

# **Indian Democracy: Its Shortcomings & Triumphs**

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Dr Amitabh Chowdury, still in his youth was working in the prestigious Southern Railway Headquarter Hospital as a Cardiothoracic and Vascular Surgeon, honing his skills as a Cardiothoracic Surgeon, when the tragic twist of fate occurred. On the 10th of September, 2003, India and the world lost him in a road accident that extinguished a precious life dedicated to the service of humankind. **But it is not only to commemorate his achievements, no doubt prodigious, that we are gathered here today. It is to reflect on the achievements of our country which produced such men as he, and the challenges that face our people. And so today I will speak to you on a subject that has been close to my heart not only as a profession, but as the identity of our people as a nation-the creative expression of what Nobel Prize Laureate Amartya Sen has described as the 'Argumentative Indian', if you please**

The father of our nation Mahatma Gandhi had this dream of India on winning freedom: "Independence must begin at the bottom. Thus, every village will be a republic or Panchayat having full powers. It follows therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world." <sup>i</sup> On the other hand Dr Ambedkar, introducing our Draft Constitution for second reading was condemnatory of village self-government," what is the village but a

sink of localism, a den of ignorance, narrow mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit."

**Today, the Nation as a whole is faced with dramatic change. Governance itself finds transition accelerated both in concept and form. Governance has of course always been subject to continuing change, as is the nature of democratic evolution, and this has been marked from the time of Independence. From a means to perpetuate imperial rule governance developed into a means of seeking equitable economic growth. The initial Indian political leadership when we won our freedom, was westernized in its education, and therefore if not in its demeanor, certainly in its approach to governance. It was hence paternalist. The Civil Services were therefore an object of respect. Such service, even though not legally so, was in practice close to being hereditary.**

This civil service oversaw the running of a 'socialist' economy: the State was omnipresent. The Welfare State was seen as a necessity, but time has shown that its achievements, although many, were hardly commensurate with such expectations. Now the state finds itself in a period of transition across the board: social, economic, political.

Politicisation of the civil services, mainstay of government, in an inevitable offshoot of democratic rule, commenced in the late '60s, and picked up pace in the early '70s. This was the time when the

term 'committed bureaucracy' came to be coined. The civil service had been trained not to question political decision-making. With the maturing of the political element in governance that element also realized its strength. There was therefore a need for these two basic elements of governance to come together in terms of mutual understanding of functions and demands. Despite much change however, this coming together has to this day remained largely elusive.

The social change brought about by a socialist economy has impacted on the political factor. The earliest dramatic manifestation was in what was then among the leading states of the country, Tamil Nadu, and then the State of Madras. This was with the onset of the Dravida Munnetara Kazhagan (DMK), which stood for separation from the Indian mainstream. That State has largely made the political adjustments as being part of the diverse nation state of India, while jealously guarding the identity of the Tamil, which was required. We find several northern States at present in the process of making such adjustments.

**But an unfortunate ramification of these changes, which these factors of political and social change have fed, has been the rise of corruption and the dilution of established ethical norms. This has been compounded, not mitigated by economic change, and I note has been dealt with at length in the Second Dr Amitabh Chowdhury Memorial Lecture delivered by one whom I consider a dear friend James Michael Lyngdoh. That change is signaled by what is described as liberalization. For**

the State this meant giving up control. Access to decision-making by those within government is receding. With the rise of the assertiveness of business houses, entrenched means of access to ill-gotten gains by the state hierarchy is increasingly limited, with the erosion of established corruption channels. Collusion instead of coordination is now increasingly marked between politicians (because of the need for election funding), business houses, and bureaucrats. There is even gossip of bureaucrats being on sale, and we have had shocking exposes in the past year that I must admit to having left me shaken.

Let us evaluate the economic achievement of bureaucrat led governance thus far. The premier thrust since the '80s has been towards Poverty Alleviation – Although there has been some success, there has also been heavy leakage. Assessments on reduction in poverty levels vary. Dutt's researches indicate that in 1973-74 the percentage of those below the poverty line (BPL) in the rural sector was 55.72%, and urban 47.96%. In 1997 the rural BPL level was 35.78%, urban 29.99%. S.P.Gupta gives the following figures: in 1983 the rural BPL level 45.65%, urban 40.79%; in 1997, rural 38.46%, urban 33.97%. The question would naturally arise whether even the more optimistic levels indicate achievements which could be concluded to have been commensurate with the costs.

What then are the future prospects? I see the bureaucrat of the future as a facilitator, and also because of wide ranging field experience, a potentially effective motivator. For this to actually

happen, however an action plan will be required for an effective & responsive administration.

The 73<sup>rd</sup> & 74<sup>th</sup> Amendments of the Constitution can in this regard be seen as ushering in a new era to ensure greater public participation in governance, so essential for democracy. Much however depended on how the new institutions were to be used by the public and by the bureaucrats. But today, with the implementation of the government's ambitious NREGA project, the latest thrust in India's quest to eliminate poverty, to which panchayats are central, the experience, together with that of the last decade in the operation of Panchayati Raj, has continued to remain mixed

The time has come for change and restructuring. A bureaucracy is by its nature risk averse, thus change resistant. It instinctively withdraws from being responsive to new ideas. In the view of one eminent executive Nasser Moonjee, former MD & CEO of IDFC bureaucrats-whom he refers to occasionally as 'Commissars'-are quick to supplant 'good ideas' with 'bad ideas'. Those with considerable experience and continuing concern for governance have also offered suggestions for change, principal among these being the need for greater accountability.

With an increase in the range of demands on government arising from decentralization and outsourcing there is actually likely to be an increase, not reduction in government size. This is borne out by simple statistics which will attest to the fact that the US, a more

open government than ours, and the world leader in free enterprise, has more government servants per 1,000 inhabitants than does India. Downsizing is therefore not the answer. The remedy rather lies in rightsizing, and in allowing the people, with all the skills that have been invested in them as part of the 'socialist' legacy of independent India, to take responsibility in governance. This is a need borne out by the fact that many government services in India like the vital sectors of education and health are, with no public oversight, lamentably understaffed while staffing at the clerical level of Secretariats is overweight.

There is of course no need to import structural designs. Our own structure, centered on local self government in the traditional panchayat raj has, despite the ills so lucidly described by Dr Ambedkar, a strong tradition both in its functioning and in its public interface. This will need to be built upon, not replaced, by greater accountability through the activation of gram sabhas. If gram sabhas are to function with the full authority envisaged by the Constitution, this would make every voter a legislator, something that no other democracy in the world can boast of. But at the same time it is necessary to study and learn from success stories, benchmarking those that can be effectively used here. In this context the former colonies in SE Asia, with an administrative tradition almost identical with ours, could be a useful case study.

To start with it is important to identify objectives. For much too long government in India has spread its net too wide. We can all see the results. We need to concentrate on fewer areas. NRIs have shown

what healthy and educated Indians can do. Health and education, centered in rural India and therefore an obvious discipline in the administration of which the people through the institution of Panchayats can participate, holds much promise. While we as a people must therefore prioritise, government needs to identify and then withdraw from areas where it is not required, or where the citizens can fulfill the task better.

Because the new commercialized environment will make the capacity to make financial profits a valued skill, there is an overriding necessity to build a viable code of ethics in service. This is among the prime lessons that we can learn from the lives of committed Indians like Dr Chowdhury. We must reclaim in today's world the position we once held of being leaders and models, earning the respect both of our peers and those more developed.

It is in this context that we might look at The Right to Information Act, 2005. Its statement of objectives recognises that "democracy requires an informed citizenry and transparency of information, which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed".

**Freedom of access to information is increasingly regarded as the signature of democracy.** Its evolution as such may be dated from 1766. In that year Sweden, of which today's Finland was then part, included the freedom of information in Sweden's constitution. Nevertheless it must be remembered that the idea was born not

from Sweden, at that time a relatively backward country to the remote north of Europe, but emanated from the Confucian tradition of China. And it was only nearly two centuries later that the concept began to take hold in what were then the western democracies. In 1951 Finland enacted a law on the Public Character of Official Documents. The USA enacted its Freedom of Information Act in 1966, which by an amendment of 1974 placed the onus of justifying restriction of access clearly upon government. This law places time limits for responding to requests and provides for access to all non-secret information disclosable through a principle of 'severability', also adopted in our law, by which even otherwise exempt information can be 'severed' to require disclosure of that part that is not so exempt. Disciplinary action-though not financial penalty-is mandated against officials for wrongful non-disclosure.

Denmark and Norway followed suit in the 1970s. The UK enacted a Freedom of Information Act in 2000, which became enforceable in 2005, allowing its government five years to suitably equip itself, and Mexico followed with a Public Government Information Law in 2002.

In South Asia Pakistan, then under military rule but with democratic pretensions, was the first to enact a Freedom of information Ordinance in 2002. Nepal followed our initiative in calling theirs a Right to Information Act adopted by a democratic government in 2007. Indonesia followed with a Freedom of Information Act in 2008, with Bangladesh being the most recent entrant with an RTI Ordinance of October 2008, drawing extensively upon our Act, as

that country's military government paved the way towards restoration of democratic rule.

Kofi Annan former UN General Secretary has succinctly described the power of information:

“The great democratizing power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task your task ... is to make that change real for those in need, wherever they may be. With information on our side, with knowledge of a potential for all, the path to poverty can be reversed.”

In our own country, we have over the years moved towards an information revolution. India's Constitution, in its Fundamental Rights, carries Article 19(1) (a), the Freedom of Expression, which Courts have held to include the right to information, thus accounting for the naming of India's legislation as 'right' and not merely 'freedom' which had been the term used in relation to this legislation in nations across the world hitherto

In the 1970s, under Government's declared policy of garibi hatao, ambitious poverty alleviation programmes were launched across the country. But, as I have mentioned, by the early 1980s it had started to become clear that the returns were not keeping pace and by no means commensurate with the investment made. Almost in tandem, unnoticed by many in its early years, a revolution in information technology had begun to gather pace by the late 1980s. This was accompanied by a withdrawal of Government monopoly over

information & broadcasting in the 1990s. These factors opened the ground to the initiatives of civil society, most notably by the MKSS in Rajasthan led by the Garboesque Aruna Roy, a Tamil and former civil servant, who threw up the relative comforts of service in government to give herself wholly to serving the peasantry. With the opening of the free media came the Freedom of Information Act piloted through Parliament by Arun Jaitley of the NDA government in 2002, but never enforced. The UPA Government, in its very infancy then revised the law and today we have the Right to Information Act, 2005.

When presenting the Bill for the Right to Information in Parliament on May 11, 2005, the Prime Minister of India, Dr. Manmohan Singh said “ I believe that the passage of this Bill will see the dawn of a new era in our processes of government, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.”

But if as I have said, **India’s Constitution provides for a right to freedom, how can I describe the right to information as a part of Article 19(1) (a)? The Supreme Court has in repeated judgments so held, the most significant in terms of its consequences being in the State of U.P. vs. Raj Singh – 1975, from which all subsequent decisions of the Supreme Court on**

**the subject have sprung, where Mathew J. on behalf of the Bench held as follows:**

**“In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, every thing that is done in a public way, by their public functionaries. to cover with veil of secrecy the common routine business, is not in the interest of public.”**

What then is information and how is it defined in the Act?

“Information means any material in any form including records, documents, memos, e-mails, opinions advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force<sup>ii</sup>”

**The key concepts are therefore transparency & accountability in the working of every public authority, the right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request, except the information exempted under Sec. 8 and Departments excluded from coverage under Sec 24, listed in the Second Schedule. It is the duty of Govt. to pro-actively make available key information to all<sup>iii</sup>. But this Act is not the responsibility of government alone. It brings a heavy responsibility to bear upon**

**all sections of civil society, notably the citizenry, NGOs, and the media.**

**So we can conclude that the freedom of which our forbears dreamt has now come closer to fruition. But those concerned with national security, and the North East of India has many such concerns, might well ask: what is the bearing this has on national security? We need therefore to recognize clearly what we mean by 'comprehensive' security. Do we mean the security of our military installations, of our economic infrastructure or of our physical structures? All these are without doubt essential to what we refer and different constituents thereof. But in the ultimate analysis it can hardly be denied that national security is synonymous with the security of the people of our country, which all these institutions serve. And if that is conceded it needs no argument to state that if the people are the objective in comprehensively securing the nation, it is the people who must share responsibility for so ensuring.**

This Act provides universal access to the poor by ensuring that the fee remains at a reasonable level although in the Act itself the quantum is not specified. There is at any rate no fee for those below the poverty line. It provides for Assistant Public Information Officers at sub district levels to facilitate filing of applications and appeals. Post offices have been so designated. There is a provision to reduce oral requests into writing together with a mandate to officials

to provide all required assistance, including to disabled persons. Besides, information is to be provided in local languages.

**Given the presumption that access to information is today a matter of right, there is no need to specify a reason for seeking information or personal details other than necessary for correspondence, but availing of this right is Open only to citizens of India<sup>iv</sup>**

What then are the responsibilities of a public authority? These are many.

- Appointing PIOs / Asstt. PIOs within 100 days of enactment<sup>v</sup>
- Maintaining, cataloguing, indexing, computerizing and networking records<sup>vi</sup>
- Publishing within 120 days of enactment a whole set of information and updating it every year<sup>vii</sup>
- Publishing all relevant facts while formulating important policies or announcing the decisions which affect public<sup>viii</sup>
- Providing reasons for its administrative or quasi judicial decisions to affected persons<sup>ix</sup>
- Provide information suo moto including Internet<sup>x</sup>.
- Providing information to Information Commission<sup>xi</sup>
- Raising awareness, educating and training<sup>xii</sup>
- Compiling in 18 months and updating regularly local language guide to information<sup>xiii</sup>
- Develop and organize educational programmes to advance the understanding of the public particularly the disadvantaged, to exercise right to information.

Government is also expected to encourage public authorities to participate in programmes, promote timely and effective dissemination of accurate information on activities train CPIOs and produce relevant training materials, user guides and related matter. The latter is being executed by the Centre for Good Governance, Hyderabad.

With this it should have become clear that what the Act aims at is the flowering of democracy in India. But does this flowering mean that security would be compromised? Does it imply that India must be a 'soft State'? There have been observations primarily in the West, even by leading intellectuals, that democracy is in fact not compatible with security, that to cater to vested interests with money to spend, elected representatives will inevitably bend, even yielding national interest to such pressure. In a closely argued essay "Us and Them" in the leading international journal *Foreign Affairs*<sup>xiv</sup>, Jerry Z Muller, Professor of History at the Catholic University of America has argued that multiethnic states cannot become nations. "In short", Muller argues, "ethno nationalism has played a more profound and lasting role in modern history than is commonly understood, and the processes that led to the dominance of the ethno national state and the separation of ethnic groups in Europe are likely to reoccur elsewhere. Increased urbanization, literacy, and political mobilization; differences in the fertility rates and economic performance of various ethnic groups; and immigration will challenge the internal structure of states as well as their borders.

Whether politically correct or not, ethno nationalism will continue to shape the world in the twenty-first century.”

Is India’s ethno nationalism such a challenge? Yes indeed. Yet, any close observer of India’s political evolution through the past century will have noted that despite its bewildering diversity, the practice of democracy has only strengthened India’s nationhood, while neighboring countries, with an administrative tradition identical to ours, that had opted for authoritarian military rule and military alliances to bring political stability and hasten economic progress, have in fact succumbed to despotism, even disintegrated. India’s diversity has been its strength. It can only be a weakness if it is perceived as an instrument of dominance of one group over another, even if the dominant group is the majority leading to what is termed ‘majoritarianism’. Muller’s gloomy views stem from what he sees in Europe’s history. On this basis he warns the US that, “A familiar and influential narrative of twentieth-century European history argues that nationalism twice led to war, in 1914 and then again in 1939. Thereafter, the story goes, Europeans concluded that nationalism was a danger and gradually abandoned it. In the postwar decades, western Europeans enmeshed themselves in a web of transnational institutions, culminating in the European Union (EU). After the fall of the Soviet empire, that transnational framework spread eastward to encompass most of the continent. Europeans entered a post-national era, which was not only a good thing in itself but also a model for other regions. Nationalism, in this view, had been a tragic detour on the road to a peaceful liberal democratic order.” But he contradicts this rosy perception by going

on to lament that, "Far from having been superannuated in 1945, in many respects ethno nationalism was at its apogee in the years immediately after World War II. European stability during the Cold War era was in fact due partly to the widespread fulfillment of the ethno nationalist project. And since the end of the Cold War, ethno nationalism has continued to reshape European borders".

But in India there is no real majority. We are in fact all minorities in one way or another. In contrast to India, Europe, about the same size but in many ways less diverse, the harbinger of the concept of 'nation state', quested hopelessly for unity through war and conquest, notably the French expansion through Napoleon, Bismarck's vision of Europe under German hegemony, and Hitler's Third Reich only to find what Muller finds a precarious unity through the European Union as the twentieth century, thanks to that very Europe's conflicting interests the most violent in India's history, drew to a close. No wonder that in concluding his arguments Prof Muller considers that "Partition may thus be the most humane lasting solution"! At the risk of sounding egotistic, I might say that Europe might do well to learn from us, who have borne for years the trauma of a misconceived Partition brought onto us by a European power, rather than we learn from them the West, as has unfortunately been our wont.

Although there will be disgruntled elements in any society, there will even be incendiaries and extremists who would love to undermine the country but this is precisely what the RTI Act is designed to overcome, by giving each citizen a sense that he is participant in

governance through being able to hold not only the political leadership, but every section of government from the lowest to the highest accountable to him. Surely then security becomes the concern not of a few, but of all.

The India Infrastructure Report, 1996, also known as the Rakesh Mohan Report flagged the importance of infrastructure for India's policy makers, "Availability of adequate infrastructure facilities is vital for the acceleration of economic development of the country"

It is understood that good governance is the means adopted to deliver services to government's clientele, in a manner acceptable to the clientele as efficient and to the provider, which is Government, as cost effective. There is a general consensus that good governance must be participatory, transparent and accountable<sup>xv</sup>. The present system in India, however thanks to perceptions enshrined in the Official Secrets Act remains firmly grounded on mistrust. If governance is to be participatory, who are the participants? It is our view that in the current political and economic environment participants in governance includes the political leadership, the bureaucracy, business, the media, financial institutions and decidedly the security apparatus.

The reason for this mistrust can be found in the legacy of governance in India; stemming directly at the District level from the Mughal<sup>xvi</sup>, adapted and extended with an archaic Secretariat system of the Colonial. An elitist structure informed both systems and continues to subsist. The Welfare State strongly influenced by the

wartime licensing legacy for distributing shortages introduced India to independence! The economy therefore remained rooted in the concept of shortage.

That structure required to be replaced. But whereas change is indeed evolving, as I have discussed, the most important step must be to develop a consensus on the objectives to be met. This must go beyond mere rhetoric like that frequently employed by intellectuals who evade basic issues other than asserting that the bureaucracy thrives by substitution of 'good ideas' with 'bad ideas'! To begin, each participant in governance must be aware of what is expected of each. But participation in governance is too often seen as a struggle for sharing power: For example there is the often the perceived conflict of generalist vs. specialist. This brings us back to the basic proposition that governance must be distinct from the exercise of power and must comprise security of life and property, both of which are predicated on security of the nation, as conceived not be the security forces or the bureaucracy, but by the people of India, which concept must then be addressed by these. If this is understood, it is easier to see why perceived needs have not been met by the system, even though widely understood. At the same time we can also see that we stand at a new threshold in India's form of governance. This was recognized by none other than the President Barack Hussain Obama of the US who concluded his address to Parliament during his recent visit with these words:

"In the United States, my administration has worked to make government more open and transparent and accountable to the people. Here in India, you're harnessing technologies to

do the same, as I saw yesterday. Your landmark Right to Information Act is empowering citizens with the ability to get the services to which they're entitled and to hold officials accountable. Voters can get information about candidates by text message. And you're delivering education and health care services to rural communities, as I saw yesterday when I joined an e-panchayat with villagers in Rajasthan.

Now, in a new collaboration on open government, our two countries are going to share our experience, identify what works, and develop the next-generation of tools to empower citizens. And in another example of how American and Indian partnership can address global challenges, we're going to share these innovations with civil society groups and countries around the world. We're going to show that democracy, more than any other form of government, delivers for the common man - and woman."

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<sup>i</sup> MK Gandhi: *Panchayat Raj*, Navjivan Publishing House, Ahmedabad, and PP 8-9

<sup>ii</sup> Section 2(f).

<sup>iii</sup> Section 4

<sup>iv</sup> Section 3

<sup>v</sup> Section 5(1)

<sup>vi</sup> Section 4(1)(a)

<sup>vii</sup> Section 4(1)(b)}

<sup>viii</sup> Section 4(1)(c)

<sup>ix</sup> Section 4(1)(d)

<sup>x</sup> Section 4(2)

<sup>xi</sup> Section 25(2)

<sup>xii</sup> Section 25(1)

<sup>xiii</sup> Section 26(2) & (3)

<sup>xiv</sup> *Foreign Affairs* March/April 2008, Council on Foreign Relations, NY

<sup>xv</sup> Sebastian Morris: *The Challenge to Governance in India*; p 19, Ch 2, India Infrastructure Report 2002, Oxford University Press, New Delhi, 2002

<sup>xvi</sup> The position of Collector, as the name implies was instituted by Raja Todar Mal, head of Mughal imperial finance in the 16<sup>th</sup> century to collect land revenue, mainstay of the Empire under the name *Amal Guzar*