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À PROPOS DE NOUS

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ABOUT US

The **International Journal of Open Governments / Revue Internationale des Gouvernements ouverts (RIGO)** is an academic journal created and edited by Irène Bouhadana and William Gilles at IMODEV, the Institut du monde et du développement pour la bonne gouvernance publique.

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ACCESS TO INFORMATION IN THE UK AND INDIA.¹

by **Ben WORTHY**, Lecturer at the Birkbeck College, University of London.

This paper examines the impact of two pieces of transparency legislation: the UK Freedom of Information Act 2005 and the Indian Right to Information Act 2005. It looks at the origins and composition of the laws before examining how the two pieces of legislation function. Both laws have led to transparency and accountability by exposure and the raising of “fire alarms”, with information disclosure being used to bring about accountability as well as, to a more limited extent, reform and behavioural change. Of the two laws, the Indian RTI has proved more “politicised” and more capable of initiating political participation. Yet the “transformative” powers of such reforms are limited by poor implementation and resistance. Moreover, the effectiveness of such laws is shaped by context, with India in particular facing deep and complex socio-political obstacles that may prevent the laws from having the “revolutionary” effects advocates had hoped.

TRANSPARENCY

Transparency broadly means making “decisions, rules and other information visible from outside” (Hood 2010, 989). In the modern world it is now widely accepted as a key component of modern government (Hood 2010).

The belief in the beneficial effects of transparency and public exposure has a pedigree that dates back to the Enlightenment (Darch and Underwood 2010). Bentham’s “Panopticon”, as one of the foremost examples, saw openness as a low-cost means of enforcing discipline and behavioural change within particular institutions (Bentham 2010). In the last century, there has emerged a more modern belief that enabling greater access reduces “information asymmetry” between public and government creating greater transparency and accountability. This in turn may increase democratic legitimacy, public trust and institutional effectiveness (Stiglitz 2003).

This faith in the universally beneficial effects of transparency lies at the heart of a range of modern “transparency instruments”. The mechanisms include general Access to Information or Freedom of Information laws as well as a growing number of focused regulations, covering specific activities such as lobbying access, records of meetings and personal records. These are now being

¹ This paper is based on findings and a draft chapter in The Elgar Research Handbook on Comparative Law and Regulation

supplemented by a variety of online transparency experiments using Open Data (Worthy 2013a).

Access to Information laws (also known as Freedom of Information or Right to Information laws) now exist in 92 countries (Access Info/CLD 2013). They have been pushed as a key driver for improving government transparency and accountability, promoting more open cultures within public bodies and, it is hoped, increasing public participation and trust (Worthy 2010). In the developing world they are seen as a powerful anti-corruption weapon and a means of securing wider social and political rights (Darch and Underwood 2010).

While the idea of transparency appears simple, it conceals nuances and complex interpretations. According to Meijer “the specific form that government transparency takes – or does not – varies enormously. There is no uniform, standardized approach to transparency but an immense variety of sorts and types of government transparency” laws (2013, 2). The impact of FOI is “highly idiographic” and the “social and political contexts and specific histories of different countries” need to be taken into account (Darch and Underwood 2010, 7).

Recent work has examined how transparency can move in different directions with different intentions, ranging from, for example, “mapping at high levels of aggregation” to localised, if not street level, “micro-level” openness (Heald 2012, 41). The dynamics are “complex because they entail interactions between a variety of actors, uncertain values and rapidly changing technology” and take place within “a variety of legal frameworks, in different cultural settings, and within complex national...policy contexts” (Meijer 2013, 1). These variations can lead to strategic uncertainty regarding aims, cognitive uncertainty as to policy options, and institutional uncertainty as transparency shifts rules and procedures (Meijer 2013, 3-4). Recent experimental research found that transparency in different policy areas can have very different effects on both institutions and public perceptions (De Fine Licht 2013; Grimmelikhaujsen 2012).

§ 1 – ACCESS TO INFORMATION IN THE UK AND INDIA

As an object of study, access to information laws present special problems. First, such laws are powerfully symbolic policies representing a redistribution of power from elites to the populace by handing control over a key democratic resource, information (See Dahl 1989). However, like other symbolic policies, the problems is in the details. Many such laws suffer from serious implementation problems while other exist simply as “paper laws” (Edelman 1964). An effective analysis of laws requires detailed scrutiny of their context and operation (Meijer 2013). A second problem concerns the dynamic of how laws operate. ATI laws evolve over time, producing conflict and are subject to change. The political and legal dynamics are often characterised as battles over openness between the resister (government) and openness

advocates (Roberts 2006). While such a dynamic frequently exists, added complication stems from the political situation (new governments, scandals, rulings from courts or appeal bodies) as well as the socio-cultural influences (prevalence of corruption, levels of involvement in politics and attitudes towards politicians). Both the Indian and UK Access to Information laws have been subject to academic and political scrutiny. In the UK research has examined the impact of the UK Freedom of Information Act at the central government level (Hazell, Glover and Worthy 2010; Worthy 2010), at the local level (Chapman and Hunt 2010; Worthy et al 2011 and Worthy 2013), and some research has focused on specific institutions such as Parliament (Hazell et al 2012). Studies have also looked at specific groups such as journalists (Hayes 2009), NGOs (Spence 2009) and MPs (Worthy 2012). The Act has also been subject to scrutiny by the Ministry of Justice (2011) and post-legislative scrutiny by a House of Commons Select Committee (2012).

The passage of India's Right to Information law led to a surge of interest, with India now being regarded as a "laboratory" for understanding the impact of transparency laws (Roberts 2010, 27). Numerous works have outlined the development of RTI in India (Jenkins and Goetz 1999; Jenkins 2007; Singh 2007; Singh and Karn 2012). Roberts has examined India's "implementation more doggedly than any other country" with 10 studies in two years (2010, 3-4). This includes the largest RTI study in the world to date by Raag/NCPRI (2009) involving 35,000 interviews and 800 RTI requests, as well as government inspections (3). Recently, RAAG/CES published a very comprehensive new report examining the impact of RTI in India 2011-2013 following on from their previous one. These studies are extremely important not only for their findings, but for their methodology and research approach, which involved a series of interviews, focus groups and requests.

There has also been analysis of the link between economic growth, corruption and RTI, both quantitatively (Bhattacharyya and Jha 2011) and through ground level RCT style experiments involving use of real RTI requests to measure the effects of use on corruption (Peisakhin and Pinto 2010; Peisakhin 2012). There is also a body of "thick" anthropological studies of RTI use by NGOs and activists (Webb 2012; Webb 2010) and examination of the lack of use by the media (Relly and Schwalbe 2013). However, there is also a re-thinking around how and why the law was passed, moving away from the "myth" of RTI as a grassroots movement upwards or a "transformative" law (Sharma 2013; Sharma 2012).

UK AND INDIA

A comparison between India and the UK offers a superficially similar case along certain dimensions. Both India and the UK passed Access to Information laws at the turn of the Twenty-First century, following a long political struggle (Worthy 2010; Sharma 2013). Indeed, both

came into force in the same year. The passage of legislation in both countries appeared to have a powerful symbolic import: in the case of the UK, after being historically the one of the world's most "secretive" democracies, and in India as a firm advance towards further democratisation. Britain's colonial legacy also means that the two countries share broadly the same governing apparatus with similar political and legal-bureaucratic structures.

However, here the comparisons end (Roberts 2010, 2). The UK is one of the most notoriously "secretive" democracies in the developed world, a latecomer to FOI but one with a strong administrative tradition. India by contrast presents a far more difficult challenge. Roberts succinctly states the complex political, economic and social picture:

Its per-capita GDP is roughly one-twentieth of the United States. Two-thirds of its 1.2 billion people still lives in rural areas... Forty percent of the population is illiterate, and many belong to oppressed social groups and] there is recurrent sectional and political violence (2010, 2)

Moreover, India is blighted with deep problems of political corruption (Bhattacharyya and Jha 2011). To illustrate the challenges, Webb points out that more than 45% of Delhi's population live in "slums, squat settlements or unauthorised colonies" (2012, 207). Despite the "universal" claims of benefits that transparency advocates claim flow from access to information, the differing contexts and environments are crucial to understanding how the two transparency laws perform and the possible impact, influence and effect of such laws.

§ 2 – ACCESS TO INFORMATION AS A REGULATORY MECHANISM

Access to Information can be seen as fitting within a broad range of "non-traditional regulation and audit" mechanisms (8). As a regulatory mechanism, Cave et al argue that "smart regulations" consist of "all mechanisms affecting behaviour" that may be "enabling or facilitative" as well as preventative: a green light as well as red light (Baldwin, Cave and Lodge 2011, 3).

Access to Information constitutes a "smart" regulatory device that exists alongside other innovations such as "crowd-sourcing" and using the "public eye" to detect problems (Fung et al 2013). The possible effects of access are three-fold. First, legislation may act as a pre-emptive safeguard, a deterrent, whose very presence creates positive "anticipated reactions" as public bodies improve decision-making or processes or desist in poor behaviour. Second, it can also be a reactive serving as a "fire alarm", highlighting problems which can then be addressed and, in certain circumstances, drive institutional change (McGubbins and Schwartz 1984). Third, as a facilitator, it may drive more positive "open cultures", relations and more professionalised processes. One way of looking at access laws is to view them as a variant of "citizen" or 'crowd-sourced "regulation", part of a shift towards what Keane (2009) calls "Monitory democracy", whereby an eclectic mix of "extra-parliamentary...power-monitoring and

power-controlling devices” from courts to social media, gradually replacing the traditional means of representation, act as “watchdog” and “barking dog” on government (xxvii).

A) ORIGINS

Access to Information laws are frequently formed through long political struggles and campaigns. Passage of access laws often requires a combination of “lone crusaders” and “reluctant stewards” pushing against increasing bureaucratic and political resistance (Snell 2000). Michener (2011) points out that the problem with such reform is “political. The symbolic qualities of FOI laws attract support but the ideal effect-to expose the doings of politicians and officials to ongoing public scrutiny-weakens the political will to enact strong laws” (146).

FOI in the UK was introduced as part of a programme intended to deepen democracy and modernise the political system in the late 1990s (Worthy 2007). Tony Blair referred to it as a “revolutionary” approach and a “quite extraordinary offer” to open up government (Blair 2010, 127). It was presented as one of a series of changes designed to reform and “democratise” Britain alongside a sweeping series of constitutional reforms involving devolution of power and the creation of new rights for citizens (Bogdanor 2010). Access laws would, it was argued, help make government more transparent and accountable and hopefully increase public participation and trust (Worthy 2010).

By contrast RTI was passed in India, according to legend, as part of a strong “second wave” anti-corruption drive powered by grassroots activists, famously the MKSS group in Rajasthan (Jenkins and Goetz 1999; Webb 2012). The truth is more complex, with the arrival of RTI enabled by disintegrating and migrating elites, moving from government to business, and working with supportive officials within government (Sharma 2013). Nevertheless, the political and transformative power of information rights in India was far stronger: RTI was described variously as “revolutionary”, a “watershed moment” and the beginnings of a “socio-economic revolution” (see Roberts 2010, 3). The law would not only bring transparency but “purge inefficiency and corruption” and “increase the influence of marginalised citizens” (Roberts 2010, 2). In India this “socio-economic narrative” around RTI has proved “compelling” (Calland and Bentley 2013, s80). Here the difference between “Freedom of Information” and “Right to Information” takes on added significance, as the latter is given a “politicised” and “active” edge that the former lacks (Darch and Underwood 2010).

B) OPERATION

Most Access to Information laws share the same broad features. They legally mandate access to information within a fixed time period and subject to certain exceptions (often called “exemptions”) for national

security, policy-making, confidence and other areas. Dissatisfied requesters can appeal via an independent body. Laws also mandate “pro-active” disclosure of information (Access Info/CLD 2013).

The Indian and UK FOI laws came into force in 2005 and share many such features: a broad access to information held by a range of bodies, with a strict time-period for reply and enforcement by an independent appeal mechanism (see Table 1). The two laws have extensive scope, stretching from central and local government to educational institutions and health services. Both Acts contain an uncertain grey area around where the remit of the Act ends (see below).

Both also link into wider laws. The UK FOI law is part of range of laws and regulations mandating openness and access. Legislation allowing access to documents and public meetings has existed at local government level since the 1960s (Worthy 2013). Successive data protection laws and area specific laws (in housing, medical records) also give citizens rights to particular information, while EU legislation grants public access to environmental information under the Aarhus convention. In the past few years, FOI has increasingly merged and overlapped with a number of initiatives and codes of practice around “Open Data” and online publication of information and datasets. In 2012, the FOI Act was amended to allow access to large datasets (Worthy 2013a).

Similarly, the Indian Act is rooted in a series of court rulings from the 1970s onwards. In the 1990s a number of state level Acts were passed, famously begun in Rajasthan (Goetz and Jenkins 1999; Roberts 2010). The Act now sits alongside several pieces of legislation mandating forms of information disclosure. For example, the National Rural Employment Guarantee Act 2005, designed to provide a minimum standard of employment for the rural poor, mandates disclosure of payroll records as well as project documents (Roberts 2010, 24-25). Successive Indian governments have committed to making themselves “SMART” (Simple, Moral, Accountable, Responsible and Transparent) through a succession e-government reforms designed to fit alongside RTI (Wright et al 2010, 3:16; Roberts 2010).

Though the laws are broadly the same, several differences bear scrutiny. First the UK Act contains a Cabinet level veto, which can be used by Ministers to block appeal decisions. The veto has now been used five times since 2005 to prevent the release of information covering Cabinet discussions over the war in Iraq and correspondence between Prince Charles and the government (House of Commons Library 2012). While the use of this veto has been relatively restrained by international standards, each veto is seen as signalling lack of faith in the system. Moreover, the government has now raised the possibility of broadening the circumstances in which it can be used (House of Commons Library 2012, 5; MOJ 2012, 17-20). Second, the Indian act contains a standard application fee (of 10 rupees) while the UK Act provides free access in almost all cases. It is not clear what effect application fees may have. However, in the case of India the actual cost of making a request may be much higher (see below) Third, the time period for a response is longer under the RTI Act than under FOI, an additional 10 days, though the Indian legislation. Like other

countries that have experienced disorder, the RTI contains a special provision for “emergency” release of information that threatens “life or liberty”. Fourth, while the UK contains a duty to “advise” and “assist” with requests, the Indian RTI Act contains a far stronger compulsion. The Information Commission can impose a fine of 250 rupees per day for an unanswered request. It is not clear how often this provision has been enforced or used. One study found almost no enforcement and another claimed that “it is common knowledge they are rarely applied” (Raag/NCPRI 2009; Peisakhin 2012, 11).

Table 1: Comparison of the key features of the UK and Indian access to information legislation

Features	UK “Freedom of Information Act 2000’	Indian ‘Right to Information Act 2005’
Coverage	Public authorities including central and local government, National Health Service, educational institutions	Public authorities including central and local government, educational institutions. Private providers?
Appeal process	Independent Commissioner (ICO) then Appeal Tribunal and Courts	Independent central Commission or state and courts
Time limit on response	20 days	30 days (except in threat to life or liberty 48 hours)
Cost of making a request	Free	Discretionary fee
Number of Exemptions	23 (though half subject to a Public Interest Test)	8

(RTI Rating 2013; RTI Rating 2013a)

One of the interesting effects of both laws is their post-implementation dynamic. As systems based on use, they transform and shift over time, innovating and moving in unexpected directions. The RTI Act has led to the development of a national telephone helpline, video appeal hearings for remote locations and experiments with FOI requests via text or online (Calland and Bentley 2013; Roberts 2010). In the UK, the Act has led to the development of an online portal *WhatDoTheyKnow.com*, that enables requests and responses to be published online open to all, which accounts for around 10% of all FOI requests (Hazell et al 2010, 241).

§ 3 – OPERATION AND HOW ACCESS TO INFORMATION IS USED

After nearly a decade of operation there are now emerging patterns on use. In India and the UK, use can be described as high, locally

focused and diverse (see table 2). Interestingly, at all levels RTI use in India appears more “politically” focused than in the UK.

Table 2: Use of access to information legislation in India and the UK

	India	UK ²
Estimated number of requests filed 2011-2012	2.3, 000,000	150,000
Estimated user groups	Public and NGOs/ <i>Sangathans</i> (and business?)	Public, NGOs, media and business
“Typical” requester	Male, middle class, urban	Male, middle class, middle aged
High profile releases	Commonwealth Games scandal 2010	MPs’ Expenses scandal 2009
Focus of requests	Local and regional government	Local government (70-80%)

(CHRI 2013a: Raag/NCPRI 2009: Hazell et al 2010: Worthy et al 2011)

There is little research on the patterns of requests. White (2007) speaks of the ‘iceberg’ effect, whereby a small number of requests attract attention and controversy while the vast number of quotidian requests remains unseen and unnoticed. This view was confirmed in later studies in the UK (Hazell et al 2010: Worthy et al 2011). A decade of requests in both countries provides some insight regarding *who* is using these laws and *how* they are using them.

First, in both India and the UK use is relatively high. Even though less than 1 in 1000 people have used the UK, and far fewer in India, the two laws appear to be heavily used compared with usage rates in other countries (Hazell and Worthy 2010).

Second, the pattern in both India and the UK suggests that, underneath the high profile use, most requests are locally focused. The majority of requests in the UK and India are submitted to local or regional government (Worthy 2013: Roberts 2010: Calland and Bentley 2013).

Third, the user groups are interestingly different. In the UK, both locally and centrally, users are a diverse mix of the public, a few journalists, NGOs and businesses, with the latter particularly heavy users at the local government level (Hazell et al 2010: Worthy 2013). By contrast in India it appears to be a mixture of the public, NGOs and *Sangathans*, local unaffiliated and unsupported campaign groups (Webb 2012: Raag/NCPRI 2009).

Interestingly, in both countries, use appears to be driven by the middle class, with ‘public’ use driven by the better-off or elite. While this usage reflects ‘normal’ patterns of political activism, it

² This is calculated through MOJ (2012a) statistics on use for central government of for that year added to estimated local government requests from the Constitution Unit survey of 2010 (with 20% added to estimate increase).

represents a problem for the transformative power of the RTI in India, which aims to equalise society by empowering all groups. The detailed research by Raag/NCPRI found that the users in India were overwhelming male (over 90%) and that few requests came from the very poor or marginalised groups in either urban or rural settings (2009, 8). Requesters are often professionals (61% coming from government or private sector) with only 3% from the unemployed (Raag/CES 2014). Numerous studies expressed concern at low levels regarding awareness of the existence of the legislation (Roberts 2010: Raag/NCPRI 2009).

One crucial requester group and driver of accountability in the UK, the media, is absent in India. In the UK the media, both local and national, play an important role in FOI use. A small group of journalists appear to be heavy users of the Act while a larger number publish or run stories based on FOI (Hazell et al 2010: Hayes 2009). Journalists play a role as champions of the Act, campaigning, protecting it against change, ‘pushing the boundaries,’ and innovating with it. Many of the key ‘accountability’ stories have been pursued by journalists who are the user group most frequently mention by politicians (see below). Research in India has pointed to a lack of use by the national or local press (NCPRI 2009: Relly 2013). While newspapers frequently report use by others, and publish op-eds urging use by the public, a number of studies have shown that newspapers have a lack of interest or believe that the law is not for their use (Raag/NCPRI 2009: Relly 2013). This may mean that India lacks a powerful defender and vocal user and a strong force for accountability.

A) HIGH PROFILE USE

Following the idea of Access to Information as a ‘fire alarm’ or tool of the ‘watchdog’, the Indian and UK laws have highlighted a series of issues, problems and scandals. In the UK these have been driven by a diverse mixture of journalists, NGOs and members of the public. In India, accountability use appears to be driven primarily by NGOs.

In the UK, a succession of high profile requests began in January, 2005, with attempts to extract legal advice regarding the war in Iraq and Cabinet minutes. Since then, the law has been used to uncover information about a range of controversial topics from extraordinary rendition, the Libor banking scandal, and reforms of the National Health Service (Worthy 2012). In 2013, FOI was used to expose failings in London Transport, to uncover a controversial Home Office policy urging the public to report illegal immigrants, and as a means for following the ongoing creation of a series of ‘free schools’ across the UK (Burgess 2013). Exposure of wrong doing through FOI has led to the resignations of several members of devolved assemblies (Worthy and Hazell 2013).

The high point of FOI in the UK was the revelation of the MPs’ expenses scandal in 2009. In May 2009, following a four year FOI

process by three journalists, the details of MPs' use of their ACA expenses system was leaked to a national newspaper. The resulting article led to a number of resignations from the Cabinet, with a record number of MPs stepping down, and five MPs imprisoned (Kelso 2009; Hazell et al 2012). The crisis led to the creation of a new independent body to oversee MPs' expenses (see below).

However, the exact consequences of FOI on voters and public perceptions may be more nuanced. Despite claims of an "expenses election", the scandal appeared to have little impact on voting patterns in the subsequent 2010 General Election (Pattie and Johnston 2012). One interesting result was a subsequent "ripple" of accountability, as FOI was used to look into the expenses of local government councillors, the police and even academics. The scandal appeared to increase the overall numbers of FOI requests, and has led to interesting "crowd sourcing" experiments when the *Guardian* newspaper opened up records of MPs' expenses to public scrutiny (Worthy 2013b).

In India, RTI has been used to uncover high profile scandals and has proved to be a powerful weapon for producing accountability. For example, it was used to obtain information regarding contracts and employment for the Commonwealth games of 2010 (Singh 2013), the sale of 2G mobile phone networks which led to questioning of Prime Minister Singh (Reuters 2011), and a housing scandal that led to the resignation of the Chief Minister of Maharashtra in 2008 and corruption in aid and food provision (Agarwal 2011). According to Calland and Bentley (2013) RTI is now "being used as a potent instrument to improve governance and transparency across a variety of areas, including the PDS, municipalities, elections, trade unions, genetically modified foods, dams, and the National Rural Employment Guarantee Act" (s76).

B) LOW-LEVEL USE

Underneath the high profile, "tip" of the "iceberg" cases, differences emerge. The focus of Access to Information is frequently regional or local. Former Scottish Information Commissioner described this type of access as "fine-grained accountability" working on a daily level that may go unnoticed (Dunion 2011, 458).

At the local government level in the UK, FOI has been used to expose a series of controversies related to parking, costs of training days and local planning (Worthy 2013, 403). Yet the majority of requests to local government entities are "niche" requests that concern private interests. An examination of these requests shows that many have a local focus because they are concerned with addressing specific, often personal or "micro-political" issues (Worthy 2013, 408).

By contrast in India, the local and regional focus remains political as "most requests are directed to offices of state and local government, and focused on seeking redress regarding grievances related the failure to deliver public services or complete public

works” (Roberts 2010, 6). Calland and Bentley (2013) characterise a spreading “politicised use”:

Since the Act was designed to respond to people’s needs, it has been branching out continually...some people use the Act to assert their right to food by making ration-related ATI requests...Others to address environmental concerns such as closing down a polluting factory. There are also some encouraging RTIA success stories of individuals or groups that often struggle to implement their rights, such as women and people with disabilities (s73).

These uses are connected to basic rights, curbing maladministration and, in some cases, life or death issues of access to resources (Raag/NCPRI 2009).

Taken together, access laws can play a key part in securing accountability through transparency, whether at high or low level. However, such a result comes with qualifications. First, transparency laws do not work in isolation, but work with by “traditional” or groups such as NGOs, journalists or Parliamentarians. To work, information needs to be turned into “accountability”. The MPs’ expense scandal of 2009 was the result of requests by three experienced journalists, pursuing the case through the appeal system and courts and the crucial moment came via a paid for leak to a newspaper rather than disclosure (Worthy 2013b).

Second, “FOI actually works in conjunction with wider campaigns as a ‘jigsaw’ tool to put together information rather than to obtain scandalous “smoking guns” (Worthy and Hazell 2013, 38). It is most often part of a wider information-gathering exercise, especially at the local level, with information being used to incrementally help build and amass evidence (Worthy 2013). A final question focuses on how FOI affects public bodies themselves.

§ 4 – THE IMPACT OF TRANSPARENCY LAWS

Measuring the impact of FOI access is fraught with difficulties. Laws co-exist alongside other reform programmes that have similar objectives (Worthy 2010), and the methodology for tracing cause and effect and determining the results and outcomes is complex and nuanced (Hazell and Worthy 2010; Prat 2006). Generally, both Acts have been regarded as a success in bringing transparency and accountability and, to an extent, shifting cultures. Yet the exact effect of these laws on behaviour and processes, whether positive or negative, is uncertain.

A) UK

In the UK, the Justice Committee concluded that after 10 years “the Act has contributed to a culture of greater openness across public authorities...many public officials not only...implement the Act but work with the spirit of FOI to achieve greater openness” (Justice 2012, 11). The government agreed in its response that the

“Act has contributed to a culture of greater openness across public authorities” (Ministry of Justice 2012, 4).

Other studies have concluded that FOI has “not met the greatest hopes or the worst fears” (Hazell et al 2010, 255). Centrally and locally, the Act has made government more open as “FOI does bring increased transparency by information release, and accountability, in the correct circumstances by questioning and receiving an answer based upon that information” (Worthy 2010, 577). The same conclusion was offered for local government (Worthy 2013). In the UK there is variation between different government departments or local councils in terms of performance, attitude and “openness”.

There is evidence in the UK that FOI may have some effect on systems and procedures, driving behavioural change and even facilitating good practices through “smart” regulation. Officials at both central and local government levels have spoken about how FOI has professionalised decision-making and record keeping and created more open cultures (Hazell et al 2010: Worthy 2013). A few officials spoke about how FOI had improved relationships with the press and stakeholders (Hazell et al 2010). However, FOI’s exact effect can only be evaluated in light of whether there has been a shift from prior previous practices, and many officials believe that they were already operating under scrutiny from many sources (Worthy 2013).

A more difficult question is whether Access to Information laws have had a negative effect on bureaucratic behaviour. The potential for exposure may lead to subterfuge or “avoidance” rather than improvements (Hood 2007). One frequently claimed counter-productive consequence is that such laws have produced a “chilling effect” whereby records are either not kept or are in some way distorted to prevent future publication. In the UK, the Justice Committee “was not able to conclude, with any certainty, that a chilling effect has resulted from the FOI Act” (2012, 75). Other research has found a marginal negative effect, but with some factors (e.g., officials more concerned about the consequences of not having a record and the effects of FOI) forced to balance these concerns against other interests such as fewer resources for record-keeping or fear of leaks (Worthy 2013).

B) INDIA

In India similarly, a PWC analysis of 2008 concluded that:

The basic tenets of the Act have been implemented and the institutional mechanism is in place and is in use by citizens...The institution of Information Commission has assumed a pivotal position [and] Civil society organisations have been, and continue to be, active in ensuring the implementation of the Act in letter and spirit (PWC 2009, 3).

The Raag/NCPRI study (2009) concluded less optimistically that the Act has had “mixed results” (29). The problem appeared to be a mixture of systemic and attitudinal inertia:

While the awareness of the importance of transparency has indeed increased manifold, infrastructure needs to be built around it to allow it to work better. At the same time, the key to increasing accountability of public authorities lies in bringing about attitudinal changes – which is something that takes time (29).

The barriers to behavioural change appear far greater in India. Compliance with the law is low and poor administration acts as a substantial obstacle. Low administrative capacity, combined with low awareness among officials and a lack of resources in both bureaucracy and the appeal system, seriously undermines both the operation and any consequent benefits of the law (Roberts 2010, 12-13). The Raag/NCPRI study highlighted a powerful mixture of “poor record management, inadequate budgets, [a] wrong mind set of civil servants, lack of human resources and lack of training and knowledge about the provisions of the Act” (2009, 27). This was also a concern in India about a possible chilling effect of the law, but there was “little evidence” for any alterations to files or records (NCPRI 2009, 28). Implementation of the RTI Act is inconsistent “varying from state to state...the process of tracking this implementation has yielded important gaps in practice and delivery” (Calland and Bentley 2013, s77).

§ 5 – WIDER BENEFITS OF TRANSPARENCY

The promise of transparency extends further than simply changing processes and promoting behavioural change. Access to information is frequently upheld as a reform that can also influence corruption, political engagement and trust. Yet each is nuanced and complex with evidence pointing in different directions.

A) CORRUPTION

A number of studies in India have focused on the effect on corruption “[t]he use of RTI to conduct social audits has acted as a deterrent to corrupt officials” (Singh 2007, 29). A 2011 study concluded that:

Legislation such as the RTI Act in India...prevents corrupt public officials from misusing this information to advance their own interest. On the other hand it provides the government with more power and public support for conducting top down audit of corrupt departments (Bhattacharyya and Jha 2011, 14).

An experiment involving RTI requests regarding the processing of voting registration found that the making of requests “results in dramatically faster processing times” that is “almost as effective as bribery” (Peisakhin 2012, 12). It may also have an effect on bureaucracy as “officials fear that failures to disclose...will negatively affect their chances of promotion” (11).

Yet others are not convinced that RTI is sufficiently strong to cause such an effect. RTI clearly contains a strong “discipline potential”

(Webb 2012, 217). Yet the implementation problems and low rates of fines are indicative of a lack of enforcement for wrong-doing. Sharma (2013) questions the concrete achievements stemming from the powerful anti-corruption narrative:

As far as RTI-informed large-scale exposés are concerned, these have been few and far between, and as several senior civil servants pointed out, the RTI Act can at best uncover a paper trail, and grand corruption typically does not take place on files (15).

The most observable, positive effects of laws on corruption in India and the UK have been on institutions and regulations. In India in 2013 a new *Lokpal* or Ombudsman was created to oversee government, triggered in part by the ongoing corruption campaign in India driven by RTI (Burke 2013). In the future it can be seen how RTI exposure could work alongside such a body to pursue. Here the UK may provide a guide. The MPs' crisis led to the creation of the Independent Parliamentary Standards Authority (IPSA), created to oversee MPs pay. IPSA has become a source of resistance and struggle between Parliament and the watchdog, with conflict over payments as well as possible pay rises, with the Prime Minister hinting that the body may be abolished. Advocates would view this as a sign of a regulator doing its job well (Worthy 2013b). Other controversies regarding appointments to Britain's Second Chamber revealed by FOI have led to changes in the tax status of members (Worthy 2012).

B) PARTICIPATION

Despite the hopes of advocates that information will stimulate political activity, FOI does not appear to have increased participation in the UK (Worthy 2010, 577). It has undoubtedly empowered NGOs and other groups at the local and central levels, but has not yet led to a widening involvement or arrested the historic decline in participation in the UK (Worthy 2013: Fox 2012). Even the MPs' expenses scandal failed to ignite involvement, despite isolated attempts to "de-select" MPs (Worthy 2013b).

By contrast, in India experiments have revealed that information obtained through RTI can have an effect on voting patterns (Banerjee et al 2010). RTI has also stimulated a political campaign that has, in the past year, began to gain a toehold within the political system itself. A clear political movement is now beginning to emerge from the decade long RTI campaign. In 2013 a 21-year-old RTI activist was elected head of a village on an anti-corruption ticket, the second such activist to be elected (Parmar 2013). In the 2013 elections to the state Delhi Congress in December 2013, the new *Aam Admi* Party, created and led by long term RTI campaigners, won 28 seats out of a total 70 (India Today 2013).

C) TRUST

Trust is a complex issue and in the UK the Justice Committee concluded that FOI had “no generalisable impact” on the level of public trust in government (2012, 17-18). In the UK critics claim FOI leads to the media highlighting scandals, further undermining trust in government. Advocates hope exposure and additional information will deter distrustful behavior and lead to more informed voters. Superficially, FOI does not appear to have increased trust in central government but nor has it led to a noticeable drop (Hazell et al 2010). At the local government level, traditionally more trusted than central government, voters views are more heavily influenced by performance and “community visibility” than openness (Worthy 2013). Even the seemingly clear case of trust decline created by the MPs’ expenses scandal involves nuance, as the disclosure of Parliamentary corruption came as a confirmation rather than a revelation to many (Hansard Society 2010) and since 2009 levels of trust in MPs have now moved back upwards (Fox 2012). The idea that information equals increased trust over-simplifies the complex ways in which the public approaches politics and presumes a cognitive “blank slate” where there are in fact numerous biases, dissonance and expectations through which information is processed (De Fine Licht 2013; Grimmelikhaujen 2012).

§ 6 – THE FUTURE? EXTENSION AND RESISTANCE

The dynamics of transparency laws represent a continuous “fighting on the borders” as various groups seek to extend or reduce the reach of access laws. Political conflict is frequently focused on extensions versus resistance.

A) EXTENSION OF TRANSPARENCY

Access to Information laws cover specific bodies but contain clauses that permit extension to new bodies. One vital question is the coverage of private contractors. Only the South African PAIA specifically enables access to private bodies (Darch and Underwood 2005).

The UK FOI can be extending via secondary legislation under section 5 of the Act. FOI does allow access to some information held by private bodies relating to public work and most bodies are happy to provide it, albeit with some high profile exceptions (Worthy 2013). In the UK the Brown government committed in 2007 to extend the Act to all public work carried out by private bodies but eventually did not do, concerned about potential costs to businesses. In 2010 the new Coalition government also committed to the same end but are yet to do so. The recent post-legislative scrutiny recommended that FOI be enforced by contracts rather than by explicit extension of the Act (Justice 2012). In India legal rulings have made formerly public bodies subject to the RTI Act. There was also debate about extending the Act to cover the stock-exchange and controversy over access to

information concerning Public Private contracts (Roberts 2010). Between 2012 and 2013, there was battle to open up both the Indian Cricket board and political parties to RTI. As of December 2013 a bill before Parliament proposed to specifically exempt political parties from the law's application, but that bill has stalled with the new government.

B) RESISTANCE

As forces outside of government seek to extend access, forces within the government can seek to resist the law and even restrict its remit or weaken it through legislative change. The UK government warned that “the formative years of open government will be difficult, tricky and uncomfortable at times” (Cabinet Office 2012, 6). Resistance in the UK includes use of the veto outlined above. On a day-to-day level there may be elements of “game playing” around controversial requests with attempts to delay or muddy the waters (Hazell et al 2010).

Politicians have a narrow view of FOI as they only see few requests, often the most sensitive or media driven. In 2010 Tony Blair became the most prominent critic of FOI, claiming it was abused and misused:

The truth is that the FOI Act isn't used, for the most part, by “the people”. It's used by journalists. For political leaders, it's like saying to someone who is hitting you over the head with a stick, “Hey, try this instead”, and handing them a mallet (Blair 2010, 516-517).

The danger is that such negativity may encourage poor behaviour and lead to a small “anti-FOI” group at the very top of government (BBC 14 Mar 2012).

Political disquiet has extended to more than simply negative signals, translating into several attempts to reform the Act. In 2006 the Blair government sought to change the costs imposed for requests and floated the introducing a standard application fee, reforms which would have curtailed use of the law. In 2007 a group of MPs sought to exclude Parliament from the ambit of the Act but failed to reach the Second Chamber. In 2009 the Monarch and the heir to the throne were made exempt from the Act. As of 2013 the Coalition government expressed concern over “industrial” use of FOI (Worthy and Hazell 2013).

In India the “game-playing” and resistance is more severe, possibly compounded by poor resources and implementation as well as pre-existing power-relations. Numerous studies highlighting delay and “blocking” as well as overt hostility to requests (Raag/NCPRI 2009; Roberts 2010). The lukewarm attitudes of senior politicians are also in evidence. In 2012 Prime Minister Singh spoke in terms very close to those of Tony Blair:

There are concerns about frivolous and vexatious use of the Act in demanding information disclosure of which cannot possibly serve any public purpose...This important

legislation should not only be about criticising, ridiculing and running down public authorities (Times of India 2012).

In India there exists a far more potent threat, that of violence. A CHRI study of 2013 recorded “31 alleged murders and 2 alleged suicides and more than 214 assaults...directly linked to the fact that the victims sought some information under the RTI Act which proved detrimental to their life and safety” (CHRI 2013). The potential of RTI as an exposé of corruption also brings powerful risks.

§ 7 – ACCESS TO INFORMATION: EMPOWERMENT AND CONTEXT

To understand transparency, it is necessary to reflect on how the particular context of a political system shapes what can and cannot be achieved. In the UK, FOI was introduced into a political system that was becoming increasingly transparent with numerous pre-existing mechanisms of accountability. In this sense FOI “went with the grain” of other change, so reforms mutually reinforced each other. Yet FOI ran against historically low levels of participation and trust, further eroded by conflictual government and media relations (Worthy 2010; Fox 2012).

In India expectations are even higher. A 2012 study concludes that RTI “has the power to erase social, cultural and economic differences” and reduce the “vast inequalities” between government and “the least privileged members of society” (12). While 16% of RTI requests are overtly aimed at expressing grievances many more are “disguised” versions of the same thing (Raag/CES 2014, 2). Yet numerous socio-cultural and political factors limit what RTI can achieve to even greater degree. To take one simple example, first, “using average wage rates and transportation costs, it finds that the true economic cost of filing an RTI request is about 250 rupees in rural India, and twice that in urban areas amounts substantially larger than the ten-rupee application fee” (PWC 2009, 134).

A more nuanced obstacle is the complex social relationships within Indian society. Use of RTI is primarily, if not overwhelmingly, by the educated, urban and male (Raag/NCPRI 2009). Very few members of the lower Indian social groups, particularly those below the poverty line, use RTI and, indeed, few appear to be aware of its existence (Raag/NCPRI 2009). Given the powerful obstacles, the idea of large sections of the poor using RTI is “illusory” (Webb 2012, 218). Cain et al found with FOI regimes elsewhere that received wisdom about bureaucratic unresponsiveness led to an automatic discounting of the possibilities of asking (Cain et al 2003). As of 2014, rural requesters make up only 14% of all requesters, despite representing 70% of India’s population (Raag/CES 2014, 61).

Instead RTI use is driven by proxies, primarily NGOs led by middle-class activists. Webb (2012) points out that this use by the educated middle-class in “brokerage and mediation” is exactly the situation RTI was intended to avoid (210). Moreover, many of the “opaque and informal conduits” that the RTI Act seeks to end and

close are “essential to allow the urban poor to survive” (207). Here the RTI Act resembles other legislation such as the Public Access to Information Act in South Africa, where legislation is caught within a network of complex social, political and cultural relation and barriers that hinder the operation of the Act (Darch and Underwood 2005).

CONCLUSION

This paper has demonstrated how access to information laws in both the UK and India can help bring about transparency and accountability, working as a crowd-sourced “fire alarm” to highlight problems nationally and locally while also driving changes in process and behaviour. Transparency laws can bring more concrete discernable shifts, creating new bodies or legal change. India’s more “politicised” use has also stimulated political activism. Yet the potential of transparency laws exists within clear limits. The legislation is fragile in a number of senses. First, to work “properly,” laws require use and the correct context. Most importantly they require support from other political mechanisms. When the legislation “works” either as fire alarm or instrument of behaviour change it is because it has combined with other mechanisms.

Second, laws require capacity and resources on the part of government. They can and are defeated and undermined by poor capacity and lack of awareness or training. While the UK offers a reasonably robust base the poor capacity of Indian government remains a powerful obstacle. The exact borders and limits of both laws are dynamic. There will be a continual fighting on margins over coverage, change or resources. Yet there will also be innovation and change.

Third, related to this is the question of “political will” (Calland and Bentley 2013). Transparency laws require support from those most likely to be damaged by them. In India and the UK hostility to the legislation and resistance is present. In numerous forms, from expressions of unhappiness to attempts to curb or limit the scope of laws, both systems are constantly under threat. This plays into a further point that transparency is also shaped by the perceptions of politicians. While this may bear little resemblance to reality, their views are crucial.

Finally, the socio-political context in which laws exist. Not all the barriers to successful outcomes lie with government. While access legislation seeks to re-shape cultures and systems, these self-same cultures and systems can shape the laws. In India particularly, the transformative potential can be undermined by pre-existing relations, attitudes and ideas. It remains to be seen if information reform in the long term can incrementally break down these more hidden barriers.

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