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**Interview with Shailesh Gandhi, Information Commissioner, Former RTI Activist**

Shailesh Gandhi is a rare breed amongst Information Commissioners in India. He was an activist for many years and was instrumental in a number of important cases. In 2008 he was awarded the Nani Palkhiwala Memorial Award for his involvement in the Right to Information movement. Shailesh is insistent about placing records in the public domain and is renowned for attaching a message at the end of his emails and letters stating that all his correspondence is in the Public Domain. He was appointed Information Commissioner in the Central Information Commission (National) in September 2008 and since then has put pressure on other Information Commissioners – both State and Central (National) - to be more proficient and mindful of their responsibility to give effect to the Right to Information Act (RTI). I met with Shailesh Gandhi in March 2009 and spoke with him about his new position and his views about the role Information Commissions play in efforts to make India more open and accountable.

Charlotte Young (CY): Brief explanation of SAHA and how FOI Programme evolved; move towards building awareness and capacity at the community/grassroots level. Through research on international freedom of information movement, India has come up as a strong example where there's a strong movement amongst activists but also activists have enabled people, often living in quite rural conditions, to take hold of RTI and really engage with the law. So that's why I'm here at the moment, to find out what's currently happening, to learn about different models and also to meet information commissioners as well. In South Africa we actually don't have an information commissioner and amongst the FOI activists in South Africa, we've been pushing for a number of years to say that we definitely need an information commissioner if we're going to be implementing this piece of law (PAIA). So, I understand that you're an information commissioner at the CIC (Central Information Commission –*National*) and I also understand you were formerly an activist in the RTI movement? Can you tell me a little about that transition for you?

Shailesh Gandhi (SG): Well, to my mind, there's no transition. I'm still the same. The only difference is I also have a right of directing people, to order people to release information which I didn't have earlier. I could teach people, I could propagate information, I could use the right to information and yet when faced with completely illogical blockages, I had to follow a very tortuous route. But as today, what I find is with an order I can say "give the information". Otherwise I see really no difference in the role. I'm still with the Right to Information; I was with the Right to Information. I think I'm still an activist. The role is slightly different; I'm able to order access to information where access has been blocked, which I earlier did not have the right to do.

CY: So, your powers as the information commissioner, that's really the only difference.

SG: Yes, that's right. I mean earlier, if I felt that certain pieces of information should be given I had to labour for a long, long time. Whereas today, in fifteen minutes I can say "give the information".

CY: Ok, and in terms of that position, as the IC, would you say that the powers you have are effective. That you make a ruling and it is effective?

SG: Reasonably. There's no absolute. I'd say by and large, yes, the orders have been executed. There are, of course, non-compliance issues in some cases there's no compliance of the order. And therefore that's a tricky one. Unfortunately another one in which I have no legal means of controlling is the fact that some of these public authorities will go to court and get a stay order. So, for that, we just have no solution. It can get blocked by the courts and...but having said that, those are relatively small numbers. So, if you look at an overview, I'd say by and large, there's a fair amount of effectiveness. Is it a hundred per cent? No, but I'd say that in life nothing is 100% really.

CY: No, of course. I've met with a number of different people, and some people have explained to me that they feel that the IC on whole are quite limited in terms of the Act has not been around for very long, and there's a lot of backlog of records that still have not been disclosed, and trying to deal with this backlog is causing quite a hindrance in terms of getting on with some other tasks.

SG: The appeals backlog, is that what you're talking about?

CY: Yes.

SG: This was something about which I was perhaps the biggest critic, of all the Information Commissions in the country; the state and the central. And since about 2006, January, I've been talking about this and criticising the Commissions for their very poor disposal, and the backlogs that they were building. Therefore in September, when I was made a commissioner, I made a promise. I said "Ok, a three and a half-year-old Act, already backlogs are one year and two years, in lots of commissions, six months and one year is common. So, if this continues in the next three to five years, RTI will be dead: because if Commissions build a back log of three or four years, you can just forget the right to information". So, I was very critical of this, and I had been saying that the commissions need to clear much more. In fact I look at a very simple proposition: justice has to be done in time or it is not justice at all. Delayed justice is what we keep seeing and we think that that's just the way it is. So, the promise I have made was, I said, "by April of 2009 whatever departments are given to me", my promise was that "backlog would not be more than 90 days". So when I joined the commission in September, they gave me certain departments which had a pendency of 1750 files. Which is approximately equal to the annual clearance of the best commissioners in the country. And these are files that are going back to 2007 and so on. So I started clearing and finding out how to deal with all of this. And, by 30 March 2009 I will have nothing that is not of 2009. That is a promise that I've made that I will certainly meet. And then, around February I realised that at the pace that I've been able to do this if I am able to continue like this, by May, I will not have much work. So, I asked for initial departments. So they've just given me initial departments where there's a backlog. So, that's just been given to me. So, we'll clear that backlog as well. I have a very firm belief that if RTI is to succeed Information Commissions have to make a commitment to ensure that the backlogs will not be more than 90 days. I think that's non-negotiable. As a commissioner that's what I'm committed to doing and I believe it is really doable. I don't see any major problem for this.

CY: And you talked about having responsibility for particular departments. So, at the CIC level, different Information Commissioners are responsible for different departments.

SG: Yes, different departments. And that's the way the CIC works.

CY: And how many departments are you responsible for.

SG: Well, it's not numbers. Most of them are Delhi Municipal corporations, Delhi government, and almost all of Delhi's governments are with me. Then I'm given the HIV ministry and now the railways have been added to that.

CY: And, in terms of the backlog, would you say that the PIOs, the lack of awareness and for want of a better word, that PIOs are not doing their job properly. Would you say that that build-up has an impact on you as information commissioners? Or is that unfair?

SG: No, I don't think it's unfair. I'd go further and say that most government officials do not think they need to observe any laws or rules. So, it's not just the Right to Information. It's a much wider thing. Its practice or whatever continues, and the feeling that it irrespective of what you do nothing can happen. There's no need to really service citizens; that transparency is like an extra thing put on. I mean most rules, laws, norms, are all observed in breach. Given that overall scenario there's no reason why a public servant would suddenly say, "Oh, Right to Information, I must observe differently". I'm saying there's a larger issue at stake, really. And of course the fact that attitudinally transparency is not really on anyone's agenda. I mean, ok, if one wants others to be transparent but no one wants to be transparent themselves. That's been...through the RTI Movement and we've seen.

CY: Yes, I've noticed that. Among the movement, certainly amongst certain activists and groups that if we are expecting government to be more accountable then we must be more transparent in our actions.

SG: What I'm only saying what I see. Is let's, when the Supreme Court of India declared this is a fundamental right of Indian citizens way back in 1975, and then repeatedly after that. But the moment the RTI Act came, they've not been very enthusiastic about following this themselves. And this is true of everybody: the political class, the commission itself, also I don't think is very great at wanting to be transparent. So, this reluctance to be transparent is a general attitudinal issue that I guess will take some time to correct.

CY: I guess, it's a mind-set...

SG: It's a mind-set that needs to be corrected.

CY: And, in terms of your position as an Information Commissioner and an activist, do you feel that there have been any hindering factors? Or any enabling factors?

SG: The enabling factor is that the Right to Information is in my blood. So, in that sense I think I have some advantages because I have looked at these matters as an activist: with a commitment to transparency where I did not have perhaps the normal attitudes that a bureaucrat would have. So I came in with the attitude that information, most things, must be known by citizens, that citizens are the owner of this. So it is a conviction that has become very strong within me. So, in that sense I think I have an advantage of really being able to interpret the law. To feel the law from within, rather than it being something that comes from without.

CY: Hmm, and I have spoken with other information commissioners, for example in Gujarat I met with the State CIC, and on Sunday I met with the CIC, Shri Habilullah. And I've heard from different people say that what they can bring as a former bureaucrat, what they can bring to the position is that they know from experience exactly how government works. Would you accept that as an enabling factor?

SG: I wouldn't. I'm not criticising anybody but I'm saying I don't think it's an enabling factor. If anything I think it's an...Ok, let me leave it there. But I don't think that being a former bureaucrat leads to better enabling as a commissioner. No.

CY: And would you say, then, conversely, would you say that as a person who hasn't been involved in such bureaucracy, would you say that it's a hindrance to you that you don't have the same insight?

SG: No, I don't think so.

CY: So you feel you have enough awareness of the way government operates and so forth?

SG: You don't need to. Why do I need to? If I want to eat an omelette I don't need to have to figure out how to lay an egg. I don't see the need at all. What I need to know...by that analogy I'm expected to learn everything there is to know about everything that I'm judging. No, I only need to know the law. A commissioner only needs to know the law. So, I don't see any reason why...yes, a person must have a logical mind, a person must understand the RTI law, a person must have a commitment to transparency. These are given. But I don't see why it matters at all as to how it (government) works. I'm not expected to figure out well, it works like this, therefore this information shall be given or shall not be given; if my mind is clouded by that then I think I'm not doing my job.

CY: And how did it come about that you were appointed to be an Information Commissioner? Is there a normal process of recruitment?

SG: No. The whole process of selecting information commissioners is flawed. It's not right at all. It's a completely faulty process; within that faulty process. Okay, the way this worked is, the government had decided they wanted to appoint three or four commissioners. And there is no reason for appointing commissioners at this stage. At least nothing has ever been stated. Commissioners are appointed because somebody gets in his mind and says, 'okay, I want to appoint information commissioners'. So, as an activist, with other colleagues this is something we were protesting anyway. And, as a protest, as a kind of gesture, we decided look, we're offering four or five names, why don't you take one of these. I, at least, never expected that anything would come out of it. But by some mysterious reason: maybe my name was just drawn out of a hat. And this is what I'm still saying; the process of selection is faulty. It's a very arbitrary process.

CY: Which, again, leads back to the whole purpose of if we're going to be transparent then we need to be transparent about the process by which we recruit and appoint our commissioners.

SG: Absolutely. I mean, I still believe that, therefore I'm still saying that my process of selection was flawed. And, why did I say 'yes'? Because I said 'Okay, I think I can make a change'. So therefore,

though the system is wrong, I accepted this position because I saw a huge opportunity for being here.

CY: And, what are some of those opportunities that you foresee?

SG: Primarily, as I said, to be able to set the law. Secondly, to be able to set norms, of clearances and this basic belief that pendencies are the problem of the commissioners. And it's my job to ensure that a citizen doesn't have to wait. If a citizen has to wait I'm responsible. As a commissioner, it's not just a position in power; I think it's a responsibility. So as a commissioner I'm not willing to say 'I don't have staff, I don't have this, I don't have that, this is my problem, that is my problem': irrespective of those problems a commissioner is expected to deliver. If I don't deliver, sack me. I mean, which is something which I had demanded earlier, and people had said 'it can't be done', so I have the opportunity to prove that. And I'm hoping that with this we'll get a few other commissioners towing the line and begin to feel that maybe this needs is what needs to do. And the other opportunity that I see is that there are decisions that I'm giving that are for pure transparency. Based on the law, but a more strict adherence with the law in terms of refusal for information. So this by itself could create a certain level of increasing transparency or better adherence to the law. The third thing that I'm hoping, now of course this is extremely ambitious and I'm not sure how far it will work out, is to see how I can use RTI as a tool, as a commissioner, with the powers that I have, to make some small movement or change in the government structure of whatever is with me, that's really the challenge.

CY: Can you explain that a bit further?

SG: Let me give you an example. I've asked for a meeting with the Director of the Municipal Corporation of Delhi. I know there's certain processes within the commission and within the municipal corporation, that seem so flawed, that I mean, the corporation cannot deliver. Forget the Right to Information; it can't deliver, in my view. So, I'm seeking a meeting with him, trying to explain to him and to negotiate with him, and say 'okay, why not get more proactive disclosures?' There are lots of things in which, perhaps there are things that are wrong. I keep coming across lots of cases, a significant number, where an enquiry will have been held, someone will have been found guilty but then nothing will happen. And they'll make another enquiry report and a third enquiry report. Now things like this I pass very serious strictures on. They may be small in number, but it has the possibility of making an impact. Okay, so that's what I'm hoping. Can this have an impact? I'm not too sure. It's extremely ambitious but I believe the Right to Information has that potential. For citizens, of course yes, it has. And then, logically, as a commissioner, also, given the fact that one has far greater powers than the average citizen, then it should be a possibility. So, I'm currently just exploring these; maybe in a year I will know if I'm being extremely stupid or just over-ambitious.

CY: Well, you've been in the position for just over six months is it?

SG: September, yes.

CY: So, it's still early days really.

SG: Yes, and it was mid-September so it's just barely six months now. So, in six months...in 2009 I think I will know.

CY: And have you changed in terms of when you were an activist and outside of the realm, and now as an information commissioner, you have a different perspective; has anything changed for you in terms of your personal views about RTI or your views about government?

SG: No. Okay, in Government there is some change. As an activist I used to see individual corruption, I would see individual flaws and faults and felt that if I exposed these it would make a difference. But now, I see there are serious systemic issues which I feel I did not have the opportunity of seeing from without. And therefore these systemic issues need to be addressed. And if you don't address the systemic issues the individual cases of corruption, the individual vagrancies are made into a minor issue. I'm not saying they are minor but if we can look at the basic issues of misgovernance which is systemic into which everybody who comes, and I have seen this often, I have seen very senior people who have said, when I talk to them, saying 'oh, it's the system'. Everybody feels as if it's the system and nobody knows who this system is. So, I am seeing certain, and I'm making small attempts at getting some changes into this. But right now it's very small. I have theories. And in the next six months I will start becoming a little more vocal about the systemic issues that I see. In that sense there is a, I believe, a deeper insight. Some people might say it's not deeper, whatever, from where I am what I'm saying is that it's a deeper insight. From feeling that it's just individuals and if you could only correct them...I'm seeing here certainly individuals need to change but I think without some systemic changes, some management changes, some HR policy changes, the results could be completely phenomenal. Right now we have a system that does not seem to be very conducive to change, to honesty, to innovation, efficiency.

CY: And in terms of some of the systems, if an information commissioner, you're talking about removing the backlog and trying to encourage others to follow suit. What are the actual consequences for an information commissioner, if they have poor performance; is there an acceptance that it's their responsibility? Are there any disciplinary procedures? What would be the consequence?

SG: Unfortunately there is no consequence. I also have not been given enough staff. I've hired additional staff and I pay them from my salary. I've made a public statement on this. I wrote to the Prime Minister and the Minister concerned, and told them that if they don't do anything that I'll make my correspondence public, and I have made it public; I've put it in the public domain. People have said that my paying people from my own salary is illegal: but I know of no law that says anything like that. Bottom line, I believe, as I said in Bombay, I said 'irrespective of the problems, if let's say by December 2009 I don't deliver I will quit'. I have a moral duty to deliver to the people of India. It's not the government as such, meaning the person who's in power; there's a larger duty that the commissioner has. So, as a commissioner, if I do not deliver then I will have failed. And that's a promise I made. Fortunately it's not happening. But if I had failed and I could not have delivered then that's what I would have done.

CY: So, as it stands, it's very much down to the individual in terms of your efficiency in the position of information commissioner, and your commitment to...

SG: No, for me, it's not even up to the individual. I think this is a given. I would believe that all information commissions should make – just like public information officers (PIO) – we didn't wait to find out what problems they had. In thirty days if he does not give the information he shall be penalised. If I want to be able to look at a PIO and tell him 'you are a bad boy' if he didn't give information within thirty days, I must have some moral authority to do that. It's not just the bigger authority that I can exercise. I can't see myself as the moral authority if I can say 'oh, I'll take three hundred days but you must do it thirty days'. I just can't see how I have the moral authority.

CY: Okay, I just mean in terms of the system, there isn't a set...

SG: I believe there should be. It's, earlier I said, and even now I am saying that the information commissioner's norm should be that he must clear 4,000 cases in a year. Today the national average is about 4-600. And, okay, in some cases I have cleared about 5 or 600 cases in a month.

CY: Wow, that's a lot of cases.

SG: No, but what I'm saying is that it *is* doable. What I'm saying is that's nothing extraordinary. I'm doing nothing extraordinary. Yes, there are some issues of staff not being there in some cases, but this is something where, as information commissioner, I feel it is my duty now to take on the government. And I've threatened and said 'look, if you don't give me enough staff, I'll someday ask citizens to donate money'. But, at the end of the day I must deliver. The point is it's my job. I do not have enough resources? I'll create resources. I'm sure citizens will very gladly help. So, it's a lot of...

CY: Yes. And in terms of your experience so far, can you give me an example of a case where there's been a positive outcome as a result of your position as the Information Commissioner? As a result of someone taking their case to your hearing, and whether the outcome is that the records have been provided or...

SG: Oh, records, *lots* of them. It's in hundreds.

CY: What's an example that illustrates nicely the powers you have as Information Commissioner?

SG: I think something very briefly that would illustrate this was – there have been issues of pensions and so forth that I've ordered – but, the most outstanding in that sense would have to be this gentleman who was a parking contractor of the Municipal Corporation of Delhi. His contract has gone over some five or six years back, and he had about 5.6 lack rupees pending with the MCD for which he was not getting, and his file had gone into one of those bureaucratic loops. And the MCD had admitted it, and he kept trying to get information to force this. But he was not getting anywhere really. The PIO had defaulted, in giving the information, and he admitted that this gentleman is owed 5.6 lacks, but the file is in a bureaucratic battle. So, I said 'look I'll penalise you R25000 for not having given the information'. I said 'look, are you willing to take the effort to get things out of this bureaucratic muddle to ensure that his refund is given to him?' So he said, 'you order this' and I said 'I can't order this, I don't have the authority; it's you who is telling me that this is owed to him. If you are willing to make a statement I'm going to record it, but I can't order it, I don't have the authority'. So he made the statement, I recorded it, the other gentleman said to me, 'oh sir, he's been very rude to me when I went' and so on. So he said, 'supposing he doesn't give the money, what can you



do?’ I said ‘well, I can penalise him’. And, sure enough, in fifteen days I called up, and this man had got his 5.6 lacks. But, as I said, there are other things, where, at a deeper level, a lot of corruption, a lot of things are coming forth. People have been fighting cases; their property records have been missing and all kinds of things are happening. A very standard thing is that files are missing. A very standard thing for that is that I tell people; that ‘if your file is not there, go and file a police complaint’. I force them into filing a complaint with the police, and getting a certificate from the police. Half the times they go and find the file afterwards, when I insist; I look and in ten days they either have the information or not. Giving of information is more or less a routine. There has been what I call the exemptions of the RTI Act; I think I have done over 2,500 cases now. And my guess is, where I would have accepted the exemptions for denial, would probably be less than ten. There are some cases I dismiss because the information has already been given. Those kinds of cases I dismiss. Or what they are seeking information at all. But, otherwise, so long as information is being sought, exemptions, as I said, it would not even be ten. By and large, most objections I have been overruling. And there have been all kinds of objections. Where I have allowed these exemptions to overrule, I think there is definitely three or four but it may be ten.

CY: Is there any examples where your powers have been too limited to ensure a successful result?

SG: No, I don’t think so. Not so far. I mean, as I go along. As I told you, it’s not my powers but the system where a person can go to a court and get a staying (order). In that sense, yes, there have been some orders that I’ve given which have been stayed by court so I can do nothing about it. It’s not having less powers, it is the fact that somebody else has the power to stay over my orders without even giving reasons. That’s the limitation.

CY: In your opinion, what is the most serious challenge to India today, to implementing RTI effectively?

SG: My own view is that there are two major threats. I mean, there are other challenges that are there, but I think they can be taken care of, and I think citizens are taking to this like fish take to water across the country so I see great positives. But I see two dangers. One is the information commissioners, who with backlogs can completely finish the Act. It would be an Act of slow poisoning. The other danger I do see is that if a lot of progressive orders get stay by courts, then again, this could go into pages. Effectively, let me put it like this. If justice is delayed either the commissions and/or the courts and this can be easily stalled, the whole process. And it won’t happen overnight. It will happen in a very slow manner. Barring these, I don’t see anyone or any authority that can...stop this.

CY: What are some of the enabling factors to the successful implementation of RTI in India?

SG: I think one is that, what I believe we have is a defective democracy, not a participatory democracy. So, to that extent it’s a defective democracy. But since this elective democracy has been there has been there for over five decades, I think citizens, in a way, have the aspirations of a participatory democracy very well in this system. The second thing is that, fortunately for us, the right to information is not been the work of any one individual or even the work of a set of individuals or a set of organisations in the country. It’s actually been like an organic growth. In each



city, in each town, at some point, you have somebody who's championing the right to information. So, in the country, in this movement, no one listens to one another. Everyone is his own master which I think is very good. I think that is the essence of what a true participatory democracy is. To my mind this is the biggest advantage of the RTI movement. If it had been centred around one or two or ten organisations or ten individuals, I would have been very worried. It swam off us. There's nobody in this country...and I'm very confident at the other end of it. There's no political party or government can dare touch this.

CY: In that respect, then, you would say that it's important not to over-control the way that RTI has evolved in India; it's important to just let it be organic, and to grow...

SG: I am very happy that this happened. There are people who would like to control it. There are moves towards but my belief is that if any of these moves succeed, and I don't think that they will, but if they do then I think that RTI has a serious problem. But I'm not seeing that happening therefore I'm fairly confident that I don't think this will.

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