



**THE EXPANDING HORIZONS OF RIGHT TO INFORMATION  
BY  
PRAVEEN DALAL\***

*The aim of this article is to explore the Constitutional and Statutory Rights of the individuals to acquire and disseminate information in all its contours and perspectives. These rights are legally couched in terms of mandates, which are primarily, directed against the State, its instrumentalities and even against private individuals. This article has been written to provide a ready made analysis and base to the Central Information Commission regarding the informational rights of citizens of India. It may provide an insight of the applicability of the Right to Information Act, 2005 (RTIA-05) in India.*

## **I. INTRODUCTION**

The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution of India. A citizen has a Fundamental Right to use the best means of imparting and receiving information. The State is not only under an obligation to respect the Fundamental Rights of the citizens, but also equally under an obligation to ensure conditions under which the Right can be meaningfully and effectively be enjoyed by one and all. Freedom of speech and expression is basic to and indivisible from a democratic polity. A true democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals. Hence to have a representative central agency to ensure the viewer's right to be informed adequately and truthfully is a part of the right of the viewers under Article 19(1) (a).

## **II. INTERNATIONAL PERSPECTIVE**

The world has moved towards universalisation of right to freedom of expression. In this context reference may be made to Article 10 of the European Convention on Human Rights. Article 10 of the Convention provides that everyone has a right to freedom of expression and this right shall include freedom to hold opinions and to receive information and ideas without interference by the public authorities and regardless of the frontiers. Again, Article 19(1) and 19(2) of the International Covenant on Civil and Political Rights declares that everyone shall have the right to hold opinions without interference, and everyone shall have the right to freedom of expression, and this right shall include freedom to seek, receive and impart information of 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<sup>1</sup>. Similarly, Article 19 of Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression and this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

### III. INDIAN RESPONSE

The Indian response towards conferment of right to information can be classified under the following two categories:

- (a) Constitutional response, and
- (b) Statutory response.

**(A) Constitutional response:** This includes:

- (i) Freedom of information under Article 19(1) (a), and
- (ii) Right to know under Article 21.

**(1) Freedom of information under Article 19(1) (a):** Article 19(1)(a) of the constitution guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1)(a) of the constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a)<sup>2</sup>. It must, however, be noted that freedoms under Article 19, including Article 19(1) (a), are available only to citizens of India. An alien or foreigner has no rights under this Article because he is not a citizen of India. Thus to confer protection upon non-citizens one has to depend upon and apply Article 21 which is available to all persons, whether citizen or non-citizen.

**(2) Right to know under Article 21:** Article 21 enshrines right to life and personal liberty. The expressions “right to life and personal liberty” are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time<sup>3</sup>. In *R.P.Limited v Indian Express Newspapers*<sup>4</sup> the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression

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\* Arbitrator, Consultant and Advocate, Supreme Court.

Contact at: [pd37@rediffmail.com](mailto:pd37@rediffmail.com)/ [perry4law@yahoo.com](mailto:perry4law@yahoo.com)

<sup>1</sup> India is a signatory to the aforesaid convention.

<sup>2</sup> *State of U.P v Raj Narayan AIR 1975 SC 865; P.V.Narsimha Rao v State AIR 1998 SC 2120.*

<sup>3</sup> *Kharak Singh v State of U.P AIR 1963 SC 1295.*

<sup>4</sup> AIR 1989 SC 190.

“liberty” must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a). Thus, the courts are required to expand its scope by way of judicial activism. In *P.U.C.L v U.O.I*<sup>5</sup> the Supreme Court observed that Fundamental Rights themselves have no fixed contents, most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the Fundamental Rights by process of judicial interpretation. There cannot be any distinction between the Fundamental Rights mentioned in Chapter-III of the constitution and the declaration of such rights on the basis of the judgments rendered by the Supreme Court.

Further, it is well settled that while interpreting the constitutional provisions dealing with Fundamental Rights the courts must not forget the principles embodied in the international conventions and instruments and as far as possible the courts must give effect to the principles contained in those instruments. The courts are under an obligation to give due regard to the international conventions and norms while construing the domestic laws, more so when there is no inconsistency or conflict between them and the domestic law.

**(B) Statutory response:** Besides constitutional provisions we have certain statutory provisions also, which confer right to information upon the citizens. The notable one among them are:

**(1) Right to information in case of Food and Drugs:** Section 23 r/w Rule 32<sup>6</sup> of the Prevention of Food Adulteration Act, 1954 confers on consumers of food products a right to be informed whether or not the article of food is vegetarian or non-vegetarian. As regards drugs and cosmetics, necessary amendments have not been made in the relevant statute. In *Ozair Husain v U.O.I*<sup>7</sup> a division bench of Delhi High court observed that it is the Fundamental Right of the consumers to know whether the food products, cosmetics and drugs are of non-vegetarian or vegetarian origin, as otherwise it will violate their Fundamental Right under Article 19(1) (a), 21 and 25 of the constitution. The packages of non-vegetarian products should bear a symbol giving their non-vegetarian origin; and a package of a vegetarian product should also bear a symbol. To enable a person to practise the beliefs and opinions, which he holds, in a meaningful manner, it is essential for him to receive the relevant information; otherwise he may be prevented from acting in consonance with his beliefs and opinions. In case a vegetarian consumer does not know the ingredients of the drugs or food products which he/she wishes to buy, it will be difficult for him/her to practise vegetarianism. Moreover, reading Article 19(1) (a) along with International Covenant on Civil and Political Rights, it must be recognized that right to freedom of speech and expression includes freedom to seek, receive and impart

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<sup>5</sup> JT 2003 (2) 528.

<sup>6</sup> As amended in 2001.

<sup>7</sup> AIR 2003 Delhi 103.

information of ideas. Further Article 21 confers on every person right to receive information and also a right to know the ingredients or the constituents of drugs and food products. However, as far as life saving drugs are concerned a limited exception will apply because a patient, who is suffering from serious ailment, which can be fatal if a life saving drug is not administered to him, need not be informed in his own interest as to whether or not the drug contains part of any animal as it is conducive to the preservation of life and, therefore, in tune with Article 21 of the constitution. Thus the High Court issued certain directions about declarations and different coloured symbols to be displayed on packages of drugs and cosmetics regarding their vegetarian or non-vegetarian origin, till amendments are made in the Act.

**(2) Right to information in cases of venereal or infectious diseases:** The welfare of the society is the primary duty of every civilized State. Sections 269 to 271 of the Indian Penal Code, 1860 make an act, which is likely to spread infection, punishable by considering it as an offence. These sections are framed in order to prevent people from doing acts, which are likely to spread infectious diseases. Thus a person suffering from an infectious disease is under an obligation to disclose the same to the other person and if he fails to do so he will be liable to be prosecuted under these sections. As a corollary, the other person has a right to know about such infectious disease. In *Mr. X v Hospital Z*<sup>8</sup> the Supreme Court held that it was open to the hospital authorities or the doctor concerned to reveal such information to the persons related to the girl whom he intended to marry and she had a right to know about the HIV Positive status of the appellant.

A question may, however, be raised that if the person suffering from HIV Positive marries with a willing partner after disclosing the factum of disease to that partner, will he still commit an offence within the meaning of Section 269 and 270 of I.P.C. It is submitted that there should be no bar for such a marriage if the healthy spouse consents to marry despite of being aware of the fact that the other spouse is suffering from the said disease. The courts should not interfere with the choice of two consenting adults who are willing to marry each other with full knowledge about the disease. It must be noted that in *Mr. X v Hospital Z*<sup>9</sup> a three judge bench of the Supreme Court held that once the division bench<sup>10</sup> of the Supreme Court held that the disclosure of HIV Positive status was justified as the girl has a right to know, there was no need for this court to go further and declare in general as to what rights and obligations arise in such context as to right to privacy or whether such persons are entitled to marry or not or in the event such persons marry they would commit an offence under the law or whether such right is suspended during the period of illness. Therefore, all those observations made by the court in the aforesaid matter were unnecessary. Thus, the court held that the observations made by this court, except to the extent of holding that the appellant's right was not affected in any manner by revealing his HIV Positive status to the relatives of his fiancée, are uncalled for. It seems that the court has realized the untenability of the earlier observations and the practical difficulties, which may arise after the disclosure of HIV status.

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<sup>8</sup> (1998) 8 SCC 296.

<sup>9</sup> JT 2002 (10) SC 214.

<sup>10</sup> In *Mr. X v Hospital Z* (1998) 8 SCC 296.

**(3) Right to know about the information under the control of a public authority:** In our present democratic framework, free flow of the information for the citizens suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root levels and an attitude and tendency of maintaining secrecy in the day to day governmental functioning. To remove these unreasonable restrictions the Right to Information Act, 2005 (RTIA-05) has been enacted by the Parliament. The Act provides 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 relations to matters connected therewith or incidental thereto. The Act is in accord with both Article 19 of the constitution as well as Article 19 of the Universal Declaration of Human Rights, 1948. The act will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, Section 3 of the Act specifies that subject to the provisions of this Act, every citizen shall have the right to freedom of information. Obligation is cast upon every public authority u/s 4 to provide information and to maintain all records consistent with its operational requirements duly cataloged, indexed and published.

It must be noted that right to receive information from public authorities, which includes judiciary, is not an absolute right but is subject to statutory and constitutional restrictions. For instance, freedom to speech and expression as provided under Article 19(1) (a) of the constitution is subject to reasonable restrictions as provided under Article 19(2). Similarly, right to know under Article 21 can be restricted by a procedure established by law which is just, fair and reasonable. On the statutory side, under the Right to Information Act, 2005 (RTIA-05), a citizen is not entitled to an absolute freedom of information. In certain cases information can be withheld from a citizen. Besides the RTIA-05 there may be other statutes also where information may be withheld from a citizen. For instance, the report of an inquiry made against a judge of High Court under the provisions of the Judges Enquiry Act, 1968 may be withheld from the public by the Chief Justice of India (CJI). In *Indira Jaising v Registrar General, Supreme Court of India*<sup>11</sup> an inquiry report was made by the committee to the CJI, in respect of alleged involvement of sitting judges of the High Court of Karnataka in certain incidents. The petitioner sought the publication of the inquiry report. The supreme Court held that it is not appropriate for the petitioner to approach this court for relief or direction for release of the report, for what the CJI has done is only to get information from peer judges of those who are accused and the report made to the CJI is wholly confidential. It is purely preliminary in nature, adhoc and not final. The court further held that in a democratic framework free flow of information to the citizens is necessary for proper functioning, particularly in matters, which form part of public record. The right to information is, however, not absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002 (now RTIA-05) does not say in absolute terms that information gathered at any level, in any manner and for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the CJI being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The court thus rejected the contention to release the said report. The court, however, made it clear that if the petitioner can substantiate that any criminal offence has been committed by any of the judges

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<sup>11</sup> 2003 (4) SCALE 643.

mentioned in the course of the petition, appropriate complaint can be lodged before a competent authority for taking action by complying with requirements of law.

**(4) Right to information and Electronic governance:** Digital technologies and new communication systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Information stored in electronic form is cheaper and easier to store. Thus, keeping in view the urgent need to bring suitable amendments in the existing laws to facilitate electronic commerce and electronic governance, the Information Technology Act, 2000 was enacted by the Parliament. The aim of the e-governance is to make the interaction of the citizens with the government offices hassle free and to share information in a free and transparent manner. It further makes the right to information a meaningful reality. In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware of social, political, economic and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues, to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and State. All the constitutional courts of leading democracies have recognized and reiterated this aspect. In *U.O.I v Association for Democratic Reforms*<sup>12</sup> the Supreme Court observed that the citizens of India have a right to know every public act, everything that is done in public way by the public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision making process. The right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Thus e-governance and right to information are interrelated and are two sides of the same coin. With the enactment of the Information Technology Act, 2000 more and more transparency is expected in governmental functioning by keeping people aware of the State's plan, policies, objectives and achievements.

**(5) Right to know about antecedents of election candidates:** In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided, its result, if pending –whether charge has been framed or cognizance has been taken by the court. There is no necessity of suppressing the relevant facts from the voters.

In *U.O.I v Association for Democratic Reform*<sup>13</sup> the Supreme Court recognized this right of the voter. The court held that the decision making process of a voter would include his right to know about the public functionaries who are required to be elected by him. Moreover, Article (19) (1) (a) of the constitution provides for freedom of speech and

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<sup>12</sup> (2002) 5 SCC 294.

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expression. Voter's speech and expression in case of election would include casting of vote. For this purpose, information about the candidate to be selected is a must. In *P.U.C.L v U.O.I*<sup>14</sup> the Supreme Court held that in an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern the respective rights of the parties. However, voter's Fundamental Right to know antecedents of a candidate is independent of statutory rights under the election laws. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures. The court further observed that securing information on the basic details concerning the candidates contesting for elections to the Parliament or State legislatures promotes freedom of expression and therefore the Right to information forms an integral part of Article 19(1) (a). This Right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press or e-media, though, to a certain extent, there may be overlapping. The right to vote is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the Fundamental Right enshrined in Article 19(1) (a).

#### IV. CONCLUSION

Every citizen has a right to impart and receive information as part of his right to information. The State is not only under an obligation to respect this right of the citizen, but equally under an obligation to ensure conditions under which this right can be meaningfully and effectively enjoyed by one and all. Right to information is basic to and indivisible from a democratic polity. This right includes right to acquire information and to disseminate it. Right to information is necessary for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can be circulated. This right can be limited only by reasonable restrictions under a law for the purposes mentioned in Article 19(2) of our constitution. Hence no restriction can be placed on the Right to information on the grounds other than those specified under Article 19(2). The said right cannot be denied by creating a monopoly in favour of the government or any other authority<sup>15</sup>. Human history is witness to the fact that all evolution and all progress is because of power of thought and that every attempt at thought control is doomed to failure. An idea can never be killed. Suppression can never be a successful permanent policy. It will erupt one day. The Constitution of India guarantees freedom of thought and expression and the only limitation being a law in terms of Article 19(2) of the constitution. Thought control is alien to our constitutional scheme. Further, people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which people of a free country aspire in the broaden horizon of the right to life in this age on our land under Article 21 of the

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<sup>14</sup> JT 2003 (2) SC 528.

<sup>15</sup> *Tata Press Ltd v M.T.N.L (1995) 5 SCC 139.*

Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform.

Thus it can be concluded that citizens<sup>16</sup> have a right to information and right to know about public affairs and governmental functioning. The legislature, realizing the need and urgency of this requirement, has shown its sensitivity and positive attitude by conferring upon citizens of India various statutory rights, which advance the Right to information and expand its horizons to the deserving limits.

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<sup>16</sup> Perhaps all “Persons”, and not merely the “Citizens”, by virtue of Article 21.