

## **Right to Information and Freedom of Expression**

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### **INTRODUCTION**

Information is power for development. For this reason, the right to information is an important human right. There is an exciting global trend towards recognition of the right to information by States, intergovernmental organisations, civil society and the people. There is a growing body of authoritative statements supporting the right to information, made in the context of official human rights mechanisms, including at the United Nations, the Commonwealth, the Organisation of American States and the Council of Europe. Numerous laws giving effect to this right have, in the last few years, been adopted in all regions of the world. Many intergovernmental organizations and professional organizations now have in place information disclosure systems which are reviewed and updated on a regular basis. The right to information has been recognised as a fundamental human right, intimately linked to respect for the inherent dignity of all human beings. Freedom of information, including the right to access information held by public bodies, has long been recognized not only as crucial to democracy, accountability and effective participation, but also as a fundamental human right, protected under international and constitutional law.

### **INTERNATIONAL DECLARATIONS AND EFFORTS**

A number of international bodies with responsibility for promoting and protecting human rights have authoritatively recognised the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These include the UN, the Commonwealth, the OAS and the CoE. Collectively, this amounts to a clear international recognition of the right. There are lot of nations passed right to information bills or acts which are not covered in this article.

#### **The United Nations**

Within the UN, freedom of information was recognized early on as a fundamental right. In 1946, during its first session, the UN General Assembly adopted Resolution 59(1) which stated: Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the UN is consecrated. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). Article 19, which guarantees freedom of opinion and expression as follows:: Everyone has the right to freedom of opinion and expression;

*this right includes freedom* to hold opinions without interference and *to seek, receive and impart information* and ideas through any media and regardless of frontiers (UN Universal Declaration of Human Rights). The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, was adopted by the UN General Assembly in 1966. In 1993, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of Opinion and Expression, and appointed Abid Hussain to the post. The UN Special Rapporteur further developed his commentary on freedom of information in his 2000 Annual Report to the Commission, noting its fundamental importance not only to democracy and freedom, but also to the right to participate and realisation of the right to development. In his 2000 Annual Report, the UN Special Rapporteur elaborated in detail on the specific content of the right to information. The UN has also recognised the fundamental right to access information held by the State through its administration of the territory of Bosnia and Herzegovina.

### **The Commonwealth**

The Commonwealth, a voluntary association of 54 countries based on historical links, common institutional and legislative frameworks and shared values, has taken concrete steps during the last decade to recognise human rights and democracy as part of its fundamental political values. In 1991, it adopted the Harare Commonwealth Declaration, which enshrined its fundamental political values. These include fundamental human rights and the individual's inalienable right to participate by means of free and democratic processes in framing his or her society. In 1980, the Law Ministers of the Commonwealth, meeting in Barbados, stated, "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information." More recently, the Commonwealth has taken a number of significant steps to elaborate on the content of that right. In March 1999, a Commonwealth Expert Group Meeting in London adopted a document setting out a number of principles and guidelines on the right to know and freedom of information as a human right, including Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions. These principles and guidelines were adopted by the Commonwealth Law Ministers at their May 1999 Meeting.

### **Organization of American States**

In 1948, the Organization of American States (OAS) adopted a seminal human rights declaration, the American Declaration of the Rights and Duties of Man. Article IV guarantees freedom of investigation, opinion and expression. This was followed in 1969 by the adoption of a legally binding international treaty, the American Convention on Human Rights (ACHR). In a 1985 Advisory Opinion, the Inter-American Court of Human Rights, interpreting Article 13(1), recognised freedom of information as a fundamental human right, which is as important to a free society as freedom of expression. In 1994, the Inter-American Press Association, a regional non-governmental organisation (NGO), organised the Hemisphere Conference on Free Speech, which adopted the Declaration of Chapultepec, a set of principles on freedom of expression. The Heads of State or Governments of 21 countries in the Americas, as well as numerous other prominent persons, have signed the Declaration. In October 2000, the Commission approved the Inter-American Declaration of Principles on Freedom of Expression, which is the most comprehensive official document to date on freedom of information in the Inter-American system. It is, therefore, clear that in the Inter-American system, freedom of information, including the right to access information held by the State, is a guaranteed human right.

## **Council of Europe**

The Council of Europe (COE) is an intergovernmental organisation, composed of 43 Member States. It is devoted to promoting human rights, education and culture. One of its foundational documents is the European Convention on Human Rights (ECHR), which guarantees freedom of expression and information as a fundamental human right at Article 10. In 1979, the Parliamentary Assembly recommended that the Committee of Ministers, the political decision-making body of the Council of Europe (composed of the Ministers of Foreign Affairs from each Member State), that invite member states which have not yet done so to introduce a system of freedom of information. The Committee of Ministers responded two years later by adopting Recommendation No. R(81)19 on the Access to Information Held by Public Authorities. In 1994, the 4<sup>th</sup> European Ministerial Conference on Mass Media Policy adopted a Declaration recommending that the Committee of Ministers instruct its Steering Committee on the Mass Media to consider "preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities." This was followed by a study for the Steering Committee on the Mass Media, which noted the need for a binding legal instrument on public access to official information.

## **ROLE OF LIBRARIES AND LIBRARY ASSOCIATIONS**

Libraries do not exist in a vacuum in any society; they are the storehouses of knowledge. This value is acknowledged without reservation. Libraries, especially public libraries, as information and cultural centers have important responsibilities in safeguarding the public's right to information. Libraries exist for the sake of freedom and thought. Those people who trains in this art (librarians) are therefore expected to make a unique contribution by safeguarding this freedom, which is not only a vital constituent of liberty but a means of securing and preserving liberty as a whole. Providing access to the worldwide information has been the goal the modern librarianship. Libraries have always been a cornerstone in building that society, which ensures those citizens, has access to information so that they can gain the knowledge to govern themselves. The mission of librarians is to ensure access to all types of information so that every citizen can explore all types of information and viewpoints. Throughout the past years, librarians in the world have collected, organized, preserved and provided access to information for all citizens. The question about their interest in political issues is pertinent because it raises issues about the kind of society want and the policies they wish to pursue so as to improve their life chances. To be precise, professional librarians have long tended to be content rather than to react to or initiate government policy. The profession has been too ready to let others set the agenda, regardless of the formation of their professional association. At a crucial time like this, when libraries are facing decreasing resources and competition from other agencies, there is an urgent need for vocal public support for the service they provide [Vijayakumar and Vijayakumar, 2002]. In an increasingly interconnected world, information is more than ever crucial. The human right to freedom of expression and free access to information is the foundation of autonomy. Librarians must defend that right vigorously, ensuring that it is not compromised nor abrogated [Byrne, 1999].

Lot of library associations all over the world, initiated activities in freedom of expression and free access to information. The activities of IFAL is briefed here.

## **IFLA/FAIFE**

According to International Federation of Library Associations and Institutions, Intellectual freedom is the right of every individual to both hold and express opinions and to seek and receive

information. Intellectual freedom is the basis of democracy. Intellectual freedom is the core of the library concept. IFLA/FAIFE is an initiative within IFLA to defend and promote the basic human rights defined in Article 19 of the United Nations Universal Declaration of Human Rights. They have published its first edition of IFLA/FAIFE World Report on Libraries and Intellectual Freedom during August 2001, which is available at <http://www.ifla.org/faife/report/intro.htm>. It covers detailed study reports of 42 countries starting with Albania to Zimbabwe including India. [IFLA/FAIFE Website].

IFLA and International Publishers Association (IPA) representing book and journal publishers through national, regional and specialised publishers associations in a joint statement at its 8th meeting held in Glasgow on 22 August 2002 on freedom of expression re-asserted and adopted that: [IFLA/IPA Joint Press Release]

- Freedom of expression is a fundamental right of the human being, in accordance with article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR). Freedom of expression is the right of every individual both to hold and express opinions and to seek, impart and receive information, through any media, regardless of frontiers.
- The right to freedom of opinion and expression is at the basis of democracy and is of fundamental importance to the safeguarding of human dignity. The diversity of sources of knowledge and information is an essential prerequisite for cultural diversity, creativity, prosperity and the development of societies worldwide.
- Publishers, by distributing works of the mind, and librarians, by providing the access to the information and knowledge, play a central role in the development and maintenance of intellectual freedom and help to safeguard democratic values.
- In order for publishers and librarians to fully contribute to the advancing of science, knowledge and creativity, national legal frameworks in accordance with international instruments protecting the right to freedom of expression must be put into place.
- The basic principles of freedom of expression in accordance with Article 19 of the UDHR and ICCPR must continue to apply in the electronic environment. Global information networks facilitate the exchange of information throughout the world to the benefit of all. IPA and IFLA encourage governments to oppose any attempts to censor or inhibit the publication of, and access to, online information.
- The UNESCO Florence Agreement on the Importation of Educational, Scientific and Cultural Materials and its additional Nairobi Protocol, by fostering the free circulation of educational, scientific and cultural materials, facilitate the free flow of ideas and thus play a central role in the widest possible dissemination of the diverse forms of self-expression in societies. IFLA and IPA encourage the ratification and implementation of both instruments.
- IFLA and IPA will do their utmost to oppose steadfastly any attempt or threat to restrict the freedom of expression and more particularly the freedom to publish, whether in the print or digital environments.

## **INDIAN INITIATIVES**

While developed countries seem to have important opportunities for the right to information, least developed countries and developing countries are far away from this right. We cannot realize the right to information unless we realize other rights we mentioned above. As a conclusion, we can say that in the 21st century, the least developed and developing countries still won't reach their right to information. [Yilmaz]. In India, the right to information has been developed through

diverse strands for almost the entire period of the country's independent history. In 1982, the Supreme Court of India ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression in Article 19 of the Constitution: The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

Various Indian laws provide for the right to access information in specific contexts. Section 76 of the Indian Evidence Act (1872), the Factories Act 1948), Section 25(6) of The Water (Prevention and Control of Pollution) Act-1974, The Air (Prevention and Control of Pollution) Act-1981, The Environment (Protection) Act, 1986, The Environment (Protection) Rules, 1986 and the Environmental Impact Assessment Regulations are few examples. The *Amending the Official Secrets Act-1997*, The 'Press Council' Draft-1995, The "CERC" Draft, The "Shourie Committee" Draft-1997, The Freedom of Information Bill-2000 and State level Laws and Orders on the Right to Information (like Goa Right to Information Act-1997, Tamil Nadu Right to Information Act-1997, The Madhya Pradesh Right to Information Act and Orders on Right to Information, The Rajasthan Right to Information Act-2000, The Karnataka Right to Information Act-2000, Delhi Right to Information Act and Orders on Right to Information-2001, Uttar Pradesh Code of Practice on Access to Information) are created awareness about freedom to information and expression. India presents a mixed picture with much secrecy legislation still in place restricting the free flow of information, but at the same time some significant developments at state level in terms of promoting freedom of information laws, as well as draft national legislation.

## CONCLUSION

Indian Library Association (ILA) and the Indian Association of Special Libraries and Inf. Centres (IASLIC) are the two main all India professional bodies. None has formulated any clear guidelines on intellectual freedom. All Library associations in India are active but their views are not strong enough to bring the expected changes in this field. There is not much of a repression - too strong a word - that Indian libraries and librarians face when it comes to intellectual freedom. What affects them most is shortage of fund that does not allow any library to get information, even the most essential items or what the users' want. [IFLA/FAIFE World Report: Libraries and Intellectual Freedom-India]. This comment is an embarrassment to all Indian library professionals. If we fail to active in these kinds of political issues, the recognition to our profession may go down, day by day.

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