

The right to know

Mass Communication

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THE Freedom of Information Ordinance, promulgated by the caretaker government through a gazette notification dated January 29, 1997, will lapse today unless extended or replaced by appropriate legislation. A favourite guessing game among the media now is how much the present government will sanction access to information available in public offices and the facility with which they will be able to exercise their right to know.

The ordinance, *inter alia*, declared as 'public record' all information pertaining to the government's instructions, policies and guidelines as well as information relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties, both movable and immovable, and pertaining to approvals, consents, permissions, concessions, benefits, privileges, licences, contracts, permits, agreements etc. The manner in which any citizen of Pakistan could gain access to all such information was also prescribed in the ordinance.

However, the accessibility to certain categories of official record, including record declared as classified under a policy made by the government, notings on files, minutes of meetings and interim orders was specifically excluded from the purview of the ordinance. Most of all, the provisions of the ordinance could not override any other law — a limitation which, as Justice Nasir Aslam Zahid of the Supreme Court, while speaking at a function at the Karachi Press Club the other day, contended, seriously diluted the effectiveness of the ordinance. In his view, this was the biggest deficiency in the Ordinance which should in fact have provided that its provisions would be operative "notwithstanding rights in other laws."

Justice Nasir Aslam Zahid was of the opinion that the right to information was a fundamental right enshrined in Article 19 of the Constitution. However, it is undeniable that long before the ordinance was enacted several journalists and certain sections of the media boldly arrogated the right to freedom of information to themselves and expressed themselves with courage on issues of fundamental importance to the society with no concern for the consequences. Even when, during Gen Zia-ul-Haq's regime, journalists could face harsh punishments for reporting or commenting upon actions and policies of the government which in their opinion militated against the fundamental rights of the people, they were many who were not deterred from expressing themselves without any inhibition.

At the same time, it cannot be said that all sections of the Press in Pakistan have at all times conformed to the highest standards of professionalism. On the contrary, there have always been some newspapers and some journalists who have prided themselves on being pro-establishment and endorsed official policies even when they were not in the best national interest. Even national crises such as the imposition of martial law for the first time (October 1958) drew spontaneous endorsement. In the words of Herbert Feldman, the fact is that after martial law was promulgated by Ayub Khan, "not a single voice,

defending lost liberty was heard." It was practically the same attitude in 1971 when army action was launched in the erstwhile eastern wing of Pakistan and no questions were asked about Gen Yahya Khan's wisdom.

At times sections of the media have even supported punitive action by the government against certain other sections of the media, as happened when almost all the national dailies of Pakistan wrote a joint editorial calling for a ban on an English-language daily of Lahore for having published a report about Kashmir. Gen Zia-ul-Haq managed to collect quite a few newspaper editors around himself, who would shower him with praise and plaudits for almost anything that he did, and these included some very senior, otherwise respectable dignitaries. They were least concerned about either about his autocratic style of governance or about the dark abyss of obscurantism into which the general was leading the nation.

It was perhaps, this class of newspaper people that a senior journalist of Lahore, Khaled Ahmed, had in mind when he said at a recent seminar in Karachi that "Urdu journalism is

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opposed to pluralism as a matter of religious creed because its mind has been closely linked to the syllabus of nation-building since 1947." However, Khaled Ahmad appeared to be guilty of sweeping generalisations when he also declared that "Urdu journalism upholds all the laws made in contradiction to the constitutional provisions guaranteeing non-discrimination on the basis of sex or creed."

He also made the somewhat controversial statement that journalists writing in Urdu tend to be irrational or incoherent but the same people while writing in English can be logical and restrained, feeling no urge to quote poetry or slogans.

Curiously, in a recent personal conversation, Zamir Niazi, a leading authority on the trends in Pakistani journalism, also expressed the view that Urdu Journalism from the outset has tend-

ed to be agitational. The trend grew out of the mindset of certain Urdu writers and journalists involved in the Khilafat movement and has continued to be so. He also significantly made the point that there were no regular Urdu dailies until almost the late 30s when again they were involved in one form of agitation or the other, either on the side of the nationalist Muslims or on the side of the League. The agitational style is still there, while serious journalism, in his view, has been a tradition with English-language dailies, despite an occasional lapse into frivolity or irrelevancy.

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the prime minister's adviser for information and culture, Mushahid Hussain, has more than once declared that the government is fully committed to freedom of access to information. The prime minister himself in his 'Press Freedom Day' message expressed his firm commitment to the freedom of expression and the freedom of Press which, he said, flowed from the Constitution. As such, the limitations in the ordinance pointed out by Justice Nasir Aslam Zahid can be expected to be done away with.

Former Supreme Court Judge, Fakhruddin G. Ebrahim, who was Law Minister in the caretaker government, had started work on the ordinance on Freedom of Information but before he could do more he decided to leave the cabinet. He has expressed the view that the ordinance, as promulgated, could in fact become an instrument for denial of information. Like Justice Nasir Aslam Zahid, he too, is of the view that "Freedom of Information is a necessary element of the fundamental right of expression spelled out by Article 19 of the Constitution."

In an interview Justice Fakhruddin Ebrahim has gone on record to say that there is no reason why notings on files, minutes of meetings and interim orders regarding any public matter should not be part of 'public record' once a final order has been passed or made. Also, in his view, the provision in the ordinance to exclude any record declared or classified under the policy made by the government is "most alarming." He has also pointed out that the ordinance does not make any provision regarding access to public record held by provincial governments or institutions controlled by the provincial governments. However, any such provision in an ordinance promulgated by the federal government could be seen as a violation of the spirit of devolution of powers as envisaged in a federal setup.

It may have been useful, as Justice Fakhruddin Ebrahim has suggested, if public opinion was elicited on the subject. It is not known whether any formal consultations were made with the representative bodies of the working journalists before the ordinance was finally drafted. The question of government control of the electronic media is also relevant. Freedom of access to information cannot operate in the true sense of the word if the control continues to be there.