

Are political parties "Public Authority"?

SHAMSUL BARI and RUHI NAZ

A frequently asked question about RTI law relates to the meaning of the term "authority". As the Act empowers citizens to query public authorities on matters that concern or aggrieve them, there is an obvious need to understand the concept of authority under the Act.

In popular parlance, "public authority" generally means government offices. Under the RTI Act that meaning has been extended to include some non-governmental authorities as well. In Section 2 (b) of the Act, "authority" has been defined to include: "any organisation constituted in accordance with the Constitution of the People's Republic of Bangladesh"; "any statutory body or institution established by or under any Act"; "any private organisation or institution run by government financing or with aid in grant from the government fund"; "any private organisation or institution run by foreign aid in grant"; "any organisation or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organisation or institution". [Italics added]

In short, any organisation/institution spending public money falls within the definition. Thus, all bodies belonging to three branches of the government – the executive, legislature and judiciary – are covered by the Act. All government ministries and offices related to them including Prime Minister's office, President's office, Judiciary and Parliament, are covered. NGOs receiving government (public) funds or foreign donations are equally included. To know if an office is bound by RTI, a simple test is to ask whether it is a constitutional body, a statutory body, or a private organisation receiving government or foreign funds.

All such bodies, except some, are obliged to respond to citizens' RTI queries, on the way they work, abide by the laws, rules and policies or simply provide any information they possess, which are not exempt. This has been

discussed in last month's column.

As in any other law, there are, of course, problems of interpretation. This was famously illustrated in a case relating to political parties in India, as highlighted below. Questions relating to applicability of the law to purely private bodies are also germane.

Though the question of political parties has not arisen directly in Bangladesh yet, it was indirectly raised in a case which has gone through the entire RTI process and is presently awaiting hearing in the High Court on a writ petition. The petition was filed following a decision of the Information Commission which aggrieved the complainants. [Complaint Case nos. 97/2013 and 57/2014 at <http://www.infocom.gov.bd/>]

Since the RTI Acts of Bangladesh and India are similar, the Indian case will be illustrative for Bangladesh. Indian RTI Act 2005, under section 2(h), provides for inclusion, as "public authority", of: "non-Government organisation substantially financed directly or indirectly by funds provided by the appropriate Government". Section 2(b) of the Bangladesh Act says almost the same except it does not contain the qualifier "substantially" before the word "financed". Otherwise, the key element of government financing is the same.

The Indian case began with RTI applications, dating back to 2010 and 2011, by two Indian activists. They asked six national polit-

ical parties of India for information relating to their election manifestoes, promises fulfilled, receipts and payments, sources of fund etc. The response of the political parties can be understood from the fact that the matter had to go through the entire RTI process a number of times for more than five years, including various hearings at the Central Information Commission.

build office premises at nominal cost, enjoy huge tax exemptions, issued with costly electoral rolls free of charge etc., they fulfil the criteria of being "substantially financed" by the Government. Other arguments included that as key players in the governance of the country they are bound by transparency and accountability regimes. Examples from other countries were cited.

A full bench of the CIC of India considered the arguments in a landmark decision in June 2013. It had "no hesitation in concluding that (the political parties) have been substantially financed by the Central Government and, therefore, they are held to be public authorities under Section 2(h) of the RTI Act." It further added that "the role played by (political parties) in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of section 2(h)".

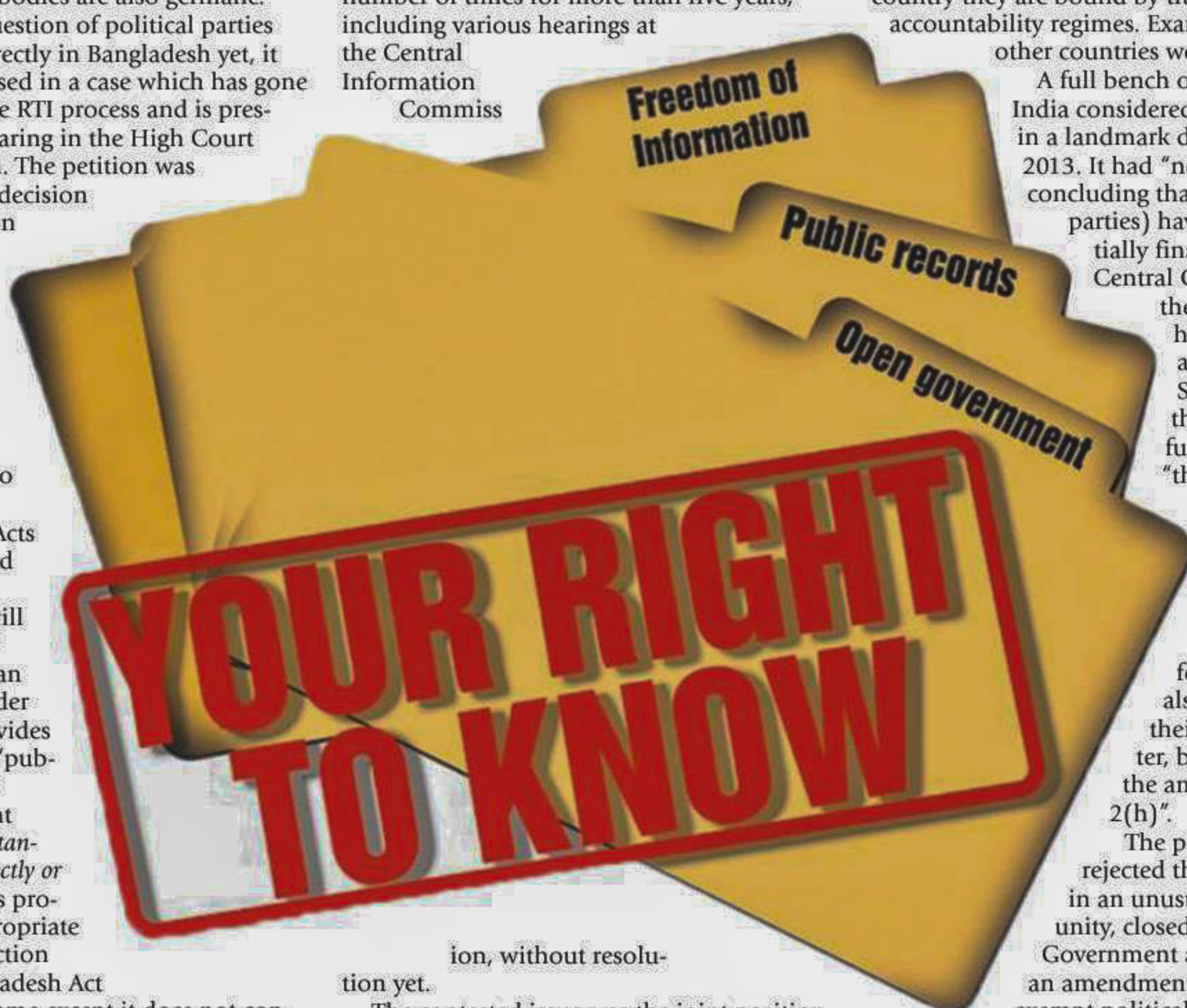
The political parties rejected the decision and, in an unusual show of unity, closed ranks with the Government and moved for an amendment to the law to exempt political parties from RTI altogether. This was vehemently resisted by the civil society, stalling the bill permanently.

Subsequently, another RTI intervention in early 2015 by the same applicants to enforce the 2013 CIC decision, led the latter to reiter-

ate its position and lament its inability to enforce implementation of the decision because of lacunae in the law. Following this, in July 2015, the Supreme Court of India in response to a PIL filed by a lawyer on behalf of an Indian NGO, asked the Central Government, the Election Commission and the six national parties concerned why they should not be considered as public authorities, accountable and transparent. Short of an amendment, therefore, the Indian political parties are clearly in. [See: Decision no. CIC/SM/C/2011/001386 & 000838 under Decision of CIC > Full Bench Decision at <http://cic.gov.in/>]

The above is an example of interpreting the law to argue inclusion of a body. There are, however, other ways of using RTI against purely private entities. This is usually done through identifying their links with other included authorities like the government. For example, a person who was aggrieved by stale food served in a restaurant, which is privately owned, had asked to see the food inspector's report on the restaurant from the Food Ministry. A Dhaka University student, dissatisfied with sloppy road construction in his locality, asked for a copy of the contract that was awarded by a concerned government body. The road was re-carpeted by the contractor when he was shown that his work did not meet agreed specifications. In India, a RTI activist, angered by frequent road accidents and unable to pursue bus owners, asked Mumbai Police department for information on how many accidents took place in a given period in a particular neighbourhood, how many arrests were made and what actions taken. He learnt that most drivers went free after bribing. The media publicity that followed raised a hue and cry. It is no small matter for individual citizens to combat public harm, caused by any authority, by using RTI in so many different and clever ways. If others did the same, what an outcome that would be for society as a whole!

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ion, without resolution yet.

The contested issue was the joint position of political parties claiming they are not covered by RTI as they are private associations of individual citizens. The applicants on the other hand argued, *inter alia*, that since political parties in India are provided with large tracts of land in prime areas of the capital, to

MORALITY AND MARKETS

The emergence of social business

M. JAHANGIR ALAM CHOWDHURY

SINCE the appearance of modern capitalism around 250 years back, the free market concept has been promoted and it has been believed that invisible hands ensure the competition in the economy and thus, it contributes to the equilibrium in the markets. And it is believed that society is benefited automatically if individuals pursue their own benefits without looking at social benefits. Now the question is: Do the invisible hands ensure benefits equally for everybody in the society? The available empirical evidences indicate that the mechanism of invisible hands has not worked equally for everybody. Thomas Piketty has documented the rising trend in inequality in his bestselling book "Capital in the Twenty-First Century". He documents the incredible rise of the top "one percent" in the world. In a recent report, Oxfam states that the top one percent i.e. richest one percent, people in the world will own more wealth than the remaining 99 percent by 2016. In a recent paper, Armin Falk and Nora Szech argue that the pursuit of self-benefits and competition contributes to the erosion of moral values. For example, some business people do not bother about destroying the environment or adulterating food for maximising profit. Similarly, Hongbin Cai and his colleagues argue in their paper that competition encourages unethical behavior in markets. Moreover, Andrei Shleifer shows in a paper that the unethical conducts and corporate greed are consequences of the market competition. Corporate greed contributed to the collapse of large corporations like WorldCom and Enron which resulted in job losses of thousands of people directly and indirectly and thousands of people lost their savings due to the collapse of the share prices of these companies. However, these negative sides of the market competition do not mean that it is always bad. On the other hand, it is also true that competition does not benefit equally everybody in the society.

Keeping the rising inequality and corporate greed in mind, Nobel Laureate Professor Muhammad Yunus rightly argues that social businesses need to be initiated and promoted. It could be seen as the "solution" to the deteriorating confidence of people on modern capitalism. Very recently, Professor Wahiduddin Mahmud wrote an article on social business in the *The Daily Star*. I would like to thank Professor Mahmud for his well-written article which has helped me understand the critical issues of social businesses. He made some comments and raised some concerns regarding social businesses: (1) "the idea of socially-oriented business is not new"; (2) "the idea of social business is too fuzzy"; (3) "not being able to take the full advantage of market signals in making decisions about prices and products"; (4) one single measure of success for the performance measurement is not available; (5) investors will get discouraged in the absence of dividend payout. I would like to try to respond to these critical points.

Professor Mahmud rightly says that socially-oriented businesses are not new. However, he does not say that social businesses are not new. Before Professor Yunus's social business, the terms like "social enterprise", "corporate social responsibility", and "social entrepreneurship" were available. However, these terms are not similar to Professor Yunus's social business. Social enterprises are not-for-profit businesses for social causes. Corporate social responsibilities are philanthropic activities of businesses. Both of these are not sustainable as they are dependent on donations. When the flow of donations stops, these activities also stop. Social entrepreneurship denotes the socially motivated profit-making activities of entrepreneurs and since these activities are market based, their social benefit maximisation is questionable. When Professor Yunus initiated microcredit 40 years back, similarly, some critics argued that his concept of microcredit was not new. However, we now know that small loans that were available in some places in relatively small scales before

are not similar to Professor Yunus's microcredit.

The term social business is not fuzzy. Professor Yunus puts two clear border lines for a social business: (1) the owner is not going to get any personal profit out of this business, except for getting the investment money back; (2) the sole purpose of the business is to solve a human problem. Including these, to guide social businesses, he puts a set of seven principles. These principles define the term social business distinc-

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tively from others. These principles are available on the websites of Social Business Pedia.

A social business is not a not-for-profit business initiative. It is not an initiative for profit maximisation either. The main objective of it is to maximise social benefits. A social business is expected to be sustainable without sacrificing social benefits. Professor Mahmud argues that social businesses will not be able to exploit "market signals in making decisions about prices and products". The most market signals are signals to

guide businesses to get to the top of profit. Thus, those signals are irrelevant for social businesses. Society should not allow businesses in some socially important sectors, like, education and health, to utilise market signals fully for determining prices. By the same token, social businesses intentionally do not intend to utilise fully market signals to determine prices and thus, do not intend to maximise profit as it compromises social benefits. However, some social businesses have already learned the technique of avoiding inefficiency due to informational deficiency through segmenting their target markets. For example, Grameen Denone, a joint venture social business with an objective to eradicate malnutrition of rural children in Bangladesh, charges a higher price for the same product in urban areas than in rural areas. The earned profit from urban areas is used to subsidise the same product in rural areas. Professor Mahmud rightly says that "such subsidies can be justified in economic theory as a legitimate means of correcting market deficiency". Grameen Denone is a profitable venture, but profit is not taken by the owners. It is a non-dividend company.

Since the monetisation is not possible for all social benefits, social businesses lack a single performance measurement indicator. But social businesses started with the premise that money is not a good indicator of performance. It has the tendency to lead the market to socially undesirable directions. If the business is solving social problems it is a success. How to measure the degree of success is an issue to be tackled over time. From empirical research, we now know monetary values of some social benefits: The average return of protecting a child from malaria through buying an insecticide-treated bed net spending \$14 is \$88 per year over the adult life of that child in Kenya. A spending of \$7 yearly behind iron supplements increases yearly income of a self-employed man by \$46 in Indonesia. The deworming for two years spending, \$2.72, is likely to increase the lifetime income of a child by \$3,269 in Kenya. Gradually, we are going to know

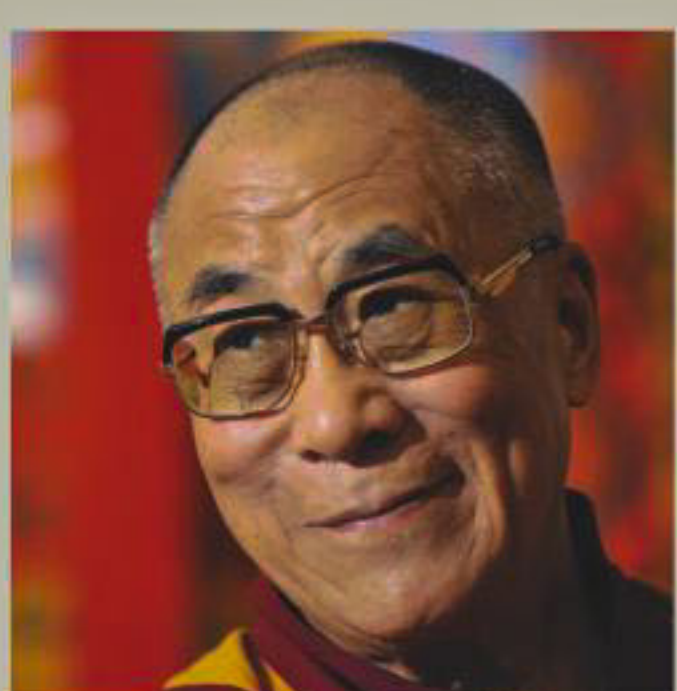
monetary values of other social benefits also.

Money does not buy always happiness. The research findings indicate that the level of happiness goes up with the increase in income up to a certain level and after that it levels off. Professor Alan Kruger and Professor Daniel Kahneman argue that "high income is associated with good mood (happiness) is greatly exaggerated and mostly an illusion". Professor Robert Lane illustrates in his book "The Loss of Happiness in Market Democracies" that the correlation between income and happiness is close to zero in rich countries and it is negative sometimes. Increasingly very rich people, like Bill Gates and Warren Buffet, are giving away the major portion of their wealth for the welfare of poor. Making others happier brings happiness. Professor Keiko Otake and his colleagues assert that there is a "close association between kindness and happiness in everyday life". Happiness has positive impacts on economic activities of people. Professor Andrew Oswald and his colleagues argue that "happiness makes people more productive" and thus, it contributes to income enhancement. Professor Yunus says that investors of social businesses get happiness instead of dividends through making others happy. Happiness is not less important than any dividends as all of us want to be happy in our lives.

In the world of rising inequality and of prevalent poverty, malnutrition, illiteracy, health care exclusion, unemployment, gender discrimination, and environmental degradation, the necessity of social businesses is unquestionable. Professor Yunus does not insist that all businesses in this world should be social businesses. However, he wants more people to come forward to start social businesses to eradicate the above mentioned social problems created by modern capitalism in the society in the name of competition, efficiency and profit maximisation.

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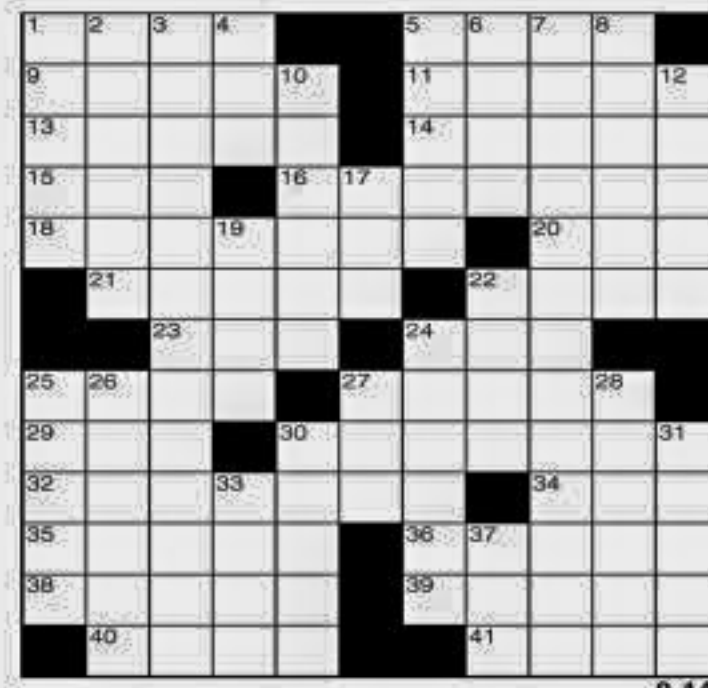


DALAI LAMA

IN THE PRACTICE OF TOLERANCE, ONE'S ENEMY IS THE BEST TEACHER

CROSSWORD BY THOMAS JOSEPH

- ACROSS**
- 1 Travel aids
 - 5 Triangular sails
 - 9 Underway
 - 11 Spring sign
 - 13 Historic caravel
 - 14 Church belief
 - 15 Was ahead
 - 16 Lettering aid
 - 18 Sent to Washington
 - 20 Baseball's Mel
 - 21 Used a towel
 - 22 Wallet bills
 - 23 Galley item
 - 24 Sault -- Marie
 - 25 Mexican coin
 - 27 Houdini's real last name
 - 29 Memorable time
 - 30 Sawbuck
 - 32 Came to a point
 - 34 Wish undone
 - 35 Digression
 - 36 Road reversal
 - 38 Bolshevik leader
 - 39 Duel count
- DOWN**
- 40 Clarinet part
 - 41 Hand over
 - 1 Syrup source
 - 2 Traveling
 - 3 Coniferous tree
 - 4 Lush
 - 5 Blase
 - 6 Wrinkle remover
 - 7 Coniferous tree
 - 8 Near East native
 - 10 Wine expert
 - 12 Sea dogs
 - 17 Senator Cruz
 - 19 Italian sendoff
 - 22 Singer Redding
 - 24 Parody
 - 25 Potpourri bit
 - 26 Correcting aid
 - 27 Minuscule
 - 28 Became unpleasant
 - 30 Pollster's find
 - 31 Keyed up
 - 33 TV's Falco
 - 37 Tic-toe connection



Yesterday's answer



BEETLE BAILEY

by Mort Walker



BABY BLUES

by Kirkman & Scott

