People's right to know-II

Freedom, not licence

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IT was replaced by the Freedom of Information Act, 1966, with the following essential features:

1) that disclosure would be the general rule and not the exception;

2) that all individuals had equal right of access of information;

3) only such information could be withheld which fell within the specified exempted categories; and

4) that a person denied access could approach a court for access. The burden would be on the government to justify withholding the document.

The basic law which governs the Press today is the Registration of Printing Press and Publications Ordinance (RPPO). Since 1988 when it first replaced the 1963 Press and Publication Ordinance it has been repromulgated every four months. In between it was allowed to lapse for a short period. Most recently it was repromulgated again soon after this government assumed office. And while the Prime Minister's adviser on information distanced himself from the ordinance and so to an extent did the PM's adviser on law, the latter also pointed out that 'earlier, there had been no law to deal with the Press.' It is not clear why a separate law is needed to 'deal' with the Press but that certainly has been the operative premise of successive governments.

According to this ordinance, the government may appoint any officers to carry out the purposes of this ordinance, in effect, to 'check' the Press. By way of routine it is the district magistrate who looms large in terms of enforcing the ordinance. The problem with the ordinance is that it sets up a separate structure which gives the government a lot of leeway in terms of going after publications and even if it is not evoked it nevertheless serves perpetually to threaten and hence to promote self-censorship. Part 4 of the ordinance provides an umbrella grouping of possible offences including publication of matter that leads to 'defiance of the authority of government.' There is, of course, the broader question of how appropriate it is for an ordinance to serve as an unwarranted check on freedom of the Press and the right to information when these are, in effect, guaranteed by the Constitution.

While the government has not actually used the law in recent years to restrict freedom of the Press and access to information, the same cannot be said, for instance, of section 99-A of the Criminal Procedure Code which has been used relatively years' rigorous imprisonment or with fine, or with both. In the 1860 Law of Defamation there had been ten exceptions of which nine were withdrawn by the amendment.

Even a cursory look at the 1860 law is enough to indicate clearly the nature of the balance which had been sought to be kept even by a colonial government more than a century ago between the public's right to know the truth and the individual's privelege against defamation. It said:

"1) It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

2) It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further. 3) It is not defamation to express in good faith any opinion respecting the conduct of any person touching any public question and respecting his character, so far as his charactar appears in that conduct, and no further.

Clearly, in the words of Zamir Niazi, the defamation law was revised, at the cost of public interest, because the law-makers suffered from a mortal fear of information. In other words, secrecy is safe, only information is dangerous.'

Similarly, the law of contempt needs to be changed. According to the late Justice Dorab Patel: 'The judges also make mistakes and just as the mistakes of politicians are exposed, just as the mistakes of civil servants are exposed, there is no reason why any class of persons should have any immunity. Long ago in setting aside a judgment of a colonial court, the Privy Council had said that justice is not a cloistered virtue and people are free to criticize anything done in a court so long as they use respectful language.'

But, how is the Press to respond to genuine concerns of the public regarding the issue of libel and other related subjects? The only reasonable answer is a structure of

The Press needs some kind of a mechanism to keep it from turning freedom into licence. This should be an autonomous, self-reg-

access to information, the same cannot be said, for instance, of section 99-A of the Criminal Procedure Code which has been used relatively frequently. Publications forfeited under Section 99-A of the Cr. P.C. cover a broad range. Among the long list of publications forfeited to the government by order of the chief commissioner, Islamabad (vide a notification of 7th August 1996 published in the gazette extraordinary 17th August 1996) were the Human Rights Watch (Arms Project) and the Amnesty International Report (1995) on Pakistan. These were bracketed together with a number of Indian publications which it was claimed tarnished the image of Pakistan and served Indian interests. Which would suggest that almost any criticism of any aspect of Pakistani society or state can be construed as 'tarnishing' Pakistan's image and thereby serving Indian interests. It goes without saying that the people of Pakistan have already paid a high price for such an attitude on the part of the establishment.

There has also been some discussion, recently, on tightening the law against defamation. There is no

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This should be an autonomous, self-regulatory mechanism. For its primary obligation is to ensure that the people's right to know is given substance over and above the government's propensity to hand out selective information.

self-monitoring and correction and not government control. Among the proposals, in this context, is one for the formation of a press council. The functions of such a council would include receiving complaints about the violations of code of conduct pertaining to newspapers, periodicals, television networks and broadcasting corporations, inquiring into complaints of publication of defamatory material, awarding appropriate relief to the aggrieved persons, ensuring compliance with the code of ethics for the Press and the electronic media, etc.

A problem, arises, however, with
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is to be a statutory body the
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may be at variance with
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a non-statutory