

IFLA/FAIFE World Report: Libraries and Intellectual Freedom



India

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The UN's Universal Declaration of Human Rights of 1948 had a catalytic effect on movements for 'open' government, worldwide. Many democratic countries have taken legislative action to give its citizens a right of access to information in the possession of the government and its agencies. USA passed the Freedom of Information Act, 1966, which was extensively amended in 1974, and again 1976, 1983. Canada enacted Access to Information Act in 1982. Australia and New Zealand also passed similar legislation in 1982 and 1983, respectively. In keeping with the spirit of the Universal Declaration of 1948 and its Article 19, the Preamble of the Constitution of India, adopted in 1950, has in its Article 19(1)(a) provides exactly similar guarantees to the citizens, the right to 'freedom of speech and expression' as one of the fundamental rights listed in Part III of the Constitution.

Population:	944,580,000 (1996)
GNP per capita:	\$ 380 (1996)
Government / Constitution:	Republic
Main languages:	Hindi, English
Main religions:	Hinduism, Islam
Literacy:	52% (1995)
Online:	0,45% (March 2000)

The Constitution of India, Pt.III under Article 19:Right to Freedom (1): "All citizens shall have the right- (a) to freedom of speech and expression. Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of the security of the State, friendly relations with Foreign States, public order, decency or morality..."

A survey of "freedom of information" laws passed in various countries would reveal that the right of access to information conferred thereby on the citizens is not unfettered. It is subject to several exemptions/exceptions indicated in broad terms under which laws government is entitled to withhold information relation to the following matters:

1. International relations;
2. National security (including defence) and public safety;
3. Investigation, detection and prevention of crime;
4. Internal deliberations of the government;
5. Information received in confidence from a source outside the government;
6. Information, which, if disclosed, would violate the privacy of individual;
7. Information of an economic nature, (including trade secrets) which, if disclosed, would confer an unfair advance on some person or concern, or subject some person or government to an unfair disadvantage;
8. Information which is subject to a claim of legal professional privilege, e.g. communication between a legal adviser and the client; between a physician and the patient;
9. Information about scientific discoveries.

Most of these exemptions are broadly similar to the grounds of permissible restrictions provided for in the Indian Constitution (Article 19 (2)) or in other extent Indian statues, which are in tune with it. However, certain antiquated laws having their genesis in the 19th century during the British colonial era are still in force in all the South Asian countries.

The most draconian of these laws which has been characterised by the critics as an 'anachronism' or 'profanity' is that contained in Section 5 and few other provisions of the Indian Official Secrets Act, 1889, 1923, introduced by the British colonial power for obvious reasons. Section 5 of the Official Secrets Act, 1923 is an omnibus catch-all provisions. It covers even a case where unauthorised disclosure relates to a document or information, which is not a 'classified' one. Section 5 is the main target of public criticism. Prosecutions for an offence under it, have been few and far between, and an occasion of its abuse for testing its constitutional validity in the Supreme Court, have not arisen. Two other acts - Indian Evidence Act and Indian Customs & Excise duty Act - are also used in several occasions to stop access to information recorded in official records or allow free flow of information irrespective of their origin.

In a significant judgement of the Indian Supreme Court in 1975, Justice K. K. Mathew observed that the power reserved to the court is a power to order production even though public interest is to some extent prejudicially affected. It seems reasonable to assume that a court is better qualified than the minister to measure the importance of the public interest. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public

way, by their public functionaries. In another case Justice Mathew remarked (1972) "that the right to free speech is inclusive of 'the right of the community to hear' and that right to free speech, includes the right of the community to read and be informed." Justice V R Krishna Iyer remarked (1990) in another judgement of the same Court - " Absence of education is an assurance that democracy will be docile. Alternatively, ignorant mobs may turn irresponsibly explosive. An enlightened people are an assurance of smooth governance and so universal literacy is integral to informational freedom and self-government. Democracy without education is hypocrisy without limitation."

The National Human Rights Commission, NHRC (estd. 1993) recommended the adoption appropriate legislation on compulsory primary education, matched with the necessary resources required for its purpose. It also recommended that timely actions be taken on the plans of the University Grants Commission to have support extended to five universities by April 1996 and various others by 1997 for the teaching of human rights at the university level.

Unfortunately, India was the first country to ban the entry of copies of Salman Rushdie's *The Satanic Verses* under the Indian Customs & Excise Duty Act. His other book *The Moor's Last Sigh* would have had the same fate but for the timely intervention of the National Human Rights Commission (NHRC 1993-). The Commission also took suo moto action in respect of Salman Rushdie's latest book *Moor's last sigh*. After hearing from press reports and complaints received from the Indian distributing agents that its distribution was being withheld on instructions from the Collector of Customs, the Commission issued notice to the Ministry of Home Affairs. As a result of this Indian government permitted the entry of the book into the country.

NHRC is an expression of India's concern for the protection and promotion of human rights. It is a statutory autonomous body with power to investigate and report to the authority / state / central governments for action / report in matters primarily related to civil liberties. However, as regards freedom of expression and access to information, time and again, it has been upheld and forced by Indian judiciary. The most effective and highest forum in India is the Supreme Court and its decisions on various 'public interest litigations' related to these issues, are some of the landmark judgements in Indian jurisprudence. Press Council of India another statutory body, also plays crucial role to safeguard freedom of the press and electronic media.

Since independence India is having a separate Ministry for Information & Broadcasting, a common affair in most of the newly formed governments of the developing countries. Its Press Information Bureau (PIB) is to provide information on the activities of the government to the mass media. Since 1992/93 Indian economy has moved to a more open market economy". With the fast growth of communication technology and electronic media, there has been growing public concern to have transparency in governance. Pressure is building up for discontinuation of this Ministry, specially its PIB wing as there are very few takers of its services within the media. While most countries in Asia are not freely allowing the use of satellite-linked cable television, India is more liberal in this regard. Like the freedom of the press, freedom of this electronic media, also is not an absolute right. The complete monopoly of All India Radio is no longer true.

Due to vast growth and development of IT and telecom technologies the government has relaxed its tight control over the electronic media. India's press however, is one of the most free and liberal. Most official publications are being brought out by the States and Central governments' Controllers of Publications. There have been growing resentments both within public and publishing sectors to stop publishing popular books and serials for mass consumption by the official Publications Division. Already opinions have been expressed to wind-up the Ministry of Information and Broadcasting.

Since independence (1947) there has been only a few (not exceeding a few hundreds) titles banned; a large majority were likely to hurt religious sentiments of one or the other section. But in all such cases publishers' associations strongly resented and protested against government action. During 1998-99 three books were banned and all are on religion.

In a large underdeveloped country having nearly half as illiterates, with multi-lingual and multi-religion social structure, there will be some conflicts of interest. Economic disparities help in making it worse. Indian Supreme Court in some of its landmark judgements and the NHRC have continuously helping in bringing the required changes to uphold citizens' rights in all spheres.

There is vast scope for allowing freedom of access to government-held information even within the framework of the antiquated Official Secrets Act, only if hide-bound bureaucrats allow it with due discretion, reasonably exercised in tune with evolving notions of open government. Bureaucratic interpretation of the Official Secrets Act and lack of political will are the main causes for not allowing public to have free access to official records of the policy making agencies of the government.

Only in 1993 the waiting period for public access to archival official records and documents was brought down from 50 to 35 years. There is a rule / practice that after 35 years of an event, the reports and official documents related to it should be handed over to the National Archives of India by the Government. This practice is not followed strictly either by the National Archives, on the plea of not having enough space, or the government departments, because of shortage of staff time, etc. This attitude of the bureaucrats to hold fast to secrecy was recently disapproved by the Prime Minister of India, urging the senior officials in a meeting to change the old ways of dealing with the press and ensure free flow of information on the government's policies and all that was being done to implement them.

Indian book trade and bodies representing publishing world made representations to the concerned official agencies to

find a solution of the case in hand but are yet to provide any guidelines to the members to tackle the issue.

Indian Library Association (IA) 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. 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.