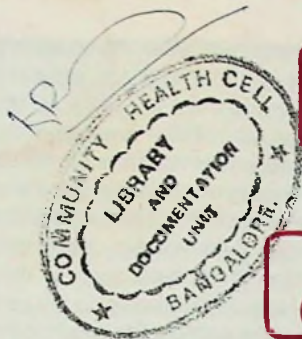




# FACTS against MYTHS

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INFORMATION BULLETIN

## Official Secrecy or the Peoples' Right to Know: The Myths behind "Freedom of Information"

"...The single most important cause responsible for corruption in society was the barrier to information..."

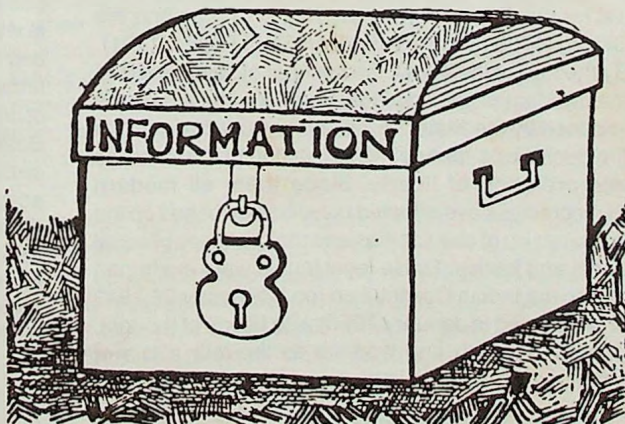
— P. B. Sawant, Former Chief Justice, Supreme Court of India

"When a society has chosen to accept democracy as its creedal faith, it is elementary that its citizens ought to know what their government is doing...No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy".

— S.P. Gupta vs. Union of India (1981)"

### COMMENT

**T**he right to acquire knowledge and the right to know is common to all cultures and civilizations ever since language became a medium for self-expression and communication and empowerment. It is an inherent trait and need. Hence, a natural right. A constitution or law does not confer it. Endowed with an intellect humans have the ability to observe, analyse, reason, comprehend and acquire knowledge. This is illustrated by the ancient legends of Prometheus of Greece and *Nachiketha* in Indian mythology. Prometheus went at great length and at great personal cost in pursuit of knowledge. Similarly, *Nachiketha* confronted *Yama*, the god of death — spurning offers of untold worldly riches — to get answers to fundamental questions. However, the systematization of the methods of inquiry into knowledge originated in Ancient Greece where Socrates (469-399 BC) raised his famous questions and his well-known inquiry mode, the Socratic method. Socrates was, however, sentenced to death by the Establishment for ostensibly imparting knowledge considered subversive and "anti-State"; for being a corrupting influence on the youth of Athens leading them astray. Following the Dark Ages five centuries later, during the Renaissance, the spirit of inquiry was revived, laying the foundation of modern science and civilization. This spirit of inquiry is today a global human heritage.



Ensuring Secrecy or Transparency?!

The Indian legal system, a British colonial legacy, has however been vicariously influenced by the US First Amendment. And the American Freedom of Information further hewed Indian values of information law through the judicial fraternity. The Supreme Court of India, in the very first case that arose for consideration under Art.19(1)(a) of the Constitution in *Romesh Thappar v. State of Madras*, acknowledged the influence of the US First Amendment in the incorporation of this freedom in the Constitution.

The inquiry process is a crucial to, and a defining factor in how information is gathered, how it is processed and how it is diffused. But it begs the question: information for whom? And for what purpose? For, knowledge in India had always been the monopoly of a privileged minority, the nobles and the brahminical high caste. In its operative part, then, the Indian tradition was not dissimilar to mainstream Judeo-Christian and Islamic belief systems. The disparity between those who had free access to knowledge and those who didn't was vast. To address it, saints, rishis and troubadours – *sufis* and *bhakti* poets for instance — had had to intervene. Their aim was to demystify and democratise the sacred knowledge for the benefit of all. Their success was however limited.

By the second half of the 18<sup>th</sup> and 19<sup>th</sup> century knowledge based on the concept of liberty was formalized as a right. As such, liberty became the beacon and rallying call for the revolutions in the North and a dominant feature in the writings of John Lock in 1689 when the English Bill of Rights was adopted. This document in turn led to the emergence of ideas of "civil liberty", "natural rights", and "rights of man". Since then discourses on liberty have been marked by an attempt to achieve a balance between state power and individual liberty. The ideas got codified in documents like the American Declaration of Independence (1776), the French Declaration of the Rights of Man and the Citizen (1789) and the American Bill of Rights (1791). By the end of the 19<sup>th</sup> C, the concept of liberty implied the freedom of the individual from external pressures imposed by the State. In the last century the focus on the doctrine of "natural rights" shifted to the legalistic interpretation of liberty. Since then, all modern democracies have adopted constitutions based on the inalienability of civil liberties and the principles of equal rights and justice. These legal tenets were enshrined also in the Indian Constitution (on November 26, 1949 and enforced in January 1950) with liberty of thought, expression, faith and worship as the four pillars of Indian democracy.

The Constitution opened a vision of democracy and concomitant right to know as well as the responsibility of the State to facilitate this right to be informed of all

facts, which affects the common weal. Paradoxically, the '*corpus juris*' of India — affected by legal sanctions e.g. the statutory amendment in 1986 to the Commissions of Inquiry Act, 1952 — empowers the government in its discretion to reveal or not to reveal the report of a public inquiry. Aberrations like these and those like the Official Secrets Act (OSA), Section 123 and 136 of the Indian Evidence Act, the Atomic Energy Act (1962) began to be questioned as they were seen as potential threats in sabotaging the very democratic framework of the country. For instance the suppression of the democratic rights and civil liberties vis-à-vis right to information during the Emergency (1975-77). This led to the demand for access to information and against acts of secrecy. Information on vital issues continues to be suppressed but shapes the overall administrative ethos in the bureaucratic apparatuses and institutions of even the armed forces and the judiciary, dominated by the upper caste Brahmins. Governments both at the Centre and State indulge in secrecy and intrigue, deception and derogation at all levels. To conceal the acts of corruption, scams, etc., the ossified colonial legal instrument 'The Official Secrets Act 1923' is often invoked. Historically, the Brahminical system appropriated all knowledge to itself and denied to others, i.e. non-Brahmins. This hegemonic control by the Brahminical elite continues to this day. Mystification, seclusion and exclusion molded into caste hierarchies thus continues to characterize this form of appropriating knowledge. Indian systems of knowledge have indeed become so exclusive that it has been lost even to its own custodians.

Public concern on government corruption has since increased the demand for greater transparency, ending in a claim for openness in government functioning and in the demand for the Right to Information Act. The demand against the Official Secrets Act (OSA) is an illustration, raised in the early decades of Independence. In recent times, the issue of the right to information has been exacerbated with the restructuring of the public sector through privatisation ideology. The State in withdrawing increasingly from the public arenas — and handing them over to the private sector e.g. private firms, NGOs, etc. — threatens to undermine freedom of information laws. The Bhopal gas disaster, the Bofors scandal are reminders that leaving the private sector out of the transparency and public accountability-net could lead to unmitigated disaster. Besides, citizens are least likely to have a right of access to information held by the private sector. In the North, Governments are beginning to recognize citizen's right to access and correct personal information, collected by private firms, as a way of discouraging unfair treatment and unjustified intrusions in personal privacy, and is now permitted under data protection laws adopted throughout the EU and in Canada. Some governments have also recognised broader rights of access to information held by private

The struggle for the freedom of information in India has strong legal and constitutional underpinnings. India is a signatory of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which also protects the right to information. The Indian Constitution's Art.19 (1)(a) guarantees that "all citizens shall have the right to freedom of speech and expression". The Supreme Court Of India has, in several landmark decisions, interpreted this right to include the right to information as well. For instance,

- ❖ In *Bennett Coleman & Co. vs. Union of India*, a Times of India group, challenged the government's policy of restricting the availability of newsprint. In its decision, favoring the petitioner, the Supreme Court declared that "freedom of speech includes within its compass the right of all citizens to read and to be informed. A dissenting opinion in the same case noted that "the fundamental principles involved here is the people's right to know";
- ❖ In *State of UP vs. Raj Narain*, A case in which the respondent had demanded information relating to the security expenses of the Prime Minister, Indira Gandhi, the Court stressed the importance of the public's right to know as a deterrent to oppression and corruption;
- ❖ In *S.P. Gupta vs. Union of India*, the Court declared that "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 interests so demands
- ❖ In 1989, in a writ petition involving M. Shah, a noted consumer activist, and the LIC of India, the court ruled that no official medium of information could transmit one set of views without also providing for the expression of alternative views, thus widening the range of opinions presented to the public.

The earliest dissent against the "Official Secrecy Act, 1923" was in 1948 by the Press Laws Inquiry Committee and in 1952 by the Press Commission. The Government of India was happily covered by it and even encouraged to indulge in acts which later made the Shah Commission of Inquiry to note: "It has been established that the more the effort at secrecy the greater the chances of Abuse of authority by the functionaries".

In 1977 the Janata Party promised to promote openness in Government in its manifesto. The Working Group that was established for this very purpose however came to the conclusion that it would be prudent to maintain secrecy on some areas like nuclear power, defense apart from external security. The group, however, suggested that an exception could be made in the case of 'developmental news' so that the masses become more aware of developments in the country. The overall recommendations was that there is nothing in the Official Secrets Act, 1923, which stood in the way of the flow of necessary information to the public! Above all, the Report was not made public. The country was thus back to 1923 — to square one — and is content to regulate its communication system with 'we, the people of India' along with the network of the colonial Official Secrets Act of 1923.

- ❖ Advocacy for the right to information soon stepped up in a number of ways and continued till the late 80s and early 90s when the Consumer Education and Research Centre (CERC), Ahmedabad, raised the issue in the context of consumer rights advocacy and access to government information. The first initiative to legislate upon the Access to Information was by the State of Karnataka in 1988, known as the Karnataka Freedom of Press Bill. The entire campaign acquired a dynamic impetus when grassroots peoples' movement, the Mazdoor Kisan Shakti Sanghatana (MKSS) in Rajasthan launched a mass struggle for the right to information in the Bhim Tehsil in the districts of Pali, Ajmer and Rajasmd. In 1994 the MKSS succeeded in forcing the State Government to publish the Panchayati Raj Rule, 1966, on December 3, 1996. Without such legislation, the benefit of the Constitution (73<sup>rd</sup> Amendment Act, 1992) devolving powers to panchayats would not be able to be utilised for the benefit of the common people.
- ❖ At the national level, the campaign was revived by the Press Council of India under the Chairmanship of Justice P.B. Savant resulting in a draft of Freedom of Information Act, 1997 submitted to the Government of India who set up a committee headed by Shri H..D. Shourie. On December 3, 2002 Parliament passed the Freedom of Information Bill. The right to information is the centrifugal point for access to myriad other basic human rights such as health, food, livelihood, shelter, environment, personal safety and security, justice, even essential services like roads, transport, etc. In the absence of this right it is not possible for workers to succeed in getting fair wages; women gaining even a semblance of equality; and the disabled seeking relief and rehabilitation.

agencies. South Africa's Promotion of Access to Information Act, adopted in 2000, implements a guarantee in its 1996 Constitution that citizens will have a right to access to information held by another person "that is required for the exercise or protection of any rights." The British freedom of information law includes discretion to include private organizations. Similarly, a proposed Jamaican law would include business that performs critical public services or hold a monopoly position in the marketplace.

Recognising of the danger in State concealment of information, the UN at the Conference on Freedom of Information drafted the Universal Declaration of Human Rights in 1948 and adopted general principles for promoting and protecting freedom of information in Art.19. Since then, the Right to Information has gathered momentum and enacted by a number of countries. Sweden, however, was the first to enact this law even prior to this initiative, way back in 1766! Other countries that have enacted this law include Finland (1957), Norway and Denmark (1970), US (1974), Canada (1980), South Africa (1987), Canada, Australia (1989). In India seven State Governments have passed their own versions of RTI Acts: Tamil Nadu (1997), Delhi, Goa (1997) Karnataka, Assam, and M.P. providing its citizens access to its information. On March 10, 2003 the Maharashtra State Legislative Assembly also passed the Right to Information bill.

Control of information is evidently a potent tool in the hands of Governments. It is crucial element in the 3-way relationship between information itself, the State and the individual. In each case the role of the state has been to intervene in the chain of communication between the source and the user of information. Freedom of information is the least widely understood and the least developed area of the three. This is significant, for freedom of information can only be beneficial to citizens if it is considered that a well-informed citizen derives benefits from the information and is acquired. The State, and those who constitute the government and bureaucracy, is exposed wherever there is open access to information. Little wonder then the bureaucracy in particular is most allergic in parting with information and indulge in subterfuge and intrigue. It is essential to therefore be both vigilant on the state control of information and expose attempts to conceal especially information that is of vital public concern by exposing the sacrosanct envelope of "Official Secrets" and its long-hidden contents into public domain as well as the major loopholes in the Freedom of Information Act.

**MYTH: *The FOI Act strengthens the democratic rights of citizens by providing freedom and access to information under the control of public authorities.***

**FACT:** This claim creates the illusion that that this law is actually creating a new right in favour of the citizens.

The right to information, however, already exists – in the form of a fundamental right recognised by the Supreme Court in several decisions; considered as the obverse side of the Freedom of Speech and Expression guaranteed under Art.19 (1) of the Constitution! Moreover, it is also inherent in the guarantees of the Right to Life and Personal Liberty and the Right to Equal Protection of Law contained in the Constitution.

The Act casts the burden on the citizen to 'secure access to information', leaving out the most important element of the duty of the state which is to effect proactive disclosure of information!

- ❖ The introductory statement also hedges in the right by the words 'consistent with public interest' which is very loose and gives unlimited discretion to public authorities and administration. What is the public interest that is sought to be protected? Who is to decide whether a certain request for information is consistent with public interests or not?
- ❖ 'Appropriate Government' and 'Competent Authority' do not consider any aspect of local bodies. All power to implement the right to information or freedom of information stops at the state level. This not only creates definite practical problems in implementation but also goes against the very spirit of openness and decentralization of authority that the law must seek to create. This will result in the law failing to address the needs of large masses of people whose day-to-day concerns are with local and village level bodies.

The scheme of definitions also imply that NGOs not 'substantially funded' by government, and by corporates, are excluded from the purview of the Act, which is contrary to the demands of mass movements.

Further, the scheme of Section 8 makes the operation of the Act completely dependent on executive discretion. It is difficult to understand the rationale, for instance, of but take decisions on matters affecting the public. Under this clause, for instance, the government could refuse to divulge information on interstate trade, or the sharing of waters, etc., which are vital matters relating to the public. Or, in the case of Kerala where the government is secretive on vital information, demanded by the peoples' movement, over Coca Cola's overexploitation of local water resources at the expense of the needs of local communities.

Finally, the wide import of the words 'prejudicially affect' would always be construed to mean 'being uncomfortable for the government'. (cf: related argument on page 7)

**MYTH: *The colonial Official Secrecy Act, 1923 was withdrawn following Independence.***

**FACT:** On the contrary! The colonial Act was amended — not withdrawn! The post-colonial governments had made only terminological changes in this Act — to conform to the terminology of the Indian Constitution. Otherwise, the basic structure and spirit of the colonial Act remained intact.

These substantive amendments were first made in 1967 when the Official Secrets (Amendment) Bill was introduced in the Rajya Sabha on June 23 and passed on August 7, 1967. It was introduced on August 12 — in less than two hours — in the Lok Sabha but without it being referred to any select committee and without much publicity. The citizens' right to know about the functioning of the Government failed to generate any great public debate. The Lok Sabha, vividly aware of the danger of spying, showed little awareness, much less understanding, of the wider implications involved in keeping government operations under a thick cloak of secrecy. Instead, it opted for a role destined to keep it poorly informed and therefore weak in its relationship with the executive. The only dissenting voice was in the Rajya Sabha by Bhupesh Gupta of the CPI.

In 1969, the V.P. Singh Government that had made the Bofors scandal a central plank of its campaign strategy came to power promising a more open government based on the right to information. Ironically — the promise to also increase the areas of governmental openness — was ultimately status quo-ist. It found nothing in the Act which could be construed to obstruct the flow of legitimate information to the people!

The policy of political parties like the Congress (I) Government on this issue was highly discouraging. There was no evidence of any attempt to restrict the area of official secrecy. Instead, a 'decommunicating' process was very much at work. The withdrawal from circulation of the 3-Volume Report of the Shah Commission of Inquiry (1978) thus de-recognised the citizens' right to access to official information.

**MYTH:** *The enactment of the right to information is victory for the people in that it makes people's power a reality, enabling ordinary people to get specific information freely on demand from the authorities.*

**FACT:** First and foremost, the mere enactment of the bill will not bring about freedom of information! For instance,

- ❖ Politicians are not prepared to provide information on their criminal records, assets and educational qualifications to enable voters to make an informed choice on implementing the freedom of information regime honestly. To illustrate: the judiciary is constitutionally autonomous. The petrol pump dealership scam illustrates how politicians can subvert it. Law and order environment is legally the responsibility of the magistrate and police. Gujarat is the latest instance of large-scale

### Practice of Secrecy<sup>3</sup>

Secrecy was a common practice in all cultures and civilizations since ancient times. Max Weber (1864-1920) had observed; 'Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of 'secret sessions': in so far as it can, it hides its knowledge and actions from criticisms. The treasury officials of the Shah of Iran made a secret doctrine of their budgetary art and even used a secret script. The official statistics of Prussia, in general, make public only what cannot do any harm to the intentions of the power-wielding bureaucracy. The tendency towards secrecy in certain administrative fields follows their material nature: everywhere that the power interests of the domination structure towards the outside are at stake, whether it is an economic competitor of a private enterprise or a foreign potentially hostile politically, we find secrecy. The pure interest of the bureaucracy in power, however, is efficacious far beyond those areas where purely functional interests make for secrecy. The concept of the "Official Secret" is the specific invention of the bureaucracy, and the bureaucracy as this attitude fanatically defends nothing, which cannot be substantially justified beyond these specifically qualified areas. In facing a parliament, the bureaucracy fights every attempt of the parliament to gain knowledge by means of its own experts or from interest groups. The so-called right of parliamentary investigation is one of the means by which parliament seeks such knowledge. Bureaucracy naturally welcomes a poor informed and hence a powerless parliament at least in so far as ignorance somehow agrees with the bureaucracy's interests.

subversion of the rule of law by politicians.

- ❖ The Act does not cast a strong enough duty on government to reach certain kinds of information to people who are not likely to exercise their freedom to go and ask for it, although it may have a vital bearing on their lives. Secondly, it provides a right to appeal to officials or public bodies on the question of accountability. Worse still, it gives a right to appeal once to some undisclosed authority and then again to the state or Central

government. In short, while a person who may be severely affected by non-disclosure of information in spite of having a legal right to it would be running from pillar to post, the 'babu' who created the situation would continue to remain in his position and continue to draw his salary.<sup>4</sup> Not satisfied with containing an array of exemptions to giving information in Section 8, Section 9 contains additional grounds on which information can be refused and one of these is, that the information is available in published material available to the public. Obviously, the government's obligation would end with 'publishing', or worse still, getting published through private publishers, any information. The invisibility of official gazettes, manuals, and reports, coupled with the high price of private publications, indicates the extent of access available.

**MYTH: Disclosures of especially sensitive information and documents to the public will endanger national interest e.g. national security and even demoralise honest public servants.**

**FACT:** This is a specious claim that cannot be availed of. To do so is to put under the carpet the misdeeds of concerned authorities.

"The objection of granting immunity to documents of this kind is to ensure the proper working of the government and not to protect the ministers and other government servants from criticism. It is only through exposure of its functioning that a democratic government can hope to win the trust of people" (State of UP vs. Raj Narain (1975) 4 SCC 428)<sup>5</sup>

Citizens in a democracy are entitled to know as to how the Government and its staff is acting on their behalf, or performing in their official capacity. After all, citizens are the ultimate sovereign in this country and are entitled to know every act of their representatives. The right to know, though not absolute, is a factor which should call for caution, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.

However, some exemptions are definitely legitimate. Any information that has to be withheld in the interests of the security of the country, etc., must certainly be exempted. But often these exceptions are so vast that they defeat the very purpose of this legislation. Further, problems arise only when this provision of exemptions is used to protect vested interests. For example to protect middlemen involved in corrupt defense purchase deals. *It is one thing to say that national security interests must be totally protected to which there is no objection.* However, it is a different thing to say that information which may lead to the exposure of corruption on defense purchase deals should be withheld. There is absolutely no justification to exclude the latter information. On the contrary, national security gets strengthened when such information is obtained

to expose corrupt defense deals.

Like the freedom of speech under Art.19 the Supreme Court has formulated many rights of citizens, which are not specifically mentioned in any of the fundamental rights of the Indian Constitution. Thus, the Supreme Court has broadened the sweep of Art. 21 which guaranteed that "no person shall be deprived of his life or personal liberty except according to procedure established by law".

The Supreme Court itself debunked the argument – e.g. in the S.P. Gupta case — that the bureaucracy will be demoralised if they parted with information to the public. It pointed out that an honest bureaucrat would not be deterred over any disclosure. On the contrary, it would be more likely to deter a dishonest official from a dishonest act or misdemeanor. At the same time, however, there must be provisions for the protection of those conscientious officials (whistle blowers) who go out of their way to be transparent in the larger public interest. Their jobs must also be protected. Thus, no democratic government can declare a document as "CONFIDENTIAL" without proper justification. Such an act will always be void and untenable.

**MYTH: Secrecy of official matter in no way adversely affects society or everyday social life of citizens.**

**FACT:** On the contrary! The practice of concealment entails grave consequences both for the polity and the wider society. In the absence of authentic information being made available to the citizens wild rumors, for instance, gain currency and even credence. Specifically, it

- ❖ is apt to foul the atmosphere and creates a communication gap between the Government and the people threatening in the long run the very legitimacy of governmental actions;
- ❖ secrecy covers up possible administrative lapses and mis-deameanours and thus has the effect of even promoting downright arbitrariness in public administration;
- ❖ It also deprives the citizens of opportunities of educating themselves on issues of contemporary significance.

With secrecy, there is no feedback available to it on the reactions of the people. Democracy without a free flow of information relating to official matter reduces itself to the level of a farce. There are vast areas of public life that is concealed from public life by the bureaucrats' labeling of official documents as "confidential", "top secret" or "classified" which can in no way be justified as legitimate.

The Official Secrets Acts has emerged as a device encouraging the mechanical application of its

provisions by civil servants. The secrecy rules are being applied blindly and thoughtlessly. This may be inferred from the fact that even the records of the colonial period continue to be protected under the Act of 1923. The seriousness with which post-Independent India protects the secrecy of its predecessor's records is really abominable. Historical documents and records relating to information on even such innocuous pursuits like sports are out of bounds for the public knowledge as these are "classified" information! Though the Official Secrets Act provides for the holding back of routine official files for a period of 50 years this time limit — itself of questionable validity — is never honored in observance. The practice in the Government is that files are cleared for declassification not for every year but every five years; and thus the 50-year secrecy rules become fifty-five years in actual practice.

Above all, the Act is a pretext in denying the people the right to information on various aspects of Development. This statutory secrecy of official information continues despite guarantee of Freedom of Information. Secrecy, conspiracy to conceal, plea of privilege, and immunity claimed against free criticism are all symptoms of the colonial syndrome of State safety through official secrecy.

The damage to present day society inflicted by the legal culture of suppression of information and punishment for revelation has been unprecedented in the annals of Indian history.

**MYTH:** *In a country where there is mass illiteracy the demand for 'openness in government' under the Right to Information Act is unrealistic and meaningless.*

**FACT:** Such claims are old and familiar, and may even be leveled against democracy itself. The country has adopted a democracy, which presently operates with a minimum flow of information to the citizens about the workings of the Government. This, in fact, has the effect of keeping democracy denied. An increased flow of information about the Government's ability to educate the people and facilitate their meaningful participation in the process of the government and consequently, make the latter more accountable and thus raise the level of its functioning. Openness in a Government enhances the citizens' sense of pride, establish democracy and safeguards public interest.

More specific to the point, while illiteracy can undermine the effective exercise of democratic rights include the rights to information, it is not clear that the "illiterate" would necessarily be much better off without an effective Freedom of Information regime. On the contrary, the poor and the "uneducated" stand to benefit from Freedom of Information that enforces accountability and checks corruption, and improves the administration of government projects, etc., that affect them. They could also turn to other non-government agencies, etc., and even bureaucrats

within the government themselves for assistance in demanding information, as the example of MKSS (cf. page 3) in Rajasthan demonstrated. The impact of illiteracy on the efficacy of any new Freedom of Information regime is thus likely to vary significantly across states; national literacy figures therefore do not constitute convincing argument against Freedom of Information.

**MYTH:** *The enactment of the FOI Bill clears the way for citizens to get all the essential information from the authorities without red-tapism or hindrance.*

**FACT:** However, on closer examination of the Bill reveals

❖ Several provisions for "exemptions" and "exceptions" and power of sweeping nature, given to the government, to add to them or interpret them. Such provisions carry forward some of the tenets of the OSA by incorporating them here, notwithstanding that the OSA has been expressly overridden<sup>6</sup>

The most blatant of these "exceptions" is the list of defense and security organizations tagged in the end that keeps them out of the purview of the Act. Even the states have been given the option of adding their own security and police organizations to this list. Another exemption clause is the one allowing the 'competent authority' to withhold any information on the grounds that it interferes with the work of a government office or involves a disproportionate expenditure in collecting it. However, the real difference is in the shift of cultures of the two regimes. While the OSA had legally perpetuated a culture of secrecy and corruption and denial of any rights against them, the FOI Bill brings in an era of transparency and accountability. And creates valuable rights to usher in this new era! Above all, the exemptions on access to information go beyond the limits prescribed by the Constitution and taken in factors, which are extraneous to the reasonable restrictions envisaged by the Constitution!

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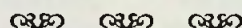
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## Official Secrecy Act

Secrecy especially Government secrecy has a long history. Most governments – the Indian government is no exception – never formally practice any large measure of openness about its internal functioning. Way back in 1843 on August 30, 1843 the British colonial government issued a notification instructing its personnel not to communicate any information in their possession. At that time, some civil servants had been leaking government information to the press. In August 16, 1884 the colonial government issued orders against making public any document, papers, or information without prior government authorisation.

In 1889, Britain passed its first Official Secrets Act, applicable to 'any part of Her majesty's dominions' including India. In its application to India, the rationale was that secrets were imperial in nature and thus the statute enforcing it must be applicable to the British Empire.<sup>3</sup> The Official Secrets Bill, 1889 was passed on October 17, 1889 during the viceroyalty of Lord Lansdowne at Simla, away from the press and publicity. The Act applied mainly to naval and military secrets thus arming itself with drastic powers for preventing their disclosure. The Act was amended in 1904 during the viceroyalty of Lord Curzon mainly to muzzle the press. There was however very strong opposition to the Act by especially Indian members of the government – by Gopal K. Gokale, Asutosh Mukherjee, Bipin Krishna Bose, T. Morison and Saiyad Muhammad. Gokhale had demanded wider practice of openness in public administration and defended the freedom of the press to seek and publish official acts. Despite these protests the Bill was passed by the Imperial Legislative Assembly.

In 1911, Britain replaced its Official Secrets Act, 1889, by the Official Secrets Act of 1911. As with its predecessor, the Act of 1911 was automatically applicable to India. There were thus, 3 laws governing secrecy management in India – the Indian Official Secrets Act, 1889, the Indian Official Secrets (Amendment) Act, 1904, and the British Official Secrets Act, 1911. The inconvenience of the law being thus scattered was obvious. Attempts at amendment were deferred till after World War I (1914-18). In 1920, British enacted the Official Secrets Act, mainly to include the experience gained during the War. Unlike the earlier Act this Act did apply to India where the colonial army who demanded a secret act in a bid to maintain tank supremacy and prevent potential enemies e.g. the Japanese from possessing this know-how. The (Indian) Official Security Act, 1923 was enacted despite protests from K.C. Neogi, Hari Singh Gour and K.B.L. Agnihotri. The aim of this Act was mainly to prevent and punish espionage. Post-colonial India however continues with the colonial legacy of the Official Secrecy Act 1923.



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