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The Right to Know – An Indian Perspective

By Unni Rajen Shanker, Associate Editor,
The Indian Express, New Delhi

It appears blasphemous, in the year 2000, to invoke something from the previous century. But any discussion on the right to information in India has to begin 25 years ago from a little street in the heart of India's capital, New Delhi, Bahadur Shah Zafar Marg in New Delhi runs parallel to the river Yamuna, across the most polluted stretch of land in India's capital. This is where most of the city's newspapers are based—that's why they still call it India's Fleet Street, long after the grand old newspapers shifted from that London street.

It was on Bahadur Shah Zafar Marg that the lights went off first on the midnight of June 26, 1975. Printing presses screeched to a halt. In the uncomforting heat of a Delhi summer night, newspaper desks waited for power to come back. It never did.

Indira Gandhi's government had cut off power as it did not want the newspapers to carry the news of suspension of democratic rights in the world's biggest democracy. On that night began a 19-month darkness in the life of India's democracy and its media.

The prime minister declared a state of Emergency, suspended civil rights and imposed pre-censorship and severe controls on the media after a court declared her election invalid. "Pre-censorship of the press was sought to be justified on the ground of its alleged irresponsibility and its failure to perform its proper role," wrote Soli J. Sorabjee, now India's Attorney General, in Law of Press Censorship in India.

Mrs Gandhi asked the media to bend. Most of the newspapers "crawled," as a leader of the Hindu nationalistic Bharatiya Janata Party, then in the opposition, said. Sorabjee recollected the example of "an editor reputed for his liberal views who hemmed and hawed in the beginning against the restrictions on the press. He reconciled himself to the situation and said quite bluntly, "I have to live with the censor. If I go on protesting, he will make my life one big hell."

Mrs Gandhi tried to camouflage the dictatorship with democratic rhetoric. She said in Parliament on July 22, 1975: "There is no doubt about the need for a regulated expression of public discontent against policies of even an elected government. We have always said that; we have never tried to stop such criticism..."

However, when protests and resistance are conceived to destroy the very fabric of society and undo the stability of the political system, such actions become a disguise for action to destroy democracy. Every right that the state concedes to the individual imposes an obligation on him. Similarly, groups and organised associations who enjoy political freedom in a democracy must respect the limits within which those rights have to be exercised."

But The Indian Express, the newspaper I work for, did not oblige. The day after Emergency was declared, Financial Express, the group's business paper edited by V.K. Narasimhan, ran a poem by Rabindranath Tagore on freedom. The Indian
Express came out with blank spaces, editors took bylines for weather columns, just to tell the people that something was wrong in the country and it can't be written about. Reporters slipped in lines describing gloom even in stories of success. Several journalists, including the editor of the Express News Service, Kuldip Nayar, were sent to jail. "None of the major English or Indian language dailies was suppressed, only the Indian Express chain persistently struggled with the government," wrote Robin Jeffrey in India's Newspaper Revolution. Government advertisements stopped. Censors rejected even innocuous reports. When the chairman of the group and the nightmare of the establishment, Ramnath Goenka suffered a paralytic stroke, the government used its clout to instal a rival paper's owner on The Indian Express board. The editor, S. Mulgaonkar was sacked. Narasimhan took over to continue the fight. But when Goenka returned, he disbanded the board and later, brought his editor back.

Once Mrs Gandhi announced elections and eased the curb on the media, Express struck back. It exposed cases of excesses, one after another while most other papers remained silent.

Elsewhere in India, in the regional language press, the struggle was more visible. Newspapers in Tamil Nadu where an elected government was dismissed by Mrs Gandhi, for instance, put up a fight. The proprietor of Punjab Kesari, a Hindi daily, was briefly detained. "The Emergency seemed to change the minds of Mrs Gandhi and others about the virtues of small newspapers. Big ones were easier to control. Of the 19 publications that remained banned for the entire Emergency, none was substantial and only five were in English," wrote Robin Jeffrey in his book on the growth of the regional press in India.

During this period the government introduced legislation at will. In 1976, Prevention of Publication of Objectional Matter Act was introduced. The Protection from Publication Act 1976 put control on the publication of parliamentary proceedings. The Press Council of India, the watchdog of journalism, was scrapped.

As many as 253 journalists were detained and 51 journalists (43 correspondents, two cartoonists and six photographers) were discredited. Emergency showed Indian media how fragile freedom of the press in the country was and how limited the right to information was. It showed how elected governments could turn into dictatorships and how even the law did not give the press shelter.

The country of almost one billion people has changed, governments have come and gone. Elections have happened at frequent and irregular intervals. Economic reforms have brought in international brands and consumer goods to the Indian upper class. But almost half of the population still doesn't know how to read. According to the 1991 census, the figure of literacy in India was at 52.21 per cent and among women it was just 39.29 per cent. Perhaps, that is why India has just 46 dailies per 1,000 as against the UNESCO bottomline of 100 dailies per 1,000.

Yet, over the last quarter of the century, Indian media has changed. According to Press in India, 1998, there are 41,705 newspapers in the country of which 4,700 are dailies. The total circulation of newspapers is estimated at 105.7 million. The
circulation of dailies between July and December 1999 was 43 million, according to the Audit Bureau of Circulation. 

While the print grew gradually in a country of 18 official languages and several unofficial ones, television quantum-leaped into the munificence of satellite age. The National Readership Survey, 1999 says the reach of press among Indians over 15 is 39 per cent, TV is 53 per cent and radio is 28 per cent. In 1991, there was just one terrestrial channel that was run by the government. In 2000, there are 60 satellite channels. TV reaches 63 million homes in India out of which 37 million are cable TV homes. The other media also witnessed a massive growth in the corresponding period. In 1991, there was one terrestrial radio network. In 2001, there might be 100 FM stations. Now the Internet is spreading across Indian cities where telephone booths are being converted into cyber cafes. At present, there are 800,000 Internet connections in India, with about two million users.

Twenty-five years is a long time – time enough for memories to fade and an entire generation to disappear. However, the 19 months of Emergency still defines the freedom of the press and the right to information in India. The Constitution of India, which borrowed heavily from the British, and the various laws which were inherited from the Raj have made it convenient for the Establishment to control the media as and when it wishes. It began more than two centuries ago. Lord Wellesley in 1799 brought in a legislation which made pre-inspection of all newspapers mandatory and prescribed deportation for violation. After the Sepoy Mutiny, which is considered India's first war of independence, in 1857, the British introduced the Press Act, 1857 which imposed "rigorous control on the possession of printing material, and gave the government the power to prohibit the publication and circulation ... of any particular newspaper, book, or other printed paper or any newspaper of any particular description." Fortunately, the Act lasted for just one year. In 1860, the Indian Penal Code introduced the offence of criminal defamation. It was amended to include "offences against obscenity, defamation, sedition, the promotion of enmity between groups and outraging feelings." In 1867, the Press and Registration of Books Act was introduced and in 1878, "an Act for the better control of publications in Oriental languages" was passed. "The vernacular press was forced to make deposits and was subjected to arbitrary powers of licensing and search and seizure," wrote Rajeev Dhavan in Only the Good News.

Meanwhile, the Official Secrets Act, the mother of all legislation against the right to information, took shape in 1889 and was amended in 1904 and 1923. These laws did not remain on paper. From 1910 to 1913, for instance, 15 newspapers were closed down because they were unable to make deposit after forfeiture. These ancient acts and laws are not just of academic importance in the context of Indian media in the 21st century – they still loom large. Most of the laws relating to the media are archaic and made by the colonial rulers with the purpose of
muzzling dissent. For instance, in this cyber age, the Indian Telegraph Act of 1885 is alive and kicking. The Act gives the "power to the government to take possession of licensed telegraphs and to order interception of messages... on the occurrence of any public emergency or in the interest of public safety."

Things did not change much even after India's independence from the British on the midnight of August 15, 1947. The Constitution of India began and ended the issue of the freedom of the press in one article. While the First Amendment in the US protected the freedom of the press, the first amendment in India restricted it. Article 19:

(1) All citizens have the right (a) to freedom of speech and expression.
(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Beyond the froth of legal prose, the flexibility and malleability of the article is apparent. It gave, and gives, successive governments room to define, explain and interpret the idea of the freedom of the press according to their comfort and convenience. That the experts who wrote the Constitution of India did not think that the press deserved any special treatment is also evident.

B.R. Ambedkar, considered to be the architect of the constitution, said: "The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and, therefore, when they choose to write in newspapers, they are merely exercising their right to expression and in my judgment, therefore, no special mention is necessary for the freedom of the press at all."

Forget rights, curbs followed one by one. Press Registrar (who was later renamed as Registrar of Newspapers in India) was introduced in 1954 who "shall have access to any relevant record or document and may enter at any reasonable time any premises where he believes some record or document to be had and may inspect or take copies of the relevant record..."

Also, during emergencies, the government is empowered to prohibit the publication of any items "prejudicial to the public safety, the defence of India, the maintenance of public order..." Emergency is a vague term and is vulnerable to convenient interpretations.

The first such emergency in independent India was from 1962 to 1968. It began with India's war with China and continued through the India-Pakistan war of 1965. The control, however, was mild. Between 1962 and 1965, government considered infractions by 54 newspapers, involving 100 news items. Action was proposed in 33 cases, formal warnings issued in 11 and informal advice in 11. But the term emergency was to acquire a different meaning a decade later.

While the Indian media found itself muzzled in times of emergencies, even in normal times it struggles to get access to information related to affairs of the government.
The Indian government divides its documents into two sections, Classified and Unclassified. Unclassified cannot be communicated to anyone outside the government without a general or specific order and all communications are through the government-run Press Information Bureau. Classified documents are further categorised into Top Secret, Secret, Confidential and Personal _ Not for Publication. All these documents are locked in for 30 years. And they are not released after the stipulated period as it happens, for instance, in the US. Half a century after independence, beyond the smiles and assurances of bureaucrats and politicians, the Indian Establishment is an indifferent fortress, guarded by the Official Secrets Act of 1923, a remnant of the Raj. The Act was amended in 1967 "to make the offence punishable with greater sentences of imprisonment and make most of the offences under the Bill cognizable offences," wrote constitutional expert Rajeev Dhavan in Only the Good News. The Act, in fact, gives grounds enough to the bureaucracy to block any information that a journalist wants. Section 3 of the Act prohibits "approaching, inspecting or passing over or entering in the vicinity of a prohibited place; or making a sketch, plan or model or note which is intended to be, directly or indirectly, useful to the enemy." It is also an offence "to obtain, collect, record, publish or communicate to any other person these items or other document or information which is calculated to be or might be directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the state or friendly relations with foreign states." The point to be noted: Following the British courts, "enemy" has been interpreted to include "political enemy." When a government chooses to victimise a newspaper, it doesn't have to look elsewhere. According to Section 4, it is unlawful to communicate with foreign agents or any person "reasonably suspected" as foreign agent. Once again, foreign agent is a vague term. Section 5 relates to failure to take care of all information "which has been entrusted in confidence to him (ie the accused) by any person holding office under government, or which he has obtained or which he has had access owing to his position as person who holds or has held a contract made on behalf of the government, or as a person who is or has been employed under a person who holds or has held such an office or contract." Voluntary reception, possession or contract of any such information is also an offence. This section is also expanded to fit in any interpretation and cover, for instance, budget leaks. Section 6 of the Official Secrets Act makes it an offence "to retain, communicate and manufacture any secret code, password or any official document if it is kept for any purpose objectively determined to the safety of the state." In these sections, governments have found the caves to hide themselves and their actions. The dangerous reach of the Official Secrets Act is evident in the fact that magistrates have the power to issue search warrants if there is reasonable grounds of suspicion.
"The Official Secrets Act 1923 strides as a colossus declaring the symbolic aims of the government and successfully using a traditional and archaic social psychology to camouflage the activities of the government," wrote Dhawan. If this all encompassing Act is not enough to protect the secrets of the government of the people, there is Section 123 of the Indian Evidence Act of 1972. "No one shall be permitted to give any evidence derived from any published official records relating to any affairs of the state except with permission of the officer of the head of the department concerned, who shall give or withhold the information as he thinks fit."

Successive committees instituted by the government ritualistically justified the shroud of secrecy. "The Press Law Inquiry Committee in 1948 found the legislation was necessary and that no move should be made to dislodge from the government its extensive and wide-ranging power to control the flow of information," wrote Dhavan.

Apart from all these monstrous legislation, the Constitution of India gives the President the "power to make rules for the more convenient transaction of the business of the government of India." These rules were published till 1973 when they were declared confidential. During Emergency, Indira Gandhi's government amended the constitution to prevent courts from having access to the already constitutional rules. The amendment itself was amended later, though.

Another legislation that makes India a tough terrain to report is its defamation laws. In the criminal law of defamation in India, the burden of proof is on the accused while in other criminal cases the burden is always on the prosecution to prove the guilt of the accused. In the civil law of defamation, where reputation is considered as property, too, the law is loaded against the defendant. "The burden of proof rests on the defendant to prove that the statement if true and though it is not necessary that the statement is literally true, he must prove that it is on the whole substantially true," writes constitutional expert Durga Das Basu in Law of the Press in India. So the complainant gets an unfair advantage in India while in the US if a public servant is the defendant, the onus is on him/her to disprove the report.

The judiciary is not too kind on the media and contempt laws are tough. The Contempt of Courts Act (1971) have dragged several journalists to the court for acts that "scandalises or tend to scandalise, or lowers or tend to lower the authority of any court" or "prejudices or interferes or tend to interfere with the due course of any judicial proceeding" or "interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner." Governments in India have tried several times to introduce new laws to control the media. The governments of Tamil Nadu and Orissa enacted legislation against "grossly indecent or scurrilous matters or matter intended for blackmail." Such non-bailable offences carried penalties of imprisonment up to five years. In 1982, the government in the state of Bihar tried to do the same. Police were given discretion to arrest and the executive magistrate the power to determine questions of bail. Journalists boycotted Parliament, protested and wore black badges, forcing the government to withdraw the legislation.
When they wanted to target the press, in fact, the governments did not need the help of the laws formulated for the purpose. They slapped cases against newspapers that refused to budge, raided publications when they wanted, as in the case of The Indian Express in 1987 when the paper was publishing a series of reports on the Bofors corruption scandal which allegedly involved the then prime minister of India.

If it was not the raids, then it was the newsprint policy. The Newsprint Import Control Policy (1972-73) restricted the number of pages of newspapers. Governments used its control over newsprint to make newspapers toe their line. However, in the 1973 Bennet Coleman vs Government of India case, Justice Ray ruled: "The direct effect (of restricting number of pages) is that freedom of speech and expression is infringed." Another method which the governments have used, effectively in the case of small newspapers, is blocking government advertising. This was also extensively done during the Emergency.

In the case of television, the government's task was relatively easy. The government, till 1991, had the monopoly and gave out the news it wanted to and blacked out the rest. India's government-run channel, Doordarshan, has been a willing slave at the mercy of its master. So more often than not, the world media overtook it even when the news broke in India. "Following Indira Gandhi's assassination towards the end of 1984, the government media delayed announcing her death, which the country learned from the BBC. It symbolised AIR's (All India Radio) and Doordarshan's lack of professional independence," writes media critic Sevanti Ninan (History of Indian Broadcasting Reform). Ninan also recollects the demolition of Babri Masjid which made the Doordarshan retreat "into news censorship" while CNN and BBC went to town with it.

One blatant incident of censorship on television happened in 1989 when the Doordarshan refused to telecast an award-winning documentary on the Bhopal gas tragedy, Beyond Genocide. This despite stipulation that all national award winning films have to be telecast.

The Gulf War brought in CNN and in 1991, Hong Kong-based Star TV made a silent entry. And Indian TV changed forever. The government lost its absolute control over the medium but clung to Doordarshan. It realised that it needed legislation to retain control. In 1994, the government promulgated an ordinance regulating cable TV. "The government introduced a must-carry stipulation enjoining all cable operators to transmit at least two DD channels."

The ancient Telegraph Act was still the governing law for television until the Supreme Court of India ruled that "the broadcasting media should be under the control of the public as distinct from the government." (Ministry of Information and Broadcasting v Cricket Association of Bengal). The government rushed to formulate a Broadcasting Bill _ it was finally introduced in Parliament in May 1997. Many governments changed since then. As the present government debates whether to allow direct-to-home (DTH) technology, the bill for broadcasting reforms remains in deep freeze. So is the Information Technology Bill which has India's cyber laws.

The grey areas of legislation still allow the government to wield enough control to make even foreign channels play to its tunes. The government bans programmes
that it thinks do not go down well with Indian culture. For instance, TB6, a
Russian channel was banned all over India for obscenity. During the Kargil war,
Pakistan TV was banned. Even local authorities have the power to ban channels in
their territories. In Gujarat, district authorities have banned FTV, a fashion
channel. With a Hindu nationalistic party in power, such threat to TV channels,
which are perceived to be agents of cultural invasion, persist.
Perhaps it is ironic that at a time when India tries to race ahead on the information
superhighway, matters pertaining to the government are sought-after secrets. In
the US, the Freedom of Information Act of 1966 threw open government records,
with designated exceptions, to the public. In India, several governments and
ministers have spoken about the need for transparency in governance but the
Right to Information Bill never crossed the draft phase. The H.D. Shourie
committee that was set up in 1997 to prepare a bill submitted the draft to the
government. Three years have gone by.
In a delicate democracy so typical to the subcontinent, where the line between
democracy and dictatorship has blurred in the past, information is power. For the
Establishment, it is a weapon of oppression. For the other side, it is a tool against
oppression. Behind closed doors, the governments of developing democracies
hide scandals and skeletons, knowing well that the doors don't open to the
outsider.
Each decision by the government of the day could be at the cost of the daily meal
of a starving Indian or at the right of the underprivileged. So any struggle against
organised corruption, which is institutionalised in the country, begins with the
fight against this spiral of silence.
For the officials and the politicians, power is all about secrecy and inaccessibility.
When everything that they do in the name of governance is out in the open, they
may no longer remain different from the class they rule.
For a newspaper like The Indian Express, where I work, the struggle is to gather
that bit of information that will make a difference to the lives of millions of
Indians. While it kept itself away from the glossy traps of contemporary Indian
journalism, The Indian Express became the newspaper of struggle by being
fiercely independent and pro-active. The reports that made it the newspaper that it
is today were exposes of corruption in the government and chronicles of social
injustice.
Reporting is a tough job when you have to constantly face stonewalling
bureaucrats who dish out only the information they want to. For every scandal
that tumbles out of the dark corridors of officialdom, there are scores lying
hidden. For every report that reveals a tale of social bias, there are hundreds
waiting to be reported.
The fight of the media in a developing country is, in fact, the fight for
information. Strangely though, there has not been an organised effort from the
media to fight for their right to information. The fight has come from the people.
People of rural India, most of them poor and illiterate, are learning that
information is power. With the help of non-governmental organisations working
in villages, they are increasingly campaigning for more transparency in local
administration. Corruption is easier at the lowest level of
bureaucracy as the people it encounters are not even able to read. Across India, rural movements for the right to information are gaining momentum and federal governments are realising that in the age of information technology, they cannot afford to hang on to an outdated obsession. On May 1, the government of the western Indian state of Rajasthan passed the Right to Information Bill. The bill gives the people access to official documents, except the classified ones. However, several such bills are pending in different state capitals while in New Delhi, the government lords over files like the last sentinel of a defeated empire.

How is this going to change? Answering this question calls for a separate study, beyond the limited scope of this paper. But a couple of points can be made: New media, especially the Internet, and the rise of cable television are putting increasing pressure on governments and officials to come clean, to state the facts. For example, when an Indian Airlines plane was hijacked last December, the government kept quiet for a full 48 hours. It was only when angry relatives began appearing on TV screens and front pages of the newspapers, in one case, they barged into the Prime Minister's Office, that the officials were shamed into giving regular briefings. That these briefings were vague and ambiguous is a different story.

Over the last five years, judicial activism is one social force that has changed the mechanics of governance in the country. Using a tool called the Public Interest Litigation, ordinary citizens have been able to force Governments and government agencies to reply to questions, to come clean. Which way these forces will work or whether they will evolve isn't clear yet. What is a fact is that twenty-five summers after Indira Gandhi suspended democratic rights, the fears have not totally disappeared. A government in India can still muzzle the media if it wants, especially those sections of the media that are pliable. In the vulnerable democracies of the subcontinent, the cloud of threat still continues to hang over the media.

For the time being, however, the lights are on at Bahadur Shah Zafar Marg.

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