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Bill. The example of the South African 'Open Democracy Act' would be a good one to emulate, as its drafting had involved various levels of government, the judiciary, the police, as well as civil society groups.

### The Right to Information Laws in the States

In India, some of the states appear to have been more savvy. Right to Information laws have been enacted by the states of Tamil Nadu, Goa and Madhya Pradesh even though enactment of a freedom of information law falls under the residuary legislative competence of the Central Government, not being covered under any of the items listed in either the State List or the Concurrent List.

The state laws, however, give little reason for cheer, being more in the nature of populist and pre-emptive measures than sincere attempts towards open government. While the Tamil Nadu Act has come in for criticism as being too restrictive with all of 22 exceptions to the rule that all information should be accessible, the Goa Act was protested against as a measure to curb, not broaden media freedom as it provided for a levy of fine on 'obtaining' and publication of information 'malafide' or believed 'to be false'. The Madhya Pradesh Act, passed in May 1998 is still pending notification. This Act takes a new approach and lists out the matters on which information *can* be obtained. Besides this limitation, it also lists out a series of areas in which information can be refused.

### The Governmental Orders

The Madhya Pradesh government has passed a series of orders in several

government departments, giving the right to information to people. These orders, if made effective through proper implementation, could go a long way in giving access to the public in accessing information.

But there lies the crunch. None of the laws or the draft laws contains any provisions for publicising the laws and the systems of access. This has been, unhappily, left to the political will of the government which is predictably somnolent unless it is time to tom-tom achievements around election-time. Consequently, the benefits of Right to Information measures, executive or legislative, are conspicuous by their non-use. In Rajasthan, following the long and consistent struggle of the Mazdoor Kisan Shakti Sangathan, a non-governmental organisation working for rights of workers and peasants, the government notification under the Panchayat Act for allowing people to inspect documents of the panchayats, itself lay hidden from the public eye for many months. Even now, not many people are aware of the right, least of all the panchayats themselves.

### A Central Legislation Necessary

All this goes to point out that an early Central law is certainly needed to create and oversee a uniform system of access to information. For, this is a right to do with good governance and the polity in general, and cannot be left to the goodwill of different bureaucrats or governments in power. A Right to Information Bill introduced by a private member in the Kerala assembly was reportedly turned down. Individual initiatives at different levels, whether from small districts or from a cabinet minister in the union government will make openness in government and

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realisation of the many important rights which can be accessed through this, a long and tedious struggle. A Central legislation would also do away with the anomaly of a situation where a person cannot have the same rights of access to information in another part of the country where such a law has not been enacted. It will also relieve citizens from being at the mercy of executive orders which can be curtailed or withdrawn at any time

### Hopes Shattered

Hopes were high in the monsoon session of 1998 that a Bill would be introduced in Parliament, but with the Women's Reservation Bill and other legislative endeavours of a weak government having bitten the dust, the passage of a Right to Information law seems like a bridge too far. One can only hope that it does not become a victim of the shifting sands of present day politics.

*Ms. Abha Singhal Joshi is a lawyer and Co-ordinator 'Right to Information' Programme, of the Commonwealth Human Rights Initiative, New Delhi*

See  
reverse

Manuscript  
below.

# The Right to Information and the Right to Literacy

The real power lies in information that eventually leads to knowledge and action. In order to assert their right to information the citizens need to be guaranteed and helped to assert their right to literacy, education. By S.V. Raju

## Introduction

Information like air is everywhere. Whichever way you turn you are literally bombarded with information. Some caution you. "Go slow, men at work" says one sign. Warns another, posted on the gate of a house "Trespassers will be prosecuted". You buy a packet of cigarettes on which is printed the advice: "Statutory warning - Cigarette smoking is injurious to health" or on a scheduled drug "Warning : to be sold by retail on the prescription of a Registered Medical Practitioner only". At a busy street intersection the three lights tell you when you can cross the street and when not. Caution, warning or advice they are messages of do's and don'ts. Some you can ignore only at your peril. If you ignore the go slow sign the consequences could be immediate - you endanger yourself, those at work or the vehicle you are using can be damaged. You ignore the red light and cross you can at best get a few bones broken and at worst end up in the morgue. If you ignore the warning on the cigarette packet long enough, you could, over a period of time, end up with lung cancer. The warning on the scheduled drug if ignored by the chemist makes him liable for legal action if he has sold you

the drug without your producing a prescription.

There is one other, not so small, factor. You must be literate enough to be able to read other than of course the signals at the intersection. Even here you must know what the colours stand for! But that's another matter.

## Information is Power

This is what information is all about. You are informed, so that you can take appropriate decisions or informed decisions. Decisions taken on the basis of reliable information are generally more effective than those taken in the absence of information. Hence the phrase 'information is power'. It is a common human failing for people to keep information to themselves. It gives the holders of such information a sense of power. The shareholders of a company may suffer if a senior manager holds back vital information that has a bearing on the company's prospects; or a manager who does not share information with his colleagues or juniors in the mistaken belief that by holding information close to his chest he ensures his position in the organisation and enhances his job security. On the other hand when a government official or an

elected representative holds back information on the ground that releasing the information is not in the public interest, he harms the public good.

## Citizen's Right to Information

Hence, civil society instead of leaving this to chance or to the arbitrary whims of individuals and groups, devised the concept of the citizen's right to information. In many countries this is a legal right - though not yet in India. Nor for that matter in the United Kingdom despite a campaign promise by British Prime Minister Tony Blair that if the Labour Party was returned to power it would introduce freedom of information. The *INDEX on Censorship* (5th/98) drawing attention to the fact that as of now the British Prime Minister does not seem to be in a mood to legalise the right to information, also draws attention to the state of affairs in the European Union. An editorial entitled "Too many secrets" points out: "Disturbingly, the new institutions of Europe are similarly obsessed with obfuscation and secrecy. The six blank pages in this issue (*and there are six blank pages in the issue 5th/98- SVR*) draw attention to how the European Commission will protect its officials rather than acknowledge the findings of its own investigation."

### Secrecy : Protection for Wrongdoers

The reference is to an article entitled "Internal corruption in the European Commission" that has been banned from publication and the "INDEX to protect the journalist concerned is not able to publish this story". Once Mrs. Indira Gandhi answering critics about corruption in India wondered why everyone was so worked up. "Corruption" she said is after all a "universal phenomenon". So it would seem are "cover up of corruption and protection of the wrongdoers", "universal" phenomena! We have plenty of examples. Not a single politician has in the last fifty years of independent India been convicted on a corruption charge!

### Right to Information and Freedom of Speech

Article 19 of the Universal Declaration of Human Rights says:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and import information and ideas through any media and regardless of frontiers."

Indeed the right to information and freedom of speech are two sides of a coin. Article 19(1) of the Indian Constitution affirms *inter alia* that citizens have the right to freedom of speech and expression.

Incidentally, it bears mention that the first targets of military coups in Africa are radio and television stations. This has two reasons : to prevent the incumbent ruler who is sought to be displaced, from appealing to his public to rally to his support and the coup leader appealing to the same public to support him in throwing the incumbent out! Even undemocratic regimes need

public support till they are able to establish full control and suppress dissent.

### State Monopoly over the Media

In democratic India the Indian National Congress which had a virtual monopoly of power for nearly forty years of uninterrupted rule and need have had no fear of losing power in those days, kept tight control over All India Radio (AIR) and later Doordarshan (DD). There were no competing channels then. Even today All India Radio is a state monopoly. Thus, for a greater part of the fifty years after freedom, the government held the information jugular.

An alert and well informed public who can meaningfully participate in the democratic process necessarily depends on the existence of a free and fearless media. In 1986 *Freedom First* released a study commissioned by the Indian Committee for Cultural Freedom and the Indian Liberal Group on the control of the ruling party on the state-owned All India Radio and Doordarshan. The study which monitored the news in English for 90 consecutive days, conclusively estab-

lished the fact that the projection of ministers were excessive and that inconvenient news either was suppressed or censored. The study cited front page news in The Times of India during that period that was blacked out by AIR and DD.

### 'Controlling' the Press

Though the press in India was free, attempts were not lacking to twist the arms of newspaper owners not to publish news and comments that were critical of the Congress in general and the Nehru-Gandhi family in particular. A most talked about example in the late fifties was the manner in which a highly popular and hard-hitting column written by "Vivek" a pseudonym adopted by Mr. A.D. Gorwala (a distinguished officer of the Indian Civil Service - the ICS - who took premature retirement rather than be a toady of the ruling party) in The Times of India abruptly ceased. The weapons used by the then government of India headed by Mr. Jawaharlal Nehru were two: create difficulties in allocating sufficient newsprint (in those days there was control over newsprint and its imports were channelised by the government-owned State Trading Corporation) and threaten to suspend government

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advertisements - a major source of revenue for newspapers - which included advertisements from government-owned undertakings.

### India's Brush with Dictatorship

India's 18-month spell of dictatorship saw all democratic institutions including constitutional rights go into cold storage. Press censorship was rigid. Rather than submit to the censor, Minoo Masani then editor of *Freedom First* suspended publication. When Mrs. Gandhi decided to seek legitimacy for her 18-month arbitrary rule she was assured by the coterie around her and by the government's intelligence services that she would win the elections with a comfortable majority. The problem was she no longer had honest feedback. The newspapers could not report facts, radio and television were only dishing propaganda and so she had no access to ground realities. She was simply swept aside because she was deprived of the right kind of information. A rare case where lack of information helped restore democracy!

### Information Technology to the Rescue

The Janata Party that swept into power in 1977 promised among other

things to free the media. This did not happen. The then minister for information and broadcasting was none other than Mr. L.K. Advani who dragged his feet though he was among the loudest in criticising the press for its supine role ('when they were asked to bend they crawled' he said) and TV and Radio for their partisanship. If today the grip over TV has relaxed it is not because Mr. Advani now Home Minister has had anything to do with it but because of the phenomenal advances in information technology.

### Non-Access to Information

Freedom of the media may be the most important aspect of free speech and the right to information but not the only aspect. There are other aspects too which are equally, if not more, important. Citizens must have access to information. They are entitled as citizens of a democracy to have information that affects them. It could relate to proposed legislation or to proposals to set up a manufacturing facility near a residential area, which could belch out gases harmful to his health, the health of his family and the community itself. Under the present dispensation it is

next to impossible to get any information out of any government department to get details of the legislation or of the proposed manufacturing facility. The chances are that he will be stone-walled if he is lucky or harassed by the police if he is not so lucky. He might even be denied information under the Official Secrets Act!

### The Official Secrets Act

The Official Secrets Act (OSA) is of 1923 vintage. Section 5 of the OSA is a wide-ranging provision which could make the disclosure of any information an offence. For instance OSA was used to prevent anti-Narmada Dam agitators from entering villages near the Dam site. The provisions of the Official Secrets Act have also been used to protect the reputation of dishonest ministers and bureaucrats and to keep the public in the dark about their misdeemeanors.

### Draft Freedom of Information Bill

The present Prime Minister and Home Minister have gone on record as saying that they would like to see the OSA scrapped but have done precious little to do something about it. On the other hand, the Department of Personnel directly under the Prime Minister has before it a draft Freedom of Information Bill to replace the OSA. A highlight of this Bill is a clause in which a dozen or more subjects are listed on which the government servant concerned is compelled to provide the information required by any citizen who seek information. This Bill was drafted in 1997 by a Committee set up by the previous Janata Dal led United-Front government under the then Prime Minister Deve Gowda. The Committee was headed by Mr. H.D. Shourie the founder of 'Common Cause'. According to a report in India Today the draft

Freedom of Information Bill provides for exemplary punishment for violation of official secrets which have been re-defined. But the draft Bill makes it easy for the average citizen to get information on a variety of subjects that have no bearing on sensitive issues relating to national security and territorial integrity.

### The U.S.A Example

In the United States government reports are available to any citizen. All he has to do is to write and ask for copies and they are generally given free of charge. These reports relate to public health, housing public services and government services. In every state capital they maintain a repository of all government publications. The Freedom of Information Act in the United States passed in 1966 was based on the philosophy that 'timely provision of information to the American people, upon their own petition, is a requisite and proper duty of the government.'

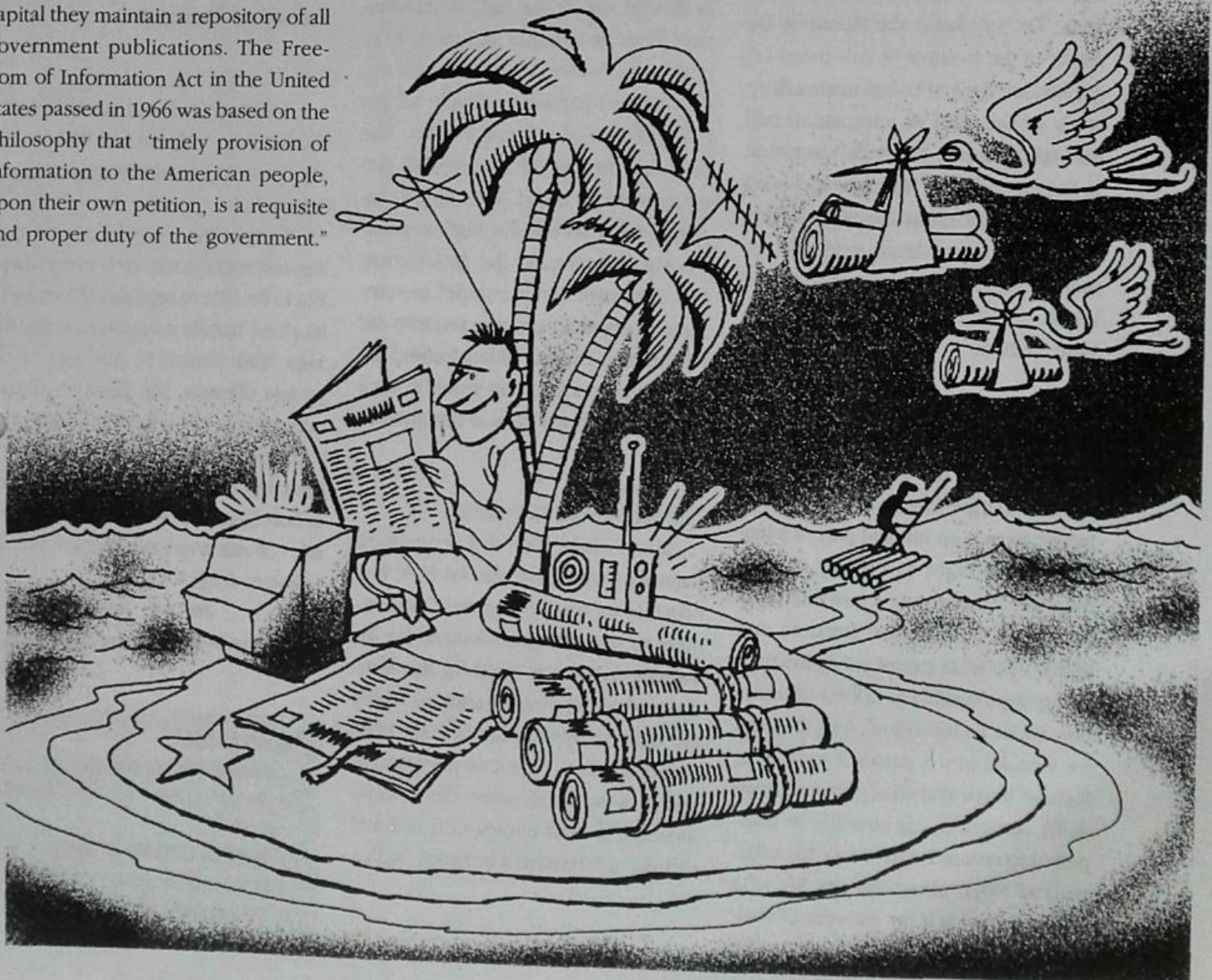
In 1986 the US passed the Freedom of Information Reform Act which expanded the Act passed twenty years earlier.

In India, on the other hand, not only are most government reports and findings of committees not available to ordinary citizens, often such reports are not available even to legislators. Ironically in an era of growing decentralisation, information is denied even to official bodies. One initiative for which Mr. Rajiv Gandhi deserved credit was pushing forward the devolution of authority, particularly financial

authority to Panchayats. In fact earlier the Constitution was amended to give Panchayats official status. Karnataka took the lead in devolving powers on Panchayats. For successful performance they would need easy access to information. Under the present dispensation even panchayats are not going to find it easy to squeeze information out of our bureaucracy.

### Ensuring Transparency

Former civil servant Dr. M.S. Sreenivasan points out "the first step for the critical examination of government functions and use of resources will begin from the moment there is free



access to information. The importance of giving publicity to these audit reports provides the answer to the question of much waste and corruption."

Dr. Sreenivasan draws attention to the case of a public utility contract like the one between the government and a private sector enterprise Enron where there was an effort by both government and Enron to black out vital information on investment and cost of power. It became necessary to seek the court's intervention to obtain even elementary information on investment and cost of power.

In the absence of the legal right to information the courts of law have been the source of relief for concerned citizens. Dr. S.P. Sathe, the Honorary Director of the Institute of Advanced Legal Studies, Pune, who has made a deep study of the right to information and the right to know has drawn attention to the fact of how "in cases involving environmental issues courts have compelled the respondents and government authorities to give information which could not otherwise be accessible to them."

### The Right to Privacy

So far we have talked of the right to information. What about the right to privacy. To the Liberal if the Right to Information is an integral part of a free society the Right to Privacy is even more precious because it is so intimately connected to individual freedom and dignity. To what extent are individuals and groups entitled to ask for information about an individual. Can they ask for a probe into a person's sources of income. If so under what circumstances? As Dr. Sathe asks, can an editor be compelled to reveal the source of his information? What about the sex life of a public figure? Is it the concern of society at large? If at all so, under what

circumstances? The United States Congress and the Senate were obsessed throughout 1998 with the sex life of their President. While the President was rightly hauled over the coals for lying under oath, wasn't there a blatant invasion of his privacy in so far as his personal sex life was concerned. A majority of the American public seemed to think so. His sexual escapades with Monica Lewinsky did not in any way compromise the security and national interests of the United States of America.

### Right to Privacy vis-à-vis Right to Information

The question of the right to privacy is the flip side of the right to information. Both go together and must be so considered when legislation gets underway and parliament finally adopts the Freedom of Information Act. The draft Freedom of Information Bill recommended by the H.D. Shourie Committee must secure the highest priority. Meanwhile can't the government by executive order compel government servants to process requests for information without hiding behind the Official Secrets Act. This would at once establish the bona fides of this government.

### The Women of Rajasthan

Meanwhile like the women in Rajasthan who have shown how it is possible to compel the state government to concede their demand for information, there is need for the hundreds of voluntary organisations which are active in this country to make concerted efforts to persuade government and its servants to come clean on issues that do not impinge on national security and territorial integrity. In this

they have not only the competing TV channels who would be glad to cooperate (in this connection full marks to Star News for their bringing up at the end of the news each day some issue of concern to the people) but make full use of the information revolution by turning to the internet. Bunker Roy has set the example for us to follow. In an article in *The Asian Age* he talks about the information revolution that he has helped bring about in Tilonia. Over three years ago he wrote that "more than 30 women have been trained to use computers. Housewives and widows have collectively put over 5,000 hours feeding data." They operate their own Rural Automatic Telephone Exchange.

### Conclusion

"Information is not power", writes Bunker Roy. "Information that eventually leads to knowledge and action is power."

I began this essay by pointing out that Information like air is everywhere. But to be able to read this information, let alone handle computers, is the first step. With almost 50 per cent of our people illiterate the Right to primary education is a sine qua non to be able to assert our right to information. Till then, information would be like water in Coleridge's Rime of the Ancient Mariner - "Water water everywhere but not a drop to drink."

*Mr. S.V. Raju is Editor of Freedom First, the Quarterly of Liberal Ideas.*

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