

Stepping towards transparency: India's Right to Information Act and China's Open Government Information Regulation.

Milind Murugkar, Xu Zhiyong

India and China, two fundamentally different political systems have responded in recent times to the need of openness in their governance. In 2005 the Indian parliament passed a law giving its citizens a constitutional right to information related to governance. China's information access legislation took effect in 2008.

The political context of the origins of these two responses differs radically. Generally it is assumed that democratic regimes are inherently more responsive to the need of transparency in governance. At the same time it is also assumed that their non-democratic counterparts are immune to these demands. But the representative democracy may not ensure transparency and the non democratic performance oriented regime may take the issue of openness more seriously. And so their comparison can provide interesting insights into the issues related to the level of transparency in governance achievable through these moves in these two countries.

On the one hand both these initiatives towards transparency are part of a global phenomenon; on the other hand they are driven by the domestic socio-political factors.

This paper is structured in five sections.

The first section situates India's Right to Information (RTI) and China's Open Government Information regulation (OGI) in their respective socio-political contexts.

The second section looks at the evolution of RTI and OGI. Both these responses to the transparency need have followed radically different paths. These paths have influenced the scope and potential of the respective transparency initiatives in these countries.

The third section looks at the specific provisions; the nuts and bolts of these two initiatives. Owing to the different political contexts of the two origins of these initiatives the level of ambition and promise reflected in them is also vastly different.

The fourth section looks at the implementation of RTI and OGI. The section draws on different case studies to analyse the ground level success and failure of these measures for transparency.

The fifth section brings out the challenges faced by Right to Information and Open Government Information regulation.

Section I

Context of origin of RTI and OGI: Global and National

Global dimension

In the last few decades, freedom of information has been internationally recognized as a protected human right, and societies across the world have been moving away from opaque and secretive administrative systems to open and transparent systems. Since Sweden's Freedom of the Press Act in 1766, over 85 countries around the world have implemented some form of such legislation (William R. 2007). Integration of world economy in recent past has accelerated this process. This is the result of transmission of new sensibilities about governance across globe and the effect of the demands from international institutes. The political systems in India and China have also responded to these sensibilities and demands by enacting laws. While it is difficult to establish very clear linkage between arrival of the RTI and global economic integration, there is a clear influence on China's first legislation towards openness in governance and of the World Trade Organization's requirement for enhanced transparency in administration in the matters of trade and economics.

The Domestic context of the genesis

The tradition of comparing India and China dates back to late forties when these two gigantic Asian countries languished in abject poverty. Geographical size, population and

primarily agrarian economy marked by the presence of small peasants were main commonalities, which justified these comparisons.

The communist revolution in China and the path of economic development with state at the 'commanding heights of economy' embarked upon by India under the leadership of Jawaharlal Nehru, the first Prime Minister of India, kept alive the interest in this comparison.

India started liberalising its economy from 1990. This reform process put India on a path of high economic growth. The initial post reform period witnessed intense political discourse about the merits of reforms. Every move of taking the economy towards market based economy was contested. Nearly a decade after the beginning of the economic reforms, now the serious political discourse seems to be concerned with 'inclusiveness of growth'. The present UPA (United Progressive Alliance) government, which ran on a platform of 'inclusive growth', was re-elected to office recently. One of its main promises in the election manifesto was to make Food Security as a constitutional right of the Indian citizen through enactment of Food Security Act. It is noteworthy that during its previous term, the same government had brought in Right to Work Act (National Rural Employment Guarantee Act) and Right to Information Act. It is not mere coincidence that these right based approaches to food, work and information emerged in the same period. In some sense they all respond to the concern about non-inclusiveness of the high economic growth achieved by the country in recent past. Of course, this is but one of the many complex factors that drove these legislations. While food and employment are obviously, intrinsically linked with the political agenda of inclusive growth, the relations of access to information appear more remote and indirect. But a closer look at the issue of non-inclusiveness reveals inherent relationship of openness (or lack of it) in governance to the developmental concerns of the large section of the society, which has remained at the margin of the process of the economic growth. They include mostly rural populace, landless labourers, small farmers, tribal population and slum dwellers in the cities for whom the issue of good governance remains central to their livelihood concerns. The discussion of application of RTI through case studies, that would follow throws light on

the huge potential RTI has demonstrated in addressing the livelihood concerns of this poor section of the society.

Like India China's concerns too seem to be dominated by the issue of regional disparities and social stability, widespread corruption, increasing inequality, environmental degradation and erosion of social security systems. An online survey conducted by 'People's Daily' showed that nearly 71 percent of those polled think that the state officials at the country level are most corrupt. They also favoured strictest action against them (*People's Daily* 2008). China has witnessed rising public unrest in recent times, expressed through increasing number of mass protests. (*Xinhua* 2006).

The context of origins of these two initiatives have a striking commonality in that, they are responses to the challenge of managing social unrest in the post reform period in India and China (Kurian 2007).

Section II History of Right to Information

The Right to Information campaign in India began with the Mazdoor Kisan Shakti Sangathan (MKSS) movement in Rajasthan to bring in transparency in village accounts of Government spending. This was in the year 1993. Government spends substantial budget on creating basic infrastructure in rural areas using manual labour. Ghost entries of labourers in payment rolls were a sign of rampant corruption in the system, which prompted MKSS to probe the situation. In the process they demanded official information recorded in government files of particular rural projects. They found it very difficult to get access to the files and registers containing required information. They took all the trouble and acquired the information. Once they had the information they freely disseminated it to the beneficiaries which led to unrest among the rural populace. From very modest beginning in the villages of Rajasthan, the success of MKSS has been a source of inspiration for activists in India. It led to the genesis of a broader discourse on the Right to Information in India.

There were parallel processes at work as well at different levels, demanding transparency in governance. In 1993, a draft RTI law was proposed by the Consumer Education and Research Council, Ahmedabad (CERC). In 1996, the Press Council of India headed by Justice P.B. Sawant presented a draft model law on the Right to Information to the Government of India. Unfortunately, none of the draft laws were seriously considered by the Government.

MKSS's advocacy gave rise to the National Campaign on People's Right to Information (NCPRI), to campaign for the right to information at the national level. In 1997, the central government appointed a working group to draft legislation on Freedom of information under the chairmanship of H.D.Shourie, consumer activist and former bureaucrat. The Shourie Committee's Report and draft law were published the same year. Notably, the draft law was criticised for not adopting a high enough standard of disclosure. The draft passed through two successive governments before being reworked into the Freedom of Information Bill in 2000. The Bill was sent to the Parliamentary Standing Committee on Home Affairs, which consulted civil society groups before submitting its Report in July 2001. The Committee recommended that the government addresses the flaws in the draft Bill pointed out by civil society. The national Freedom of Information Bill, 2000 was passed by Parliament in 2002 but failed to get notified.

Few States like Rajasthan, Maharashtra etc made State laws which was the earlier version of RTI but has some restrictions. The civil society movement for Right to Information received a major boost when the UPA Government's Common Minimum Programme promised that: "The Right to Information Act will be made more progressive, participatory and meaningful". The new government set up the National Advisory Council (NAC) to oversee speedy implementation of the Government's Common Minimum Program. Further, the Supreme Court, under a public interest litigation case on the issue, directed the government to notify the Act and laid down a specific deadline (15 September 2004) for the implementation of its orders. The Draft Rules under the Freedom of Information Act 2002 was released for public deliberations with the NAC

and a range of civil society activists also gave evidence before the Committee. The Act formally came into force on 12 October, 2005.

(<http://www.nyayabhoomi.org/treatise/history/history1.htm>).

The journey towards RTI offers some interesting insights. For one, it is obvious that the RTI Act in India has come a long way through deliberations and participation of the civil society organizations at different levels. The influence of civil society groups like MKSS and movement in Maharashtra lead by Anna Hazare played an important role in the process. However, the political presence of these movements was restricted to small regions in the country and their efforts did not trigger the massive political pressure to compel the government to enact this law which runs against the vested interests of the massive Indian bureaucracy. The influence of the civil society organizations on this Act is obvious. However it will be wrong to attribute the credit for this law entirely to the civil society organizations. Realization of RTI was possible also because of initiative by key individuals like UPA's Chairperson Sonia Gandhi and some other elected representatives. In addition we can see that the Judiciary has also played an important role in making this happen.

Evolution of China's Open Government Information Regulations

The evolution of Open Government Information Regulations in the People's Republic of China can be traced to the "open village affairs" at the village level in the early 1980s. The central government then adopted a reform and opening-up policy. In 1987, the Communist Party launched a national campaign called "Two Disclosures and One Monitoring." This campaign included provisions to disclose administrative rules, procedures, and results and to accept public monitoring at every level of government. Since then, open government information practices have gradually spread among villages, townships, and cities. China's first government information access legislation at the municipal level, the Guangzhou Municipal Provisions on Open Government Information, took effect on January 1, 2003. This legislation formally and explicitly established the principle that virtually all government information should be disclosed and that non-disclosure would be the exception. In 2004, following the city of

Guangzhou's lead, Shanghai, Beijing, Shenzhen, Hang Zhou, Chongqing, Chengdu, and Wuhan all adopted local open government information policies. Building on developments at the lower governmental levels, a nationwide policy was put on the agenda of the State Council in 2003. The State Council of China approved the Regulations of the People's Republic of China on Open Government Information on January 17, 2007. The national regulations took effect on May 1, 2008 (Horsley2007).

It is obvious that Chinese initiative for openness in governance is an internally generated process. Its driver seems the combination of economic and political motives. They have driven the authoritarian Chinese Communist Party leadership toward greater transparency. China's international and bilateral commitments require greater transparency and provide an external impetus toward greater openness. However, the main motivations underlying the OGI Regulations are largely domestic; broader sharing of government information in the service of economic development, improving people's lives, enhancing trust between the public and the government, curbing government corruption and promoting better governance at all levels of government (Horsely 2007). Widespread corruption in the Chinese administration is a major concern and this issue is a main force behind this legislation. That this is a paramount concern is evident in the remarks of the chief drafter from the Legislative Office who described the people's right to access government information as a move to "improve administrative efficiency and prevent abuses of power", and "help to curb corruption at its source, largely reducing its occurrence" (Hubbard 2008).

Section III

Status and scope of RTI and OGI

RTI and OGI have emerged in fundamentally different political systems. So, it is obvious that they will carry important dissimilarities in their status and scope. But they have striking similarities as well.

As far as legal status is concerned, there is obviously a major difference. RTI is a formal act passed by the Indian Parliament while the OGI is just an administrative statute promulgated by the Administration and the State Council of China. The latter is subordinate to the laws passed by the national legislative body, the National People's Congress and its standing committee. According to the Law of China, the State Council does have legislative power to some extent. Normally the State Council exercises this power only when the legislative condition is not mature enough for the national legislative organ to pass a formal law and the concerned regulation is demanded by social development.

Both RTI of India and OGI require the disclosure of government's regulatory documents, statistical information on national economy and social development, the fiscal budget, reports on final accounts, information on the establishment and functions of administrative organs, and information on government behaviours concerning the vital interests of the people.

But the scope of China's OGI is far too smaller than RTI. According to Article 2 of OGI, government information is defined as information that administrative organs generate or acquire during the process of performing their work, which precludes the information grasped by the legislative—the people's congress system and the judicial branch—people's court system and any other public institution— such as the ruling party. RTI of India applies to all of the public institutions including the administrative, legislative and judicial organs of the state and all other organizations substantially funded by the government including parties and independent NGOs.

India and China adopt different methods to outline information categories for exemption from release. RTI of India for one puts very few exemptions and importantly, reasons have to given by the authority for exemptions. The conditions and criteria for exemption are clearly specified. OGI sets wide exemptions from disclosure without clearly defining the scope and condition of the exemptions (<http://www.chinatransparency.org>). Administrative bodies are prohibited from releasing information that involves “state secrets, confidential commercial information and an individual's privacy”. Before

disclosing any government information, the administrative body shall, pursuant to the Law of the Peoples Republic of China on Guarding State Secrets and other laws and regulations, censor the content of the information to be released. Article 10 of the Law of the Peoples Republic of China on Guarding State Secrets stipulates that “the specific scopes and categories of state secrets shall be stipulated by the state secret-guarding department together with the Ministries of Foreign Affairs, Public Security and State Security and the other central bodies concerned.” It means that the scope of the government information that cannot be released to the public shall be conclusively determined by a few administrative organs.

Both RTI and OGI call for disclosure on the government's own initiative of information relating to government structure, functions and procedures as well as information that affects the "vital interests" of the public and matters that society broadly needs to know about or participate in. RTI demands such information as suo moto disclosure by Public authorities.

RTI and OGI share similar rules on the procedure for applying for the disclosure of government information. A person, who desires to obtain any information under RTI of India, has to make a request in writing to the concerned Public Information Officer. The officer, as the case may be, on receipt of a request, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either has to provide the information on payment of regulated fee as may be prescribed or reject the request for any of the reasons specified in the Act.

OGI stipulates that when responses can be made on the spot for applications for release of government information, state organs should answer the request on the spot. When responses cannot be made on the spot, state organs should answer the application within 15 working days of submission of the request. If there is a need to extend the period of response, permission should first be sought with the organ responsible for government information release work, notice should be made to the applicant, and extensions to the period of response may not exceed 15 working days. With regard to the information disclosure guarantee system, there exist a lot of differences between RTI of India and

OGI. According to Article 33 of OGI, if a citizen, or a legal person or any other organization believes that the administrative organ hasn't performed their duty to release the concerned government information under their control, they are entitled to report to the higher authority of administration and supervision or the authority of government information office. The authority after receiving the report has to carry out an investigation. In case that a citizen, or a legal person or any other organization believes that the concrete administrative action of any administrative body has infringed upon their legal rights, they can apply for an administrative review or initiate an administrative litigation. However, according to the Administrative Procedure Law of the People's Republic of China, the people's courts are not supposed not accept actions initiated by citizens, legal persons or other organizations concerning administrative rules and regulations, or decisions and orders with general binding force formulated and promulgated by administrative organs. Hence, sometimes even if concerned government department declines to provide the information, the citizen has no legitimate access to a judicial remedy.

RTI of India stipulates that every public authority, within one hundred days of the enactment of this Act, should designate Public Information Officers in all administrative units. More importantly, the Act requires the establishment of an Information Commission, including a Central Information Commission and a State Information Commission. RTI of India consists of six chapters; three of them are focused on regulating the constitution, tenure of office, staff qualification, remuneration and exit system, and the powers and working procedure of the information commissions. These prescriptions assure the independent status of Information Commissions and their function as a special tribunal. Information commissions have some judicial powers similar to civil courts. They can impose fines on officers in the public institutions that didn't carry out their duties of disclosing the information that they are supposed to disclose according to the Act.

RTI's biggest strength lies in its redressal mechanism. It has successfully compelled some kind of response to the applicant of the information within stipulated time. The accountability is clearly specified and the individual and not the department or

organization is penalised if found guilty of violating the right. No comparable provision exists in the OGI.

Section IV

Implementation of RTI and OGI

RTI is being used extensively in India. This is across big cities, small towns and in the rural areas too. RTI has been used by citizens to settle their personal grievances, to get their problem resolved. And RTI is also being used by individuals and groups to take up issues of malpractices in the delivery of social and developmental programs of the Government. RTI is being used; to question the efficacy of Government programs with respect to the objectives of a particular program; to question the Government in its allocation and use of funds; to question the irregularities in delivery of programs; to point out when Government does not follow its own rules; to question patronage and misuse of authority. Questioning is possible given the data and the information given by RTI coupled with the democratic spaces.

Who is using and what kind of info?

In the first three years after the passage of RTI act by the parliament, state of Maharashtra topped in its use with four hundred thousand applications being filed to seek information. Most of the applicants were urban and seeking information from urban development, Revenue, Home and Rural Development departments. Over 93% of the applicants received replies and information (Indian Express March 22 2009; Times of India March 23, 2009). Though the quality of information received might be a matter of concern.

The information sought is quite varied. In a civil dispute case, even a prisoner used RTI to prove his illegal arrest and demand action against the erring Policeman (Times of India, Aug 14, 2007). Students in Colleges and Universities have used it to get their facilities right, get their fee refunded and even get their answer sheets to see. (Loksatta 17 Dec 2007, Hindustan Times March 30, 2008 and). Encroachments in public areas and roads have been brought to notice and action sought after the residents of the area got

proper documents through RTI to prove the illegal status (Times of India Aug 26, 2008). Villagers have used it to know the funds that have been sanctioned and utilized under different schemes in their village (Indian Express Jan 06, 2010).

Studies on the implementation of RTI are bringing out interesting aspects about the social profile of the applicants of information. These aspects are also promising when viewed from the perspective of potential of RTI in addressing the concern of non-inclusive growth. According to a nationwide survey conducted in 2008, an estimated 400,000 applications have been filed from rural areas and nearly 1.6 million applications were filed in urban areas in the first two and half years of the RTI Act. (Singh 2008). Nearly 30 per cent of the sample applicants in rural areas belonged to the economic weaker class of society. As for the urban applicants, nearly 15 per cent of the sample applicants belonged to the economically weaker class of society.

Grass root experiences in the use of RTI

The potential and limitations of the provisions under RTI can be best assessed by analyzing various instances of its use. RTI has been used at different levels and abstracting some common representative theme by choosing from their analysis is a herculean task. One of the author's association with a grass root organization Pragati Abhiyan, based in Nashik, India, which uses RTI and helps citizens to use it, has prompted him to discuss some of these experiences in the use of RTI in detail. The first three examples deal with the issues of livelihood and poverty. The last two cases show how even an individual citizen without organizational support can access information related to sensitive issue of security of citizens.

Soil Testing Labs in Maharashtra State.

RTI has proved to be useful in bringing in certain key policy issues in the mainstream political debates. Numbers are important to make a point. And numbers provided by the Government are very useful in making a point about a particular policy. Availability of soil testing lab facilities for the farmers is a key aspect of farm productivity and hence is closely linked with the issue of rural poverty. State Agricultural Universities and the state agricultural department advice farmers to decide the fertilizer doses strictly based on soil testing reports to ensure balanced use of fertilizer and avoid overuse of fertilizer. Government has also made soil testing mandatory for availing subsidy through various schemes. The issue of soil testing and the inadequate facilities has always been mentioned during political debates on agriculture. But the argument lacked specific details.

Pragati Abhiyan sent an application using RTI to the office of Agriculture Commissioner to get data on the Test labs, both Government and Private, available in the State. The information arrived in time. After a simple analysis it revealed that the facilities were woefully low. The data received showed that there was only one lab in every district and many labs were situated in cities and hence beyond the reach of most of the farmers in the state. These figures proved that the government recommendations were mere rhetoric and were not rooted in the ground reality of availability of facilities. So a simple issue could be forcefully presented with specific data obtained through RTI. The data provided credibility to the argument and the media provided the democratic space for advocacy (Agro won, 1st May 2007).

RTI and Employment Guarantee

The MIS (Management Information System) of National Rural Employment Guarantee Act (NREGA), another landmark Act of the Government is an example of the influence

of the RTI. This Act embodies the transparency aspect of RTI. The Act makes it mandatory for all the Government offices involved in the implementation of the Act to collect, analyze and disclose all the data on a website (www.nrega.nic.in). Wages paid to any laborer across the country can be assessed on this website. This is the first instance of such timely and widespread disclosure of functioning of scheme. This data has been widely used by Media and Civil Society Organizations to monitor the program and bring the wrongdoings into light (Kulkarni 2008).

RTI and Public Distribution System

India's Public Distribution System (PDS) is the biggest food security system for the poor in the world. For a country which is home to world's largest number of poor, effective delivery of food subsidy through PDS is an issue of paramount importance. There is a large scale corruption in the system and poor often bear the brunt of it.

Pragati Abhiyan's attempt to seek data to assess the effectiveness of the PDS in Nashik district of Maharashtra reveals the ineffectiveness of RTI when the data management system is weak or absent.

Invoking RTI, Pragati Abhiyan sought information about the supply and uptake figures of food grain and kerosene from the District Supply Officer (DSO). DSO is in-charge of the PDS at the district level and all the block offices in the district fall under his administrative control. He is supposed to allot monthly quota of food grains and kerosene based on the uptake during previous month. DSO responded to the RTI application saying that his office does not have consolidated data of the district and that he has forwarded the RTI application to all the block level offices. Pragati Abhiyan then received responses from all the block offices. Under RTI Act, the cost of photocopying the information from the government's records is to be borne by the seeker of the information. Pragati Abhiyan was surprised to see that different offices demanded different fee amount for photocopying. The amount ranged anywhere between Rs.160 to

Rs.18, 730. This clearly showed that the data was not maintained in a common format. It was obvious that the DSO has no administrative control over functioning of PDS in his district as he had no consolidated data and even if he had such data the present system of data management makes the data useless for monitoring the program.

Success of RTI depends on availability and efficiency of the data management system at different levels of state administration. The case also hints at the huge scope for the use of Information Technology to realize the potential of RTI (Kulkarni 2008).

Pistol Licensing:

RTI, in certain cases has empowered concerned ordinary citizens to deal with very sensitive issues related to security; the issues which are closely linked with the illegal functioning in the society. ((Sadhana, a weekly published in Marathi, dated 3rd April 2004)

In Satara, a small city in the state of Maharashtra in India a Secondary School teacher got intrigued by a small news item of shooting on the streets of his city. The incident was shocking but more importantly availability of a Pistol gun in the hands of a commoner was more shocking. Being a RTI activist he put an application asking for information on licenses for getting gun being provided by the authority with details of who has it, since when and such. The data revealed that the licenses had increased many fold in last couple of years and the reasons for acquiring a gun were quite frivolous. He probed further using RTI again. He wrote about it in a state level vernacular daily. And later for three consecutive years he pursued with the same query. And he realized that the rate of issuing licenses decreased substantially after he had exposed the earlier data. This is the case where the information when obtained and made public exposed the people in authority and made them accountable to the rules and procedures to be followed. Sometimes, somebody is asking is a reason enough to bring in accountability.

Consumer grievance

Subscriber of a public sector telephone company who had received wrong bills had sought redressal by filing complaints with the service provider. But there was no response and he had to continue paying hiked bills. He used RTI to get necessary information about the billings. But his application was ignored. He filed the first appeal. Yet he was ignored. He sent second appeal to the State Information commission and even then his application went unnoticed. Tired but determined he wrote to the Central Information Commission. They responded and took appropriate action against all those who had not responded as per the provisions of the law. He was also compensated for the trouble he was put through (Lokmat, 27th September 2008).

Cases like these show the high levels of perseverance demanded on the part of the citizens to realize the potential of RTI. It also demonstrates RTI's strength which lies in its provision to penalize the specific official who refuses to provide the required information. One of important features of RTI is its grievance redressal. If the applicant is not satisfied, if the applicant feels that the information provided is incorrect, incomplete or misleading they can appeal to an Appellate Authority. If the applicant remains dissatisfied they can reach out to the Information Commissioner. The latter is a completely independent authority. The Appellate and the Information Commissioner both have the authority to make them provide requested information and importantly penalize the PIO for non compliance. There is no other Scheme or Act which penalizes any Government employee. And though not many, there have been instances of Appellate authority putting penalty on the erring PIO.

Landmark judgment on the assets' declaration of Supreme Court judges:

Does the highest authority of judiciary come under the ambit of RTI? An intense debate in recent times was triggered by an application filed under the RTI seeking information about the declaration of the assets by Supreme Court Judges. This was followed by a Public Interest Litigation in the high court challenging the Supreme Courts contention

that the office of Chief Justice of India does not fall under the purview of the transparency law (www.news.oneindia.in/2010/.../office-of-cji-comes-under-rti-delhi-hc.html)

The Delhi high court's verdict which upheld the PIL caused much embarrassment to the Supreme Court damaging its credibility as the latter argued its case merely on technical grounds without invoking any first constitutional principles and lost. But the impact of cases like these has to be assessed on the long term basis as they deepen the roots of democracy and principle of rule of law.

Implementing OGI

Chinese experience in moving towards more openness in governance is of relatively very short time span. But even in the short period, OGI has generated huge interest about its use. Chinese people are using it in increasing number. After a sustained economic growth for over thirty years now, Chinese population is demanding more openness in the area of governance as well. They are demonstrating increasing hunger for litigation. The major grievances which are surfaced invoking OGI are unpaid wages, inadequate or no compensation for land acquisition. The other issues that dominate the pattern of accessing information include the use of money collected as tolls for the use of highways and bridges, restructuring the public sector companies. The spectrum of issues is very wide. It includes issues such as information about how the government was spending money collected from pet-licensing fees, the specifics and retired workers seeking access to the official minutes of a meeting on employee pensions. Public pressure has played an effective role in yielding results. For instance, strong and persistent efforts by Chinese businessman Wu Junliang prompted the Guangzhou city government to disclose the budgets of all 114 municipal departments and agencies. This decision triggered a surge of public interest and an unanticipated heavy online traffic to download the documents.

Studies are revealing increasing use of OGI by Chinese citizens. In 2008 the number of requesters who filed application for some kind of information has increased by fifty percent over the previous year (Kurian 2009). One of the most striking examples of the

effect of the spirit of OGI can be seen in the case of the tragic incident of earthquake of Sichuan. The incident occurred just eleven days after the OGI went into effect. Chinese government and state-owned media updated information on the disastrous earthquake in a much more proactive and prompt way than they had with prior emergencies. For instance, the news of the earthquake was announced to the public via Xinhua News Net only 18 minutes after the first shock wave, and a press conference was held by the News Office of the State Council the next day. Foreign reporters and international financial donations were permitted (Piotrowski et.al.2009) Sociologist Yefu Zheng wrote, ‘We knew little about it when a devastating earthquake struck Tangshan City in 1976. There was just a brief news announcement about it. Thirty-two years later we are paying close attention to the suffering and rescue of our countrymen. Besides enormous grief and sorrow, we saw something new from any past disasters in China—that the general public is well-informed about it. And when the people are informed, their hearts can be brought together’. (*China Digital Times* 2008)

OGI’s success or failure has to be assessed at two levels. One is by assessing government’s response to OGI is by proactively providing the official information. The second is by looking into the government’s response to citizen’s request for information. In the former case the government’s performance is impressive but same can not be said about its response to requests from citizens. For instance, the Shanghai government has not scored so well on its response to information requests by citizens recording a nearly 60 per cent success rate. (Horsley 2007) .The record of most government agencies has been tardy in complying with the OGI requirements to publish annual information disclosure reports. Reports by ministries also do not provide any insights into the decision making process involved. These tend to be bland statements on the number of information requests they received and offer no explanations on what grounds information was given or withheld.

Challenges facing the transparency initiatives

The legal status and scope of RTI and OGI vary widely, but the challenges they face in their implementation are similar in many ways.

A survey conducted to assess implementation of OGI brings out several issues that hinder the effectiveness of the OGI (Piotrowski et.al.2009). One important factor is the lack of positive attitude of the officials towards the implementation. This can be a major obstacle in Chinese case as the citizens are deprived of effective redressal mechanism unlike in India. The administrative set up including preparations of guides and catalogues for responding to information application is another hurdle. The responsibility for the oversight of the implementation of OGI is also not fixed in many government offices. Among 43 provincial-capital cities and other major cities who were covered by the survey, the government transparency were far from ideal, half of them can't meet the standard in terms of opening their information to the public. The survey pointed out on the information disclosure websites, procedures of inquiry navigation like and some of the telephone numbers provided on websites do not exist.

The officials generally do have basic idea about the OGI but are unaware of the procedural and implementation details. Inadequate training of the concerned officials is a major issue.

Most of the issues cited in the context of OGI are relevant for the implementation of RTI as well.

A survey conducted by Pragati Abhiyan, a development organization, reveals major lacuna in the implementation of section IV of the RTI, under which all public authorities are required to publish certain information on their own (Kulkarni 2009). This is the first crucial step which the public offices should take for any possibility of successful implementation of RTI.

The survey reveals certain shocking issues of non-compliance with the basic foundational requirements of the RTI. It was brought out that many government offices as yet do not

have a Public Information Officer even though that is a fundamental step in getting this Act off the ground. At the appellate and state level too all the necessary information commissioners have not yet been nominated. Not having proper personnel in appropriate place almost leads to denial of information.

Second, even where a PIO exists on paper, compliance with the law is spotty. In particular, many offices have not even bothered to collect the information stipulated in Section IV of the Act.

Thirdly, in using the Act to monitor the progress of development spending, it was found that while information exists in raw form, it generally is not processed in consolidated formats. The absence of such consolidated information at the offices of various decision-making authorities suggests an alarming absence of any kind of such monitoring.

At higher levels of government, there is much talk of outcome budgeting as a way of emphasizing the importance of outcomes over outlays and use of RTI can help in a big way towards achieving this through effective monitoring. But foundations for such efforts are as yet absent. On the other hand, lack of uniform standards of data reporting undermines the purpose of the Act.

There are issues of information asymmetries as well. Rules across the states vary widely. Different authorised agencies have all with the right to make their own rules has led to a maze of rules and procedures. There is a case to make unique set of rules for the use of RTI. The procedural requirements are cumbersome and they involve a lot of paper work and these requirements differ from state to state.

Section V

Future of RTI and OGI

RTI and OGI are two landmark steps respectively in the Indian and Chinese history of reforms in governance. How far will these initiatives travel in bringing the desired

changes? In what time frame? These are lofty questions and definitive answer is not possible. But one could still attempt some informed possibilities.

The uniquely different paths travelled by these transparency initiatives can provide some basis for the responses to these questions. One obvious and striking aspect of arrival of RTI on India's political scene is the major role played by the civil society groups. These organizations have been mainly responsible for the reflection of grass root concerns in this act and also for intricate checks and balances built in the act to ensure that this constitutional right of the ordinary citizens is safeguarded. This significant role of civil society groups would prompt us to conclude that passage of RTI act is essentially a bottom to top process; a process that can be considered as a feature of an ideal democratic regime. But this conclusion would be rather too simplistic. The democratic political system has certainly provided space for civil society groups. But this space is not entirely due to the political pressure which civil society has succeeded in generating around the demand for transparency. The mobilisation at the grass root level in Rajasthan and Maharashtra were surely responsible for triggering the processes towards RTI. But at national level the demand was hardly a palpable political demand capable of bringing in this right to information. But the arrival of the United Progressive Alliance (UPA) government at the centre under the leadership of Ms. Sonia Gandhi provided a window of opportunity for the civil society groups. Leading activists in the RTI movement candidly acknowledge major role played by Ms. Sonia Gandhi and other individuals for the passage of RTI act. This 'top to bottom' aspect of the evolution of RTI has to be factored in while analysing the implementation of RTI, as, at least partly, explains highly inadequate infrastructural arrangement for honouring this fundamental constitutional right of the citizens.

While RTI may not be essentially the result of 'bottom-up' process, it has certainly created space for the future silent grass root movement of the citizens for demanding transparency in governance. This is made possible precisely because of effective redressal mechanism built in the provision of RTI. As more and more people invoke RTI, which they are surely doing on wide scale, the government will be compelled to put in

the required systems in place. Increasing use of Information Technology will play a crucial role in the success of implementing RTI. RTI has thus emerged as one of the most promising legislations in the recent history of India.

China's OGI on the other hand is essentially a self driven process with virtual absence of civil society's role. But it has too travelled from 'bottom to top' in a sense, as many local governments first responded to this need of transparency through their unique regulations. In fact concerns are expressed over whether the OGI will be able to retain the liberal provisions in the local regulations. Path towards OGI might not have been influenced by the ordinary citizens through civil society movements, but it is surely a response to grass root issues like growing unrest against corruption, land acquisition and such. Although OGI has a much lower legal status than RTI and is of much smaller scope, increasing number of Chinese citizens are invoking it. Indian citizens face the challenge of a highly inefficient and sluggish bureaucracy. It is going to be long drawn struggle to make this formal constitutional assurance for transparency a reality. On the other hand performance-oriented Chinese political system might prove to be more responsive to its citizens. The same factor might propel Chinese government to move towards an efficient data management system making use of latest information technology. India might move rather slowly in this direction and to that extent would slow down the process of openness.

There is a deeper cultural issue here. China, despite being a non-democratic political system has egalitarian ethos deeply imbedded in its culture. India on the other hand is a traditional hierarchical society. These traditional notions of hierarchies have subverted the modern democracies at different levels. This would explain tolerance of wide scale corruption in Indian system. On the other hand even under the authoritarian regime, the Chinese citizens' impatience towards corruption in administration is palpable. This has been one important factor for the birth of OGI. This 'tolerance' and 'impatience' in the respective societies will have strong bearing on their citizens' enthusiasm in the use of RTI and OGI for bringing in more transparency in the respective governance.

At the root of the success of RTI is proactive role played by the civil society groups, judiciary and media. RTI was possible primarily because of active civil society groups. The status and scope of RTI is deeply influenced by their contribution. Along with this, judiciary also played a major role enlarging the scope of RTI. Many newspapers in the country used RTI to seek information by breaking through the wall of secrecy. They also gave generous space for RTI cases. They ran columns explaining the citizens how to use RTI. All of this has made huge impact on the level of awareness about RTI. This is reflected in the widespread use of RTI. A silent revolution for transparency is underway in India at the moment.

Unfortunately no such processes exist in China. Civil society movement in China is very weak to cause any influence on the use of OGI. They did not have any role in the evolution of OGI. Role of judiciary too is virtually absent. Arrival of OGI in 2008 had triggered lot of hope. It is noteworthy that the OGI was introduced by China's Vice-Minister Zhang Qiong of the State Council's Office of Legislative Affairs as a measure facilitating "the public's right to know". (*Xinhua* 2007). But unlike RTI, the optimism associated with it is waning fast. This is primarily due to the absence of democratic institutions like civil society groups, role of judiciary and free press.

The future path towards openness in governance in these two countries thus will be decided by myriad of factors, some of them unique to these countries.

References:

Hubbard, Paul, (2008), China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation, *Open Government: A Journal on Freedom of Information*, vol 4, no. 1:7.

Horsley, Jamie, (2007), "China Adopts First Nationwide Open Government Information Regulations", on Freedominfo.org, posted May 9, at <http://www.freedominfo.org/features/20070509.htm>.

Kulkarni, Ashwini (2008), "Government and Right to Information in Maharashtra", *Economic and Political Weekly*, August 30, 2008.

Kurian, Nimmi (2007), "Troubled Transitions: The Politics of Social Harmony in China", *CPR Issue Brief No.1*.

Piotrowski, Suzanne J.; Zhang, Yahong; Lin, Weiwei; Yu, Wenxuan (2009), Key Issues for Implementation Chinese Open Government Information Regulations, Public Administration Review, Volume 69.

Singh, Shekhar (2008), Safeguarding the RTI: Report of the People's RTI Assessment 2008, Summary of Findings.

Staples, William R. (2007), *Encyclopaedia of privacy*. Westport, Conn: Greenwood Press. p. 240. [ISBN 0-313-33478-1](#). "The world's oldest freedom of information law was enacted by Sweden in 1766."

Xinhua News (2006), Press Conference on China's Open Government Information by the Central Commission for Discipline Inspection of the Communist Party, Xinhua News 26th September

Xinhua (2007), "China issues landmark decree to encourage government transparency", 24 April