

CHAPTER III

Secrecy in Government of India

Government practice

The normal rule in the Government of India is secrecy, and openness the exception. For purposes of secrecy, government papers and documents are divided into two, namely, "non-classified" and "classified". Greater secrecy is to be observed in the case of the latter. In regard to classified papers, the Ministry of Home Affairs has issued departmental security instructions and these documents are to be handled either by officers themselves or in sections designated as secret or top secret. Even in sections not so designated extra care is to be taken by the concerned officers to keep such documents secret.

As regards "non-classified" papers, the rule is that no official is to communicate any information to anyone which has come into possession in the course of his official duties, unless so authorised by general or special orders. Similarly, note portions of a file referred by a department to another is to be treated as confidential.

As regards communication of information to the press, it is to be communicated through the Press Information Bureau. However, ministers, secretaries and other officers specially authorised in this behalf may give information or be accessible to the representatives of the press. Any other official will not give any other information to the press, and if he is approached by the press, the officer is to direct him to the Press Information Bureau.¹

A government servant under the civil service rules is under an obligation not to disclose to anyone including a fellow government servant any information acquired by him during the course of his official duties. This is provided by Rule 8 of the Central Civil Service (Conduct) Rules, 1955. A violation of this rule will subject the civil servant to disciplinary action, apart from punishment under any other law, *e.g.*, the Official Secrets Act, 1923.

It is well known that classified documents are divided into four categories, namely, "top secret", "secret", "confidential", and "personal—not for publication". The "top secret" grading is given to information of a vital nature affecting national security such as military secrets, matters of high international policy, intelligence reports, etc. The "secret"

1. The above information has been extracted from the Central Secretariat Manual of Office Procedure, 1977. The full text is given in the Appendix.

marking is given to papers or information which is likely to endanger national security or cause injury to the interests or prestige of the nation or would cause serious embarrassment to the government either within the country or in its relations with foreign nations. The word "confidential" pertains to information whose disclosure would be prejudicial to the interest of the nation or give advantage to a foreign nation or even cause administrative embarrassment. "Personal—not for publication" is meant for cases where the information is fit for communication to the individual members of the public, but it is desired that the information given to an individual is not meant for publication.

The extent of the secrecy in government will be clear from one instance. Under article 77 of the Constitution the President has to make rules for the more convenient transaction of the business of the Government of India and for the allocation amongst ministers of the said business. Under this article, the President has framed the Transaction of Business Rules and the Government of India (Allocation of Business) Rules, 1961 which are also known as the Rules of Business. The allocation rules were published till 1973 and were available to the public but these are now treated as confidential. These rules mention the items of business allotted to each ministry or department of the Government of India. The Rules of Business which provide for the exercise of powers vested in the government of India have always been treated as confidential by the government, and are not accessible to the public. However, these rules have been supplied by the government to the courts as and when the question arose whether or not the power was discharged by an authorised officer. It is somewhat strange that though the President makes these rules under the Constitution, yet they are treated as confidential without the Constitution explicitly giving any confidentiality to them. In treating these rules as confidential the government intends to cover up its own irregularities and defects rather than protecting, even remotely, any public interest.

In enacting delegated legislation in both the United States and England the process of consultation of the affected interests is used extensively, but in India the rules are generally made in the secret chambers of the bureaucracy and "consultation" is an exception.³ Again this is indicative of the fact that the guiding gospel of the Government of India is secrecy rather than openness.

Innumerable instances can be given where the most trivial matters are treated as secret which do not serve any interest of the nation except per-

2. The Forty-second Amendment of the Constitution had specifically provided that the courts shall not have access to the Rules of Business. Fortunately the Forty-fourth Amendment has abolished this provision.

3. See M. P. Jain and S. N. Jain, *Principles of Administrative Law 89-96* (1979).

haps saving the government from embarrassment. The reports of various enquiry committees and commissions (like plane crashes or accidents) are treated as secret.⁴ The recent reports of the Bihar C.I.D. and D.I.G. into Bhagalpur blindings of the undertrials are being treated as secret and all kinds of subterfuges are being used by the Bihar Government to withhold their production from the Supreme Court where the proceedings in this matter are pending. According to the press reports, the Bihar Government through its counsel has repeatedly told the court that it is not sure whether such reports exist. The news item says : "This is a lie. Final reports on each case of blinding were submitted by the CID team between January 10 and 20".⁵ Another extremely odd instance of government secrecy is that by an administrative order issued on April 30, 1976 the government directed its departments not to submit confidential files on policy questions to the Comptroller and Auditor-General of India. The idea was to stall the possible adverse comments of the Auditor-General on the very large amounts spent on "populist programmes" by the government. These instructions were withdrawn when the government changed.

Another recent instance of secrecy to protect the government from political embarrassment is the case of the change over of consultancy contracts for the gas-based fertiliser plants, at Thai-Vaishet and Hazaria based on Bombay High gas, from an American Company to another set of companies which included an Italian, a Danish, and an American Company. The switch had led the World Bank to withdraw its commitment to aiding the project. An opposition Member of Parliament exposed the whole case, copies of notings on government files and other documents in Parliament to show that the considerations which led the minister concerned to make the change were other than proper. The government has initiated action against the persons responsible for exposure under the Official Secrets Act.⁶

It is ironical that even the recommendations of the Inter-departmental

4. Sometimes the leakage of information of the report of a Commission of Inquiry by a person results in his prosecution. For instance, the leakage of the report of the Paul Commission, appointed by the Tamil Nadu Government, has led to the prosecution of the person concerned. Speaking about it Justice Krishna Iyer has commented : "To plead secrecy of the report of a commission of enquiry, or prohibit publication of the report, or prosecute under the Official Secrets Act a person for leakage of the report, is contrary to the basic right to know enjoyed by citizens in our country". *The Indian Express*, Feb. 26, 1982. The same newspaper report mentions the fact that the Tamil Nadu Government has treated as secret the report of the public analyst about the contamination of water supply to Madras.

5. *The Indian Express*, Feb. 23, 1981. Also *The Indian Express*, Feb. 7, 8, 11 and 23, 1981.

6. See *The Economic and Political Weekly*, April 4, 1981, p. 696; *India Today*, April 1-15, 1981, p. 44, and April 16-30, 1981, p. 41.

Study Group,⁷ set up by the Government in 1977, to look into the Official Secrets Act, 1923 have been treated as confidential.⁸ Office manuals or administrative staff manuals (which are either printed or cyclostyled) are kept secret.⁹

In India, we do not have any enactment on the lines of the British Public Records Act, 1958 which prescribes what old records will be available for public inspection after a certain period. We have, however, the Archival Policy Resolution of the Government of India, dated 11.12.1972, which provides for public inspection of documents of archival value after 30 years. But there are several limitations—the records should be non-confidential public records and they are open only to *bona fide* research scholars.

Specific laws providing for secrecy in the government

Apart from the secrecy embodied in the practices of the government or the service rules, there are specific statutes providing for secrecy in government. The most important statute on the subject is the Official Secrets Act, 1923. In addition there is section 123 of the Evidence Act, 1872 which provides that no one shall be permitted to give any evidence from unpublished official records relating to any affairs of state, except with the permission of the head of the department who shall give or withhold such permission as he thinks fit. Literally read, the section gives a blanket power to the government to withhold production of documents from courts even where the documents are in the interest of justice. The only qualification is that such a document relates to the affairs of state which is an extremely broad term. The courts have, however, imposed some limitations on the powers of the government in this regard. All these legal provisions including the Official Secrets Act are the subject-matter of the next chapter.

7. For the composition of the Study Group, see S. Maheshwari, *Secrecy in Government of India* in T. N. Chaturvedi (ed.), *Secrecy in Government* 126 (1980); S. Maheshwari, *Open Government in India* 66-67 (1981).

8. It was stated by the Home Minister, Shri H M. Patel, in the Lok Sabha that it would not be in the "public interest" to disclose the recommendations of the Study Group. *The Hindu*, July 16, 1979, p. 8.

9. For a few more instances of secrecy in the Government of India, see S. Maheshwari, *Open Government in India*, *supra* note 7 at 69-71.