

Paranoia, Vested Interests and the Indian State

By Bharat Karnad

The official Secrets Act on the Indian statute books mocks the democratic pretensions of the State and nullifies the concept of public accountability of the government to the people. A Freedom of Information Act would be a sensible thing for India to subscribe to.

Introduction

Prominent among the enduring legacies of the British Raj in India is the security phobia. In every day life, it is manifested in such things as the signs prohibiting photography placed in airport lounges and alongside remote culverts and bridges on country roads, or in the warnings by the cabin crew to passengers aboard aircraft landing, say at Bangalore, to keep their urge to use cameras firmly in check. Within Government, this phobia results in indiscriminate classification. Almost every piece of demi-official paper, however innocuous, is stamped 'secret' and rendered unfit for public discourse. The "thirty year"-rule, in theory mandating release, en masse, of official documents having served the prescribed sequestration period, is observed, if at all, in the breach.

Maniacal Suspiciousness

This is not a surprise. At independence, nothing changed by way of the apparatus of governance except that new political masters replaced the old. The colonial habit of mind of the Indian officialdom, reflecting, what George Orwell from his experiences in the subcontinent said was, "maniacal suspiciousness", survived in tact. While this attitude was perhaps understandable in alien rulers, it is intolerable in a free and democratic State as it is tantamount to treating citizens and taxpayers as enemy. But, this is precisely what has obtained. So much so, that even Parliament has no ready access to official documents. What information, sensitive or otherwise, is demanded by the various Standing Committees of the Lok Sabha and the Rajya Sabha is first suitably "sanitized" by the concerned Ministry or Department.

The Villain & Official Secrets Act

The villain-in-chief is the Official Secrets Act, circa 1923 (which, in turn, is derived from an Act of the same name legislated by Westminster in the 1890s, amended in 1911 and again in 1989!). Fifty odd years after the British departed India, and notwithstanding progressive loosening of the Act in the UK itself, this rather draconian law, from the point of view of the Constitutional Right to Information implied in Article 19 of the Indian Constitution guaranteeing the freedom of speech and expression, remains on the books in its pristine colonial form to mock the democratic pretensions of the State and to nullify the concept of public accountability of the government to the people.

The Heavy Blunderbuss

The trouble with the OSA, designed to distance the ruler from the ruled, is its omnibus character and, what the Second Press Commission (1982) referred to as, its "chilling effect on the freedom of the Press. "Urging moderation of this Act (which eventually was legislated in 1989) in the United Kingdom, Bernard Donoghue, a senior policy adviser to two British prime ministers, argued some

20 years back that the OSA was "the heavy blunderbuss...rarely used, but by its mere existence intimidating those who might contemplate communicating about government to the governed."

He went on to reveal the real reason for its popularity with political leaders once they come into power and with civil servants at all levels. It has "nothing at all do with secrecy or legitimate confidentiality," he wrote, in a signed article published in The Times (London), but with preserving "the convenience, or especially to avoid the embarrassment" of ministers, bureaucrats and the uniformed brass responsible for making decisions and implementing policies.

Secret Cover for Impropriety

How much stronger would be the motivation to retain the OSA in India where behind every government measure, contract and capital acquisition there seems to lurk a political scandal and a corrupt deal? The fact is the OSA affords an impregnable legal cover for all acts of omission and commission and the politicians who exploit the system in league with rules and regulations-versed civil servants, quite simply, cannot do without it. The operative principle here is: "What the people don't know wont hurt the governors"! It brings to mind Woodrow Wilson's observation that "Everybody knows that corruption thrives in secret places, and avoids public places, and we believe it is a fair presumption that secrecy means impropriety."

A Drain on the Economy

The costs of an opaque system of government with the OSA at its nub, which prevents sheer mismanagement from coming to light, are huge and unaffordable, especially for a poor country such as India perennially in dire economic straits. Rajiv Gandhi's damning statement at the 1985 centenary celebrations of the Congress Party that only 15 paise of every rupee spent on development and social welfare actually reaches the people, with the rest going into the upkeep of a vast bureaucracy or is lost through "leakage" and "wastage", only hints at the problem. Considering that it was a serving Prime Minister who revealed this, it is as grave and direct an indictment of the system as can be imagined.

Transparency in official decision making facilitated by a formal and separate Freedom of Information Act would, of course, prevent the routine mismanagement and misuse of the system by those manipulating the levers of power and for that very reason would be resisted by the current beneficiaries.

The Security Threat

Besides the vested political and bureaucratic interests opposed to any reforms, there is also, alas, the security consideration. The OSA, as originally adopted by the colonial government, was geared to warding off perceived external threats and to containing the nationalist demands, which last meant protecting the government and the processes of governance from scrutiny in order to limit the exposure of the system to risk from domestic dissenters. The means of holding India in thrall was the British Indian Army, which not only performed the constabulary role within the country but also acted as a ready expeditionary force in service of empire. The two roles conflated into institutionalized paranoia that begot the Official Secrets Act.

Guardian of Secret Non-Secret

It is another matter that in the dawning Informatics Age of satellites and Internet, of Global Positioning System and instantly accessible data-banks, the OSA, concerned at its core with keeping military secrets secret, is made irrelevant by advances in communications technology. Moreover, there is so much information in the public realm and available in the open literature that there is very little that is secret about any country, down to the disposition of its military forces and the quality of its weapons inventory.

Indeed, such is the "technological inter-penetration" of the region that Pakistan buys six meter resolution imagery of the India-Pakistan border areas picked up by the Indian Remote-Sensing Satellite and marketed worldwide on behalf of the Indian Space Research Organisation by an American Company based in Virginia. Such photographs are sufficiently clear to indicate a buildup of forces and other military activities by, and the location of major military installations in, either country. More powerful American and Russian satellites capable of less than one meter resolution are even more prying.

In this context, the point of an OSA is not that it keeps away information from adversaries but, as a Report of Workshop held in the early 1990s says, that "excessive secrecy about defense-related matters has precluded informed debate and understanding of military issues."

OSA keeping Citizens at Bay

In the larger sense, the Act successfully keeps the knowledge of how government works and about how official decisions are made, from the people, the worst-affected being those at the grassroots level fed up with non-performing agencies and unresponsive local government and administration. These are worries central to the campaign in the country -- progressing albeit only in fits and starts - - to realize freedom of information, either as a separate Act legislated by Parliament or as an amendment to enlarge Article 19 of the Constitution.

The ruling Bharatiya Janata Party in its 1998 election manifesto in its "Agenda for Institutional Rejuvenation", promised "concrete steps to promote transparency in the functioning of Government". While not offering a Right to Information Act as such, the Party said it would "Enhance public access to information to the maximum extent feasible; Review laws and regulations concerning confidentiality; and Introduce social audit of development programmes, especially in rural areas."

Unkept Promises

In the early months of the BJP Government, the Home Minister, L.K. Advani, made sympathetic noises that were echoed by the Minister for Information and Broadcasting, Sushma Swaraj. But very little has transpired beyond these words in part, perhaps, because of the compulsions of coalition politics. Smaller parties and own party leaders have to be kept humoured, which, in essence, requires a studious turning of the Nelson's Eye to instances of ministerial pelf and peccadilloes. In any case the BJP this effort did not take off at all.

National Front Government

Something similar happened to an earlier political initiative, this time by the National Front Government. In the run up to the 1989 elections, it committed itself to open government and as a corollary offered to amend the Constitution to "ensure the citizen's right to information" and with

this in mind to "suitably" amend the OSA. The incoming prime minister, V.P. Singh, soon after assuming power, spoke grandly of making "the Right to Information a Fundamental Right", called it "a basic human right" and went on to define it expansively as "specifically the right to seek, receive and disseminate information" and as a pillar of "transparent functioning of our Government".

In the strongest statement made by an Indian prime minister on the subject, Mr Singh debunked the basic premise of the Official Secrets Act which, according to him, was "The idea that all wisdom resides within the Government and that the Government knows best.." "The corresponding fear that the people will misuse information or cannot be trusted with it," he added, "is equally misplaced." On the core aspect of the OSA, Prime Minister Singh forthrightly rejected the contention that this law protected military secrets. Rather, "The veil of secrecy," he declared, was "not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgement." One of the reasons attributed for the defeat of the Congress Party in the preceding elections, it may be recalled, were the allegations of corruption and bribery concerning the Swedish Bofors gun deal flung at Rajiv Gandhi.

Succeeding Governments

The VP Singh regime lasted only a short while before the Congress Party returned to power. But because the latter perceived this Movement for a Freedom of Information Act as in some ways a reaction to, and directed at, the illiberal tendencies of the Indira Gandhi-led government of the Emergency period in the mid-70s, there was opposition within the Party to any such law being passed during P.V. Narasimha Rao's tenure and in the years following when the United Front Governments held sway, but at the pleasure of the Congress Party.

An Emerging Consensus

Whatever the political prospects for a Freedom of Information Act, there is a good deal of consensus developing on the issue. There is no question but that this right is not unconditional and certain critical matters concerning military plans would need to be kept secret. But as has been argued, by the likes of Soli Sorabjee, the Solicitor General, the details of the defense budget "and of transactions involving military hardware cannot totally be withheld". Nor, he feels, should information regarding "vital issues of peace and war" that may entail great sacrifice of wealth and human and material resources be denied to the public in case the government decides to engage the nation in war.

Freedom of Information as a Deterrence

From the security perspective, the freedom of information, if it is to be meaningful, will have to distinguish between what is a genuine defense / military secret whose disclosure would imperil national security, and information that will result in a mere military discomfiture. A large dose of catholicity in making this distinction far from hurting national interests may actually have a deterrent effect. Who is to say that the diligent tracking by Pakistani Intelligence agencies of the growingly decisive conventional military clout of India's three armoured strike corps, has not had a sobering effect on the Army Headquarters in Rawalpindi and, hence, on the government in Islamabad?

Be that as it may, but the Report of the aforementioned Workshop which involved a number of leading military officers, including the late Chief of Army Staff, General K. Sundarji, in fact

recommended that "In peace time not more than five percent of military information need be classified", with the proportion necessarily rising during any "pre-hostility" phase.

Greater Urgency for Transparency

Now with nuclear weaponisation underway in both India and Pakistan, in the wake of the May 1998 Tests, there is, if anything, a greater urgency to bring transparency into the national security policies of the two neighbouring countries. Nuclear weapons in geographically contiguous States pose special problems for mutual security. There is an even greater need for the two governments correctly to assess each other's nuclear capabilities, and even more, intentions. A wrong assessment by either may result in precipitate action and the torpedoing of stable bilateral relations promised by nuclear weapons by way of mutual deterrence. Too much secrecy, paradoxically, may lead to misreading the intention of the other side and thus to the destabilizing of an emerging delicate nuclear situation.

Looked at it this way, a Freedom of Information Act would be a sensible thing for both countries to subscribe to, failing which for India to go it alone and have it on the books soonest. It cannot hurt, it may even help in pushing Pakistan to emulate India.

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