

**THE RIGHT OF INFORMATION - AN  
INALIENABLE COMPONENT OF FREEDOM  
OF SPEECH AND EXPRESSION**

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*"Give me the liberty to know, to utter and to argue freely according to conscience,  
above all liberties."*

- John Milton, *Areopagitica*, 1644

Above all liberties, one should be given the core liberty, the liberty to know. Indeed, the right to information makes a citizen trust its own government and the ruling body. Especially in a democratic system of governance, a free flow of information can be an important tool for building a trust between the Government and the citizens. It also improves communication within government to make the public administration more efficient and effective in delivering services to its constituency. In a democratic society, where the Government is selected by the will of the people by exercising Universal Adult Franchise, there is a need for maintaining a relationship which ensures trust in all sense. Without the support of the citizens no government can survive in a democratic system of governance. Therefore it is necessary that whatever ideas the government or its other members hold must be freely put before the public. The free flow of information is must for a democratic society in particular because it helps the society to grow and flourish. It is now recognized that the right to information is vital to democracy for ensuring transparency and accountability in governance. It therefore ensures that governance is more participatory being a vital component of successful democracy. The absence of authentic information can even lead to claiming of false allegation against individuals and institutions and will encourage rumors and speculations that can be false in nature.

The right to information gained power when UDHR was adopted in 1948 providing everyone has the right to seek, receive, information and ideas through any media and regardless of frontiers.<sup>1</sup> Also The International Covenant on Civil and Political rights

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<sup>1</sup> Article 19 Universal Declaration of Adult Franchise (1948)

1966 says that "Everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind, regardless of frontiers".<sup>2</sup>

The development of the principle of "strict scrutiny" or "proportionality" in administrative law in England is, however, recent. Administrative action was traditionally being tested on *Wednesbury* grounds<sup>3</sup>. But in the last few years, administrative action affecting the freedom of expression or liberty has been declared invalid in several cases applying the principle of "strict scrutiny". In the case of these freedoms, *Wednesbury* principles are no longer applied. The courts in England could not expressly apply proportionality in the absence of the convention but tried to safeguard the rights zealously by treating the said rights as basic to the common law and the courts then applied the strict scrutiny test. In the *Spycatcher case Attorney General v. Guardian Newspapers Ltd.*<sup>4</sup> Lord Goff stated that there was no inconsistency between the convention and the common law. In *Derbyshire County Council v. Times Newspapers Ltd.*<sup>5</sup>, Lord Keith treated freedom of expression as part of common law. Recently, in *R. v. Secy. Of State for Home Dept., exp. Simms*<sup>6</sup> the right of a prisoner to grant an interview to a journalist was upheld treating the right as part of the common law. Lord Hobhouse held that the policy of the administrator was disproportionate. The need for a more intense and anxious judicial scrutiny in administrative decisions which engage fundamental human rights was re-emphasised in *R. v. Lord Saville ex p*<sup>7</sup>. In all these cases, the English Courts applied the "strict scrutiny" test rather than describe the test as one of "proportionality". But, in any event, in respect of these rights "Wednesbury" rule has ceased to apply.

However, the principle of "strict scrutiny" or "proportionality" and primary review came to be explained in *R. v. Secy. of State for the Home Dept. ex p Brind*<sup>8</sup>. That case related

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<sup>2</sup> Article 19 International Covenant on Civil and Political Rights (1966)

<sup>3</sup> the doctrine of 'Wednesbury Unreasonableness' as developed in *Wednesbury Corporation* (1947) 2 All ER 640 - It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it.

<sup>4</sup> (No.2) (1990) 1 AC 109 (at pp. 283-284)

<sup>5</sup> (1993) AC 534

<sup>6</sup> (1999) 3 All ER 400 (HL),

<sup>7</sup> (1999) 4 All ER 860 (CA), at pp.870,872

<sup>8</sup> (1991) 1 AC 696

to directions given by the Home Secretary under the Broadcasting Act, 1981 requiring BBC and IBA to refrain from broadcasting certain matters through persons who represented organizations which were proscribed under legislation concerning the prevention of terrorism. The extent of prohibition was linked with the direct statement made by the members of the organizations. It did not however, for example, preclude the broadcasting by such persons through the medium of a film, provided there was a "voice-over" account, paraphrasing what they said. The applicant's claim was based directly on the European Convention of Human Rights. Lord Bridge noticed that the Convention rights were not still expressly engrafted into English law but stated that freedom of expression was basic to the Common law and that, even in the absence of the Convention, English Courts could go into the question.

".....whether the Secretary of State, in the exercise of his discretion, could reasonably impose the restriction he has imposed on the broadcasting organisations" and that the courts were "not perfectly entitled to start from the premise that any restriction of the right to freedom of expression requires to be justified and nothing less than an important public interest will be sufficient to justify it".

Lord Templeman also said in the above case that the courts could go into the question whether a reasonable minister could reasonably have concluded that the interference with this freedom was justifiable. He said that "in terms of the Convention" any such interference must be both necessary and proportionate.<sup>9</sup>

In due course of time, several species of rights enumerated in Article 19 (1) (a) of the Constitution of India have branched off from the genus of the article through the process of interpretation by the Apex Court. One such right is the "right to information".

With the passage of the Right to Information Bill 2005 by the Rajya Sabha on May 12, 2005 India is now one of the 55 countries, which have legislated comprehensive laws that protect the citizens' right to information. Nine States namely, Delhi, Maharashtra, Tamil Nadu, Rajasthan, Karnataka, Jammu & Kashmir, Assam, Goa, and Madhya Pradesh already have laws on the right to information to show their commitment for building a dynamic and prosperous society by involving the people in governance and decision

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<sup>9</sup> *Damoh Panna Sagar Rural Regional Bank & Anr .v Munna Lal Jain*, Appeal (civil) 8258 of 2004, decided by a bench consisting of Arijit Pasayat & S.H. Kapadia, [www.judis.nic.in](http://www.judis.nic.in)

making process. The Supreme Court of India has, from time to time, interpreted Article 19, which upholds the right to freedom of speech and expression, to implicitly include the right to receive and impart information. There had been relentless efforts and mass mobilization in favour of a comprehensive Central Act providing access to information regimes.

The right to freedom of information is only a statutory right. If the entitlement to information is a right, it is equally a compelling obligation cast on the public authorities to supply the information.<sup>10</sup> The importance which our Constitution makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited ground specified in Article 19(2), not to speak of inherent limitations of the right.

The new legislation is a radical improvement on the relatively weak and ineffective statute it seeks to replace, the Freedom of Information Act, 2002. The new legislation unequivocally confers on all citizens the right to access information and, correspondingly, makes the dissemination of such information an obligation for all public authorities. It is an Act, which provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

An outstanding feature of the Bill is the provision for Information Commissions - independent high level bodies at both the Central and State levels that are dedicated to encouraging the citizen's right to know and enforcing the provisions of the Act. By empowering these Commissions to act as appellate authorities and by vesting them with the powers of a civil court, these bodies have been given the teeth to discourage public authorities from refusing to part with information.

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<sup>10</sup> A constitutional right can be enforced through the constitutional courts such as the High Courts and Supreme Court. Those courts can rectify, correct the breaches in constitutional rights. Whereas, statutory right can be enforced through the mechanism the concerned statute provides. It is only where those institutions overstep their jurisdiction in protecting and enforcing statutory rights, the Constitutional courts may step in to correct the errors. Therefore, it is incumbent on all persons to follow primarily the procedures prescribed for enforcing the right conferred under the Freedom of Information Act.

The provisions of the Act require authorities to respond to queries in as little as 48 hours, if it is a matter of life and liberty. This will undoubtedly prompt accountability and transparency to climb up several notches, especially as the Act promises hefty fines and disciplinary action against erring officials. The information should be provided to the citizen by the concerned authority who desires it. The act is being enacted by parliament in the Fifty- sixth Year of the Republic of India. Section 2(f) of the act very clear says about the definition of the term “information”, accordingly “information means any material in any form, including records, documents, memos, e- mails, opinions, advices, press releases, circulars, orders, log, books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be assessed by a public authority under any other law for the time being in fore. The word information is derived from the latin words ‘Formation’ and ‘Forma’ which means giving shape to something and forming a pattern. It can be said that information adds something new to our awareness and removes the idea that may be abstract or vague in our mind.

The meaning of the expression “ right to information” is clearly stated in Section 2(j) of the act, accordingly, the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

Inspection of work, documents, records; taking notes, extracts or certified copies of documents or records; taking certified samples of material; obtaining of information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

This Act by Section 3 declares that all citizens shall have a right to information. This right is equivalent to the right to a freedom of speech and expression. This Act acts a tool or an instrument for the proper utilization of freedom of speech and expression as envisaged under article 19(1) (a) of our constitution. A citizen can properly make use of this freedom unless and otherwise proper information is being provided to them.

Freedom of speech and expression, just as the equality clause and the guarantee of life and liberty, has been very broadly construed by this court right from the 1950s. It has been variously described as a “basic human right”, “a natural right” and the like.

It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and viewpoints and debates on matter of public concern.

The Act is indeed acting as a framework for effectuating the right to information recognized under Article 19 of the Constitution of India. The controversy whether the right to information is included in the fundamental right to freedom of speech contained in Article 19(1) of the Constitution of India or not has since been settled and the Supreme Court <sup>11</sup> which finally held that the right to information is as much a fundamental right as the freedom of speech. This pronouncement has radically changed the very approach of understanding of the right to freedom of information. For the proper enjoyment of the right as mentioned under Article 19(1) (a) it is imperative that there must be knowledge and information.

The preamble of the act itself gives us a clear cut idea about the need and objective of the act. In this Act, like our preamble to the Constitution, the preamble has to be necessarily read as a part of the Act. The preamble gives clear guidelines on the extent of information which could be made available and the extent to which it can be withheld. It says, The Right To Information Act is an act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of the public authority, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central information Commission and State Information Commissions and for matters connected therewith or incidental thereto. It also appends the fact that in a democratic country people should be informed about the things happening around there without any failure. Transparency of information is considered as a vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

Perhaps, the first decision which has adverted to this right is *State Of Uttar v Raj Narain*. "*The Right to know*", it was observed (at SCC p 453 para 74) by Mathew, J "which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions"

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<sup>11</sup> *Dinesh Trivedi v Union of India*, 1977 (4) SCC 306

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have the right to know every public act, everything that is done in a public way, by their public functionaries.

No democratic can survive without accountability and the basic postulate of accountability is that people should have information about the functioning of the Government; it is only if people know how the Government is functioning that they can fulfill the rule which democracy assigns to them and make democracy a really effective participatory democracy.<sup>12</sup>

In order to ensure greater and more effective access to information, the Act was introduced for providing an effective frame work for effectuating the right of information regarding Article 19 of the Court of India.

The provisions ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, effective mechanism for access to information and disclosure by authorities. Democracy requires informed citizens and transparency of information. The Act provides for setting out Central Information Commission and State Information Commissions to promote transparency and accountability in the working of every public authority.<sup>13</sup>

"Excessive administration secrecy... feeds conspiracy theories and reduces the public's confidence in government." Sen. John McCain, candidate for US president, 2008. It shuts down all windows affecting transparency, trust, confidence. Indeed all the essentialities a true democratic government should possess will be affected. In our country both the legislatures as well as the judiciary function as open. The legislature by way of open debate by the representatives of people to which press and people both have access functions openly. In a very similar manner the judiciary decides the cases only after giving both the parties to the cases, a chance of hearing. These two wings of government never normally carry out their operation in secrecy.

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<sup>12</sup> *People's Union for Civil Liberties (PUCL) and Ani v Union of India & Anr.*, AIR 2003 SC 2363

<sup>13</sup> In the judgement given by Hon' ble Mr. K. Thankappan, J in the case of *Abdu Razak v State of Kerala*, W P (C) No. 14686 of 2006 decided on 6<sup>th</sup> July 2006

In the case of *S. P. Gupta v Union of India*<sup>14</sup>, the concept of an open government is the direct emanation from expression guaranteed under Article 19 (1) (a). Therefore disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception.<sup>15</sup> As Justice Krishna Iyer in the Maneka Gandhi case<sup>16</sup> said “a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial”. There is a certain danger that despite several efforts for welfare purposes, the power may be used arbitrarily and for corrupt goals.

Therefore a right to know is necessary to handle the affairs related to executive and provides a platform for people to participate in governance with proper knowledge. The right of information is an inalienable component of freedom of speech and expression guaranteed by Article 19(1) (a) of Indian constitution. As held in the respective cases of *Bennet Colman v. Union Of India*<sup>17</sup>, *SP Gupta v Union Of India*<sup>18</sup>, and *Secretary, Ministry of information and broadcasting v Cricket assn. of Bengal*<sup>19</sup>.

The Supreme Court of India in Bennet Coleman case while taking into account the News print control order, allotment of newsprint to a newspaper was restricted, held that such restriction had not only infringed newspaper ‘s right to freedom of speech but also readers’ right to read was cut down. And the reader’s right to access the newspaper was his right to information which was implicit in the right to Right of freedom of speech. Similarly in SP Gupta case the SC observed that “the people of this country have a right to know every public act, everything that is done in a public way, by those functionaries. They are entitled to know the very particulars of every public transaction. Also in *Secretary, ministry of information & broadcasting v. Cricket Assn. of Bengal*, the SC held that the airwaves were a public property and its distribution among the government media and the private channels should be done on equitable basis as the freedom of speech included the right to impart and receive information from electronic media.

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<sup>14</sup> (SCC p. 275 para 67)

<sup>15</sup> In the judgement given by Hon’ ble Mr. Umeshwar Pandey, J in the case of *Praveen Verma son of Sri Triloki Nath Srivastava v The Hon’ble High Court of Judicature through its Registrar General & Ors.*, Civil Masc Writ Pet. No. 45252 of 2005

<sup>16</sup> AIR 1978 SC 597

<sup>17</sup> AIR 1973 SC 106

<sup>18</sup> AIR 1982 SC 149

<sup>19</sup> (1995) 2 SCC 161

Theoretically this act is very good but it suffers from many inadequacies ..... This act empowers the people to gather information. But the problem is that when 35% of the population is illiterate, then how anyone could expect that people will demand information. So I suggest the government to make more serious efforts towards improving the Literacy level. The act lacks necessary teeth for defaulters. In cases where information has been denied without sufficient cause, the penalty is not so harsh enough so as to have a deterrent effect on those who do not want to share information. The official mindset is a very big obstacle in the progress of this act. No official in normal condition wants to share information. They generally prefer not to share information, and therefore people find it very difficult to secure information from them. The act itself provides for several grounds on which the public information officer turn down the application. Although one is allowed to appeal to next higher authority but this is just making the matter worse. The act being based on computerized records of data, it may take a long time in computerization of such vast data and therefore the doubt hangs over whether the act would be implemented in a time bound manner.

In *Essar Oil Ltd v. Halar Utkarsha Samiti*,<sup>20</sup> the SC held that right to information emerges from right to personal liberty guaranteed by article 21 of constitution. The Right to information is definitely a very powerful tool for exercising the fundamental right to freedom of speech and expression. Information is indispensable for the functioning Information always empowers people and ensures transparency of administration .But people's access to information is very limited because of the fact that mechanism is not so effective and man's brain deliberately holds back information. The Right to Information Act 2005 seems to be an effective legislation but what about its effective implementation. And it requires aware and educated people who can use it for their welfare. So government first needs to ensure that a majority of population becomes educated so that this act may survive for a longer period and serve the deprived and poor people of this country. Also a high order Judicial Activism is also necessary regarding the implementation. If it succeeds in its purpose it will necessarily increase public

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<sup>20</sup> AIR 2004 SC 1834

participation. Thus, it is an opening way to true democracy. A fully informed citizen will be able to perform his duties in a better manner and if we stand together we can build a better tomorrow for our country.