RIGHT TO INFORMATION

Learning from the US's experience

SHAMSUL BARI *and* RUHI NAZ

THERE are obvious and big differences between the socio-economic and political conditions of Bangladesh and the US and the extent of their Right to Information (RTI) experiences. A good understanding of how the differences affect the operation of the law might help us assess the performance of our own RTI regime more objectively and foresee the course of its future evolution.

The US has recently observed the sixtieth anniversary of FOIA (Freedom of Information Act) and several in-depth studies and assessment reports on the operation of the law have emerged. A quick glance at some of them confirmed that there are distinct differences between the two countries, particularly in two areas: the category of users and the subjects of use.

When FOIA was enacted in the US, it was seen primarily as an instrument for journalists to serve as a government watchdog and promote government accountability. Bangladeshi journalists had a different expectation: They thought their information gathering from government offices will be made easier by this. But the reality was different. Journalists' share of information requests made to public authorities in both countries is rather small.

In the US, FOIA's user base has evolved over the years to encompass a diverse array of organisations, entities, and individuals who use the Act for a wide variety of purposes. They include lawyers, non-profit organisations, academic researchers, hospitals, political committees, hedge funds, government agencies and private individuals.

One study found that the news media made only 7.6 percent of all FOIA requests. It also found commercial businesses to be the biggest users, accounting for 55.7 percent of all requests. This includes "law firms" which alone account for 16.7 percent of requests. Private individuals are the second biggest share with 20.1 percent. The share for non-commercial organisations is 7.5 percent and universities account for 4.5 percent.

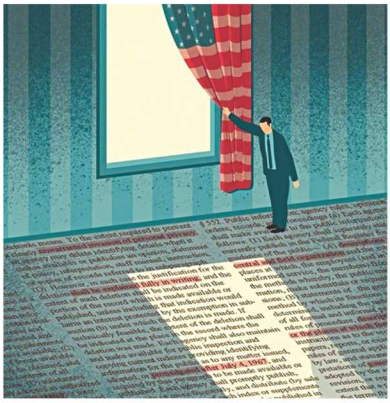
Among "news media", the largest user is the *Associated Press*. Others include the *Wall Street Journal*, *Bloomberg* and the *New York Times*. If the first three agencies are excluded, the percentage of FOIA use by news media drops significantly.

The "commercial business" category includes all for-profit entities. This group constitutes 11 percent of all FOIA users. They specialise in financial data and their requests are directed exclusively to the Securities and Exchanges Commission (SEC), which seeks to regulate the capital market. In fact, 79 percent of all requests to SEC, numbering 136,858 in the last one decade, were made by such commercial houses.

The "non-commercial" category includes non-profit NGOs, political committees, government agencies, and the offices of elected officials. Political committees include the three Democratic Political Committees at the national level, which filed 16 times more FOIA requests in recent years than their Republican counterparts. It is interesting to note that the volume of requests made by the political committees is comparable in size to that of the top news outlets.

FOIA use by political committees is a unique feature in the US. Most of the requests from both sides relate to research on opposition candidates. The primary interest is to dig out negative information on the opposition, from presidential candidates to those running for local offices.

The non-profit category includes two investigative organisations dedicated to government accountability (Judicial Watch and Cause of Action), one labour union (The American Federation of Government Employees), an agency advocating for animal rights (PETA), and one that litigates to defend civil liberties (ACLU).



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"Universities" include both academic and non-academic entities within a university (e.g. investment office, university hospital, etc.). "Individual" requests are those that were not explicitly requested on behalf of an organisation.

Among universities, George Washington University and University of Illinois are the main users. The former makes far more requests than any other university because it is the home of National Security Archive, "the world's largest non-governmental collection" of declassified US documents. The University of Illinois requests come primarily from the Illinois State Geological Survey, a geological and environmental research institute that is separate from the university's academic departments.

Among the recipients of these requests, the top five are: the SEC (115419), the Department of Defence (30371), the Environmental Protection Agency (20721), the Department of Veterans Affairs (13418), and the Food and Drug Administration (9394).

The Obama administration, in its final year, spent a record USD 36.2 million on legal costs defending its refusal to turn over federal records to FOIA requesters. The number of lawsuits filed by news media in this regard surged during this time. They were led by the *New York Times*, the Centre for Public Integrity and *Associated Press*. The latter settled its 2015 lawsuit against the State Department for not disclosing files about Hillary Clinton's time as Secretary of State. It received USD 150,546 to cover part of its legal fees.

In fact, despite President Obama's pledge that his would be "the most transparent administration in history," his administration was criticised for censoring FOIA requests. It spent a record USD 478 million answering complaints and lawsuits.

The administration employed 4,263 full-time FOIA employees across more than 100 federal departments and agencies. It released all or parts of records in 91 percent of requests. More than 125,000 sets of data were posted on a government website, data.gov. The president instructed that the US should not withhold or censor government files merely because they might be embarrassing. One government official claimed: "When it comes to our record on transparency, we have a lot to be proud of. And frankly, it sets a standard that future administrations will have to live up to."

It is difficult to foretell how President Donald Trump's administration will relate to FOIA or other transparency measures. Trump has not expressed any views yet about transparency. It is known that he required his private-business employees and presidential campaign advisers to sign non-disclosure agreements, barring them from discussing their work. His campaign had barred some mainstream news organisations from campaign rallies and his administration has barred selected media houses from White House press briefings. He also broke with tradition by refusing to disclose his tax returns.

Readers acquainted with this column would easily appreciate the differences between the Bangladesh RTI regime and the US regime above, more particularly those relating to user base and purposes of use.

We can draw some brief conclusions on the differences. One, the influence of socio-economic and political realities on the use of the law is unavoidable. The RTI regime in Bangladesh will surely evolve over time as the country moves up the development ladder.

Two, progress in the implementation of the Sustainable Development Goals will increasingly spur the middle and upper classes to use the RTI mechanism. There would be a need for commercial houses to provide RTI support services to them, as in the US. NGOs/activists could already spearhead the process by adding a commercial window to their existing voluntary services.

Three, as awareness about the multifarious use of the law grows, and commercial houses emerge to assist fee-paying clients, the Information Commission and public offices must be prepared to meet the requirements. Learning from experience of other nations would help. Top government leaders should be prepared to provide direction.

Four, the present user base of RTIA in Bangladesh will continue to be individual-centric till people realise its importance for government oversight. The process of change can be hastened only by concerted efforts of citizen groups and other stakeholders, including the news media.

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PROJECT SYNDICATE

Can US states right Trump's wrongs?

BARRY EICHENGREEN

US President Donald Trump, with the help of a Republican-controlled Congress, is undermining many of the fundamental values that Americans hold dear. He is jeopardising their access to health care by seeking to repeal the 2010 Affordable Care Act ("Obamacare"). His budget proposes massive cuts in everything from early childhood education to food stamps and medical research. His tax reform plan, and especially its much lower top rate for "pass-through" business income, implies significant further redistribution of income to the wealthy.

Most recently, his misguided decision to withdraw from the Paris climate agreement jeopardises America's global standing. Worse, it puts the health and welfare of the planet at risk.

This is a good time to remember that the United States is a federal system, not a unitary state with an all-powerful central government (think France). Its system is enshrined in the Tenth Amendment of the US Constitution, which stipulates that all powers not expressly assigned to the federal government are "reserved to the states."

Traditionally, states' rights were invoked by southern states to defend slavery, and then nearly a century of Jim Crow (the legal framework for racial segregation), from federal interference, thereby preserving southern business owners' and farmers' control of their black labour force. More recently, socially conservative states have appealed to the Tenth Amendment to oppose progressive legislation and the expansion of federal powers more generally.

Now the tables have turned. Can Americans who oppose the contraction of social programmes and revocation of progressive federal legislation use states' rights to counter these trends?

Consider environmental policy. California already has its own relatively stringent standards for vehicle emissions. Fourteen other states have adopted those standards, which therefore cover 40 percent of the US population. Auto companies can't afford to produce two different sets of cars for states with strict and lenient emission rules. So California could well dictate emissions standards for the country.

Moreover, one can imagine California signing voluntary climate deals with China and other countries in an effort to restore the culture of oversight and accountability of the Paris accord. Indeed, the state's cap-and-trade carbon programme is the model for the carbon-trading scheme that Chinese officials are currently considering. It is worth recalling that California is the world's sixth largest economy, a fact that makes it a plausible interlocutor for environmentally conscious countries.

After that, however, it gets harder. The California State Senate just passed a bill to create a single-payer health plan without specifying how to pay for it. One possibility is a 15 percent payroll tax. Another is to plow Medicare dollars provided by the federal government into the plan. But it is unclear whether either approach is politically viable.

Like the residents of other "blue" (Democratic) states, Californians clearly prefer more spending on education and social services. The problem is that they are already subject to some of the highest personal income and business taxes in the country. Groups like the Howard Jarvis Taxpayers Association warn that further increases could lead to a massive exodus of businesses and jobs.

Two of my Berkeley colleagues, Emmanuel Saez and Gabriel Zucman, have come up with a two-part solution to this problem. First, they would tax the global profits of companies on the basis of the share of their sales occurring in California. Second, they would levy a modest 1 percent wealth tax on residents with assets of more than USD 20 million. Critics will warn of a brain drain, but do we really think that a 1 percent tax would convince, say, the venture capitalist Peter Thiel to pack up and move to New Zealand?

There are two scenarios – one benign, the other vindictive – for what another of my Berkeley colleagues, Laura Tyson, has called "progressive federalism."

In the benign scenario, people will club together in different states on the basis of their preferences for big or small government, public or private provision of services, and international cooperation or isolationism. Mick Mulvaney, Trump's budget director, has himself made the case. "If you live in a state that wants to mandate maternity coverage for everybody, including 60-year-old women, that's fine," And if you don't, "then you can figure out a way to change the state that you live in" or alter "state legislatures and state laws," in Mulvaney's words. "Why do we look to the federal government to try and fix our local problems?"

In the vindictive scenario, by contrast, Trump and the Congress could seek to limit progressive states' rights. They could prohibit use of Medicare funds for single-payer health plans. They could refuse to renew the waiver of Environmental Protection Agency regulations that allows California to impose its more stringent emissions standards.

They could invoke the Commerce Clause of the Constitution as part of an effort to prevent states from signing climate accords with foreign countries. They could eliminate the federal deductibility of state taxes to increase the cost of funding state programmes. They could curtail federal support for public services in sanctuary cities and states with immigrant-friendly policies.

We Americans are about to find out in which US, benign or vindictive, we now live.

The writer is a professor at the University of California, Berkeley, and the University of Cambridge. His latest book is *Hall of Mirrors: The Great Depression, the Great Recession, and the Uses – and Misuses – of History*.

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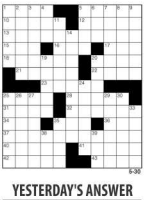

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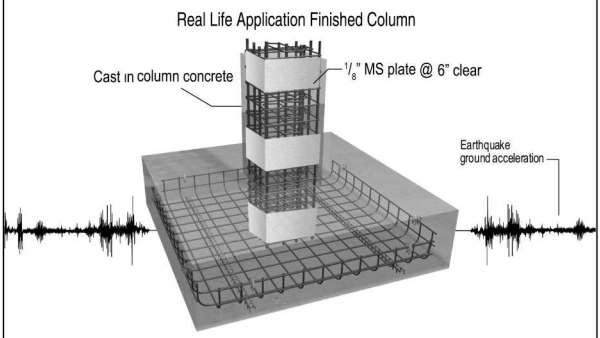

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