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Opening India

The world's largest democracy finally has an FOI law—so why have journalists been slow to embrace it?

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In October, community activists from around India gathered at the Nehru Memorial Museum & Library in New Delhi to celebrate the third anniversary of the country's Right to Information Act and assess the progress made under the landmark law. One speaker told how the law had produced a measure of belated justice after the 2002 riots between Hindus and Muslims in Gujarat state left more than a thousand dead and 150,000 homeless.

Dissatisfied with the pace of police investigations, a number of Muslims filed public-records requests to track the progress of their cases. Their scrutiny pressured police into arresting one hundred suspects.

Nikhil Dey, one of the champions of the law, choked up when he took the microphone to comment. "I'm sorry," he said, bringing his hand to his face. "Don't be," came a voice from across the hushed conference room. "We should all have tears in our eyes."

Dey regained his composure and explained to fellow advocates why the Gujarat example was so poignant. "Completely non-accountable, brazen

people who put the Constitution aside can be brought to book by their victims,” he said.

There’s no denying the emotional impact and political potential of India’s young law granting citizens the right to access government documents. For a nominal fee—in most cases, ten rupees, or twenty cents—an Indian citizen can step up to the scariest government agency and take his or her shot. The law applies to the bulk of paper and electronic information collected by public agencies, from federal ministries to the smallest rural village, as well as the files of private organizations that are “substantially financed” by the government. Citizens can even request samples of materials, like cement, used in government projects. The law contains a number of exemptions for records that, among other things, might compromise national security, endanger life and safety, divulge trade secrets, or that relate to the riot-prone state of Jammu and Kashmir. It gives an agency thirty days to either deliver the information or reject the request. And unlike the U.S. Freedom of Information Act, the Indian law comes with some bite: bureaucrats who stall, give misinformation, or refuse to hand over records without reasonable cause can face personal fines up to twenty-five thousand rupees, or \$520.

Born of a decade-long, Mahatma-like protest movement staged by peasants, the act, which took effect in 2005, has unleashed a surge of civic engagement in the world’s largest democracy. In the first three years, citizens have filed hundreds of thousands of requests with federal, state, and local agencies, shaking out everything from construction budgets and neighborhood maps to school exams and road surveys. Armchair reformers and nongovernmental organizations like Greenpeace have used the law to halt illegal commercial construction, expose embezzlement in poverty food programs, and track the development of genetically modified crops on the subcontinent. They’ve embarrassed leading politicians for such things as spending public emergency funds on mango festivals and wrestling matches. Most of all, the law is changing the zeitgeist in a society where people have participated in free elections for fifty-six years but have been otherwise shut out of the daily decisions by a notoriously secretive and corrupt government bureaucracy. “The one difference the RTI has made is that a citizen who used to feel helpless when he approached a government department doesn’t feel helpless anymore,” says Arvind Kejriwal, an information-law activist and founder of the anticorruption group Parivartan in Delhi. “He can challenge the department. He can challenge the bureaucracy. He can challenge injustice.”

What is still unclear, however, is whether the law will live up to its potential as a game-changer by challenging the government’s systemic lack of transparency and accountability. Expectations are high for a measure that represents the most sweeping government reform yet in a country that still

doesn't require the disclosure of campaign contributions during political races or have a legal framework to encourage and protect whistleblowers. Despite the impressive testimonials and the isolated successes, fundamental change will come slowly, incrementally, and with plenty of setbacks. The information act has pried open the workings of government, instilling a fear in bureaucrats that their movements can now be tracked, but has yet to deliver the larger reforms its supporters envisioned. "Transparency? Yes," says K. K. Misra, chief of the commission set up to oversee the act in southern Karnataka state, which includes the city of Bangalore, an outsourcing hub. "But accountability and a better government? The eradication of corruption? That is a more time-consuming process."

Only 10 percent of India's 1.1 billion people even know about the law, according to two recent studies. And those who do tend to use it do so to satisfy personal grievances, such as dislodging ration cards or passports without paying bribes. Some of the more aggressive users have been the bureaucrats themselves, who file requests to peek at civil-service exams and glean clues as to why they were passed over for promotions. Otherwise, the bureaucracy has given up ground grudgingly. It is estimated that only about half of all public agencies have made the proactive disclosures of basic information, like salaries and regulations, required under the law. Public-information officers, typically junior administrators, are poorly trained or are hidden from the public in anonymous offices. Reports persist of citizens being harassed when they attempt to file RTI requests.

These problems are compounded by the growing mountain of appeals from denied requests, which threatens to overwhelm the system. And the independent state and federal "information commissions" charged with hearing those appeals have been reluctant to fine uncooperative officials. The Central Information Commission in Delhi, which hears appeals involving ninety federal departments and forty-eight ministries and union territories, including the city of Delhi, has assessed penalties in fewer than 4 percent of the 6,400 cases it has considered so far in which fines were possible. Only a third of the 2.2 million rupees, or \$46,500, in fines levied has been collected; a small portion of that has been put on hold, either because of new facts or through court appeals of commission decisions. But more than half of the fines are either scheduled to be deducted in installments from officials' paychecks or remain seriously overdue, according to a Central Commission spokesman. The highest-ranking administrator tagged: the joint secretary in the Ministry of Environment & Forests, who was fined twenty-five thousand rupees in

December 2007—and still hasn't paid because she's appealing the matter in civil court. The commission concluded she took a "very casual approach" to a subordinate's request for twenty-year-old records relating to a court case the department initiated against him. The joint secretary took eight months to deny his request, then cited a nonexistent exemption in the RTI act to keep the documents secret, the commission found.

Meanwhile, the mainstream Indian press has been tentative at best in its use of the new tool. Reporters for native-language publications, especially those at rural papers with small circulations, have been using the act, but often as a way to keep local officials honest rather than to ferret out stories. The leading English-language newspapers and magazines—the publications that have the most influence on India's power centers—have reported widely on the RTI law itself, but have not embraced it as an investigative tool. Reporters and editors say they simply don't trust the information released by government officials. Narendar Pani, a former senior editor for *The Economic Times* and now dean of interdisciplinary studies at the National Institute of Advanced Studies in Bangalore, suggested other, less noble explanations for the "patchy" use of the law. English dailies compete for upscale urban audiences that prefer feel-good, India-rising stories to articles about government corruption. Pani said another factor is that Indian reporters are culturally attuned to work through networks of informal sources, which would dry up with "a blunt-instrument approach, which is the RTI."

The right to information act emerged out of a "people's movement" in

Rajasthan, a state in western India that borders Pakistan. The improbable crusade of impoverished peasants reframed a typically intellectual debate over good governance into a gritty struggle for survival. "The unique thing about India's RTI is that it started with poor people, making a demand for extremely real issues," said Aruna Roy, one of the country's most respected social activists and the person most closely identified with the RTI movement. "It was not an academic issue at all."

The issue was, and continues to be, official malfeasance. Billions of rupees disappear from construction and welfare programs. Civil servants and local officials do little without pocketing baksheesh. Transparency International estimates that Indians dole out a collective \$4.8 billion in bribes every year for basic services, like filing a police report. In upholding the conviction of a police officer for taking a 3,500-rupee bribe, India's Supreme Court lamented in 2006: "No facet of public activity has been left unaffected by the stink of

corruption.” Hardest hit, advocates say, are the 450 million mostly rural villagers who subsist on less than \$1.25 a day.

Their ranks include the feisty people of the Pali District in central Rajasthan. During the early 1990s, the region suffered through severe droughts. To help stave off famine, the government opened a number of small construction projects so the villagers could earn money to buy food. But when villagers had completed their work and showed up to collect their pay, they were shortchanged. The town official who controlled the money claimed the workers didn’t log nearly as many hours as they thought. The villagers demanded to see the timesheets, or “muster rolls.” The official refused, saying the rolls were confidential government documents under the 1923 Official Secrets Act, an anti-espionage measure left over from British rule.

As it happened, the irate villagers were members of Mazdoor Kisan Shakti Sangathan, or the Workers-Farmers Unity Union, which Nikhil Dey and Aruna Roy started in 1990. A small, severe-looking woman, Roy knew the bureaucratic game, having served in the most elite group of civil servants, the Indian Administrative Service, before quitting in 1975 over what she termed its “decadent colonial spirit.” She moved to Rajasthan to work directly with the poor. When the grievances over the famine work first bubbled up, the union staged hunger strikes but nothing happened. Let them die, local officials said. That’s when Roy and her compatriots seized on access to information as a way of fighting back. They convinced one local official to let them copy muster rolls, including related bills and vouchers for the construction projects. Insiders leaked other records. Then they went from village to village, confirming the information.

What they found was straight out of Chicago ward politics. There were dead people on the rolls, as well as names of villagers who had moved away—all “ghost” employees who never worked a day on the projects. Bills showed evidence of other fraud: the “purchase” of new stones when workers had used old ones from a torn-down building.

In December 1994, Roy and her cohorts convened a public hearing to discuss the findings. More than a thousand villagers, gnarled old men in turbans and women in colorful ankle-length *ghaghras*, sat under the shade of a borrowed parachute. With town chiefs looking on from a distance, peasants paraded to the mike to testify to the rip-off. After two years and two highly publicized sit-down strikes, Rajasthan officials grudgingly agreed to open all village records to inspection and photocopying. The union’s campaign became a phenomenon, with several village officials promising to pay back pilfered funds. Former Prime Minister V. P. Singh showed up at a subsequent hearing and the Brahmins of the national press offered to help. The burgeoning

movement also prompted Rajasthan and eight other states to pass right-to-information laws, which spurred other transparency campaigns.

In conjunction with the Press Council of India, Roy and another union co-founder, Shekhar Singh, lobbied Parliament for a national law. The first attempt got enough votes to pass in 2002, but was never enacted due to a technicality. A second bill soon picked up a powerful ally in Sonia Gandhi, the president of the National Congress Party, who fashioned a coalition government after the 2004 elections. The coalition government, called the United Progressive Alliance, committed itself to passing a strong information law and the next year Gandhi pushed it through Parliament.

The information commissions were established to keep requests from getting bottled up in hostile bureaucracies. But as the number of requests mushrooms, the commissions at the federal level and in the larger states have themselves become a bottleneck. The Central Information Commission in New Delhi, for instance, is trying to dig out from nearly nine thousand appeals and the end may not be in sight. If things don't change in a year or two, warns Wajahat Habibullah, the head of the commission, the whole system may collapse.

The law's supporters vow to safeguard it, claiming the glut of appeals will subside once agencies have fully embraced the act. Indeed, they gained added influence when one of their own—Shailesh Gandhi, an RTI activist from Mumbai with eight hundred requests under his belt—was chosen to become the new federal information commissioner. He started hearing appeals in mid-September. Activists are also laying plans with federal authorities to establish a national RTI hotline that will allow citizens to place and pay for their requests via cell phone.

During the October gathering of activists, Roy, Dey, and thirty others gave an update on the nationwide study they are conducting of the RTI law's impact. As part of the study, underwritten in part by \$250,000 from the Google Foundation, the activists have compiled a database of case studies, some six thousand accounts of how the act has struck a small blow for poor farmers and other underdogs. The cumulative effect, Dey says, is a "class-action kind of thing" that he believes will shift India from an electoral to a participatory democracy. "You can't say it's tangible. It's a change of culture," he says. "It's governance being turned around."

The media are turning around as well, albeit slowly. English-language newspapers now regularly publish stories brought to them by RTI activists. Some have broken bite-sized exclusives stemming from their own requests. One Bangalore tabloid has carved out an RTI mini-beat. In November, Delhi's largest television station launched a federal probe with its report—based on

information obtained under the RTI law—that newborn babies were dying at a disturbingly high rate at a leading city hospital due to unsanitary conditions there. Within other newsrooms, editors and reporters accustomed to India’s smash-and-grab style of journalism openly acknowledge they need to find a way to harness the landmark law. “To be very frank, we have not understood the power of the Right to Information Act yet,” says Saikat Datta, an investigative reporter for the weekly newsmagazine *Outlook*, about the journalistic community. “We just haven’t figured out how powerful this tool is and what it can achieve.”

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