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# THE GENESIS AND EVOLUTION OF THE RIGHT TO INFORMATION REGIME IN INDIA<sup>1</sup>

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

## Evolution of the Idea of Transparency

Clearly, transparency is an idea whose time has come. Named word of the year by Webster's Dictionary in 2003<sup>3</sup>, "transparency" might well prove to be the word of the last decade and a half. Consider that in the two hundred and twenty years from 1776, when the first transparency law was passed in Sweden, till 1995, less than 20 countries had such laws. In the fifteen years, from 1995 to 2010, nearly sixty additional countries have either passed transparency laws or set up some instruments to facilitate public access to institutional information.

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

Meanwhile, at the national level, Pakistan was the first off the block and passed a transparency ordinance in 2002. However, there is some dispute whether this was finally converted into a legally sustainable law and whether it is still applicable<sup>4</sup>. India came next, with a national Freedom of Information Act, passed in 2002. However, this somewhat weak Indian law never came into effect and was finally replaced, in 2005, by a much stronger Right to Information Act. Nepal followed, soon after, in 2007 and Bangladesh in 2009. Sri Lanka, Bhutan and the Maldives are still at various stages in their quest for establishing a transparency regime.

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

<sup>2</sup> Founder member and former convener of the National Campaign for People's Right to Information (NCPRI). Was member of the State Council for the Right to Information, Delhi; Co-Chair of the international Task Force on Transparency, as a part of the Initiative for Policy Dialogue based in Columbia University. Has taught philosophy and environmental management in various universities/institutions and has been associated with the RTI and the environmental movement.

<sup>3</sup> Named the Word of the Year for 2003 at Webster's New World College Dictionary, **transparency** is an answer to the public's impatience with secrecy and deceit on the part of leaders, institutions, and processes everywhere, Webster's editors stated in a press release. (December 16, 2003- [www.theworldlink.com/articles/2003/12/16/news/news08.tx](http://www.theworldlink.com/articles/2003/12/16/news/news08.tx)).

<sup>4</sup> Recent news suggests that the insertion of Article 19A in Pakistan's Constitution will make the right to information a fundamental right in Pakistan (*The News*, April 9, 2010, "Access to information now a fundamental right"). However, they might still need a new facilitating law.

## Genesis of RTI Regimes

Globally, it has been argued that the major impetus to transparency has been the growth of democracy<sup>5</sup>. Credit has also been given to multilateral donor agencies<sup>6</sup> for “persuading” governments, especially in countries of the South, to set up transparency regimes, often as a condition attached to the sanction of loans and aid. In Europe, concerns about the environment have catalyzed efforts at transparent governance, especially with the Aarhus Convention<sup>7</sup>. The environmental movement has been one of the initiators of the transparency movement in many parts of the world, including India<sup>8</sup>.

Interestingly, in India, it was not so much the birth of democracy (in 1947) but its subsequent failures, especially as a representative democracy, that gave birth and impetus to the transparency regime. The RTI regime emerged essentially as a manifestation of the desire to move the democratic process progressively towards participatory democracy, while deepening democracy and making it more universally inclusive. However, the democratic nature of the state did, on the one hand, allow space for the growth of the RTI regime and, on the other, respond to the voices of those (very many) people who increasingly demanded the facilitation of a right to information. Perhaps without a democracy, the transparency regime would never have blossomed, but also without the failures of this democratic system, the motivation among the people to formalize such a regime might not have been there<sup>9</sup>.

The impetus for operationalising the right to information, a fundamental (human) right that is enshrined as such in the Indian constitution, arose primarily out of the failure of the government to prevent corruption and to ensure effective and empathetic governance. The role, if any, of international agencies was marginal<sup>10</sup>. The Indian RTI Act of 2005 is widely recognized as being among the most powerful transparency laws in the world and promises far greater transparency than what is prescribed or required by most international organizations. Though the World Bank, for example, has recently revamped its disclosure

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<sup>5</sup> Banisar, D. “Freedom of Information and Access to Government Records Around the World”, posted on [www.ati.gov.jm/freedomofinformation.pdf](http://www.ati.gov.jm/freedomofinformation.pdf)

<sup>6</sup> Ibid

<sup>7</sup> The Aarhus Convention is a Treaty of the United Nations Economic Commission for Europe (UNECE). Adopted in 1998.... The Aarhus Convention represents enforceable binding law in most member states of the European Union (EU), including the UK. With effect from 28 June 2007 all institutions, bodies, offices or agencies of the EU will also have to comply with the provisions of the Convention... Designed to improve the way ordinary people engage with government and decision-makers on environmental matters, it is expected that the Convention will help to ensure that environmental information is easy to get hold of and easy to understand. Campaigners are also hoping the convention will improve the way governments fund and deal with environmental cases. For further details see [www.capacity.org.uk/resourcecentre/article\\_aarhus.html](http://www.capacity.org.uk/resourcecentre/article_aarhus.html)

<sup>8</sup> See, for example, Singh, Misha and Shekhar Singh, “Transparency and the Natural Environment”, *Economic and Political Weekly*, 41:15, pp. 1440-1446, April 15, 2006

<sup>9</sup> India is a successful democracy in so far as the government that comes to power is unquestionably the one that the people have voted for. It is unsuccessful in so far as, once the government comes into power, it mostly does not reflect the concerns of the people, especially the oppressed majority, in the process of governance. It shares with most other democracies of the world the weakness that it offers voters limited choices, thereby making it difficult for them to use their franchise to ensure that their will is done.

<sup>10</sup> In fact, since 2005, the Indian RTI regime is far more stringent than those of international agencies, and one concern of at least some of the international agencies operating in India has been to protect their own “secrets” from being made public under the Indian RTI law.

policy<sup>11</sup> and made it much stronger, it still lags behind the Indian law, at least in coverage and intent.

### **Limitations of a Representative Democracy**

In India, as in most other democracies, functionaries of the government are answerable directly to institutions within the executive, including institutions designed to prevent corruption, monitor performance and redress public grievances. They are also answerable in courts of law if they violate a law or the constitution, or (in a somewhat uniquely Indian practice) if they do not meet with the expectations of the judiciary<sup>12</sup>. The Government, as a collective, is answerable to the legislature, though with the party whip system<sup>13</sup> prevalent in India it is arguable whether the government in power can actually be taken to task by the Parliament or the Legislative Assembly. Finally, it is indirectly answerable every five years, when it attempts to get re-elected, to the citizen's of India, or at least to those among them who are eligible to vote,.

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

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

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

Other institutions are overwhelmed by the sheer volume of work, and starved of resources to tackle the workload in even a minimally acceptable time frame or manner. The judiciary, for example, apart from often being corrupt or co-opted, has by one estimate a back log of over 30 million cases that, at current levels of support and staffing, will take a whopping 320 years

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<sup>11</sup> Copy of the World Bank disclosure policy available at <http://siteresources.worldbank.org/EXTINFODISCLCLOSURE/Resources/R2009-0259-2.pdf?&resourceurlname=R2009-0259-2.pdf>

<sup>12</sup> The Indian judiciary is often described as the most powerful in the world and has been accused, not always without basis, of blurring the distinction between the judiciary and the executive, and indeed even the legislature, and passing directions and delivering judgments on matters that should ordinarily not concern them.

<sup>13</sup> The Tenth Schedule of the Constitution of India was added in 1985 as a result of the 52<sup>nd</sup> Constitutional amendment. This specifies, among other things, that an elected member would be disqualified "...b) If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission."

to clear<sup>14</sup>! Apart from the intolerable delays, for most of the poorer citizens of the country, whose need for justice is most pressing, access to the courts of law is beyond their financial means.

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

Essentially parliamentary (and assembly) constituencies are too large<sup>15</sup> and too varied. Added to this, the weakest segments of society are by definition not organized into politically significant lobbies. Elections are held once in five years and issues before the voters are many. Besides, voting is not influenced only by the past performance of elected representatives but by many other considerations, including caste, religious and party loyalties, and how socially accessibly the elected representative is<sup>16</sup>.

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

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

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

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<sup>14</sup> "Indian judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts including High courts in the country, Andhra Pradesh High Court judge Justice V V Rao said". (*Courts will take 320 years to clear backlog cases: Justice Rao* (Press Trust of India, Mar 6, 2010, as posted on <http://timesofindia.indiatimes.com/india/Courts-will-take-320-years-to-clear-backlog-cases-Justice-Rao/articleshow/5651782.cms>).

<sup>15</sup> On Member of Parliament in India represents on an average 2 million people.

<sup>16</sup> One of the MPs from Delhi once told a public gathering that he spends most of his time attending wedding and birthday parties among his constituents, for he knows that at the end of five years that is what will get him votes rather than any work that he might do in and for the constituency. Though a somewhat cynical view, it does have elements of truth.

## Challenges for a Representative Democracy

This inability to provide effective governance and a semblance of justice to the poor and marginalized has its own consequences. Apart from the suffering that it imposes on the citizens of India, it has also fostered a violent response. From the late 1960s there has been a festering armed revolution in parts of India. Originally known as Naxalism, after the Naxalbari village of West Bengal from where it originated, a new and somewhat transformed version of the armed “revolution” is now more popularly known as Maoism. Recently, the Prime Minister declared Maoism the greatest threat to India’s internal security<sup>17</sup>.

The popularity of Maoism has ebbed and waned over the years. In the early 1990s, with the opening up of the economy, many believed that corruption and the poor delivery of services could now be tackled through the three pillars of the new economic order: privatization, liberalization and globalization. The dismantling of the “licence raj”<sup>18</sup> and the inclusion of the private sector into core economic activities was seen as the way to break the nexus between the corrupt bureaucrat and politician, and deliver essential services and economic growth to the citizens of India. However, nearly twenty years down the line, though the economy has grown, the stock exchange is doing well and India has all but weathered the global economic meltdown, the plight of the poor and the marginalized seems no better.

All that seems to have changed is that whereas earlier Maoists were fighting against the mis-governance of the state, they now fight against the usurping of natural resources and land by corporations intent on building factories, mining natural resources, and displacing local populations. The writer Arundhati Roy suggests that the so called “Maoist corridors”, where the violence is often in opposition to the memoranda of understanding (MoUs) being signed between governments and profit seeking corporations, can more appropriately be called “MoUist corridors”<sup>19</sup>!

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<sup>17</sup> “Singh told a meeting of top police officers from around the country that Maoist rebels posed the greatest threat to India’s internal security and that a new strategy was required to deal with the problem..... The country’s Maoist insurgency, which started as a peasant uprising in 1967, has spread to 20 of the country’s 29 states and claimed 580 lives so far this year.” (*PM warns of failure to tackle Maoist ‘menace’*; Sep 15 2009; [www.livemint.com/2009/09/15114802/PM-warns-of-failure-to-tackle.html](http://www.livemint.com/2009/09/15114802/PM-warns-of-failure-to-tackle.html))

<sup>18</sup> The dismantling of government control and regulation in favour of private enterprise.

<sup>19</sup> “Ms. Roy also described her recent visit into areas controlled by groups portrayed in the mainstream media as “violent Maoist rebels” that need to be “wiped out.” She argued that in exchange for giving such groups the right to vote, democracy “has snatched away their right to livelihoods, to forest produce and to traditional ways of life.”

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

## **Overthrowing the State, or Making it Work**

Perhaps an alternate to the armed struggle that started around Naxalbari village of West Bengal in the late 1960s is the RTI movement that started around Devdhungari village, in Rajasthan, in the early 1990s. Reacting to similar types of oppression, corruption and apathy, a group of local people, led by the Mazdoor Kisan Shakti Sangathan<sup>20</sup> (MKSS), decided to demand information. “Armed” with this information, they proceeded to confront the government and its functionaries and demand justice. From these modest beginnings grew the movement for the right to information, a movement that could promise an alternative to the gun.

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

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

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

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

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

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<sup>20</sup> Loosely translated, the alliance of the power of farmers and workers.

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

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

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

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

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

### **Demands for Transparency**

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

Perhaps the humiliating war with China, in 1962, more than any other single event, marked the end of the public's honeymoon with the Indian Government. The poor performance of the Indian army in the face of Chinese attacks, and the rapid loss of territory to China, shook public confidence in the government like nothing had done before. The euphoria of the freedom movement and independence had finally faded.



## SOME LANDMARKS IN THE RTI JOURNEY

**1975:** Supreme Court of India rules that the people of India have a right to know.

**1982:** Supreme Court rules that the right to information is a fundamental right.

**1985:** Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.

**1989:** Election promise by the new coalition government to bring in a transparency law.

**1990:** Government falls before the transparency law can be introduced.

**1990:** Formation of the *Mazdoor Kisan Shakti Sangathan* (MKSS) in Rajasthan and the launching of a movement demanding village level information.

**1996:** Formation of the National Campaign for People's Right to Information (NCPRI).

**1996:** Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.

**1997:** Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie.

**1997:** The Shourie Committee submits its report to the government.

**1999:** A cabinet minister allows access to information in his ministry. Order reversed by PM.

**2000:** Case filed in the Supreme Court demanding the institutionalization of the RTI.

**2000:** Shourie Committee report referred to a Parliamentary Committee.

**2001:** Parliamentary Committee gives its recommendations

**2002:** Supreme Court gives ultimatum to the government regarding the right to information.

**2002:** Freedom of Information Act passed in both houses of Parliament.

**2003:** Gets Presidential assent, but is never notified.

**2004:** National elections announced, and the "strengthening" of the RTI Act included in the manifesto of the Congress Party.

**May 2004:** The Congress Party comes to power as a part of a UPA coalition government, and the UPA formulates a "minimum common programme" which again stresses the RTI.

**June 2004:** Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi.

**August 2004:** NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its recommendations, to the government.

**December 2004:** RTI Bill introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government.

**Jan-April 2005:** Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.

**May 2005:** The RTI Bill passed by both houses of Parliament.

**June 2005:** RTI Bill gets the assent of the President of India

**October 2005:** The RTI Act comes into force.

People started questioning government action and inaction like never before and suddenly there were more persistent and strident demands for information and justification. However, it took another ten years or so for the Supreme Court of India to take cognizance of public demand for access to information and rule that the right to information was a fundamental (human) right. In 1975 the Supreme Court, in *State of UP vs Raj Narain*, ruled that: "In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings."

Subsequently, in 1982 the

Supreme Court of India, hearing a matter relating to the transfer of judges, held that the right to information was a fundamental right under the Indian Constitution. The judges stated that: "The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1) (a).

Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest” (SP Gupta & others vs The President of India and others, 1982, AIR (SC) 149, p. 234).

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

In 1989, there was a change of government at the national level, the ruling Congress party losing the elections<sup>21</sup>. There were promises by the new ruling coalition to quickly bring in a right to information law, but the early collapse of this government and reported resistance by the bureaucracy resulted in a status quo.

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

### **Birth of the RTI Movement in India**

The 1990s saw the emergence of a right to information movement<sup>22</sup> which primarily comprised three kinds of stakeholders. First, there were people's movements working on ensuring basic economic rights and access to government schemes for the rural poor. The relevance and importance of transparency was brought home to them when they found that the landless workers in rural areas were often cheated and not paid their full wages. Yet, the workers could not challenge their paymasters, who claimed that they had worked for less days than they actually had, as these workers were denied access to the attendance register in which they had affixed their thumb prints every day they worked, because these were “government records”.

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

The third group of supporters were environmentalists who were concerned about the rapid destruction and degradation of the environment. They were spurred on by the success,

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<sup>21</sup> Interestingly, in the late 1990s and the early 2000s, it was the Congress party which took the lead in enacting right to information laws in the states that they ruled and today it is seen as the champion of the right to information in the country, having rightly got credit for enacting a powerful national law.

<sup>22</sup> For a fuller account of the RTI movement in India, see Shekhar Singh, “India: Grassroots Initiatives”, in Ann Florini (Ed.) *The Right to Know: Transparency for an Open World*, Columbia University Press, New York, 2007.

though limited, of an earlier petition to the Supreme Court demanding transparency about environmental matters.

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

### **Towards a National RTI Legislation**

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

Such a need was the focus of discussion in a meeting held in October 1995, at the Lal Bahadur Shastri National Academy for Administration (LBSNAA), Mussoorie<sup>23</sup>. This meeting, attended by activists, professionals and administrators alike, took forward the agenda of setting up an appropriate national body.

In August, 1996, a meeting was convened, appropriately at the Gandhi Peace Foundation, in New Delhi where the National Campaign for People's Right to Information (NCPRI) was born. It had, among its founding members, activists, journalists, lawyers, retired civil servants and academics. This campaign, after detailed discussions, decided that the best way to ensure that the fundamental right to information could be universally exercised was to get an appropriate law enacted, which covered the whole country. Consequently, one of the first tasks that the NCPRI addressed itself to was to draft a right to information law that could form the basis of the proposed national act<sup>24</sup>.

Once drafted, this draft bill was sent to the Press Council of India<sup>25</sup>, which was headed by a sympathetic chairperson, Justice S.B. Sawant, who was a retired judge of the Supreme Court of India. The press Council examined the draft bill and suggested a few additions and modifications. The revised bill was then presented at a large conference, organised in Delhi, which had among its participants representatives of most of the important political parties of India. The draft bill was discussed in detail and was enthusiastically endorsed by the participants, including those from political parties.

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<sup>23</sup> This is a government institute that trains civil servants on their entry into service.

<sup>24</sup> The states seem to catch on to the idea of transparency much faster than the Centre did. In fact, starting from the mid 1990s with Tamil Nadu, various states in India enacted transparency laws of varying description and often dubious efficacy. The exceptions were Maharashtra, Delhi and Karnataka, and to some extent Rajasthan. However, even in these states, much was missing from the transparency laws and implementation was by and large poor. The other states with transparency laws of one form or another were Assam, Goa, Andhra Pradesh and Madhya Pradesh.

<sup>25</sup> The consumer protection movement in India had also been concerned about the lack of transparency with regards to matters that affected consumer rights. They had also formulated an "Access to Information Bill 1996."

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

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

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

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

### **The Sleeping Giant Stirs: Response of the Government**

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

Characteristically, the Indian State was a divided and somewhat confused house. There were many bureaucrats and politicians who were enthused about the possibility of a right to information law and did all that they could to facilitate its passage. However, many others were alarmed at the prospect of there being a citizen's right to information that was enforceable. Undoubtedly, some of these individuals were corrupt and saw the right to information act as a threat to their rent-seeking activities. Yet, many others opposed transparency as they felt that this would be detrimental to good governance. Some of them felt that opening up the government would result in officers becoming increasingly cautious.

Already, there was a tendency in the government to play safe and not take decisions that might be controversial. It was felt that opening up files and papers to public scrutiny would just aggravate this tendency and reinforce in the minds of civil servants the adage that they can only be punished for sins of commission, never for sins of omission.

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

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

As was inevitable, these internal contradictions within and among different levels of the government had to, sooner or later, come to a head. They did, in 1999, with a cabinet minister unilaterally ordering that all the files in his ministry henceforth be open to public scrutiny<sup>26</sup>. This, of course, rang alarm bells among the bureaucracy and among many of his cabinet colleagues. Though the minister's order was quickly reversed by the Prime Minister, it gave an opening for activists and lawyers to file a petition in the Supreme Court of India questioning the right of the Prime Minister to reverse a minister's order, especially when the order was in keeping with various Supreme Court judgments declaring the right to information to be a fundamental right.

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

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

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<sup>26</sup> In 1999 Mr Ram Jethmalani, then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his Ministry.

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

### **Passing the Freedom of Information Act 2002**

Meanwhile, as mentioned earlier, a case had been filed in the Supreme Court questioning the unwillingness of the government to facilitate the exercise of the fundamental right to information. This case continued from 2000 to 2002 with the government using all its resources to postpone any decision. However, finally, the court lost patience and gave an ultimatum to the government. Consequently, the government enacted the Freedom of Information Act, 2002, perhaps in order to avoid specific directions about the exercise of the right to information from the Supreme Court. It seemed that the will of the people, supported by the might of the Supreme Court of India, had finally prevailed and the representatives of the people had enacted the required law, even if it was a very watered-down version of the original bill drafted by the people<sup>27</sup>. Unfortunately, this was not really so.

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

### **Change in Government, and a Change in Fortunes**

In May, 2004, the United Progressive Alliance (UPA), led by the Congress Party, came to power at the national level; displacing the BJP led National Democratic Alliance government. The UPA government brought out a Common Minimum Programme (CMP) which promised, among other things, “to provide a government that is corruption-free, transparent and accountable at all times...” and to make the Right to Information Act “more progressive, participatory and meaningful”. The UPA government also set up a National Advisory Council (NAC)<sup>28</sup>, to monitor the implementation of the CMP. This council had leaders of various people’s movements, including the right to information movement, as members.

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

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<sup>27</sup> Essentially, the five indicators of a strong transparency law can be seen to be *minimum exclusions, mandatory and reasonable timelines, independent appeals, stringent penalties* and *universal accessibility*. The 2000 Bill failed on most of these counts. It excluded a large number of intelligence and security agencies from the ambit of the act, it had no mechanism for independent appeals, it prescribed no penalties for violation of the act and it restricted the access only to “citizens” and did not put a cap on the fees chargeable under the act.

<sup>28</sup> The NAC was chaired for the first couple of years of its existence by Mrs. Sonia Gandhi, President of the Congress Party and Chairperson of the UPA.

Accordingly, in August 2004, the National Campaign for People's Right to Information (NCPRI), formulated a set of suggested amendments to the 2002 Freedom of Information Act<sup>29</sup>. These amendments, designed to strengthen and make more effective the 2002 Act, were based on extensive discussions with civil society groups working on transparency and other related issues. These suggested amendments were forwarded to the NAC, which endorsed most of them and forwarded them to the Prime Minister of India for further action.

### **The Empire Strikes back**

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

The next three or four months saw a flurry of activity from RTI activists, with the Prime Minister and other political leaders being met and appealed to, the media being regularly briefed and support being gathered from all and sundry, especially retired senior civil servants (who better to reassure the government that the RTI Act did not signify the end of governance, as we knew it), and other prominent citizens.

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

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

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<sup>29</sup> The first of these amendments was the renaming of the Act from "Freedom of Information" to "Right to Information". The RTI Act was among the first of the laws unveiling the rights based approach public entitlement –subsequent ones include the National Rural Employment Guarantee Act and the Right to Education Act. The rights based approach, apart from empowering the people, also does away with the prevailing system of benign dispensation of entitlements, leading to state patronage and corruption. It allows even the poorest of the poor to demand with dignity what is their due, rather than to beg for it and humiliate themselves, while being at the mercy of insensitive, partisan or corrupt civil bureaucrats.

Consequently, there was a sharp reaction from civil society groups, while the government set up a group of ministers to review the bill, and the Speaker of the *Lok Sabha* (the lower house of Parliament) referred the RTI Bill to the concerned standing committee of Parliament. Soon after, the NAC met and expressed, in a letter to the Prime Minister, their unanimous support for their original recommendations. Representatives of the NCPRI and various other civil society groups sent in written submissions to the Parliamentary Committee and many were invited to give verbal evidence. The group of Ministers, chaired by the senior minister, Shri Pranab Mukherjee, was also lobbied<sup>30</sup>.

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

Even while according assent “in due deference to our Parliament”, the then President had some reservations which he expressed in a letter dated 15 June 2005 addressed to the Prime Minister. Essentially, the President wanted communication between the President and the Prime Minister exempt from disclosure. He also wanted file notings to be exempt. The Prime Minister, in his reply dated 26 July 2005, disagreed with the first point but reassured the President (wrongly, as it turned out), that file notings were exempt under the RTI Act<sup>31</sup>.

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

### **“Strengthening” by Weakening: Threats to the RTI Act**

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

A perusal of the draft bill revealed that the main thrust of the amendments was to effectively remove “file notings”<sup>32</sup> from under the purview of the RTI Act. The genesis of this demand of the government lay in the drafting of the RTI Act itself. When people’s movements were drafting the RTI Act, they had under the definition of information specifically added

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<sup>30</sup> See text of letter at Annexure I,

<sup>31</sup> Copies of the correspondence at Annexure II.

<sup>32</sup> “File notings are the views, recommendations and decisions recorded by civil servants/ministers in files and include the deliberative process which leads up to the final decision. In the Indian system this deliberative process is usually recorded on sheets of (usually light green) paper with a margin. These sheets are attached to a file but are distinct from the correspondence and other documents that comprise the remaining file. There are strict conventions about how notes are to be recorded – and even the colour of ink to be used – and usually the file and the consequent notes move up and down the hierarchy, starting from near bottom, moving up to the appropriate decision making level, and then coming down for implementation of the decision and storage of the file.



“including file notings”. The government, while finalizing the bill for introduction in Parliament had deleted this phrase<sup>33</sup>. However, as it turned out, even without this phrase the definition of information in the act was wide and generic enough to unambiguously include file notings<sup>34</sup>.

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

Unfortunately, the government tried to perpetuate the myth that, in amending the RTI Act, they were actually trying to strengthen rather than weaken the act. In a letter addressed to the noted RTI activist Anna Hazare, the Prime Minister states: “File notings were never covered in the definition of ‘information’ in the RTI Act passed by Parliament. In fact, the amendments being currently proposed expand the scope of the Act to specifically include file notings relating to development and social issues. The overall effort is to promote even greater transparency and accountability in our decision making process”.<sup>35</sup> Fortunately, the public didn’t buy the argument, especially as more than one information commission had held that the RTI Act, in its present form, did include file notings.

People’s organisations reacted strongly to this attempt to weaken the RTI Act and restrict its scope and coverage. They organized a nation-wide campaign, including a *dharna* (sit-down protest) near the Parliament. Political parties were lobbied, the media was contacted<sup>36</sup>, and influential groups and individuals were drawn into the struggle. A point by point answer to all the issues raised by the government, in favour of this and other proposed amendments, was prepared by RTI activists and publicly conveyed to the government<sup>37</sup>, with the challenge that the government should publicly debate the issues.

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

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<sup>33</sup> See, for example, para 15 of the PMs response to the President of India, copy at Annexure II.

<sup>34</sup> The President and the Prime Minister of India also seemed to be agreed on the necessity of keeping file notings out of the purview of the RTI Act – the Prime Minister going so far as to assure the President, just a few days after the RTI Act was approved, that in case there was any ambiguity in the RTI Act on the matter, the Act would be amended (for correspondence between the two see Annexure II).

<sup>35</sup> Letter dated July 27, 2006 – for complete text see annexure III

<sup>36</sup> The left parties were immediately sympathetic and supportive. Among the ruling Congress Party, many leaders were privately supportive but could not publicly oppose the Government’s stand. The media was universally supportive and gave extensive coverage to the issue.

<sup>37</sup> For a copy see annexure IV

## **Renewed Efforts to Weaken the Act**

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

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

Meanwhile, a threat from a new quarter, the judiciary, emerged. In 2007, an RTI application was filed with the Supreme Court (SC) asking, among other things, whether SC judges and high court (HC) judges are submitting information about their assets to their respective chief justices<sup>38</sup>.

This information was denied even though the Central Information Commission subsequently upheld the appeal. The main issue was whether the office of the Chief Justice of India (CJI) was under the purview of the RTI Act. The matter was then appealed to by the Supreme Court Registry before the High Court of Delhi, where a single judge ruled that the CJI was covered under the RTI Act.<sup>39</sup> A fresh appeal was filed by the Supreme Court in front of a full bench of the Delhi High Court which has also, since, ruled against the Supreme Court<sup>40</sup>. The Supreme Court has now taken the somewhat unusual and perhaps unprecedented step of filing an appeal against the order of the full bench of the Delhi High Court in front of itself!

Interestingly, the real issue was no longer the assets of the Supreme Court judges. In fact, perhaps at least partly in response to public pressure and perception, judges of the Supreme Court and various high courts (including Delhi) had already put the list of their assets on the web. The dispute seemed to be about more sensitive issues, arising out of recent controversies about the basis on which high court judges were recommended for elevation to the Supreme Court<sup>41</sup>. Newspaper reports suggested that some members of the higher judiciary were concerned that if the office of the Chief Justice of India was declared to be a public authority then the basis on which individual judges were recommended or ignored for elevation would also have to be made public.

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<sup>38</sup> The Supreme Court of India, and all the high courts, had resolved that all judges would declare their (and their spouse/dependent's) assets to the respective chief justice, and update it every time there was a substantial acquisition. This was seen as a means of promoting probity and institutional accountability.

<sup>39</sup> Judgment of the High Court of Delhi dated 2 September, 2009, W.P. (C) 288/2009.

<sup>40</sup> Judgment of the High Court of Delhi dated 12 January 2010, LPA No. 50-1/2009.

<sup>41</sup> The current system in India gives exclusive power to a Collegium of Supreme Court judges, headed by the Chief Justice and comprising four senior most judges, to decide on whom to elevate.

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

Even while the appeal against the single judge order to the full bench of the Delhi High Court was pending, the then CJI wrote a long letter to the Prime Minister, trying to make a case for the exclusion of the CJI from the scope of the RTI Act. Among other things, he contended that “Pursuant to the decision of the Delhi High Court and in view of the wide definition of information under section 2(f) of the RTI Act, several confidential and sensitive matters which are exclusively in the custody of the Chief Justice of India may have to be disclosed to the applicant-citizens exercising their right for such information under the RTI Act. Undoubtedly, this would prejudicially affect the working and functioning of the Supreme Court as this would make serious inroad into the independence of the judiciary.....In this scenario, I earnestly and sincerely feel that Section 8 of the RTI Act needs to be suitably amended by inserting another clause to the effect that any information, disclosure of which would prejudicially affect the independence of the judiciary should be exempted from disclosure.....”.<sup>42</sup>

All this came together in October 2009, when just after the annual conference, organized each year by the CIC, the nodal department of the Government of India (the DoPT) organized a meeting of chief information commissioners and information commissioners from across the country to discuss the proposed amendments. As RTI activists had already got wind of this meeting, many of the commissioners were briefed in advance. In any case, most of the information commissioners were sympathetic to the activist’s point of view and, by all accounts, the proposed amendments were rejected by almost all those present<sup>43</sup>.

RTI activists also prepared a response to the proposed amendments and, in an open letter to the Prime Minister and the Chairperson of the ruling coalition, disputed the need and the desirability of the proposed amendments.<sup>44</sup> Some of the activists also met the Chairperson of the ruling alliance, who was sympathetic and supportive and even addressed a letter to the Prime Minister. These activists also met the DoPT secretary and the concerned minister and got an assurance from them that there would be no effort to amend the RTI Act without first consulting various stakeholders, including people’s movements and organizations. In any case, the matter seemed to have again been put on hold, at least for the moment.

Subsequently, Mrs. Sonia Gandhi, Chairperson of the UPA, addressed a letter to the Prime Minister on 10 November 2009, where she stated that “In my opinion, there is no need for changes or amendments. The only exceptions permitted, such as national security, are already well taken care of in the legislation”. Unfortunately, the PM seemed less supportive and in

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<sup>42</sup> Letter dated 16 September 2009, from the Chief Justice of India to the Prime Minister – for other extracts, see Annexure IX

<sup>43</sup> Though no official version of the proceedings of this meeting ever appeared in the public domain, one of the information commissioners who attended the meeting later on publicly circulated his version of the proceedings (see annexure V).

<sup>44</sup> Copy of letter at annexure VI

his response, dated 24 December 2009, said that “While we are taking steps to improve dissemination of information and training of personnel, there are some issues that cannot be dealt with, except by amending the Act.”<sup>45</sup>

However, there seems to have been no further effort at amending the RTI Act. The Supreme Court has also not yet started hearing its appeal to itself. Therefore, as of now (September 2010), that is where the matter rests<sup>46</sup>.

### **How Did We Get Here: A Retrospect of the RTI Movement**

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

The second phase starts in 1996, with the formulation of a draft RTI bill, spearheaded by the NCPRI, and its subsequent processing by the government and the Parliament. Various state RTI laws are passed during this period, including in Tamil Nadu, Delhi, Maharashtra, Karnataka, Assam, Madhya Pradesh, and Goa, as is the national Freedom of Information Act in 2002. This phase also marks the rapid growth in size and influence of the RTI movement in India, and culminates in the passing of the national RTI Act in 2005<sup>47</sup>. This is also the period that sees a large number of countries across the World enact transparency laws.

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

### **Lessons Learnt: Grassroots Mobilization and Building of Alliances**

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

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<sup>45</sup> Copies of correspondence between Chairperson of the UPA and the PM at annexure VII and VIII.

<sup>46</sup> It is interesting to compare the Indian experience with the British one. The British Government took longer than even the Indian one to formulate a transparency law, and then as soon as it was passed, set about trying to destroy it. Perhaps British Colonial influence runs deeper within the Indian bureaucracy than anyone imagined! See annexure XI for an interesting account of the British experience.

<sup>47</sup> A remarkable achievement, in 2002/3, was that of the Association for Democratic Reforms, which successfully petitioned the Supreme Court and finally got a law passed that made it compulsory for all those standing for elections for Parliament and state assemblies to declare their assets, their educational qualifications and their criminal records, if any. For details, see [www.adrindia.org/Activities/Content/achievements.html](http://www.adrindia.org/Activities/Content/achievements.html)

environmental movement sought to use the Supreme Court and some of the high Courts to push for transparency in environmental matters.

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

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

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

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

Equally important was the lobbying with political parties and with individual members of Parliament. The media was also an important ally and ensured that the issue was never out of the public eye. In short, the lessons of this phase were that the most critical requirement is to

build alliances across the board, ensure that there is grass roots mobilization and pose the demand as a political demand rather than a techno-managerial one.

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

Perhaps, more crucially, it is not just the receiving of information that is the main attraction of the RTI Act. For a vast majority of Indians it is a new sense of empowerment that, for the very first time, allows them to "demand" information and explanation of the high and mighty, the senior government officials, whom they could till now at best observe from afar.

Therefore, it is not so much the information they receive, but the fact that they have a legal right to demand it, and to receive it in a timely manner, and to have the official penalized if the information is wrongly denied or delayed, and the flutter that all this causes among the officials, that is the real value of the RTI Act. And this sense of empowerment inevitably spills over to other transactions so that, for perhaps the first time in their lives, they start looking at the government as something that is answerable to them and not just as something that they are answerable to, as was always the case.

### **Lessons Learnt: Exploiting Opportunities**

Another lesson learnt from this phase is that RTI movements must be prepared to exploit opportunities that might suddenly appear. In India, the change of government, the refusal of Mrs. Sonia Gandhi to become the Prime Minister and the extraordinary level of moral authority this gave her, the setting up of the National Advisory Council under her leadership, the unfamiliarity of the system with this first-of-its-kind council and therefore its inability to "manage" and neutralize it, the hesitation of the bureaucrat to openly oppose proposals coming from this council, all led to a window of opportunity which allowed the RTI Act to "slip through". It is quite possible that if the movement was not ready with a draft bill, or did not recognize the significance of this window of opportunity, this Act would never have been passed. In fact, as the system assimilated the NAC it developed its own strategies to neutralize it, as can be seen from the fate of subsequent proposals, most notably the National Rehabilitation Policy, which was also forwarded by the NAC to the Government, in a manner not dissimilar to that of the RTI Act, and yet got nowhere.

### **Lessons Learnt: Flexibility and Consensus**

Undoubtedly, when alliances are to be built, there has to be the ability and willingness to compromise and build consensus. Sometimes this is the hardest part of the process, for people come to the negotiating table after years of struggle for things they passionately believe in. Then to compromise and give up some of your demands in order to build up broader alliances is never easy. There is, of course, the danger of giving up too much and it is difficult to be

sure how far is far enough. In forging consensus around the Indian RTI Bill, this was often an issue. People concerned about undue invasion of privacy wanted far more stringent safeguards, but others felt that such safeguards could get misused to deny even legitimately accessible information. Human rights activists wanted access to all information relating to intelligence and security agencies, but this was violently objected to by these agencies and other interests. The compromise (perhaps not a happy one) was to allow the exclusion of certain notified intelligence and security agencies but only for information that was not about allegations of human rights violation or allegations of corruption.

### **Lessons Learnt: Political Mandates and Transparency**

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

In 2004 the incumbent coalition led by the Bharatiya Janata Party had lost its mandate, even though it was widely expected to win, and this was attributed to the “incumbency factor”. Therefore, it was thought that in 2009 the incumbent coalition led by the Congress Party would lose, or at least have a reduced majority, for the same reasons. However, belying such expectations, the coalition led by the Congress Party not only won but did better than it had done in 2004. The Congress Party itself got many more seats than it had got last time. This victory of the coalition, and especially of the Congress Party, has been widely attributed (even by the Congress Party Leadership) to be mainly due to the two progressive, people friendly, and popular laws it passed in its first term, one of which was the Right to Information Act<sup>48</sup>. This has predictably perked up the interest of democratically elected leaders in other countries, who are vulnerable to persuasion that the introduction of effective transparency laws prior to the next elections might give them an edge in the hustings.

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

Governments are not ordinarily in the business of disempowering themselves. Therefore, in order to wrest from them this right, the people have to line up all the power and influence they can muster, and exploit all the windows of opportunity that present themselves. In India this meant building alliances among NGOs and people’s organizations, with sympathetic elements among the government and the political leadership, and among the media, and supporting this with grass roots mobilization. In another country the opportunities and possibilities might be different and the more relevant allies might be international organization and NGOs, or groups of professionals like lawyers and academics. Windows of

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<sup>48</sup> The other being the National Rural Employment Guarantee Act.

opportunity might also be different. For example it might not be post election chaos but pre election insecurity of a political party that can be exploited to get their support for such a “popular” law!

### **What the Future Holds**

One might be forgiven for hazarding a prediction that the RTI Act in India is here to stay. And as more time passes and more and more people use it with greater effect, it will become increasingly difficult for the government to tamper with it, to weaken it or to repeal it altogether.

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

### **The State of Implementation**

In 2008 the DoPT, Government of India, decided to commission an assessment of the implementation of the RTI Act. An international accountancy company, PriceWaterhouse Coopers (PwC) was awarded the contract, reportedly paid for by the DFID of the Government of UK. Forever watchful of governments, when people’s organizations heard about this impending assessment they decided to do one of their own, so that if any very startling results (for example those that supported the need for amending the RTI Act) emerged from the PwC assessment, they would have a parallel assessment, done at the same time, which was arguably bigger, more scientific and more participatory, on the basis of which these results could be challenged. Consequently, two nation-wide assessments of the implementation of the RTI Act were done in 2008-09, both coming up with their reports in 2009<sup>49</sup>.

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

Both studies came to the conclusion that awareness about the RTI Act was still very low, especially among rural populations and among women. Fortunately, surveys done in rural areas as a part of the People’s Assessment estimated that in the first two and a half years of

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<sup>49</sup> PwC report is available at <http://rti.gov.in/rticorner/studybypwc/index-study.htm>. Executive summary of the People’s Assessment is available at [http://www.rti-assessment.org/exe\\_summ\\_report.pdf](http://www.rti-assessment.org/exe_summ_report.pdf)



the RTI Act (Oct 2005 to March 2008) there were an estimated two million RTI applications filed across the country, of which an estimated 400,000 RTI applications were filed from the rural areas, belying the impression that only the educated urban people used the RTI Act. Nearly 50% of the rural and 40% of the urban applicants were not even graduates, and the representation among applicants of the disadvantaged groups was in proportion to their population in India. Both studies, however, concluded that the Act was primarily being used by men and only 5% of the rural and 10% of the urban applicants were women.

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

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

Another weak area was the functioning of the information commissions<sup>50</sup>. The People's Assessment highlighted that in many of the states the back-log was huge and growing. This meant that appellants had to wait for months in order to get their matter heard and decided upon. It was also found that, despite the fact that the RTI Act mandated that a penalty shall be imposed every time information is not provided within 30 days (without reasonable cause), very few penalties were actually being imposed, with some commissions imposing no penalties at all. Also, there was no consistency or uniformity in the orders of the commissions, with similar or even identical applications being treated differently by different commissions, by different commissioners in the same commission, and in at least one bizarre case, by the same commissioner! There was also a tendency, among many information commissioners, to uphold refusal of information for a variety of reasons not permissible under the law.

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

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<sup>50</sup> A recent (2009) study done by the Public Causes Research Foundation (PCRF) on the functioning of information commissions around the country has identified huge delays and a high proportion of anti-transparency orders as two of the important problems. Another major problem identified was the inability or unwillingness of commissions to ensure that their orders were complied with. The PCRF also decided to rank information commissioners and information commissions – thereby causing much controversy. Their report can be accessed from [www.rtiawards.org](http://www.rtiawards.org)

## **A Proposed Agenda for Action**

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

1. Both the assessments described above highlighted the need to raise awareness about the RTI Act, especially among the rural populations and among women. The PwC study recommended promoting RTI as a brand name and using established marketing strategies. In addition, the People's Assessment recommended the use of electronic and traditional media, including folk theatre, song and dance troupes, and the medium of fictionalized television serials. They also recommended introducing RTI as a non-credit instructional subject at senior school, and college and university level (detailed recommendations at s. no 1-4 of annexure X).
2. Both the studies also highlighted the need to train effectively a much larger number of civil servants and to orient them to facilitating people's right to information. It was thought that the current efforts were not enough, both qualitatively and quantitatively. Detailed recommendations are at s. no. 5-12 of annexure X.
3. Perhaps the future of the RTI regime lies in progressively strengthening the pro-active disclosure of information so that there is little need for applicants to apply for information and for officials to process, and respond to, these applications. Apart from saving time, effort and costs all around, a proactive regime of information disclosure has many other advantages. Though the Indian RTI Act contains strong provisions for pro-active disclosure of information, both the assessments highlighted the unsatisfactory implementation of these provisions. In fact, ideally speaking public authorities should go much beyond the minimum required by the law, but at the moment they are not even meeting the minimum requirements. Perhaps there is both a need to monitor this aspect more stringently and also to involve external professional agencies to assist public authorities in this task. Detailed recommendations are given at s. No. 23-28 of annexure X.
4. Both the studies have suggested that the poor state of record management in most public authorities is one major constraint to providing complete information in a timely manner. Though detailed instructions exist, most public authorities do not have the resources, the manpower or even the space to organize their records in a manner that would allow effective retrieval of information. On the other hand, a proper management of records, especially their computerization and digitization, would not only facilitate the implementation of the RTI Act but also help in many other aspects of governance. Therefore, this can also be seen as a priority area for action. Detailed recommendations are at S. no. 29-30 of annexure X.
5. Another major need is the strengthening of information commissions. Though the RTI Act gives a fair amount of authority to information commissions, most of them are not able to fully exercise this authority or meet fully their various legal obligations, primarily because of a lack of resources. Most information commissioners have no legal background before they join the commission and there is currently no system by which

they are oriented and trained. There is also little ability to learn from each other's experiences or to be consistent in the interpretation of the law. Therefore, significant strengthening of the information commissions is required and detailed recommendations are at s. no. 35-38 of annexure X.

## **Conclusion**

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

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

## **Annexure I**

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

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

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

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

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

#### **“17. Penalties**

- (1) Subject to sub-section (3), where any Public Information Officer, or any other officer who holds or is responsible for holding the information, as the case may be, has, without any reasonable cause, failed to supply the information sought, within the period specified under section 7(1), the Information Commissioner shall, on appeal, impose a penalty of rupees two hundred fifty, for each day's delay in furnishing the information, after giving such Public Information Officer or the other officer, as the case may be, a reasonable opportunity of being heard
- (2) Where it is found in appeal that any Public Information Officer has –
  - (i) Refused to receive an application for information;
  - (ii) Mala fide denied a request for information;
  - (iii) Knowingly given incorrect or misleading information,

- (iv) Knowingly given wrong or incomplete information,
- (v) Destroyed information subject to a request; or
- (vi) Obstructed the activities of a Public Information Officer, any Information Commission or the courts;

he/she would have committed an offence and will be liable upon summary conviction to a fine of not less than rupees two thousand, and imprisonment of up to five years, or both.

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

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

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

Therefore the proviso to Sub section 1 of Section 11 may be amended to read as follows:

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

5. In addition the Bill placed in Parliament does not include the following important NAC recommendations mentioned below which also need to be considered by the Government:

- a) The NAC draft had a proviso for intelligence and security agencies otherwise exempted from the Act, being required to provide information on allegations of corruption and human rights violations. The RTI Bill 2004 has removed the obligation of these agencies to provide information in relation to human rights violations.
- b) The NAC draft gave all “persons” the right to information, this has been replaced by restricting the right to “citizens” alone.
- c) The NAC draft gave citizens the right to access all documents after a 25 year period – even those covered by the exemption clauses. The RTI Bill 2004 has deleted this provision.

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

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

Annexure II

Correspondence Between the President and the Prime Minister of India Relating to the RTI Act:  
June/July 2005

34012/10(S)/2005 ESH  
SECRET



सत्यमेव जयते  
राष्ट्रपति  
भारत गणतंत्र  
PRESIDENT  
REPUBLIC OF INDIA

15 June, 2005

Dear Dr. Manmohan Singhji,

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

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

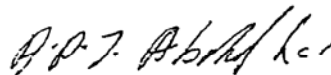
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[2]

- (3) Prima-facie it appears that this legislation has been enacted under entry 97 of the Union List under the Seventh Schedule. If that be so, then Section 28 of the Right to Information Bill is defective as it allows the competent authorities at the State level to frame their own rules. These rules can always turn out to be at cross purposes with the rules framed by the competent authority at the Central Government level. Technically speaking, since this legislation is under the Union List, the State Governments get automatically debarred from framing their own rules. This aspect has been overlooked in this Act.
- (4) The definition of the words, "information" in Section 2(f); "record" in Section 2(i) and "right to information" in Section 2(j) are such that even note portions of the file which contain advice/opinion tendered by officials on arriving at a final decision can be insisted upon for production. This is not a fair approach and will harm the process of decision making as officials would be more cautious in or ever refrain from rendering objective, frank and written advice on file. Sharing of information on decisions taken and sharing of information on how the decision is actually arrived at have entirely different dimensions and ought to have been handled differently.

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

Yours sincerely,



(A.P.J. Abdul Kalam)

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



प्रधान मंत्री  
Prime Minister

New Delhi  
July 26, 2005

*Respected Rashtrapati ji,*

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

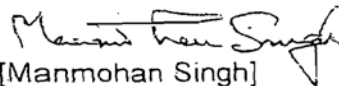
15. I may share with you that the draft of the RTI Bill, which was received from the National Advisory Council for consideration of the Government, had mentioned file notings as one of the items that can be disclosed. But, the Group of Ministers, as well as the Department-related Parliamentary Standing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

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

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

*With warm regards,*

Yours sincerely,

  
[Manmohan Singh]

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



प्रधान मंत्री  
Prime Minister

New Delhi  
July 27, 2006

Dear Shri Hazare,

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


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

File notings were never covered in the definition of 'information' in the RTI Act passed by Parliament. In fact, the amendments being currently proposed expand the scope of the Act to specifically include file notings relating to development and social issues. The overall effort is to promote even greater transparency and accountability in our decision making process.

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

With regards,

Yours sincerely,

  
(Manmohan Singh)

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

Encl: As above

## PRESS STATEMENT

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

1. When the Right to Information Bill was introduced in Parliament, it was referred to the concerned Parliamentary Standing Committee. The Bill, subsequently endorsed by the Parliamentary Standing Committee, did not include the words "file notings" in the definition of "information" given in Sections 2 (f). In other words, file notings were not included in the information that was liable to be disclosed under this law.
2. Consequently, the Right to Information Act, as passed by both the Houses of Parliament and assented to by the President, excluded "file notings" from the definition of Information that was accessible under the Act. The Department of Personnel and Training accordingly made this clear on its own website.
3. The arguments that were placed before the Government in favour of non-disclosure of file notings included :
  - a) the fact that the Freedom of Information Act passed during the tenure of the NDA Government did not allow the disclosure of file notings;
  - b) the fact that similar legislations enacted in the developed democratic countries like the USA, UK, Australia, France, Canada, etc. also exempted the "deliberative process" from disclosure. Even Netherlands, which is considered to be one of the most open societies, has enacted a legislation which specifically exempts internal discussions and advice from disclosure;
  - c) the fact that the State Information Acts in place at the time of the passage of the RTI Act also did not have any provision for the disclosure of file notings.
  - d) the fear that disclosure of file notings may cast a reflection on the reputation of an officer or place him under threat or danger;
  - e) the fear that exposure to public glare may inhibit the expression of frank views by officers;
  - f) the belief that a measure of confidentiality is not only desirable but necessary in the smooth functioning of Government.
4. Nevertheless, the exemption of file notings from disclosure under the Right to Information Act led to protests from certain sections of civil society soon after the passage of the Act. Although these protests subsequently died

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

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

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

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

- a) powers to the Commissions to take all necessary measures to promote the use of electronic record keeping and to facilitate effective disclosure of information as well as information management;
- b) powers to make recommendations regarding effective implementation and monitoring mechanisms;
- c) powers to make recommendations regarding systems and tools that need to be developed and deployed;
- d) powers to make recommendations for development of guidelines, minimum requirements, proactive disclosure of information, methods of publication, etc.

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

26.7.2006



## Annexure IV

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

#### (Enclosures not included)

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

Our Response:

*There is no doubt that the RTI Act of 2005 is a stronger act than the FOI 2002. In fact, it was the weakness of FOI Act 2002 that resulted in its repeal and its replacement by the stronger RTI 2005 Act, by the UPA Government.*

*However, it must not be forgotten that, even then, sections of the bureaucracy tried very hard to scuttle the proposed RTI Act, or to emasculate it. There was also an attempt to notify the old FOI Act of 2002 instead, once it became obvious that the RTI Act would get the political support of the UPA Government.*

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

1. The government says: Disclosure of file notings made by the individual officers may expose these officers to threats and risks from mafia group and anti-social elements against whom such officers may record notes.

*Our Response: There is already an exemption under section 8(1)(g) stating that “there shall be no obligation to give any citizen.... information the disclosure of which would endanger the life or physical safety of any person....”. Therefore, without amending the existing law, not only file notings but all information can be withheld, if there is a credible threat perception.*

2. The government says: Disclosure of file notings may expose individual officers to trial by vested interests in media, which may be detrimental to the smooth functioning of public administration.

*Our Response: For years honest civil servants and politicians have been publicly maligned on the basis of unfounded rumours and disinformation. As long as there was no access to information these officers and politicians could not defend themselves as they were prevented from making their notings and advice public. With the right to information, for the first time individuals who are being wrongly maligned can defend themselves by making public their notings and other documentation that exonerates them. What is needed is not less but more transparency, if this tendency has to be fought, and perhaps more effective laws of libel and tort.*

*It is also significant to note that, since the controversy regarding the proposal to amend the RTI Act has become public, numerous politicians, and serving and retired civil servants and judges, have expressed the view that access to file notings would significantly help to protect the honest among the civil servants and politicians.*

3. The government says: Disclosure of file notings may lead to unnecessary litigation against individual officers.

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



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

4. The government says: Disclosure of file notings may impede free and frank expression of views by public servants and may affect the candour of expression. As a result the quality of decision making may suffer.

*Our Response: The argument that public access to file notings would impede free and frank expression of views by public servants and may effect candour of expression, is a seriously flawed one. The assumption is that the possibility of public exposure would pressurise officials against expressing their views frankly. However, the truth is that officers are pressurised to record notings contrary to their convictions or opinions, or those not in keeping with public interest or the law, NOT by the public but by their bureaucratic and political bosses (or by others who have the ear of these bosses). These bosses already have access to file notings and do not need the RTI act to access them. On the contrary, disclosure of file notings would help ensure that officers are not pressurised into recording notes that are not in public interest. This would strengthen the hands of the honest and conscientious officers and expose the dishonest and self serving ones.*

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

5. The government says: Even the constitutional authorities like UPSC have advised the government against disclosing internal deliberative process.

*Our Response: As we do not know the basis on which this advice was given, or the details of the advice, we cannot comment. However, we do recognise the need to include under section 8, sub-section (1) another sub section (k) that exempts from disclosure, prior to an examination, the examination papers containing questions that examinees have to answer. This sub-section could also exempt from disclosure the identities of examinees and examiners, where such an exemption is required for the fair conduct of examinations.*

6. The government says: Disclosure of file notings to officers facing corruption cases may help such officers to know the weaknesses of the case against them and they may use it for their acquittal. This would thus weaken the fight against corruption.

*Our Response: Section 8(1)(h) states that... “there shall be no obligation to give any citizen.... information which would impede the process of investigation or apprehension or prosecution of offenders;” Therefore, the existing act contains adequate safeguards to ensure that “corrupt” officers cannot misuse it to escape the ends of justice. No amendment is required.*

*However, there are numerous cases of honest officers being entangled in false corruption cases by unscrupulous bosses who want to victimise and harass them. In such cases, it is clearly in public interest that the victims have access to the information that allows them to defend themselves.*

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

7. The government says: Due to these factors, the government had taken a conscious decision not to allow disclosure of any file notings, while formulating the RTI Act, 2005.

*Our Response: Though we are not privy to the decisions of the government “..while formulating the RTI Act, 2005”, as there was no right to information then, and subsequent efforts to access those files have not yet met with success, the Act, as passed by Parliament, does not reflect such a conscious decision. The Act clearly states that “‘information’ means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form....(Section 2(f)). No where else in the Act is it stated that file notings are excluded from the definition of information.*

8. The government says: But due to the several representations received on the subject, the government is now introducing some clarifications and allow most of the notings on the subject that relate to the common people (sic). It has decided that the file notings related to social and development issues shall now be made available under RTI Act.

*Our Response: Again, we have not seen those “several representations”. However, going by media reports and the reactions of the many credible civil society groups campaigning for the right to information, it seems clear that when the RTI Act was passed by Parliament in May 2005, it was widely hailed as a very progressive act and there were no reports in the media that people had protested about lack of access to file notings. This was because everyone understood the Act to allow access to file notings. The first public protests were in December 2005, when the Prime Minister’s Office, through the issue of a circular, tried to restrict access to file notings except, as currently proposed, to those pertaining to “development and social issues”. There were also protests about the DoPT web site, which insisted on declaring that file notings were not a part of information, even after the Chief Information Commissioner of India had formally ruled that they were.*

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

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

- i. *Whether it relates to development and social issues.*
  - a. *The terms “development” and “social” in this context are not well defined. In one sense they would collectively include every aspect of administration.. But then this qualification is redundant.*
  - b. *However, in practice, each PIO will interpret it differently, involving a large number of appeals and a huge waste of time.*
- ii. *Once it has been established that the notings asked for deal with development and social issues, then the PIO would have to determine whether these file notings are on plans, schemes, or programmes of the government.*
  - c. *This immediately leaves out all non-plan expenditure of the government, including repair and maintenance work, or the expenses of running an office. But what could be the justification for this.*
  - d. *It also excludes the normal duties and functions of administrators. For example, enforcement of laws and policies, or the supervision of officers and agencies, or the hearing and resolution of grievances, are not necessarily parts of any plans, schemes or programmes. Therefore, they would be inaccessible. But why? [We cannot, for example, get notings related to why a passport or FCRA clearance was refused, or why someone was not given permission to join a job, etc.]*
- iii. *Even for those few notings that relate to development and social issues, and are on plans, schemes, or programmes of the government, the PIO will still have to determine whether they are substantial or not.*
  - e. *It is not clear what are “insubstantial” notings.*
  - f. *In any case, this term will also be variously interpreted by PIOs and again result in endless appeals and delays.*

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

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

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

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

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

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

*Our Response: This is not correct. A preliminary and quick analysis of the transparency laws of 32 countries revealed that at least nine provided full access to notings or their equivalent, and 16 countries provided partial access. Please see annex 1.*

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

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

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

C. Excluding file notings was a decision taken while formulating RTI Bill. Specifically:

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

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

*it is incorrect to say that the Freedom of Information Act 2002 “expressly excluded the internal deliberative process (file notings) from disclosure”, as claimed by the government.*

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

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

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

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

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

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

*What is even more surprising is that they continue to do this till today, even after the Central Information Commission and the Chief Information Commissioner of India had ruled in appeal No. ICPB/A-1/CIC/2006, dated 31.1.06, (copy available at the website of the Central Information Commission), that: “... a combined reading of Sections 2(f), (i)&(j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part. If the legislature had intended that “file notings” are to be exempted from disclosure, while defining a “record” or “file” it could have specifically provided so. Therefore, we are of the firm view, that, in terms of the existing provisions of the RTI Act, a citizen has the right to seek information contained in “file notings” unless the same relates to matters covered under Section 8 of the Act.”*

- D. Congress/UPA favours transparency in governance

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

## **Annexure V**

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

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

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

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

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

- 6) Adding 'frivolous & vexatious requests' to the list of Section 8 exemptions. Commissioners pointed out that the decision of what constitutes 'vexatious' or 'frivolous' would have to left to the PIOs. This would result in large-scale rejections by PIOs and would go against the present principle that no

purpose needs to be given by applicants. Most Commissioners spoke against such an amendment, while two stated that it was necessary.

7) Excluding discussions / consultations that take place before arriving at governmental decisions; in other words, exclusion of file-notings, which would render the working of the government completely opaque to citizens. This would mean that Citizens will know the reasons for taking decisions only after the decisions have been taken and never know why certain decisions in their benefit were not taken.

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

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

Shailesh Gandhi

## **Annexure VI**

### **Text of the letter sent by the NCPRI, on 18<sup>th</sup> October 2009, to Dr Manmohan Singh, Prime Minister, and Mrs Sonia Gandhi, Chairperson of UPA, regarding the proposed amendments to the RTI Act.**

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

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

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

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

It is significant that even among the collective of Information Commissioners from across the country, whom the government recently “consulted”, the overwhelming view was against making any amendments to the RTI Act at this stage of its implementation. These Commissioners, all appointed by the government, have a bird’s eye view of the implementation of the RTI Act. They have the statutory responsibility to monitor the implementation of the Act,

and the moral authority to speak in its defense. Since the government works with the democratic mandate of the people, the collective wisdom, of people across the board who use and implement the law with an ethical base cannot be put aside without adversely affecting the government in power.

The government should, therefore, abandon this ill advised move to amend the RTI Act. Instead, it should initiate a public debate of the problems that it might be facing in the implementing of the RTI Act and take on board the findings of the two national studies that have recently been completed. It is only through such a public debate that a lasting and credible way can be found to strengthen the RTI regime.

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

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



## Annexure VII

### Letter from Mrs. Sonia Gandhi to the Prime Minister of India Regarding Amendments to the RTI Act – 10 November 2009

**SONIA GANDHI**

Chairperson  
United Progressive Alliance (UPA)

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

November 10, 2009

Dear Prime Minister,

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

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

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

In my opinion, there is no need for changes or amendments. The only exceptions permitted, such as national security, are already well taken care of in the legislation.

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

With good wishes,

Yours sincerely,



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

Attested  
11/11/10

RECEIVED  
OFFICE OF THE  
PRIME MINISTER  
NEW DELHI  
11/11/10

## Annexure VIII

### Response from the Prime Minister to Mrs Sonia Gandhi, Regarding Amendments to the RTI Act: 24 December 2009



प्रधान मंत्री

Prime Minister

New Delhi  
24 December, 2009

Respected Sonia ji,

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

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

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

With warm regards,

Yours sincerely,

(Manmohan Singh)

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

Attested

Mr  
Halla

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## Annexure IX

Extract from Letter written by the Chief Justice of India to the Prime Minister, regarding  
Amendment of the RTI Act: 16 September 2009

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

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



*K. G. Balakrishnan*  
*Chief Justice of India*

*5, Krishna Menon Marg,  
New Delhi - 110 011*

contented in that case that the Supreme Court of India alone is a "Public Authority" and not the Chief Justice of India since the Chief Justice of India is specifically declared under Section 12 (e) of the RTI Act to be "competent authority". Pursuant to the decision of the Delhi High Court and in view of the wide definition of "information" under Section 2 (f) of the RTI Act, several confidential and sensitive matters which are exclusively in the custody of the Chief Justice of India may have to be disclosed to the applicant-citizens exercising their right for such information under the RTI Act. Undoubtedly, this would prejudicially affect the working and functioning of the Supreme Court as this would make serious inroad into the independence of the judiciary, which as held by the Supreme Court in its decision in the Kesavananda Bharti case [AIR 1973 SC 1461] is a "basic structure of the Constitution" which cannot be abrogated or altered even by the process of its amendment of the Constitution itself. Needless to add, this "basic structure" doctrine has consistently continued to be acted upon till date.

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

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

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

*Attested*  
*Bm*  
*17/4/10*

Yours sincerely,

*[Signature]*  
[K.G. Balakrishnan]

Hon'ble Dr. Manmohan Singh,  
Prime Minister of India,  
Rashtrapati Bhavan,  
New Delhi - 110011.

## Annexure X

### PEOPLE'S RTI ASSESSMENT 2008-9

#### MAJOR FINDINGS AND A DRAFT AGENDA FOR ACTION

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

**Recommended Action:**

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

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

**Recommended Action:**

5. Appropriate governments and the ICs should direct all PAs and training institutions (invoking, if need be, S.19(8)(a)(v)), that, apart from conducting separate training courses for PIOs/FAAs and other officers, a module on RTI should be incorporated into all training programmes, considering every government employee is subject to the RTI Act. [DoPT, CIC, SIC]
6. In order to facilitate the recommended training courses, a committee of RTI and governance experts should be constituted, also involving CICs/ICs from various states and the Centre, to develop a training plan and a model syllabi for training modules at different levels of the government. This exercise can be anchored by one of the state or national training institutions.
7. Concurrently, it is also important to identify and train trainers. A roster of trainers, in different languages and for different levels of officials, need to be set up so that training institutions have access to trained trainers.
8. Training material, in the form of printed material and films also needs to be compiled and, where required, developed in the various languages. State training institutes and other state level institution could be made repository libraries for training material, to be accessed by departments and institutions for use in training programmes.
9. An agency, within or outside the government, needs to be given the responsibility of monitoring the state of preparedness among a sample of PIOs and officers, in order to assess the efficacy of the training programme.
10. Advisories Could be sent (perhaps once a month and at least once every three months) by Information Commissions (ICs), under section 25(5) of the RTI Act, to all public authorities bringing to their notice important interpretations of the law decided by the ICs, with the recommendation that these should be brought to the notice of all PIOs and maintained by them as reference material. Such advisories could

also alert PAs and PIOs against common errors made by them in disposing RTI applications (like denying information just because it is third party, or just because it is subjudice, or just because it concerns a police investigation.)

11. Such advisories would also ensure that PIOs cannot take the plea that they were not aware of the interpretation of the law by ICs, or about widespread yet erroneous ways of interpreting the law.
12. In order to facilitate this, each information commission needs to have a research and statistics cell that supports these functions.

***Finding III:*** All state and union territory governments (a total of 34), all the high courts (19) and legislative assemblies (29), the central government, the Supreme Court and both houses of Parliament have a right to make their own rules. This can result in 86 different sets of rules in the country. In addition, the 28 information commissions also have their own rules and procedures, a total of 114 sets of rules relating to the RTI in India! Consequently, an applicant is confronted with the often insurmountable problem of first finding out the relevant rules and then attempting to comply with the application form, identity proof, or mode of fee payment requirements, which differ from state to state and are often virtually impossible to comply with.

**Recommended Action:**

13. The Government of India needs to develop a consensus among all appropriate governments and competent authorities on a common set of minimum rules that would enable applicants from residing in one state to apply for information from any other state, without first having to find, study and understand the rules of each state and competent authority. **[DoPT, Appropriate Governments, Competent Authorities]**
14. Though, given the provisions of the RTI Act, it might not be possible or even desirable to insist on total uniformity, at least the basic application fee should be the same. There should be at least one mode of payment (perhaps the suggested postage stamp – see 17 below) that should be acceptable to all states and competent authorities. Applications on plain paper should be accepted by all with at least the following three bits of information: Name of the Public Authority, details of the information sought, and name and address of the applicant. Where exemption under BPL category is sought, relevant proof of BPL status should also be enclosed.
15. Similarly, basic rules for filing first and second appeals must also be uniform across the country, so that people are enabled to pursue their applications (even where there is a deemed refusal or no response from the first appellate) without having to study 114 sets of rules.
16. Beyond this, appropriate governments and competent authorities could exercise the freedom of allowing additional modes of payment specifically appropriate to their conditions, or give additional concessions (like the waiver of application fee in rural areas of Andhra Pradesh).
17. The Information Commissions could support the imperative for basic common rules and procedures across the country by invoking the powers given to them under S. 19(8)(a) of the RTI Act. **[CIC, SIC]**
18. Special effort must be made to ensure easy payment of application and additional fee. Though Indian Postal Orders (IPOs) are the easiest of the currently allowed modes of payment, especially for those who do not live close to the public authority or do not want to go personally and pay in cash, IPOs are not easy to purchase, especially in rural areas. Besides, many states and competent authorities do not accept IPOs. Rather than introducing a new instrument for payment of fees, perhaps all states and competent authorities can be persuaded to accept **postage stamps (including post cards)** as a means of payment. These are widely available. Where the amount is large, especially where a large number of pages have to be photocopied, all public authorities should be willing to accept money orders.

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

**Recommended Action:**

19. Complaints of such intimidation, threat or attack to ICs must be treated as complaints received under S. 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an enquiry under S. 18(2) read along with S. 18(3) and 18 (4). **[CIC,SIC]**
20. Such intimidation, threat or attack, in so far as it is an effort to deter the applicant from filing or pursuing an RTI application, can clearly be considered as obstruction and falls within the gamut of S. 20(1) as a penalisable offence. Therefore, where the enquiry establishes the guilt of a person who is a PIO, the IC must impose such penalty as is appropriate to the case and acts as a deterrent to other PIOs.
21. Where the guilty party is not a PIO, the IC must establish a tradition of passing on the enquiry report to the police, where a cognizable offence is made, or otherwise to the relevant court, and use its good offices (and its moral authority) to ensure that timely and appropriate action is taken.
22. It would also help if public authorities designated Assistant Public information Officers (APIOs), as required under S. 5(2) of the RTI Act, from neutral agencies. Following the example of the Government of India, it would be a good idea if post offices across the country are made universal APIOs, so that any applicant can file an application in any post office pertaining to any public authority. This would also otherwise facilitate the filing of RTI applications, especially for the rural applicant. **[DoPT, Appropriate Governments, Competent Authorities, MoCommunications]**

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

**Recommended Action:**

23. Given the very poor implementation of Section 4 by most public authorities, the ICs could recommend (under S. 25(5) read with S.18(8)(a)) that each PA designate one PIO as responsible for ensuring compliance with all the relevant provisions of section 4. The Commission would hold this PIO responsible for any gaps or infirmities, subject to provisions S. 5(4) and 5(5) of the RTI Act. **[CIC, SIC]**
24. Where an appeal or complaint comes before an IC relating to information that should rightly have been made available *suo moto* under section 4 of the RTI Act, but was not, the IC should exercise its powers under S. 19(8)(b) and compensate the appellant/complainant for having to waste time and energy seeking information that should have been provided proactively. This will not only encourage applicants to complain against PAs not complying with S.4, but also encourage PAs to fully comply.
25. To ensure that the information proactively put out is up to date, the ICs could direct all PAs that each web site and publication relating to S. 4 compliance must carry the date (where appropriate for each category of information) on which the information was uploaded/printed and the date till which it is valid/it would be revalidated.
26. Concurrently, appropriate governments should commission competent professional agencies to develop a template for S. 4 declarations, with the required flexibility to be usable by different types of PAs. This or some other agency should also be in a position to help PAs to organize the required information in the manner required.
27. The ICs should also require each PA to make a negative list of those subjects/files which might attract any of the sub-sections of section 8(1) and thereby be exempt from disclosure. This list should be sent to the ICs, with justifications, and the advice of the ICs considered before finalizing it. The remaining subjects/files should be declared open and any RTI request relating to them should be automatically

honoured. Further, all the relevant information in these open files should be progressively made public *suo moto*, so that there is finally no need to invoke the RTI Act in order to access such information.

**[DoPT, Appropriate Governments, CIC, SIC]**

28. Appropriate governments and competent authorities should encourage the setting up of information clearing houses outside the government, especially by involving NGOs and professional institutions for subjects related to their area of work. Such clearing houses could function as repositories of electronic information accessed from the concerned public authorities. They can systematically and regularly access information that is of interest to the public. They can demystify, contextualize, and classify such information and make it easily available to the public through electronic and other means. They can also send out alerts regarding information that needs urgent attention. However, such clearing houses should not absolve public authorities of their own obligations under the RTI Act and should actually motivate governments to be more proactive and organized while disclosing information. **[Appropriate Governments, Competent Authorities, NGOs, Professional Institutions]**

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

***Recommended Action:***

29. Section 4(1)(a) of the RTI Act obligates every public authority to properly manage and speedily computerize its records. However, given the tardy progress in this direction perhaps what is needed is a national task force specifically charged with scanning all office records in a time bound manner. Apart from saving an enormous amount of time and valuable space, the replacing of paper records by the digital version would also make it more difficult to manipulate records, or to conveniently misplace them, provided proper authentication and security protocols are followed. **[DoPT, MoInfo. Tech.]**
30. A priority should be given to scanning records at the village, block and sub-divisional level. As facilities for digitizing records are not usually available at this level, it is recommended that a special scheme for scanning rural records, using mobile vans (or “scan vans”) fitted with the requisite equipment and with their own power source and wireless communication facilities should be commissioned to cover all rural records in a time bound manner.

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

***Recommended Action:***

31. Without illegitimately curbing the citizen’s fundamental right to information, there are various ways of ensuring that the numbers of RTI applications received by a public authority do not become unmanageable. First, each public authority should assess every three months what types of information are being sought by the public. As far as possible, the types of information that are most often sought should then be proactively made available, thereby making it unnecessary for the citizen to file and pursue an RTI application. **[Appropriate Governments, Competent Authorities]**
32. Second, most often RTI applications are filed because there are unattended grievances that the public has with the public authority. These are mostly delays, lack of response to queries, not making the basis of decisions public, seemingly arbitrary or discriminatory decisions, violation of norms, rules or laws by the public authority, and non-disclosure of routine information that should have been disclosed even without the RTI. If heads of public authorities periodically (say once in six months) reviewed the basic reasons behind the RTI applications received, they could initiate systemic changes within the PA that would obviate the need to file these applications.



33. Besides, such systemic changes would ensure that the benefits of the enhanced transparency and accountability consequent to the RTI Act do not only go to those who actually use the Act, but to even those who might be too poor or otherwise unable to take advantage of it.
34. Another practice that would minimize the work load of many public authorities is the putting of all RTI queries and the answers given (except where the information relates to matters private) in the public domain. This would allow people to access information that has already been accessed by someone earlier without having to resort to filing an RTI application. This would also be a good way of ensuring that information accessed under the RTI Act is not used to blackmail anyone. Once all accessed information has been proactively put into the public domain, the potential blackmailer would have no remaining leverage.

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

***Recommended Action:***

35. There is a need to develop a consensus among information commissioners, across the country, on norms for budgets and staffing patterns of ICs, based on the number of cases/appeals received, the number of information commissioners, and other relevant state specific issues. **[CIC, SIC, DoPT, Appropriate Governments]**
36. Similarly, there needs to emerge, through a broad consensus, a norm on the number of cases a commissioner is expected to deal with in a month. This could help determine the required strength of commissions, the period of pendency, and also indicate to the public the norm which the commissioners have agreed to follow for themselves. Of course, such a norm should be developed after discussion with other stake holders, especially the public.
37. In order to have the ability to evolve a consensus among information commissioners on these and other such issues, it is important that there be a community or body of commissioners, formal or semi-formal, perhaps as a collegium.
38. There also need to be created a system of legal aid where non-governmental organizations and legal professionals can assist appellants, especially those coming from weaker segments of the society, to formulate their appeals clearly and more effectively. This would also help information commissions to deal with such appeals more speedily and effectively.

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

***Recommended Action:***

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

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

**Recommended Action:**

40. Newly appointed information commissioners must be provided an opportunity to orient themselves to the law and case law. Incumbent commissioners should have an opportunity to refresh their knowledge and understanding and to discuss their experiences and thinking with commissioners from other commissions. Towards this end, it might be desirable to link up with the National Judicial Academy, in Bhopal, and request them to organize orientation and refresher workshops, the latter over the weekend, in order to minimize disruption of work. This is similar to the workshops being organized by them for High Court judges. [CIC, SIC]
41. There also needs to be a standardized format for IC orders that ensures that at least the basic information about the case and the rationale for the decision is available in the order. This again needs to be discussed with other stakeholders and agreed to by the community of information commissioners.

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

**Recommended Action:**

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

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

**Recommended Action**

44. Information commissioners across the country should get together and collectively resolve to start applying the RTI Act more rigorously, especially as four years have passed since the Act came into effect, and this is more than enough time for the government, and for PIOs, to prepare themselves to implement the Act.[CIC, SIC]
45. At the same time, a dialogue needs to be initiated between the public and information commissions to discuss why they are not imposing penalties even where clearly no reasonable ground exists for delay or refusal of information, etc. To that end, it is required that groups of interested citizens join hands with the media and the legal professionals, and progressive former civil servants and judges, and start on a regular and systematic basis, analyzing orders of commissions, so that a meaningful dialogue can be had with commissions on the need for imposition of penalties. [NGOs, People's Movements]

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

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

**Recommended Action**

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

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

**Recommended Action:**

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

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

**Recommended Action:**

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

## Annexure XI

Extract from *The Blair Memoirs and FOI* (6<sup>th</sup> September 2010) by Maurice Frankel of “The Campaign for Freedom of Information”, UK.

The full article is available at <http://www.cfoi.org.uk/blairarticle060910.html>

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

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

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

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

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

*Just 18 months later, Mr Blair struck again. New regulations were proposed, drastically [limiting the right of access](#). Requests can be refused if the cost of answering them exceeds certain limits, but only the time spent finding and extracting the information can be counted. The government proposed to also include the time officials spent thinking about the decision. Any complex request, or one raising new issues, would involve considerable ‘thinking time’ and so would be likely to be refused on cost grounds - freezing progress on*

*openness. Another provision would have rationed the number of requests anyone could make within a 3 month period, limiting campaigners, and entire organisations such as the BBC, to perhaps one or two requests a quarter to any one authority.*

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

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