required to get information in Nepal while the impacts are to showcase the success of RTI in Nepal. The success stories are developed in six thematic areas

## RTI Case Studies: Nepal

including exposing misuse of public resources, RTI use among youth, information in public interest, RTI for protecting whistle blowers, RTI and democracy and RTI in local governance.

### **3. Exposing misuse of public resources**

#### RTI and VAT fraud investigation

In spring 2010, Nepal's Inland Revenue Department (IRD) seized fake value added tax (VAT) invoices that were being sold at local stationeries. Amid reports that companies used these invoices to evade taxes a story appeared on CNN online about how a report prepared by the IRD on VAT evasion had gone missing, possibly because business elites had influenced the Finance Minister. The CNN piece reported that fake VAT invoices had been used to evade almost Rs. 20 billion in taxes, and also named some businesses that were allegedly involved in the scam. These reports surfaced in the wake of the resignation of the Finance Secretary who was said to have quit following 'disagreements' with the Finance Minister. Some newspapers even speculated that it was possible he resigned over a dispute with the minister on how to handle VAT evasion. Questions had also been raised in Parliament on this issue, to which the government had not provided a satisfactory response.

In the meantime, Freedom Forum obtained information from the Ministry of Finance (MOF) that the Department of Revenue Investigation had formed a special five-member task force in 2010, led by a deputy director, for the investigation. It had submitted its report to the Director-General of IRD, who had forwarded it to MOF, but no decision had been taken on it. The information received by Freedom Forum suggested that 515 businesses had used fake invoices to evade about Rs.10 billion in taxes. No action had been initiated because a decision was pending.

**The Process:** Tara Nath Dahal, chair, Freedom Forum, filed an RTI application on 8 May 2011 with the MOF seeking information on the tax evaders. He wanted to know the names of the VAT evaders (both individuals and businesses) and also the amount of revenue lost. He asked for copies of the 'Investigation Report on Tax Evasions using Fake and Duplicate VAT Invoices, 2010' and its annexures 1-7.

The government did not provide the information within 15 days of the application, as was required by law. Nor was the petitioner given a reason for the non-provision of information. Next Dahal took his case to the Finance Secretary, the first appellate authority, on 9 June 2011. The Finance Secretary initially did not respond, and later said he was unable to make the disclosure. Responding to the resulting appeal, on 11 July 2011, the NIC ordered the Finance Ministry to either provide the requested information within three days, or give an explanation to the Commission as to why the information had not been made available. The ministry did not comply with the order.

Instead of responding to the appeal and the orders of the NIC, on 20 July 2011 the ministry sought the opinion of the Attorney General's Office and was advised against disclosure because of the 'confidential' nature of the information under tax laws. Earlier, on 21 June, the Ministry of Finance – through a ministerial decision – had also decided that the information could not be disclosed. The ministry had used a similar argument to deny information while responding to NIC's 11 July order.

Consequently, the appellant was forced to appeal again to the NIC, on 15 August 2011.

**Disclosure:** Eventually, the Ministry of Finance disclosed the information, on 30 October 2011. This was in response to the NIC's final decision that said the requested information was a matter of public concern and therefore the petitioner had the right to be informed. The NIC added that it was the

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public's right to know if the taxes they paid had reached the exchequer, or if they had been stolen and that people had the right to know if certain businesses might have taken the money using fake invoices. The order read, "If such scandals are made public, the concerned can be discouraged, and similar crimes are likely to be prevented. Transparency discourages while concealment of public information could encourage it. Therefore, people will be deprived of information if the probe report on tax evasions is kept secret."<sup>3</sup>

The Ministry of Finance disclosure said a total of 518 companies had been investigated but information on only 437 was disclosed. Though the reported loss in taxes was Rs. 10 billion, because information on 81 companies in the probe report was not released, there was reason to suspect that the losses could have been higher. The remaining information was not made available because the investigation into the remaining 81 companies was ongoing. As a result, the NIC directed the ministry to make public only information contained in four out of the seven annexes that had been requested. The remaining information was later obtained from the Inland Revenue Department (IRD).

**Follow-up requests:** Not satisfied with the partial disclosure however, the applicant made another request for information to the IRD. He asked for names of all 518 companies, their owners, the violations committed and the total amount to be recovered. IRD refused to register the application on 6 August 2012 saying the information sought was protected under the Right to Privacy. He then took the application to the Director-General (28 August 2012), the head of office, to file an appeal against the denial of information.<sup>4</sup> The next day a director at IRD provided some information that said the government needed to recover Rs. 6.59 billion of evaded taxes but did not disclose the names of companies that had defaulted. The tax office said the information was protected under section 3.2 of the RTI Act and also section 74, of the Revenue Act that has provisions for protecting taxpayers. This denial was appealed at the NIC on 7 October 2012. The RTI Act gives NIC 60 days to take a decision on a complaint or appeal. After this time had elapsed, the applicant wrote to the NIC requesting a response on the status of the application.

Interestingly, on 14 February 2013, IRD Director General Sharma filed a case against Freedom Forum and the National Information Commission in the Supreme Court, demanding a certiorari<sup>5</sup> and mandamus<sup>6</sup> order in his favour. In this regard, Freedom Forum took the stand that those evading taxes are not taxpayers, but criminals. So, they need not have their privacy protected, as argued. With this stand, Freedom Forum submitted its written response to the SC on 15 March 2013 and reasoned that it had the right to get the information sought. The case is still pending at the SC.

**Impact:** The information received showed how policy level inaction could affect public interest, particularly on an issue that was tantamount to stealing from the treasury, and therefore from the people. The disclosures also provided moral support to honest policymakers, government officials and law enforcers, who were previously unable even to disclose the information because of the influence of some big businesses on the government. There was higher tax collection in 2012 compared to 2011, and this could have been influenced by the RTI disclosures. On 12 August 2012 *Saurya Dainik* (a

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<sup>3</sup> Translated from Nepalese.

<sup>4</sup> By law the appellate authority is the head of office of the concerned public agency.

<sup>5</sup> **Certiorari** is a [writ](#) seeking [judicial review](#). It is issued by a [superior court](#), directing an inferior court, tribunal, or other public authority to send the record of a proceeding for review. Source: <http://en.wikipedia.org/wiki/Certiorari>

<sup>6</sup> **Mandamus** is a judicial remedy in the form of an order from a superior court, to any government subordinate court, [corporation](#), or [public authority](#)—to do (or forbear from doing) some specific act which that body is obliged under law to do (or refrain from doing)—and which is in the nature of public duty, and in certain cases of a statutory duty. Source: <http://en.wikipedia.org/wiki/Mandamus>

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vernacular daily) had a report that said revenue collection had increased by 27 percent in the first month of the fiscal year (mid-July to mid-July). The Monthly Tax Bulletin of IRD in July-August 2012 also reported an increase in collection by Rs. 3 billion, which it attributed to successful reforms in revenue administration. The disclosure also received wide coverage in the media. The knowledge that some tax information could be disclosed may also serve as a deterrent to potential defaulters. The government began recovery of the unpaid taxes, and was challenged by businesses at the Revenue Tribunal. On 4 September 2012 the tribunal ruled in favor of the government, and all of this was possible with only partial disclosure of information through RTI.

### RTI and free fuel coupons

Nepal Oil Corporation (NOC) is the state company that has a monopoly over petroleum products – diesel, petrol, liquefied petroleum gas (LPG), kerosene, and aviation fuel. It has the sole rights to purchase, transport, store, and distribute petroleum products. It purchases petroleum products from India, fixes prices with government consent and sells and distributes petroleum through private and public sector retailers and dealers. It is also the agency that licenses petrol and diesel retailers.

Despite the monopoly, NOC has a history of huge losses, largely because prices were always artificially (politically) suppressed. Almost every attempt to raise prices to match international rates has been met with widespread protests because of the lack of transparency in how NOC conducts business. Both NOC and the government have justified every price hike as something necessitated by increasing losses. However, the fact that there were losses did not prevent NOC employees from receiving additional salaries and payments for up to as many as 27 months in a year, under different budget lines. Further, there were many reports in the media accusing NOC of indulging in corruption relating to price fixation, licensing, and transportation contracts, and while appointing dealers.

Following an attempt to raise prices in October 2011, the Minister for Supplies told the media that NOC faced losses because “of managerial lapses and distribution of free coupon(s),” in addition to the differences in the buying and selling rates (*Karobar* daily, 24 October 2011.) The information that some individuals obtained free coupons for petroleum products triggered an information request by Freedom Forum.

**Process:** The information request made on 6 December 2011 sought the following:

1. The number of coupons and volume of fuel distributed since 17 July 2006, names and addresses of individuals receiving free coupons, and of outlets that distributed free petroleum products;
2. Certified copies of criteria or policy/directive, standard or decisions for distributing free coupons;
3. The volume of oil and LP gas purchased, and dated cost and selling prices after 17 July 2006.

Upon failing to obtain the requested information, Freedom Forum appealed at the NIC. NOC did not provide the information and informed Freedom Forum that it did not have an information officer. Next the applicant filed another application addressed to its executive director (27 December 2011), the appellate authority, requesting the same information, and reasons if it could not be disclosed. The executive director neither provided the information nor the reasons for denial.

An appeal was filed before the NIC on 16 January 2012 and on 19 January 2012 the Commission ordered NOC to provide the information within seven days or provide explanations for not doing so. NOC did not comply, following which the NIC wrote back on 15 February 2012 asking for the status of

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the implementation of its order. On 20 March 2012 Freedom Forum went back to the NIC seeking legal action against the NOC executive director for non-compliance. The NIC then issued another order giving NOC 15 days to comply with the information request. It also asked the executive director to appear in person at the NIC with a written response on his failure to implement previous orders.

In response, NOC sent two separate letters to the NIC. One letter, signed by a director on 26 March 2012, said the disclosure was delayed for lack of human resources to search for the information. Attached with the letter was a page listing the cost and selling prices of petroleum products from 2007/2008 to 2011/2012. But the information supplied was not adequate to compare the cost levels with the changes in prices of petroleum products, and the information was not certified by NOC.

The second letter had a 75-page attachment, but it did not have information on the criteria, policy, directive or decisions on the distribution of free coupons. It only stated coupon numbers, some vehicle numbers and amount of petroleum products distributed. It contained the information from 2008/09 to 2011/12 (not from 2006 as requested). The recipients were not named and this information was also not certified. This information was provided on 5 April 2012.

Not satisfied with the information, another appeal was filed with the NIC on 10 April 2012. The NIC wrote to the NOC executive director again on 3 June 2012 ordering that the information sought be provided within a week, failing which he would face legal action. Thereafter NOC sent more information to the NIC, with copies to the applicant. This 12-page document had information on the prices of petroleum products on different dates, and some sections of the ledger with records of profit and loss signed by its auditors for 2006/2007, 2009/2010 and 2010/2011. NOC, however, did not disclose the cost of distributing free coupons, other administrative costs and the fully audited accounts.

On 28 June 2012 another appeal was filed reminding the NIC to take a decision on the pending request within 60 days, as provided by law. The appeal also sought information on action taken on the appeal dated 10 April 2012. Eventually the NIC invited the applicant and the NOC chief executive to its office for a meeting on 16 July 2012. The meeting was attended by the NOC executive director, his legal advisor and Dahal, where NOC stated that it was not its intention to hide information and that it was making all efforts to make it available. At the meeting the NOC chief estimated that free coupons worth around Rs. 170 million could have been distributed in the period under question without proper records and said that the distribution of coupons had not stopped. He also assured the information seeker that NOC would make efforts to provide all information, which had not been possible because of poor recording keeping.

A month later, on 22 August 2012, NOC sent the applicant a letter with a 101 page document. The document provided cost prices of petroleum products purchased on different dates, selling prices fixed at 10 different depots and the information it had sent the NIC earlier. All information that had been requested was received 142 days after the first appeal. Though it was not possible to obtain information on who received the free coupons, it was established that the head of NOC had done that arbitrarily, which is a matter that needs to be investigated by anti-corruption bodies.

### **Impact:**

- It took nine months to receive the information from NOC. The information was widely covered by the media and therefore is expected to serve as a deterrent to distributing free oil to individuals in position of power and influence.

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- The information request and appeals were also able to establish that no public agency is beyond the scope of the RTI law.
- NOC has appointed an information officer and has begun posting price information on digital displays at three locations. The display provides the cost price, expenses, and updates on profit and loss. It has also begun publishing a bi-monthly bulletin 'Nepal Oil News'.

### **4. RTI use among the youth**

#### RTI in education

The education system in Nepal has long been questioned for its quality and fairness in evaluation and at times students have either boycotted examinations or resorted to violence when not pleased with the outcome. This has been a problem with all major educational institutions, and centrally administered school-level examinations, including the School Leaving Certificate (SLC). The RTI Act has allowed students at different levels to seek access to their examination answer sheets when they've felt the evaluation was unfair. In most cases, the outcome was a correction of the score that was initially allotted.

**RTI Process:** The first information request related to examinations was made on 14 June 2009. This was when Bijay Aryal, a BBS<sup>7</sup> 1<sup>st</sup> Year student, and four others, wrote to the information officer at Tribhuvan University – the country's oldest and largest university – seeking access to their examination answer sheets of Business Statistics and English. Failing to obtain information from the information officer, they knocked on the doors of the chief examinations controller, the appellate authority, on 30 June 2009. The appeal eventually reached the NIC, which ruled in favor of the students.

However, the university did not comply with the NIC's order, and refused to provide the students access to their papers. Subsequently, the NIC wrote again to Tribhuvan University asking for an explanation for the denial. The university responded on 25 August 2009 saying that it was unable to provide the answer sheets because its laws and regulations did not permit access to examined answer sheets but allowed students to request a re-totaling of their marks. It added that it maintained confidentiality of answer sheets that were verified and scrutinized by well-qualified and competent academic resource persons and said that disclosing the information could put the examiners at risk. Other reasons for non-disclosure were: (1) answer sheets are disposed after six months of the publication of result; (2) the applicant had applied long after the results were published (the result was published 13 June 2008 and the applicant applied on 14 June 2012) and the answer sheets have already been destroyed; (3) the Right to Information Act section 3 (3)(e) has a provision for not disclosing information that may put someone's life at risk, or damage property, health or may result in a threat. It also asked the NIC to nullify the information request.

The NIC, however, decided otherwise and ordered the university to provide copies of the requested answer sheets as per Section 2 (a) of the RTI Act. The section obligates all public institutions to make the disclosure. The NIC order said examinations and evaluations by a public institution like the Office of Examinations Controller are matters of public concern and therefore citizens have the right to

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<sup>7</sup> Bachelor in Business Studies.

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access the information. On the university's claim that the life of individuals could be endangered the NIC said there was no need to cover up work that was carried out honestly and accurately.

Not satisfied with the NIC verdict Tribhuvan University challenged the decision at the Supreme Court. The court, however, not only ruled in favor of the NIC on 18 May 2011 but it also ordered the university to formulate rules to facilitate the provision of answer sheets to students. It also added that the examiner's identity could be kept confidential while providing the certified copies of answer sheets. The court decision says:

- (a) An applicant can request for his/her own answer sheets only.
- (b) No applicant can request for answer sheets of others, or do so even with consent of the person concerned.
- (c) Students would require admission cards of the examination to make the request and collect the answer sheets.
- (d) The university can determine the fees and deadline for providing the information.
- (e) The university would be the sole authority for re-totalling or re-examining the answer sheets in case there are mistakes.
- (f) The identity of the examiner of the examination papers shall be kept confidential.

Tribhuvan University had not prepared the rules for providing students access to answer sheets when this report was prepared. However, the information request and the court verdict triggered a series of information requests at other academic institutions and in almost all cases the students were able to get their grades revised. Some academic institutions have also used the court verdict to set high fees to deny access to students.

### RTI and school level examinations

Ashesh Neupane, a student of Suryodaya Jyoti Secondary School, Ghattekulo, Kathmandu, filed an application at the Office of the Examinations Controller on 19 July 2011 seeking access to his answer sheets. The request was denied, and led the applicant to file an appeal with the NIC. On 21 July 2011 the NIC ordered the examinations controller to either provide access to answer sheets in accordance with the Supreme Court decision or explain reasons for not doing the same. The examinations controller, Surya Prasad Gautam, wrote back saying his office did not have authority to provide copies of the requested answer sheets. Following that, the NIC issued another order asking the controller's office to provide access to answer sheets without disclosing the examiner's name. In another case Sangam Biswokarma, from Makwanpur, was unhappy with the marks he was given in his English paper – 32/100. He appealed for access to his examination papers, and upon review his score was revised to 97/100. Nine other students had made similar requests and of them four were able to get their marks revised.

### RTI at the high-school level

Sushma Subedi of Morang district had failed in Population Studies in her Grade XI examinations. The results showed that she was marked absent on the day of the test, even though she had been present and had taken the test. She made an information request to access her mark sheet at the Higher Secondary Education Board (HSEB) in Biratnagar but was denied information. Upon pursuing her case in Kathmandu, she discovered that she had scored 19 out of 20 marks in the said examination.

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### RTI and scholarship entrance test

Ashesh Pradhan of Khairhani, Chitwan, did not find his name among those selected for scholarship at the Ministry of Education. Not satisfied with the selection he applied to the Ministry of Education for access to his exam papers and was able to find out his actual score, which is not generally published in the announcement of the candidates selected for scholarships.

### High fees bar citizens from accessing information

Raj Shrestha, a Purbanchal University student in Biratnagar, had sought information on rules related to accessing answer sheets and was able to obtain the information, following the intervention of the Nepal Information Commission (NIC). Disclosure by the university on 3<sup>rd</sup> December 2012 revealed that it had set an unusually high fee for the service: Rs. 5,000. The university's executive council had approved this rule on 8<sup>th</sup> August 2012. The fee was in violation of the RTI regulations that say information up to five pages has to be provided free of cost and that above this can be charged at Rs. 5 per page. The NIC then issued another directive asking the university to accordingly lower the fees.

High fees can be a major obstruction to accessing information. There was an instance where a person was unable to obtain the information he wanted because of the cost involved. Balaram Dahal had requested copies of the tax statements on the salaries of the Constitution Assembly (CA) members. But he was unable to obtain copies because copying would have cost Rs. 80,000. The applicant did not go back to Parliament because the information sought could have involved copying about 16,000 pages.

### RTI and college level test results

Sangam K. C., a student of the Nepal Medical College affiliated to Kathmandu University, and seven others<sup>8</sup> filed an appeal with the NIC on 11 April 2010 saying the university's examinations controller had rejected their application for information they had sought. The students wanted access to the scores for practical examinations held at the college. The NIC ruled in favor of the students but the university wrote back saying there was no practice of keeping such records. On 3 November 2010 the NIC ordered Ministry of Education and all universities to keep records of all practical papers and make them available to concerned information seekers.

**Impact:** In most cases related to students and examinations, the NIC has ruled in favor of the students. Tribhuvan University tried challenging the decision in court but the NIC verdict was upheld. The NIC's orders on accessing answer sheets have brought transparency to the education system and have also caused teachers to be more diligent while grading students – because their assessments could be called into question if the answer sheets were accessed by the students. The NIC orders have also forced educational institutions to take measures to improve record keeping.

## **5. Information in the public interest**

### RTI and the status of ICC statute ratification

The International Criminal Court (ICC) is a body that can adjudicate cases of crimes against humanity. It can intervene when national governments fail to take action against people accused of committing serious crimes against humanity. ICC was established in July 2002 as a result of the Rome Statute, after 60 countries ratified its statutes, and 121 countries had endorsed it by December the same year. Nepal

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<sup>8</sup>Srijana Poudel, Shikha Shah, Shradda Pradhan, Susan Pradhan, Nischal Puri, Ranjan Ranabhat and Dhiraj Shah.

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had not ratified the statute despite a July 2006 directive from the House of Representatives. The foreign minister's proposal for taking the bill to Parliament in February 2011 had failed to get cabinet approval. The government had also formed a task force on 18 October 2006 to study the obligations resulting from ratification of the Rome Statute but this document had not been made public.

**Process:** On 25 December 2011 Taranath Dahal of the Freedom Forum submitted an application seeking information on the report from the information officer at the Ministry of Foreign Affairs. He had asked for a copy of the task force report (formed 18 October 2006) that had been presented to the Deputy Prime Minister and Minister for Foreign Affairs on 14 December 2006, information on work done by the government in connection with ratification, and when the government planned to take the bill to the Legislature-Parliament.

Failing to obtain the information, the applicant made his request to the Secretary at the Ministry of Foreign Affairs, the appellate authority. He received a response from a section officer saying that the information sought could not be provided since it was about issues related to the views Nepal would adopt in terms of bilateral, regional and multilateral relations. Additionally, a meeting of the Information Classification Committee, chaired by the Chief Secretary, had concluded that such information need not be given. (At about the same time the government had made public a list of 140 kinds of information it had categorized as 'classified', which the Supreme Court later stayed.)

Freedom Forum appealed to the NIC on 6 February 2012. In addition to assistance in obtaining the information it had requested, it also asked the Commission to annul the government classification. The NIC decided on the appeal the same week and ordered the Secretary at the Ministry of Foreign Affairs, to provide the information sought within seven days. The Ministry of Foreign Affairs provided the information about 15 days after the NIC order.

**Impact:** The Ministry of Foreign Affairs provided photocopied pages of the task force report and explained that the cabinet had not approved its decision to take a ratification proposal to Parliament in February 2009.

### **6. Investigation committee reports**

Formation of investigation committees has been a normal practice in Nepal, as has been the tendency to let matters rest after the reports are prepared. Successive governments have not thought it necessary to make these reports public. Accordingly, the government had not released to the public the report on the investigation on civil disorder in Kapilvastu district in 2007.

#### Report on the riots in Kapilvastu

Riots had spread across the district following the murder of one Moit Khan, a resident of Ward No. 7 of Birpur village development committee (VDC), by unidentified gunmen. Violence in 12 VDCs had resulted in the loss of 23 more lives and destruction of property. Subsequently, the leader of a committee of victims requested the Home Ministry to provide information on its assessment of the riots, as it was the basis of the compensation they would receive from government.

He made an application for information in May 2010, seeking access to the report of the investigation committee (formed 21 September 2007). The information officer responded that a copy of the report could not be provided because the Council of Ministers had not decided on making it public. The petitioner then made another application addressed to the Secretary at the Home Ministry and failing to obtain the report, appealed to the NIC on 18 August 2010.

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On 2 September 2010, the NIC ordered the Home Ministry to provide the requested information. However, the information officer responded saying the information could not be provided as it did not fall within the classification of information in the RTI Act. The NIC wrote back to the ministry on 31 January 2011 asking why the head of the ministry should not be punished. Eventually, the ministry provided the information to the NIC on 11 February 2011.

### Report on property investigations

In the fiscal year 2001/02 His Majesty's Government of Nepal had formed a judicial commission led by Supreme Court justice Bhairab Prasad Lamsal to investigate the property of all individuals who had held public office after 1990. The commission had submitted its report to the government, based on which the CIAA detained some politicians and government officials for further investigation. The courts were still examining some cases filed by CIAA when this report was prepared. Further, some of the accused were serving jail terms after the courts had decided that they had erred.

The investigation report, however, had not been made public and there were accusations that the CIAA had arbitrarily targeted some suspects and ignored others. The Freedom Forum filed an information request at the CIAA seeking access to the report. They asked for names of individuals facing corruption charges based on the commission's report, and the statements of the suspects. They also wanted information on the status of cases that the commission had recommended for further investigation, and the names of public agencies whose officials faced corruption charges and investigations, among others.

CIAA did not provide the information sought within the RTI law's deadline nor did it provide reasons for the denial. Next, the applicants took up their case with the chief of CIAA to no avail. The appeal was then taken to the NIC. CIAA provided some information after an NIC order (20 December 2012) but withheld some as well.

CIAA provided names of individuals charged in 33 cases of graft based on the report (that had recommended charges against 508 individuals) and details of the charges. It also revealed that investigations had been undertaken on another 474 individuals recommended for further investigations, but the probe had not been finalized. It did not reveal names of those who had been charged on the basis of the additional investigations.

### Journalist uses RTI to access information

Unidentified assailants had killed a journalist in Kailali district on 28 November 2008. On 3 December the government formed an investigation committee headed by a lawyer with a representative of the police and a journalist as members. Though the committee was given 15 days to submit its report it took 11 months to do so. The report was submitted to Prime Minister Madhav Kumar Nepal on 1 November 2009. All this while the slain journalist's family did not receive any support from the government and the government made no effort to arrest the culprits.

Ramji Dahal, a journalist at *Himal Khabarpatrika*, sought information on the committee's work and published a story. Information obtained using the RTI Act helped him disclose that the team had spent Rs. 3 million on the probe that was supposed to have been completed in 15 days, but actually took 11 months.

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Dahal also asked for information about the committee's expenditures, including the bills and receipts, from the Home Ministry, on 26 January 2010. The next day the Home Ministry informed him that it had no records on the probe committee and its work.

However, the same day a source at the ministry provided some information about the funds that had been released for the investigation and some details of the expenses. This information showed that the committee had a budget of Rs 3.096 million and it had spent Rs. 2.9 million in 11 months. The story was published by *Himal Khabarpatrika* following which the Council of Ministers, meeting on 24 January 2011, decided to provide Rs. one million as compensation to the family of the slain journalist! Because the information sought was not complete, Dahal made another request to the Secretary at the Home Ministry on 2 February 2010. Not able to obtain the information in seven days, Dahal appealed to the NIC on 7 March 2010. Thereafter on 19 March, the NIC ordered the Home Ministry to provide the information sought by Dahal or furnish reasons why the information cannot be provided. The Ministry on 22 March 2010 responded saying that the information seeker had been provided the requested information but it was not possible to provide the bills and receipts because the accounts had not been audited. The NIC took another decision on 17 May 2010 ordering the ministry to provide the information, as there were no lawful reasons for not doing so. Thereafter, the ministry provided the copies of the bills and receipts sought by the applicant.

The information released showed that the committee members has spent Rs. 14,000 on purchasing telephone recharge cards, and Rs. 90,000 on petrol purchase on a single day. However, a look at the vehicle's travel log revealed that the vehicle had not travelled outside the Kathmandu Valley on the said day. The government, however, did not disclose information on whether or not a First Information Report on the case had been filed.

### **7. RTI for protecting whistleblowers**

The RTI Act of Nepal has extensive provisions to protect whistleblowers. Section 29 requires employees of public bodies to provide information on corruption or irregularities, or the possibility thereof and makes it a duty of the information receiver to protect the identity of the whistleblower. Another section of the law says the whistleblower shall not be harmed for having provided information, and if punished or harmed, can seek compensation and revocation of the decision punishing or harming the whistleblower. This provision was tested in a case involving school authorities against a teacher in Far-Western Nepal.

#### *RTI helps in reinstating teachers*

Pushpa Karki, a teacher at Saraswoti Lower Secondary School in Dhangadhi in the Far-Western Region, had disclosed information on irregularities taking place at her school to the media, revealing how the teachers discriminated against *Dalit* students. Following the publication of media reports, on 27 May 2009, the school authorities wrote to her asking her to stop taking classes.

After receiving the letter she requested the school for the reasons behind the decision. However, her request was denied. She then filed an application with the district education office (DEO), Kailali, seeking the same information. The DEO told her she was being transferred with 'good intention' to make it easy for her to continue working at a place closer to her home. However, the office had withheld her salary and allowances after she had begun seeking information.

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On 25 August 2009, Karki appealed to the NIC to assist her in annulling the transfer decision and in obtaining information leading to the transfer, claiming that she had been victimized for disclosing information. In response, on 27 August, the NIC ordered the DEO, Kailali, to make arrangements for her to work at her old workplace and to continue providing her salary and allowances until a final decision was made on her petition.

The district education officer wrote to the NIC on 13 November 2009 saying that the school management committee (SMC) has the right to take action against a teacher and also said that the school officials did not discriminate against *Dalits* as disclosed by Karki. The letter also blamed Karki for violating the code of conduct for teachers and said it was wrong of her to have approached the NIC. The allegations against Karki also increased over time: the school authorities wrote letters to the DEO accusing her of manhandling their family members, and opening the school on a public holiday without permission and taking possession of important documents.

She informed the NIC about the collusion of the school authorities with the DEO and clarified that the allegations against her were false, and requested it to expedite a decision on her appeal. She also requested the NIC to enforce its order of 21 February 2010 asking the DEO to let her continue working at the school, and to release her salary and allowances, which had not been complied with.

The NIC wrote a second letter to the DEO, Kailali, asking why action should not be taken against him in accordance with section 32 of the RTI Act for not implementing its earlier directive. The law allows the NIC to fine defaulters up to Rs.10, 000 for non-compliance. The DEO did not respond even after the second order, causing the NIC to issue a third one on 13 May 2010. This time it decided to find out whether the teacher had been punished for disclosing information or for something else and ordered the DEO to submit the necessary documents. This letter was also copied to the Ministry of Education. After examining the documents the NIC decided that she had been punished for disclosing information on discrimination and other malpractices at the school.

The NIC ruled that no action could be taken against any employee for simply making information public, particularly information that was not legally exempt from disclosure. It also decided to penalize the DEO for not abiding by its earlier order and for not furnishing convincing reasons for not doing so. Concluding that the order was flouted deliberately the NIC also ordered the DEO to pay a fine of Rs 5,000, under section 32 (5) of the RTI Act.

The DEO appealed the fine at the appellate court and also petitioned the NIC (13 August 2010) requesting withdrawal of the fine. Karki has been reinstated at her school (and is currently on deputation in Lalitpur district). The appellate court was still examining the writ filed by the DEO when this report was prepared.

In another case related to a school, Devendra Pratap Singh, a teacher at Budhanilakantha School in Kathmandu, had requested information on recruitment and promotion of employees, enrolment, volume of transactions, budget and audit reports. He had made the request at his school on 16 December 2011. The school principal refused the information and instead fired him on 17 January 2012 from his position as head of the department of social sciences. Singh appealed against the school's decision at the NIC on 20 January 2012, seeking protection under section 29.

In response, on 30 April 2012, the NIC ordered the school principal to furnish information that was the basis of taking actions against Singh. In his response the principal said Singh had been removed from his job for committing acts against 'the betterment of the school, under the influence of unscrupulous

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elements and for his involvement' as secretary of the staff union. He clarified that the action had not been taken just because he had sought information.

Not convinced with the response, on 10 August 2012 the NIC invited the principal to its office to discuss his response. Eventually on 2 October 2012, the NIC issued a directive asking the school to reinstate Singh, who it concluded had been fired for seeking information. It also concluded that the claim made by the principal that Singh had produced and submitted some misleading documents to the NIC and had tried to bring disrepute to the school, was not true. The school informed the NIC of Singh's reinstatement on 5 October 2012. The principal of the school subsequently resigned, after the National Vigilance Centre began investigating some of the charges made by the whistleblower.

### **8. RTI and democracy**

Nepal held the election of its first Constitution Assembly (CA) on 10 April 2008. Its 601 members were required, by statute, to promulgate a new constitution in two years. Having failed to do so in time, it extended its term several times, until it was dissolved in May 2012, following a Supreme Court ruling. The inability of the assembly to produce a constitution had led to widespread criticism of lawmakers and of the waste of public resources. In this background, Freedom Forum made several attempts to seek information from the Parliament Secretariat.

#### Information on activities and expenses

On 26 May 2011, Freedom Forum filed an application seeking information on the activities and expenditure of Parliament. It asked for information on:

- The number of CA meetings in three years, with date, time and attendance;
- The number of committee meetings, with attendance and the records of the meetings;
- The number of Legislature-Parliament meetings after 2008, with date and time;
- The number of bills approved by the CA and Legislature Parliament, with titles, date and time;
- Details of salaries, expenses and perks of all members;
- The number of foreign trips made by the 601 members, with names, and countries visited;
- The names of members who had health checkups, with dates and costs;
- Expenses of CA members on district and constituency visits with names of members and visit programs;
- Expenses of CA in drafting the constitution with details of the source of the budget and expenditure lines.

Unable to obtain the information in 15 days, an application was made to the chairman of the CA and Legislature-Parliament Secretariat. The Parliament Secretariat provided most of the requested information in about a month. The expenditure details were not included (largely because of the inadequate record keeping at the Secretariat), but the information seeker was assured that the remaining information would be provided at a later date.

#### Salaries and perks of members of Parliament

On 4 June 2012, the Coordinator of the Anticorruption Campaign, Mahottari, Sharada Bhusal, asked the Parliament Secretariat for information on the expenses of CA members. She asked for details of all meetings held, their minutes, progress reports of CA activities, the names of all the different committees formed by the CA, and their duties and responsibilities. The Parliament Secretariat

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provided Mrs. Bhusal with the information on 8 June 2012. According to the records, the expenses, including salaries, allowances and perks, added up to Rs. 2.93 billion.

### RTI helps reinstate a judge

In 2004, the Judicial Council dismissed Chitra Dev Joshi, a judge at the Syangja District Court, for allegedly commenting on politics. He was accused of making tarnishing remarks against King Prithivi Narayan Shah, Nepal's founder. Joshi denied making defamatory remarks and challenged the council for not allowing him to make a statement before his dismissal. He was also not provided access to documents that had led to the dismissal.

Joshi sought information on his dismissal from the information officer at the Judicial Council, on 11 January 2010. He wanted to examine the documents used by the council to take the decision. The information officer refused the information and his subsequent request to the head of office was also refused. Next Joshi appealed to the NIC seeking its assistance to obtain the documents.

On 1 March 2010, the NIC asked the council for its reasons for not providing the information and the council responded with several justifications. It argued that Article 27 of the Interim Constitution allows it to withhold 'information that should be kept secret under law' and that its regulations also did not require such information to be made public.

The NIC then summoned the head of the council to its office on 16 March 2010 but the letter was ignored. The NIC wrote to the council again on 15 April 2010 asking its representatives to appear at the commission within a week.

After the second letter, the council responded to the NIC saying that the information could not be released because the case had reached the Supreme Court and that it would be required to present the documents in court. It sent its section officer to inform the NIC about the same.

On 19 May 2010, the NIC wrote again to the head and the information officer of the council ordering it to provide the information requested within 15 days. The NIC had also considered the relevant article of the Interim Constitution cited by the council, but interpreted it differently. However, the council still did not provide the information.

Eventually, after repeated follow up by the NIC, on 9 February 2011 the Judicial Council provided the information to the commission. In the meantime the Judicial Council also filed a writ with the Supreme Court challenging the NIC's decision, arguing that the NIC had caused it to breach the law by making the disclosure.

The information revealed that the applicant had not used the words he had been accused of using, and that the recording of the speech did not provide enough ground for dismissal. He was eventually reinstated in his position after the Supreme Court delivered a verdict ruling that the dismissal was illegal.

## **9. RTI in local governance**

Nepal's last election for local government bodies was held in 1997. Nepal has a two-tier local government structure: village development committee (VDC) or municipality, and district development committee (DDC). In the absence of elected representatives the government began the practice in 2002 of appointing office holders at the local bodies. King Gyanendra, who began ruling directly in February 2005, held municipal elections that were boycotted by the major political parties.

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Even though officials had been elected to the municipalities, this vote had low turnout and the result was subsequently annulled, after the popular movement led to the restoration of Parliament and change in government in 2006.

Following the political changes of 2006, the government made arrangements to run local bodies through a mechanism comprising of local representatives of seven major political parties that were in Parliament. This body was put in charge of managing and distributing public services and facilities. However, in the absence of oversight and local accountability many of the local bodies had become seats of corruption and misuse of public resources. Meanwhile, the Supreme Court had taken two decisions instructing the government to hold local elections. But the government was neither able to hold an election nor stop corruption and leakages at the local level.

By law each VDC receives at least Rs. 10 million for local development activities each year, while the municipalities receive a minimum of Rs. 20 million. The DDC implements development programs in all VDCs, municipalities and the district, and coordinates the programs of over 25 government line agencies, and international and national non-governmental organizations (NGOs). In all, the government had spent about Rs. 45 billion through local government bodies, a large portion of which was misused.

### RTI in local development

Jumla is among Nepal's most under-developed districts. It lies in the country's northwestern region and is one among five districts of the Karnali Zone. Three village development committees (VDCs) – Ghode Mahadev, Raralihi and Malika Dhanta – had come together in 2011 to build a road to connect their villages. Their idea was to open up a track and lobby the government for supporting the construction of a bridge on the Tila River.

Following a meeting in December 2011, 18 villagers and three VDC secretaries decided to travel to Kathmandu to lobby for bridge-building support. The team included representatives from all wards of the three villages. These 57 individuals had come to the capital with Rs. 200,000 drawn from the development budget of the three VDCs.

In Kathmandu, the team stayed in cheap lodgings and spent about a month (January 2012) lobbying for the bridge. They met the prime minister, ministers, and members of the National Planning Commission (NPC) and were assured that the government would allocate a budget for the bridge. Their meeting with the prime minister was also covered as a main story by the state-run newspaper *Gorkhapatra*. It said that the bridge was a government priority, among others. The team returned to Jumla, confident that their application had reached the Department of Roads from NPC, and that construction would begin the following year.

Seven months later Dan Bahadur Basnet, a young activist from Malika Dhanta, went to Kathmandu for a weeklong training on RTI. As part of the training he wrote an RTI application seeking information on the status of the request made by the villagers. He filed his application on 11 September 2012 at the Department of Roads (DOR) and received a call five days later asking him to come and collect the information. The file signed by a DOR official said the Tila River bridge had been listed as a project but its 'survey, design and estimation' had not been carried out for lack of a budget. It also said that from 2013 bridge construction over local rivers would be done by the Local Infrastructure Development and Agricultural Roads Office under the Ministry of Local Development.

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Dan Bahadur took the information back to Jumla and provided copies to all three VDCs. After receiving the information the locals asked their VDC secretaries to account for the spending of the development budget used in the Kathmandu visit. Some local youths had also been demanding that the local party cadre that had taken the trip to Kathmandu pay back the money they had spent. The three VDCs had

### **A rare case of RTI compliance without NIC intervention**

Two women and a man from Banauli-Danuli VDC in Mahottari district started a fast-unto-death demanding investigation into the corruption in their VDC. They were seeking investigations and action against the guilty. After 13 days, the Prime Minister's Office sent a team to the area and convinced the hunger strikers to break their fast by assuring them that the government would make efforts to address their demands.

The assurances were not followed up, however, following which one of the two women hunger strikers, Sharada Bhusal, made an information request at the Ministry of Home Affairs. She wanted a copy of the investigation commission's report. She obtained a copy of the report after about 35 days of the request. This report confirmed their allegations and showed that corruption was widespread. The report had also recommended action by the Ministry of Local Development and further investigation by the Commission for the Investigation of Abuse of Authority (CIAA).

However, following the CIAA probe, the accused VDC secretary, who had earlier been suspended, was reinstated.

Bhusal, on 30 October 2012, filed an application with the CIAA demanding that its report be made public. CIAA refused to provide the information saying that the investigation was still underway. She had also asked why the suspension of the VDC secretary had been lifted. It was after an appeal at the NIC that CIAA did provide some information, but there was no explanation on why the suspension of the VDC secretary had been lifted. Bhusal then filed another appeal seeking the information but it had not taken a decision when this text was prepared.

spent some Rs. 900,000 on the lobbying trip, where government officials had provided them assurances. In the end it turned out that the assurances had not been followed up with a budget.

### RTI and municipal transparency

Municipal bodies managing Kathmandu Valley's public parking spaces had never done it transparently. They had not made public calls for quotations for selecting contractors nor prepared rules on the fees. Parking contractors charged different rates for parking in different areas and often even local organizations arbitrarily charged the fees while there was no information on where the money went. On 19 July 2012, Sanjeev Ghimire of Freedom Forum filed an information request at the Kathmandu Metropolitan City, and the Lalitpur Sub-Metropolitan City seeking the following:

- Copies of policies, guidelines and decisions on parking spaces;
- Information on public spaces designated as parking zones;
- Details on parking spaces leased out to contractors or individuals, their names, the conditions of the contracts, etc.;
- Parking income of municipal bodies from 2008 to 2011, with details for each parking area;
- Number and types of vehicles that used the parking lots from 2008 to 2011, with separate information for each parking area.

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The municipal bodies failed to provide the information within 15 days of the application. After several reminders, the applicant took a petition addressed to the chief executive, which was not registered because the clerk said he needed a go-ahead from higher officials before accepting an application. The chief executive could not be contacted and instead, the officiating chief offered to provide information, but refused to register the appeal against the denial of information with the organizational appellate authority. In the next attempt, the applicant visited the office when the chief was present, and this time he was provided additional information on 28 August 2012, but not all that was requested.

On 3 October 2012, Ghimire took his appeal to the NIC. He had named officials of Lalitpur sub-metropolitan city also as defendants. The NIC ordered the municipal bodies to provide the information, which however was not done. Kathmandu municipal officials eventually provided the information but withheld the contractual documents.

The information confirmed the arbitrary leasing of parking spaces. Further, since the contractual documents were not provided, there was reason to suspect irregularities. The case also revealed that the municipal bodies – local government organizations – were not aware of the RTI Act and were unwilling to disclose information.

## 16.

# RTI Case Studies from Pakistan

Iffat Idris

Editor

### 1. Introduction

Pakistan is a federal state comprising four provinces (plus other territories); legislation for right to information (RTI) – or freedom of information (FOI) as it is also referred to in Pakistan – has long existed at federal level and in two provinces, Sindh and Balochistan, and was recently passed in Khyber Pakhtunkhwa (KP) and Punjab. The federal Freedom of Information Ordinance 2002 was followed in 2005 by the Balochistan FOI Act and in 2006 by the Sindh FOI Act. Passage of the 18<sup>th</sup> Constitutional Amendment in 2010 gave all citizens the right to access information of importance to public affairs (Article 19-A). The KP RTI Act was passed in August 2013 and the Punjab Transparency and RTI Act in December 2013. The federal, Balochistan and Sindh FOI laws are essentially identical. The procedure for submitting FOI requests is briefly described in the main federal law, and was later elaborated in the 2004 Rules and Regulations for the FOI Ordinance. These stipulate a minimum fee of Rs.50 for information requests, entitling citizens to get up to 10 pages of photocopied information; should the pages they request exceed 10, they must pay an additional Rs.5 per extra page. Public bodies are required to respond within 21 days of the receipt of a request, either providing the information sought, or referring the requester to the relevant body holding it, or explaining in writing why the information cannot be provided. There is no provision in the law for submission of urgent requests. Requestors can file a complaint with the head of the public body concerned, or if still failing to get a satisfactory response, with the Federal Ombudsman or Federal Tax Ombudsman. Neither Sindh nor Balochistan have notified rules relating to their FOI laws, but the procedure followed there is the same as that for federal bodies.

**The KP RTI Act makes requesting information easy and free:** there is no fee for submitting an RTI request, it can be made in any form, information officers must help citizens in making requests, and no reason must be given for requesting information. Public bodies must respond to RTI requests within ten working days (extendable by a further ten working days). For matters of life and liberty, information must be provided within two working days. Public bodies can charge for cost of providing information, but the first 20 pages must be provided free of cost and there are no charges for those living below the poverty line. No internal complaints mechanism (i.e. within public bodies) is specified under the law: requestors can file complaints with the KP Information Commission, an independent three-member body with the powers of a civil court. The Commission must decide on a complaint within 60 days. It can impose a fine of up to Rs.250 per day, up to a maximum of Rs.25,000 on any official acting willfully to obstruct any activity required to be undertaken under the law.

The Punjab Transparency and RTI Act is similar in its requesting procedure to the KP RTI Act. It differs only in that the PIO has not 10 but 14 working days in which to respond to an RTI request (but can take an extra 14 days if needed). Unlike KP, the Punjab law provides for an internal complaints mechanism: requestors (complainants) have 60 days in which to file an internal review application, and the officer responsible has 14 days in which to respond. As with KP, the external complaints mechanism is an independent Information Commission. It must decide on complaints within 30 days (up to a maximum

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of 60 days) and, in cases where it finds that a PIO has not carried out their duties properly, can impose penalties up to Rs. 50,000.

The methodology for compilation of these case studies involved the following: review of available literature, internet search (especially newspapers) and contacts with organizations and individuals known to be actively engaged on the issue of RTI/FOI in Pakistan. The bulk of the latter are members of the Pakistan Coalition for RTI, and include the Centre for Peace and Development Initiatives (CPDI), Consumer Rights Commission of Pakistan (CRCP) and *Shehri*, a Karachi-based NGO.

As will be seen, there is a general dearth of case studies on FOI/RTI requests in Pakistan. This can be attributed to a number of factors. One, RTI legislation in KP and Punjab was only very recently passed. Two, there is widespread lack of awareness among the general public and even among mainstream civil society about FOI/RTI; related to this is reluctance to use FOI legislation (particularly the federal law), in the case of civil society because the law is seen as flawed, and in the case of the media, because information can more efficiently be accessed through other means. Lack of awareness is reflected in the low number of FOI/RTI requests submitted: precise figures are not available, but since passage of the FOI Ordinance 2002 these run into hundreds rather than thousands. Since 2013, the KP Information Commission has received 175 complaints and the Punjab Commission 480 (as of Nov. 2014), giving an indication of the numbers of requests submitted. Three, most of the organizations approached during the course of research for this report did not respond or gave vague responses, e.g. referring researchers to the RTI Coalition. Very few gave precise and accurate information about FOI requests they had submitted. For the same reason, in many cases, the information provided is not very detailed.

Consistent with the guidelines for compilation of country case studies, the FOI/RTI requests detailed in this report have been categorised into: a) unusual use of FOI/RTI legislation; b) unusual users of legislation; c) specific issues for which FOI/RTI legislation used; d) organizations working to support FOI/RTI legislation; e) work of information providing institutions/personnel. However, it should be noted that the bulk of cases actually fit best in category d; some of these were applicable to other categories and, because of the overall dearth of cases, were used to illustrate those.

### **2. Unusual use of FOI legislation**

#### *Clemency appeals on behalf of Zulfiqar Bhutto*

The Consumer Rights Commission of Pakistan (CRCP) reported recent FOI requests they had made to the Foreign Office, seeking to find out what clemency appeals were made by international leaders on behalf of Zulfiqar Bhutto. Bhutto was Prime Minister of Pakistan in the 1970s, but was ousted in a military coup in 1979 led by General Zia-ul-Haq, and later convicted in a murder case and sentenced to death. A number of foreign leaders such as the King of Saudi Arabia, made clemency appeals to the Pakistan government not to carry out the death sentence. CRCP reported that the Foreign Office had refused to release information about these on the grounds that it was 'classified'.

#### *Hoisting of political party flags in capital*

During the May 2013 election campaign numerous political parties displayed banners and flags around the capital, Islamabad. The administrative entity responsible for Islamabad is the Capital Development Authority (CDA). Normally, advertising banners have to be posted with prior permission from CDA and upon payment of designated dues. The Consumer Rights Commission of Pakistan (CRCP) submitted an FOI request to CDA, asking for information about the hoisting of political parties' flags

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in the capital. CDA replied that the flags had been put up without prior permission from them, and after receiving CRCP's request had the flags removed (note: it is not clear whether removal happened before or after the elections, but most likely after). CDA also informed CRCP that neither political parties nor religious organizations seek permission to display banners/flags.

### Status of police investigation into journalists' murders

Sadly, for many years now armed violence in Pakistan has been escalating: it includes religious and sectarian violence, ethnic violence, criminal violence, armed insurgencies, conflict between state and non-state actors, and terrorist attacks. As well as civilians, many journalists reporting on these issues have been killed (some in targeted attacks). In March 2014 the Pakistan Press Federation (PPF) submitted a total of 60 RTI requests at federal level and in all four provinces plus Gilgit-Baltistan to find out the status of investigations into the cases of journalists killed between 2002 and 2013. PPF said the aim of the requests was to create pressure for action by government and the police to find those responsible for the killings, and to curb the prevalent situation in which 'violence against journalists.... goes unchecked because those who are involved and who attack journalists enjoy complete impunity.'

### **3. Unusual users of FOI legislation**

#### Naeem Sadiq

Naeem Sadiq is a citizen based in Karachi who has been actively using FOI legislation to promote accountability of government to ordinary citizens. Since passage of the 18<sup>th</sup> Constitutional Amendment, he has also submitted information requests on the basis of Article 19-A, and since passage of the KP and Punjab RTI Acts, using that legislation. His belief is that, "If FOI gets going – if hundreds of people start asking questions about, for example, 'why do you go to Umrah at our expense with a huge coterie, and then go again every few months?' - it could make a big difference in Pakistan". Naeem Sadiq is an engineer by profession, but has been submitting FOI/RTI requests for the past 7-8 years and has submitted over 30 to date. He generally asks for the same information from the federal and all four provincial governments. Sometimes, he submits joint requests (with other citizens) in the hope that this will have more impact. Some examples of Naeem Sadiq's FOI/RTI requests are given below:

**Issuance of weapons licenses** – In January 2013, as one of five citizens from Karachi, he submitted FOI requests to the Interior and Provincial Home Departments to find out how many weapons licenses were issued in the country between 2001 and 2012. The Musharraf government was in power from 2001 to 2007; the PPP formed the government following elections in 2008. No information was provided, so the five appealed to the respective Ombudsman offices, but this too yielded nothing. Eventually, some 'sketchy' information was provided by the federal government. This alone showed a massive increase in issuance of weapons licenses after 2008, with almost 69,473 licenses for prohibited bore weapons issued just to parliamentarians – on average a staggering 350 each. An article on the repeated failures to obtain information was written by Zubeida Mustafa, another of the citizens involved, and appeared in the leading English daily, *Dawn*.<sup>1</sup>

**Ghost schools in Sindh** - In September 2009 he submitted an FOI request to the Sindh Department of Education asking for the number of ghost (non-functioning) schools and the expenditure made on

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<sup>1</sup> Zubeida Mustafa, 'Weapons and Information', (*Dawn*, 5 June 2013).

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these schools in 2006, 2007 and 2008. After no response was received for four months, the Provincial Ombudsman was approached who ordered a hearing for both parties. Three such hearings were held. Naeem Sadiq turned up for all three hearings but the Education Department neither responded nor appeared in any of them.

**Foreign nationality holders** - In September 2009 he requested the Ministry of Information in Islamabad to provide names of all parliamentarians, Ministers and Senators who hold nationality, passport, green card or permanent residence in any other country, besides Pakistan. When no response was received for four months, the Federal Ombudsman was approached. On the intervention of the Ombudsman, the Ministry of Information sent a response stating that: “this subject does not relate to the Ministry of Interior and falls within the domain of Ministry of Law, Justice and Parliamentary Affairs.” When the Ministry of Law, Justice and Parliamentary Affairs was asked to provide the information it responded: “The information is neither available nor falls within the ambit of this Ministry and may be obtained from other organizations such as Cabinet Division, National Assembly, Senate, etc.” Rather than wait to be referred from one entity to another, in May 2010 Naeem Sadiq directly sought the information from five key institutions: the National Assembly, Ministry of Foreign Affairs, Senate, Cabinet Division and Election Commission of Pakistan. All five failed to respond, and he again appealed to the Ombudsman, but they still did not provide any information. The only information he did secure through the National Assembly Secretariat was that, “as per available CVs, 259 of the Members of National Assembly, the Honourable Members hold Pakistani Nationality”. There was no mention of whether they also held other nationalities, or of the status of the remaining 83 Members of National Assembly (MNAs).

**Hunting of Houbara bustards** – Houbara bustards are internationally recognized as an endangered species. Hunting of the birds is banned under Pakistani law; despite this, licenses are granted for Arabs from the rich Gulf States to hunt them. Naeem Sadiq submitted an information request under Article 19-A of the Constitution and the federal FOI Ordinance 2002 to the Ministry of Foreign Affairs (MOFA) for the number of hunting licenses issued by the Ministry. On MOFA’s failure to provide this information, he petitioned the Lahore High Court, which ordered the Ministry to disclose the information (by 23 January 2014) and later imposed an interim ban on bustard hunting. Sadiq’s request and subsequent reporting on the issue led to media coverage of it nationally and even internationally. In May 2014 there was widespread condemnation of a Saudi prince who had killed 2,100 bustards in a single 10-day hunting trip.

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While, as seen, Naeem Sadiq’s success in obtaining information through FOI/RTI requests has been limited, he often writes op-ed articles in leading English newspapers about his (frustrated) efforts – and these articles have an impact in terms of highlighting an issue and raising public awareness. The issue of dual nationality holders of public office (notably parliamentarians) has now become so well-known in Pakistan that in the May 2013 election those with foreign nationality wishing to contest, either had to first renounce it or else could not be registered as candidates. Similarly, his request into issuance of licenses for Houbara bustard hunting has greatly raised awareness of this issue and advocacy against the practice.

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### **4. Specific issues for which FOI Act is used**

Two of the major issues on which FOI/RTI requests have been submitted in Pakistan are public expenditure/transparency in financial affairs, and service delivery. Examples of FOI/RTI requests in relation to each of these are given below:

#### *Fees paid to lawyers to defend Musharraf's presidential candidacy*

The Centre for Peace and Development Initiatives (CPDI), an NGO active on the FOI/RTI issue in Pakistan, submitted an FOI request to the Ministry of Law and Justice in May 2008 for information about: a) details of lawyers hired by the Ministry to represent the federal government in the Supreme Court between 2002 and 2008 (when Pervez Musharraf was President); b) the total amount paid in legal fees; c) the fee paid to each lawyer. The Ministry refused to provide the information, so CPDI lodged a complaint with the Federal Ombudsman. The Ombudsman took a year to decide on the complaint, but finally found in favour of CPDI and ordered the Ministry to release the information. The Ministry then appealed to the President on the grounds that, 'If the requested information was provided to the requestor, this would create unnecessary problems, an embarrassing situation, and open a Pandora's box.' The issue remained pending with the President with no decision taken.

CPDI then shared the details of their efforts with Ansar Abbasi, a well-known and respected journalist with the Jang group of newspapers. This led to front-page stories in the *Jang* (Urdu language) and *The News* (English language) newspapers on 14 July 2008 headlined 'Law Ministry protecting Musharraf's legal extravagance'. As a result of this exposure, an MNA Nuzhat Siddiqi asked the Minister for Law, Justice and Human Rights for the same information. The Minister provided partial information, which nonetheless showed huge expenditure on legal fees by the Musharraf government. A major story on this appeared in the print and electronic media on 12 August 2008.

The issue was then taken up in parliament. The Leader of the House Raza Rabbani told the Senate that Musharraf had paid his lawyers over Rs. 42 million from the national exchequer to defend his presidential candidacy in the Supreme Court, even though the state was not a party to the case.<sup>2</sup> He claimed Musharraf had violated rules when he paid his lawyers from the national exchequer, and demanded an investigation into the issue. The Law Minister assured the Senate that action would be taken if it was found that any rules had been violated in paying fees to the lawyers defending Pervez Musharraf.

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Following their 'success' in obtaining information about fees paid to lawyers, CPDI submitted an FOI request on 29 August 2008 to the Ministry of Information and Broadcasting. CPDI sought information about spending under the Special Publicity Fund of the Ministry, specifically the names of journalists/media houses/others who had received funds through it and copies of the contracts under which payments were made to them. The Ministry refused to provide this on the grounds that it was 'classified': following CPDI's complaint to the Federal Ombudsman, the Information Ministry claimed the Fund had been declared as 'secret' by the Finance Division in 1976. The Federal Ombudsman decided on the case in October 2010, upholding the position of the Ministry and rejecting CPDI's complaint.

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<sup>2</sup> 'Payments to Musharraf's Lawyers: Any violation in legal fees to be penalised, Naik', *Daily Times*, 29 August 2008.

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### Income tax returns of parliamentarians

Umar Cheema, an investigative reporter with *The News* and founder of the Centre for Investigative Reporting in Pakistan (CIRP) conducted an investigation into the income tax returns of Members of Parliament filed in September 2011. The major challenge he faced in undertaking this study was to access relevant data about taxpayers, which is still treated as confidential. In view of this, he used a combination of formal and informal sources to obtain information. He firstly sent letters to all MPs at their postal addresses, asking them six questions related to possession of a National Tax Number (NTN) and filing of income tax. Secondly, he submitted an FOI request to the Election Commission of Pakistan (ECP) for the nomination papers of MPs, in order to collect details of their NTN and CNICs essential for accessing the tax record. The ECP did grant access to nomination papers. Thirdly, information was collected from the Federal Board of Revenue (FBR) website, which hosts Taxpayers Facilitation Portal and PRAL that hosts computerized tax return details of all filers. Fourthly, he submitted an FOI request to the FBR. The objective was to verify whether the MPs whose record was not found in PRAL and the Taxpayer Facilitation Portal were registered with the tax authorities or not. The FBR did not respond to the request, but Umar Cheema was able to access significant information through informal sources in the FBR.

Umar Cheema subsequently published (in collaboration with CPDI) a report on MPs' income tax returns.<sup>3</sup> The report received wide coverage in print and electronic media, and contributed to heightened public awareness and demand for information about the assets and tax returns of those in public office. In the May 2013 elections, one of the issues discussed in coverage of the contest was the financial transparency of political parties and politicians; indeed, it would be reasonable to assert that Pakistan Tehreek-e-Insaaf (PTI) gained considerable mileage from the fact that its leaders and representatives declared all their assets and tax returns. It should be stressed, though, that the bulk of information Umar Cheema obtained was not through submission of FOI requests but through other sources.

### Expenses incurred by the President on Hajj

RTI activist Naeem Sadiq submitted a request to the President asking for details about the latter's Hajj trip in October 2013. He sought information about the names of all those accompanying the President, the amount spent on each individual, and who paid for them – the President from his own pocket or the government? When no reply was provided, Sadiq complained to the Federal Ombudsman but it too took no action. In February he appealed to the authority designated in the FOI Ordinance 2002 as the higher appellate authority – the office of the President. Sadiq thus appealed to the President to ensure that his own office provided information requested under the FOI Ordinance and Article 19-A of the Constitution.

### Government expenditure on bakery items and moon sighting committees

Since passage of the KP and Punjab RTI Acts, journalists have started using RTI legislation to investigate stories. A journalist submitted RTI requests on 18 September 2013 to the KP and Punjab Chief Minister's Secretariats, seeking to find the expenditure incurred by them on 'entertainment/bakery items'. The Punjab CM Secretariat did not provide a response, but the answer from KP showed expenditure in one year of Rs. 2.0 million on entertainment and Rs. 0.6 million on bakery items. The story was widely covered in the media. RTI activist Zahid Abdullah used RTI in a similar way to find the

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<sup>3</sup> Excerpts taken from *Representation without Taxation: An Analysis of MPs' Income Tax Returns for 2011* (CPDI, CIRP).

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expenditure incurred on meetings of the Ruet-e-Hilal Committees, responsible for sighting the moon to decide the dates of important religious events, notably the start of Ramadan and the dates of the two Eid festivals. He found that in FY2013-14 Rs. 2.6 million was spent on the central committee, mostly on air tickets and hotel accommodation. This figure belied the common perception that the committees incurred heavy expenses.

### Ensuring safe drinking water in Islamabad

The Capital Development Authority (CDA) has installed water filtration plants in various locations in Islamabad to provide citizens with safe drinking water. However, following numerous complaints from residents about the quality of the water, the Consumer Rights Commission of Pakistan (CRCP) submitted an FOI request to the CDA Water Management Division. They sought details related to water testing, frequency of changing the water filters, and display of information for the public. CDA did not respond to the FOI request, so CRCP complained to the Federal Ombudsman – following which the information was provided. This FOI request led to CDA taking more care to ensure safe drinking water, and even inviting CRCP representatives to accompany CDA officials when they changed some filters.

### Securing merit-based government employment in KP

Two cases have been highlighted in the press of people in Khyber Pakhtunkhwa using the recent RTI Act to secure government employment on merit. Sabahat Ghaznavi applied for the post of computer operator in the Bureau of Agriculture Information in December 2013. He sat a test and was one of the successful candidates listed on a notice displayed by the Bureau, but the list was then removed and the posts re-advertised. He filed an RTI request to find out what had happened but did not get a satisfactory response. He complained to the Information Commission, which directed the Bureau to provide him the results of the first test. He was subsequently appointed to the post.

A similar case also involved the Bureau of Agriculture Information. A contract employee Altaf Hussain was served notice of removal from service, just prior to the Bureau advertising posts for drivers. Hussain challenged the actions in the Peshawar High Court, which ruled that contract employees should be given preference in hiring for regular posts. Hussain subsequently took the tests for driver and his name was displayed on a list of successful candidates, but this list was removed shortly after. Hussain submitted an RTI request for the list but this was denied by the Bureau. He then complained to the Information Commission which ordered the Bureau to provide the list. Hussain used this as evidence in the case he took to the Peshawar High Court. On the basis of that evidence – obtained through RTI – the court decided in his favour and he got the driver's job.

### Request for seniority list leads to punishment for education officer

A primary school teacher in Vehari district, Punjab, submitted an RTI request in June 2014 to the Executive District Officer (EDO) Education, asking for the seniority list of teachers in the district and details of an enquiry report regarding the teacher. When the EDO failed to provide this information the teacher complained to the Information Commission. When repeated requests/reminders by the Commission failed to produce any action, the Commission imposed a fine on the EDO Education of two months' salary. In its decision it noted the EDO 'need to be held accountable for their acts of omission and commission to send a clear message to all and sundry that delays and obstruction in the way of citizens' legal and constitutional right to information will not be tolerated.' The Punjab Commission's decision in October 2014 to penalise the officer concerned for not providing information

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to a citizen received widespread media coverage. It represents a pioneering move – the first time in Pakistan a public official has been punished for such an offence.

### **5. Organizations working to support FOI/RTI legislation**

A handful of civil society organizations in Pakistan are very active on the FOI issue, and regularly submit FOI requests as a means of promoting awareness, implementation and improvements in the law. The vast majority of FOI requests submitted in Pakistan can be attributed to this handful of CSOs. Prominent among these are:

#### Centre for Peace and Development (CPDI) initiatives

The Centre for Peace and Development Issues (CPDI) is among the leading NGOs active on the FOI issue in Pakistan. CPDI has submitted numerous FOI requests on diverse issues, some of which have been detailed in this report. They are also heavily involved in efforts to draft effective FOI/RTI legislation. They have provided suggestions and comments on government drafts. CPDI have also convened several conferences on FOI, which bring together local as well as international experts to exchange ideas and devise ways to move the issue forward. Zahid Abdullah is Program Manager for FOI with the organization, and writes extensively on the issue in the press. Finally, CPDI played a pivotal role in the establishment of the Pakistan RTI Coalition, an umbrella forum for all the NGOs/groups working to promote FOI in Pakistan.

#### Consumer Rights Commission of Pakistan (CRCP)

CRCP has been engaged on the FOI issue in Pakistan for many years, including through drafting of model FOI legislation and advocacy for reform of the federal FOI Ordinance 2002. The NGO also has a strategy of strengthening FOI regimes in Pakistan through use of the law ('FOI activism'); in the past four years (Jan. 2009 to Jan. 2013) CRCP has submitted 148 FOI requests under the federal, Sindh and Balochistan FOI laws, as well as under the Local Government Ordinance 2001 which has some provisions to access information from local governments. The two main issues on which the NGO submits FOI requests are: a) governance, e.g. postings and transfers of government officials, use/misuse of public money, award of contracts and licenses, classification and archiving of documents; and b) service delivery, e.g. health, hygiene and sanitation, and education services, working of the police, roads and communication infrastructure. Details of some of these requests have already been given in this report.

Finally, CRCP has supported capacity building of some public bodies to understand and implement FOI provisions, e.g. the Balochistan Ombudsman. It helped prepare FOI policies for the Sindh Police Department and S&GAD Department; in 2012 the Trade Development Authority of Pakistan (TDAP) began collaborating with CRCP to develop a departmental FOI policy.

#### Shehri

*Shehri* or Citizens for a Better Environment is an NGO based in Karachi that works to promote a better environment in the city. This is done, in particular, through trying to ensure that developers and others comply with planning and building regulations. *Shehri* sees checking corruption as an integral part of this effort; so too promotion of an informed and proactive civil society. The NGO makes use of FOI legislation to seek information on municipal issues, with the aim of stopping violations in building regulations and so on.

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An example of the way *Shehri* uses FOI is its engagement with the Karachi Water and Sewerage Board (KWSB). *Shehri* submitted FOI requests for details of distribution of water by KWSB (e.g. how much allocated to Pakistan Steel Mill, Defence Housing Authority, the Rangers), the number of legal hydrants in Karachi, the number of KWSB employees, the amount of water sold via containers and distribution of money from this, copies of contracts between individual hydrants and KWSB, and so on. This information is significant because supply of water is a big issue in Karachi, controlled by various parties and mafias, who are able to selectively supply water to certain localities and charge exorbitant rates. By putting the spotlight on the way KWSB supplies water, *Shehri*'s aim was to remove corruption and make it fairer for all. However, the response by KWSB has been poor. The bulk of these FOI requests were submitted between 2012 and 2013. In a few cases information had been provided to *Shehri* after complaint to the Ombudsman, but in the bulk of cases the requests were 'in process' (usually with the Ombudsman).

### **6. Information giving institutions**

It is difficult to find examples of any public bodies in Pakistan that have a strong record on responding to FOI/RTI requests. Again, this partly reflects the limited number of requests made, and lack of awareness on the part of public bodies about FOI/RTI legislation and their responsibilities under it.

#### National Highways Authority

CRCP reported improved responsiveness on the part of the National Highways Authority (NHA) with each new FOI request made. Initial requests received no response and the organization had to appeal to the Ombudsman. Subsequent requests were responded to in less and less time, e.g. an initial FOI request for details of realignment of the Murree Expressway took a total of 14 months for these to be provided; a later request for the PC-1 of the Murree Expressway took 12 months; and a more recent request for the PC-1 to the Rawalpindi-Kalar Kahar section of the M2 motorway took 4 months. This shows a steady improvement – albeit still far off the 21 days stipulated in the FOI Ordinance 2002. CRCP reported similar improvements in responsiveness of the Ministry of Environment and the Capital Development Authority.

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With regard to enforcement bodies, the role of the Federal Ombudsman and Provincial Ombudsman Offices has already been detailed in the cases given in this report. As seen, in general, the Ombudsman Offices uphold citizens' demands for information; public bodies sometimes respond to the Ombudsman's orders by providing information, but equally (if not more) often ignore those as well. The case study below is an example of the Federal Tax Ombudsman upholding a citizen's right to information.

#### Federal Tax Ombudsman

For cases related to the Revenue Division, complaints in relation to FOI requests are to be made to the Federal Tax Ombudsman. Waheed Shahzad Butt filed a complaint with the FTO against the Federal Board of Revenue (FBR), after it refused his FOI request to provide information related to its functioning. Mr. Butt had asked for details about the total number of cases in which appeals were filed before the first appellate authority (from July 2011 to date); revenue involved in the cases; and the number of appeals cases (in the same period) in which written arguments/comments were furnished. The FBR refused to provide this information. Upon the complaint being taken up by the FTO, the FBR

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filed a reply stating that the data sought pertained to privileged/confidential information regarding taxpayers.

Federal Tax Ombudsman (FTO), Dr. Shoaib Suddle ordered the Federal Board of Revenue (FBR) to implement provisions of Freedom of Information Ordinance 2002 in letter and spirit for providing information to the people. He rejected the argument that the information sought was privileged or exempt under the FOI Ordinance. The FTO asked the FBR to appoint an official to ensure its compliance and submit compliance report within 30 days. In its order the FTO noted that:

Freedom of Information (FOI) enables citizens to ask for publicly-held information as a matter of right. Its purpose is to ensure transparency and promote good governance by making government more accountable and open. ... It is abundantly clear that as per Freedom of Information Act and the Constitution the respondents are bound to disclose information requested by the requester. The disclosure of the requested information cannot be denied without being in violation of the law and the Constitution.<sup>4</sup>

### **7. Conclusion**

The handful of cases presented in this report are really too few to draw any substantive conclusions. It is only possible to arrive at some broad points.

The first is that the focus of FOI/RTI requests in Pakistan tends to be on 'macro' governance issues (e.g. spending by government on vehicle purchases, on health treatment abroad, payment of taxes by parliamentarians) or rather obscure issues of little relevance to ordinary people. There are few cases of someone using the FOI Ordinance 2002 to seek any personal information, or something that could have a direct bearing on their services and entitlements (e.g. outcome of a job application for a public sector position, actions by the police, social welfare benefits). This has undoubtedly contributed to low demand for FOI in Pakistan. However, a slight change has come about since passage of the KP and Punjab RTI laws: as seen, citizens are starting to use RTI to secure their rights. This could have a knock-on effect and encourage others to use RTI.

The second related point is that traditionally the same very limited number of organizations and individuals have been submitting FOI requests: CPDI, CRCP, *Shehri*, Naeem Sadiq, Centre for Civic Education and so on. Over the years this group of FOI activists has barely changed: it has certainly not expanded to take in more diverse members. Even with passage of the KP and Punjab laws, the bulk of requests are still being submitted by the same groups/individuals.

The third point is that – at least in the past – FOI has not been an effective tool in Pakistan. It rarely led to the release of information; even where this happened, it was even rarer for any follow-on action such as disciplinary measures, change in policies or procedures to take place. The maximum that was achieved by FOI activists was that some issues, e.g. parliamentarians holding dual nationality, attracted media coverage and thus caught the public's attention – and media/public pressure led to some change. Overall, however, the FOI Ordinance 2002 as an instrument to acquire information and bring about transparency and accountability proved very weak. It is early days yet as far as the KP and Punjab RTI laws are concerned: despite a handful of cases in which RTI has proved effective in yielding information, most requests still don't lead to information. It remains to be seen whether those handful

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<sup>4</sup> 'Federal Tax Ombudsman orders Federal Bureau of Revenue to provide information under FOI Ordinance', *The News*, 9 January 2013.

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of cases multiply and whether the respective information commissions can enforce disclosure by public bodies.

The final related point is that the Ombudsman has not proved to be a strong enforcement mechanism for FOI. Appeals to the Ombudsman can themselves take many months to be addressed and, even where they find in favour of the requestor, public bodies will often ignore recommendations to release information or engage in other delaying tactics. The KP and Punjab Information Commissions are independent bodies with much greater investigation and sanction powers than the Ombudsman. Already, they have 'flexed their muscles', particularly the Punjab Commission when it imposed a heavy fine on the EDO Education Vehari. As previously noted, it remains to be seen if this approach continues.

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Momentum is building in Pakistan on the supply side for FOI/RTI. Both Punjab and Khyber Pakhtunkhwa have passed sound RTI legislation (largely consistent with internationally accepted requirements). Implementation is underway, albeit more slowly in Punjab than KP. However, effective implementation requires a strong demand side as well: engagement of civil society and ordinary citizens.

In this regard, Pakistan desperately needs a 'big bang' FOI/RTI story: an example of FOI/RTI being used in relation to an issue that ordinary citizens can relate to, an FOI/RTI story that actually delivers transparency and accountability, and that leads to tangible improvements. Even if these are on a small scale, if others can see the FOI/RTI story as something that they could easily replicate, its impact would be huge. As seen a handful of potential stories have emerged in KP, but FOI/RTI has not yet caught the public imagination in Pakistan.

It is to be hoped that civil society organizations and others take advantage of the opportunities being offered in Punjab and KP, view and use FOI/RTI from the perspective of citizens, and thereby firmly establish FOI/RTI as an instrument to empower citizens.

## Annexure

### BRIEF PROFILE OF AUTHORS

**Amrita Johri** is member, Working Committee, National Campaign for Peoples' Right to Information, *RTI Assessment and Advocacy Group (RaaG)*, and has been working with Satark Nagrik Sangathan (SNS) since 2007. SNS is a citizens' group with a mandate to promote transparency and accountability in government functioning and to encourage active participation of citizens in governance. SNS has pioneered the effort of using the RTI Act to make legislators more responsive and accountable. In 2014, Amrita co-authored a study on the implementation of the RTI Act in India, titled 'Peoples' Monitoring of the RTI Regime in India 2011-13' which was carried out by RaaG & the Centre for Equity Studies (CES).

**Ananya Raihan** (Dr.) is an Ashoka Fellow. Dr. Raihan is a member of Editorial Board of the Journal of Community Informatics. He holds both a Masters and Ph.D. in Economics, with a specialization in Economic Cybernetics. D. Raihan, as a co-founder of Dnet, led inception and growth of the institution since 2001. Access to Information for common citizen is the core area of his works. A social entrepreneur, Dr Raihan led the development of the "Pallitathya Model" to improve access to knowledge and information among poor and marginalized communities. His new concept "Infolady" ([www.infolady.com.bd](http://www.infolady.com.bd)) opens employment opportunities to thousands of women as well as promotes women's agency in the society.

**Anjali Bhardwaj** has been closely associated with the Right to Information movement in India since 2000 and is a co-convenor of the NCPRI. Anjali is the founder of SNS, a citizens' group set up in 2003 with a mandate to promote transparency and accountability in government functioning and to encourage active participation of citizens in governance. SNS has pioneered the effort of using the RTI Act to make legislators more responsive and accountable. In 2014, Anjali co-authored a study on the implementation of the RTI Act in India, titled 'Peoples' Monitoring of the RTI Regime in India 2011-13' which was carried out by RaaG & the Centre for Equity Studies (CES).

**Ashikur Rahman** (Dr.) is a Senior Economist at the Policy Research Institute of Bangladesh and Visiting Research Fellow at the Bangladesh Institute of Governance Development. Prior to this, he completed his PhD in Government at the London School of Economics. Mr Rahman also has an MPA in Public and Economic Policy and BSc in Economics (Hons) from the LSE. His research interest is in the field of political economy, especially in areas such as development and governance. At present, he is associated with numerous empirical work on the nature of concentration of political power and its role in shaping economic and political outcomes.

**Astha Tandon** holds a Master's Degree in Human Rights and Duties Education, and is currently working as a Short Term Consultant to the World Bank. She has been working with RaaG since 2013 as a research associate and was a member of the research team for the UNDP sponsored 2011-2013 study "Peoples' Monitoring of the RTI Regime in India".

**Bincy Thomas** has been associated with RTI Assessment and Analysis Group (RaaG), India. She had been involved in a diagnostic study on 'Citizen's access to information in South Asia' carried out by The Asia Foundation. As a Short Term Consultant with the World Bank, she has also carried out proactive disclosure assessments. Previously, she has worked in the field of Right to Education. She holds a degree in social work from Christ University, Bangalore.

## Annexure: Brief Profile of Authors

**Binod Bhattarai** has Master's degrees in business administration and journalism and mass communication. He is a journalist by training, now working as a consultant on media development, strategic communication and media management. He worked for all major media types in Nepal (print and broadcasting) and wrote for the Economist Intelligence Unit and the Financial Times from Nepal from 2002 to 2007. He now teaches communication at the MBA level, and runs The Writing Workshop P. Ltd. that provides services on writing and editing and supports development organizations in planning and executing communication strategies.

**Iffat Idris** is a freelance consultant working in the development sector for over fifteen years. In recent years she has focused on transparency and right to information, supporting passage and implementation of strong RTI laws in Pakistan. Wider governance issues, conflict analysis and capacity development are other key focus areas. Dr Idris has worked for numerous international, national and government agencies, notably the World Bank, UN System and ADB. She has a PhD in political science (ethnic conflict) from the University of Hull, UK, and her thesis was published by Oxford University Press. She lives in the UK.

**Krishna Sapkota** is an enthusiastic and self-motivated professional combining inter-disciplinary working experience in the field of governance and development with a strong background in policy practice, analysis and research focused on access to information. A change agent having good functional rapport with various government and non-government actors mostly in the areas of transparency and accountability and extensive involvement in promoting access to information in Nepal both through open government data and right to information. Krishna has authored some research-based scoping papers, case studies, briefing papers and reports. 'Exploring the Emerging Impacts of Open Aid Data and Open Budget Data in Nepal' is the latest research report authored by him. An avid learner and advocate of freedom of expression and openness and thrives in and multi-cultural working environments.

**Kuldeep Mathur** has taught at Jawaharlal Nehru University and at Indian Institute of Public Administration, New Delhi. Mathur has been a member of the United Nations Committee of Experts on Public Administration 2003-2006. He has been Director, National Institute of Education Planning and Administration and Rector of Jawaharlal Nehru University. Mathur has published extensively on subjects such as public policy processes, bureaucracy, decentralization and state-society relations. Among his recent publications are Policy-Making in India (2009), From Government to Governance A Brief Survey of Indian Experience (2008), Panchayati Raj (2013) and Public Policy Making in India How Institutions Matter (2013).

**Manzoor Hasan** is presently the Executive Director of the South Asian Institute of Advanced Legal and Human Rights Studies and Chair, UNCAC Coalition. Previously Mr. Hasan headed the Institute of Governance Studies and Transparency International Bangladesh (TIB). He was also engaged with BRAC and Transparency International. Mr. Hasan graduated from the London School of Economics. He was then called to the English Bar from the Honourable Society of Lincoln's Inn. In 2003 he was awarded the Honour of the Officer of the Order of the British Empire by Queen Elizabeth II for his service to TIB.

**Misha Bordoloi Singh** studied History at St. Stephen's College, Museum & Artefact Studies at Durham University, and recently completed a Masters in Social Anthropology from the London School

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of Economics. She began working on transparency with the National Campaign for People's Right to Information (NCPRI) in 2005. In 2008 she joined the Right to information Assessment and Analysis Group (RaaG), as a Team Leader for a project entitled Safeguarding the Right to Information, and joined TAG in 2012 as a consultant. She has also worked in the heritage sector, at museums like the Nehru Memorial Museum and Library, Delhi and the Cellular Jail Museum, Port Blair, and is the director of a theatre company called the Black Cow Company.

**Rahela H. Sidiqi** the Founder of Rasa Advocacy & Skill Building Agency (RASA) based in Afghanistan and Founder of Asian Middle East Women and Youth Society in & Chair of Afghanistan Emergency & Development Aid Network in UK. Rahela was Senior Advisor to the Chairman of Civil Service Commission and other senior level leaders in Afghanistan for about 5 years. She is a reformist; anti-corruption and human right women right activist. She worked for 10 years at UN as senior social development advisor and is one of the key founders of National solidarity Program in Afghanistan. She **is Right to Information Activists and Advisor for South Asian Countries**. She is poet and storywriter. Her BSc is in Agriculture from Kabul University and her Master Degree is in Social Development and Sustainable Livelihood from Reading University in UK.

**Ridhi Sharma** Holds a Masters' degree in Development Communication and Extension, working as a Research Associate with the Right to Information Assessment and Advocacy Group (RaaG) since 2013, and was a member of the research team for the UNDP sponsored 2011-2013 study "Peoples' Monitoring of the RTI Regime in India". Other professional experience includes drafting instruments and conducting research for the study on the social impact of outbreak of Japanese Encephalitis in Kushinagar, UP, with the Public Health Foundation of India (PHFI), developing audio-visual aids on climate change for a UGC project with Institute of Home Economics, Delhi University; preparing the 'Learner's Guide of Home Science' at the secondary level for the students of National Institute of Open Schooling (NIOS). Currently also works as a Guest lecturer at the Institute of Home Economics, University of Delhi.

**Ruby Singh** is Research consultant with RaaG in 2008 – 2009 and 2013 – 2014 where responsibilities included compiling, collating and analyzing data for a report on how the Indian print media used and reported on the RTI in 2013. In 2009 – 10 compiled and collated RTI data of all states of India to be used at the World Bank sponsored workshop for South Asian countries in April 2010 at IIPA, New Delhi. As preparatory research consultant for TAG, responsibilities included analyzing RTI applications and copy-editing. Other professional experience: editing of research papers, proposals, magazine articles; language training, teacher training and content development with IGNOU, non-profits and learning institutes. Working as a ST consultant with the World Bank.

**Salim Ahmed Qureshi** holds a Master's degree in Geography from Jamia Millia Islamia. Worked as Cartographer (manual)- Feb 2001 to June 2002 in Consultancy Project on Survey of National Park and Sanctuaries, sponsored by MOEF at Indian Institute of Public Administration; Computer Lab Incharge- July 2005 to April-2008 in Zakir Husain College (University of Delhi); Admin & Accountant- May-2008 to August-2009 and from June -2013 to Sept-2014 in RaaG; Project Officer (Admin & Accounts) on Modernization Project- Sept-2009 to Feb-2012 in Nehru Memorial Museum & Library; Admin & Accounts Officer -March-2012 to May-2013 in Joint Operation for Social Help (JOSH).

**Shabina**, a post graduate in Political Science (Jamia Millia Islamia) is currently working as an information and Research Coordinator with Satark Nagrik Sangathan since February 2013, to promote

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transparency and accountability in government functioning and to encourage active participation of citizens in governance in India by using RTI Act,2005. She has worked as a Researcher with Centre for Equity Studies (October 2013 – June 2014). Her past experience includes working as Programme Manager in Targeted Intervention (Female sex workers) and Project Officer in Gender Resource Centre.

**Shailesh Gandhi** was a first generation entrepreneur and a Distinguished Alumnus awardee of IIT Bombay. He sold his business to become a RTI activist. Shailesh was part of the National RTI movement and NCPRI. He used RTI and also trained many citizens to use it. As a Central Information Commissioner he disposed a record of over 20000 cases and ensured that most cases were decided in less than 90 days. He gave many landmark decisions on RTI, apart from organizing the first digital paper-less office. He is now in Mumbai pursuing RTI and trying to involve citizens in improving governance.

**Shamsul Bari (Dr.)** is the Chairman of Research Initiatives, Bangladesh (RIB), an NGO focused on poverty research. He set it up upon his retirement and return home after many years of stay abroad. During his years abroad he studied in the UK and the US, taught at the Universities of Chicago and Minnesota before joining the UN, where he served in many senior positions at UNHCR, the UN refugee agency. In Bangladesh he also directed for a short period the research work of Grameen Trust, a sister agency of Grameen Bank and served as the Executive Director of BLAST, Bangladesh's foremost legal aid organization, of which he is now a member of its Board of Trustees. He served for five years as a member of RAWOO, an Advisory Council of the Dutch Ministry of Foreign Affairs and Development. For the past six years he has been the Special Rapporteur of the Human Rights Council of the UN for the promotion and protection of human rights in Somalia. He is a member of the Board of Directors of Legal Aid Worldwide (LAW) a London/Geneva/Nairobi based international legal aid organization. He is a Barrister and Doctor of Law. He is presently a co-chair of Transparency Advisory Group (TAG), based in New Delhi, which was formed to coordinate efforts of scholars/activists/and public officials of South Asia for the promotion and implementation of RTI in the region.

**Shekhar Singh** is currently the Co-chair of the Transparency Advisory Group (TAG) and co-ordinator of the Right to information Assessment and Advocacy Group (RaaG). He is a founder member and former convenor of the NCPRI and, since 2000, has co-chaired the International Task Force on Transparency, as a part of the Initiative on Policy Dialogues, located in Columbia University, USA. He is an academic and an activist, who has taught Philosophy, at St. Stephen's College, Delhi, and Environmental Management, at various universities and institutes. He has also been an Advisor on environment and forests to the Planning Commission, Government of India. He was co-director of the 2005-08 Google supported, and of the 2011-13 UNDP supported, RTI assessment in India.

**Stuti Govil** worked as a Researcher at RaaG. She recently graduated with an MA in Critical Media and Cultural Studies from SOAS, University of London.

**Sushma Shrivastava** is a post graduate in Natural Resources Management (TERI University) and is currently working as an Information and Research Coordinator with Satark Nagrik Sangathan, since June 2013, to promote transparency and accountability in government functioning and to encourage active participation of citizens in governance in India by using RTI Act,2005. She has worked as a Researcher with Centre for Equity Studies (October 2013 – June 2014) .Her past experience includes

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working as Research Associate with Central Pollution Control Board, Delhi on 'Pollution Assessment of river Yamuna'.

**Taranath Dahal** is one of the prominent journalists and civic activists of Nepal for the past 26 years. Mr. Dahal having academic background of law has established his good name as a Right to Information (RTI) activist and pioneer. He had spearheaded the RTI movement in Nepal since he was the general secretary of Federation of Nepali Journalist (FNJ). He was a member of RTI draft committee formed for the first time and served the government taskforce of RTI Bill for two times. He has authored several books, research papers, working papers and write-ups on access to information and compiled and edited several journals on RTI and freedom of expression. Top of that, he himself is an avid practitioner of RTI who has established milestone-setting success stories in the regime of information request and receipt in Nepal. Currently Mr. Dahal is the chairperson of Freedom Forum-a leading civil society organization working for the promotion of RTI and freedom of expression in Nepal. In addition, he is the chairperson of Citizens' Campaign for Right to Information (CCRI)-a network of CSOs working for RTI in Nepal. It is active in policy reform, capacity building and networking for effective implementation of RTI.

**Vikram K. Chand** is Lead Public Sector Specialist at the World Bank in New Delhi. He has held fellowships at the University of California, San Diego and the Watson Institute for International Studies at Brown University. He has also taught at Brown and Wesleyan Universities. He served as the principal consultant to the Carter Center's Mexican Elections Project as well as its field representative during the 2000 Mexican Presidential Elections. He has been an Associate Research Professor at the Centre for Policy Research, New Delhi. He is the author of a book *Mexico's Political Awakening* (The University of Notre Dame Press, 2001) as well as two edited volumes, *Reinventing Public Service Delivery in India* (Sage Publications, 2006), and *Public Service Delivery in India: Understanding the Reform Process* (Oxford University Press, 2010), and several articles on governance reform. He holds a Ph.D in political science from Harvard University.



*An artist's view of RTI in Nepal*

## *Countries of South Asia*



Afghanistan

Bangladesh

Bhutan

India



Maldives

Nepal

Pakistan

Sri Lanka