

## State Transparency after the Neoliberal Turn: The Politics, Limits, and Paradoxes of India's Right to Information Law

By *Aradhana Sharma*\*

**Abstract:** In 2005, the Indian government passed the Right to Information or RTI Act, which is hailed for inaugurating an era of open, accountable and truly post-colonial democracy. This article focuses on how the RTI law is being both implemented and subverted in India through ordinary bureaucratic proceduralism and what this tells us about the limits and contrary logic of state transparency in the neoliberal age. India's information freedom law has moorings in local grassroots movements that fought long and hard for its passage, but it also articulates with the global neoliberal development regime's discourse on good governance. I consider how dominant transnational meanings of state transparency crosscut and color popular mobilizations of the RTI law in India. My contention is that the technocratic casting of transparent and good governance under neoliberalism lends a formalized and procedural hue to the ground-level workings of Indian law, which bureaucratizes social life, hems-in activist aspirations for fundamental changes in democratic governance and, paradoxically, reinforces state opacity. On the one hand, citizens and activists are compelled to become proficient in bureaucratic literacy in order to audit and petition the state. On the other hand, officials strategically alter the language and procedures of administration, shifting the interplay between writing and orality in their daily work and changing what they record and how they do so to avert scrutiny and preserve state secrecy in the age of transparency.

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### 1. Introduction

What first caught my attention about India's Right to Information (RTI) law was the public reaction to it: the excitement and hope were palpable. Nearly every English-language Indian daily I read quoted people who hailed the passage of this law in 2005 as the most important step in state and democratic reform in five decades and as India's final liberation from colonialism. Consider this, for instance: "It is on October 12, 2005, [that India] got...actual independence, since it is the day when the RTI Act was enforced.... It is a true people's

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Act. It explains properly what democracy is”.<sup>1</sup> The RTI law signified the decisive undoing of colonial rule because it challenged the draconian Official Secrets law put in place by the British. Enacted originally in 1889 and last amended in 1923, the Indian Official Secrets Act made statework completely opaque: it rendered state records and even government buildings and sites inaccessible, and severely restricted the freedom of press. The RTI law reversed this regime of state secrecy instated by the colonial rulers and inherited by the postcolonial Indian state.<sup>2</sup> When I began my study of the everyday life of the RTI law in August 2008, many activists I interacted with described it as a tool for empowering ordinary citizens and changing the culture of governance by making it transparent, less corrupt, participatory, and accountable. But along with celebration came caution. Precisely because it augurs such important changes in governance and a shift in the balance of power between citizens and the state, the law faces ongoing challenges from officialdom. Shekhar Singh, a leading RTI figure, writes that “the RTI movement, though it has its own victims and levels of...violence, promises a much more benign method [as compared to Maoist groups] of making governments answerable.... The worrying thing is that the government...continues to try and weaken the RTI regime.”<sup>3</sup>

In this article, I show how the RTI law is being both implemented *and* subverted in India through routine bureaucratic proceduralism, and tease out the limits and contrary logic of state transparency in the neoliberal age. Why do I invoke neoliberalism here? Primarily because this transnational policy context disappears in most popular accounts about the Indian RTI law, where, as a keen observer of the freedom of information movement put it, only “certain factors get hearing space” (field note, 22 May 2009). Indeed, the transparency activists I interviewed, largely told the RTI story as a tale of a homegrown fight undertaken by local groups, which successfully overturned state secrecy.<sup>4</sup> In this article, I present a translocal picture that includes the wider context of neoliberalism against which the Indian narrative unfolds. My intention is not to claim that transparency is a neoliberal phenomenon: Sweden’s Freedom of the Press Act of 1766 speaks to the longer history of transparency as a legal principle. And yet, there is something significant about the fact that while in 1989 only eight countries had information freedom laws,<sup>5</sup> today that number has grown

1 *Herald Deccan*, Inclusion of RTI Act in School Curriculum Mooted, <http://www.deccanherald.com/content/40044/inclusion-rti-act-school-curriculum.html> (last accessed on 24 July 2013).

2 The Official Secrets Act has not been withdrawn formally.

3 *Shekhar Singh*, The Genesis and Evolution of the Right to Information Regime in India, <http://rtiworkshop.pbworks.com/f/2010-04-IN-Country-Paper-Shekhar-Singh.pdf> (last accessed on 24 July 2013).

4 *Prashant Sharma*, Democracy and Transparency in the Indian State, The Making of the Right to Information Act, New York 2015. The author also argues that the dominant narrative about the passage of the RTI law in India constructs it as a bottom up fight against the state, undertaken by environmental and then information activists, and helped by progressive Supreme Court decisions.

5 *Sharma*, note 4.

to over 100.<sup>6</sup> This is no coincidence given the important place occupied by state transparency in neoliberal good governance policies that have been promoted globally by international development institutions during the same time period. In referencing this translocal backdrop, I neither wish to undermine the local part of the RTI tale nor to suggest that the global forces of neoliberalism tightly script the outcomes of governmental transparency in India. Rather, I attend to show how the dominant good governance mantra *articulates* with the RTI act and how it conditions the Indian law's field of possibility. I consider how powerful transnational meanings and practices of state transparency intersect with and color popular mobilizations of the RTI law locally.<sup>7</sup> My contention is that the technocratic casting of transparency and good governance under neoliberalism lends a formalized and procedural hue to the ground-level workings of Indian RTI law. This ends up hemming-in activist aspirations for fundamental changes in democratic governance, bureaucratizing social life and, paradoxically, reinforcing state opacity.

The turn toward good governance happened in the late 1980s, when mainstream development actors, such as the World Bank, blamed the negative impact of structural adjustment programs on bad governance in the developing world.<sup>8</sup> Fostering a facile and instrumentalist form of good governance-as-liberal democracy became the order of the day as a means for achieving development success. International agencies have since pushed a standard political liberalization package<sup>9</sup> across the globe, which includes, top-down, technocratic restructuring that formalizes market-based freedom; civil society empowerment and participation; constitutionalism and legal reforms; and governmental efficiency, minimalism, accountability, and transparency.<sup>10</sup> Governance, here, is not seen as an exercise in power but as apolitical administration, which can be improved through expert intervention. However, even as the global development regime works as an antipolitics machine<sup>11</sup> to depoliticize rule, it also spawns unpredictable forms of political struggles that challenge state power and keep the meaning of good governance and democracy in play.<sup>12</sup> In the case of India's RTI law, bureaucratic paper archives and communication practices have emerged as critical arenas where this political contest is unfolding.

6 Statement by European RTI Community on the world's First Official Access to Information Day on 28 September 2016 in Madrid, <https://www.access-info.org/uncategorized/26216> (last accessed on 1 November 2017).

7 Kregg Hetherington, Populist Transparency, The Documentation of Reality in Rural Paraguay, *Journal of Legal Anthropology* 1 (2008), pp. 45–69.

8 Rita Abrahamsen, *Disciplining Democracy, Development Discourse and Good Governance in Africa*, New York 2000.

9 Abrahamsen, note 8.

10 David Harvey, *A Brief History of Neoliberalism*, Oxford 2005.

11 James Ferguson, *The Anti-Politics Machine, "Development", Depoliticization, and Bureaucratic Power in Lesotho*, Minneapolis 1994.

12 Brenda Chalfin, *Neoliberal Frontiers, An Ethnography of Sovereignty in West Africa*, Chicago 2010; Hetherington, note 7.

Government documents are the primary site of state transparency in both mainstream and populist imaginaries. Information freedom laws enable citizens to access these apparently faithful and comprehensive repositories of government work through formal petitioning. Official records, however, are not just annals of state facts but are also political artifacts that do not compile truths as much as conjure them. Bureaucratic documents are not simply products of statework but also produce the state. Official files, signatures, letterheads, and seals are routine objects that actualize state authority and rule in people's lives, as a number of anthropologists have shown.<sup>13</sup> The RTI law focuses on these symbols of political power, politicizing the relationship between writing, records, and governmental domination in new ways.<sup>14</sup> Where burning documents was an important form of subaltern resistance against governmental authority in colonial India,<sup>15</sup> retrieving official papers through bureaucratic means is now a common mode of citizen protest against unaccountable state power.

This increasingly technocratic and formalized method of challenging the state has paradoxical consequences, at once empowering and disciplinary. The RTI law works as a governmental mechanism<sup>16</sup> that forces people to engage and audit the state in its own idiom. As petitioners learn how to make their demands legible by learning the ways and words of the state, however, the language of administration morphs. Officials shift the interplay between writing and orality in their daily work, change what they record and how they do so, and strategically use bureaucratic techniques to avert accountability and preserve anonymity. They thus ensure that the state remains vertically authoritative<sup>17</sup> and continues to be written under erasure,<sup>18</sup> even in the age of horizontality and transparency.

I proceed by first situating India's RTI law against a translocal context and explaining how it is supposed to work. I then draw upon ethnographic vignettes to elaborate my arguments about the limits and paradoxical effects of the RTI law. My stories are culled from a specific time and place, but they have wider relevance for understanding the relationship

- 13 For example, see *Veena Das*, *The Signature of the State, The Paradox of Illegibility*, in: *Veena Das/Deborah Poole* (eds.), *Anthropology in the Margins of the State*, Santa Fe 2004, pp. 225–252; *Akhil Gupta*, *Literacy, Bureaucratic Domination, and Democracy*, in: *Julia Paley* (ed.), *Democracy, Anthropological Approaches*, Santa Fe 2008; *Matthew S. Hull*, *The File, Agency, Authority, and Autography in an Islamabad Bureaucracy, Language and Communication* 23 (2003); *Brinkley Messick*, *The Calligraphic State, Textual Domination and History in a Muslim Society*, Berkeley 1993; *Annelise Riles*, *Documents, Artifacts of Modern Knowledge*, Ann Arbor 2006; *Emma Tarlo*, *Unsettling Memories, Narratives of the Emergency in Delhi*, New Delhi 2003.
- 14 *Claude Lévi-Strauss*, *Tristes Tropiques*, New York 1961; *Max Weber*, *Bureaucracy*, in: *H.H. Gerth/C. Wright Mills* (eds.), *Essays in Sociology*, New York 1968, pp. 196–244.
- 15 *Ranajit Guha*, *Elementary Aspects of Peasant Insurgency in Colonial India*, New Delhi 1983.
- 16 *Michel Foucault*, *Governmentality*, in: *Graham Burchell/Colin Gordon/Peter Miller* (eds.), *The Foucault Effect, Studies in Governmentality*, London 1991, pp. 87–104.
- 17 *James Ferguson/Akhil Gupta*, *Spatializing States, Toward an Ethnography of Neoliberal Governmentality*, *American Ethnologist* 29 (2002), pp. 981–1002.
- 18 *Jacques Derrida*, *Of Grammatology*, Gayatri Chakravorty Spivak, Baltimore 1997.

between secrecy and state power. I conclude this article by considering what makes the very idea of a transparent state a contradiction in terms.

## II. *Situating Information Freedom in India*

The worlding of information as a “highly valued commodity”<sup>19</sup> and information freedom as a governance ideal have much to do with late capitalism, the end of the Cold War, neoliberal development discourse, and the information technology revolution. During an RTI workshop that I attended in December 2008 in New Delhi, the participants were informed of the rapid expansion of information freedom laws across the world since the late 1980s. The gentleman conducting the workshop pointed out the protransparency countries, colored green on a map that he was using, and stated that, “All countries that have comprehensive RTIs in place are democratic” (field note, December 2008). Economic liberalization and the growing threat of corporate and government corruption, he explained, lay at the heart of the global mushrooming of transparency legislation. In order to secure a proinvestment environment, many states had to downsize licensing regimes and enact disclosure laws.

The end of the Cold War also aided the worldwide spread of transparency. The collapse of the USSR reinforced the ideological equations between secrecy and authoritarianism, on the one hand, and freedom and Western liberal democracy, on the other. The democratic credentials and legitimacy of some post-Soviet states, like Ukraine, depended upon formally establishing information-sharing as a governance principle.<sup>20</sup> Indeed, the international development regime has played a key role in scripting economic and political liberalization plans for the former Soviet world, in addition to the so-called Third World.

Organizations like the World Bank and the Asian Development Bank proliferate the neoliberal good governance agenda by tying loans and guarantees to administrative and judicial reforms.<sup>21</sup> Transparency is a key variable in the calculus by which government efficiency and “goodness” is rated; it is a powerful instrument of global governmentality by which state conduct and practices are managed and normalized by multilateral institutions and international NGOs alike.<sup>22</sup> For example, the Millennium Challenge Corporation, a U.S. government body, and Transparency International, a nongovernmental actor, use accounting

19 David Harvey, *The Condition of Postmodernity, An Enquiry into the Origins of Cultural Change*, Oxford 1989, p. 159.

20 Adriana Petryna, *Life Exposed: Biological Citizens after Chernobyl*, Princeton 2002, shows how the Ukrainian state, in contrast to the Soviet state, based its democratic identity and legitimacy on disclosing information about the Chernobyl disaster and radiation science, and by providing those exposed with some relief.

21 Amita Baviskar, *Is Knowledge Power? The Right to Information Campaign in India*, Sussex 2007, pp. 1-26, <http://rtiworkshop.pbworks.com/f/2006-00-IN-Is-Knowledge-Power-The-Right-to-Information-Campaign-in-India-Amita-Baviskar.pdf> (last accessed on 27 July 2013).

22 Ferguson/Gupta, note 17; Barry Hindess, *Liberalism—What’s in a Name?*, in: Wendy Larner/William Walthers (eds.), *Global Governmentality, Governing International Spaces*, New York 2004, pp. 23–39; Todd Sanders/Harry G. West, *Power Revealed and Concealed in the New World*

and audit technologies to rate the performance of governments according to standardized transparency and corruption indexes.<sup>23</sup> These indexes are powerful regulatory tools that impact the political-economic present and future of nations. Institutionalizing transparency in this context sends an important signal that a country is a legitimate sovereign on the transnational capitalist stage, deserving of aid and investment.

Another factor that helped globalize transparency is the growth in information technology. The idea that information ought to be freely available and that “knowledge should be at my fingertips,” as one of my elite male informants unselfconsciously put it (field note, 17 April 2009), had arrived by the 1990s. Indeed, the World Bank coined the phrase “knowledge economy” to underscore the role that scientific education and information technology play in development and made India the poster child for its “Knowledge for Development” strategy.<sup>24</sup> The Indian state’s active promotion of this strategy reinforced the professional middle class’s belief in the integral connection between information, knowledge, and power, and its unquestioned entitlement to all three.

While it is important to situate India’s RTI law against these entangled global trends, the story of its passage is adamantly translocal. Grassroots movements in India, in opposition to narrow and instrumentalist definitions of good governance, compelled the Indian state to pass a progressive information freedom law that was not centered on capitalist profits or middle-class entitlement, but on the empowerment and survival rights of marginalized groups. Even though the Indian Supreme Court, in a landmark judgement in 1982,<sup>25</sup> recognized that freedom of information was a part of the citizens’ freedom of speech and expression and underscored the principle of disclosure (not secrecy) as the norm of democratic governance, the Indian state continued to invoke the Official Secrets Act during the 1980s and 1990s. This lack of transparency posed serious challenges for environmental, forest, and food rights activists, who were struggling to shine light on disasters, to hold agencies accountable, and to seek redress and compensation for the people affected by them.<sup>26</sup> The Union Carbide gas leak and Narmada Dam cases, for example, were two prominent instances where the government refused to share critical information that would have helped

Order, in: Harry G. West/Todd Sanders (eds.), *Transparency and Conspiracy, Ethnographies of Suspicion in the New World Order*, Durham 2003, pp. 1–37.

- 23 Sally Merry, *Measuring the World, Indicators, Human Rights, and Global Governance*, *Current Anthropology* 52 (2011), pp. 83–95.
- 24 World Bank, *India and the Knowledge Economy, The Road to a Best Selling World Bank Report*, <http://go.worldbank.org/DHRLTKBBG1> (last accessed on 24 July 2013).
- 25 This was the *S.P. Gupta vs. Union of India* case (AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365). For a transcript of the judgement see <https://indiankanoon.org/doc/1294854/> (last accessed on 22 October 2017).
- 26 Harsh Mander/Abdha Joshi, *The Movement for the Right to Information in India, People’s Power for the Control of Corruption*, pp. 1–46, <http://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf> (last accessed on 24 July 2013); Sharma, note 4; Singh, note 3.

those affected to access their rights.<sup>27</sup> Justice for the disenfranchised clearly required a law that overturned state secrecy.

The *Mazdoor Kisan Shakti Sangathan* (MKSS; Worker Peasant Power Coalition), a people's movement founded in 1990 in the state of Rajasthan, took up the issue of transparency and mobilized the popular slogan, *Hum janenge, hum jeeyenge* (we will know, we will live). It fought and won a protracted battle against state corruption and injustice, and for information as a human right.<sup>28</sup> MKSS organized around state-sponsored famine relief. Rajasthan is a drought prone area, and public works programs offer a key survival mechanism for the poor. The money slated for these programs, however, found its way into the pockets of the powerful. Accessing state records was the only way to trace this corruption. The government maintains "muster rolls" that list, among other things, the names of people who labor on public works projects and the wages paid to them. MKSS representatives were able to obtain muster rolls for famine relief work in certain areas and held *jan sunvais* (public hearings) to which they invited residents, officials, and other well-known personalities. Muster rolls were read out loud and those named were asked to verify if the recorded information was correct. The wrongdoings of administrators and local bigwigs were easily revealed: some laborers' names were made up; some names were those of people long dead; some of those listed as being paid were never paid; others who were paid got less than the recorded minimum wage; and so on. The officials present were questioned directly by residents and activists. In some cases, the intended beneficiaries of famine relief were paid retroactively. In other cases, a fear of public shaming pushed officials to settle accounts with individuals in advance of scheduled hearings. These "social audits" brought home the message that poor people's livelihoods and prospects for justice rested on obtaining state documents. Unlike the subaltern rebels that Ranajit Guha<sup>29</sup> and James Scott<sup>30</sup> write about, who resisted authority by destroying records, the peasants and workers representing MKSS confronted state power by demanding government records. Information, for them, was a human right, and necessary for survival and for building a just democracy.

The tenacious 15 year-long struggle led by MKSS, working alongside human rights activists, environmentalists, and the National Campaign for People's Right to Information,

27 In the Bhopal case, this information concerned storage of hazardous materials and details about the government's settlement with Union Carbide (*Kim Fortun*, *Advocacy after Bhopal*, Environmentalism, Disaster, New Global Orders, Chicago 2001); in the Narmada Dam case, activists were denied access to dam- and resettlement-related documents.

28 The MKSS information is based on my interview with founding member Aruna Roy on 30 April 2009, and on the organization's website: <http://www.mkssindia.org> (last accessed on 27 July 2013). See also *Baviskar*, note 21, and *Mander/Joshi*, note 26.

29 *Guha*, note 15.

30 *James Scott*, *Orality, Writing, and Texts*, in: James Scott, *The Art of Not Being Governed, An Anarchist History of Upland Southeast Asia*, New Haven 2009, pp. 220–237.



bore fruit in 2005 when the Indian parliament passed the RTI Act.<sup>31</sup> This happened during the reign of the Congress party-led United Progressive Alliance (UPA) government. Indeed, the Congress party had made explicit mention of the right to information in its manifesto leading up to the 2004 elections. According to virtually all my sources, the passage of this transparency law would have been a lot more difficult without the explicit endorsement of Sonia Gandhi, the leader of the Congress party. In addition to supporting the RTI, Gandhi also appointed some key members of the grassroots information campaign, including MKSS's Aruna Roy, to the National Advisory Council, a prestigious apex body set up to advise the UPA government on matters of policy. Despite serious pushback from the bureaucratic establishment (as I discuss later, with respect to the file notings issue), the RTI law passed because of the concerted lobbying efforts of the MKSS campaign and other allied civil society groups.<sup>32</sup>

This law effectively overrides, without actually overturning, the Official Secrets Act of 1923.<sup>33</sup> It allows any citizen, acting in public interest, to submit a written application for the disclosure of any information held by public authorities, as long as it does not pose a national security risk. The law establishes a wide definition of information as "any material in any form, including records, documents, memos, e-mails, opinions..." that is held by or "can be accessed" by public authorities; and public authorities include not only government departments, but also agencies "constituted, owned, controlled or substantially financed... directly or indirectly" by the government.<sup>34</sup> Section 4 of the law seeks to routinize transparency by requiring public authorities to provide "information *suo moto* to the public at regular intervals"<sup>35</sup> rather than waiting for citizens to file RTI petitions. There are exemptions to the routineness and rule of transparency as well. Section 8 of the law details instances when information may be withheld if its public release would "prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests

- 31 The government passed a weak Freedom of Information act in 2002, but failed to notify its date of operationalization. An act needs to be notified or publicized in The Gazette of India for it to effectively become law.
- 32 For a discussion of these advocacy efforts and the role played by Sonia Gandhi in the successful passage of the RTI law, see *Sharma*, note 4.
- 33 This is detailed in section 22 of the RTI law, which states that, "The provisions of this Act shall have effect notwithstanding anything contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force" (Government of India, The Right to Information Act, 2005, The Gazette of India, No. 25, New Delhi 2005, p. 16).
- 34 Government of India, note 33, pp. 1-2. These definitions are sites of ardent and ongoing contestation; citizens and state officials struggle over their very meanings through the application and appeals process, and beyond that, in courts. For a discussion of some important RTI-related court cases see *Divya Jyoti Jaipuria/Jayshree Satpute*, Leading Cases on Right to Information, Delhi 2009. The Commonwealth Human Rights Initiative also maintains a rich archive on information on RTI-related public debates and court proceedings <http://www.humanrightsinitiative.org/publication-access-to-information> (last accessed on 18 November 2017).
- 35 Government of India, note 33, p. 4.



of the State, relation with foreign State or lead to incitement of an offence”;<sup>36</sup> several intelligence and security organizations, listed in the Second Schedule of the law, do not come within the purview of the RTI.<sup>37</sup> At the same time, however, Section 8 also includes a caveat: it states that public authorities may allow access to “sensitive” information “notwithstanding anything in the Official Secrets Act, 1923... nor any of the exemptions permissible” in the RTI law if “public interest in disclosure outweighs the harm to protected interests”.<sup>38</sup> The overwhelming imperative, then, is on sharing information, not hiding it.

According to the RTI law, every government department must designate Public Information Officers (PIOs), who constitute the first tier of the information bureaucracy. The PIOs have 30 days to process an RTI query. If they delay or refuse disclosure without providing written justification or if they release wrong or partial information, applicants can appeal to higher officials, First Appellate Authorities (FAAs), in the same department. If an FAA upholds a PIO’s decision regarding denial of information, applicants can turn to the highest tier of the information bureaucracy, Information Commissioners, at the state and central government levels, who have the power to decide whether a PIO and FAA acted in accordance with the law, and to penalize any PIO 250 Rupees (roughly US\$4) per day up to a maximum of 25,000 Rupees or just over US\$400 for wrongfully withholding or destroying information, or giving incomplete or incorrect information. The Central Information Commission in New Delhi is the apex decision making body in the RTI-related bureaucratic universe.

### *III. Mimicking the Words and Ways of the State*

In August 2008, I began my research into the symbolic and material shifts in the imaginations and practices of citizenship, the state, and democracy that the RTI law represents. My project combined documentary research on legislative debates surrounding the Official Secrets and RTI acts with an ethnographic study of the everyday life of the RTI law, and I focused on three overlapping groups of actors: activists, citizen-users, and officials.

I entered the RTI field in New Delhi as a volunteer, working mainly with two NGOs that promote RTI education and usage among slum dwellers. I did specific projects for these organizations and assisted their employees in routine activities, such as awareness raising, filing RTI applications and appeals, and meeting officials. My volunteer work gave me access to RTI users of various class backgrounds, to the larger network of activists, and also to PIOs and Information Commissioners. Between August 2008 and August 2010, I interviewed several activists, applicants, lawyers, officials, and public intellectuals, and par-

36 Government of India, note 33, p. 7.

37 These organizations include, for instance, the Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Central Reserve Police Force, Aviation Research Center, Central Economic Intelligence Bureau, among others (Government of India, note 33, p. 21).

38 Government of India, note 33, p. 7.

ticipated in workshops, conferences, public hearings, information commission proceedings, social audits, and rallies connected to the RTI act.

One of the NGOs I volunteered for was *Parivartan* (Change), which was founded by Arvind Kejriwal, a bureaucrat-turned-RTI activist.<sup>39</sup> I first met Arvind at his home on a rain-soaked monsoon morning toward the end of August 2008. We discussed my research proposal and volunteering details over cups of hot, milky tea prepared by his mother. I found him warm and energetic, handling phone calls and work alongside our meeting without skipping a beat. He gave me useful suggestions about my research questions and also described a “right to food” project for which he sought my assistance. Parivartan was using the RTI law to expose corruption in the government’s Public Distribution System, which dispenses subsidized food to people living below the poverty line, but which is also notorious for not delivering what it promises. We agreed that working on this project would allow me to understand how marginalized citizens use the law to obtain entitlements from the state. Arvind also asked me to pick up a pamphlet about the RTI act from his office and to look it over carefully. It would be a quick read, he said, because the activists who drafted the law took pains to use simple and accessible language.

I obtained the RTI pamphlet later that day and began reading it on the metro ride home. While some parts of the law were straightforward, others were confusing. I was full of questions for Arvind at our next one-on-one meeting and sought clarification on the meaning of “public interest,” the exemption clause that allows the state to withhold information, and the RTI application and appeals process. Arvind answered my queries patiently but also advised that the best way to learn about how the law works and what its various clauses mean in practice was to submit an information request: “Just file an RTI application.” “About what?” I wondered aloud. “Oh, about anything,” replied Arvind. “MTNL [a government-owned telephone company] service, potholes in your neighborhood streets, anything at all” (field note, 24 September 2008).

I chose to tackle an issue at home. My grandfather, a retired civil servant, had made an out-of-pocket payment for an emergency surgery. He was covered by the government’s health plan and filed for reimbursement, but the health department had not processed his claim after nearly a year. “The government is dragging its feet because they know he is old,” my mother confided in me. “They are just waiting for him to die” (field note, 4 October 2008). We decided to make an RTI intervention.

I asked my grandfather what he wanted to say in his RTI petition. “That I am 91 years old and a retired government servant,” he began, establishing his social legitimacy and claim on state services, and proceeded to narrate in elaborate detail why he could not seek prior permission for an emergency surgery. I produced a cleaned-up version of his story on my laptop and ended the application by asking why his claim had not been processed after nearly a year (field note, 19 October 2008). My activist colleague, Nisha, took one look at

39 In this article, I use the real names of RTI activists Arvind Kejriwal and Aruna Roy, who asked me to do so in the interest of full disclosure. The names of the rest of my informants are fictitious.

my two and a half-page, single-spaced letter and told me to edit it. She also asked me to delete the final question that I had posed, “Why has no action been taken?” and word it exactly as follows:

1. Please give me the daily progress made on my application so far: on which date my medical claim application reached which officer and what did this officer do.
2. Please give me the names of the officers who were supposed to take action on my medical claim reimbursement and have not done so.
3. What action will be taken against these officers and by when?
4. By when will I get my reimbursement of medical claim? (Field note, 31 October 2008)

Why did Nisha instruct me to shorten this petition when the law did not prescribe any word limit? And why did she substitute my simply worded “why” question with four new ones? I did not quiz Nisha right then as she was busy, but followed her advice and mailed the now single-page application, along with the required 10 Rupee fee (US\$0.15) to the relevant PIO.

My perplexity was cleared a few weeks later when I participated in an RTI workshop organized for PIOs. Approximately 200 government officers, of whom barely a tenth were women, were in attendance. A senior civil servant opened the proceedings:

*For sixty years we were told not to give out any information—a continuation of the colonial mindset. [It is] not so now.... There is a lack of awareness among PIOs.... Their attitude seems to be: Find some exemption provision to deny information. This attitude must change.... Whatever might be the motivation of this law—whether it is grassroots activism or pressure from the World Bank—this Act is a milestone.... Everything **has** to be disclosed. (Field note, December 2008)*

This was followed by a rapid clause-by-clause exposition of the law by two male facilitators, until they reached section eight. This section details the exemption clause of the RTI Act, specifying when information may be legally withheld for national security, sovereignty, and related reasons. Despite the repeated message of the facilitators that the new bureaucratic ethos ought to focus on releasing information, not holding it back, they were now bombarded with questions about how PIOs could use section eight to reject RTI requests and avoid paying a penalty.

I found this discussion provocative, but also unsurprising. A PIO I had interviewed prior to the workshop told me that his was a “harassed lot” (field note, 14 November 2008). The PIOs are directed to take on RTI duties in addition to their routine work and are mandated to share information in a timely and appropriate manner; otherwise their salaries can be docked. A fine of 25,000 Rupees is no small amount for PIOs, many of whom are lower-level government employees. The senior bureaucrats I interacted with largely supported the law and welcomed *RTI ka zamana* (the age of RTI). However, as an activist commented, these upper-class elite officers are “free to take a liberal, positive attitude” because they are not held personally liable for nondisclosure (field note, 23 October 2008). For PIOs, however, the law has meant increased work, recordkeeping, and answerability to their bosses

and, ostensibly, to the public. Because the law affects them directly, PIOs often seek clarification about its various sections and especially about the exemption clause. Vineet, an NGO representative who ran a helpline to assist citizens in understanding the RTI law and in filing applications, told me that a large proportion of the calls he received were from PIOs seeking advice on how to either appropriately respond to information requests or deny them without breaking the law (field note, 17 October 2008).

At the above-mentioned workshop, I got a taste of the PIO interest in lawful nondisclosure. Among other questions, PIOs asked when they could label a petition “voluminous” or “frivolous and vexatious,” or “not in the public interest,” or a national security risk and reject it. Could they reject an application if it asked for information that did not exist in extant records but would have to be generated? Could they decline a query because it was noninformational? And could they refuse to answer “why” questions? I was surprised. The law did not exclude “why” or any other questions as “noninformational” and therefore not meriting a response.

Later that evening I met up with Sunil, an NGO colleague, and shared my bafflement: “What does ‘why’ have to do with anything!” Sunil smiled knowingly and explained that the law defines information broadly as “anything that exists in government records” in any form, including documents, files, images, and computer data.<sup>40</sup> However, many RTI applications are denied because the question a person asks cannot be answered given the form in which information is documented. Sunil gave me an example. If a person files an RTI application asking, “Why was my passport denied,” but there is no official record of the reasons behind that denial, her request can be refused because the information she asked for is nonexistent. She cannot exert her right because she asked an unanswerable “why” question. If there were a “noting” in her passport file that specified the reasons for rejection, then “information” would exist and she could access it. Hence, what gets recorded in files and how it gets recorded makes a difference. State representatives lean toward not documenting the reasons behind their decision-making. Why questions, therefore, run aground in the RTI world. Sunil’s explanation helped me understand the dynamics of the PIO workshop. I also realized that Nisha had reworded the why question on my grandfather’s application to prevent its rejection: There was probably no note in his health department file that indicated why his reimbursement was being held up.

Sunil continued. “The reasons why... should be recorded!” he exclaimed passionately and shook his head in frustration. “We have been fighting to have such information included in files.” I intervened: “Well, maybe you could pose the informational query in a more creative manner, without using ‘why’.” I mused about the possible ways one could phrase an RTI petition, quite like Nisha did, using what, who, and when questions. “But that just says that if you can use words and the English language better, then your petition will be heard,” interjected Sunil angrily. “The [RTI] law is not about the creative use of language, Anu!”

40 Government of India, note 33, pp. 2-3.

Even as he chastised me, Sunil admitted that this was indeed happening. State functionaries were compromising the spirit of the law by narrowly interpreting the letter of the law and miring it in technicalities. If people want information from the government, they have to appeal to it primarily in writing, in a formalized and abbreviated idiom that mimics statist use of words.<sup>41</sup> Vineet, who ran the RTI helpline mentioned above, had told me earlier that a simple RTI petition is not enough; people must use certain “key phrases [and] the right language” (field note, 17 October 2008). He and other activists I worked with instructed applicants to format their information petitions in a formulaic manner, using institutionally appropriate language and asking a standardized set of what one of them called “magical questions” (field note, 3 February 2009), quite like the ones I had been told to pose on my grandfather’s application.

Many RTI users I interviewed narrated their cases and complaints against the government in great detail. Their stories, like my grandfather’s, partook in broader criticisms of governmental failure and corruption that suffuse the Indian public sphere.<sup>42</sup> RTI applications constitute a recent form these criticisms take, through which people can grumble against the state and rightfully demand redress. Bureaucrats, however, tend to treat these applications as formulaic and concise petitions made by supplicants to a higher power, and not as creative critiques of that very power. The rich intricacies of my grandfather’s case, which he composed into a moral story about his career in the government, retirement, old age, ill health, and claims on the state, had no place in his official RTI letter. That letter had to be a dry and standard document that spoke to the state in its own specialized language. Walter Benjamin blamed the thin and abbreviated information age for a decline in the art of storytelling;<sup>43</sup> the technocratic narrowing of information under neoliberalism deals it a further blow.

The neoliberal emphasis on formalized “good governance” bureaucratizes and juridifies the workings of transparency. The language, interpretation, and procedures of the law become ends unto themselves. This focus on technical details tends to work against the more expansive popular agenda for state openness, inclusiveness, and accountability that MKSS and other activist groups strive for. Vineet told me that 60 percent of the RTI appeals made to Information Commissioners in Delhi are rejected on meaningless procedural grounds; for example, appeals are not typed or not written in English, or lack an index of the papers attached or a list of dates. He claimed that state’s fixation on such bureaucratic minutiae has given new life to lawyers in Delhi, who compose suitable RTI applications and appeals for those who can afford them (field note, 17 October 2008).

41 There is an RTI call center in the eastern state of Bihar, where citizens can call in with their information requests, which are recorded and treated like written applications.

42 *Akhil Gupta*, *Blurred Boundaries, The Discourse of Corruption, the Culture of Politics, and the Imagined State*, *American Ethnologist* 22 (1995), pp. 375–402; *Aradhana Sharma*, *Logics of Empowerment, Development, Gender, and Governance in Neoliberal India*, Minneapolis 2008.

43 *Walter Benjamin*, *The Storyteller, Reflections on the Works of Nikolai Leskov*, in: Hannah Arendt (ed.), *Illuminations: Essays and Reflections*, New York 1969, pp. 83–110.

Official insistence on formal rules and words in the context of the RTI law normalizes statist languages of protest. It bureaucratizes social lives and activism, forcing ordinary individuals to become competent in a specific kind of technical literacy: “official-ese.” The law acts as a governmental tool, dispersing “modalities and spaces of rule”<sup>44</sup> across society. This proliferation of cultures of audit and expertise<sup>45</sup> promotes activist citizenship of a documentary sort. The law’s formal textual workings also tend to advantage middle- and upper-class “citizen-auditors” who have the requisite bureaucratic literacy, economic and cultural capital, as well as time to navigate the RTI world. As one of my elite informants commented:

*[The RTI law] has more power to work at the middle-class level: the people who know how to do this, the people who persist. The man who is uneducated...has to depend on somebody who can file an RTI form.... Even educated people have difficulty...in how to phrase questions.... I think [RTI] is going to be far more effective in the middle-class sector than anywhere else. (Field note, 17 April 2009)*

Those not fluent in statist words and ways, regardless of their formal schooling, have to rely upon others, like NGO workers and lawyers, to tackle the state’s information labyrinth.<sup>46</sup> And those subalterns who have neither bureaucratic literacy nor contacts with NGOs or activists face obstacles in exercising a right that was, ironically, enacted in the name of empowering the ordinary citizen or *aam aadmi* (common man). The law’s increasingly technological workings, in other words, can undermine democratic inclusivity and participation.

Interestingly, while officialdom insists that people must learn the language of the state and rigidly follow rules to access information, it is transforming its own recording and communication practices in order to thwart disclosure. By changing what they document and how, state functionaries effectively alter records and, hence, the substance of information that may be available to the public. Predictably, therefore, government files and documentary practices have become more fetishized and fought over in the RTI age.

44 Chalfin, note 12, p. 91.

45 Timothy Mitchell, *Rule of Experts, Egypt, Techno-Politics, Modernity*, Berkeley 2002; Marilyn Strathern (ed.), *Audit Cultures, Anthropological Studies in Accountability, Ethics and the Academy*, London 2000.

46 Martin Webb, *Success Stories, Rhetoric, Authenticity, and the Right to Information Movement in North India, Contemporary South Asia* 18 (2010), pp. 293–304.

#### IV. *The State in a Mode of Erasure*

Written records are deeply entangled with state power.<sup>47</sup> Files are iconic of rationalized bureaucratic administration,<sup>48</sup> and play an important role in materializing the state as a vertically dominant entity.<sup>49</sup> The Indian state's *kaghazi raj* (paper rule),<sup>50</sup> put in place by the British, relies on an elaborate system of organizing and circulating files. These "paper shrines", built with the occult-like force of official inscriptions, are capable of manipulating lives.<sup>51</sup> "To most laypersons the government file is a musty compilation of important papers. Almost all of India, even the illiterate...knows the significance and power the file holds to control the destiny of many people".<sup>52</sup> Official files, as mysterious fetish objects, symbolize and carry hidden and inexplicable powers. Their religious-magical force is sustained by the authoritative and just-out-of-reach nature of the "paperealities"<sup>53</sup> they construct. The RTI law politicizes these files by promising to make their contents knowable.

Every government file contains two sections: the substantive papers relating to a particular project on the right-hand side, and official notes, written or typed, on the left. "File notings" constitute a specific form of statist writing, documenting the flow of work between different levels of a departmental bureaucracy, the opinions and oral deliberations of functionaries at each level, and the final decision on a particular issue and its implementation process. The British created this noting system for "internal transparency and oversight",<sup>54</sup> not public accountability. The Official Secrets law protected the identities, written recommendations, and acts of colonial administrators. Signed or initialed bureaucratic notes carry a different significance, however, under transparent postcolonial democracy. File notings become a dangerous and unsecured paper trail for bureaucrats—a potentially enduring record of their past actions and communication, which can reveal the why, who, and how of state decision-making to citizens.<sup>55</sup> The very thing that enacts state verticality, sovereignty,

47 *Foucault*, note 16; *Gupta*, note 13, pp. 167–192; *Hull*, note 13, pp. 287–314; *Richard Saumarez-Smith*, *Rule by Records, Land Registration and Village Custom in Early British Panjab*, Delhi 1996; *Scott*, note 30. I do not want to suggest, however, that state authority is exerted through written texts alone (*James Collins/Richard K. Blot*, *Literacy and Literacies, Texts, Power, and Identity*, Cambridge, 2003).

48 *Jack Goody*, *Logic of Writing and the Organization of Society*, Cambridge 1986; *Weber*, note 14.

49 *Gupta*, note 13; *Hull*, note 13; *Riles*, note 13; *Scott*, note 30; *Aradhana Sharma/Akhil Gupta*, Introduction, *Rethinking Theories of the State in the Age of Globalization*, in: *Aradhana Sharma/Akhil Gupta* (eds.), *The Anthropology of the State, A Reader*, Malden 2006, pp. 1–41.

50 *Hull*, note 13, pp. 293–295.

51 *Guha*, note 15.

52 *Aruna Roy/Nikhil Dey*, Taking the Life out of the Right to Information, <http://www.hindu.com/2006/07/24/stories/2006072402411000.htm> (last accessed on 24 July 2013).

53 *David Dery*, "Papereality" and Learning in Bureaucratic Organizations, *Administration and Society* 29 (1998), pp. 677–689.

54 *Baviskar*, note 21, p. 18.

55 The materiality and portability of government records also gives rise to an informal paper economy where counterfeit state documents and inscriptions circulate. *Das*, note 13, shows how these



and mystique when hidden—an official note—can threaten to unravel state reason and power when exposed.

Predictably, the bureaucratic establishment in India fought to keep notings out of the RTI act. The activists who drafted the act pointedly used the phrase “including file notings” when defining information, but it was deleted in the version of the bill debated and passed by the parliament.<sup>56</sup> Activists nonetheless believed that notings were unquestionably covered under the law. The state agency charged with implementing the RTI legislation, however, declared that notings do not count as public information because they record “internal” bureaucratic discussions on an issue prior to a final decision.<sup>57</sup> Citizens appealed to information commissions, which upheld the activist interpretation that notings constitute a “paper trail, vital to establish a chain of transparency and accountability,” and excluding them was tantamount to “taking the life out of the RTI Act”.<sup>58</sup> In 2006 and 2009, officials tried to amend the law and take out notings but failed in their efforts; the battle, however, is far from over.

This bitter struggle over file notings reveals the accepted truisms regarding state records that underwrite India’s RTI law and the mainstream logic of transparency. This logic, as Gregg Hetherington argues, relies on a straightforward relationship between “the signifier and the signified, or between representation and reality”.<sup>59</sup> Files are assumed to faithfully reproduce backstage realities of statework and to serve as permanent inscribed chronicles of administrative facts and oral decision-making. Official notes, moreover, are sanctified as stand-ins for state officials; they give power a face. People can get a hold on the state and rein-in arbitrary power by accessing files and notings. That, at least, is the presumed ideal.

In practice, however, bureaucratic documents rarely function as unchanging and legible stores of administrative work, disinterestedly constructed through rational rules. Even bureaucrats know and decry this, as the following memo, circulated by the vice chairman of the Slum Department of the Delhi Development Authority, makes obvious:

*Not much care is being taken for proper up-keep of files and papers. Many times files become so bulky that corners of pages are torn and previous notings become totally illegible. In the majority of files, the correspondence and noting portions are not page numbered, leading to a situation where any paper can be taken out if somebody had malafide intentions.*<sup>60</sup>

documents reify modes of state power but also undermine the original force of the state’s signature.

56 Singh, note 3.

57 Singh, note 3.

58 Roy/Dey, note 52.

59 Hetherington, note 7, p. 47.

60 Tarlo, note 13, p. 120.

Where files are malleable, notings can obfuscate. Matthew Hull elaborates how representatives of the Pakistani bureaucracy inscribe notes so as to avoid personal responsibility. They confuse agency by using passive voice and quoting words from previous notes rather than naming particular individuals.<sup>61</sup> They duplicate a certain mode of writing rather than referring to a specific decision-maker. Thus, notings operate as authorless bureaucratic texts and reproduce a mimicked and enclosed knowledge economy where agency, intentionality, and originality are mystified.

The internal administrative scripts of Indian government bodies are now under the public gaze, and officials are altering the form and content of file notings to further complicate legibility, authorship, and accountability. A mid-level government employee told me in confidence that instead of writing detailed comments on note sheets included in files, some of his coworkers use separate notepads that circulate alongside files but are not included in the official record (field note, 4 February 2009). Neel, a researcher who was part of a study on the impact of the RTI law, reported during a meeting that officials increasingly write notes on sticky papers, which can be removed; he called this the new “Post-it” culture of bureaucracy. Neel added that even when officials inscribe and initial a note on a note sheet, they often write “see me” or “discuss with me.” Discussions largely happen in person or over phones and what gets recorded in the file is the phrase, “seen, discussed, deliberated” and the final decision. Aruna Roy, a prominent RTI activist and former bureaucrat, who was in attendance at this meeting, criticized these practices: “If seen, what was seen! If discussed, what was discussed! Whenever there is a difficult decision to take, bureaucrats choose a scapegoat and make this person write the note” (field note, 20 March 2009). In other words, officials either use meaningless words that do not convey anything or calculat- ingly document information to frame particular individuals and circumvent responsibility for bad judgments. Both these procedural tactics largely preserve state inscrutability and unaccountability.

Thus, when ordinary bureaucratic records and forms of writing are redefined as “information” and become objects of public concern, they are made to morph. Government representatives are able to maintain state verticality, elusiveness, and unanswerability by simply changing how they communicate and what they record. Bureaucratic writing atrophies and remains only partly legible. The use of ephemeral Post-it notes in files or of the phrase “seen, discussed, deliberated,” as a chain of empty words that refuse to signify, guarantee neither the transparency of meaning nor the traceability of power.<sup>62</sup> Additionally, the em-

61 Hull, note 13, pp. 304-307.

62 Derrida, note 18; *Rosalind Morris*, Intimacy and Corruption in Thailand’s Age of Transparency, in: Andrew Shryock (ed.), *Off Stage/On Display, Intimacy and Ethnography in the Age of Public Culture*, Stanford 2004, pp. 225-243.

phasis on oral deliberations, in-person or over the phone, which often go unrecorded, makes official notings and files even more partial and evanescent.<sup>63</sup>

These instances force us to contend with the mutuality of and exchange between writing and orality in administrative rule.<sup>64</sup> Writing is commonly understood as the script of the state because of its supposed certitude in conveying meaning, portability, and permanence as a mode of recording information. However, a singular focus on the fact of writing occludes the form and content of official inscriptions and how they intertwine with spoken words to enact state authority. The examples I have recounted demonstrate that ephemeral forms of writing and orality work in tandem to keep state power arbitrary and opaque. Administrative writing, albeit never entirely intelligible, can signify even less as government documents are made accessible. And orality's "jelly fish like"<sup>65</sup> quality—manipulable and fleeting—makes it valuable for exerting bureaucratic state power. Orality is not just a powerful mode of antistate resistance and horizontality as James Scott asserts in his historical study of anarchic Southeast Asian hill societies;<sup>66</sup> it can equally well serve to enforce hierarchy and subvert substantive democratization when used by those in power.

Vanishing bureaucratic scripts and atrophied records, which are rendered more powerful for what they do not say rather than for what they do, ensure that the state continues to be spoken and written under erasure in the era of transparency. Accessing a file in this context becomes akin to making one's way through more puzzles and fictions<sup>67</sup> rather than following a certain path to the truth of state authority and reason. The face of state power is more liable to disappear just when you think you can grasp it through its records. This perpetual deferral makes the work of citizens, particularly activists, difficult. They must learn statist languages and simultaneously fight to transform them. RTI activists demand literality: faithful documentation of oral discussions and meticulous notes that make bureaucratic realities and authors unambiguously present and the state decipherable. This, however, is proving difficult to achieve given the very nature of bureaucracy and sovereign state power, as I next discuss.

## *V. State Power and Transparency: Concluding Thoughts*

I received an initial reply to my grandfather's RTI petition within two weeks, informing me that it was being forwarded to the correct PIO. Around two weeks later I got a letter from the appropriate PIO requesting some case-related details, which were, in fact, already included in the original document. Interpreting this as an object lesson in official foot-drag-

63 While phone records can be retrieved, the content of phone or in-person conversations is less accessible unless they are intentionally recorded through deception or other means.

64 *Collins/Blot*, note 47; *Gupta*, note 13.

65 *Scott*, note 30, p. 230.

66 *Scott*, note 30.

67 *Tarlo*, note 13, p. 70.

ging, I wrote a frustrated but proper response restating the required facts and my four questions. After nearly eight weeks, well past the 30-day deadline for PIOs to respond to RTI queries, a health department functionary told us over the phone that my grandfather's reimbursement had been approved and would be disbursed after the new federal budget was passed in February 2009. The payment arrived in May 2009. Interestingly, whereas the RTI law helped my grandfather receive his entitled due in a "timelier" manner, it failed to deliver on his right to information. We did not find out the answers to the questions we had asked on his application, including the names of the officials who processed his file.

Many users of the law I interacted with had similar experiences. *RTI se kaam ho jata hai* (RTI gets work done) was a common refrain I heard. Activists also applauded the law's success as a "grievance redress" mechanism, but some felt that this undermined the larger aim of information disclosure. Limited improvement in governmental efficiency on an individual basis could dangerously trump the norm of state transparency, which, for many activists, is the main goal of the law. Ashish, for example, while discussing the findings of a national RTI-impact study then underway in 2008–09, expressed optimism about the reported increase in the number of RTI petitions. He saw this as a sign of growing public empowerment but stated that the ultimate measure of the law's success would be a decline in RTI queries (field note, 7 November 2008). This would happen when the government shared information proactively, thus rendering it unnecessary for citizens to use their right to information. The RTI law, in other words, would triumph when it obviated its own need.

This aim, as I have illustrated above, is proving tough to achieve in practice and is being subverted through procedural tactics and technicalities. State transparency in contemporary India is a checkered terrain, in part because of its transnational articulations with neoliberal development discourse. This discourse promotes a form of good democratic governance that is technocratic and instrumentalist. Governance, in the neoliberal imagination, concerns neither rule nor power but is reduced to administrative and judicial reforms. Democracy is promoted not for its radical potential but for the veneer of representation and legitimacy that it lends to antipoor austerity measures.<sup>68</sup> This seemingly apolitical, formalized approach conditions the workings of the Indian RTI law; it tussles with and constrains popular understandings of transparency as "engaged political activity"<sup>69</sup> aimed at fundamentally altering the institutions and modes of democratic governance.

The ground level dynamics of the Indian RTI act are paradoxical. The law, enacted in the name of the ordinary citizen, furthers cultures of expertise and audit among the public that are empowering for some but not necessarily horizontal or inclusive. It governmentalizes social life and fosters bureaucratized activism and procedural citizenship. It also ends up reifying opacity as the core of state power, as officials tactically alter their modes of de-

68 James Ferguson, *Global Shadows, Africa in the Neoliberal World Order*, Durham 2006; Hindess, note 22.

69 Hetherington, note 7, p. 61.

cision-making, communication, and documentation to confuse accountability and preclude information sharing.

By highlighting the inconsistencies and obstacles that arise in the workings of the RTI act, I do not wish to mark the exceptionalism of the Indian state or use it as a typical example of Third World corruption. Indeed, the Indian case has broader theoretical relevance for understanding transparency, secrecy, and state power. It reveals that secrecy is not a distortion of a liberal democratic state, but constitutive of it. My contention is that bureaucratic and sovereign modes of state power<sup>70</sup> are at odds with the ideal of transparent governance and subvert it from within.

Bureaucracy, as depersonalized, hierarchical, and rationalized rule, is premised on procedures and structures that keep the authorless governmental machine working precisely and predictably. This Weberian-type state body—where bureaucrats are entirely defined by their function, personal ties do not matter, and the public can access everything efficiently—is presumed normative by the neoliberal governance mantra. Indeed, every charge of corruption and every rating of countries on standardized governance and transparency scales reinforce the ideal bureaucratic state—streamlined, calculable, and impersonal.<sup>71</sup> This on-stage rationality, visibility, and liberality of bureaucratic bodies, however, is made possible by whisking arbitrariness, opacity, and illiberality out of sight. Lars Buur writes:

*On the one hand, bureaucratic institutions accentuate their rational side...in the form of transparent criteria.... The flip side of the transparency of bureaucratic institutions...is the public erasure of irrational actions and decisions.... This is done by hiding what goes on inside...through a whole range of naturalized and logical strategies.<sup>72</sup>*

Bureaucratic state power and transparency exert contrary pulls on each other. Transparency relies on making state representatives accountable for their actions by publicizing government paper archives that supposedly reveal how decisions were made and by whom. Agency and accountability run into trouble with the principle of anonymity, which also lies at the heart of rationalized bureaucracy and is reproduced through banal procedures that depersonalize authority. Making a bureaucratically organized state transparent through the very languages and rules that keep power faceless is bound to run aground at some point.

Furthermore, these languages and procedures can be bent at random by state agents to keep bureaucratic operations opaque. Arbitrariness, after all, is a key aspect of state

70 Wendy Brown, *Finding the Man in the State*, in: Wendy Brown (ed.), *States of Injury, Power and Freedom in Late Modernity*, Princeton 1995, pp. 166–196.

71 Gupta, note 42; Michael Herzfeld, *The Social Production of Indifference, Exploring the Symbolic Roots of Western Bureaucracy*, Chicago 1992.

72 Lars Buur, *The South African Truth and Reconciliation Commission, A Technique of Nation-State Formation*, in: Thomas Blom Hansen/Finn Stepputat (eds.), *States of Imagination, Ethnographic Explorations of the Postcolonial State*, Durham 2001, p. 173.

sovereignty. This prerogative or illiberal mode of state power<sup>73</sup>—what defines the *raison d'être* of a state—is “expressed as the armed force of the police or as vacillating criteria for obtaining welfare benefits”.<sup>74</sup> Random changes in bureaucratic policies and rules articulate the sovereign will of the state as much as spectacular displays of might. The Indian case reveals how procedural tactics and bureaucratic discretion allow for the routine exertion of sovereign state power; they are used by officialdom to reify its authority and water-down the RTI law. In fact, before this act was passed, a section of the bureaucracy argued that transparency was anathema because “government would become too rigid and rule-bound as no officer would like to exercise discretion which could later be questioned”.<sup>75</sup> On the one hand, officials want to preserve their authority to arbitrarily ignore rules, but on the other hand, they force the public to follow tedious rules in order to obtain information. Indeed, on 31 July 2012, the government issued new rules regarding the RTI law, which dictate that applications cannot exceed 500 words and appeals to the Information Commissions must contain all required documents in order to prevent delays or rejection.<sup>76</sup> Significantly, these rules were made in a nonparticipatory and opaque manner.

Secrecy and arbitrary discretion are not marks of bad or corrupt government, as dichotomous understandings of state transparency tend to assume, but of government-as-usual. Secrecy is the other face of the open, democratic state. Indeed, Weber proposed that “bureaucratic administration always tends to be an administration of ‘secret sessions’; in so far as it can, it hides its knowledge and action”.<sup>77</sup> And Indian officials who opposed the RTI law from the start argued that secrecy is “the bedrock of governance”.<sup>78</sup> These bureaucrats lost, but only partially. The connection between state sovereignty and secrecy is institutionalized in the law. Section eight of the RTI act excludes from disclosure any information that would risk the integrity of the nation, and the sovereign interests of interests of the state. This clause establishes sovereignty as the limit of transparency and as an exception; it cannot do otherwise.

The global regime of neoliberal governmentality challenges state sovereignty and verticality by attempting to downsize governments; by enabling certain modes of participatory and self-government; and by compromising, to lesser or greater degrees, states’ control over domestic policymaking.<sup>79</sup> Additionally, popular demands for state accountability and openness in India also contest state power by challenging governmental impenetrability.

73 Brown, note 71; Hindess, note 22.

74 Brown, note 71, p. 191.

75 Singh, note 3, p. 12.

76 Alope Tikku, Government Puts Limits on Your Right to Info, *Hindustan Times*, <http://www.hindustanimes.com/India-news/NewDelhi/Govt-puts-limits-on-your-right-to-info/Article1-911648.aspx> (last accessed on 24 July 2013).

77 Weber, note 14, p. 233.

78 Singh, note 3, p. 12.

79 Chalfin, note 12; Ferguson/Gupta, note 17.

The RTI law does augur danger for governmental secrecy, which has been in place for a very long time.<sup>80</sup> It threatens to respatialize the state's distinction from and domination over society by allowing those on the outside to question and partake in inside decisions. This gets to the heart of state sovereignty—that backstage, privatized recess that symbolizes the “why” of rule and the sheer “prestige of domination”.<sup>81</sup> This is the space where illiberality, arbitrariness, and unaccountability reign. It is this face of the state that citizens threaten to unravel and implode when they retrieve official records as information. Some escape hatches are needed if the state's sovereign prerogative is to be maintained in the age of participatory and transparent governance. The exemption clause in the RTI law, the expanding bureaucratic procedures that citizens must follow to actualize their right to information, and emergent modes of official communication and documentation that routinely frustrate disclosure, serve as those escape hatches; they prevent the transgression of the state–nonstate boundary and hierarchy, and keep the why and who of state power illegible.

80 Questioning the powerful is dangerous work. At least 12 RTI activists were killed between January 2010 and August 2011, according to the Asian Centre for Human Rights, RTI Activists: Sitting Ducks of India, <http://www.achrweb.org/ihrq/issue3-4/India-Sitting-Ducks-2011.pdf> (last accessed on 27 July 2013).

81 *Max Weber, Economy and Society*, Berkeley 1978, pp. 910–911.