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Interview

‘These are times when ‘fair is foul’ and ‘foul is fair’: Aruna Roy and Nikhil Dey



[Vidya Subrahmaniam](#)



RTI activists during a protest against changes to RTI Act at Jantar Mantar in New Delhi on Monday, July 29, 2019. Photo: Shiv Kumar Pushpakar / The Hindu

*The Narendra Modi Government has mounted an assault on public institutions and people's fundamental rights and one such act is the set of amendments pushed through recently to the Right to Information Act. Simultaneously, the government has imposed an information blockade in Jammu and Kashmir that has crippled normal life and taken away the people's basic rights, including their right to timely medical treatment. The government has also extended the Central RTI Act to the newly-created Union Territory. This, as **Aruna Roy and Nikhil Dey, co-founders of the Mazdoor Kisan Shakti Sangathan**, point out in this e-mail interview to **Vidya Subrahmaniam, Senior Fellow, The Hindu Centre for Politics and Public Policy**, is an act of irony because J&K had a far more robust information law of its own. Roy and Dey believe though that efforts at curbing information whether at the Centre or in J&K will eventually fail because the people are determined to have information.*

We are the in the middle of distressing developments across the country. Recently, amendments to the RTI Act, critically impacting the functioning of the Central Information Commission, were passed by Parliament with some stealthy maneuvering by the Narendra Modi Government. How critical are these amendments to the survival of the CIC which is the apex appellate authority for RTI?

The standard of evaluation of RTI Acts across the world is dependent on their autonomy and independence, and the powers they have to deliver on their mandate. These amendments critically and deliberately undermine both. The government has failed to come up with any meaningful justification for the amendments, because they don't want to state the real purpose behind the amendments. This government has already displayed its determination to exercise control over all independent and autonomous institutions.



Social Activist Aruna Roy during an interview with The Hindu at her residence in New Delhi on May 21, 2018. Photo: R. V. Moorthy

The stealth is not just in the maneuvering to have the amendments passed without any consultation. Since the government is not able to control the democratic urge of citizens to be vigilant, and question authority, the government decided to undermine the apex body tasked with procuring information from all, including the highest offices in the country. It did so by usurping powers to fix salaries, tenures, terms and conditions, and status of the apex body not just at the Centre but also in the states! The amendments will undoubtedly affect the autonomy and authority of the apex body. However, there are more than 50 lakh RTI applications filed every year and these are the real driving force of India's robust RTI movement. Behind each application, there is a determination to expose the arbitrary use of power. The people gave birth to this movement when there was no law by asserting their fundamental human right to information. That is only going to get stronger, with every attempt to weaken the legal entitlement.

When the first United Progressive Alliance Government tried to bring amendments to the RTI, these were beaten back via huge public participation in protests and political pressure brought in by important political and social figures, including those in the government. This time, the passage happened not only because of a Machiavellian government single-mindedly pursuing its goals but also because of the Opposition's shameful apathy and neglect in preventing the Bill's passage in the Rajya Sabha. Nor did we see public pressure of the kind witnessed in 2006. Ironically, this government is made up of the same set of people who used RTI to expose the scams of the UPA Government, thereby ensuring its defeat in the 2014 general election. Do you think it is possible to turn the clock back on this? If so, how?

The RTI Act has survived the attempt to weaken it through amendments multiple times, because there was always some degree of democratic sensibility and ethos, where the government responded to popular sentiment and people's opinions. Even the current government had in its last term sought public feedback on a change in RTI rules, and withdrawn the rules after there was a strong negative feedback. The very same amendments were withdrawn after a public outcry in the last session of the 16 Lok Sabha.

This time the government was clearly determined to push through without providing any space for consultation, and regardless of procedure, process, public opinion, or political consensus.

The RTI campaign has always shown its determination to make the law an enabler, and not be hemmed in by legalese. It has too many determined unstoppable citizens on its side to lose what they have gained to a manipulative and autocratic state.



Nikhil Dey. File Photo: V. Sudershan

That is why, the RTI campaign has already responded with a campaign called “Use RTI, to save RTP”. This will focus attention on the power of every citizen to ask questions and put pressure on government departments to give answers without having to go to the commissions. The Rajasthan government has developed a very important citizens information portal, that was designed with citizens groups and civil society organizations to effectively operationalise mandatory disclosure under section 4 of the RTI Act, so that the disclosure of information is not subject to the whims and fancies of a government official. All these efforts will ensure that a message goes out to the government that the questions will go on, and answers will be sought, as no government can control the independence and autonomy of the people.

The amendments to the RTI which erode the credibility and autonomy of the CIC are ominous in themselves. Juxtaposed against the information lockdown in Jammu and Kashmir, they point to a future where information could become impossible to access. Paradoxically, it is being suggested that the Central RTI Act will be extended to J&K making the state more responsive to its residents. Where do you see all this going?

Very few Indians know that the erstwhile state of J&K had its own RTI Act and that it was in fact better than the central RTI Act, 2005. Witnessing the huge delays of addressing appeals in the Information Commissions across the country, the J&K RTI movement pushed to ensure that their Act should have a time bound period for deciding second appeals in their State Information Commission. It contradicts the assumption that extending the central RTI to J&K will give its residents greater access to information. The J&K RTI Act disproves the propaganda that rescinding Article 370 will bring in a more progressive legislation. The RTI in J&K was also perceived as a process which promised hope to those denied the right to access justice in an otherwise bleak landscape of conflict and repression. People used the J&K RTI Act to ask a spate of questions - from the most regular civic issues such as *sadak*, *bijli*, *paani* to the most fundamental issues of missing persons, the ultimate RTI question.

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The manner in which Article 370 was abrogated and with a complete blackout on information over the last month has only been a perverse and geometric progression of what the Central Government sought to do in amending the RTI Act, 2005. All rights and processes of transparency and democracy were defied – there was no consultation; no respect for equality of opinions of the people concerned - while claiming that these changes would bring greater freedom and transparency! These are times when “fair is foul, and foul is fair” and citizens rights are selectively guaranteed. That is why it is possible for the government to welcome the people of J&K as “full Indian citizens” in a situation of complete lockdown – unprecedented in India and perhaps across the world! People in India need to understand and draw lessons from this experience, of what may lie in store in the

future for defining citizenship in an unequal and partisan India. It is a warning of how this government perceives information and democratic rights.

The Right to Information Act, 2005 has a long history of state-level struggle and state information laws behind it. Your book, *The RTI story: Power to the people*, gives a very detailed account of this. Nonetheless, for the benefit of RTI users and others without a deep understanding of the issue, can you briefly outline the decades of struggle that finally gave birth to the Central RTI Act that got promulgated on October 12, 2005?

The Mazdoor Kisan Shakti Sangathan (MKSS) was formed in 1990 with the objective of addressing the issues of the workers, small and marginal farmers who formed the bulk of the population in five Blocks of Ajmer, Rajsamand (then Udaipur), Pali and Bhilwara districts. This contiguous area is drought prone, with small holdings and plagued by yearly migration. There was no blueprint; the objective was to work and plan with people. We understood that people needed to define the nature of the problems they faced, the alternatives they sought, and the modes of struggle and change they would have to sustain in order to move towards a better world.

In struggling against non-payment of minimum wages on government and contract works, the MKSS systematically arrived at the conclusion that transparency of records of work and wages were essential, in order to use ‘truth’ to fight injustice. To quote Mohanji, Dalit worker, marginal farmer, bard, and singer of Kabir - “until the records come out, we will always be labelled thieves, while the real thieves hide behind secrecy. Records will have to be made public”. The slogan – ‘*Hum Janenge, hum Jiyenge*’ (the right to know – the right to live) succinctly explained how information was vital in order for people to secure access to their rights, and look for ways to end corruption and the arbitrary use of power.

One reason why the RTI Act as well other Rights-based laws came into being during the rule of UPA-I was the presence of an advisory council with members drawn from enlightened and public spirited sections of society in the form of the National Advisory Council (NAC). Can you tell us about the role the NAC played in pushing the law and the difficulties it faced – the draft we know went back and forth – in getting it on board?

The Campaign had engaged with the political establishment over the years of the struggle for the RTI. In this process the Congress and left parties had lent a sympathetic ear, and many Congress governments had enacted State laws in States where their government was in power. The UPA-I put out a document called the “National Common Minimum Programme (NCMP)”, listing out the government’s commitments to the people of India. The National Advisory Council (NAC) was constituted to operationalise the commitments made in the NCMP.

The NAC was chaired by Sonia Gandhi, who had opted out of becoming Prime Minister. This collective of just over a dozen members drawn from civil society, academia, and the social sector, worked on giving shape to many commitments in the NCMP including the promise to make the RTI Act “more progressive, participatory, and meaningful.”

The already drafted and redrafted and much debated RTI, enacted in half a dozen States, with a dormant, un-notified and weak central law, was so to speak on the anvil first. It seemed as if the Freedom of Information Act would have to be substantially amended. Eventually, a decision was taken, to replace the very “weak” Freedom of Information Act with a much stronger Right to Information law.

The drafting of the law was done in tandem between the NAC, and the Government, along with constant inputs from the Campaign. It was a law on which many consultations and debates had already taken place, and the entitlements had been understood and defined, well before the draft law came to the NAC. NAC members, N.C. Saxena, Jairam Ramesh, Jean Dreze, A.K. Shiva Kumar, Jaiprakash Narayan and the Chair herself, applied themselves to the process of drafting and engagement with the government, and civil society. There was a need for a very concentrated effort at persuasion and perseverance in order to enact a law that was drawing stiff behind the scenes opposition from within the bureaucracy. There were many vital questions that only got decided after the parliamentary standing committee gave a unanimous and favourable report.

Laws should be made through a process of consultation and engagement drawing upon the views and contributions of a large collective. This process cannot be surrendered to a non-transparent and exclusive process in government. The democratic process has to follow the recording of people’s points of view within a consultative framework, as well as the mandatory steps and mechanisms of

governance. The RTI movement grew organically on the one side with peoples participation; and the law evolved in the legal frame, drawing thoughts and energy from the other. The dialectic was ever alive. It involved continual dialoguing with the government, law makers, and a whole gamut of sectors of citizens; while focusing on the needs of the poor for whom “the right to know was the right to live”. Corruption’s remedy lay in understanding that government money is public money, and must be transparently spent and accounted for, resulting in the famous slogan – “Our money our accounts”. The first draft of the law was made in the Lal Bahadur Shastri Academy of Administration with Harsh Mander and N.C. Saxena, inviting the MKSS to come and discuss the principles behind the law. This first draft was handed over to the National Campaign for the People’s Right to Information (NCPRI), and taken to the Press Council whose chair, Justice P.B Sawant, coordinated the first comprehensive draft of the law. This has remained the basic draft on which much work was done since.

The RTI Act was historic in that it opened the doors to government functioning in a country ruled by the Official Secrets Act and where almost all information was classified. How did it feel to get the Act up and running?

The unanimous passage of the RTI Act 2005, in the form and substance of its enactment was just short of a miracle. In all the years of struggle there was hope but also the constant hum of constraint, doubting whether 'power' could ever be persuaded to disempower itself, and to become transparent or accountable. L.C. Jain, Gandhian thinker and activist, diplomat and friend, wrote to us while he was the Indian Ambassador to South Africa, to say that he didn’t think I would see the law in my lifetime, but the struggle was extremely worthy.

For the people engaged in a long, and incremental campaign all over the country, the victory signified the coming of age of democracy. People had moved from being objects of policy to becoming the creators of such policy, realising sovereignty and rights in one stroke. The RTI set the tone for other rights based laws, and expanded the boundaries of public action and peoples participation in constitutional politics. The rights based laws defied the existing legal history and custom to become a democratic process of making peoples policy. The role of the NAC, its consultative process, and the sustainability of rights based laws even when there is a hostile

government has been a matter of great interest and curiosity, drawing the attention of premier academic institutions as much as policy makers and governance.

Despite the tremendous success you had in getting the law passed, it almost immediately came under attack from the bureaucracy which deliberately misinterpreted the clauses of the Act to deny information. The Department of Personnel and Training (DoPT) which was the nodal government ministry for implementing the RTI, itself placed roadblocks in its implementation. In the initial days the fight was over disclosing 'file notings' which the DoPT, obviously with the blessings of the highest in the Government, tried its hardest best to block. What is a file noting and why is it important to be able to access it?

The file has two parts. The 'PUC' is "paper under consideration", a pile of letters and communications filed on the right. On the left in what used to be a bluish paper with a margin, were 'notings' ie where the suggestions, analysis, recommendation, and opinions were recorded. This was jealously guarded, and secrecy made it easy for senior officers to over-rule junior officials suggestions; or for junior officials to misrepresent the matter. Very often they were both over-ruled by the politicians, most often because of vested interest. File notings are therefore at the heart of the decision making process, as they record the decision making trail and the reason for the decision taken.

The fear of the disclosure of file notings first arose when (the late) Ram Jethmalani was Urban and Land development Minister during Atal Bihari Vajpayee's tenure. He issued an order, using Supreme Court Constitution bench decisions, that held that the citizens have the right to get information about all aspects of government functioning. He therefore opened up files for general scrutiny. This created a furore right up to the Prime Ministers office. The PMO tried, and somewhat succeeded in scuttling this effort. Jethmalani had also suggested that anything available to Members of Parliament must be available to citizens. It was the same clause that Dr N.C. Saxena, as Director of the LBSN Academy had suggested in 1996 at a meeting in Mussoorie.

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The biggest fear of civil servants from that time onwards was that the file “notings” would be disclosed. During the period of the drafting of the law, the bureaucracy somewhat cleverly (they thought) dropped the word ‘notings’ from the definition clause of information under section 2(f) of the RTI Act. However, the definition was comprehensive in stating that “any material in any form” and specifically included “opinion” and “advice”. Therefore file notings got covered, without being specifically named.

Meanwhile, the DoPT tried to place a misleading interpretation on its web site that file notings were not included for access.

This matter was taken up in the appeal in front of the then Chief Information Commissioner, Wajahat Habibullah, who ruled that if opinions and advice could be accessed under the law, file notings also could be accessed, thereby putting the controversy raised by the DoPT website to rest. – at least till the Cabinet decision to amend the law, and along with other regressive measures, exempt file notings from disclosure.

Ten months after the enactment of the law, the Government proposed a set of amendments to the RTI law, a key one being placing file notings outside the law. In the end the government backtracked on it. In an interview to me at the time titled, “Don’t mess with RTI”, you had said: “The amendments have been shelved under public pressure — public pressure of a kind not seen before. There is nobody and no area that the issue does not touch, and you can see it from the people who have been drawn to it — from Narayana Murthy through the Left parties, V.P. Singh, jurists, poor peasants, women activists, performing artists, human rights activists, electoral reform advocates to thousands and thousands of young people. This is not about one voluntary organisation, it is a whole, wide movement. Yet precisely because this is a mass movement, the establishment will hit back. They will hit back because they are losing power, losing control “. losing control.” How important was it to have credible public figures fighting for the RTI law?

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We must make a difference between the NAC as a policy framing platform; and the RTI/NCPRI movement and public protest on the other. The movement put together a set of demands, worked actively on public campaigns, and made space for public protests and demonstrations. There was a sharp understanding that people played a formative and positive role from the street. It was the most important public space for a range of people to have their voices heard. If peoples voices are to be shut out we just need to look at the period from 2014 till today, when the NDA government has clamped down on spaces for protest and all forms of dissent. This is an important check on arbitrary governance, but also a place from where people can make important policy suggestions and interventions. It was not just citizens groups and campaigns that spoke from Jantar Mantar. Senior political leaders like V.P. Singh, senior journalists like Kuldeep Nayar, Prabhakar Joshi, Ajit Bhattacharjee, and many others, supported, and enriched this public space.

The NAC, on the other hand, became an institution that drew its mandate from the UPA's common minimum programme, but based its policy recommendations on a process of public consultation that facilitated engagement and advocacy with the government. Jairam Ramesh, Hanumanta Rao, Dr N.C Saxena, and many others occupied this space. On the specific role of public personalities, one example will illustrate how this worked. We elaborated this in an obit article on V.P.Singh, published in the Indian Express, titled, The Raja of Small Things:

"V.P. Singh spent every second day at Delhi's Apollo Hospital, long hours undergoing dialysis. Kidney failure was compounded by bone marrow cancer. And yet, he had no hesitation in telling us — 'for the Right to Information and Employment Guarantee Act anytime, anywhere, I will do all I can to help.' He was as good as his word." As a former prime minister he gave us a sense of what was in the realm of the possible, without losing the capacity to fashion a dream. He discussed each provision of the law as if he were prime minister, and strengthened each basic demand as if he was the applicant. As a person who enjoyed immense political goodwill amongst India's political formations he had no hesitation in using it to build support. Ministers, party leaders and journalists were often taken by surprise when V.P. Singh called, lobbying for a particular provision of the right

to information or employment guarantee acts. He would get involved in planning an event, he would try and ensure the presence of other people crucial to its success, and come to meetings, demonstrations, press conferences for as long as his body would allow it. These brief appearances made all the difference.

One of the ironies of the RTI Act is that it brought down the very government that enacted it. Exactly what role did RTI play in exposing the scams that eventually led to the downfall of the UPA-II government?

There are innumerable factors that go into the decision to vote one way or the other, and it is therefore often difficult to pin point what exactly leads to the electoral endorsement, or rejection of a candidate or party. After all, despite predictions to the contrary, the UPA, was voted back to power in 2009, after having passed strong rights based legislations, with the RTI in the vanguard. It is true that the unearthing of major scams (in which RTI was used) did riddle and affect the performance, and image of UPA- II. But it never tried to make political capital out of this important agenda of systemic change. In fact even right until the end of the term of UPA II anti-corruption, and accountability measures like the Lok Pal and Whistle blower protection law were enacted. That a strong RTI Act was enacted despite powerful opposition in the government, and the party, also speaks of the courage of a leadership which took on a statesman-like role, and placed the country above potential political fallout. The BJP, on the other hand, has done little beyond delaying or neutralising any move at democratic accountability. The BJP has dragged its feet on the implementation of the Lok Pal and the Whistleblower Protection Act; and has in fact completely legalised corruption in the political system by bringing in deliberately opaque electoral bonds. The BJP has shown that it is a master in political rhetoric and propaganda. Through careful and choreographed use of messaging, they have even manage to build support for a policy failure like demonetisation.

With 60 lakh RTI users, this law has become a movement. The genuine popularity of the RTI, and the potential popularity of a transparency and accountability agenda, was not used for political advantage by UPA and its parties. It is a fact that the UPA did very little to lay claim to the entire gamut of rights based legislations that had been brought into effect by them.

What brought the UPA down more was its internal conflicts and its inability to deal with accountability, when the chips were down.

In the early years after the enactment of the RTI, there was so much hope. Activists and analysts hailed the glasnost that was sweeping the corridors of power, opening tightly shut bureaucratic doors to the ordinary man. There were hundreds of stories of the small victories that the rural and urban working class and poor experienced, at the ration shop, at the electricity and telephone offices. Reports poured in of dirt poor folk being treated with respect by local bureaucracies for fear of the RTI.

Where have that feeling of hope, stories of little triumphs disappeared? Why do we see fewer and fewer RTI-based stories in the newspapers?

Those who had lived in an era before the RTI saw the unfolding of the wonder of what real citizenship could mean. To ask a question, and expect an answer from people occupying positions of power was a new and incredulous feeling. When these stories were reported, it was with the wonder of ‘speaking truth to power’, and power being forced to respond. It became clear that the RTI was actually the sharing of power.

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The stories of hope still exist. However, now the anger of being stonewalled, and being frustrated by delay and denial is becoming the dominant discourse. In many cases, even when information is extracted or procured, the system is getting immune to demands of accountability. There is also now a creeping atmosphere of fear. In high places, power is being seen as becoming vengeful, and taking the shape of an arbitrary undemocratic decision maker. There is growing privatisation where power is shared by Government with, specially privileged companies and contractors. The growing nexus of the corporate sector and political bosses wants and needs the RTI to be whittled down. The corporate sector owns the media, and controls news. So, the stories of triumph are there, but they are getting much less media space. Even though most media houses have RTI cells, and journalists understand the fundamental importance of RTI, the success stories often go unreported partly

because of a change in management priorities. There is an odd dismissal of citizen based struggles, that require an understanding of complex processes, and might need to occupy mind space for a long time. It is argued that they need to be replaced by the ‘sexy and slick’ stories of instant success, and the peoples need to ‘feel good’!

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