Wrong Information
Right Choices?

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Not many people will recall that the Freedom of Information Act (FOIA) was passed in the United States of America in 1966, when Lyndon Johnson was the President, the Cold War had created a “national security” mania, and the anti-Vietnam War protests were singeing campuses across the country. Johnson publicly signed the Act, "with a deep sense of pride that the United States is an open society in which the people's right to know is cherished and guarded." But, as Bill Moyers, his Press Secretary at the time, reveals, “what few people knew at the time is that LBJ had to be dragged kicking and screaming to the signing ceremony. He hated the very idea of the Freedom of Information Act; hated the thought of journalists rummaging in government closets; hated them challenging the official view of reality.” Johnson’s concern arose from the fact that, in the 1950s itself, just after World War II, the American Society of Newspaper Editors (ASNE) had formed a Freedom of Information (FOI) Committee to battle government secrecy.

The “rummaging” journalists were trying to get past the smokescreen of national security that was routinely invoked to conceal all information related to war and defense spending, and they often found their way to a Democrat Congressman named John Moss. Moss had been appointed to a minor House Committee in 1953 when he decided he wanted to find out what a 'security risk' was. He discovered that a security risk was anybody the government wanted to brand as one, and would not even reveal how many of ‘them’ there were! So Moss and his team became a conduit for acquiring a wealth of information that should have legitimately been public from the start. When Moss realised that the problem was so widespread, he made up his mind that he was going to try to fix the problem. But it took him 12 long years to steer the Act through Congress. For these valiant efforts, Moss's own FBI file, recently obtained under FOIA, grew to two inches thick!

Over a century-and-half earlier, James Madison, the fourth US President (1809-1817), had said: “A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.” It is an irony that the Vietnam War lasted for 12 years for the US, to be followed by another 20 years of economic sanctions and embargoes, until President Clinton eased the sanctions in 1998 “to allow American investors in Vietnam to compete more effectively and to receive financial help from the US government.” As American journalists and analysts keep trying to unearth these linkages through successive US involvements in violence in Korea, Afghanistan, Iraq, and across the globe, President Bush is once again using national security as an excuse to clamp a lid on public access to information.

Nevertheless, the Freedom of Information Act was the first law that gave Americans the right to access the records of federal agencies. After the public uproar that followed the Watergate scandal in 1974, the Act was amended to force even greater agency compliance and forge opportunities for powerful public protest. For instance, in 1977, the

newspapers used the FOIA to break a story on how FBI chief J. Edgar Hoover had instigated a four-year investigation of women's rights groups. When the Department of Transportation was sued for information, the Ford Pinto car had to be recalled in 1978. As Vietnam War veterans groups began using the FOIA in 1979 to obtain records from the Department of Defense on defoliants used in Vietnam, Agent Orange became an issue of public concern. After Vice President Agnew submitted his resignation in 1973, law students at George Washington University forced the release of 2,500 pages of federal and state documents and filed a successful suit against him for tax evasion.

Recent revisions mandate that every federal agency maintain a FOIA web page. Thus, on the website of the Occupational Safety and Health Administration, there is a database of US businesses with the worst health and safety records who have been sent official warnings. Clinton EPA chief Carol Browner was ordered to restore files deleted from the office computer. A new book by Johns Hopkins Professor Piero Gleijeses discloses new information, retrieved through FOIA, about U.S. involvement in Angola as early as 1975. In 2000, the Justice Department was ordered to pay $355,000 in legal fees in a case relating to the FBI crime lab. But the Bush administration is now taking the stand that information will be withheld if there is a "sound legal basis" for doing so. This is an alteration from the previous test, instituted in 1993, which said FOIA applications should be complied with unless "disclosure would be harmful."

There are lessons to be learnt from the experience of the US, as Indian citizens and organisations attempt to enact and use the Right to Information Bill. The same processes of official secrecy, of virtuous statements conflicting with actual events, of citizens trying to democratise society while official agencies and legislators try to centralise power, are at work in both societies. As is well known, the initial demand for information in India was rooted in the agitation for relief work in drought-stricken Rajasthan and the subsequent struggle for wages, of which the Mazdoor Kisan Shakti Sangathan (MKSS) was the most insistent and articulate voice. But this struggle was not merely for information; it also represented the conflict between official and unofficial information. The instrument of the ‘Jan Sunwai’ – or public hearing – provided a platform for people to challenge and contest the claims of the government agencies.

This contestation was actually based on a structure of informality underlying the formal process; of people being active participants in gathering their own information to challenge the official records. Information was therefore, sought to enforce accountability and to obtain redress for wrong-doing by those in positions of power. This informal process was a product of large-scale community and mass organisation, as a form of assertion of the people’s own knowledge and power. Hence, there was a political imperative to the demand for information – of mass mobilisation and the growth of a social movement. As the imperative grew beyond Rajasthan, it took the shape of the National Campaign for People’s Right to Information (NCPRI). Many groups and organisations joined in an alliance and took up the common modality of the Jan Sunwai to bring to public notice the patently illegal behaviour of the State and its representatives.

Two major features characterised the growth of this social upsurge. One was the clear emergence of conflicts in both rural and urban situations, as the organised poor attempted to balance the power of the affluent who controlled the development expenditure, the mid-day meals in schools, the ration shops, and the service sectors of government. Thus, the struggle over information actually exposed the struggle between social classes. At the same time, there was the emergence of a vital debate to identify

who were common friends and common foes. In other words, the building of alliances required a healthy examination of who was asking for information, for what purpose, where did the real balance of power lie, was counter-information being generated, and was there a recognition of the political imperative that challenged the very basis on which society was structured? The Right to Information campaign was, thus, not merely about “information”; it also contained the germ of the idea of “right” information, as generated by people – and opposed to “wrong” information, as given by official agencies.

As this perception of wrong and right information grew, it also threw up a number of other possibilities between which different social actors could choose. For instance, a possibility was the one explored by the “magic wand” school of thought. In this school, individuals and groups filed requests for information about why certain public services had not been provided. It was as if a ‘magic wand’ had been waved, because very shortly thereafter the concerned agencies would become active in providing the service, and the request for information itself would become redundant. Thus, there was no need to mobilise to collect counter-information, nor, in fact, to even get the information originally asked for. What was sufficient to record was that the previously incomplete work had been performed and some individuals had been able to get their problems solved. This was taken to be a demonstration of the effectiveness of the “right” to information.

The second option was for individuals to apply for information that should have been in the public realm in the first place, and then offer the same information in the public domain – mainly through the media. Here, there were some attempts to produce elements of counter-information, as in the case of an analysis of how public lands were being used for private purposes. But, again, there was no need for social mobilisation. The initiators would hope that making the information public would, by itself, generate a wave of public indignation, and subsequent self-corrective action by the agencies concerned. Thus, there was a strong moral sense of outrage associated with this possibility of using the Right to Information for a social purpose. There was a conviction, probably born out of the manner in which the national movement for freedom has often been portrayed, that this sense of moral purpose would infuse the nation and induce a social demand for reform and remediation.

A third emerging option has been the request for selective information of a particular kind, essentially for maintaining privilege. Thus, sundry resident welfare associations have been asking municipalities for the details of the amount spent on slums, as “evidence” of how the tax-payers’ money is being ill-spent. Contractors have attempted to use the law to elicit information about their rivals’ tender bids in order to undercut the competition. Government agencies have also tried to use the response mechanism to reinforce a particular kind of social imagery that blames the poor for being victims, holding them responsible for all the ills of society. This possibility of using the Right to Information not only asks for specifically ‘wrong’ information in a one-sided manner, it also seeks to dispense with the kind of mobilisation required for generating the ‘right’ counter-information.

Now that the Right to Information Act is finally on the anvil, and the legislature and executive have tried, much in the manner of the Johnson and Bush administrations in the US, to modify the popular Bill for their own purposes, it would be relevant to ask, which of the above possibilities do these modifications encourage? And, by default or

design, which ones are actively discouraged? Various public-spirited analysts have described several ‘positive’ aspects of the Act, including universal application, empowerment of all citizens, reasonable fees, public interest to override possible harm, *suo moto* and web-based disclosure. At the same time, some of the ‘diluting’ amendments are: the fundamental “right” has been ignored; information can only be sought by ‘citizens', and not ‘persons'; all violations are treated equally; the political establishment appoints the Commissioners; third parties have been allowed right to appeal; intelligence and security agencies are exempted; and the *suo moto* disclosure provision has been dropped for proposed development projects; as has been ‘sensitive’ and commercial information.

Each one of the above dilutions gives some idea of the direction in which lawmakers and enforcers want to push the Act. By ignoring the Constitutional Right and empowering only citizens, the message that is being sent out is that individual action will be favoured over organisational ones. Similarly, the reinforcement of political control and treating serious violations by officials on par with unintended ones, indicates that systemic reforms are not going to be encouraged, but service delivery will become the norm against which the supply of information will be judged. And the numerous restrictions placed on disclosure demonstrate that the larger public interest will not be the actual consideration when decisions are taken at the discretion of the authorities. Thus, when looked at closely, the above amendments seem to imply that the very bases on which Right to Information became a powerful political instrument for accountability and participation in governance, have been eroded in the structuring of the Act itself.

The strong lesson that comes across is that, in future, those who politically mobilised for the Act to be enacted are likely to be undermined by those who want to selectively use it for individual gain or to protect their privileged positions. Over three decades after he managed to steer the FOIA through the US Congress, when John Moss was honoured for lifetime achievement by the California First Amendment Coalition, he offered a special insight, "*But I also learned that you can't just say that the job is done and walk away. There should be a very major effort right now to build on strengthening freedom-of-information rights. We gave them some tools that have made it easier for people to do some things. But like any other job, keeping the public government open to the public will never be complete.*" Serious Indian activists need to reflect on how the Right to Information is being eroded at its very inception, how the opportunities being offered by the Act are being grasped by those with their own private interests, and what is the likely strategy for the future.

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