

का कुछ हिस्सा मिला कर नए राज्य दण्डकारण्य को अस्तित्व में लाने की चौका देने वाली घोषणा की है और इस दिशा में उन्होंने का करना भी प्रारंभ कर दिया है। जिसका प्रत्यक्ष प्रमाण इन दिनों छत्तीसगढ़ के बस्तर सहित अन्य सीमावर्ती क्षेत्रों में निर्वाचित सरपंचों, पंचों और अन्य पंचायत प्रतिनिधियों को सामूहिक तौर पर जबरन त्याग-पत्र देने के लिए विवश किया जा रहा है। वे उन पर तथा उनके निकट संबंधियों पर जान लेवा हमला भी कर रहे हैं। इस तरह चारों प्रदेशों के बहुत बड़े आदिवासी क्षेत्रों में बढ़ती घटनाएं नई चिंता उत्पन्न कर रही है। फलस्वरूप इन मामलों तथा नए राज्य दण्डकारण्य की घोषणा को व्यापक संदर्भों में देखे जाने की आवश्यकता है।

मेरा केन्द्र सरकार से आग्रह है कि उग्रवादी गतिविधियों के समग्र स्वरूप को दृष्टिगत रखते हुए ठोस कार्य योजना बनाए जाने की आवश्यकता है, जिससे विकासात्मक और सुरक्षात्मक पहलुओं पर गंभीरता से विचार कर, कदम उठाया जा सके। धन्यवाद।

Announcement by Chair

THE VICE-CHAIRMAN (SHRI SANTOSH BAGRODIA): I have to inform Members that the Minister of Environment and Forests has requested the Chair to defer the calling attention on the stoppage of mining in Aravali Ranges. Accordingly, I am postponing the discussion to some other day.

Shrimati Vasundhara Raje to move the motion for consideration of the Freedom of Information Bill, 2002.

GOVERNMENT BILLS

The Freedom of Information Bill, 2002

THE MINISTER OF STATE OF THE MINISTRY OF SMALL SCALE INDUSTRIES THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTRY OF PLANNING, DEPARTMENT OF ATOMIC ENERGY AND DEPARTMENT OF SPACE (SHRIMATI VASUNDHARA RAJE): Sir, I move-That the Bill to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration.

There is a world wide trend in democratic countries to have legislation for assuring to the citizens, the right of access to information maintained by the public authorities. This is an intrinsic element of the efforts to provide openness, transparency and accountability in administration, and, to ensure greater participation of the people in Government's decision making process. Transparency is seen as a vital element of good governance, and, has been advocated by agencies and citizen groups alike. Democracy, today, embraces a concept which goes beyond the traditional view of accountability of the Executive to the Legislature in a Parliamentary democracy, and, incorporates equal accountability of the administration to the people in terms of accessibility, standards of performance and service delivery.

In our country also, there have been demands, for the past many years, for greater transparency and openness in the functioning of the Government. It is widely recognised that secrecy and lack of openness in functioning are major contributors to corruption and abuse of authority. Thus, right to information forms an important element of the programme for effective and responsive administration and Civil Service Reforms initiated by the Government.

With this end in view, the Government had appointed a Working Group on "Right to Information and Promotion of Open and Transparent Government" under the Chairmanship of Shri H.D. Shourie. The Working Group was asked to examine the feasibility and need for, either full fledged Right to Information, or, its introduction in a phased manner to meet the needs of open and responsive governance. The Working Group submitted its Report in May, 1997. and, as a part of its work, drafted legislation on the following broad principles":

- (a) disclosure of information should be the rule and secrecy the exception;
- (b) the exception should be clearly defined; and
- (c) there should be an independent mechanism for adjudication of disparities between the citizens and the public authorities.

The draft Bill and the Report of the Working Group were examined in detail by three separate Groups of Ministers, at different times, who in turn, also had the benefit of the suggestions made by a Committee of Secretaries, who had discussed, earlier, in detail, the various provisions of the draft Bill. The proposed Bill, which was in accordance with both Article 19 of the Constitution and article 19 of the Universal Declaration of Human Rights, was finally introduced in the Lok Sabha on 25th of July, 2000. Subsequent to its introduction, the Bill was referred to the Department related Parliamentary Standing Committee on Home Affairs for examination and report thereon. The Report of the Standing Committee was presented in both the Houses of Parliament on the 25th of July, 2001.

The recommendations of the Parliamentary Standing Committee, except for a few departures, have been accepted by the Government and the Bill, which incorporates the amendments suggested by the Parliamentary Standing Committee and agreed to by the Government, has been passed by the Lok Sabha.

May, I, therefore, Mr. Vice-Chairman Sir, commend the Bill to this august House.

The question was proposed.

SHRI PRANAB MUKHERJEE (West Bengal): Thank you, Mr. Vice-Chairman, Sir, for giving me this opportunity to participate in this debate. I also thank the hon. Minister for bringing this legislation. Normally, I do not participate in the discussion on a legislation which has passed through a Committee headed by me. But this piece of legislation is not only an important one, it also aims at strengthening our parliamentary system, the democratic norms and transparency; it aims at arming our citizens with the right to information.

Sir, it is said that knowledge is power. The essential ingredient of knowledge is information. The history of this Bill goes back to -- perhaps, it originates from -- the observation of the Supreme Court that the right to information makes the freedom of speech and expression guaranteed in article 19, complete. The right to information strengthens the right to life and livelihood; it gives sustenance to life. I would not like to go into the details of its history and the various committees through which this Bill has

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RAJYA SABHA

passed. But I would just like to point out that it has taken a little longer time. Even after the presentation of the Report of the Standing Committee in July, 2001, the Government has taken a little longer time to consider the various recommendations made by the Standing Committee. We had the privilege of having both the oral evidence and also a large number of written representations made by eminent organisations. There were three important organisations, namely, the Commonwealth Human Rights Initiative, New Delhi, the Consumer Education and Research Centre, Ahmedabad, and the Mazdoor Kisan Shakti Sangathan, Rajasthan. Three prominent individuals, namely, Dr. Madhav Godbole, the former Home Secretary of the Union Government, Mr. A.G. Noorani, an eminent columnist, and Justice Sawant, who was the Chairman of the Press Council of India, appeared before the Committee and gave their views,

I would like to draw the attention of the hon. Minister, specially, to paragraph 7.2 of the Report, where it is pointed out - this is the relevance; and this has compelled me to participate in this discussion:-

"The Committee is of the considered view that many of the important suggestions of the experts and organisations, as enumerated in para 7.1, have not been covered in the Bill. The Committee, therefore, recommends that the Government should consider these views and suggestions of the experts and organisations, and incorporate them in the Bill to make it comprehensive".

Sir, formally, we did not move any amendments to the different clauses of the Bill, on the understanding that as it is a new piece of legislation - the Government had gone through various stages of discussions - even the Group of Ministers, to which a reference has been made by the hon. Minister in her introductory remarks, had eight meetings; and the Group of Ministers was reconstituted thrice because, between 1997 and 2000, several Governments came to exist - the Government would consider all aspects. Instead of tying the hands of the Government with appropriate recommendations, we made a broad, general, recommendation in paragraph 7.2, and asked the Government to please consider the suggestions which have been enumerated. There are as many as 26 suggestions in paragraph 7.1"; but many of these suggestions have not been included in the Bill. I will just give you one example. Now, look at the

exemption category, which has been dealt with in clause 8. One can understand that information related to the Cabinet Committee should not be disclosed, but why are you extending this facility to the recommendations of the Committee of Secretaries? Why are you extending it to the civil servants, because there will always be a tendency to withhold information? If you are trying to create an open society by providing access to information, that access has to be made available. If one reads clause 8, and the exemptions which have been provided, one will find that the exemptions are much more than the right which you are giving in other clauses. Therefore, I would like to suggest that there should be one broad categorisation in respect of information to be provided. If the Government refuses to give any information, there must be a written reason why such information should not be given.

Secondly, even in respect of the decisions of the Government, what happens now? We come to know about the decisions of the Government, which have been taken at the Cabinet level. Of course, it is not possible for the Government to tell us who said what at the Cabinet meeting. But, surely, when the Cabinet arrives at a decision, it is possible for the Government to announce the decision, backed by an explanatory note, giving the reasons and the circumstances under which the decision was taken. That will help the common people to understand, rather to appreciate the Government's decision in the proper perspective, and it will also help the Government to communicate with the people easily because the reasoned arguments of the Government in favour of the decision taken by the Government would be appreciated when this piece of information is available to them.

Sir, the second suggestion which the Committee had made, and which I don't find in the Bill, is this. In the Schedule, you have given the name of the Central Intelligence organisations which will be exempted from the purview of the Bill. But the information ought to be made available to the people, not only from the Central Government, but from the State Governments also. At the Committee stage, we were told that the State Governments have not enumerated, they have not identified, the list of such organisations in regard to seeking information because some of the State Governments have made their own laws. States like Tamil Nadu, Goa, Maharashtra, Karnataka and Rajasthan have already enacted their own Right to Information legislations. But many States have not enacted the law and

the Central laws would be made available to them. If I understand correctly - if I am wrong, the Minister may correct me - the legislative competence of the Union Government is arriving in this case from Entry 97 of the List 1 in the Seventh Schedule, because in List 1 of the Seventh Schedule, on which the Parliament has the competence to make laws, specifically, the right to information is not mentioned there. But, as early as in 1997, the Department-related Parliamentary Standing Committee on Home Affairs, while examining the Demands for Grants for the Department of Personnel, recommended that if the Government suffered from lack of legislative competence, it can take the help of Entry-97, which is a residuary clause, where the power is vested in the Union Government to make legislations through Parliament, if it is not specifically mentioned from Item Nos. 1 to 96.

Therefore, you have the legislative competence. Now, the States, who have not passed their enactments, would like to take advantage of this law. But there is no identification, there is no enumeration of the intelligence organisation, which will be exempted from the purview of the law. One-and-a-half years have passed since the report was tabled in both the Houses in July, 2001. We are discussing it in December, 2002. Even after one year, this information has not been made available. As a consequence of that, Mr. Vice-Chairman, Sir, in the Bill, which we examined, in the Schedule, there were two Parts, Part-A and Part-B. Part-A related to the Central Government, and Part-B related to the State Governments. It is not seen now and you have simply dropped Part-B. That is not going to help us. You will have to impress upon the State Governments that when a Central Act is coming, they have to identify. If you come to the conclusion that they are not going to give you the information, please inform the Parliament that you have tried to have information from the State Governments but they are not giving you.

The third point, to which I would like to draw the attention of the hon. Minister, has, on two aspects, there was a detailed discussion in the Committee and most of the representatives, who gave their evidence before the Committee, have suggested that the appeal should lie with the High Court. Now the appeal lies with the Departmental seniors, within the purview of the same Department. The appeal lies with the higher officers of the Department. The demand is, at least, one appeal should lie with the High Court. Courts are totally barred. I would also not like to burden the courts with all sorts of cases; but, at least, the High Court should have the right. I

am not talking about the writ jurisdiction that is inherent. But one appeal should lie with the High Court so that the Executive doesn't take any arbitrary decision. Once the arbitrary decision is taken by the Executive, it is supported by his superior.

The next point, which I would like to emphasise is, there is no provision of penalty. If somebody deliberately conceals information, if somebody deliberately refuses to divulge information, which he is statutorily obliged to do, no provision of penalty has been incorporated in this Bill. We didn't make any specific recommendations on clause 13. As I said in the beginning, I don't want to tie the hands of the Government. I wanted the Government to have adequate flexibility. After considering the 26 major recommendations made by various organisations, whichever Government consider suitable and acceptable, they should have. But the whole purpose of the Bill is to provide a transparent, open, system where the citizens will have the right to information, on how decisions are made, who are responsible for the decision-making, what would be the impact of the decision, etc. Certain information would always be 'privileged information'. Even in the court, you can claim privilege. Certain information will always be classified. Even we have gone whole hog with the Government that period of classification should be 25 years, as many suggested that it should be 15 years. But you must give plausible explanations why it cannot be given and why it should not be given. Otherwise, the old Official secret Act, if it continues to remain and the same recalcitrant officers have no fear of penalty, then I am afraid, Mr. Vice-Chairman, Sir, the Bill will remain ineffective. Even many of the State Governments have provided penalty. They have provided a penalty of Rs.2000 or Rs.3000 which should be recovered from the salary of the erring and recalcitrant officers. I do feel the hon. Minister may consider that some sort of penalty is provided. It need not necessarily be departmental punishment. Even if you want to have departmental punishment, please do ensure that it becomes a major departmental penalty in the language of the Department of Personnel. This is a new piece of legislation which is opening a new area, as I pointed out, it is a beginning in the right direction, which many of the countries have introduced. If I remember correctly, the USA was the first to make legislation in this regard in 1966. Thereafter, many other matured democracies had this piece of legislation. We are also joining them. At the initial stage, there would be certain hesitant steps. But our steps should be in the right direction. With these words, and subject to my general observations, I

support and welcome this Bill. I thank you, Mr. Vice-Chairman, for giving me this opportunity.

श्रीमती चन्द्रकला पांडे (पश्चिमी बंगाल): माननीय उपसभाध्यक्ष महोदय, यह जो सूचना के अधिकार का बिल आया है, इसके उद्देश्यों को लेकर किसी के मन में किसी भी प्रकार का संशय होने की जरूरत नहीं है। जैसाकि हमारे वरिष्ठ साथी श्री प्रणव जी ने बताया कि इससे नए ऐरिना खुलते हैं और ऐसा लगता है कि आजादी के इतने वर्षों के बाद जनता के सामने जो सारी चीजें छिपी रहती थीं, वे सूचना के माध्यम से बाहर आ जाएंगी और शासन में अधिक पारदर्शिता और सरकार के कार्यकलापों में अधिक पारदर्शिता दिखाई पड़ेगी। लेकिन अगर इस पर गहराई से विचार किया जाए तो यह स्पष्ट होता है कि यह जन-उपभोग की जगह, जन-दबाव को बढ़ावा देगा। सूचना का अधिकार संविधान के 19वें अनुच्छेद के तहत सुप्रीम कोर्ट ने सुनिश्चित किया इसलिए सूचना पाना इस देश के नागरिकों का मौलिक अधिकार है लेकिन अब तक इसके लिए कोई मशीनरी नहीं बनी है। हमें इस मशीनरी को उपलब्ध कराना होगा। हमारे पूर्व वक्ता ने भी कहा कि इस दिशा में सबसे बड़ी बाधा जो आई है, वह है सरकारी गोपनीयता अधिनियम और अन्य नियमों के वे प्रावधान जो लोगों को सूचना देने के स्थान पर सुरक्षा और सरकारी गोपनीयता की आड़ में उन्हें सूचना से वंचित कर देते हैं।

महोदय, सन 1982 में मैथ्यू कमेटी ने कुछ सिफारिशें की थी। इस कमेटी ने सरकारी गोपनीयता कानून में भी कुछ संशोधन सुझाए थे लेकिन वे संशोधन कागजों पर ही रह गए। प्रैस काउंसिल ऑफ इंडिया ने भी विधेयक का एक ड्राफ्ट प्रस्तुत किया था, परंतु वह भी जहां का तहां रह गया। सन 1989 में युनाइटेड फ्रंट सरकार जब केन्द्र में आई थी तो जनवरी, 1980 में तत्कालीन प्रधानमंत्री श्री वी.पी. सिंह ने जो कहा था, उसे मैं उद्धृत करना चाहूंगी।

उन्होंने कहा था कि

“प्रशासन पर लोगों का नियंत्रण बढ़ाने और भ्रष्टाचार घटाने के लिए सरकार सूचना मुहैया कराएगी। अगर सरकार जनता के अनुसार काम करे तो गलत कामों पर काफी कुछ अंकुश लग सकेगा। सरकारी गोपनीयता कानून में संशोधन किया जाएगा और हम सरकार के कामकाज को अधिक पारदर्शी बनाएंगे.... गोपनीयता वही रखी जाएगी जहां वह राष्ट्रीय सुरक्षा और विदेशी मामलों के लिए वांछित होगी। सूचना का अबाध प्रवाह जनतंत्र की मूलभूत आवश्यकता है, पूर्व शर्त है। हम अपवने संविधान में सूचना के अधिकार को सुनिश्चित करेंगे, दूरदर्शन और आकाशवाणी को स्वायत्तता दी जाएगी। इसी समय यू.एफ. ने एच.डी. शौरी की अध्यक्षता में एक कमेटी भी बनाई थी। उसमें कई अनुभवी और वरिष्ठ अफसर थे। कमेटी ने एक ड्राफ्ट बनाया था। यह विधेयक उसी ड्राफ्ट की तर्ज पर बनाया गया लगता है। इसके कुछ प्रावधानों पर हम विचार करें तो इसके तीसरे क्लॉज में कहा गया है, इस अधिनियम के उपबंधों के अधीन रहते हुए सभी नागरिकों को सूचना की स्वतंत्रता होगी। [सूचना की स्वतंत्रता की परिभाषा देते हुए कहा गया है] [सूचना की स्वतंत्रता से निम्नलिखित के माध्यम द्वारा किसी लोक प्राधिकारी से सूचना अभिप्राप्त करने का अधिकार अभिप्रेत है

(a) निरीक्षण उद्घरण और टिप्पण लेना।

(b) ऐसे लोक प्राधिकारी के किन्हीं अभिलेखों की प्रमाणित प्रतियां अभिप्राप्त करना।

(c) जहां ऐसी जानकारी का भंडारण किसी अन्य युक्ति में किया जाता है, वहां डिस्कटों, फ्लापियों, इलेक्ट्रॉनिक साधनों या प्रिंट आउट के माध्यम से अभिप्राप्त करना है।

उपसभाध्यक्ष महोदय, इसी क्रम में सूचना की परिभाषा इस रूप में की गयी है। [सूचना का अर्थ है, किसी रूप में कोई सामग्री जो प्रशासन, ऑपरेशन या पब्लिक अथॉरिटी के निर्णयों से संबद्ध हो। विधेयक में पब्लिक अथॉरिटी को भी परिभाषित किया गया है। पब्लिक अथॉरिटी का आशय उस अधिकारी या संस्था से है जो उपयुक्त शासन द्वारा निर्धारित नियमों के तहत गठित किया गया हो और उसी में शासन द्वारा प्रत्यक्ष या परोक्ष तौर पर वित्तीय नियंत्रण भी उस पब्लिक अथॉरिटी को प्राप्त होगा। क्लॉज-4 में पब्लिक अथॉरिटी के कर्तव्यों का भी विवरण दिया गया है। वह अपने सारे रिकार्डों को मेंटेन रखेगा, व्यवस्थित ढंग से कैटलॉगिंग और इंडेक्सिंग करेगा। कुछ अंतरालों पर वह सूचनाएं प्रकाशित भी करेगा और किसी भी नागरिक की जरूरत पर वह सारी सूचनाएं ठीक मुहैया कराएगा। पब्लिक अथॉरिटी सभी प्रासंगिक तथ्यों को प्रकाशित करेगा और अपने निर्णयों का कारण भी बताएगा। क्लॉज -4 में ही कहा गया है किसी परियोजना के शुरू होने पर उसके बारे में उससे प्रभावित होने वाले व्यक्ति को ही उसे खास रूप में मुहैया कराया जाएगा। मैं इस संदर्भ में कहना चाहूंगी कि अगर पब्लिक अथॉरिटी ही अपने सारे कर्तव्यों का निर्वहन ठीक से कर लेता है तो शायद किसी को भी सूचना मांगने की जरूरत ही न पड़े क्योंकि वह सूचना जब खुद-ब-खुद मिल जाएगी तो सूचना पाने के लिए किसी भी प्रकार का पापड़ बेलने की जनता को कोई जरूरत नहीं होगी। लेकिन बिल में ही कहीं भी यह नहीं बताया गया कि अगर पब्लिक अथॉरिटी अपने कर्तव्यों का निर्वहन नहीं करता तो उसके लिए सजा का क्या प्रावधान होगा। इस पर विधेयक में विस्समयकारी चुप्पी है मेरी राय में विधेयक की यह बहुत बड़ी कमजोरी है। हालांकि विधेयक के मूल उद्देश्य का मैं स्वागत करता हूं। हो सकता है, इससे देश की बहुत बड़ी संख्या में लोग उत्साहित हों कि अब उन्हें सारी सूचनाएं मिल जाएंगी। लेकिन पब्लिक अथॉरिटी पर सजा का भी कोई प्रावधान होना चाहिए। माननीय मंत्री जी से मैं यह पूछना चाहूंगी कि क्या इस प्रकार की कोई सजा का प्रावधान होना चाहिए। माननीय मंत्री जी से मैं यह पूछना चाहूंगी क्या इस प्रकार की कोई सजा का प्रावधान रखना चाहेंगे। अब हम कानून के तहत इस पर आए तो देखेंगे कि इसमें प्रावधान है कि सूचना पाने के लिए निवेदन करना होगा लेकिन उस निवेदन की अर्जी भी कभी कभी मंजूर नहीं होती। अगर यह अर्जी मंजूर नहीं होती है तो अपील दुबारा की जाएगी। अपील किससे की, कब्र की जाए, कोई भी व्यक्ति इस प्रकार से इसके बारे में, पब्लिक अथॉरिटी के बारे में या पब्लिक इनफॉर्मेशन आफिसर के बारे में ठीक ठीक समझ नहीं पाता है। यह कहा गया है कि तीन दिन के भीतर यथोचित अधिकारी के पास अपील कर सकता है वह एक अफसर हो सकता है, सैक्रेटरी हो सकता है, ऐडिशनल सैक्रेटरी हो सकता है, वह इसी प्रकार का कोई उच्च अधिकारी हो सकता है। लेकिन इसमें बहुत देर लग जाती है। मैं यहां कहना चाहूंगी कि केन्द्र सरकार और राज्य सरकारों के पास इस प्रकार के जो प्रावधान हैं, पब्लिक अथॉरिटी को सबसे पहले अपनी ड्यूटी निभानी

चाहिए और जो बार-बार अर्जी करने का मामला है, यहां अर्जी दी जाए, यहां न मंजूर हो तो फिर और कहीं दी जाए, यह ऐसा है जैसे कि पूरी जलेबी बनाने की प्रक्रिया है। समझ में नहीं आता कि सूत्र कहां से पकड़ा जाए और कहां छोड़ा जाए। महोदय, फैज ने अपनी एक कविता में कहा था घबराकर इक दिन हमने, सबसे यूँ नाता तोड़ दिया। [ऐसा लगता है जो अर्जी मानी ही नहीं जाती है तो घबराकर सबसे नाता तोड़कर चुपचाप बैठ जाता है।

(उपसभापति पीठासीन हुई)

उसे कई बार ऐसा लगता है कि भ्रष्टाचार इस तरह व्याप्त हो गया है कि किस किस का नाम लीजिए, किस किस को रोइए, आराम बड़ी चीज है, मुंह ढककर सोइए सोचकर वह भी चुपचाप रह जाता है और सोचता है अब कहीं से उसे किसी प्रकार की सूचना नहीं मिलेगी। सूचना की लंबी तालिकाओं को इस प्रकार दे दिया जाता है जैसे ये.ये.ये.ये सारी सूचनाएं हैं। इस सूची में बताया गया है, जो भारत सरकार की स्वायत्तता से जुड़ा है, अखंडता से जुड़ा है, देश की सुरक्षा से जुड़ा है, रणनीति संबंधी सूचनाएं हैं, ये सारी चीजें उसमें नहीं आएगी।

महोदय, एक बड़ी सूची पर जब इस प्रकार की बंदिश लगा दी जाती है कि ये सारी चीजें किसी भी रूप में जनता की सूचना से बाहर हैं तो सोचती हूं कि इस बिल के लाने के बावजूद इसकी बहुत कुछ मंशा पूरी नहीं होगी। अभी हाल ही में विनिवेश पर चर्चा हो रही थी। मान लीजिए किसी कंपनी के विनिवेश का मामला है, किसी और चीज का मामला है और केबिनेट में एक डिजीजन ले लिया गया और कह दिया गया कि यह राष्ट्रीय हित से जुड़ी हुई बात है और राष्ट्रीय हित से जुड़ी हुई बात को पब्लिक के हित में कैसे लाया जा सकता है ? तो वह सारी चीजें वही की वही रह जाती हैं और बाहर नहीं आ पाती हैं। इसी संसद में एक बात हुई थी कि लोकपाल विधेयक पास हो जाएगा। लोकपाल विधेयक पास होने के बाद किसी के पास, किसी भी बड़े अधिकारी के पास अथवा किसी राजनीतिक नेता के पास धन कहां से आया, सम्पत्ति कहां से आई, इन सब चीजों की विस्तृत जानकारी जनता को दी जा सकती थी लेकिन ये सारी चीजें अभी तक नहीं हो पाई हैं। कई बार ऐसा होता है कि टेबल के ऊपर क्या बात होती है और टेबल के नीचे क्या बात होती है, यह सारी चीजें भी जनता को मालूम नहीं होती। बड़े बड़े लोग समझौता कर लेते हैं और जनता केवल देखती रह जाती है कि उनका देश, जो उनका अपना महान देश है, जिसके लिए संविधान में गारंटी दी गई है कि यह देश उन सब लोगों का है जिन्होंने संविधान की शपथ ली है लेकिन ऐसा कुछ होता नहीं है। वैधानिक संकट की बात उठा दी जाती है और जनता को सूचना के अधिकार से वंचित कर दिया जाता है।

उपसभापति महोदय, एक और तथ्य मैं इस विषय में यह बताना चाहूंगी कि आज बहुत सारी चीजें हैं ट्रेड लाइसेंस को लेकर, व्यावसायिक चीजों को लेकर। वहां भी यह कह दिया जाता है कि यह व्यापारिक, वाणिज्यिक गोपनीयता है और इस व्यापारिक, वाणिज्यिक गोपनीयता की जानकारी देश की आम जनता को नहीं दी जाएगी। अगर देश की आम जनता को ही अपने देश की सारी चीजों को जानने का अधिकार नहीं है और उसे बार बार गुमराह रहना पड़ता है

तो एक आजाद देश की मूलभूत शर्त ही खत्म हो जाती है। इस बिल में मैं यह जोड़ना चाहूंगी कि पब्लिक इनफॉर्मेशन के लिए कम से कम जिस अधिकारी को वहां रखा जाए, उसका यह दायित्व हो कि वह सूचना के लिए जो कोई भी व्यक्ति आया हो, उस व्यक्ति को किसी भी रूप में गुमराह न करे। केन्द्र और राज्य संबंध इससे जरूर प्रभावित होंगे इसलिए इसमें पारदर्शिता लानी जरूरी है। अगर क्लॉज 8 की आड़ में पांच छः बार आकर भी वांछित सूचनाएं किसी व्यक्ति को न मिलें तो यह उसके लिए असंभव हो जाता है। फिर यहां थर्ड पार्टी की बात की गई है। उस थर्ड पार्टी के माध्यम से सूचना कैसे मिलेगी, किस रूप में मिलेगी, यह इस विधेयक में एक बहुत बड़ी खामी है, इसे भी हमें ध्यान में रखना चाहिए, सूचना प्राप्त करने के लिए 25 दिन पहले नोटिस देना पड़ेगा। उसके बाद 30 दिन और फिर 60 दिनों के बाद फिर 25 या 30 दिन लगेगे। इस तरह यह एक लंबी प्रक्रिया हो जाएगी और सूचना चाहने वाला केवल इंतजारों के अंतहीन सिलसिले में उलझकर रह जाएगा। मैं एक बात गंभीरतापूर्वक सरकार के ध्यान में लाना चाहूंगी। पहली यह कि इस देश की अर्थव्यवस्था की जड़ें जिस प्रकार खोदी जा रही हैं, भ्रष्टाचार जिस प्रकार व्याप्त हो रहा है, इसे सभी जानते हैं। अगर हम पूरी जनता को पारदर्शिता के साथ देश के हर मुद्दे की जानकारी दिलाने के लिए सरकार को निर्देशित कर सकते हैं, सरकार अगर इस दिशा में आगे बढ़ सकती है तो मुझे लगता है कि यह बिल जिस महत् उद्देश्य को लेकर आया है, उस उद्देश्य में इसे बहुत बड़ी सफलता मिलेगी। भ्रष्टाचार को खत्म करना या कम करना इसके लक्ष्य में आएगा। पारदर्शिता करना और सूचना के अधिकार को अनिवार्य बना देना होगा लेकिन इस विधेयक के अंतर्गत आप भ्रष्टाचार को किस कोने से रोक सकेंगे, कहीं न कहीं, न कोई छिद्र ऐसा भी होगा जिससे चोर दरवाजे से निकल भागेगा। अधिनियम जिस पीआईओ की बात करता है, वह कौन है? उसका स्टेटस क्या होगा, उसकी योग्यता क्या होगी? वह किस रूप में इन सारे नियमों, कानूनों पर ध्यान देगा और कैसे सूचना का अधिकार सारे देश की जनता को मुहैया कराया जा सकेगा। मीडिया अगर सतर्क रहे तो वह सूचनाएं काफी कुछ दे सकता है। इस देश में बहुत सारे एन.जी.ओ. भी हैं, जो देश की भलाई के लिए काम कर रहे हैं। कुछ व्यावसायिक और वाणिज्यिक लोग हैं जो सूचनाएं प्राप्त करना चाहेंगे, कुछ ऐसे लोग हैं जो चाहेंगे कि इस सूचनाओं को पाकर, वे अपने देश के विकास में आगे बढ़ें। मैं यह कहना चाहूंगी कि सरकार इस बिल को पास करे और आम जनता को सूचना का अधिकार दे। आज जनता जब सूचना के अधिकार को प्राप्त कर सकेगी, सरकार के कार्यों में पारदर्शिता आएगी तो खुदबखुद इस देश से भ्रष्टाचार दूर हो जाएगा।

SHRI RAVULA CHANDRA SEKAR REDDY (Andhra Pradesh):
Madam Deputy Chairman, I thank you for giving me this opportunity to speak on this Bill. It was a long-pending desire of the people of this country to have this piece of legislation so that they could have access to the information. I welcome this piece of legislation, which is basically designed to ensure openness, transparency, and accountability in administration. A parliamentary democracy can become meaningful only if it is a participatory democracy; a system where ordinary citizens are allowed to develop a sense of belonging in the day-to-day administration. This is possible only when there is a transparency in administration, and every

citizen has access to public records, and the functioning of the Government. Through this enactment, the Right to Information is sought to be conferred upon the citizens of this country. It is a basic right. Therefore, I welcome this Bill. In our country, this type of legislation would be very useful, as it would strengthen our democracy. We are like a very strong knit-family, and our strength lies in unity in diversity. We may defer with each other on some issues, but once a majority section takes a decision, we abide by it. That is our strength. Sharing of the existing information, exchanging information, and access to information must be given to the people as a right, because it would help in taking correct decisions.

Madam, I would like to mention one thing. In our country, people elect their representatives right from the panchayat level to the parliamentary level. The representatives, once elected, are supposed to take an 'Oath of Secrecy' before taking charge of their office. This is where I defer. People should have access to information, and they should not be kept in dark. The people elect their representatives, but these representatives deny information to those very people who elected them. The 'Oath of Secrecy' should be reviewed, or, it should be discouraged. Madam, I would like to know from the hon. Minister whether this Bill would be a further improvement on article 19(a) of the Constitution which confers the Right to Information to all its citizens. This Freedom of Information Bill should be renamed as the Right of Information Bill. That would be appropriate; it would strengthen the democracy, it would strengthen the people of our country.

All these days, the people of this country have been kept in dark with regard to the preparation of the Budget. We treat it as a secret document. Madam, through you, I would like to inform the hon. Minister that in Andhra Pradesh, the involvement of the people has been encouraged at the initial stage of the preparation of the Budget itself. The State Government had tried to take their opinion, and their participation was there at the stage of the preparation of the Budget only. Earlier, we had instances when Ministers were made to resign for leakage of the information relating to Budget. But days have changed. Now, the people should have information, they should have knowledge, and they should be allowed to participate in the decision-making process. Participation of the people in the Budget-making process is there in Andhra Pradesh. Last year, before the presentation of the Budget, the Minister of Finance went to the people.

The Minister of Finance went to the people and requested them to offer their suggestions, to give their opinions, to narrate their problems, plight, etc. to the Government so as to incorporate all these things in the Budget. This is a very good thing. Madam, right from the time of our freedom, we should have involved the people in our Budget preparations. Preparing the Budgets in Delhi and at the State level, and throwing them down below is not yielding good results. For this particular reason, I would like that people have the right to information. Then only, they can have their say in the Budget preparations. Madam, in Andhra Pradesh, we have gone a step ahead. The entire proceedings of the Assembly are telecast live and all documents pertaining to Government works, pertaining to the Government decisions, etc., are put on the Internet. Everybody can have access to Government's documents and the people can have information from the Government officers. By this, they can have a fresh look at the activities of the Government, and can also offer their suggestions to the Government.

Madam, I understand, the idea of this Bill is to promote openness, transparency and accountability. On the one hand, we are uttering all these big words, but on the other hand, I find there are a lot of restrictions by way of clauses 5 and 8. Madam, clause 5 makes provisions for appointment of Public Information Officers who have been charged with the duty of dealing with the requests for information from the members of the public. Public information officers are the agencies through which public will have the benefit of information as provided in the Bill, and, without them, the Bill will be reduced almost to nullity. But, surprisingly, the Bill is silent about the status of these officers, their qualifications or the methods of their selection and recruitment. Instead of leaving these details to be prescribed by the rules, the Bill should have given some idea about these appointments.

The other aspect about which I would like to speak is with regard to clause 8. Here, I would like to mention that a lot of restrictions are put, more particularly, in clause 8(e). Madam, the Bill contains a long list of items whereon the information sought will not be disclosed. I shall refer only to some of them. There is a provision in clause 8(e) under which the minutes, records of advice including legal advice or opinions cannot be disclosed. Why not? What is the harm in informing the public of the legal advice or the opinion, after the Government has taken any decision with regard to a matter? And, then clause 8(f) debar information with regard to "trade or commercial secrets" of the Government. This is incomprehensible because

in this era, there can be no trade secret at all when the W.T.O. regime is functioning almost throughout the world. If, for instance, a country is dumping a particular commodity at the cost of farmers of our country, should it be classified as a 'trade secret or as a commercial secret'? I think, definitely, it cannot be.

When a person seeks any information, the time limit proposed to be given to the administration is 30 days. This period, I think, is too long. We are in an electronic age and any information can be given through the electronic media.

Madam, there are also no provisions with regard to penal clauses. When an officer denies or when an officer prohibits a person to have access to information, there is no penal provision in this Bill. That should be there. Apart from this, the people - whose expectations are very high - are deprived of their legal rights also. In a small office like Tehsil Office or Revenue Office, when people request the officers to give some information pertaining to their own land, even that, the officers generally refuse to give. This should be a right of the people. As I have said earlier, the Government of Andhra Pradesh has put everything on Internet, and the interface between the officers and people are reduced... As a result the people can save their time, money and energy. They can also invest all these things in some other areas to strengthen themselves and the country. Therefore, I request that there should be a re-thinking in regard to clause 8. So many restrictions on information will dilute the very purpose of the Bill. That should be looked into.

On clause 5 also, the toon. Minister should come out with specific details of appointment and recruitment procedures and the officers to be designated. All these things should be clearly told to the people, through this House.

With these comments, I support the Bill.

उपसभापति : श्री उदय प्रताप सिंह । आप लंच के बाद बोलेंगे कि अभी ।

श्री उदय प्रताप सिंह (उत्तर प्रदेश) : लंच के बाद ।

उपसभापति : चार मिनट और हैं

So, I can adjourn for lunch now. There are certain amendments also given by Shri Prithviraj Chavan. They will also be circulated. So, you can speak after lunch.

The House is adjourned for lunch for one hour.

The House then adjourned for lunch at fifty-six minutes past twelve of

the clock.

The House reassembled after lunch at one minute past two of the clock,

[THE DEPUTY CHAIRMAN in the Chair.]

उपसभापति : श्री उदय प्रताप सिंह ।

श्री उदय प्रताप सिंह : माननीय उपसभापति जी, इस सूचना प्राप्ति के अधिकार का बिल लाकर इस सरकार ने सही दिशा में एक बहुत जरूरी कदम उठाया है जिस का हम सब लोग बहुत दिनों से, जो भी राजनीति में है, जरूरत महसूस करते रहे हैं। जहां एक तरफ सरकार के कामकाज में इस से पारदर्शिता आती है, वहीं दूसरी ओर जनता की रुचि और भागीदारी भी सरकारी कामकाज में बढ़ती है। सरकार क्या करने जा रही है, उस की योजनाएं क्या हैं और उन योजनाओं का वह कार्यान्वयन कैसे करेगी, इन सब बातों को जानने का अधिकार आम आदमी को है और खासकर मतदाता को है।

महोदया, अगर हम प्रजातंत्र के इतिहास पर थोड़ी नजर डाले तो मैग्नाकार्टा से लेकर आज तक के प्रजातंत्र के विकास की सारी प्रक्रिया के पीछे, इस इतिहास की प्रक्रिया के पीछे राइट टू नो यानी जानने का अधिकार है। इस में सूचना देने का अधिकार और सूचना पाने का अधिकार मुख्य शक्ति रही है। अगर जनता को यह फिक्र है तो उसे बताया भी जाना चाहिए कि सरकार किस प्रकार से काम करती हैं तभी उस की उस में रुचि बढ़ेगी। पिछले दिनों जितने बड़े बड़े भ्रष्टाचार के मामलों में संदेह की सुई बहुत सी जगह घूमती रही, उस का एक कारण यह भी रहा कि दोनों ओर से इस अधिकार के अभाव को महसूस किया गया। महोदया, मैं एक बात और कहना चाहता हूं कि जब कोई उद्यमी कोई उद्यम लगाता है या कोई नौजवान अपने जीवन की नई शुरुआत करना चाहता है तो उसे बहुत सी बातें सूचना जानने की जटिल प्रक्रिया के कारण अनुपलब्ध रहती हैं जिन की वजह से उन के सपने अधूरे रह जाते हैं। इसलिए एक तरफ जहां सरकारी गोपनीयता का सिद्धांत है, मैं यह नहीं कहता कि यह बिल्कुल नहीं होनी चाहिए, गोपनीयता भी कहीं कहीं बहुत जरूरी है और इस में उन के बारे में एक सूची दी गयी है। डिफेन्स का मामला है और ऐसी बातें हैं। देश की एकता और अखंडता के लिए जहां पर यह आवश्यक है वहां पर यह रहें, इसमें कोई दो राय नहीं है, इससे कोई इंकार नहीं कर सकता। लेकिन, उपसभापति महोदया, यह भी बहुत जरूरी है कि उसकी आड़ में कभी कभी ऐसी सूचनाओं को बाधित किया जाता है, जो जनोपयोगी हैं और उन सूचनाओं की अनुपलब्धता

कई नौजवानों और कई उधमियों को अपंग बना देती है। इस संबंध में मेरा एक निवेदन है कि इस बिल में यह भी प्रावधान रहना चाहिए कि यह प्राकिया इतनी जटिल न हो, जो जिसके कारण इसके प्रावधानों, सब प्रावधानों के होते हुए लोग वंचित रह जाएं।

महोदया, सरकारी कामकाज में गोपनीयता का सिद्धांत अंग्रेजों के जमाने में उनके लिए एक कारगर हथियार था और वह इसका प्रयोग बड़े कौशलपूर्ण ढंग से शासन को चलाने, अपना राज बनाए रखने के लिए, हमें पराधीन रखने के लिए किया करते थे। उनकी ऐसी कोई मंशा नहीं थी वह चाहते भी नहीं थे कि सरकार के कामकाज में आम जनता की कोई भागीदारी हो क्योंकि यह उनके लिए घातक हो सकता था। इसीलिए जब कांग्रेस की स्थापना हुई तो ए० आर० ह्यूम ने अपने भाषण में कहा था कि एक ऐसा फोरम होना चाहिए, जो सरकार की योजनाओं की सूचना जनता को दे और जनता की अपेक्षाएं क्या हैं इसकी सूचना वह सरकार को दे। तो जनता को यह जानने का अधिकार है और इसकी आवश्यकता आज से नहीं बल्कि हमेशा से रही है। अंग्रेजों ने इसकी उपेक्षा इसलिए की थी कि इस सुविधा को जनता को देने से उन्हें संकोच था कि यह उनके लिए घातक हो सकता था। आज जमाना बदल गया है और इसलिए जनता को यह अधिकार होना चाहिए। अगर लोकतंत्र में, जनतंत्र में भी आज जनता को, लोक को तंत्र की जानकारी नहीं होगी तो मुझे शायद यह शेर पढ़ना पड़ेगा।

जिन्होंने जान देकर मयकदे की आबरू रख ली।
वही एक एक कतरे के लिए तरसाए जाते हैं।

महोदया, मैं यह निवेदन करना चाहता हूँ कि गोपनीयता का सिद्धांत अपनी जगह पर रहे, लेकिन उस में जो मुझे डर है उसका निराकरण जरूर सरकार की तरफ से होना चाहिए कि उस गोपनीयता के सिद्धांत में और इस बिल के द्वारा जो आप सुविधा जनता को देने जा रहे हैं, उसमें आगे चलकर किसी प्रकार की कोई रस्साकशी न हो। इसी के साथ मैं एक बात और कहना चाहता हूँ और वह यह कि हमारे सांसदों का विकास योजना के संबंध में कभी कभी बड़ी उंगलियां उठाई जाती हैं और बातें की जाती हैं कि उनका उपयोग नहीं हो पा रहा है, अखबारों में भी कभी इस संबंध में आता है और जनता भी हमें पूछती है। उनको ऐसी कोई सूचना नहीं मिलती कि नार्मस क्या, किस आधार पर कहां काम दिया गया, कैसे दिया गया, ऐसी ऐसी बहुत सी बातें हैं मैं इसमें ज्यादा विस्तार से नहीं जानना चाहता, लेकिन सिर्फ मुझे इशारा यह करना है कि अगर जनता की भागीदारी हो, जनता को विश्वास में लिया जाय, जनता अगर जानना चाहे कि उसे बताया जाए, तो ऐसी बहुत सी बातें उड़ी उड़ी फिरती है, जो असर जनता में चर्चा का विषय बन जाती है और जो हमारे राजनैतिक जीवन के लिए भी शुभ नहीं है, यह सब देखने सुनने में नहीं आएंगी। इसलिए यह सारी सूचनाएं जनता तक जाएं, यह बहुत जरूरी है।

महोदया, मैं यहां एक बात और कहना चाहता हूँ कि यह जो आपने इसमें प्रावधान किए हैं, इसमें पब्लिक इन्फोरमेशन आफीसर को यह अधिकार दिया है कि वह जब चाहे तब किसी का भी एप्लिकेशन या उसका जो प्रार्थन पत्र है, उसको बिना कारण बताए रद्द कर दे। यह तो फिर ऐसा हो जाएगा कि इसमें संदेह की राजनीति होने लगेगी और जब संदेह की राजनीति होने लगेगी और जब यह जाना जाने लगेगा कि कोई निश्चित आधार नहीं है रद्द करने

का तो बिल के पास होने के बाद भी जनता को यह सारी सुविधाएं उपलब्ध नहीं होंगी, वह लाभ नहीं होगा, जिसकी अपेक्षा हम कर रहे हैं। इसलिए मैं चाहता हूँ कि सरकार की तरफ से इस प्रकार का भी कोई निश्चित संशोधन लाया जाए कि अगर कोई पब्लिक इन्फारमेशन आफिसर रद्द करे तो वह उसके कारण भी बताए और पहले से कोई नार्म्स भी हों, जो जनता के सामने हों कि इन इन बातों पर रद्द किया जा सकता है। सारे के सारे अधिकार पब्लिक इन्फारमेशन आफिसर को नहीं दिए जाने चाहिए।

इसी तरह से एक दूसरी बात फीस के बारे में है, इसके भी कोई स्पष्ट नार्म्स सरकार की तरफ से बनने चाहिए और या तो ये सूचना के महत्व के हिसाब से हों पहले से ही सुनिश्चित हों। इसे इन्फारमेशन अधिकारी के ऊपर बिल्कुल नहीं छोड़ा जाना चाहिए। यह मैं आपके माध्यम से सरकार से कहना चाहता हूँ।

इन्हीं चंद बातों के साथ मैं इस बिल का आमतौर से समर्थन करता हूँ। धन्यवाद।

THE DEPUTY CHAIRMAN: Everybody is going to vote on the Bill now. Why should we not go a little bit faster? If there is nothing controversial, it will be better to give suggestions only, and the Minister will consider them. I am suggesting this because everybody is supporting it, and the opinion is the same. Mr. Apte, if you don't mind, I would call Mr. P.G. Narayanan to speak first.

SHRI B.P. APTE (Maharashtra) : It is all right, Madam. I have no problem.

SHRI P.G. NARAYANAN (Tamil Nadu): Madam Deputy Chairperson, it is, now, widely recognised that freedom to every citizen to secure access to information about the Government's functioning is a vital component of democracy. Meaningful participation of people on major issues affecting their lives is, now, a vital component of the democratic governance, and such participation can hardly be effective, unless people have information about the way the Government business is transacted. 'Democracy' means a choice, and a sound and informed choice will be possible only on the basis of knowledge.

Modern democracy embraces a wider and more direct concept of accountability, a concept that goes beyond the traditionally well-established principle of accountability of the Executive to the Legislature in a parliamentary democracy. Increasingly, the trend is towards accountability, in terms of the standard of performance and service delivery of public

[16 December,
2002]

RAJYA SABHA

agencies to the citizen groups, they are required to serve. Such accountability is possible only when the people have access to information, relating to the functioning of the constitutional agencies.

The freedom of information is, by necessary implication, included in the freedom of speech and expression, implicitly guaranteed under Article 19(1)(a) of the Constitution, which says,

"All citizens have the right-

(a) to freedom of speech and expression."

The only limitation recognised on the above fundamental right is the one found in Article 19(2) of the Constitution, which provides:

"Nothing in sub-clause (a) of clause (1) of Article 19 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 interests of the sovereignty and integrity of India, the security of the State..."

The right to inform and the right to be informed were held to coexist. In our country, where a large section of population is illiterate, having no access to media, even the apex court stressed the relevance of a Central agency, representing all sections of the community to inform the public and to ensure its citizen, right to be informed adequately and truthfully. In the bureaucracy also, there has been an increasing awareness on the importance of openness and transparency.

The Conference of Chief Ministers, held in May 1997, strongly endorsed the need for ensuring responsive, accountable, transparent and people-friendly administration at all levels, and agreed that necessary corrective steps must be taken to arrest the present drift in the management of public services. The need for the right to information has been widely recognized; and the right to information has also been recognised by the judiciary. The Government has brought forward this much-awaited Bill.

In our present democratic framework, free flow of information for the citizens and non-Government institutions suffers from several bottlenecks, including the existing legal framework, lack of infrastructure at the grass root levels, and an attitude of secrecy within the civil service, as a result of the old framework of rules.

The Government proposes to deal with all these aspects in a phased manner so that the Freedom of Information Bill becomes a reality, consistent with the objectives of having a stable, honest, transparent and efficient Government. It is a welcome move. The proposed Bill will definitely enable the citizens to have an access to information on a statutory basis.

With a view to furthering this objective, Clause 3 of the proposed Bill specifies that subject to the provisions of this Act, every citizen shall have the right to freedom of information, it will go a long way in maintaining transparency in the Government, which will reduce the degree of corruption to the maximum extent.

An obligation is cast upon every public authority under Clause 4 to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals, as may be prescribed by the appropriate Government, or, the competent authority in coming years will generate greater sensitivity and awareness in the public minds.

The ambit of the Bill covers the two Houses of Parliament, the State Legislatures, the Supreme Court, High Courts and subordinate courts including their administrative offices, constitutional authorities like the Election Commission, Comptroller and Auditor General of India and the Union Public Service Commission. It should be extended to all the Government agencies and departments to achieve the real objective of this Bill.

Clauses 8 and 9 are the two most significant clauses of the Bill. These clauses relate to the specific categories of information which have been exempted from disclosure. The appellate mechanism in regard to grant of information should be made more easier and user-friendly.

If the Public Information Officer refuses grant of information, the Bill provides for appeal to such authority, as prescribed by the Government. The second appeal lies with the Central or State Governments or the competent authority.

The jurisdiction of the subordinate courts to entertain any suit, application or proceedings in respect of an order made under the proposed Act has been barred. Though the writ petition jurisdiction of the Supreme Court and High Courts is still there, the Government should provide for an alternative mechanism for effective and efficient remedy so that the burden on the High Courts and the Supreme Court will be reduced.

SHRI B.P. APTE : Madam, I am grateful to you for giving me this opportunity to speak on this important Bill. I rise in support of this Freedom of Information Bill, 2002. I find that this Government appears to be a Government of fruition. By bringing in the Money Laundering Bill, the Biological Diversity Bill, etc., this Government is accomplishing something which the earlier dispositions could not, both in terms of economic reforms and political reforms. The present Bill is a matter in point because the issue was being considered by our polity for the last 25 years. A Special Study Group was constituted in 1977, when the first Janata Government came to power. Then, the Mathew Committee came in 1982. This Bill came in 2000 and was referred to the Standing Committee. Now, the Bill, as passed by the Lok Sabha, has come before this House for consideration.

Madam, freedom of information is integral to an open Government. But a statutory provision seems to be a little slow. We understand that the United States gave the freedom of expression, by the first amendment, 200 years ago. But their Freedom of Information Act came some time in 1966. Now, many other countries have this kind of a legislation; even some of our States have such a legislation. The right was enshrined in the International Covenant on Civil and Political Rights, 1966, and our own Constitution, by Article 19, gives us the right to freedom of expression. In both these Articles, incidentally both are Article 19, there is one aspect which is comparable and guiding. Therefore, I would like to refer to both of them. Article 19 of the International Covenant on Civil and Political Rights, apart from providing that every one shall have the right to freedom of expression, says, "this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in

writing or in print, in the form of art or through any other media of his choice". Clause (3) of Article 19 provides for the inherent limitations: "The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary". The restrictions are: "(a) for the respect of the rights or reputations of others; (b) for the protection of national security or of public order or of public health or morals".

Article 19 of our Constitution also provides for restriction on the freedom of expression by clause (2). It says that nothing in sub-clause (a), that is, freedom of speech, 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 restriction on the exercise of the right conferred by the said sub-clause in the interests of (1) the sovereignty and integrity of India, (2) the security of the State, (3) friendly relations with foreign States, (4) public order, decency or morality and (5) in relation to contempt of court, defamation or incitement to an offence. The restrictions in Article 19 in respect of Freedom of Expression will apply to the Right to Information, particularly because the Right to Information was read into this article by the Supreme Court, which was not there expressly in the article. We are aware that in the case of S.P.Gupta, popularly known as the Judges Case, the Supreme Court enlarged its own jurisdiction in public interest, and, in the same way, enlarged the scope of Article 19. It read into the article the Right to Information, and, at one stage, it affirmed that even the Cabinet papers were not above scrutiny by the courts.

Madam, this right which was read into the Constitution, as a fundamental right, is now being given a statutory sanction. Our Republic is a democracy, where an open Government is an integral part of it. An open Government means both transparency and accountability. Historically, therefore, the Official Secrets Act of 1923, and Section 124 of the Evidence Act of 1872, militate against the concept of this openness and accountability and appear to be a little anachronistic. Disclosure of information with regard to the functioning of a Government must actually be the rule, and secrecy an exception. From this point of view, while supporting and welcoming this Bill, I would like to express my own doubts about the efficacy of the right being given by the Statute because of the limitations imposed by clause 8 and clause 16, and a long list in the Schedule of various organisations which are above the public notice.

Madam, in the age of knowledge and explosion of information and knowledge, where everything is available on the internet - even atomic secrets are no more secrets - any shroud of secrecy around any Government agency is really not necessary, excepting in the case of some highly confidential matters which really militate or affect the sovereignty, the integrity or the security of the country.

Madam, according to me, scandals like Bofors were possible because of the unnecessary secrecy shrouding the defence deals. There is nothing secret in it. There is nothing which can be hidden from the public gaze. Still anything concerning defence deals is put above everything, and it is not to be touched! Because of this kind of secretiveness, scandals take place, like worms which are readily available in a pool. Let there be a free flow of information, and, probably, the Government will be more transparent and, therefore, more clean. About the restrictions mentioned in Article 19, everybody knows the adage, sometimes it is said, Part III of the Constitution takes away much more, in terms of rights, than it gives, by way of the substantive right governed by restrictions. But those restrictions, at least, have the limit of either the sovereignty or the security of the country or public order, health or morality. Anything beyond this ought not be a restriction. And, I believe, there are several restrictions, under clause 8 and clause 16, which will militate against the right to information, considering the bureaucratic structure we have inherited and which we have faithfully continued for the last fifty years. The disclosure will be delayed, the disclosure will not be given and even though this enactment says that this law will have overriding effect over the Official Secrets Act, it has not overruled those legislations. Therefore, the umbrella of those legislations is available to those who do not want to give information. I feel constrained to express my doubts about the efficacy of the law that is being made. But, obviously, the right that is being statutorily guaranteed now to the people is a welcome sign of openness. And, as I said, in the series of steps this Government is taking towards economic and political reforms, this is one more step in the same direction. I, therefore, wholeheartedly support the Bill.

SHRI PRITHVIRAJ CHAVAN (Maharashtra): Thank you, Madam, for permitting me to participate in the debate on this important Bill. The whole country has been agitating for a long time for an enactment of this nature, which, essentially, will lead to openness on the part of the Government,

transparency and increased accountability. Today, the common man's perception of the Government is that, the Government is an extremely corrupt organisation; that it is full of inefficiency, there is harassment of the common man; there are deliberate delays; and there is unnecessary secrecy. Madam, information has always been power, and the way the British ruled the country was by withholding information. The whole governance was based on the principle, "need to know". Information was passed on from top down to the bottom only on the basis of this principle of "need to know", which means very little information was given. The information was limited to the requirement of the junior officer to do his job, to fulfil his responsibility. There was never a holistic approach to information that the Government of India had; even now this is the case. And, this mindset has continued over the years. Even today, the bureaucracy in the Government of India and the political executive, which is on the top of the bureaucracy, run the Government, with the same attitude that we know better, you need not know; if you know, there will be unnecessary problems, criticism, litigation. So, the best is that you need not know." And, it is this kind of attitude in the governance which has led to inefficiency, corruption, harassment and, ultimately impacted on the efficiency of the country, the economy of the country, and, also on the competitiveness of the economy. As you know, there is an evaluation, internationally, of the competitiveness of the countries, and we are very low, in terms of competitiveness. Because, ours is still not a very open society, as it should be. And, therefore, this legislation that is being brought today, is a welcome legislation. We support it, but, because of the system that we have had for so many years, what is really required is a change of mindset, both in the Government and in the public, which uses the services of the Government. That is why, my first problem with the Bill is the nomenclature itself. The nomenclature of the Bill reads as The Freedom of Information Bill and not 'The Right of Information Bill; there is a subtle difference. When people perceive that it is a right to get information, it has a different connotation, than when compared to the fact that you have the freedom of information. That, I think, has been missed in this Bill. Of course, this is a landmark step, and, for the first time since independence, we are embarking on such a step; therefore, we need to learn as we go. I appreciate it. It is a first step, but, let the best not be the enemy of the good, and let us go ahead.

Madam, when we really re-look at the whole Bill, we need to

ultimately go from the 'Freedom of Information' to the 'Right of Information'. I have given certain amendments, and those amendments are with the purpose of making the Bill an even better legislation than it is today.

The Standing Committee had gone in great detail over the Bill and . there are good suggestions of the Standing Committee. Many eminent persons appeared before the Committee and gave very good suggestions. And the Standing Committee Report had enumerated those suggestions. But many of the suggestions have not been accepted. I am sure, the Minister, while replying to the debate, would say why she could not accommodate all the concerns that were expressed, or, the good and valuable suggestions that were made by eminent persons who appeared before this Standing Committee.

Madam, I would be moving a couple of amendments; some of them, of course, relate to clause 8 which deals with exemptions. Clause 8 is one which can kill the spirit of the whole Bill. If there are too many exceptions, if any Government officer takes shelter behind this clause, saying that they would not be able to part with the information, then, the whole spirit of the Bill would be defeated. I have suggested three amendments pertaining to clause 8 which would enhance the right of the people to get information. I don't want to read those amendments here; they have already been circulated. One deals with the Cabinet information which is to be kept secret'; that is all right. The next one pertains to information regarding discussion of Council of Ministers and Secretaries; that is also quite all right. But I seek to delete the words 'and officers'. If we retain these words, even a clerk would say, "I am an officer working for the Cabinet and I cannot part with the information"; the Cabinet is the Government really. Therefore, anybody can deny the information. That is why I request the hon. Minister to delete the words 'and officers'.

Another amendment of mine relates to the provision regarding penalty. If information is denied for wrongful reason, then, there is some penalty against an officer, subject to certain appeal procedure. I have also given an amendment relating to clause 15 where there is a bar of jurisdiction of courts. I want it to be amended in such a way that it would exclude the High Courts. There have been suggestions that the High Courts should be permitted to go into it.

Madam, my amendments are in consonance with the spirit of the Bill, for making the Bill stronger. I am sure, the Minister would consider these amendments.

The information that is with the Government of India can be broadly classified into three or four categories. One is, information which pertains to national security; this is a very important area, and hence there are exceptions. We cannot give information, which is sensitive in nature, to anybody, because it can go to the wrong hands. And, that is fine. The second set of information that emanates from the Government is of economic nature, namely, relating to public works, tender processes, disinvestment, investment, etc. -- and there are serious concerns about how Government takes these decisions regarding disinvestment of public assets, say, the public sector companies, how the Government decides to invest them, and what is the correct valuation. I will just give a couple of examples. I will not get into the great details about the disinvestment decisions because the House has been continuously considering that subject, and we have great concerns about it. We need to know what the valuation was, how the valuations were arrived at, why minimum bids were accepted or why not accepted; and, all the decisions about disinvestment. I think, there should be complete transparency in all economic decisions that the Government of India takes. There is other side of disinvestment, which is investment. I will give some examples. Recently, the Government of India -- a public sector company, ONGC Videsh, of Government of India -- has decided to invest a billion dollars in purchasing a Canadian company. The Canadian company had problems. It was in the field of oil exploration. It was an African country, a friendly African company. But, there were problems of operation for the Canadian company. A majority shares, 25 per cent of shares, has been purchased by the Government of India, ONGC Videsh. What is the valuation? People say that it has been highly over-valued. The Canadian company was willing to be taken over by anybody but the Government of India in a very transparent process, when it should not have been transparent, said that it was going to buy it. The prices went up and almost Eight hundred million to a billion dollars had been already invested by the Government of India. Public needs to know how the valuation is arrived at? Now, there is a simple matter of economic decision, tenders in development works. Most corruption happens in this process where public works are sanctioned, the tenders are floated. We do not know who is the lowest tender, how the tender advertisements came

and who was the tender and whether the tender conditions were met or not whether the work is completely done or not, inspection is correct or not. This information needs to be made public. I congratulate the NGO, working in Rajasthan -- the Shram Shakti Mazdoor Sangathan -- which has really been sponsoring this whole agitation about freedom of information in Rajasthan through this Jan Sunwai Adalat and all that. They have done great work there. I think the Minister hails from that State and there is a law pending before the State where notification has to be issued by the Government. That work needs to be looked at. This is what helps a common man. In the public works, in the development works, there is a huge amount of corruption and public at large cannot enquire into it because everything is secret. Now, Madam, I hope that this Bill will attack that basic problem in regard to development expenditure. When corruption is removed, eliminated and reduced we can get more mileage out of the money that we spend on the development works. That will be a great service to the public of this country.

There are routine matters of administration where appointments are made within the Government and they keep it a secret and there are some people who are pushed up and some others are pushed down. Why should not there be transparency about it? I will just give an example. An appointment was made by the Government of India's highest decision making body, the Appointments Committee of the Cabinet. An organisation under the Ministry of Finance appointed a person. The appointment was made on 1st of May in this year. Nobody knew about it. And I am referring to the famous Commission of Inquiry which was going on and the judge who was enquiring into had been appointed by the Government of India to an important office in the Finance Ministry. But, nobody knew about it. Was there a vested interest of the Government of India in not making the appointment public? The Government of India decided on 1st of May. The office was taken on that day but nobody knew about it till last month. Why such routine appointments are being withheld from public? Who is responsible? Will the Government look into it? Why was there no public notification of that appointment on 1st May itself? There are many examples one could discuss. But, my point is a limited one, Madam. This is an important Bill which we are going ahead with today. I have some more suggestions. There are some other suggestions which I am not making here because they can be taken care of in the rules. You have made a provision for appointment of a Public Information Officer. Good. But, I

suggest that this officer should not belong to the Ministry in which he is working. Why cannot we have a mechanism, something similar to the Central Vigilance Commission? Where there are vigilance commissioners in each States, in each bank and in each department, who ultimately report to the Central vigilance Commission? Can there be a National Public Information Officer, who is an independent authority? The Public Information Officer in each department, in each public authority then indirectly report, to that National Information Officer. That is a different kind of set up. The Public Information Officer cannot belong to that Ministry because he will not go against his colleagues. Because he needs promotion from his superiors. So, I think we can look at the model of the Central Vigilance Commission. What would be the seniority of these people? Who would be manning these positions of Public Information Officers? What will be their authority? Unless they have authority to go over the heads of their bosses, nothing will happen. Madam, I will now come to a very simple matter. There is a lot of information. There is no intention on the part of the Government to withhold the information. The information is public. But the only thing is that it is difficult to access it. It is not available to the common man. It is not available to the millions of people living in our villages. You say that you will put the information on your website. That is very good. It is available; it is public; and it is open. But how many people can actually access it and download a report from the website? So, my request is this. The most important information that emanates from the Government of India, and which concerns the common people, is the Annual Report of each and every Ministry and Department of the Government of India, every bank etc., which is given to the Members of Parliament. But does it go beyond that? Does it go beyond the Parliament Library and the houses of MPs? I request that the entire set of all the Annual Reports of each and every Ministry, each and every autonomous body, every authority, should be placed in all the public libraries and the libraries of various universities, and these should be available on payment. So, if a common man goes to a public library or a university library, he should be able to get the Annual Report of the Ministry of Personnel, Public Grievances and Pensions or any other Ministry or Department. I know it is on the website. But it is very difficult for everybody to access it. (Time-bell) Madam, I will take just one or two minutes more.

My second suggestion is this. Please make every document of the Government of India a priced document. It can be priced, depending on

the number of pages, paper, etc. If it is priced, then it is my right to buy it. If it is not priced, then it is your decision to give it to someone and not to give it to someone else. If you go to Western countries, every piece of paper can be obtained by making a nominal payment. Whether you should subsidise it or not, and, if so, how much the Government can afford to do it, is a different matter. But it should be available, and it should be priced.

Madam, I have many more suggestions, but the time given is not enough. While supporting the Bill, I would request the hon. Minister to consider my amendments. Let us go ahead and see what the difficulties are in the implementation of this law. Please come with rules and regulations as soon as possible. And, please publicise them. Also, please go in for a major campaign, at the national level, on the electronic and print media, to make the people at large aware of this enactment, about the fact that they have the right and the freedom to get information. Let people really know where they can go and get the information. Then only will this whole concept become successful.

With these words, Madam, I support the Bill, and, once again, request the hon. Minister to consider my amendments.

PROF. M. SANKARALINGAM (Tamil Nadu): Madam, thank you for giving me this opportunity to participate in this debate.

Madam, I welcome this Bill and support it. The right to information has been construed by the Supreme Court to be inherent in article 19 of our Constitution. Therefore, it is the fundamental right of every citizen to get information. But there has been no machinery available for this purpose. This machinery has to be provided. What stands in the way of this right is the Official Secrets Act and some provisions of some other Acts that debar citizens from getting information, or, rather, empower the authorities to withhold information under the pretext of security, safety, official secrecy and so on. We had inherited this draconian approach from the British rule, since the Official Secrets Act dates back to 1923. When this Official Secrets Act was enacted in Tamil Nadu, the great poet of our national movement, Bharati, composed a song and sung it at every platform, which means, when will our thirst be quenched, because this Act cuts at the throat of democracy. This right to withhold information, on the ground of security, was replaced by this Act. In 1982, the Mathew Committee made certain

recommendations. It advocated for amendment of the Official Secrets Act, but nothing was done. Transparency in administration is the corner stone of Parliamentary Democracy, i.e., the Government of the people, by the people and for the people. When it is so, this transparency will help in preventing corruption to a large extent. Today, a number of incidents of corruption and nepotism are prevalent in various sections of the administration. I hope this Bill will solve most of these evils, to a great extent. Even in this Bill, clause 8 mentions about exemptions where freedom to information can be denied. I fear that these provisions of exemption may form a protection cover to corrupt officials. The ordinary citizens may find it very difficult to get the benefits of this Bill. So, I request the Government to make specific rules to the effect that if the officer concerned rejects any request for providing information, then he should supply an explanatory note within a stipulated time, i.e., within two or three days so that the affected person may seek the remedy from the higher authority which is to be constituted through this Bill. In this connection, I want to say that the constitutional authority should not be below the rank of a judicial district judge. Moreover, clause 8, sub-clause (f) states, "Trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests or the competitive position of the public authority." I cannot relish this clause because it gives privilege of secret information to commerce also. What are the trade or commercial secrets of the Union Government or the State Governments which cannot be disclosed to the common people of this country? So, these are not welcome features of the Bill. Hence, I request the Government to rethink in the matter.

Madam, right to get information from the private sector should also find a place here in this Bill. The Government may say that the Consumers' law provides such a right, but it is not full enough. So, a separate provision should also be provided in this regard.

Madam, in Tamil Nadu, in 1997, the Government passed the Right to get Information Bill. Here, it is the Freedom of Information Bill. More effective words have been used there which worked very well. In Tamil Nadu, after passing this Right to Information Bill, the Government had asked each Department to publish 'Citizen Chart' which clearly denotes where to go and how to get information. The Chart gives full details about it. In addition, each Department also publishes a yearly policy note. This is what was done by the Government of Tamil Nadu in 1997. This solved many problems of the people. Taking all these things into account, the

Government should take sufficient care in framing the rules in this regard. With these observations, I support this Bill.

श्रीमती सरोज दुबे (बिहार) : माननीय उपसभापति महोदया, सूचना स्वातंत्र्य विधेयक 2002 का मैं स्वागत करती हूँ। महोदया, प्रजातांत्रिक शासन व्यवस्था में एक स्वच्छ, संवेदनशीलता और जवाबदेह शासन सुनिश्चित करने के लिए जनता को सूचना का अधिकार होना एक अनिवार्य अपेक्षा थी क्योंकि प्रशासनिक पारदर्शिता लाने के लिए सूचना का अधिकार बहुत जरूरी है। इसीलिए इस संदर्भ में जस्टिस पी०वी० सावंत ने कहा था कि भ्रष्टाचार का सब से बड़ा कारण सूचना पर पाबंदी होना है। किसी भी प्रशासनिक व्यवस्था में सूचना तथा प्रसारण की बहुत महत्वपूर्ण भूमिका है और प्रजातांत्रिक सरकार दायित्व है कि वह सूचना तथा प्रसारण के माध्यम से सरकार की सारी गतिविधियों व योजनाओं की जानकारी देती रहे। वास्तव में रोजमर्रा के प्रशासन में व्याप्त भ्रष्टाचार पर लगाम लगाने तथा विकास कार्यों और विभिन्न गरीबी उन्निमूलन योजनाओं में हो रहे घपलों, घोटालों का पर्दाफाश करने के लिए सूचना का अधिकार आवश्यक है। एक लंबे अर्से से ऐसे कानून की मांग हो रही थी और बड़े इंतजार के बाद यह विधेयक आया है, लेकिन बहुत ही प्रतिबंधित और सूचना के अधिकार के बहुत ही सीमित। इसमें काफी खामियां भी हैं, जिस कारण संभवतः यह उतना उपयोगी नहीं रह पाएगा। जिसकी हमें प्रतीक्षा थी।

महोदया, इस विधेयक में नागरिकों को सरकारी व सरकारी सहायता प्राप्त करने वाली संस्थाओं से सूचना प्राप्त करने का अधिकार तो दिया गया है, निजी कंपनियों, ऐसी संस्थाओं और स्वैच्छिक संगठनों से सूचना प्राप्त करने का अधिकार नहीं दिया गया है। विदेशी पैसों से अगर कोई संगठन ग्रामीण क्षेत्र में कोई बड़ा प्रोजेक्ट चला रहा है तो इस कानून के तहत ग्रामवासियों को उस संगठन के बारे में कोई सूचना प्राप्त करने का अधिकार नहीं है और आप जानती हैं कि निजी संस्थाओं में इसके अंतर्गत विदेशी सहायता से कितनी घपलेबाजी हो रही है। किसी भी निजी अस्पताल से कोई मरीज अपना मेडिकल रिकार्ड प्राप्त करना चाहे तो यह कानून उसके लिए कोई सहायक नहीं हो सकता है। जब उसको शक है कि उसका इलाज ठीक से नहीं हो रहा है, मगर इस विधेयक से उसको कोई सहयोग नहीं मिल सकता है क्योंकि इस कानून के द्वारा सरकार सहायता प्राप्त संस्थाओं, संगठनों के बारे में जानकारी प्राप्त की जा सकती है। लेकिन, इस सीमित दायरे में भी इस कानून से लोकतंत्र के सशक्तिकरण, भ्रष्टाचार को कम करने के काम को आगे बढ़ाया जा सकता है, यदि कुछ थोड़े से ऐसे अपवादों और छूटों के अतिरिक्त सभी जानकारी नागरिकों को देने का स्पष्ट प्रावधान इस विधेयक में रखा जाता। दूसरी ओर बहुत अधिक छूट दिए जाने की स्थिति में यह और भी अधिक जरूरी हो जाता है कि जिस नागरिक को सूचना दिए जाने की से इंकार किया गया है उसके लिए उस निर्णय के विरुद्ध अपील हेतु किसी स्वतंत्र, निष्पक्ष मंच की भी व्यवस्था की जाती। ऐसी व्यवस्था इस विधेयक में नहीं है। इस विधेयक में नहीं है। पहली अपील कहां की जा सकती है, इसके बारे में कहा गया है कि कानून के लिए नियमावली बनाते समय यह बात में निर्धारित किया जाएगा। दूसरी अपील के बारे में कहा गया है कि राज्य, केन्द्र सरकार या सक्षम अधिकारी के यहां अपील की जा सकती है। इस बात की संभावना छोड़ दी गई है कि जो कार्यालय या विभाग सूचना देने से इंकार करेगा, उसी के पास उसके खिलाफ अपील भी पहुंचेगी तो वह तुरन्त ही उस अपील को खरिज कर देगा। यह कैसा निर्णय है?

3.00 p.m.

महोदया, इस विधेयक में सूचना प्राप्त करने की कार्यविधि संक्षेप में बताई गई है। सूचना पाने के लिए कार्यालय में लोक सूचना अधिकारी को एक अर्जी देनी पड़ेगी और वह निश्चित अवधि के अंदर सूचना देगा या वह कारण बताएगा। और, सूचना के खर्च को ध्यान में रखते हुए फीस निर्धारित होगी। यह बड़ी ही सहज प्रक्रिया लगती है, लेकिन इसमें समस्या तब उठती है जब इसमें गोपनीयता का आवरण बता कर, गोपनीयता का बहाना बनाकर बहुत से अन्य विषय भी सूचना के अधिकार के दायरे से बाहर कर दिए जाते हैं। विधेयक में ऐसी शब्दावली का उपयोग किया गया है, जो बाद में अधिकांश जानकारी से नागरिकों को वंचित रखने में सहायक हो जाएगी क्योंकि हमें यह भी नहीं भूलना चाहिए कि बहुत समय से सरकारी कामकाज में गोपनीयता की प्रवृत्ति हावी रही है। जनसाधारण किसी सरकारी कार्यालय में जाकर ऐसी जानकारी मांगने लगे, जिससे उसी कार्यालय के भ्रष्टाचार, उसी कार्यालय की अनियमितता सामने आने की उम्मीद है तो यह वहां के अधिकारियों के लिए बड़ा असहनीय होगा और वे कभी भी जानकारी नहीं देंगे। अगर मना करने के बाद भी इसमें कोई दंड का प्रावधान नहीं हुआ तो यह विधेयक बिल्कुल निरर्थक साबित हो जाएगा। अधिकारी सूचना नहीं देना चाहेगा क्योंकि वह सूचना तभी दे सकता है जब उसकी फाइल नियमित रूप से हो, फाइल का काम बिल्कुल सही हो, सुव्यवस्थित हो, लेकिन आप जानती हैं कि ऐसा नहीं होता है। सूचना पाने वाला अपील पर अपील करता रहेगा और वह खारिज हो जाएगी। इसके बाद वह अपना समय और पैसा खर्च करके अपने घर बैठ जाएगा। उसके हाथ में कुछ आने वाला नहीं है।

महोदया, इस विधेयक की चार धाराओं, धारा 8, 9, 11 और 16 को समग्र रूप से देखा जाए तो स्थिति स्पष्ट हो जाएगी कि कई अनावश्यक छूटें, अधिकार दिए गए हैं। बजट संसद में पेश होने से पहले गोपनीय रहे, बहुत ठीक। देश में शांति और सदभावना बनाए रखने के लिए गोपनीयता जारी रहे, बहुत ठीक। केन्द्र राज्यों के संबंध में अगर कोई तनाव आता है तो गोपनीयता रहे, बहुत ठीक। लेकिन, इसके साथ बहुत सी संकीर्ण व्याख्या की गुंजाइश अधिकारियों पर छोड़ दी गई है, जो इस बिल में बहुत बड़ी कमी है। अगर इस विधेयक को दुर्गति से बचाना है तो इसमें अपील सुनने की एक स्वतंत्र और निष्पक्ष व्यवस्था होनी चाहिए, कानूनी व्यवस्था के अनुसार जानकारी न देने वालों के लिए किसी न्यायसंगत दंड की भी व्यवस्था होनी चाहिए। क्योंकि 'भय बिन प्रीत न होत गोसाई'। आप जानती हैं कि हिन्दुस्तान में फाइलें कितनी मुश्किल से सरकती हैं, मनो धूल जमी रहती है ऐसे में कोई सूचना मांगे तो यह अधिकारी को बिल्कुल नागवार गुजरता है। इसलिए आप बिना किसी भय के सूचना की जो स्वतंत्रता दे रही हैं, वह किसी भी मायने में सफल नहीं हो सकती है। ... (समय की घंटी) ...मैडम, मैं खत्म कर रही हूँ। इसलिए मेरा कहना है कि कुछ जरूरी अपवादों को छोड़कर अन्य सभी जानकारी नागरिकों को उपलब्ध कराना अत्यंत आवश्यक कर दिया जाए।

मैडम, भारत में प्रत्येक स्तर पर भ्रष्टाचार पनप रहा है। यहां पर हर सरकारी खरीद, चाहे रक्षा सौदा हो, चाहे किसी भी संस्थान को निजी हाथों में सौंपना हो, सब कुछ गोपनीय होता है, जनता को भनक तक नहीं मिल पाती हैं इस प्रकार की प्रवृत्ति को रोकने के लिए जरूरी है कि देश के नागरिकों को अन्य अधिकारियों की भांति सूचना का अधिकार भी दिया जाए वरना सूचना

[16 December,
2002]

RAJYA SABHA

मांगने वालों का स्तर देखकर सूचना दी जाती है--अगर कोई एमपी0 मांगे तो शायद कोई सूचना दे भी दे लेकिन एक रिक्शा वाला अगर सूचना मांगने जाएगा तो कोई नहीं देगा। थाने में अपने एफ0आई0आर0 की नकल तक तो मिलती नहीं है, सूचना कौन देगा ? इसलिए इसमें आपको दंड का प्रावधान करना पड़ेगा और जब तक भय व्याप्त नहीं होगा तब तक यह कानून व्यर्थ हो जाएगा। विधेयक आप लाई, आपका बहुत बहुत स्वागत है, विधेयक बहुत अच्छा है, लेकिन इसका आपने कोई बुनियादी ढांचा नहीं पेश किया है और सूचना अधिकारी के अधिकारों और कर्तव्यों का कहीं जिक्र नहीं किया। ऐसे विधेयक से कोई बहुत लाभ नहीं होने वाला है। इस विधेयक को यदि नख दंत विहीन विधेयक कहा जाए तो मेरे ख्याल से आपको कोई आपत्ति नहीं होनी चाहिए क्योंकि इसमें दंड का प्रावधान नहीं है

आप इस बिल को लाई, इसके लिए आप बहुत साधुवाद की पात्र हैं लेकिन इसमें जो कमियां हैं, उन्हें आपको दूर करना चाहिए और जिस उद्देश्य को लेकर यह बिल आप ला रही हैं, उस उद्देश्य की पूर्ति के लिए प्रशासन को बांधना पड़ेगा वरना यह विधेयक यहां सदन से पास होकर कानून तो बन जाएगा लेकिन इसका सही तरह से क्रियान्वयन नहीं हो पाएगा और जो हम खुशी मना रहे हैं कि बहुत अच्छा अधिकार मिल रहा है, कानून बनने जा रहा है, इसके कोई मायने नहीं होंगे, यह अप्रासंगिक हो जाएगा। इसलिए मेरा आपसे अनुरोध कि इस बिल पर व्यापक रूप से विचार करें और दंड का प्रावधान रखते हुए, निष्पक्ष मंच की व्यवस्था करते हुए इस विधेयक में सुधार करें और नया विधेयक व्यापक रूप से लाएं तो इस विधेयक की उपयोगिता सिद्ध होगी। स्टैंडिंग कमेटी ने बहुत सुझाव दिए थे, उन पर शायद बहुत अमल नहीं किया जा सका, कारण क्या हैं वह मैं नहीं जानती,

इन शब्दों के साथ मैं इस विधेयक का स्वागत करती हूं और उम्मीद करती हूं कि जिस उद्देश्य से आप यह विधेयक ला रही हैं, उन उद्देश्यों की पूर्ति के लिए आप और आवश्यक कदम उठाएंगी ताकि इसका लाभ आम जनता को मिल सके। धन्यवाद।

श्री भारतेन्दु प्रकाश सिंहल (उत्तर प्रदेश): आपने पूछा कि कारण क्या हैं, स्टैंडिंग कमेटी के बहुत से सुझाव इसमें नहीं आए, तो इस विधेयक के बाद उसका पता लग जाएगा, मांग लीजिएगा।

उपसभापति : देश में बहुत से एन0जी0ओज0 काम करते हैं और उन एन0जी0ओज0 के पा कहां से आता है, कहां जाता है, कौन उनको फंडिंग करता है, इसके बारे में भी इन्फार्मेशन होना चाहिए। That is the most important thing, I feel, रिक्शे वाला तो कोई इन्फार्मेशन ढूंढेगा नहीं।

श्री भारतेन्दु प्रकाश सिंहल : इनसाइडर इन्फार्मेशन तो प्रैस वाले भी देते हैं,, On the condition of anonymity देते हैं और वे बहुत सारी बातें लिख देते हैं, तो उसके बारे में भी क्लेरिटी होनी चाहिए और मीडिया में भी ट्रांसपिरेसी होनी चाहिए।

श्री मूल चन्द मीणा (राजस्थान) :सिंहल साहब का सुझाव मान लीजिए।

श्री स्वराज कौशल (हरियाणा) : मैडम, इस बिल को आने में 50 साल लग गए हैं।

उपसभापति : : So, we will take 50 minutes more to do it. The thing which is delayed should move fast

श्री सतीश प्रधान (महाराष्ट्र) : उपसभापति महोदया, मैं आपका आभारी हूँ कि आपने मुझे इस विषय पर बोलने का मौका दिया। सबसे पहले मैं आदरणीय मंत्री जी को धन्यवाद देना चाहता हूँ, उनका अभिनंदन भी करना चाहता हूँ इस बिल को लाने के लिए क्योंकि बहुत दिनों से इस विधेयक का इंतजार था। यह बहुत दिनों से चल रहा था कि राइट टू इन्फॉर्मेशन सबको मिलना चाहिए, सूचना का अधिकार सबको मिलना चाहिए, जो भी कुछ हम कर रहे हैं या सरकार जो निर्णय कर रही है, उसकी सूचना मिलनी चाहिए। उस विषय पर पूरी जानकारी लोगों को, जनता को मिलनी चाहिए और लोकतंत्र में यह उनका सबसे बड़ा अधिकार होना चाहिए। मुझे मालूम नहीं कि किसके लिए यह निर्णय लिया गया? ब्रिटिश सरकार के जमाने में यह रहा हो तो ठीक है लेकिन स्वतंत्रता के बाद भी इस बिल को यहां लाने में इतने साल क्यों लगे, पता नहीं। उसमें किसका क्या इंटरस्ट था, यह भी पता नहीं है लेकिन एक बात स्पष्ट है कि इतने दिनों के बाद यह बिल आ गया है। इस विषय पर बात करते समय दो चार सुझाव मैं देना चाहूंगा जिन पर गौर से विचार करने की आवश्यकता है। सबसे पहली बात यह है कि यहां सैक्शन 1 (2) में आपने लिखा है कि "It extends to the whole of India except the State of Jammu and Kashmir."

मैं यह जानना चाहता हूँ कि जम्मू कश्मीर में राइट ऑफ़ इन्फॉर्मेशन की व्यवस्था करने के लिए हम क्यों कतरा रहें हैं? वहां की जनता और वहां के लोगों की जो इन्फॉर्मेशन हो, वह हिन्दुस्तान में सभी नागरिकों को मिलनी आवश्यक है और उनके स्पेशल स्टेटस वगैरह को ध्यान में रखते हुए, उसके लिए अगर अलग से कुछ प्रावधान करने की आवश्यकता हो तो तुरंत उसके बारे में कुछ व्यवस्था करने की आवश्यकता है।

महोदया, दूसरी बात यह है कि हम लोकतंत्र की बात करते हैं और लोकतंत्र की बात करते समय हम सिर्फ चुनाव के समय लोगों के पास जाते हैं। सभी पोलिटिकल पार्टियों वाले केवल चुनाव के समय उनके पास जाते हैं तब हम उनको बताते हैं कि आप इस देश के मालिक हैं और आप हमें चुनिए लेकिन चुनकर आने के बाद, हम जो निर्णय करते हैं, उसकी इन्फॉर्मेशन अगर हम लोगों को न दें, उसकी पूरी जानकारी लोगों को न दें, वे सारे पेपर्स लोगों को देने से अगर हम कतराएंगे तो यह बहुत गुनाह है, यह ठीक नहीं है।

महोदया, लोकतंत्र में जो मालिक है, उसको पूरी इन्फॉर्मेशन देने की आवश्यकता है। यह इन्फॉर्मेशन न देने में सुरक्षा का कारण भी बताया जाता है। जो देश का मालिक है, उसको इन्फॉर्मेशन न देने से सुरक्षा को खतरा पैदा होता है, मैं यह मानने के लिए तैयार हूँ। इसके लिए इसमें यह प्रावधान करने की आवश्यकता है, जो अभी नहीं हुआ है। आपने सुरक्षा के बारे में जो प्रावधान यहां रखे हैं, उनमें यह प्रावधान अभी नहीं है। कोई भी उठ जाता है और आज की तारीख में सब जगह यह हो रहा है कि कोई भी डेवलपमेंट का काम चल रहा हो तो कोई भी

उठकर खड़ा हो जाता है, NGO के नाम से कोई भी उठकर खड़ा हो जाता है और पब्लिक इंटरस्ट लिटिगेशन के नाम से कोर्ट में चला जाता है और 5-10 साल तक काम रोककर बैठ जाता है। अगर ऐसे लोगों के हाथ में कोई इन्फॉर्मेशन जाएगी तो यह मुसीबत वाली बात होगी, इस बात को आपको ध्यान में रखना पड़ेगा। इस मिली हुई इन्फॉर्मेशन का दुरुप्रयोग न हो, इसका ख्याल रखने की जरूरत है।

महोदया, मैं एक और बात आपके सामने रखना चाहता हूँ। यह सैक्शन 5 में जो प्रावधान किया गया है Appointment of Public Information Officer मेरा सरकारी कामकाज का या म्युनिसिपल ऑफिस में कामकाज का जो अनुभव रहा है, उसके आधार पर मैं कह सकता हूँ कि जो पब्लिक रिलेशन ऑफिसर या पब्लिक इन्फॉर्मेशन ऑफिसर एपाइंट किया जाता है, उसकी नियुक्ति होने के बाद यदि बाकी सब ऑफिसर उसको इन्फॉर्मेशन नहीं देते और उसके पास इन्फॉर्मेशन नहीं होगी तो वह उसे Pass on नहीं कर सकता है। यह मुश्किल आती है। इसलिए जो भी इन्फॉर्मेशन आवश्यक है वह सब इन्फॉर्मेशन उसके लिए खुली होनी चाहिए, इसका बंदोबस्त करने की आवश्यकता है। एक बात यह भी है कि हम टेंडर मंगवाते हैं, निविदा सूचनाएं मंगवाते हैं और जब टेंडर मंगवाते हैं तो बताया जाता है कि टेंडर के विषय में सभी अखबारों में नोटिस देने की आवश्यकता है। अक्सर यह देखा जाता है कि जिस अखबार की बिक्री सबसे कम होती है, उसमें यह न्यूज दी जाती है। उसके बारे में ठीक ढंग से प्रावधान नहीं किया जाता है, सबको नहीं बताया जाता है। इसके अलावा पब्लिश होने के बाद भी टेंडर फार्म किसको देना है और किसको नहीं देना, इसका निर्णय भी संबंधित अधिकारी लेता है। वह सबके लिए ओपन नहीं रहता है। मैं समझ सकता हूँ कि स्पेशलाइज्ड सबजैक्ट है या बड़ा काम है तो जिसकी आर्थिक स्थिति अच्छी हो, जो उस काम को कर सके, जिसमें वह काम करने की काबलियत हो, उसको वह टेंडर देना चाहिए। लेकिन यह क्राइटेरिया नहीं अपनाया जाता है बल्कि जिसको वह अधिकारी जानता है, उसको ही वह टेंडर देता है, दूसरे को नहीं देता है। इस ढंग से सरकार के अधिकारी काम करते हैं चाहे वे स्टेट गवर्नमेंट के हों, सेंट्रल गवर्नमेंट के हो, प्राइवेट सेक्टर अंडरटेकिंग्स के हों या पब्लिक सेक्टर अंडरटेकिंग्स के अधिकारी हों सभी जगह इसी तरह से काम चलता है। उसके ऊपर कहीं भी कंट्रोल नहीं है। (समय की घंटी) इसके अतिरिक्त अगर लोगों को फार्म ही नहीं दिया जाएगा तो लोग ठीक ढंग से उसका इस्तेमाल कैसे का पाएंगे? इसके बारे में कुछ व्यवस्था करने की जरूरत है। महोदया, मैं केवल दो और बातें कहकर अपनी बात समाप्त करूंगा। किसानों की खुद की जमीन होती है। उसका रिकॉर्ड ऑफ राइट्स में सब जगह पर रिकार्ड रखा जाता है, फार्म में सब जगह जानकारी दी जाती है। लेकिन इस फार्म के संबंध में भी, उसका हक बनता है कि किसी भी हालत में उसकी जमीन के बारे में उसको जानकारी मिलनी चाहिए, यह इन्फॉर्मेशन उसको नहीं मिलती, उसके लिए भी घूस की व्यवस्था किए बगैर उसे यह जानकारी नहीं दी जाती। उसके लिए भी ठीक से व्यवस्था करने की आवश्यकता है। जैसा अभी पृथ्वीराज चव्हाण जी ने बताया कि इन सभी विषयों के बारे में आप वेब साइट पर पूरी इन्फॉर्मेशन देने की व्यवस्था करें। यह बहुत अच्छा सुझाव है। यदि ये सारी चीजें हम लोगों के सामने आएंगी मैं बताना चाहता हूँ कि हमारे सुरेश प्रभु जी जब मंत्री थे, डिपार्टमेंट में जो भी लोगों के ऐप्लीकेशंस आते थे या दूसरी कुछ इन्फॉर्मेशन आती थी, वह सारी इन्फॉर्मेशन उनके डिपार्टमेंट की वेब साइट पर आया करती थी। इस प्रकार से ट्रांसपेरेंसी लाने की व्यवस्था अगर आप करेंगे तो अच्छा रहेगा। ... (व्यवधान) ...

श्री स्वराज कौशल : सुरेश प्रभु जी इतने अच्छे मंत्री थे, आपने उन्हें हटाया क्यों? (व्यवधान) ...

श्री सतीश प्रधान : हमने हटाया क्योंकि पार्टी के काम के लिए अच्छे आदमी की जरूरत है, इसलिए उधर लेकर गये। आपको उसमें क्या आपत्ति है, यह मेरी समझ में नहीं आ रहा है।

उपसभापति: वह पार्टी के सब कार्यक्रम वेब साइट पर लाने के लिए गये हैं।

श्री सतीश प्रधान: उधर काम करने के लिए हम उन्हें वहां लेकर गये हैं। आप उसकी चिंता मत करिए। अंतः में महोदया, जैसा आपने कहा, एन.जी.ओज के बारे में भी ख्याल रखने की जरूरत है। धन्यवाद।

SHRI MP. ABDUSSAMAD SAMADANI (Kerala): Madam, it is a very important Bill. It is a historical landmark in the development of democratic values in our country. The democracy is a historical process, and its real aims and objectives are yet to be achieved. A Bill of this kind Bill makes the process easier and smoother. Thus, we would be able to reach our destination at the earliest. Openness in the administration and the Government is linked with transparency and accountability, but, I think, it is more linked with accountability. Madam, here, I am reminded of a historical incident. A great ruler, who was very famous for his sense of justice, was making a speech. When he was about to start his speech, an ordinary citizen stood up and asked the ruler, "Before you make your speech, I would like to know, when everyone of us is getting his share, how did you get this kind of cloth for your shirt? My share is only this much, and my shirt is small. Your shirt is a bigger one because you are a ruler." The ruler said, "My son, who is present in the assembly, will answer your question." The son, who was there, stood up and said, "I gave my share to my father. When the shares of both of us were added, only then this big shirt was made." This ruler was Khalif Umar, about whom the Father of our Nation, Mahatama Gandhi, once remarked that it is his style of administration that he would like to adopt for his country. So, this urge to know... (*Interruptions*)... No; no, this is the second Umer, the Khalifa Hazrat Umer. Anyway, Madam, this is directly linked with accountability, and the enactment of this Bill would enable us to fight the disease of corruption. Madam, we know that the Freedom of Expression is the freedom of our tongue; and the Freedom of Information is the freedom of our ears and

eyes. These are very important organs of human existence; human individuality. In other words, the freedom of individual can be said to be complete only when these rights are given to them. I would like to request the hon. Minister to devise methods to keep every institution of our country, including the Executive, the Judiciary and the Legislative, alert for the successful implementation of this Bill. Then there is the Press, which is known as the Fourth Estate of our democracy. The Press is already doing its duty in the field of 'Freedom of Information'. They are already very much involved in it. But all these institutions of our democracy should work together for the successful implementation of this enactment.

Regarding access to information, I would like to say that the bureaucracy should be made accountable for the delay in providing information. An individual has got a right to approach any institution for seeking information. Sometimes there might be delay in giving information. In that case, I think the concerned officer should be made accountable for the delay, and he should be made to reply as to why there was delay. There are some officers, who are not ready to do things, which they are legally bound to do. In that case, the citizen should have the right to know from that officer why he is not doing his duty. In most of the cases, it has been seen that they don't reveal the reasons. But, Madam, there must be some mechanism to get this information.

I will not go into the details of the process of the enactment of this Bill. We all understand that Defence, Foreign Affairs etc., are areas which are very sensitive, and they should be kept secret. But that should not be misused. Hon. Shri Apteji correctly referred to that point. I was a Member of the Standing Committee on Defence. And I remember those occasions when the presentation and the slide shows were shown in meetings, and the officer, who used to conduct these meetings, would get up and say, 'I can give information up to this point, not beyond, because it is secret.' So, even for Members of Parliament also, information regarding defence and foreign relations are kept secret. I think, in war, as well as, in peace the citizens should have a right to information. They should know what policy their country is following; and what developments are taking place. I agree with Mr. Apteji when he remarked about the free flow of information.

The next point is about the language of the Bill. Shri Prithviraj Chavanji mentioned that this kind of literature should be produced. I think

in that case, the language should also be taken into consideration. It should be published in the local dialect also. Then only the Freedom of Information will be directly acceptable to the people.

Then there is the point regarding lack of infrastructure. I would like to draw the attention of the hon. Minister to the lack of infrastructure which is already mentioned in this enactment. An improvement should be made in this area. So, infrastructure facilities should be provided in order to successfully implement this enactment.

Finally, Madam, there is a proverb that 'Man is the enemy of what is unknown to him'. Here, ignorance is creating unnecessary enmity. And to fight this kind of enmity, free flow of information is highly essential. This is the age of openness and the age of Information Technology.

This is the age of openness, this is the age of information technology. But, it is unfortunate for the mankind that despite all this, many of the information are not disclosed. But, definitely, it will be a solution for that kind of problem. Thank you.

THE DEPUTY CHAIRMAN: You said one proverb, but there is another proverb, "Ignorance is a bliss". It is better not to know anything.

SHRI MP. ABDUSSAMAD SAMADANI: That is right.

THE DEPUTY CHAIRMAN: Now, Shri Swaraj Kaushal.

SHRI SWARAJ KAUSHAL : Madam, we congratulate the hon. Minister for bringing forward this Bill. When Section (3) of the Bill reads, "all citizens shall have freedom of information", I think, it is a great day for democracy. It is a great day for the citizens. It is an occasion, as important as the Magna Carta. It is a right that is very valuable, and. I am happy that Parliament is conceding that to the citizens of the country. My only concern is that although the right is valuable, it has not been included in Chapter-III, that is, the Fundamental Rights, of the Constitution of India. My concern is, what is given in the Bill should not be taken away by the Executive Bill. So, we are happy that this Bill has come, but we would have been happier, if the Bill had come in the form of Fundamental Rights granted to the citizens.

Madam, when we go to clause 8 of the Bill, sub-clause (c) says, "information, the disclosure of which would prejudicially affect the conduct of Centre-State relations". I cannot visualise as to what can that area be. When you bring forward this provision, is it that you have something like the Cauvery dispute in mind; otherwise, the relations between the Centre and the State ought to be made public to the citizens of the country. This provision is considerably vague.

Sub-clause (e) of clause 8 which relates to exemption from disclosure of information, says, "minutes or records of advice including legal advice, opinions or recommendations made by an officer of a public authority during the decision-making process prior to the executive decision or policy formulation".

Madam, once we accept that probity in public life is important, once we accept that accountability in public life is absolutely necessary, I do not understand the justification of including this provision. I believe, it is wrong, and, I for one, do not understand the rational behind including this.

Then, what is given under section (3) is, in fact, diluted by section 8(e). When we go to clause (16), "Nothing contained in this Act shall apply to intelligence and security organisations, specified in this Schedule being organisations established by Central Government or any information furnished by such organisations to that Government". Now, clause 2(2) says that "appropriate Government" is the Central Government and the State Government. But, here, under clause 16, the power to exclude or power to exempt is given only to the Central Government. And when the State Governments want certain organisations to be excluded, every time, the State Government has to come forward to the Central Government. I seek clarification from the hon. Minister in this regard.

Madam, I will conclude only by bringing to the notice of the hon. Minister that the Schedule is not complete, and you have left out very important organisations. I know you can do that by an Executive notification, and it is for this reason that I am bringing this to your kind notice. Madam, though you have included various organisations, what has been left out is an organisation that guards the Prime Minister and the ex-Prime Ministers. Somehow, the Special Protection Group has been excluded from the list of 19 organisations. You have included the Special

Branch (CID), Andaman and Nicobar, the Crime Branch-C.I.D.-C.B, Dadra and Nagar Haveli, and so on, but you have left out the Special Protection Group. And, one thing that I cannot understand is why the Narcotics Control Bureau has been included in this Schedule. When there is some information which relates to the security of the State, it is important, as such, but is it not advisable for the NGOs or organisations - which work for the elimination of the drug traffic in the country - to know as to what kind of work the Narcotics Control Bureau is doing? Who are the people involved in drug trafficking? The Narcotics Control Bureau is an organisation that should not have been included in the Schedule.

Madam, we welcome the Bill, and we congratulate the Government for bringing forward this progressive and historic piece of legislation. Thank you, Madam.

SHRI FALI S. NARIMAN (Nominated): Unlike most of the Members, Madam, I have some apprehensions With regard to this Bill. Let me express them. It is based on the Financial Memorandum annexed to the Statement of Objects and Reasons, which says that the manpower requirement arising from this legislation will probably be met from within the existing sanctioned strength of various agencies at the Central and State level, and will not be too much of a burden on the Executive. Madam, I take leave to demur from this. The moment you give all citizens access to information, they will start using it, even though there may be no purpose for it. Therefore, I am worried about the implementation of this Act, particularly, when you also provide that information means and includes 'inspection, and taking of extracts and notes'. This is clause 2(c). Now, in any Government office, where is the space for inspection? If many people were to come at any one point of time, demanding inspection, and if a file were to pass through many hands what will happen to the file? I know of an instance in my practice where an individual, for the purpose of an arbitration, went to inspect a file, he tore out and swallowed one of the most damaging document against him. Now, how are you going to protect the security of Government departments and Government files? I have grave apprehensions, and I would really recommend to the hon. Minister. Information is very good; please give it, as much as people want. But I would rather have - freedom of information means - clause 20(1) 'obtaining copies of extracts and notes.' That is all right. The officer will give you copies - certified, good, copies. But if somebody starts dissecting the file

or somebody goes for inspecting the file, and another person goes for inspecting it and thumbing it and so on, I do not know what will happen in Government departments? This will operate at all levels, including the panchayat level; all authorities, from the lowest to the highest. Therefore, I would respectfully request the hon. Minister to please bear this in mind. All this is very well in a very sophisticated society, in a small country, where there are a few people, but ours is a big country where everybody suspects everybody else, and Government the most. That is how it exists and that is how we are. So, I would respectfully suggest that when you give information, you certainly give; you appoint your officers, and let them give information in the form of copies or, as you say, certified copies of any records, and so on, but certainly not inspection because, if you open the doors for inspection, I am afraid - as it is, there is very poor governance in our country - the governance will come to a complete stop because half the files will be missing and the other half will probably be destroyed in course of time. I seriously mention this, Madam, for the consideration of the hon. Minister. Just imagine your Department, hon. Minister, where 50 or 100 people come every day to inspect some file. If somebody says that the file is with the Minister, that person would say, "No; I want it; I must have it; how can it be with the Minister; the Act says that I must get it. I must inspect the file." The governance will stop.

THE DEPUTY CHAIRMAN: And then we will have a lot of cases in the form of PIL.

SHRI FALI S. NARIMAN: Yes; in the form of PIL, as it is ...

THE DEPUTY CHAIRMAN: Everybody would do it.

SHRI FALI S. NARIMAN: They will do it. Let the courts do it. They are already doing it in various forms, and I have grave apprehensions of this opening up of files totally to each and every and all and sundry, without any purpose, without any difficulty.

Secondly, Madam, the Bill quite rightly says, as Mr. Kaushal has said, as per clause 3, "All citizens shall have freedom of information." It is an advancement on article 19 of the Constitution. Clause 6 uses the word 'person'. I take it; it means 'citizen'. I do not want foreigners to come and take advantage of this. It is a very valid section - Section 3. It is not a

matter of interpretation. Don't say, "Why not?" I am very apprehensive. They will manipulate this Act far better than any of us can do, for various purposes, especially, when we have just passed the Biodiversity Bill. I mean, for all these purposes, it is the foreigners who are looking to various things that are happening in this country. I do not want them to take advantage of it. That is the second point.

The third point is that there is a step clause - Section 1, sub-section (3), which shall come into force on such date as the Central Government shall appoint. I would respectfully ask the hon. Minister to take care and see that it is not brought into force, until the necessary infrastructure is obtained and he has examined all the ramifications of the rights that he is giving here, not only at the level of his Secretariat, but at the level of each and every local body or local authority. Therefore, it was, perhaps, far better to have proceeded on the basis initially of only with the Central Government and work downwards later, having regard to the experience gained. Therefore, I would respectfully submit to the hon. Minister that while this is very good in concept, in practice, how it is going to work is something that must receive his attention.

The last point that I wish to make is this. I find that there is a material departure from Section 14 as introduced in the Lok Sabha and was ultimately passed. Section 14 says : The provisions of the Official Secrets Act and every other Act in force shall cease to be effective to the extent to which they are inconsistent with the provisions of this Act." Whereas we now have a section, which says : "The provisions of this Act shall have effect notwithstanding anything inconsistent with the Official Secrets Act," and not that it shall cease to operate. The Official Secrets Act is a blot, I agree, on our Statute Book, but it should be removed. But, there are sections which are still required having regard to the army and other installations, but they extend even to ordinary information that we obtain. I would request the hon. Minister to please tell us whether this Official Secrets Act will stand repealed, whether any information that will be given in pursuance of it will be treated as information which should not be given under the Official Secrets Act; or if information is derived, otherwise and through the mechanism of this Bill, will it still invoke the penalties that are prescribed? There is some difficulty. I do not know how this section came to be changed. All I would prefer is the original wording.

THE DEPUTY CHAIRMAN: What will happen to the 'Oath of Secrecy' the Ministers take? Through the files everything will be known.

SHRI FALI S. NARIMAN: Yes. I have a great apprehension about how it is going to work. It is all very good in conception.

SHRI B. P. SINGHAL: Inspection of the files would really make a chaos of the entire governance.

SHRI KULDIP NAYYAR (Nominated): Madam, I think some of the fears expressed by Members are ill-founded. If that was the case, then there would not be a need for the right to information at all. Madam, I want to tell you that it is working in Karnataka, Maharashtra, Goa, Delhi and Rajasthan. They are doing with it very well. If they can handle it, then why can't the Centre handle it very well? But, my objection to this Bill is that it does not give enough scope for transparency. Nor is there any accountability. Let me tell you about the first point - transparency. Section 8 is a classic example. This examines every paper, deliberations of the Council of Ministers, Secretaries and other Officers. This is what we would like to know. We would like to know, as a citizen, as to why the Government came to a certain conclusion. Just because you happen to be in the Government does not mean that public and reporters should not know. This is part of democracy. Incidentally, Goa has allowed it; Maharashtra has allowed it; and Karnataka has allowed it, but the Centre has not allowed it. I was a member of the Standing Committee where this was discussed. If I recall correctly, regarding this Official Secrets Act, they said that this would either go or would be modified accordingly. This was the assurance given to us. But there was one thing we had recommended, which is a very innocuous clause. Today, a person goes from pillar to post to get information. So, we had suggested, and this was, "Public authorities must publish a list of their publications so that the general public could browse them, for knowing about the activities and functions of public institutions." I think, this was the minimum which should have been included in the Bill. I do not know why it has not been included. Now, I come to accountability. Today, an officer can say 'No', and that is all. There is no penalty; there is no challenge. He is the person who decides. In the Act, there are only two appeals. Both the appeals lie to the Government; they do not lie beyond the Government. I do not know why Clause 15 of this Bill bars the jurisdiction of Courts. There is no justification for barring the jurisdiction of the Court. I do not understand why this Bill is doing that. I also suggest that there should be a penalty clause for the officer who says that he would take a lot of time or who refuses wrongly.

What is the punishment? There is no punishment in this Bill at all, not even a fine of Rs.50. So, some punishment should be there. I suggest, Madam Deputy Chairman, that there should be an independent monitoring body for implementation of the right to information. This independent monitoring body should have Government's representatives, NGOs' representatives, journalists, academicians, lawyers, etc., so that this can really be an independent body which would be able to find out as to why a particular information has not been given. Lastly, at the very least, this Bill should be amended to include, as I said, an independent appeal mechanism and a penalty clause. Many State laws have taken these into consideration. The Central Government must follow their example in this regard. Thank you.

उपसभापति: श्री राजीव शुक्ल जी। अभी बहुत डिसकशन हो गया इसलिए आप जरा जल्दी जल्दी बोल दीजिए।

श्री राजीव शुक्ल (उत्तर प्रदेश) : मैडम, मैं बहुत छोटा और टूट प्वायंट बोलने की कोशिश करूंगा। महोदया, सब से पहले तो मैं मंत्री जी को धन्यवाद देना चाहूंगा भले ही इतनी देरी के बाद यह बिल बाया है जो कि बहुत पहले आ जाना चाहिए था। आज इस सदन में नरेन्द्र मोहन जी नहीं हैं, जो कि सालों साल लगातार इस विधेयक के लिए संघर्ष करते रहे, आज इस मौके पर उनकी हमें याद आ रही है जबकि सरकार यह बिल लाई है और उसके लिए मैं सरकार को बधाई देता हूँ। मैडम, सूचना का अधिकार बहुत जरूरी है, क्योंकि हमारे यहां तमाम ऐसी बातें हैं जो न तो मीडिया को पता चल पाती हैं और न लोगों को पता चल पाती हैं और उनके नाम पर सरकारी दफ्तरों में जबर्दस्त दुरुपयोग होता है। इसलिए मैं इस सूचना के अधिकार का बहुत बड़ा पक्षधर हूँ, लेकिन साथ साथ जो सेफगार्ड्स लिए गए हैं उनको और बढ़ाना चाहिए था और जैसा कि स्वराज कौशल जी ने कहा कि इलैबोरेट नहीं किया गया, कहीं कहीं बिल्कुल वेग है, तो उनको इलैबोरेट करने के लिए अगर सरकार बाद में कोई नोटिफिकेशन निकाल सके तो मेरे ख्याल से यह बहुत अच्छा होगा। उदाहरण के लिए मैं एक छोटी सी बात कहना चाहता हूँ। मैडम, आप ने बोला कि पी.आई. एल. होंगी। मैडम पी.आई.एल. तो होंगी और इतनी सी.बी.आई. की जांच होंगी कि सरकार को संभालना मुश्किल हो जाएगा क्योंकि इंफॉर्मेशन देना अपनी जगह है, लेकिन सेक्शन-4 (डी) में कहा गया है कि "Give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions. अगर एक एक अफसर को कारण बताना पड़ेगा तो कितनी मुश्किल होगी? मैडम, डिसीजन क्या है, यह तो उसने बता दिया, लेकिन किस वजह से उस ने यह डिसीजन लिया, यह बताना पड़ा तो इतनी पी0आई0एल0 और सी0बी0आई0 इंक्वायरीज की मांग होगी कि सरकार के लिए हेंडल करना मुश्किल हो जाएगा। मैडम, आगे सेक्शन 8(ई) इसे बिल्कुल कांटेडिक्ट करता है। सेक्शन 8 में पॉइंट आउट किया गया है कि Clause 8(e) says: "Minutes or records of advice, including legal advice, opinions or recommendations made by any officer of a public authority.."

यह डिस्क्लोज नहीं कर सकता तो वह रीजन क्या बताएगा कि किस वजह से मैंने यह फैसला लिया और इस जगह आकर यह मामला फंस जाएगा ।

उपसभाध्यक्ष (श्री सुरेश पचौरी) पीठासीन हुए ।

दूसरी चीज यह है कि सेक्शन 11.3 के अंतर्गत जो इनफॉर्मेशन ऑफिसर नियुक्त किया जा रहा है, उस को 60 दिन का समय दिया गया है। मेरे ख्याल से इस को घटाकर 30 दिन किया जाना चाहिए क्योंकि 60 दिन का समय बहुत लंबा होगा । इसलिए इस पीरियड को 60 दिन की जगह 30 दिन किया जाना चाहिए। इस के अलावा सेक्यूरिटीज एजेंसीज और इंटेलीजेंस एजेंसीज को सेक्शन 16.1 में एक्सक्लूड किया गया है। यह बहुत ही संवेदनशील बात है । महोदय, यह ठीक है कि यह देश की सुरक्षा और गुप्तचार एजेंसियों के बारे में जानकारी नहीं मिलनी चाहिए, लेकिन किस हद तक ? महोदय किसी न किसी हद तक हमें कुछ सूचना तो मुहैया करानी पड़ेगी । उदाहरण के लिए मैं राँ की बात करता हूँ । राँ नॉन प्लान एक्सपेंडीचर में आता है । अब वह क्या कर रहा है, क्या नहीं कर रहा है, किसी को कुछ पता नहीं चलता है। यह पार्लियामेंट तक को जानने का अधिकार नहीं है, कैबिनेट सेक्रेटरी तक को जानने का अधिकार नहीं है। इसलिए गवर्नमेंट के अंदर कोई कमेटी बनाई जानी चाहिए या कोई और व्यवस्था हो, लेकिन इस तरह की कुछ न कुछ जानकारी तो होनी चाहिए। अकाउंटेबिलिटी तो हरके की फिक्स होनी चाहिए और यह कैसे फिक्स होगी, यह भी पता होना चाहिए।

महोदय, मैं बी.पी. सिंहल जी का बहुत सम्मान करता हूँ । उन्होंने एक बात मीडिया के संबंध में उठाई। यह दायित्व मीडिया पर भी पड़ना चाहिए कि वह बताएं कि उन्होंने कोई खबर किस लिए छापी । मैं यहां उन से सहमत नहीं हूँ क्योंकि मीडिया को सुप्रीम कोर्ट से प्रोटेक्शन मिला हुआ है । लेकिन मैं इतना जरूर कहूंगा कि...

श्री भारतेन्दु प्रकाश सिंहल: इसलिए क्योंकि वह अक्सर छाप देते हैं कि (1) As per an insider view और एक व्यू छाप देते हैं। न्यूज तो ठीक है, व्यू छाप देते हैं On conditions of anonymity तो उन ओपीनियंस का सोर्स आना जरूरी है।

श्री राजीव शुक्ल: महोदय, उन्हें कोर्ट का प्रोटेक्शन मिला हुआ है कि उनके लिए सोर्स डिस्क्लोज करना जरूरी नहीं है, लेकिन मैं आप की बात को आगे बढ़ाते हुए कह रहा हूँ कि मीडिया की अकाउंटेबिलिटी फिक्स करें क्योंकि बहुत लोगों का बहुत तरह से अपमान हो जाता है और वह बाद में बहुत एग्रीव्ड फील करते हैं। महोदय, यह प्रेस काउंसिल ऑफ इंडिया को मजबूत कर के किया जा सकता है जैसे कि सुषमा जी का आइडिया था कि मीडिया काउंसिल बनाई जाए और उस को यह अधिकार दे दिया जाए कि वह उनकी अकाउंटेबिलिटी फिक्स करे जिस के लिए मीडिया आंस्वरेबल हो। महोदय, आज उसे रिप्रिमांड करते हैं, मैं भी प्रेस काउंसिल ऑफ इंडिया का मेंबर हूँ, उसे कोई अधिकार नहीं है, कोई शक्ति नहीं है । उसे कम से कम यह अधिकार दिया जा सकता है कि अगर उसे प्रेस काउंसिल ऑफ इंडिया सजा देती है तो ऐ साल के लिए उस के डी.ए.वी.पी. के विज्ञापन बंद कर दे। इस तरह प्रेस काउंसिल ऑफ इंडिया या मीडिया की किसी बॉडी को अकाउंटेबिलिटी फिक्स करने का अधिकार दिया

जाना चाहिए, लेकिन अगर इनफॉर्मेशन बिल का हिस्सा मीडिया को बना दिया गया तो पत्रकार तंग हो जाएंगे।

महोदय, मुझे यही कहना था, धन्यवाद।

उपसभाध्यक्ष (श्री सुरेश पचौरी) : श्री राम जेठमलानी।

SHRI RAM JETHMALANI (Maharashtra): Mr. Vice-Chairman, Sir, I thank you for giving me this opportunity to speak. The great American Democracy gave this measure to the American people in the year 1966, when President Johnson was the President of the United States of America. I still distinctly remember that it became a cause for national celebration, and I remember, a very glittering press conference was called, where, President Johnson said, "this is the proudest day in the history of the American Democracy, and it is the proudest day in my tenure as the President of the United States of America that I am putting my signatures on this Bill, to become a law." I hope this Government will get due credit for having brought this Bill at an opportune time, and I must compliment everybody who is connected with the bringing forward of this Bill, and its passage today through Parliament. Mr. Chairman Sir, it must be acknowledged that this Bill does not grant what the Liberals would have asked for. This Bill represents a compromise between two everlastingly conflicting interests, that is, bureaucratic secrecy on the one hand and democratic transparency on the other; on the one hand, the needs of governance, and on the other, the rights of the people to know how their elected representatives and bureaucrats are behaving. I do not suggest that this Bill is a perfect measure. My friend, Shri Kuldip Nayyar, made some complaint; I think he is perfectly justified. I believe that when we have more experience of the working of this Bill, and when the Government acquires more self-confidence about it, improvements would be made in this law, and the people will get what they really deserve. But it must be understood that the Bill does not purport to, and does not pretend to confer rights. The Rights are created by Article 19 of the Constitution of India. The Rights have already been evolved by the Supreme Court of India, and taking the cue from the Supreme Court of the United States and the freedom of Information Bill which was passed in the United States in 1966, this Bill only creates a mechanism as to how that right is to be enforced, and ultimately, if there is any difficulty in the implementation of this Bill, or if there is any kind of dereliction of duty in enforcing the provisions of this Bill, the

fundamental right of the people to know how the Government is carried on, will be enforced by the High Courts in proper Writs under Article 226 and Writs even under Article 32, because the right arises out of Article 19 of the Constitution. I hope the Government, while acting upon the provisions of this law, will see to it that they set up healthy practices and healthy precedents, so that and they do not try to find loopholes in the Bill for defeating the people's right to know. On the other hand, they should so interpret the Bill generously and in accordance with the spirit of the Constitution, that people 'get as much of information, as is perfectly consistent with the nation's security and other interests which are protected.

My friend, Shri Fali S. Nariman, is a very liberal Member of Parliament -- I have known him outside to be a liberal politician - I have never seen him argue as an ultra-conservative as he has done today. This is a new facet of my friend, Shri Fali S. Nariman. First of all, he asked not to bring forth this Bill until a mechanism is created, and so on and so forth. My advice, Madam Minister, is : please, bring this Bill and bring this Act into force as early as you can. In fact, you should bring it absolutely forthwith because it is not that the Bill is creating a new right. The Bill is only creating a mechanism for the enforcement of a right which is already created by the Constitution of India and which, we have not so far been able to recognize and enforce. My friend, Shri Fali S. Nariman, said : 'well, do not give the right to inspect, give the right to make copies.' This is putting the cart before the horse. I am surprised", my friend, Shri Fali S. Nariman, is not here ...*(Interruptions)*... Section 76 of the Indian Evidence Act, which creates the right to get certified copies of some public record says : "That officer is under a duty to grant certified copies when somebody has a right to inspect that document." The right of inspection is a condition precedent to the right to obtain copies. Therefore, the Bill must give inspection rights, and after inspecting a document, you may find that it is not worthwhile spending money on getting certified copies. Besides, if you don't have the right to inspection, you might get wrong certified copies, you might get certified copies which don't really coordinate, which do not fit in with the actual record. So, I think inspection must be given. My friend, Shri Fali S. Nariman, has another premonition, about the meaning of the word 'person'. Person in the context of this Act must mean a person on whom the right to information is created under the Act, and the right to information arising out of Article 19 exists only for citizens unlike Article 14 -the right to equality --it does not apply to all persons, it only applies to the citizens of India. So,

that also is somewhat unfounded. I hope the Government will interpret this in a liberal spirit.

I must say that this is, in a sense, an advance on the American version. The American version has 13 exceptions in which the right to know is not recognised, information is not furnished. When we were discussing this Bill, we reduced that number to 8. I believe that there are about seven or eight exceptions in the Bill, and, therefore, it is, in a sense, an advance on what that great American democracy has given to it. But, ultimately, it all depends on the spirit in which you administer this law. If there are liberals who constitute the Government, the Bill or the law will serve the purpose for which it is meant. It is meant to serve a great purpose, and, I hope, the Government will satisfy the aspirations of the people. With these words, I support the Bill, and I compliment the people who have something to do with bringing this law. Thank you, Sir.

SHRI H.K. JAVARE GOWDA (Karnataka): Sir, I welcome the Freedom of Information Bill, 2002. Sir, many of my colleagues have elaborately discussed about the implications of the Bill. Under clause 4, an obligation is cast upon every public authority to provide information to every individual who seeks information, from the point of view of transparency and accountability of every act of the Government.

Clause 7 reads as follows:

"(1) On receipt of a request under section 6, the Public Information Officer shall, as expeditiously as possible, and in any case, within thirty days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9."

I want to seek a clarification from the hon. Minister. Sir, we are in the information age. The technology has developed so much. I don't think it would require 30 days to get a certified copy or any information! If, in this computer age, when one can easily have access to documents, you are providing the Public Information Officers a period of 30 days. This will cause inordinate delay in having access to information under their control. I, therefore, request the hon. Minister to reduce this period to 15 days.

For safeguarding the interests of the nation, clause 8 provides a power to the Government to protect the information, in certain cases. I welcome it.

Clause 9 gives a sort of discretionary power to the public authority to reject a request for information. The Bill specifically mentions the cases where an individual is entitled to get information, and where he is not entitled. I don't know why, under this clause, the power has been given to the authorities to reject a request. I think, it is not correct.

Sir, in clause 12 of the Bill, a provision is made for making an appeal to the authority, if the request of an applicant for seeking information is rejected. Sir, though the provision for making an appeal has been made, there is no specific time-limit mentioned in the Bill. There should have been a time-limit fixed for the disposal of an appeal; otherwise, it will not serve the purpose.

As regards the other aspects of the matter, under clause 15, keeping everything out of the jurisdiction of the courts is not desirable. Not only in this legislation, but in many other legislations also, we are barring the jurisdiction of the courts. It is not a good sign. One may say that if you provide for the civil court's jurisdiction, it may protract the proceedings, and it will lead to unnecessary delay. But this Bill does not deal with such matters. But if any individual or Government is not going to oblige the request of an individual, then the ultimate remedy is the court. Therefore, I feel, this aspect should be reconsidered. The civil court jurisdiction should be provided under the Bill. Another thing is, we are not making the public aware of whatever laws we are making. They are not aware of the existing laws. As a result, the laws are sometimes misused. Therefore, people should be made aware of the various laws being enacted. Unless this kind of an awareness is created among the people, we will not be able to achieve the purpose of this enactment. With these words, I support this Bill, Thank you, Sir.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Hon. Minister, please.

SHRIMATI VASUNDHARA RAJE: Sir, I am very, very grateful to the hon. Members of this august House for their enthusiastic participation in this debate on the Freedom of Information Bill, 2002. The hon. Members will appreciate that the proposed legislation actually seeks to radically change the ethos and culture of the administrative system and mark a substantive departure from the hitherto accepted culture of functioning inside the Government. We are often said to be living in the information age. Access to information about Government, which has gained momentum in the late 20th Century, is a pre-requisite to an effective democracy and participation in it. Viewed in this context, openness is fundamental to the political health of a modern State. All citizens must be in a position where they can understand and access the policy followed by Governments. The Right to Information has, therefore, become one of the Fundamental Rights of the present-day citizen. However, of the nearly 200 independent countries in the world, less than 20 have given their citizens the legal right to Government information. It is, therefore, a matter of great pride for this country, with its manifold problems and its myriad diversity, to be in the forefront of the Comity of Nations, in making available to its citizen a statutory mechanism to enforce their Fundamental Right on the functioning of the Government. With this short preamble, I would now like to straightway go to the various points that have been raised by hon. Members and attempt to reply to some of the queries. Pranabda raised the point about jurisdiction of the courts being barred. On this, I would like to say that the Working Group, under Shri H.D. Shourie, considered the option of the appellate remedy. They felt that it would not be an effective appellate remedy, considering the state of arrears in the courts and the pending litigations that were there. The Working Group then recommended that there could be an appeal which could be disposed by the District Forum, the State Commission or the National Commissions under the Consumer Protection Act of 1986. Sir, it was then felt that the state of arrears in the Consumer Fora was a discouraging factor in accepting the recommendations made by the Working Group. So, it was decided to dispense with the jurisdiction of lower courts, as this would not help in speeding up the process. It is only the jurisdiction of the lower courts that is being barred. The Writ Jurisdiction of the Supreme Court and the High Courts, under Article 32 and 226, respectively, would remain and would, perhaps, be enough to decide such cases. Then, Sir, Mr. Swaraj Kaushal, Dr. Chandra Kala Pandey, Shri Reddy, Shri Kuldip Nayyar and Apteji said that the exemption list is too large, and something should be done about it.

4.00 p.m.

Apteji said that the restrictions under Article 19 of the Constitution were alright, but clauses 8 and 9 of the Bill were too pervasive, and something should be done. Sir, there is no freedom of information legislation which exists anywhere in the world today that does not have a set of exemptions. The total number of exemptions, as proposed in the present Bill, are 7 under clause 8, and 4, under clause 9, and they compare favourably with the prevailing legislations around the world. These exemptions, in one form or the other, are present in the freedom of information legislations of Australia, New Zealand, Ireland, the Netherlands, the USA, France, Canada and the UK. There are, however, areas like public employment, public appointments and honours, etc., which are not there in the present Bill. The Report of the Shourie Working Group suggested a total of fourteen exemptions. We have reduced them to eleven. Some of the exemptions proposed by them are not part of this Bill. They are, the information, the disclosure of which would prejudicially affect the management of services under and operations of public authorities; the information, the disclosure of which would not subserve any public interest; the information, the disclosure of which would prejudicially affect the competitive position of a third party. These are the three things left out. The Government is not aware of any judicial pronouncements, which allow absolute freedom of information. Even the Constitution of India recognises the limits to freedom of expression, as set forth in article 19(2). Eventually, the Act, as and when passed, would be tested through various challenges in judicial and administrative fora. The judicial pronouncements and the administrative experience gained through the implementation of the Act will clarify its contents, and lead to further necessary modifications, as has been the experience in the other developed countries as well.

Shri Pranab Mukherjee mentioned something about internal deliberation and he wants to know what is the rationale behind the clause 8(1)(e) of the Bill. According to the United Kingdom Government White Paper, which was presented to the Parliament in 1997, the internal discussions and advice is exempted from disclosure in Australia, New Zealand, Ireland, Netherlands, USA, France and Canada. In India also, the Freedom of Information Bill exempts minutes or records of advice including legal advice, opinions or recommendations. The Group of Ministers felt that in order to enable the officers to give free and fearless advice, it is essential

to protect internal discussion and advice, but final decision of the Government will be available to the general public, except in regard to the exemptions which are provided under clauses 8 and 9 of the Freedom of Information Bill.

Shri Uday Pratap Singh said that there should not be any contradiction between the dictates of secrecy and provisions of the Bill. Basically, clause 14 of the Freedom of Information Bill gives overriding effect to the proposed Act, as it lays down that the Official Secrets Act, 1923 and every other Act in force, shall cease to be operative to the extent to which they are inconsistent with the present Bill. Shri Nariman referred to the Official Secrets Act. After the receipt of Shourie Working Group Report, the Ministry of Home Affairs has examined the Official Secrets Act, 1923 and concluded that there is no inherent contradiction between the Official Secrets Act, 1923 and the proposed Freedom of Information Act. While the Freedom of Information Act casts an obligation on the part of the public authority to provide information, which is not exempted under clauses 8 and 9, the Official Secrets Act, 1923, deals, basically, with prosecution of persons communicating official secrets to other persons. Thus, the ambit and scope of the Official Secrets Act, 1923, is different from the Freedom of Information Act, but, to the extent that there is any contradiction, it is the Freedom of Information Act which would prevail over the other Acts. The Parliamentary Standing Committee, while upholding this particular provision, has also given a recommendation, namely, that the word "Act" may be extended to cover Instruments also. This will ensure that the provisions contrary to the Freedom of Information legislation, even if these are contained in rules, guidelines, manuals, etc., shall be brought in conformity. This is what Shri Uday Pratap Singh has said.

Shri Prithviraj Chavan and Shri Reddy asked: Why should the Bill be called "Freedom of Information Bill"? Why shouldn't it be "Right to Information Bill"? The right to know has been judicially recognised as a facet of the fundamental right to free speech and expression enshrined in article 19(1) of the Constitution. The purpose of passing the Freedom of Information Bill is primarily to provide a statutory framework for that right and it is felt that the expression "freedom of information" more fully reflects the spirit and intent in the proposed legislation. I will give you some examples. In Australia, there is a Freedom of Information Act. Ireland, USA and UK also have the same type of Acts. Canada has the Access to

Information Act. New Zealand has the Official Information Act. The Netherlands have the Government of Information (Public Access) Act. South Africa has the Promotion of Access to Information Act.

Shri Kuldip Nayyar, Shri Pranab Mukherjee and Shrimati Saroj Dubey mentioned about the absence of penalty provision in the Bill. They said that there should be some kind of a penal provision. With regard to the criticism relating to the absence of a penal provision in the Bill, there was a view that it would not be desirable to provide for a penalty provision in the Bill as it might generate resistance and resentment among employees. There would also be a lot of prosecution which can be avoided. It was felt that the recommendation of the Working Group for amendment to rule 11 of the CCS (Conduct) Rules, 1964 would take care of those concerns. After the Freedom of Information Bill introduced by the Central Government becomes an Act, the CCS(Conduct) Rules, and the corresponding rules are proposed to be amended requiring a Government servant to give information which is asked for by an Institution or an individual under the Act. Any officer, who deliberately withholds information or gives false information, shall be liable to action under the relevant disciplinary rules and the departmental penalty was considered sufficient because they are quite stringent, I mean, from censure, it goes up to withholding of promotion, recovery from pay, reduction to a lower stage in the time scale of pay, withholding of increments of pay, reduction in rank, pay, grade or service and compulsory retirement, removal or dismissal from service.

Sir, Mr. Nayyar, Dr. Chandrakala Pandey and Mrs. Saroj Dubey asked as to why there should not be an independent appeal mechanism to prevent over-burdening of courts. The question of providing independent appeal mechanism was examined very carefully. It was noted that the deficiencies in the working of Consumer Forums as well as the Courts in the form of massive arrears and chronic shortages of man power, would appear to undermine the effectiveness of either of these forums. On the other hand, departmental appeals would be far more economical and cost effective. For those people, who are dissatisfied with the outcome of the appeal, the writ jurisdiction of the High Court would be still available. In view of this, it was considered that the Bill should provide for two-tier appellate remedy of a purely departmental character at different levels to be determined by the appropriate Government and that could be utilised usefully.

Then, Prof. Sankaralingam and Mrs. Saroj Dubey asked as to why the private organisations are not under the scope of the Bill. We felt, that while extension of the proposed legislation to the private sector may have an emotive appeal, it needs to be recognised that the basic purpose of the Freedom of Information legislation was to promote openness, transparency and accountability in Government and to facilitate a fuller and more meaningful participation of the people in the governance. So, this cannot be said to apply wholly to private businesses which are not required to primarily sub-serve public interest as it is commonly understood. Any attempt to bring the private sector under the proposed legislation could be regarded as excessive intrusion into the freedom and management of private sector and there is a danger that it might become a tool for competitive strategy. Information relating to operations of private firms which impinges on public interest such as health, safety, environment standards, in any case, would be accessible under the provisions of the Act framed by the concerned regulatory authority and there need not be any apprehensions of the public interest being allowed to suffer. It is also noteworthy that none of the advanced democracies such as USA, Canada and Australia have thought it fit to widen its laws to this extent to cover the private sector.

Mr. Reddy asked as to how could a Minister give information when he has taken the "Oath of secrecy"? In this connection, I would like to say that as part of the 'public authority' within the meaning of the proposed Act, the Minister can communicate and give information to the public save as is barred from disclosure under the 'exemption' clause. So, there is no conflict between the 'oath of secrecy' and the 'Freedom of Information Bill' and the Minister can take the oath as before.

Mr. Chavan, Dr. Chandrakala Pandey and Mr. Reddy asked as to what is the remedy, if the Public Information Officer does not furnish the information that is required under the 'Freedom of Information Act' when it comes into force. Sir, It is proposed to amend the CCS(Conduct) Rules so as to provide that every Government servant shall, in his good faith, communicate information that is required by the public in accordance with the Act. The failure to furnish information on a request made under the Act or wilfully withholding any office information would amount to violation of the Conduct Rules and would make the Public Information Officer liable to disciplinary action, as I mentioned, under the relevant Rules. There is also an appeal mechanism to take care of this.

Many hon. Members have shown their concern on various aspects of the Bill and, some of which, according to them, have fallen short of their notions of complete transparency and openness. I would only say that enactments of this nature can never remain one-off measure, the finality of which is fixed *ab-initio*.

In the novel and far-reaching experiments which have been attempted by passing a law on the freedom of information, there is a need to learn, as we move on. I can only assure the hon. Members, on behalf of the Government, that we will remain committed to providing an open framework of governance to the citizens of the country. And, it would be our endeavour to effect all necessary corrections and improvements in the provisions of the Act in the light of the experience gained in its working, with the passage of time. I would like to thank all the hon. Members, especially Shri Ram Jethmalani, Shri Nariman, Shri Rajiv Shukla, Shri Narayanan and the last but not the least Shri Prithviraj Chavan. With these words, I commend the Bill to the House.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Now, I put the motion for consideration to vote. The question is:

To move that the Bill to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto, as passed by Lok Sabha, be taken into consideration.

7?? motion was adopted.

. THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): We shall now take up the clause-by-clause consideration of the Bill.

Clause 2 to 7 were added to the Bill.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Clause 8. There are three amendments, Nos.1 to-3, by Shri Prithviraj Chavan. Are you moving?

SHRI PRITHVIRAJ CHAVAN: Sir, I move:

Clause 8 - (Exemption from Disclosure of Information)

- (1) That at page 4, *for* lines 32 and 33, the following be *substituted*, namely: -

"(d) Cabinet papers, including records of deliberations of the Council of Ministers and Secretaries;"

- (2) That at page 4, line 40, *after* the words "any person" the words "except when, and to the extent, overriding public interest requires its disclosure" be *inserted*.

- (3) That at page 4, after line 43, the following proviso be inserted, namely: -

"Provided that information regarding the decision of the Cabinet, along with the reasons leading to the decision shall be made available and every Government order issued on the basis of a Cabinet decision shall be accompanied by a statement explaining the reasons for and the circumstances under which the decision was taken. The *questions were put up and the motions were negated*.

Clauses a to 13 were added to the Bill.

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Now, there is an amendment No. 4, by Shri Prithviraj Chavan for insertion of a new clause 13A.

SHRI PRITHVIRAJ CHAVAN: Sir, I move:

New Clause-13A

- (4) That at page 6, *after* line 27, the following new clause be *inserted*, namely:-

"13A. Where any competent authority, without any reasonable cause, fails to supply information sought for, or furnishes information which is false with regard to any material particulars, and which it knows, or has reasonable cause to believe it to be false, the authority immediately superior to the competent authority:

(i) may impose a penalty not exceeding rupees five thousand after giving the competent authority a reasonable opportunity of being heard, and such penalty shall be recoverable from the salary of the competent authority, or, if no salary is drawn, as arrears of land revenue; and

(ii) the competent authority shall also be liable to disciplinary action under the service rules applicable to such competent authority". The *question was put and the motion was negated. Clause 14 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI):

Clause 15. There is an amendment, N0.5, by Shri Prithviraj Chavan.

SHRI PRITHVIRAJ CHAVAN: Sir, I move:

Clause 15 - (Bar of Jurisdiction of Courts)

(5) That at page 6, *for* clause 15, the following clause be *substituted*, namely: -

"15. No court, other than a High Court, shall entertain any suit, application or other proceedings in respect of any order made under this Act; and no such order shall be called in question except in a High Court otherwise than by way of an appeal under this Act".

The question was put up and the motion was negated. Clause 15 was added to the Bill.

Clauses 16 to 21 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the title of the Bill were added to the

Bill.

RAJYA SABHA [16 December,
2002]

SHRIMATI VASUNDHARA RAJE: So, I move:

That the Bill be passed.

The question was put up and motion was adopted

श्री बालकवि बैरागी : उपसभाध्यक्ष महोदय, यह बिल तो पास हो गया है, लेकिन जो अमैडमेंट रिजेक्ट किए गए हैं, मना किए गए हैं, कालांतर में इसी सरकार को वापस लाने पड़ेगे और एक नया बिल बनाना पड़ेगा, मुझे इसमें कोई शक नजर नहीं आ रहा है।

संसदीय कार्य मंत्री तथा संचार और सूचना प्रौद्योगिक मंत्री (श्री प्रमोद महाजन) : मैं यह कह रहा था कि आप यह कहेंगे कि हमारी सरकार आएगी तो करेंगे। अभी तो आप हमारी सरकार को पकड़कर चलें तो अगले दो तीन साल के बाद सोचेंगे।

श्री बालकवि बैरागी : मुश्किल से दो तीन महीने के भीतर मैडम राजे को वापस आना पड़ेगा।

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Now, we take up the Transfer of Property (Amendment) Bill, 2002...

SHRI PRAMOD MAHAJAN : Sir, I have to make a request. As decided in the Business Advisory Committee, we have two major Bills, namely, the Companies (Amendment) Bill and the Appropriation Bill, scheduled for tomorrow; day after tomorrow, we are discussing the Midterm Review and then, on Thursday, we are discussing the Competition Bill. Apart from this, the Bill relating to the Ordinance on the People's Representation Act, which is to be passed by Lok Sabha tomorrow, would also be brought before this House. So, I request the hon. Members that we should sit a little longer and finish the four Bills which are there on the Agenda today.

SHRI PRANAB MUKHERJEE: We can sit a little longer and complete the Legislative Business.

SHRI PRAMOD MAHAJAN: If we do not complete the business listed today, then, we will not be able to take up the Bills which are to be passed by the other House. And, if this House does not pass those Bills in this Session, then, they would not become the law.

श्री मती सरोज दुबे : सर....

[16 December, 2002] RAJYA SABHA

श्री प्रमोद महाजन : महिलाओं को तो और सहनशक्ति के साथ समर्थन करना चाहिए।

श्री सरला माहेश्वरी : आप लोगों का भार ढोते-ढोते बहुत सहनशील हो गए हैं।

THE VICE-CHAIRMAN (SHRI SURESH PACHOURI): Okay. Now, we take up the Transfer of Property (Amendment) Bill, 2002.

THE TRANSFER OF PROPERTY (AMENDMENT) BILL, 2002

कोयला और खान मंत्रालय में राज्य मंत्री तथा विधि और न्याय मंत्रालय में राज्य मंत्री (श्री रविशंकर प्रसाद) : Sir, I move:

That the bill further to amend the Transfer of Property

Act, 1982, as passed by Lok Sabha, be taken into consideration

उपसभाध्यक्ष जी, बहुत ही छोटा बिल है। यह जो संपत्ति अंतरण का अधिनियम है, उसकी धारा 106 के विषय में यह प्रावधान है कि अगर यह लीज है तो the notice period would be six months if the lease is from year to year, और अगर मंथ टू मंथ है तो फिफ्टीन डेज का नोटिस है। इसमें एक समस्या यह आ रही थी कि जिस दिन नोटिस सर्व हुआ वह काउंट होगा की नहीं होगा। That is the whole idea behind this Bill. The Supreme Court had said, "It will not be counted". And, this was creating a lot of problems. The other point was, the commencement of the period of notice and the time when the tenancy began, were matters of dispute. And, what happened was, the people kept filing case after case, but when the High Court said, "Notice was not served", the suit failed. And it had to be started afresh. This was creating a lot of problems. Therefore, to avoid litigation and to expedite the entire thing, this amendment has been brought whereby in addition to original Section 106, two proviso have been added. Firstly, for the purpose of Section 106, the date on which the notice is served shall be taken as the commencement of that period, and, secondly, even if a suit is filed after the period of notice is over, that suit shall not be deemed to be invalid. These two changes have been made. This Bill has already been passed by the Lok Sabha. I request this House -- it is a curative amendment; if I should use the legal expression -- also to pass this Bill.

The question was proposed.