People's right to know

Mass communication
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By Abbas Rashid

THE right to information is a basic fundamental right guaranteed, implicitly, by our Constitution (Article 19). Whether explicit or implicit, it is clear that a democratic dispensation cannot work in the absence of such a right, for it is only the obverse of the right more frequently equated with democracy: the right to express. But then the right to expression means very little in the absence of the right to be informed as to the affairs of state and society which have a bearing, directly or indirectly, on the well-being of the citizen.

The Supreme Court of Pakistan made it clear that the latter right was implied in the Constitution in the Nawaz Sharif vs Federation of Pakistan (1993) case: The right of citizens to receive information can be spelt out from the freedom of expression guaranteed in Article 19, subject to reasonable restrictions specified therein and such rights must be preserved.

Various international covenants seeking to further the democratic mode and make the participation of the citizen more effective and meaningful incorporate this right. For instance, Article 19 of the Universal Declaration of Human rights (1948), Enabling laws to this end are on the statute in democratic societies such as the United states and some of the Scandinavian countries. In other countries it is implicit in the constitutional provision for freedom of expression and the relevant information on public affairs is made accessible to citizens by convention. Pakistan is committed to uphold the Universal Declaration of Human Rights and is therefore required to ensure that there are no obstructions to the imparting or receiving of information through any media.

In Pakistan, even though the people have demonstrated on more than one occasion their commitment to and preference for the democratic system, democracy has often given way to forms of non-democratic and unrepresentative rule. Even when democracy has been allowed to function, it has frequently lacked content. And even elected and supposedly democratic governments have been averse, in varying degrees, to allowing a genuinely free Press to operate. Without exception, governments, democratic or otherwise, have treated the electronic media as their fiefdom.

Where the intent is absent any government can find considerable room in Article 19 of the Constitution to restrict freedom of expression and information. The article reads: 'Freedom of speech, etc: every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the Press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan, or any part, thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, [commission of] or incitement to an offence.' What follows the phrase 'reasonable restrictions' in this article is obviously open to very broad interpretation by the government which could well serve to seriously undermine the freedom guaranteed in the opening words of the article.

In any case, a number of laws can be invoked by the government to curb the right of free expression and to deny information on key areas. Such as the Official Secrets Act. Information can be denied on the grounds that it jeopordizes national security. Or that it brings the government into contempt. One problem is

Admittedly, governments all over the world have a propensity to restrict public access to matters that are considered too sensitive for general consumption and disclosure of which is likely to cause reactions that are disproportionate and destsabilizing. However, the wiser among them have discovered over time that the advantages that are to be gained from doing so are far too often outweighed by the harm inflicted on state and society when secrecy becomes the watchword for governance.

Certainly, a persuasive argument can be made for not allowing unrestricted information on all issues at any given time. But where such information can be legitimately denied, the question is on which issues and for how long? This is a matter that has to be carefully thrashed out, from time to time, perhaps with the help of the judiciary. And regardless of how persuasive such arguments are perhaps no state in the last half century has suffered as much from denying information to its people and misinforming them, as Pakistan. Right up to the fateful day of December 16, 1971 the overwhelming majority of the people of the western wing of the country remained almost entirely clueless as to what had been transpiring in the

> No state in the last half century has suffered as much from denying information to its people and misinforming them as Pakistan. Right up to the fateful day of December 16, 1971, the majority of the people of the western wing were kept in the dark as to what had been happening in the eastern wing. Had they been privy even to a half-way accurate information over the years, it is not unlikely that the tragedy could have been averted.

eastern wing over the last so many months, if not years. Right up to the bitter end, the government-controlled media and some of those not controlled by goverment let loose a barrage of disinformation and propaganda to keep people in the dark. Had the people of the western wing been privy even to a half-way accurate information over the years it is not unlikely that pressure would have been built up on the state to change its policies and possibly the tragedy could have been averted. And the tragedy lay not only in the separation of the country but even more so in the manner in which it was separated: amidst unmitigated violence and bloodshed against the people of the land that what was to become Bangladesh.

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growing alienation of the people from the way in which it has functioned in this country. Nearly three out of four people eligible to vote chose not to exercise that right in the last elections.

There are people who contend that a free Press has not made much of a difference in terms of doing away with the evils identified in the media. The corrupt, by and large, have not been brought to the book. Most of them continue in their priveleged positions. Many, in fact, remain central to running the state and society despite changes in government. But this should not be an argument for limiting information or the freedom of the Press. Access to information leads to necessary changes through the activation of relevant institutional arrangements. These may be parliamentary committees, courts, public interest groups, etc. Clearly, their role must be strengthened if greater access to information is to be rendered truly meaningful.

In January, the caretaker cabinet approved the Freedom of Information Ordinance (FIO) and allowed access to records concerning superior courts and the armed forces which was earlier out of the purview of the original draft ordinance. The ordinance lapsed in the last week of May. It was neither repromulgated nor has the government come through with its commitment to give it the shape of an act. In the absence of any clear-cut schedule to this effect its intentions become somewhat suspect. Section 4 of the ordinance which originally denied such access to information concerning the superior courts and the armed forces was amended by the cabinet as a result of widespread adverse response from the Press, in particular. However, the amended section 4 still excludes the following record from the public domain:

a. Notings on files, minutes of meetings and interim orders

b. Record of banking companies and financial institutions relating to the accounts of their customers

c. Record declared as classified under the policy made by the government

d. Record relating to the personal privacy of an individual

e. Record of private documents furnished to a public office either on an express or implied condition that information contained in such a document shall not be disclosed to a third person.

Assuming that the government still intends to honour its commitments regarding freedom of information, it may be pointed out that while section 4 stands improved there is considerable room for officials to obstruct disclosure arbitrarily by making use of clause (c). In a bureaucracy where almost anything other than an invitation to dinner has been routinely classified this provision is likely to be widely used and, even more likely, misused. Again, by reference to clause (e) it is not clear how we are to judge if the conditions against disclosure of what are categorised as 'private' documents are reasonable.

Earlier in the year a newspaper editorial on Freedom of Information suggested that 'at the most certain sensitive aspects of the affairs of the armed forces, ministry of defence and ministry of foreign affairs can be placed beyond public access. But the question arises, what aspects: What about the details of the defence budget? It is possible, for instance, to argue that we could not have been told in advance about Operation Gibraltar. But should we also not be told in retrospect? What about Ojhri camp? What about the events leading up to the formation of Bangladesh and the Hamood-ur-Rehman report?

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to contempt of court, [commission of] or incitement to an offence.' What follows the phrase 'reasonable restrictions' in this article is obviously open to very broad interpretation by the government which could well serve to seriously undermine the freedom guaranteed in the opening words of the article.

In any case, a number of laws can be invoked by the government to curb the right of free expression and to deny information on key areas. Such as the Official Secrets Act. Information can be denied on the grounds that it jeopordizes national security. Or that it brings the government into contempt. One problem is that by the time a court decides that the law has been unjustly applied the damage may well have been done and a newspaper or journal may not be able to recover its circulation.

Another problematic aspect is that while the judiciary can play a crucial role in providing substance to Article 19 by deciding in favour of freedom of expression and against government's often unwarranted efforts to restrict such freedom, it has yet to come out strongly in favour of limiting the scope of the contempt of court doctrine and providing for greater access to information where there is no clear likelihood of a sub-judice matter being prejudiced as a result.

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It is because of the tendency to withhold of information that more than a quarter of a century after the event the Hamood-ur-Rehman Commission report has yet to be made public. Nor, for that matter, has the Ojhri Camp report been released.

It is time that the establishment in this country recognized the nature of the challenge with which it — and indeed we — are confronted. Freedom of information is not a luxury available to the citizens of stable Western democracies that in our enthusiasm we seek to emulate. For us, it is a necessity that is crucial to providing democracy some much needed substance and making it work. It is the minimum condition for making democracy genuinely representative and participatory. And let us not underestimate the threat to the democratic system and the

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In this context, the experience of the United States is illustrative: The US Congress in 1946 shortly after the end of the second world war passed The Administrative Procedures Act. Under this act the government was obliged to disclose routinely held information and free access to documents other than those involving any function of the United States requiring secrecy in the public interest or any information held confidential for good cause found.' But the problem was that the caveat enabled government officials to withhold information even when the cause found could not be rated as good by any stretch of the imagination.

To be concluded