

A GREAT AND REVOLUTIONARY LAW?  
THE FIRST FOUR YEARS OF INDIA'S RIGHT TO INFORMATION ACT

Alasdair Roberts

Rappaport Professor of Law and Public Policy

Suffolk University Law School

alasdair.roberts@gmail.com

REVISED 12 March 2010

Forthcoming in *Public Administration Review*

**ABSTRACT.** India's Right to Information Act (RTIA), adopted in 2005, is among dozens of national laws recently adopted that are similar to the United States' Freedom of Information Act. A large number of studies completed in 2007-2009 have examined challenges in implementing the law. Indian citizens filed about two million requests for information under the RTIA in its first two and half years. However, use of the law has been constrained by uneven public awareness, poor planning by public authorities, and bureaucratic indifference or hostility. Requirements for proactive disclosure of information are often ignored, and mechanisms for enforcing the new law are strained by a growing number of complaints and appeals. Nonetheless, RTIA advocates have demonstrated the transformative potential of the new law, and continue to press energetically for proper implementation. Public authorities and civil society organizations have developed innovations in practice that may be useful to other developing countries adopting similar laws.

## A SOCIO-ECONOMIC REVOLUTION?

In 1966, the United States adopted the Freedom of Information Act (FOIA), which established a right to information held by federal government agencies. Strengthened after the resignation of President Richard Nixon in 1974, FOIA became the model for dozens of statutes adopted by US state governments. FOIA also became a model for other countries, such as Canada, Australia, and New Zealand -- all of which adopted similar laws in 1982. By 1990, fifteen other nations -- mainly wealthy advanced democracies in Europe or the Commonwealth -- had similar statutes (Roberts 2006, 1-23).

In the next two decades, however, enthusiasm for FOIA-style laws exploded (Banisar 2006). Some of the other wealthy democracies -- such as the United Kingdom, Germany and Japan -- finally adopted similar statutes. Many countries -- such as South Africa, Mexico, and many states in Central and Eastern Europe -- adopted FOI laws as a way expressing a new commitment to democratic governance. Some governments also adopted FOI laws to control corruption, often acting on advice from international organizations such as the World Bank or Transparency International.

By 2010, over seventy nations had national laws comparable to the United States' FOIA. Even China had adopted regulations establishing a right to government held information. Most of the countries that have adopted laws over the last two decades differ in important ways from the United States and other early adopters. On the whole, they are less affluent, less politically stable, have weaker administrative and legal systems, and are more prone to corruption (Roberts 2006, 108; Tiwari 2009). An

important question -- only now being answered -- is how well FOIA-style laws will work under these more difficult conditions.

India is one of the most important recent adopters of FOIA-style legislation. The Right to Information Act (RTIA) was adopted by India's Parliament in May 2005 and went into force in October 2005. Like the United States' FOIA, the RTIA gives Indian citizens a right to obtain information held by public authorities. However the RTIA is broader in scope. While the US FOIA applies only to national government, the RTIA applies to all of India's state and local governments as well.

India, although a long-established federal democracy, confronts challenges in economic and political development unknown to the affluent nations that first adopted FOIA-style laws. Its per-capita GDP is roughly one-twentieth of the United States'. Two-thirds of its 1.2 billion people still lives in rural areas, although the country is urbanizing rapidly. (By contrast, only one-sixth of the US population is rural.) Forty percent of the population is illiterate, and many belong to oppressed social groups. There is recurrent sectional and political violence (Nussbaum 2007). Government programs to promote social and economic development are often undermined by mismanagement and systemic corruption (Chand 2006, 18-22). The Indian bureaucracy, whose fundamental features were established during the era of British colonial rule, is very powerful, and shares the British bureaucracy's penchant for secretiveness.

Advocates of the RTIA argue that the law can help to purge inefficiency and corruption from government, control bureaucratic power, and increase the political influence of marginalized citizens. And expectations about the transformative potential of the new law are very high. The Bangalore-based Public Affairs Centre describes the

adoption of the RTIA as a "watershed moment in the history of public governance in independent India" (Public Affairs Centre 2009, 1). A committee of Indian information commissioners also said recently that the statute "has the potential to change the nature of governance in India" (Commissioners' Committee 2009, 16). Speaking to a national conference in Delhi in October 2009, Lord Meghnad Desai called the RTIA "a great and revolutionary act . . . another step further in the embedding of democracy." A report prepared for India's central government in 2009 agrees that the RTIA could "bring in a socio-economic revolution" (PriceWaterhouseCoopers 2009, 27).

Whether the RTIA fulfills these hopes hinges largely on how it is implemented. Indeed, the rapid diffusion of FOIA-style laws has led naturally to a growing international literature on problems of implementation. Significant reports have been published recently about implementation in the United Kingdom (Hazell, Worthy et al. 2010), Mexico (Bookman and Guerrero Amparán 2009), and China (Piotrowski, Zhang et al. 2009; Xiao 2009). But India has examined implementation more doggedly than any other country. In 2007-2009, two major national studies about the operation of the RTIA were completed, along with a half dozen studies of more limited scope (Table 1). This profusion of studies provides an extraordinary opportunity to consider whether the RTIA is meeting expectations about its revolutionary potential. This is a question that is relevant not only in India, but in many other countries in similar circumstances, which have either adopted or are considering the adoption of FOIA-style legislation.

TABLE 1: RECENT ASSESSMENTS OF THE RIGHT TO INFORMATION ACT		
AUTHOR	DATE	METHOD
PriceWaterhouseCoopers (PWC)	2009	Survey of five thousand citizens and public authorities in five states; mail survey of information commissions and central government PIOs; national workshops for commissioners, civil society organizations, and the media; other submissions from stakeholders
RTI Assessment & Analysis Group (RAAG) and the National Campaign for People's Right to Information (NCPRI)	2009	Nineteen thousand individual interviews and 630 focus group discussions with citizens and officials in eleven states; survey of sample of 515 public authorities across India; 800 RTIA requests filed across India.
Centre for Good Governance (CGG)	2009	Compilation of RTI best practices by commissions, public authorities, and civil society organizations.
Commissioners' committee	2009	Report by a committee of central and state information commissioners on issues relating to RTIA implementation raised during the Third Annual Convention on Right to Information.
Commonwealth Human Rights Initiative (CHRI)	2009	Field study by a team of paralegals of 95 local and district offices in Panchmahals district in the state of Gujarat. The district was selected by the Gujarat government for RTI capacity building under a UNDP program.
Institute of Secretariat Training & Management (ISTM)	2009	Assessment of the proactive disclosure practices of five central government ministries.
Public Affairs Centre (PAC)	2009	Review of websites of twelve central government departments as well as sixteen departments in each of the 28 state governments
Society for Participatory Research in Asia (PRIA)	2007	Collection of data from 65 representatives of civil society organizations who have been working on RTIA for at least one year, in 21 districts of eight states
Society for Participatory Research in Asia (PRIA)	2008	Survey of 420 individuals who have used RTIA, selected from one district in each of ten states

The aim of this article is to synthesize the main findings of these recent Indian studies. Overall, the reports show that citizens and civil society organizations have been able to use the RTIA to fight mismanagement and corruption and improve governmental responsiveness. But there are still daunting barriers to use of the law because of poor

planning and bureaucratic indifference or hostility. Provisions in the law to promote "proactive disclosure" of key information are often disregarded. Some of the commissions established to enforce the law are struggling with a growing caseload of complaints about non-compliance by public authorities.

For advocates of the RTIA, these results are disappointing but not disheartening. Four years is a short time in which to accomplish change within India's vast public sector, and there is little evidence that the enthusiasm of RTIA advocates is flagging. Government agencies and civil society organizations are also developing innovations in practice that might prove useful in other developing nations. The challenges are nonetheless substantial. This set of studies show that the adoption of an FOIA-style law is only the first step on the long road to transparency.

## USE OF THE LAW

Two large-scale assessments of the RTIA were produced in 2009. One was completed by the private consultancy PriceWaterhouseCoopers (PWC) for the Indian government's Department of Personnel and Training, the lead organization within central government for implementation, with financial support from the United Kingdom's Department for International Development. (Considerable support for work on implementation has also been provided by the United Nations Development Programme (UNDP) through Capacity Building for Right to Information (CBA2I) project.) The other was undertaken by a coalition of civil society organizations, the RTI Assessment & Analysis Group (RAAG), with support from the philanthropy Google.org. Each of the

studies relied on surveys or interviews of thousands of Indian officials and citizens, and both reached broadly similar conclusions about the state of the RTIA.

The RAAG study estimates that Indian citizens filed about two million requests for information under the RTIA in the first two and half years of its implementation, from October 2005 to March 2008 (RTI Assessment & Analysis Group 2009, 7-8). PWC's estimate is roughly comparable, at about 850,000 requests in 2008 alone (PriceWaterhouseCoopers 2009, 67). This is an immense number of requests, but it should be remembered that the law affects all levels of India's vast public sector. From the point of view of RTIA advocates, the number is seen to be too low, reflecting limited awareness of the RTIA and a host of factors that make it difficult for citizens to make requests under the law.

Indeed, none of the recent studies suggest that public authorities have yet been overwhelmed by an inflow of requests. Another non-governmental organization, the Commonwealth Human Rights Initiative, completed a smaller study of RTIA implementation in the state of Gujarat in 2009, and found that the workload created by the law "does not appear to be as Herculean as people have been made to believe" (Commonwealth Human Rights Initiative 2009, 9). A 2009 report by a committee of central and state information commissioners concludes that official fears about a deluge of "useless demands and complaints" are unfounded (Commissioners' Committee 2009, 18).

Most requests are directed to offices of state and local government, and are often filed with the aim of redressing grievances about the failure to deliver public services or complete public works. The variety of complaints is broad, reflecting the fact that the

Indian state continues to have an expansive role in provision of services. For example, citizens have used the RTIA to prod authorities to deliver rationed food to the poor; pay wages and pensions; provide scholarships and school uniforms; complete roads and housing projects; correct bank statements; restore electricity service; and take disciplinary action against delinquent teachers (Society for Participatory Research in Asia 2008, 74-91; PriceWaterhouseCoopers 2009, 30).

In many cases, RTIA requests reveal corruption in public services. The Orissa State Information Commission gives the illustration of two non-governmental organizations that used the RTIA to reveal that government officials and businessmen had stolen four million kilograms of rice intended for distribution to the poor. The two organizations organized public protests to press home their demand for information, braved harassment and threats, and eventually restored the supply of rice (Orissa State Information Commission 2009, 3-4). This is far from being an isolated case. Many advocacy groups have integrated RTIA into their campaigns for improved delivery of services to the poor (Centre for Good Governance 2009, 4 and 83; Commissioners' Committee 2009, 34). Many are inspired by the example of Mazdoor Kisan Shakti Sangathan (MKSS), which became famous for integrating Rajasthan's state RTIA, adopted in 2000, into its campaigns for the rural poor (Roberts 2006, 1-3).

Two groups are conspicuously *not* major users of the RTIA. RAAG concludes that there is no evidence to support officials' apprehension that aggrieved government employees would rely heavily on the law as a tool for dealing with internal personnel matters. More surprising is RAAG's finding that the media is not using the RTIA extensively as a tool for investigative journalism. The Indian media has given extensive

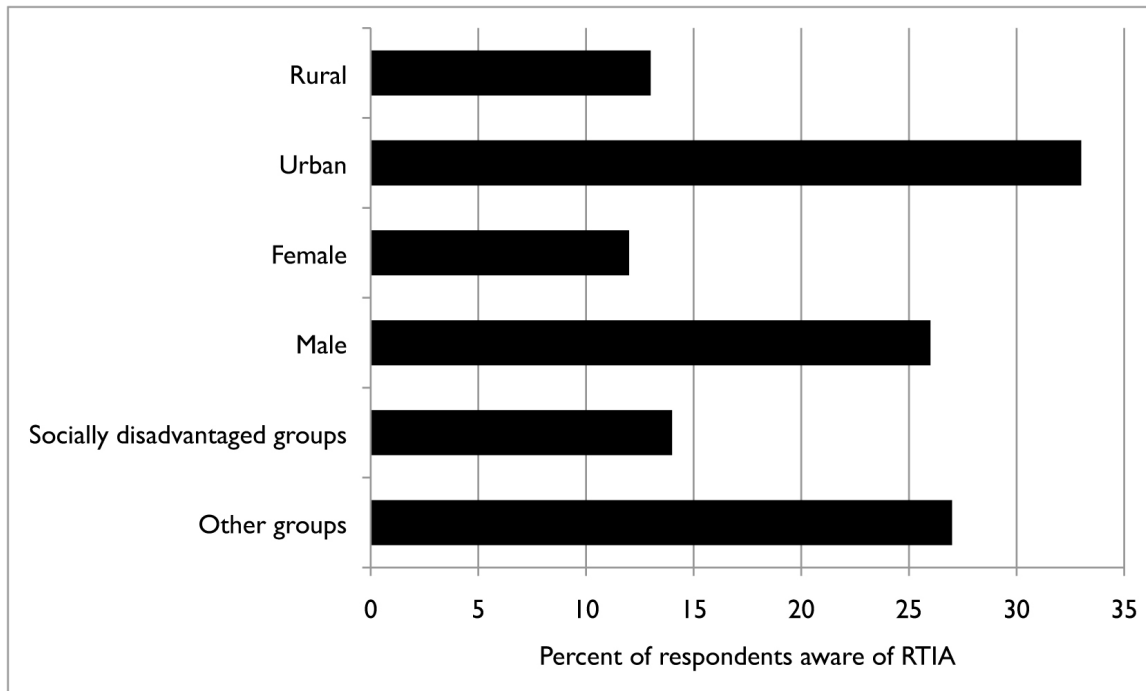


coverage to the RTIA, but stories have focussed primarily on the use of the law by other groups. "The press sees the RTIA primarily as a boon for citizens, rather than itself," the RAAG report concludes (RTI Assessment & Analysis Group 2009, 26-28, 30, and 32). Media use of the RTIA is sometimes discouraged because of harassment of the press itself, particularly in rural areas (Freedom House 2009).

## BARRIERS TO ACCESS

There are several daunting barriers to the more frequent use of the right to information. One of the most substantial is a simple lack of awareness about rights granted by the RTIA, particularly among marginalized groups. PWC's survey of the general public found that only fifteen percent were aware of the law (PriceWaterhouseCoopers 2009, 38). The Centre for Good Governance (CGG), a governmental research organization that has played an important role in RTIA implementation, says that lack of awareness is "the most glaring deficiency at the demand side . . . particularly in the rural areas" (Centre for Good Governance 2009, 84). A study of poor households in Orissa completed for Transparency International found that only four percent were aware of their right to information (CMS India 2008, 12). Other studies have also confirmed that awareness, and therefore use, tends to be skewed toward the urban middle classes (Society for Participatory Research in Asia 2007, 22; Commissioners' Committee 2009, 13). There is also a very sharp difference in awareness between men and women (PriceWaterhouseCoopers 2009, 38). RAAG's study finds that a startling ninety percent of RTIA users are men (RTI Assessment & Analysis Group 2009, 8).

CHART ONE: DIFFERENCES IN AWARENESS OF THE RIGHT TO INFORMATION ACT



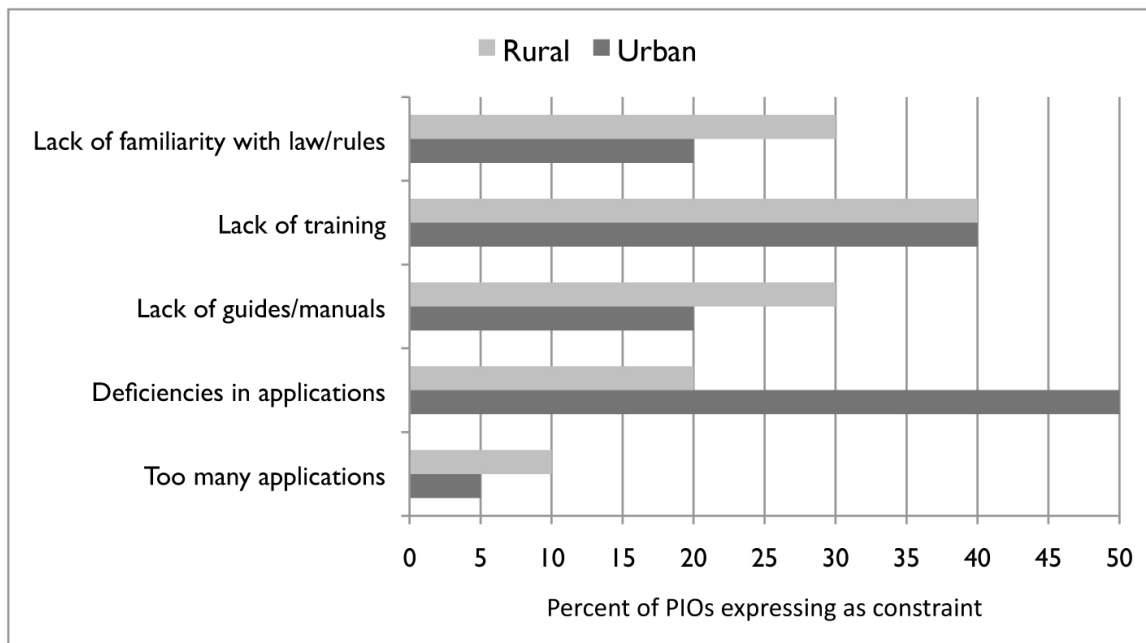
"Disadvantaged groups" comprises three groups defined in Indian law: Scheduled Castes, Scheduled Tribes, and Other Backward Classes. Source: (PriceWaterhouseCoopers 2009, 38)

For individuals who are aware of their right to information, and seek to exercise it, there are a number of prosaic difficulties. The first of these is knowing where a request should be filed. The law requires public authorities to appoint Public Information Officers (PIOs) to receive requests, and publish details about the location of PIOs in ways that are convenient for possible requesters. But it is often difficult to determine who or where the PIO is, especially at the district and local levels of government (RTI Assessment & Analysis Group 2009, 10). A 2008 survey of RTI requesters completed by the Society for Participatory Research in Asia (PRIA) found that details about PIOs "were simply not available" for district governments in most of the states which it

covered (Society for Participatory Research in Asia 2008, 25). Similarly the 2009 CHRI study found that three-quarters of local government offices did not display information about their PIO (Commonwealth Human Rights Initiative 2009, 2).

There are other practical barriers -- such as a lack of instructions or advice on how to file an RTIA request. In PWC's survey, most citizens complained about the "non-friendly attitude" of PIOs, with half saying that the PIO provided no assistance in drafting and filing their requests (PriceWaterhouseCoopers 2009, 43). Some authorities have imposed additional restrictions -- such as an obligation to provide proof of identity, limits on the length or scope of requests, or requirements that application fees be paid only in banker's checks or postal orders rather than cash (Society for Participatory Research in Asia 2008, 8, 36-37) (PriceWaterhouseCoopers 2009, 41, 148, 158).

CHART TWO: CONSTRAINTS FACED BY PUBLIC INFORMATION OFFICERS



Percentages do not add to 100 because multiple options were permitted. Source: (RTI Assessment & Analysis Group 2009, 23)

It is noteworthy, however, that there are few complaints among requesters about fees in principle. A large majority of respondents to PRIA's 2008 survey of requesters said that they found fees to be reasonable (Society for Participatory Research in Asia 2008, 7). By contrast, many PIOs told researchers that the RTIA application fee should be "substantially increased" to deter frivolous requests (RTI Assessment & Analysis Group 2009, 30). But this complaint misses the other substantial costs that are borne by individuals who decide to request information. The PWC study deserves credit for tabulating these other costs. Using average wage rates and transportation costs, it finds that the true economic cost of filing an RTI request is about 250 rupees in rural India, and twice that in urban areas -- amounts substantially larger than the ten rupee application fee (PriceWaterhouseCoopers 2009, 134).

As PWC observes, the real cost of pursuing an RTI request increases when citizens are required to make frequent follow-up visits. PWC finds that 26 percent of requesters had to make three or more visits to file a request (PriceWaterhouseCoopers 2009, 7). PRIA's 2008 survey of requesters found that in forty percent of cases, requesters had to make two to five visits, while twenty percent had to make more than six (Society for Participatory Research in Asia 2008, 41-42).

In some instances, requesters also pay a psychological cost, as they confront overt hostility from public officials. As the PWC study says, "weaker sections in society are scared to face the public authorities" (PriceWaterhouseCoopers 2009, 150). In the RAAG study, forty percent of rural respondents said that the most important constraint they faced in exercising their right to information was harassment and threats from officials: "Applicants, especially from weaker segments of society, are often intimidated,

threatened or even physically attacked when they go to submit an RTI application, or as a consequence of their submitting such an application" (RTI Assessment & Analysis Group 2009, 10 and 38). The 2008 PRIA survey finds "abundant" cases of threats and harrassment from officials, noting that "the cost of asking for information can be very high and sometimes brutal in some cases" (Society for Participatory Research in Asia 2008, 8 and 43-44).

The truth of that statement was demonstrated in January 2010 by the murder of Satish Shetty, an activist who used the RTIA to expose corruption in the city of Pune. Anna Hazare, one of India's most prominent RTIA advocates, said that Shetty was killed by sword-wielding assailants "simply because he used RTI to unearth corruption . . . This is frightening and can cause a serious setback to the RTI movement" (freedominfo.org 2010).

This hostility is tangible evidence of an underlying reality: RTIA is construed by some officials as an assault on long-standing power relationships, particularly in rural areas. The anger of a few officials at the challenge to their prerogatives is evident in CHRI's field study in Gujarat. Paralegal staff executing the study found that several PIOs were "rude and dismissive" when questions were posed about RTIA compliance. One PIO wondered why people from respectable families would stoop to asking about his work. Another protested about being treated like a vegetable vendor. Only anti-social elements use the RTIA, said a third: "The good ones beg humbly and get [information] anyway." CHRI calls the overall level of performance at local levels "dismal" (Commonwealth Human Rights Initiative 2009, 11, 56, 73, 76, 94, 158).

## PROBLEMS OF ADMINISTRATIVE CAPACITY

Compliance is hindered by the manner in which PIO positions are filled. In the RAAG survey, one third of PIOs in rural areas admitted they did not want the assignment, which offers no rewards but does pose the risk of personal fines in cases of non-compliance (RTI Assessment & Analysis Group 2009, 23-24). (Most urban PIOs simply refused to answer the question.) In some authorities, PIO responsibilities are given to low-level staff, whose lack of seniority makes it hard to collect and disclose information. Turnover among PIOs also impairs their ability to learn on the job (PriceWaterhouseCoopers 2009, 45, 49 and 84).

Capacity building at the frontline level has been "particularly weak," according to the commissioners' committee (Commissioners' Committee 2009, 14). PWC's study found that only half of PIOs had received training about the RTIA (PriceWaterhouseCoopers 2009, 45). The proportion is significantly lower for local officials in CHRI's Gujarat study, which also seemed to show resistance to the very idea of training among a few senior staff (Commonwealth Human Rights Initiative 2009, 6-7). RAAG's survey of urban and rural PIOs found that only forty percent had been trained, while half of rural PIOs conceded that they did not even have a copy of the law. But the RAAG survey also shows that a significant proportion of government officials recognize the need for further training (RTI Assessment & Analysis Group 2009, 25, 30-31).

There are other administrative difficulties. Some offices, particularly at lower levels of government, lack the equipment needed to respond properly to requests -- such as computers, photocopiers or even typewriters. And compliance is widely acknowledged to be undermined by the "primitive" state of records management in many

authorities (National Coordination Committee on RTI 2008, 16-17, 22, 45; PriceWaterhouseCoopers 2009, 8 and 45-48).

But many studies regard these administrative problems as symptoms of a much larger difficulty: the absence of top-level leadership and planning. As the commissioners' committee observes, there is "a lack of seriousness [and] commitment among departments and public authorities in general toward implementing this Act . . . an abject lack of whole-of-the-organization thinking" (Commissioners' Committee 2009, 10 and 22). The need for a more forceful and systemic approach to implementation is also a key theme in PWC's recommendations (PriceWaterhouseCoopers 2009, 68-71). PRIA suggests that in key areas of implementation, central and state governments "pay lip service to transparency and accountability in government" (Society for Participatory Research in Asia 2008, 10).

## PROACTIVE DISCLOSURE

In addition to provisions that allow citizens to make requests for government-held information, the RTIA imposes a positive obligation on public authorities to collect and publish specified details about their work (section 4(1)(b)). This is called *suo moto* or proactive disclosure. It is comparable in style to the disclosure requirements contained in the United States' Administrative Procedure Act (5 USC 552(a)(1-2)). Indian RTI advocates hoped that the RTIA's proactive disclosure requirements would eliminate the need for many RTI requests by compelling the publication of frequently-sought information.

Unfortunately, many public authorities have neglected the RTIA's proactive disclosure requirements. PWC's report finds that state governments have generally failed to take adequate steps to assure compliance with the provision, and that even when information has been proactively disclosed, it is often incomplete or soon out-of-date. PWC's survey of PIOs found that 43 percent were not aware of the proactive disclosure requirements at all (PriceWaterhouseCoopers 2009, 8 and 49-50). The RAAG study found equally spotty compliance in its large-scale study (RTI Assessment & Analysis Group 2009, 11-12).

A series of smaller studies have produced similar results. In 2009 the Institute of Secretariat Training & Management (ISTM), a central government consultancy, examined the proactive disclosure practices of five central government ministries. (The ISTM study, funded by UNDP, used a toolkit developed by CGG for appraising the adequacy of an authority's proactive disclosure (Centre for Good Governance 2007).) It concluded that all five ministries had limited or poor compliance with the RTIA's requirements. Study team members reported that they were obliged to visit ministries "a number of times to elicit the information" covered by the proactive disclosure provisions. Several ministries published information shortly after adoption of the law but failed to update it afterward. "While the initial compliance was due to euphoria or fear," the team concluded, "it now appears that things are not taken with the degree of seriousness that is warranted" (Institute of Secretariat Training and Management 2009, 5-9, 32, 43).

CHRI's assessment of practices in local and district offices in the state of Gujarat also found poor compliance with proactive disclosure rules. More than eighty percent of the local offices required CHRI's researchers to file an RTI request and pay an



application fee to obtain information that was supposed to be proactively disclosed. Most of these offices subsequently ignored the requests. The researchers concluded that a large majority of the local offices had not compiled the necessary information. "I have never heard of [proactive disclosure]," one PIO told the study team. "Even God does not give anything unless someone asks him" (Commonwealth Human Rights Initiative 2009, 4-5, 46, 49, 61).

The 2008 PRIA survey provided a similarly bleak view of compliance with proactive disclosure requirements. Nearly ninety percent of respondents said that the authorities with which they had dealt had failed to make the required information available. "The status of self-disclosure in selected districts is appalling," the study concludes. "Public authorities have not taken this provision seriously" (Centre for Good Governance 2007, 8 and 27).

The RTI law encourages the use of the internet for proactive disclosure. However, a study of central and state government websites completed in 2009 by the Public Affairs Centre finds that many authorities have declined the opportunity to use the internet for this purpose. Overall, central government ministries make more extensive use of the web than state governments, but practice within both levels of government varies widely. Several states (and a small number of central government ministries) appear to have made no effort to use the internet for proactive disclosure at all. State information commissions are more clearly split, with about half making a good effort and half clearly not (Public Affairs Centre 2009).

## ENFORCING THE LAW

The RTIA creates appeal mechanisms for citizens who are dissatisfied with the response received from a PIO or have complaints about other problems such as the inability to file a request at all. A first appeal must be made to a senior officer appointed by the authority that received the request. A second appeal can then be made to the state Information Commission, or the Central Information Commission. These commissions are quasi-judicial bodies established to hear RTIA appeals exclusively.

Effective enforcement is generally regarded as critical to the success of any FOIA-style law. As Laura Neuman has observed in a World Bank report, "if there is a widespread belief that the access to information law will not be enforced, the right to information becomes meaningless" (Neuman 2009, 1). As Neuman suggests, perceptions about the credibility of the enforcement mechanism matter, and not just its actual performance, because a citizen's decision to file a request may hinge on his or her judgment about whether effective enforcement will eventually be available. Concern about the potency of enforcement mechanisms is shared in India. As the PWC report says: "[I]n the absence of a strong review mechanism, there is a high probability that the level of RTI implementation would regress to lower levels" (PriceWaterhouseCoopers 2009, 11).

Unfortunately there is substantial evidence of weaknesses in the enforcement mechanisms established by RTIA. A 2007 PRIA survey of civil society organizations working on RTI found a broadly shared view that the senior officers who dealt with first appeals are "largely sympathetic to PIOs and tend to go along with them" (Society for Participatory Research in Asia 2007, 21). PRIA's 2008 survey of RTI requesters

produced a similar finding. A majority of requesters said that they did not pursue a first appeal, often because they felt they would be "wasting their time and resources" (Society for Participatory Research in Asia 2008, 9 and 53). Researchers for the RAAG study filed over two hundred first appeals: in eighty percent of cases, they received no response at all, and in another eleven percent the appeal was rejected (RTI Assessment & Analysis Group 2009, 15).

The second appeal -- to a state or central information commission -- should provide a backstop against non-compliance, but it has weaknesses as well. A widespread complaint has to do with the composition of the commissions. The law says that commissioners should be "persons of eminence in public life with wide knowledge and experience" in a diversity of fields (RTIA, ss. 12(5) and 15(5)). In practice, RAAG finds, there is "a bias toward retired government servants." Twenty-three of the 28 people initially appointed as Chief Information Commissioners at the national and state level were retired members of the Indian Administrative Service, the elite corps that dominates the Indian bureaucracy (RTI Assessment & Analysis Group 2009, 14 and 45). A 2007 PRIA study finds that at least half of all state commissioners are retired from the IAS (Society for Participatory Research in Asia 2007, 27).

The skew in appointments clearly undermines the credibility of the second appeal mechanism. The PWC study finds that there is a "perception that [ex-bureaucrats] are 'soft' while passing orders" on public authorities (PriceWaterhouseCoopers 2009, 88). The 2008 PRIA study concedes that retired IAS officers have sometimes performed well as commissioners but is still sympathetic to the view that their dominance "creates a

mental block" against strong enforcement (Society for Participatory Research in Asia 2008, 64).

A larger difficulty is the inability of commissioners to deal promptly with the influx of appeals. The report of the commissioners' committee finds that there is a "huge pendency in disposal of appeals and complaints" among state commissions (Commissioners' Committee 2009, 14). The RAAG study calculates that commissions received 86,000 appeals in the first two and half years of operation, but disposed of only 50,000 in the same period (RTI Assessment & Analysis Group 2009, 15-17). The PWC study agrees that the rapid growth in number of appeals is creating "a grave situation which requires urgent intervention" (PriceWaterhouseCoopers 2009, 9, 53 and 67). Long delays in addressing appeals create "a sense of pessimism among citizens about the RTI Act" (Society for Participatory Research in Asia 2007, 22).

India is certainly not the only country in which the credibility of an RTI law has been undermined by a backlog of appeals. For example, a British advocacy group recently warned that the credibility of the UK FOIA is threatened by the commissioner's slowness in resolving complaints (Campaign for Freedom of Information 2009, 6), and Canada's commissioner has also struggled with backlogs of complaints (Roberts 2002). But in India the scale is entirely different. The Information Commission of the Indian state of Maharashtra received 16,000 appeals in 2007 (PriceWaterhouseCoopers 2009, 53). By contrast, the UK Commissioner received 2,600 appeals in that year, while the Canadian commissioner received 2,400.

There is substantial variation in the budgets given to Indian's commissions (Society for Participatory Research in Asia 2007, Table 2; RTI Assessment & Analysis

Group 2009, 21-22). In general, though, central and state information commissioners say that they are hobbled by a lack of resources. The commissioners' report says that in many states, commissions "have been rendered toothless [by the] resource and manpower crunch" (Commissioners' Committee 2009, 14). For example, Tamil Nadu's commission has had to deal with a "flood of papers . . . with an extremely tiny complement of staff" (Centre for Good Governance 2009, 68). The PWC report agrees that "limited infrastructure" within commissions encourages official non-compliance (PriceWaterhouseCoopers 2009, 89). Some commissioners argue that their resource problems are unlikely to be resolved so long as they are dependent on the executive branch, rather than the legislature, for budget allocations and staff (Society for Participatory Research in Asia 2007, 31; RTI Assessment & Analysis Group 2009, 22 and 42).

Indian commissioners also wrestle with a problem inherent in the enforcement model used in most FOIA-style laws, which is premised on the notion that compliance is generally promoted by investigating and resolving specific cases of non-compliance. The model may be vulnerable to positive feedback and therefore inherently unstable: as the number of complaints increases, the commission's ability to quickly resolve them declines, encouraging more non-compliance by authorities, and yet more complaints (Roberts 2002).

There are at least three ways to break this cycle. The first is to trim procedural requirements for disposing of complaints. The Tamil Nadu Commission has experimented with "fast track" hearings for simple cases, and even with the disposition of cases without hearings at all (Centre for Good Governance 2009, 66-67). Some multi-

member commissions have also delegated order-making authority to individual commissioners. But such tactics may be vulnerable to criticism. For example, citizens or public authorities may protest about the denial of natural justice when adverse rulings are reached without full hearings. Central government officials have also questioned the legality of delegating powers to individual commissioners, although the soundness of this argument is strongly disputed (Times of India 2009b).

A second approach is to increase the penalties for non-compliance to compensate for the perverse incentives caused by backlogs. The RTIA contains a unique provision, section 20, that allows commissions to impose fines on PIOs personally if they fail to provide information without reasonable cause. But section 20 is rarely applied, to the deep frustration of many RTI advocates. Commissions respond that it would be unfair to levy penalties on inexperienced or untrained PIOs or hold junior staff personally accountable for systemic problems within authorities (Society for Participatory Research in Asia 2008, 62-63; PriceWaterhouseCoopers 2009, 51-52; RTI Assessment & Analysis Group 2009, 20).

A third way of breaking the cycle would be for commissions to address systemic problems directly. Commissions in other countries have attempted to deal with backlogs in this way, by pushing for overall reform of administrative processes within authorities that generate a disproportionate number of complaints (Roberts 2002). In fact, the RTIA gives commissions an unusually broad power to give directions to authorities that are repeat offenders (section 19(8)). The commissioners' committee urges the more aggressive use of this power to promote "systemic change" in public authorities (Commissioners' Committee 2009, 15). But many commissions are caught in a difficult

predicament: already struggling with large backlogs of appeals, they have neither time nor money to develop the new capacities that are necessary to identify and remedy broad patterns of non-compliance among public authorities (PriceWaterhouseCoopers 2009, 52).

## INNOVATIONS IN IMPLEMENTATION

The scale and diversity of the Indian public sector must not be forgotten. Even though there are broad difficulties with the operation of the RTIA, there are also parts of the Indian bureaucracy that are strongly committed to effective implementation. And because implementation is highly decentralized, there is ample room for experimentation. India has become a vast laboratory for inventing and testing innovations in RTIA administration. Many are tailored to the challenges of implementation in a developing country, but certainly not all. For example, many users of FOIA-style laws in developed countries would appreciate an innovation by the state information commission in Andhra Pradesh: the ability to obtain an automated update on the status of appeals by sending a text message from a cell phone (Centre for Good Governance 2009, 48-49).

Another initiative, the Jaankari call center, received a national award for innovation in e-governance in 2009. Undertaken by the state government of Bihar in partnership with a non-governmental organization, Parivartan, Jaankari overcomes many barriers to access by allowing individuals to make RTI requests through a single toll-free number. Service is provided in four languages. The application fee is charged to the caller's phone bill, and a reply is sent directly from the PIO. Other governments have

also established RTI helplines, although not with Jankari's capacity to receive requests (Centre for Good Governance 2009, 18-22; PriceWaterhouseCoopers 2009, 131).

Governments and civil society organizations have also shown ingenuity in promoting awareness about the RTI. Kerala's information commission enlisted the state's highly regarded literacy authority to conduct RTI classes attended by almost 300,000 people (Centre for Good Governance 2009, 61). Assam's state government has undertaken a program to identify and train the staff of non-governmental organizations in rural areas, with the expectation that those NGO staff will then educate citizens about RTI (PriceWaterhouseCoopers 2009, 131). And India may be the only country that has hosted a film festival dedicated only to productions about the right to information.

Commissions are also experimenting with new work methods -- such as the procedures for triaging cases and streamlining hearings, the use of videoconferencing to make hearings more accessible, or development of performance ranking schemes designed to identify authorities with weak compliance records (Centre for Good Governance 2009, 24, 45, and 57). In 2009, central and state commissioners established a new national federation to coordinate policy and share best practices (Commissioners' Committee 2009, 55-58).

Although none of the recent studies address the subject, there is another aspect of the RTIA that breaks new ground. Unlike many older laws, the RTIA accommodates the reality that public functions are now performed by a wide range of governmental, quasi-governmental, and private actors (Roberts 2001). It extends to non-governmental organizations that are "substantially financed, directly or indirectly" by government. It also affirms a right to information held by any private body that could be accessed by a



public authority under any other law (Sections 2(f) and (h)). No other FOIA-style law has a similar rule.

A number of cases are testing how these provisions will work in practice (Saxena 2009). One controversy centers on the application of the RTIA to India's stock exchanges, which claim to be private organizations, although they are created under the authority of a public regulator. In 2007 the Central Information Commission decided that the exchanges are covered by the law, but some exchanges challenged the decision, which is still in litigation. Requesters then attempted to force the regulator to use its own statutory powers to obtain information from the exchanges. The regulator eventually acquiesced, but the exchanges balked again, and the matter has been taken to court (Laskar 2009).

A similar dispute surrounds three Delhi power companies privatized in 2001. The Central Information Commission has ruled that they, too, are subject to RTIA, although the dispute is still before the courts. Similarly the Commission has found that the law applies to privately-owned gas utilities, the private consortium that now runs Mumbai's main airport, and private schools (including a prestigious private school favored by senior bureaucrats in Delhi). The inclusion of private schools has made it easier for non-governmental organizations to gauge their compliance with government rules about enrolment of students from marginalized communities (Kumar and Malik 2009, 34).

Another innovation in Indian policy is the absorption of RTI principles into other legislation. The National Rural Employment Guarantee Act (NREGA), also adopted in 2005, is a public works bill designed to provide a minimum amount of employment for the rural poor. But the law also contains transparency rules designed to discourage

mismanagement and corruption. For example, payroll information must be publicly accessible at each worksite, and a broader range of project documents must be released regularly to allow public scrutiny of projects in each town or village (Ministry of Rural Development 2008). The approach taken in NREGA is similar to that later adopted in the American Recovery and Reinvestment Act of 2009. RTI advocates laud NREGA as "an outstanding example of how the RTI Act can be woven into the fabric of the delivery system" of major public programs (Roy and Dey 2009).

#### A REVOLUTION IN PROGRESS

It is too early to say whether RTIA will be a "great and revolutionary act," as Lord Desai suggested in 2009. Although the law has clearly done good already, substantial challenges remain to be overcome. The two most notable difficulties are the barriers to use of the law by India's rural poor, and the threat to enforcement capabilities that is posed by the inflow of appeals to central and state information commissioners. The failure to grapple adequately with these challenges might mean that the law becomes useful only to businesses or wealthy citizens who have the knowledge and resources to file requests and persist with prolonged enforcement processes. There is significant evidence that this has been an outcome in other countries: a law adopted to accomplish progressive aims eventually serves the unintended consequence of reinforcing the position of already advantaged interests.

There are other dangers as well. As in other countries, India's RTIA advocates have been confronted with repeated attempts by bureaucrats and ministers to amend the new law so that the right to information will be restricted. One government-initiated

proposal would have created a broad exemption for bureaucrats' internal comments about the handling of official files; while other proposals would have given them discretion to refuse vexatious requests, and exempted some defense organizations from the law. Lobbying from a well-organized RTI coalition has so far defeated these attempts to restrict the law (Times of India 2009a).

At the same time there are several considerations which should deter us from taking a pessimistic view of the law's prospects. The first is that four years is a very short time in which to achieve significant change in the operation of the Indian public sector. Bureaucratic habits of thought and administrative practices, and understandings about the relationship between officials and citizens, are built up over decades. Indeed, it is to some extent still true that India is wrestling with administrative traditions and pathologies inherited from the era of British colonial rule, if not earlier (Maheshwari 2005, 270). A fair assessment of the law's impact likely cannot be made for years to come.

Advocates for the RTIA have also set a very high bar for judging the success of their law. Proponents of older FOIA-style laws often hoped that legislative change would yield significant improvements in the quality of governance, but few hoped to produce a socio-economic revolution. And it is likely that older laws in economically advanced democracies would fare badly if judged by the same rigorous standards that have been applied in these evaluations of the RTIA. What proportion of the developed world's poor would know how to file a request for information, or actually have attempted to do so?

Most importantly, problems of implementation have not induced a sense of fatalism among the RTIA's advocates, either within and outside government. On the contrary, there is still broadly shared optimism that problems can be worked out and the

potential of the law fully realized. A critical question in coming years will be whether cohesion and optimism within the RTI movement can be maintained as challenges persist, and if the substantial funding provided to Indian governments and civil society organizations by development agencies and philanthropies declines.

Further investment in India's venture in transparency would certainly be justified. It is the most exciting experiment with FOIA-style laws in the world today -- not only because of the number of people whose well-being could be improved, but also because it is being conducted under much more difficult circumstances than those prevailing in the early-adopter nations. If, through persistence and innovation, the RTIA can be made to work effectively, then India will become a model for dozens of other countries in developing world. In critical respects, the first world have something to learn from India as well.

## SOURCES

- Banisar, David (2006). Freedom of Information around the World 2006. London, Privacy International.
- Bookman, Zachary and Juan-Pablo Guerrero Amparán (2009). "Two Steps Forward, One Step Back: Assessing the Implementation of Mexico's Freedom of Information Act." Mexican Law Review 2(January-June): 4-51.
- Campaign for Freedom of Information (2009). Delays in Investigating Freedom of Information Complaints. London, Campaign for Freedom of Information. July.
- Centre for Good Governance (2007). Audit of Proactive Disclosure under the Right to Information Act, 2005: A Toolkit. Hyderabad, Centre for Good Governance.
- Centre for Good Governance (2009). Best Practices in Implementation of the Right to Information Act. Hyderabad, Centre for Good Governance. August.
- Chand, Vikram K. (2006). Reinventing Public Service Delivery in India: Selected Case Studies. Thousand Oaks, CA, Sage Publications.
- CMS India (2008). Tii-Cms India Corruption Study 2007: State Report on Orissa. New Delhi, Centre for Media Studies.
- Commissioners' Committee (2009). Report of the Second Sub-Committee on Problems and Issues Raised During the Annual Convention 2008. Delhi, Office of the Central Chief Information Commissioner. September 25.
- Commonwealth Human Rights Initiative (2009). Compliance with the Right to Information Act: A Survey. Delhi, Commonwealth Human Rights Initiative.
- Freedom House (2009). Freedom of the Press 2009. Budapest, Hungary, Freedom House Europe.

- freedominfo.org (2010). Anti-Corruption Activist Satish Shetty Slain in Retribution for RTI Work. Washington, DC, freedominfo.org. January 29.
- Hazell, Robert, Ben Worthy and Mark Glover (2010). Does FOI Work? The Impact of the Freedom of Information Act 2000 on British Central Government. Basingstoke, Palgrave Macmillan.
- Institute of Secretariat Training and Management (2009). Study Report on Training Requirements and Audit of Proactive Disclosure of Information. Delhi, Institute of Secretariat Training and Management.
- Kumar, Vivek and Aman Malik (2009). Should the RTI Act Be Applicable to Businesses? Dare. 3: 1 (October): 32-35.
- Laskar, Anirudh (2009). SEBI Slaps Show-Cause Notice on BSE. Mint. November 9.
- Maheshwari, Shriram (2005). Public Administration in India: The Higher Civil Service. New Delhi, Oxford University Press.
- Ministry of Rural Development (2008). NREGA Transparency and Accountability Rules. Delhi, Ministry of Rural Development.
- National Coordination Committee on RTI (2008). Report on Implementation of the Right to Information Act 2005. Delhi, Central Information Commission.
- Neuman, Laura (2009). Enforcement Models: Content and Context. Washington, DC, World Bank Institute.
- Nussbaum, Martha Craven (2007). The Clash Within: Democracy, Religious Violence, and India's Future. Cambridge, MA, Belknap Press.
- Orissa State Information Commission (2009). RTI Applications: Case Studies from Orissa State. Bhubaneswar, Orissa State Information Commission.

- Piotrowski, Suzanne, Yahong Zhang, WeiWei Lin and Wenxuan Yu (2009). "Key Issues for Implementation of Chinese Open Government Information Regulations." Public Administration Review 69(S1): S129-S135.
- PriceWaterhouseCoopers (2009). Final Report: Understanding the Key Issues and Constraints in Implementing the RTI Act. Delhi, PriceWaterhouseCoopers. June.
- Public Affairs Centre (2009). National Assessment of the Degree of Compliance to Suo Moto Disclosure Provisions of Right to Information Act 2005. Bangalore, India, Public Affairs Centre. April.
- Roberts, Alasdair (2001). "Structural Pluralism and the Right to Information." University of Toronto Law Journal 51(3): 243-271.
- Roberts, Alasdair (2002). "New Strategies for Enforcement of the Access to Information Act." Queen's Law Journal 27: 647-683.
- Roberts, Alasdair (2006). Blacked Out: Government Secrecy in the Information Age. New York, Cambridge University Press.
- Roy, Aruna and Nikhil Dey (2009). NREGA: Breaking New Ground. The Hindu. June 21.
- RTI Assessment & Analysis Group (2009). Safeguarding the Right to Information: Report of the People's RTI Assessment 2008. Delhi, RTI Assessment & Analysis Group. October.
- Saxena, Prabodh (2009). "Public Authority and the Right to Information." Economic & Political Weekly 44(16): 13-16.
- Society for Participatory Research in Asia (2007). Tracking Right to Information in Eight States. New Delhi, Society for Participatory Research in Asia.

- Society for Participatory Research in Asia (2008). Accessing Information under RTI: Citizens' Experiences in Ten States. New Delhi, Society for Participatory Research in Asia.
- Times of India (2009a). Dopt Agrees to Disclose All File Notings under RTI. Times of India. June 25.
- Times of India (2009b). Dopt Wants Full Cic to Hear All Complaints, Appeals. Times of India. June 13.
- Tiwari, A.N. (2009). Presentation to the Fourth Annual Convention on Right to Information on RTI and the Developing World. Delhi, Central Information Commission.
- Xiao, Weibing (2009). Freedom of Information Reform in China. Hobart, Australia, University of Tasmania. PhD: Pages.