

Transparency, Accountability RTI Act & All That

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FORUM
OF FREE ENTERPRISE

"Free Enterprise was born with man and shall survive as long as man survives".

- A. D. Shroff

Founder-President
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Introduction

Transparency and accountability are truly the key hallmarks of good governance, responsive institutions and increasingly maturing and modernizing democracies. The essence of transparency is the free flow of information, which in turn means that processes, institutions and information are directly accessible to those concerned with them, namely, the stakeholders or the citizens at large. Like-wise, stakeholders or citizens are vitally interested that decision-makers whether in government, autonomous institutions, private sector or civil society are invariably accountable for their decisions and actions. However, transparency and accountability are found to be the weak links of India's socio-economic and political ethos.

The relevance and significance of aforesaid brief theoretical construct can greatly be appreciated, if experts on this subject offer us their valuable insights and exposition, based on their specialized knowledge and personal experiences of some important practical instances or judicial cases. Keeping this perspective in view, the Forum of Free Enterprise is extremely delighted to publish this booklet for a wider circulation to create greater awareness and generate public discourse on issues of transparency and accountability as well

as on Right to Information Act. We believe that such initiatives are crucial for ensuring vibrancy of our democracy in general, and promotion of responsible regulatory institutions, businesses and civil society.

This booklet is the outcome of two excellent speeches delivered on the occasion of Twelfth M.R. Pai Memorial Award Function held on May 6, 2016 by Mrs. Maja Daruwala, who was the Chief Guest on this occasion, and Mr. Shailesh Gandhi, one of the foremost RTI activists – and who was the Award Winner. Incidentally, the Chief Guest has also been actively championing the cause for propagation of RTI in the country for the past many years. What transpire from the text of the two separate speeches are some obvious common threads:

- First, both the authors offer extensive reflections on the recent landmark judgment of the Supreme Court in the Jayantilal N. Misry case [combined with other ten cases], in which it set aside the RBI's contention that revealing information relating to inspection/audit reports of banks in response to complaints of irregularities against them would lead to breaching of its 'fiduciary duty' to the banks. The information sought also covered list of loan defaulters, minutes of board meetings of banks, etc. The Supreme Court also did not concede to the RBI's contention that the economic interest of the country would be hurt by disclosure of such

information sought by the respondents. As a consequence, not only the stakeholders at large would benefit from transparency of and access to the relevant information from the banks, but there would also be disciplinary and positive impact in the functioning of our banks, thereby promoting greater financial stability.

- Second, both the authors are seriously concerned about strong underpinnings of resistance to transparency and accountability, and more specifically to the RTI Act, especially from the political system. Mrs. Maja Daruwala points out that “It is a concern to me that RTI requests are going down, attempts to stifle it are continuous, the highest in the land are still not willing to lead on transparency, questioning is becoming harder and harder”. Far more worrisome is her contention that “resistance to RTI ranges from non-compliance to harassment, intimidation, and outright murder as we have seen with over two dozen RTI activists”.
- Like-wise, Mr. Shailesh Gandhi warns us thus: “The Right to Information appears to be facing a serious threat. Thrice before in 2006, 2009 and 2013 the then government sought to amend the law. We agitated and managed to stall the move by the government all three times”.
- Third, given their intense passion and commitment to the cause of transparency and accountability in the system of governance and public life,

both the authors offer their respective views and suggestions on what is the way ahead. Apart from the issue of the Supreme Court's judgment on the RBI debate, Mrs. Daruwala also highlights much wider challenges of 'cronyism and financial irregularity'; of subverted CBI, the bureaucracy and financial system; of watchdog laws and machinery [like the Lokpal, the whistleblowers law, the police complaints authorities, et al] becoming hollow organizations; and so on. Likewise, Mr. Gandhi expresses his deep anguish about the nature of recent political discourse in the Parliament on issues of RTI and pleads: "I think it is up to citizens to put pressure on Reserve Bank of India and political system to move towards more transparency and accountability".

Apart from above common threads, authors have also reflected upon several separate, but crucial aspects afflicting the Indian banking. The centrality of their focus is, doubtless, on protecting assiduously the Right to Information. Thus, Mrs. Daruwala has several critical observations on the findings of the Nayak Committee and on the RTI requests relating to PSU banks. Based on her analysis she concludes thus: "So the RTI statistics submitted by the banks to the CIC do not uphold the "constraint theory" or the "burden theory" regarding their governance".

Like-wise, Mr. Gandhi reflects on the daunting challenges of non-performing assets of banks and

efforts made from time to time to resolve through various schemes like Corporate Debt Structuring [CDR] and Strategic Debt Restructuring [SDR]. He is also very critical about the RBI and states: "Information which was ordered by the Supreme Court to be disclosed is not being given by the Reserve Bank of India. When a major regulator of this nation does not follow the Supreme Court's order, it's a very sad and disturbing situation". Taking an overall view, the author concludes: "Active citizenship is the fundamental basis on which a nation can grow. Let us stop complaining about our leaders and expect them to deliver everything. It is the citizens of this nation who must take responsibility".

All in all, both these presentations will be extremely valuable in shaping the course of the debate on issues of transparency, accountability and Right to Information Act. We, at the FORUM, salute the contribution of both our eminent activists and thought leaders, and hope that would inspire many amongst the aspiring youth of our nation to take forward and strengthen this noble cause.

Sunil S. Bhandare
Editor

Transparency, Accountability RTI Act & All That

I

The Value of Transparency and Accountability

by

Maja Daruwala*

Thank you for the honour of speaking to you about transparency and accountability.

When I go to my maker I am sure he is going to say, Maja, "You kept talking about accountability and transparency. Now as I weigh you for good and evil you are going to have to account for your time on Earth."

In return, I am going to say "But your lordship" – because after all, for lawyers, he is the Supreme Court

* The author is Director, Commonwealth Human Rights Initiative, New Delhi. The text is based on her talk at the Twelfth M. R. Pai Memorial Award Function, sponsored by Punjab & Maharashtra Co-operative Bank Ltd. and arranged by All-India Bank Depositors' Association (AIBDA) jointly with Forum of Free Enterprise and M. R. R. Pai Foundation on 6th May 2016, in Mumbai. The Award was presented to Mr. Shailesh Gandhi.

–“you didn’t make your rules and regs clear, you are not really compliant under the RTI Act of disclosing to your subjects what you expect and can we please wait to resolve this matter until we can have a word with Mr. Shailesh Gandhi.” That will get me off the hook!

Unless of course I am talking to the ‘other fellow in the other place.’ in which case Shailesh, - much as he has done all his life - will have to rescue me with very devilish arguments. Arguments that he has won here on Earth most recently in the Supreme Court in Jayantilal N. Mistry matter, so I am in good hands in either place.

I am delighted that this talk is inspired by the outcomes of the work Mr Shailesh Gandhi has undertaken over the many years he has been an RTI activist and during the time he was an RTI regulator. This did not interrupt his activism and to see it vindicated in the judgement of the Supreme Court in the Jayantilal N. Mistry case should give those of us who believe in transparency a great deal of satisfaction.

- I will talk a bit about the case itself and its significance;
- A little about the value of facts;
- A little about the concerns I have about transparency and accountability
- And a little about what I hope for the future.
- And if you are still here at the end of the talk I shall congratulate you on your forbearance.

First - the case

What was the matter before the court?

It was in fact, 11 cases rolled into one; one might say a batting 11. Against the bowling RBI which was defending its turf. Shailesh and Chief Information Commissioner Satyanand Mishra had said in effect in these cases where the banks were being asked to give an account of themselves "Sorry boys: all out. Give the information" the RBI challenged this decision before the third umpire - the Supreme Court.

What was it that was being asked for in the Jayantilal matter?

In very brief – the requestors were asking tell us about –

- a. Reports of inspection of public sector banks including cooperative banks conducted by the RBI on receipt of complaints of irregularities against them, fines imposed on them, all correspondence conducted with them in this regard and final reports and findings of RBI in such cases;
- b. List of loan defaulters and action taken against them;
- c. Minutes of board meetings of banks;
- d. Losses suffered by banks in the currency derivatives market (market to market losses);
- e. Grade classification of a cooperative bank, etc.

Why did the RBI think it shouldn't be given?

The RBI said by giving this information: it would

- Breach a fiduciary relationship that the RBI has with the banks it regulates. [section 8(1)(e)]
- there may be a detriment to the nation's economic interest [section 8(1)(a)],
- Breach the commercial confidence of banks [section 8(1)(d)]

What did the court say – in essence?

On the RBI's contention that it would be breaching its fiduciary duty to the banks it regulates if it revealed information, the court made it clear: you can't just pin an additional badge of special relationship on yourselves, call it 'fiduciary' and claim exemptions that are not a determinant or signifier of the nature of relationship between the two. In this case the reports of the inspections, statements of the bank, is information related to the functioning of the banks and is given to the RBI "not under the pretext of confidence or trust." But given and received under an obligation necessary for a regulator set up by the RBI Act as India's central bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector.

The Supreme Court did right in not buying into the arguments that are often held out as a subtle plea to retain the exclusionary positions of the privileged. The RBI, whose function at law is to regulate, cannot set up a claim of some special relationship of love, trust (like

a trustee and a minor or beneficiary) or confidentiality (like a doctor and patient or lawyer and client), and the banks can't imagine they are speaking as one might to a favourite aunt. "I will tell you my little dark deeds if you promise not to tell mummy!"

Disclosure to the RBI is a statutory requirement and can't be conditioned with secrecy on some imagined confidentiality. This confidentiality would never have been claimed if all was well. The Court went further when it implied that even if any possible fiduciary relationship could have been inferred it would have been trumped by the overriding public interest in understanding what is seeking to be hidden that could harm the public interest.

Banks like the vast bureaucracy that channels tax payer's money into expenditure for the public weal are deeply vital public authorities set up to be depositories and deliver services and as the bankers' bank it is expected to regulate for the benefit of the depositor. As keepers of the collective national wealth health, like all regulators at different levels of the system it must be held to their statutory functions and obligations are seen to be done in the public interest. How can they say they will not disclose how they are dispensing or regulating on our behalf that which is ours?

Economic interests

On the RBI's contention that the economic interests of the country would be hurt by disclosure - the court felt that the "CIC has given several reasons to state

why the disclosure of the information sought by the respondents would hugely serve the public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India." The court pointed out, "the RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived ..."

The court emphasized the value of openness to economic progress when it went on to say that "one of the tools to attain this goal [of economic health] is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool, it has not only been made one of the fundamental rights under article 19 of the constitution but also a central act that was brought into effect on 12th October 2005 as the Right To Information Act, 2005."

The apex court appreciated the CIC's reasoning in its orders in the following words:

"In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness." [para 81]

The Court was not kind to the RBI

“We have surmised that many financial institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those banks that have been practicing disreputable business practices.” [para 69]

...“to our surprise, the RBI as a watch dog should have been more dedicated towards disclosing information to the general public under the Right To Information Act.”

“...and in this case the RBI and the banks have sidestepped the general public’s demand to give the requisite information on the pretext of “fiduciary relationship” and “economic interest”. “This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the banks accountable to their actions.”

I am a lawyer and it is not beyond my small talents to argue on the other side. There may be all sorts of nuances in this 70 page judgement - God forgive their lordships their prolixity – that I have not explained clearly or completely and for this I beg your indulgence. All in all though, this is a win for transparency for the right to information and for the ordinary person who relies on institutions of state acting appropriately to protect the common interest.

Resistance

But – isn't there always a but?

Where there is a win there will be people working to defeat it.

In one sense the RBI case is itself a demonstration of the strong resistance to openness at the very highest levels: what was obvious at the level of a single bench Information Commissioner had nevertheless to reach the Supreme Court before it was conceded. The case also had to revisit - and we will witness this in the future too – well settled issues of law:

- i. That the right to know is a fundamental right and the RTI Act is but an enabling legislation;
- ii. That pre-existing laws and regulations that relate to doing business - whether it is those of the banking sector or the Supreme Court itself must conform and are subject to the RTI law;
- iii. That the general proposition is that disclosure, not secrets are in the public interest;
- iv. That you cannot play fast and loose with the exemptions and put on them any width that you like to escape giving information – as illustrated in the constant battle to explain the meaning of “fiduciary”;

The Court also was constrained to once again point out that even after a decade there was frequent non-compliance with RTI at all levels including public information officers and again exhorted the leadership

to ensure that they complied with training and directions.

The Nayak Committee

Background and major findings

The truth is while the public loves the RTI, resistance within government has been consistent and stubborn to remove. This is at all levels. Legitimizing and validating attempts to restrict access to information has been building for a while. I am sure Shailesh and other advocates will have innumerable instances to give you. But I will point out some.

In May 2014, an expert committee under the chairpersonship of Mr. P. J. Nayak submitted a report to the Reserve Bank of India, reviewing the governance of boards of banks - both public and private. I am sure it had many good things in it and many wise recommendations.

But from my point of view it made a dangerous assertion: that the Right To Information Act, 2005 was a major constraint on the governance of public sector banks because it severely inhibited the ability of public sector banks to compete with their rivals in the private sector. Although the Central Government has not acted on this recommendation yet, it has not conclusively rejected this recommendation either.

The view is concerning because it is given from a high level group to a hugely important regulator – the RBI - as a strong recommendation that is very likely to be acted upon. But is not an argument that is backed by

facts and figures obvious and evidenced in the report. It is simply an assertion of anecdote and sentiment set out as objective truth. Much in the way that we say women who don't dress properly are the ones who get raped. Its not true but if you say it enough it is believed. Too much of our high policy discourse is acceptable without asking for the data on which policy is being decided.

Here you will excuse a side wind. You will recall another such assertion that presently inhibits the experience of democratic rights of civil society. A completely unsubstantiated, mean spirited short report that came out of the Ministry of Home Affairs just at the end of UPA II said that some NGO actions had negatively affected the GDP of the nation by several percentage points. On the back of this has ridden an attack on the work of community based groups and advocacy groups without the necessity of justification.

But back to the matter at hand. The Commonwealth Human Rights Initiative, my organisation, and in particular our RTI lead Mr Venkatesh Nayak, himself a specialist on all things RTI, thought we'd check into how much of a clog on the working of the banking sector RTI requests are in reality. Are they the huge burden they are made out to be? For this CHRI did not generate any 'fancy civil society' data or 'spin' the numbers but relied throughout on official CIC annual reports.

The Finance Ministry accounts for about 20% of all RTI requests. In 2014 -15 the 24 public sector banks that

reported to the CIC had to deal with just over 79,000 RTI requests. This included the backlog from 2013-14. This amounted to about 56 percent of the total volume of RTI applications received by the Ministry of Finance that year.

So we may safely assume that the operations of banks are of interest to people. Being the largest banking network the State Bank of India received almost a third of all requests, followed by the Bank of India and the Punjab National Bank.

Some banks (State Bank of Hyderabad) witnessed a significant increase over the previous year while others witnessed a sharp decline. Be that as it may, 10 of the banks that reported to the CIC last year saw a significant decline in the number of RTI applications. This appears to be in tune with the overall trend of decline in the number of RTI applications dealt with by public authorities under the Central Government in 2014-15.

The reasons for this could be many: the banks have begun putting out a lot more information on their websites and there is no need to ask; people are fed up of asking when they get no reply; appeals are backing up and there is no recourse; or there is nothing significant to ask about. It could be anything but what it is not is that RTI is a great burden on public sector banks from which they need saving.

Let's look at the burden theory another way: during this period all 24 public sector banks opened new offices across the country. Bank of India was the only

bank which averaged close to 2 RTI applications per office. Only the State Bank of India, State Bank of Bikaner & Jaipur and Punjab National Bank averaged more than one RTI application per office, with all other banks averaging less than one RTI application per office. So the RTI statistics submitted by the banks to the CIC do not uphold the "constraint theory" or the 'burden theory' regarding their governance. Of course we don't know if some branches receive more while others less. But these are exactly the details that need to be known before rushing to judgement about the nuisance value of transparency.

In my view analysis based on data must be the basis of policy shifts – especially when they are restrictive as they increasingly are nowadays. An analysis based on factual data about the usage of RTI requests will surely reduce the irritation factor that all public servants seem to have against the RTI Act. Such a step would be in accordance with the letter and spirit of the RTI Act which requires all public authorities to work towards reducing people's need to seek information, by making voluntary disclosure of a deal of information as required by Sec 4 of the RTI Act. A cost benefit analysis of how much has been gained in the way of accountability through transparency and how much it costs to keep things secret and what harm has flowed from secrecy or openness would be valuable in protecting the RTI Act which is constantly under threat. It is a more honest way to go than mere assertion.

Resistance to RTI ranges from non-compliance to harassment, intimidation, and outright murder as we have seen with over two dozen RTI activists. If those with dirty linen to hide have their hands on state machinery they can and do manipulate it; again there is too much evidence of this for me to rehash it here.

So we must expect that there will be concerted efforts to defeat transparency in other ways; you may have seen the discussion in the Rajya Sabha only the other day. It was extremely disturbing. It was disturbing that assertions are made in hallowed buildings by people whose voices carry across the country. It was disturbing because the loudest voices were the ones whose party had actually passed the law. It was disturbing because there was so much scorn for the fact that for 10 rupees the law now grants 'even the chaiwala' the possibility of asking the Prime Minister questions. What temerity! I am sure the irony of the example given by Mr Praful Patel is not lost on any of you.

It is a concern to me that RTI requests are going down, attempts to stifle it are continuous, the highest in the land are still not willing to lead on transparency, questioning is becoming harder and harder. The idea that everyone who doesn't agree with the status quo is anti-national is being nurtured. The imposition of one kind of a notion of morality, the imposition of political correctness is fast reducing the space for questioning. Instead, what is growing is both a covertly and overtly violent response to questioning; a violence sometimes permitted with impunity by agents of the state. As

violence and the threat of it increases it is inevitable that a strong-weak state will come down hard on it. When we are deprived of information you can be sure we will be prey to rumour or have to bow down to an imposed and dominant discourse. I fear that without the means to get information challenge will reduce to subservience and the cycle of oppression and resistance fuelled by the utter lack of justice will continue.

So what is the way ahead?

The discourse about financial integrity, corruption, non-performing assets, secret transfers, anonymous participatory notes, black money, slush money accounts, sources of political party funds, levels of contribution, the grey economy, transparency and accountability - by which I mean penal, financial and reputational consequences - has been growing consistently. The RBI debate is just one example.

We may be ashamed of how the discussion about cronyism and financial irregularity is being used selectively, angered by its hypocrisy, frustrated by the lack of corrective action, but we must accept that the public clamour against corruption and in favour of transparency and accountability has been growing.

Still corruption and insistence on secrecy is hard for advocates of transparency and accountability - and even for the state - to counter because illicit money flows are global. - they rely on an inter-linked transnational banking system and its legal loopholes;

also because it is systemic in that it involves not only the beneficiaries and a bunch of enablers like lawyers, chartered accountants, money managers, investment houses, and because it implicates so many downstream givers and takers like you and I and because there is so much to lose from revelation.

To protect some from discovery we have seen a willingness to distort the whole system and leave the country without a working police authority. To avoid bringing the powerful to book we have subverted the CBI, the bureaucracy and the financial system. We have ensured that the watchdog laws and machinery we create (like the Lokpal, the whistleblowers law, the police complaints authorities, the over 100 rights commissions spread across states) are hollow organisations intended to look like they are able to deliver effectively while ensuring their absolute impotence through weak appointments, unsuitable infrastructure and arrant disobedience to their edicts whenever the system actually raises its head enough to work.

The question before people like us is how does one then break this resistance? Evil ones will strive for the status quo.

The outrage at corrupt practices and the demand for accountability and transparency has, I believe, caught the imagination of the public. This is evidenced by the refusal of the clamour for information to die and the building momentum that takes a challenge from a village in Rajasthan all the way to the Supreme Court.

There are allies within the state. There are allies across civil society and voices from the public that want to be heard loud and clear.

We can make the public argument for transparency and accountability by countering bald assertions of opinion with objective data like some I have given you and by serious study of the cost benefit analysis of holding secrets and disclosure. We can press the point through examples of wins like the RBI win and ensuring whether it is prison regulation, police regulation that we show how law is being disobeyed and how it can be repaired.

RTI gives us the possibility of mining data and doing underlying research to correlate different sets of information and come up with engaging information which helps build public debate and relate the data to ordinary lives of people so that we swell the demand for accountability.

Let me give you an example of catching public imagination,

- a. For instance, the UK tax justice network estimated that nearly 70 billion pounds a year is lost due to tax evasion. It argues that you would not have to reduce social safety net spending if this money was not lost to tax havens. Public opinion and public pressure has grown to change laws; on top of that consistent campaign, has come the Panama revelations.

But we don't have to look as far as the UK. In India we find everywhere the peaceful civil disruptions that are needed to bring about change.

An understanding of what corruption and its friend, secrecy, do to destroy development, rights, institutions of state and social safety nets has caught the imagination of so many varied constituencies and united them. Each of these battles –ADR's for transparency in elections and election funding; common cause taking matters to court; India against corruption taking it to the streets; the public's elevation of Hazare and Kejriwal to almost messianic heights, are all evidence of the value and power of consistent civil resistance to injustice. It has become the coin of political debate or should I say the whip with which to flay all sides of the political spectrum. And for those of you who watch Arnab, it is also our daily dose of entertainment... through this we are building political will. Information combined with action can produce people power. The very act of asking questions is disruptive of the smooth flow of interconnections that have till now taken each other's connivance for granted. Asking creates tensions within the system and strain on its inter-linkages. This is what Mr. Shailesh Gandhi's decisions as the first CIC from civil society have done and his continued questioning is building up.

Vaclav Havel, the last President of Czechoslovakia, points out that today's unjust 'peace' must be disturbed by mobilized citizens, as they have themselves the

power to produce a more positive, just order (Havel, Power of the Powerless).

We don't have to have all the solutions beforehand - when we campaign together as people it doesn't matter whether at the outset we do not have all the legislative answers or the policy level interventions worked out about how an injustice can be repaired. But we must keep the issue on the boil at the national level until it is in the interest of the enablers and influential leaderships to break their cozy connections, their traditional allegiances and secret ways and move towards legitimate and honest ways of behaving.

Money is said to be the root of all evil but at the same time it has the ability to be the means for an enormous amount of good.

As RTI activists we are not out to ensnare the government and its institutions. We want the state to work for the greatest good of the greatest number. We want to make sure that systems of government are not manipulated by a powerful few.

The citizenry is here to help. The government must show its willingness to engage.

II

Reflections on RTI, NPAs and Supreme Court Judgement

by

Shailesh Gandhi*

I am indeed thankful to Punjab & Maharashtra Co-operative Bank Ltd. and to the All India Bank Depositors Association for conferring this award. I feel humbled. M. R. Pai was the Royalty of Activism. He was known as a consumer activist but beyond consumers he was really an idol who inspired a whole lot of people. I did not have the good fortune of meeting Mr. Pai, but around 18- 20 years back I had once called him. We had a very lengthy telephone discussion where he gave me his suggestions and gave me very valuable guidance.

* The author is an RTI activist and former Central Information Commissioner (CIC). The text is based on the speech delivered by him in response to the Twelfth M. R. Pai Memorial Award conferred on him on 6th May 2016 in Mumbai. The Award is instituted by Punjab & Maharashtra Co-operative Bank Ltd. and the function was arranged by All-India Bank Depositors' Association (Mumbai) in association with M. R. Pai Foundation and Forum of Free Enterprise.

I perceive we are heading for a very serious problem with respect to our banks; particularly the nationalized banks. I don't think they are aware of this, therefore, I will take the liberty of putting across my viewpoint about what is happening.

Today I would like to share with you some information about this Reserve Bank judgement by the Supreme Court and some related matters. I had given my orders in 2011 and 2012. RBI and others got stays from High Courts and in 2015 the Supreme Court took all these eleven cases itself. Ten of these had been decided by me, and one had been decided by Mr. Satyananda Mishra. Before this landmark judgment of the Supreme Court on 16 December 2015, upholding the Information Commission's decision to disclose information in eleven cases, there is only one instance of the apex court ordering information to be disclosed.

What did this judgment cover? Citizens using RTI had sought information primarily on 5 points: Investigations and Audit Reports of bank by RBI; warnings and advisories given to banks; minutes of meeting of governing boards; top defaulters and grading of banks. These were some of the things which had been denied in RTI and this came to me in a host of different cases. RBI does Audit Reports but they are considered to be secret. Who are these Audit Reports for? Who does Reserve Bank of India represent except citizens of India? When I had dealt with each case, I could see no reason for denial as per the Right To Information Act. The banks and the Reserve Bank were of course claiming that disclosure of this will lead to economic

deprivation of this nation's interest. I had written there, and I repeat that if the economy of this nation is going to depend on whether we expose the truth or not then I think our economy must be in very bad state. Even then transparency is our best option.

If you hide all this, and Reserve Bank makes a mistake or is corrupt the entire nation will pay. To believe that the citizen who is mature enough to elect this government, - who gives legitimacy to the government, which Reserve Bank represents - is incapable of making mature judgment is flawed. The argument that the citizen is incapable of understanding the financial sector and hence must not be given the truth is unacceptable. The denial of information to citizens has to be covered by the exemption of Section 8 of the RTI Act. These are in consonance with Article 19 (2) of our Constitution which defines reasonable restrictions which can be imposed on our fundamental right of expression. The claim to keep the information secret was not covered by the exemptions in the RTI Act and the Supreme Court has upheld this view.

Let us look at this a little closely to unravel what is happening to our nationalized banks and their health. Why is there a reluctance to share the truth? In 1994, Reserve Bank of India had issued a circular which directed banks "to make public the names of the borrowers who have defaulted and against whom suits have filed by banks". This required all banks to expose defaulters so that everybody would know and defaulters may be shamed. This followed the basic principle that the bank's primary responsibility

is to safeguard the interests of its depositors. Then slowly we find the change coming for which we must question our regulator as well. From 1993 to 2002 the Non Performing Assets (NPA) of the banks,- which are likely bad debts,- were in the range of Rs. 38,000-50,000 crores. They would go up and come down and then a funny thing happens: Reserve Bank and other banks began to see that these bad debts were rising. The Non Performing Assets have to be written off in next three years' Profit & Loss so that the true financial position of the banks is known.

When they realized that the truth was looking bad, they came up with an interesting label called Corporate Debt Restructuring (CDR). They said instead of calling it NPA if you should think the business is good,-basically a large, well connected borrower,- refer the case to a CDR cell. What is the CDR cell? CDR cell is no legal entity. It does not report to the Reserve Bank of India, and is a collective of banks which takes a decision on which NPAs should be labeled CDR to avoid the label of NPA. This CDR group of people who are beyond RTI, beyond laws of this nation, claim they are an informal club with nineteen employees. It is housed in IDBI and sixteen of the employees are on deputation from public sector banks. They have until now converted 4 lakh crores of NPAs into CDRs, just by labeling them thus. These loans are rescheduled and at times the interest is forgiven. The Non Performing Assets of banks are about 3.6 lakh crores. The Khap Panchayat of CDR has 'restructured' 4 lakh crores NPAs by labeling them

as Corporate Debt Restructuring. Out of this only Rs. 60,000 crores have actually come back.

They began to feel a little uncomfortable, as some of us started questioning the CDR cell and insisting that they are covered by RTI. My appeal is pending with the Central Information Commission. Since the CDR label had been used for over 4 lac crores of NPAs, they felt the need for a new label. Innovatively they called it Strategic Debt Restructuring (SDR). What is Strategic Debt Restructuring supposed to do? The debt is restructured by all the lenders and upto 25 years the loan can be extended to the borrower! Initial installments may be waived so that there is no default on books. Interest can also be reduced. Depositors pay money because they get interest for that. There is a cost that bank incurs, interest is not profit. Therefore if interest is written-off something is going wrong. There is no official estimate of the amount of NPAs mislabeled as SDR. Rough estimates are there that this may be already between Rs. 1-2 lakh crores. Today we don't talk even of tens of thousands, we talk of Rs. 1 lakh crores, Rs. 2 lakh crores. One lakh crores has twelve zeroes.

About 12 years back there was only one name for likely bad debts: Non Performing Assets. Banks were expected to write these off in their books in three years, unless the borrower paid during this period. These were about 4% of the total deposits of the banking sector. Primarily most of these bad debts are with the nationalized banks. Now if I count the CDR which has not come back and the SDR and what is recognized is

Non Performing Assets, the total is somewhere in the region of about Rs. 8-9 lakh crores which represents over 9% of the total deposits of the banking sector. Out of about 9 lakh crores of likely bad debts only about half are being acknowledged. The rest are being swept under the carpet in the name of restructuring. How is the Strategic Debt Restructuring happening? Loan repayments are being extended to 25 years and interest reduced. At times the loan repayment is postponed so that only in future will it have to be recognized as a bad debt. More dangerously the bank is often expected to swap the debt for equity shares in the defaulting company. We have accepted that the public sector should not get into business, but under SDR, PSU Banks are supposed to forget the loan amount and take equity in a company which is defaulting on repayments!

Let me give you a recent example to illustrate the Himalayan blunder of this route. On 31 March 2016 the under construction Vivekananda flyover collapsed in Kolkata killing 21 people. Who will have to pay for that collapse and for the people who died? The citizens of India will have to pay because just 6 months back 51% of the equity has been swapped for debt with the company IVRCL using the smart label of SDR. Primarily business is a concept where an entrepreneur risks his money, borrows from elsewhere. He may tap the equity market where those who participate are looking for high rewards, but are also conscious of the risk. If you make a windfall profit, the profit is yours, if you make a loss the loss is yours.

We have now come up with this brilliant economic theory. It says borrowers of Rs. 5000, 50,000, 5 lakhs, 50 lakhs, 50 crores must repay. If they are unable to repay due to any reasons,- personal illness, death, loss of job, non-payment by debtors,- steps should be taken immediately to safeguard the banks money. The bank's primary duty is towards depositors firstly, and secondly to its shareholders. But if you borrow over Rs. 2,000-5,000 crores then the bank must make a judgement of whether you made a mistake in your calculation, forecasts, or whether it is just bad luck. You are an honest person but you are hit with bad luck then the bank must restructure all the loans. It's the bank which is supposed to see that you succeed in business. Windfall profits are for the entrepreneur, losses must be shared by the depositors of banks.

If we continue with this game of mislabeling the bad debts of our public sector banks with more innovative labeling in another decade our bad debts, -with various labels,-may become 18-20% of the deposits. The entire PSU Bank sector may be finished. It will become like Air India, which you can't sell, or make it viable. The nation will pay for it through taxes. Every citizen and the poorest man in this nation,-including the little girl in Vidarbha who is probably starving or dying,- will pay to ensure that the large borrowers over Rs. 5,000 crores will continue with their jets and villas, because they are such nice and elegant people. This is a matter of grave concern for this nation. Transparency everywhere will lead to accountability and citizens as monitors will be the watchdogs.

I was very thrilled with the new year's message given by Reserve Bank Governor. It almost reflected what I and the Supreme Court had said. The Supreme Court judgement came on 16th December 2015, and the Governor sent the new year message after a fortnight saying: "It has often been said that India is a weak state. Not only are we accused of not having the administrative capacity of ferreting out wrong doing, we do not punish the wrong-doer – unless he is small and weak. This belief feeds on itself. No one wants to go after the rich and well-connected wrong-doer, which means they get away with even more. If we are to have strong sustainable growth, this culture of impunity should stop. Importantly, this does not mean being against riches or business, as some would like to portray, but being against wrong-doing. ...there is a sense that we do not enforce compliance. Are we allowing regulated entities to get away year after year with poor practices even though these are noted during inspections/scrutinizes ? Should we become more intolerant of sloppy practices at regulated entities, so that these do not result in massive scams years later? Should we haul up accountants who do not flag issues they should detect? My sense is that we need a continuing conversation about tightening both detection as well as penalties for non-compliance throughout the hierarchy..... Finally, we are embedded in a changing community. What was OK in the past is no longer all right when the public demands transparency and better governance from public organisations. Transparency and good governance are ways to protect ourselves from roving enquiries – everyone

should recognise that an effective regulator has enemies, and like Caesar's wife, should be above all suspicion." I wrote an article praising the Governor and saying RBI is acknowledging and accepting the truth and its responsibility to citizens. Three months later the tune has changed. Information which was ordered by the Supreme Court to be disclosed is not being given by the Reserve Bank of India. When a major institution and regulator of this nation does not follow Supreme Court's order, it's a very sad and disturbing situation. I had asked them for information which the Supreme Court had ordered to be given and they have replied that the matter is before the Supreme Court. There is no review petition filed by the Reserve Bank of India. When the Reserve Bank of India was asked for the list of defaulters by the apex court, they have given it as a sealed envelope and said this should not be released but they have not challenged the Supreme Court judgement. Is this the way the largest regulator in India should conduct itself by defying the orders of the Supreme Court?

I am not blaming the current Governor. Perhaps everyone feels he is inheriting a set of problems created by someone else. During his tenure he doesn't want the problem to come so he postpones it but this is not the way you can run a nation. We will really come to deep sorrow if we continue thus.

Before I end here is a small thing I would like to warn you about. The Right to Information appears to be facing a serious threat. Thrice before in 2006, 2009 and 2013 the then government sought to amend the

law. We agitated and managed to stall the move by the government all three times. In April, 2016 all the political parties across the spectrum appeared to have come together in Parliament. The Samajwadi Party MP, Naresh Aggarwal said "The RTI Act was passed by Indian Parliament because of the pressure from the United States of America."

No, this is not a laughing matter my friends it's an insult to my nation's Parliament. It's an absolute insult in public of my nation's Parliament and India, and nobody is bothered. The other members of Parliament did not even raise an objection. Praful Patel said "har paanwadi or chaiwallah is asking for information in RTI". Do we need to tutor these people that this is a democracy run on our behalf? We the people of India own this nation. Democracy is a rule of the people, for the people, by the people and these MPs don't understand this. Rajiv Shukla of the Congress also supported it and the government minister also said they will consider these views. I happened to be on the TV debate after that and there was somebody from Nitish Kumar's party who kept saying that they want to strengthen Right to Information. I kept pleading: 'We don't want any strengthening, just leave it there'. But it may not be easy and I am suggesting that all of us will have to do something actively on both these issues. I think it is upto citizens to put pressure on Reserve Bank of India and the political system to move towards more transparency and accountability.

Active Citizenship is the fundamental basis on which a nation can grow. Let us stop complaining about our

leaders and expect them to deliver everything. The citizens of this nation must take responsibility. We use the word Lok Shahi to describe our democracy. Lok Shahi means logon ki shahenshahi. Each one of us must feel and believe he is a badshah or a begum but then the responsibility is also ours. Unfortunately most of us have abdicated our responsibility. Most times we just crib about what is wrong. I am suggesting to all of you that we need to take up Active Citizenship. And if we do this, we can change this nation. We can make this a nation that everybody will be proud of: a fairer, equitable and prosperous nation. But if you don't do that it will not happen. This will not happen until we take the responsibility. I am hoping a lot of us will start taking this responsibility.

And my final appeal is to your patriotism. Patriotism is not a question of merely standing up when the national anthem is being sung or saluting our flag. These are useful symbols. Patriotism is something deeper. We must feel for our nation and decide to do something actively to make it better. I the sovereign citizen of India am responsible.

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- Eugene Black
Former President,
World Bank

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