

Today, there is a wide acceptance, at least in principle, that the right to information is an indispensable instrument for increasing citizen control over the exercise of executive power, and for enforcing transparency and accountability. However, even a powerful grassroots organisation like the Mazdoor Kisaan Shakti Sangathan in Rajasthan (MKSS) continues to experience enormous difficulties in securing access to copies of government documents, despite clear administrative instructions that certified copies of such documents as muster rolls, bills and vouchers should be made available to a citizen on demand. This highlights how important it is that the people's right to information is enforced by law. A significant national consensus has emerged in recent years in this regard, and three successive union governments have declared their commitment to pass a bill to guarantee the freedom of information (FOI).

However, it is critically important to focus attention on the actual content of such a legislation. The experience of laws passed recently by state governments, especially those of Tamil Nadu and Goa, has highlighted the dangers of legislation for right to information, which actually takes away more than it gives, despite all the rhetoric.

The first major draft FOI Bill in the country that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. This, in turn, derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie, in October, 1995.

The first important feature of the Press Council Bill was the affirmation in its preamble that the right to

People's Bill vs *Sarkari* Bill

Legislating for *Freedom* of Information

○ Harsh Mander

information already exists under the Constitution, as an implication of the fundamental right to free speech and expressions under Article 19(1) of the Constitution. The bill merely makes provisions for securing to the citizen this right to information. Incidentally, this position that the right to information flows from the Fundamental Right to freedom of speech and expression had even earlier been affirmed in a number of Supreme Court rulings, such as the State of UP vs Raj Narain AIR 1975 SC 865; Maneka Gandhi vs Union of India AIR 1978 SC 597; S P Gupta vs Union of India (High Court Judges' transfer case) AIR 1981 SC 149; and Secretary, Ministry of I & B vs Cricket Association of Bengal and Ors. 1995, 2 SCC 161.

The draft bill affirmed the right of every citizen to information from any public body. Information was defined

as "any fact relating to the affairs of the public body" and included any and all records relating to its affairs. Right to information included inspection, taking notes and extracts and receiving certified copies of the documents. Significantly, the terms "public body" not only included the state within the meaning of Article 12 of the Constitution of India, but also all public undertakings and non-statutory authorities, and most significantly, a company, corporation, society, trust, firm or a co-operative society, whether owned or controlled by the government or by private individuals and institutions whose activities affect public interest. In effect, both the corporate sector and NGOs were sought to be brought under the purview of this proposed legislation.

The few restrictions that were placed on the Right to Information were similar to those under other Fundamental Rights. The draft bill allowed withholding of such information, the disclosure of the contents of which prejudicially affect the sovereignty and integrity of India; the security of the state and friendly relations with foreign states; public order; investigation of an offence or which leads to incitement to an offence. This is substantially on the lines of Article 19(2) of the Constitution. Other exemptions were on bona fide grounds of individual privacy, and trade and commercial interests.

However, the most significant saving provision was that



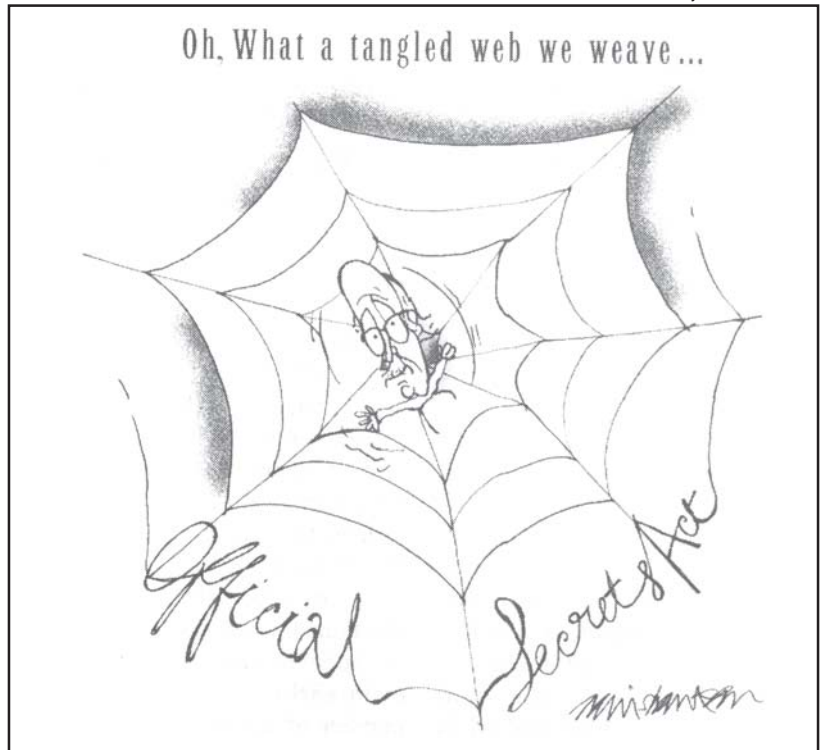
Courtesy : INDIA TODAY

information which cannot be denied to the Parliament or the state legislature will not be denied to a citizen. This would have been the most powerful defence against wanton withholding of information by public bodies, because the agency withholding information would have to commit itself to the position that it would withhold the same from the Parliament and the state assemblies as well.

The draft bill laid down penalties for default in providing information, in the form of fines as personal liability on the person responsible for supplying the information. It also provided for appeals to the local civil judiciary against failure or refusal to supply the desired information.

The government of India then constituted a committee chaired by consumer activist H.D. Shourie to draft a bill for consideration of the government. This committee, which submitted its report in May 1997, advanced on the Press Council Bill in one respect—it explicitly brought the judiciary and legislatures under the purview of the proposed legislation.

However, many positive aspects of the Press Council Bill were excluded or diluted in the Shourie draft. Most important, it widened the scope of exclusions to enable public authorities to withhold “information the disclosure of which would not subserve any public interest”. This single clause broke the back of the entire legislation, because, in effect, public authorities would then be empowered to withhold disclosure of incriminating information in the name of public interest. The powerful clause which provided that only such information that can be denied to the Parliament or the legislature can be withheld from a citizen, was not included.



The Shourie draft also made no provisions for penalties in the event of default, rendering the right to information toothless. Appeals were allowed to consumer courts. The proposed draft bill defined public authorities more narrowly to exclude the private sector and all NGOs which are not “substantially funded or controlled” by government. Some analysts, including the writer, believe that it is the government which should be made explicitly responsible to provide to a citizen information on demand, related to the private sector and NGOs.

However, with the demise of two United Front governments, this draft also went into cold storage. The BJP—led alliance included a Bill for Right to Information in its national agenda, but there has been little open debate about the contents of such a bill.

The first indications of what is possibly being considered by the

Union government are indicated in recent reports in the media, according to which the government is now contemplating only to amend a few sections of the Official Secrets Act, and to list a dozen items on which it would become mandatory for the government to give information on demand. Items not covered by this list would continue to be covered by the Official Secrets Act. This is completely contradictory to the basic principle of transparent and accountable governance, that the enforceable right of the citizen to government-held information must be the rule, with only a few exceptions for genuine considerations of national security and individual privacy. No Bill for FOI should be allowed to make this principle stand on its head, making disclosure the exception rather than the rule.

To sum up, it is of paramount importance that a comprehensive early legislation is passed early that guarantees the right to

information, to every citizen. Such legislation to be meaningful must enable every citizen to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It must bring within its purview the judiciary and legislature while making the government explicitly responsible to supply to a citizen, on demand, information relating to the corporate sector and NGOs. It must also contain powerful provisions for penalties and an autonomous appeal mechanism. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with a proviso that no information can be denied to a citizen which cannot be denied to the Parliament and the state legislatures. It would then truly be the most significant reform in public administration, legally empowering a citizen for the first time to enforce transparent and accountable governance. □

Harsh Mander is an IAS officer of the 1980 batch. Currently on a sabbatical, he is working actively to lend support to issues related to people's empowerment including the Right to Information campaign.

Another important Right to Information Bill has been drafted by the Consumer Education and Research Centre, Ahmedabad headed by India's foremost consumer rights activist, Manubhai Shah. We will soon carry a comparative analysis of the three bills—one prepared by the government appointed Shourie Committee and the other two by citizen's organisations.

Sita

*Sita was my class mate,
She and I pored over
that great new poem **The Ramayan**
of Satyanarayan.*

*When we were done I asked her,
looking at her thoughtful eyes :*

*“You listened to the whole story,
we followed Ram
with the swiftness of poetry
into the wilderness of the past time.
We met him, went to the forest with him; we saw him
kill Vali from behind the tree,
and test his wife by fire.
Now tell me do you really like to
live like Sita of the ancient time,
wife of the hero Ram?”*

*When she heard me, she said:
“Hey, Pathabhi,
Sita is the very epitome of
Indian womanhood.
It is an ideal dream to have
the good fortune
to live like her.
But even if I should want to be Sita,
I shall never want to be Ram's wife.
Tell me, would you ever want to be Ram,
yourself ?”*

*“Why would I, when you don't want
to be Ram's wife?
My desire, rather,
is to become Ravan.*

*With all my ten mouths
I will kiss your lips, your face.
I will imprison you
in my looks from my twenty eyes.
I will press you to my chest
with my twenty strong arms
and make you one with me
in one tight embrace.”*

Now, Sita is my wife.

Pathabhi

Translated from Telugu by **V. Narayana Rao**