

CONSTITUTIONAL PROVISIONS AND JUDICIAL PRONOUNCEMENTS ON FREEDOM OF INFORMATION

Constitution of India guarantees various fundamental rights to its citizens. One such important right is - Right to Freedom under Article 19. This includes right to freedom of speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession, to carry on any occupation, trade or business. Before 44th amendment, there was also a right "to acquire, hold and dispose off property" under Article 19(f), but the same was omitted by this amendment in 1978. Instead, an article was added as Article 300A by the same amendment to the effect that no person shall be deprived off his property saved by Authority of Law. The effect of this amendment is that now the right to property is no longer a fundamental right under the Indian Constitution.

Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. This right is available only to a citizen of India and not to foreign nationals. This right is, however, not absolute and it allows Government to frame laws to impose reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement to

an offence. There has been lot of discussions and disputes leading to Court cases on this Right to Freedom. In one of the earliest judgments, pre-censorship of the press was held to be unconstitutional (Ramesh Thapar Vs. State of Madras, (1950) S.C.R. 594; Brij Bhushan Vs. State of Delhi, (1950) S.C.R, 605). Similarly, there has been lot of differences of opinions regarding indecency and immorality as to what constitutes indecent literature or other expressions through media. Similarly, the law of sedition under section 124A of the I.P.C. was also subjected to dispute in Kedarnath Vs. State of Bihar, A. 1962, S.C. 955, when Supreme Court held the validity of this provision.

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press and the same is included in the freedom of expression, which is conferred on all citizens (Virender Vs. State of Punjab, A. 1958, SC. 986 and Sakal Papers Vs. Union of India A.1962 S.C. 305). It has also been by this judgment that freedom of the press under the Indian Constitution is not higher than the freedom of an ordinary citizen. It is subjected to same limitation as are provided by Article 19(2). It has been held by Court in the above cases that press is not immune from paying taxes, from following labour laws, regulating services of the employees, law of contempt of the Court, law of defamation

and with respect to regulation of commercial activities of a newspaper.

Further restrictions have been imposed on the freedom of speech and expression by Article 51A defining fundamental duties of a citizen (42nd Amendment in 1976). Under Article 51 A, no one should in exercise of the freedom of expression or of the press do any of the following acts: -

1. to disparage the constitution, its ideals and institutions, the National Flag or the National Anthem;
2. to undermine the sovereignty, unity and integrity of India;
3. to disrupt the spirit of common brotherhood among all the people; and
4. to insult the rich heritage of our composite culture.

It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests (*Hamdard Dawakhana Vs. Union of India* (1960) 2 S.C.R. 671) and to answer any criticism leveled against one's views through any media [*LIC Vs. Union of India*, A. 1993 S.C.171 (para 8)]. This freedom also includes right to impart and receive information through telecasting [*Ministry of Information Vs. Cricket Association*, (1995) 2 S.C.C. 161]. It also includes publication of advertisement and commercial speech [*Tata Press Vs. MTNL* (1995) 5 S.C.C. 139]. It also covers right to hold telephonic conversation in privacy [*PUCL Vs. Union of India* (1997) 1 S.C.C. 301]. It is thus quite clear that right to acquire and get information is a fundamental right under the Indian Constitution. But what type of information it includes? Obviously, not all types of information, but only the information relating to matters of

public or common importance affecting people in general. Till now, most of the Government Departments were denying information to the public under the Official Secret Act. But various judgments quoted above have given this right to people and it will no longer be possible for Government to deny such information unless it does not concern the public at all.

Further, the preamble to Indian Constitution says as under: -

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

This will show that in democracy it is the people who are supreme. It has been rightly said that democracy is a Government of the people, for the people and by the people and it is the people who are the sovereign in a democracy. People have a right to choose and elect their any representative to Parliament, State Assemblies and Local Bodies for a fixed period, and in some countries people have a right even to call them back if they do not perform their functions properly. Since the Government is elected by the people in India, they have a right to know how the Government is functioning and whether their problems are being attended to by the Government effectively. Without right to information, people will not be in a position to

know what is happening and thus to take further steps in the direction.

In one of the earliest judgments [Romesh Thapar Vs State of Madras (1950) SCR 594], the Supreme Court observed as under: -

".... (The freedom) lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse...(but) "it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits".

In the same judgment, the Court held (paragraph 68) that the public interest in freedom (of discussion of which the freedom of press is one aspect) stems from the requirement that members of the democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves. In an English case - Attorney General Vs. Times Newspaper Limited [(1973) 3 ALL ER 54], it was held that freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps an individual to attain self-fulfillment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual in participating in decision-making; and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration."

In a recent case of Vineet Narain Vs. Union of India (1998) 1 ACC 226 (Pg. 510), the Supreme Court held that considering the wide spread illiteracy of the voters and at the same time there over-all culture and character they need to be well informed about the candidate contesting election as M.P. or MLA so that they are in a position to decide independently to cast their votes in favour of more efficient candidates.

The right to get information in a democracy is recognized in all the countries. It is a natural right flowing from the concept of democracy [Article 19(1)(2)] of the International covenant of Civil and political rights, of which India is a signatory, speaks as under: -

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; 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."

Several decisions of the Supreme Court make it clear that under Article 19(1)(a) of the Constitution, freedom of speech and expression includes voters speech for expression in choosing their candidate. Therefore; information about the candidate such as their educational qualification, criminal background, assets and financial liabilities, is to be given to the voters to choose a better candidate. Article 10 of the European Convention of Human Rights also states as under: -

"Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

In one of the early decisions in the case of State of UP Vs. Raj Narain and Others [(1975) 4 SCC 428], the Supreme Court of India considered a question whether privilege can be claimed by Government of UP under section 123 of Evidence Act in respect of Blue Book summoned from the Government of UP and certain documents summoned from SP, Police, Raibareilly, UP. The Court observed that -

"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 a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."

In a recent case of Secretary, Ministry of Information & Broadcasting, Government of India Vs. Cricket Association of Bengal [(1995) 2 SCC 161], the Supreme Court observed in para 82 as follows: -

"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 or oligarchic organizations. This is particularly so in a country like ours where a majority of the population is illiterate and hardly 1½ per cent of the population has an access to the print media which is not subject to pie-censorship."

In another recent case of Dinesh Trivedi, M.P. and Others V. Union of India and Others [(1997) 4 SCC 306], the Court dealt with citizen's rights to freedom of information and observed as under :-

"In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant."

There is a practice followed in United States of America, where a candidate contesting election for Senate has to fill up a form giving information about all his assets and that of his spouse and dependents. The form is required to be refilled every year; a penalty is also prescribed which include removal from voting. In India, however, all the political parties do not want to disclose any such information.

Regarding definition of a public servant in case of P.V. Narsimha Rao V. State A(CBI/SPE) [(1998) 4 SCC 626], the Court considered whether MP is a public servant and observed as under -

A public servant is "any person who holds an office by virtue of which he is authorized or required to perform any public duty". Not only, therefore, must the person hold an office, but he must be authorized or required by virtue of that office to perform a public duty. Public duty is defined by section 2(b) of the said Act to mean "a duty in the discharge of which the state, the public or that community at large has an interest". In a democratic form of government it is the Member of Parliament or a state Legislature who represents the people of his constituency in the highest law making bodies at the center and the

state respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the center and the state shall be spent and in exercising control over the Executive. It is difficult to conceive of a duty more public than this or of a duty in which the state, the public and the community at large would have greater interest."

From the above, it will be seen that freedom of speech and expression includes right to collect information and to disseminate it. This freedom is necessary for self- fulfillment as it enables people to contribute to debate on social and moral issues. The right to get information in a democracy is recognised all over and it is a natural right flowing from the concept of democracy.

The Indian Freedom of Information Act 2002 was finally passed by both the Houses of the Parliament in December 2002. Under this Act, it is obligatory upon every public authority to provide information and maintain records, consistent with its operational needs. These records will have to be duly catalogued and indexed and published at such intervals as may be prescribed by an appropriate government or the competent authority. The legislation seeks to promote openness, transparency and accountability in administration.

Recently, one of such rights which came to limelight was right of people to know about the antecedents of a candidate contesting elections - specially about their criminal background, educational qualifications and their properties and assets. In a public interest litigation filed by Association of Democratic Reforms [Union of India Vs. Association for Democratic Reforms & Ann, JT 2002 (4) SC 501], the Supreme Court directed the Election Commission to require the persons contesting elections to give such

information. It was felt that this information would help the people to choose good, sincere and honest persons to the legislatures.

Even in day to day life of the people, they have right to know what is happening to their applications made to the Government Departments, how much time it will take to process them and if rejected, reasons for such a rejection. Though, internal instructions have been issued by various Government Departments laying down a time frame for disposal of such applications, but in actual practice, it is not being adhered to. Even Departments like Passport Office which has developed a website for the purpose, it is not always possible to know where one's application is pending. Thus, there is a need to have separate legislation on right of information of the people based on Article 19 of the Indian Constitution so that deliberate and unnecessary delay does not take place in disposal of the work, affecting the people. It will also help in cutting down delays and reduce corruption in various Government Departments.

Expectations of the Society :

Immediately after the Independence the citizens of our Country were full of zeal, energy and were beaming with high moral values and patriotic feelings for the all round national progress.

Such feelings did wonderful job and the developmental pace was just too good. The planning and execution was superb. The situation of the "nature against the mankind" was controlled. The nation became food surplus with the green revolution. But of late after 1980's the situation started deteriorating. The overall deterioration of the quality whether in production, services, civic administration, health etc. started showing its effects in the late 1990's. Many of the State Governments had become Bank Corrupt

and still are in precarious financial position. The unholy nexus between the Criminals, Politicians and some of the highly placed public servants resulted into drain on State Exchequer. The relationship was so complex, interwoven and intertwined, that it has now the lawbreakers have become lawmakers.

The Corruption had started eating the vital/ethos of the fabric of the Society. The worst hit was the low-income group, the villagers and the middle-income group.

The funds meant for rural development though utilised on record for developmental schemes were siphoned off. The medicines sent to the Hospitals/dispensaries disappear and never reach the intended section of the society. The farmer is in financial mess forced to commit suicides. The Power Sector is running into massive losses due to theft & pilferage by the section of society having political and muscle power.

The common citizen is on cross roads and does not know where to go.

Today all of us whether a Public servant or the common citizen all of us curse the lack of civic amenities, lack of governance and ever increasing corruption because all of us at one or the other stage have to face these harsh realities in one or the other manner. Today all of us are fed up with the system as is evident from the following instances:

1. The Health Board had carried out a scheme for immunizing children in Gauri's district. Gauri and others of here district heard about the scheme on the radio. However, no children were immunized in the district. When they asked the health of officers for details about the scheme, such as how many children had been immunized, how much medicine had been brought to the district and how much was given to children, they

were refused the details saying that the health board was under no duty to tell anybody anything.

2. A journalist saw news items, which said that in a particular village several children had died of diahorrea. She went to the village to investigate the matter in order to bring out a detailed report. When she visited the homes of the children who had died she came to know that the children had died of starvation. When she asked the health authorities to give the details of the deaths and the disease of which the children had died, they refused to give her the details saying that this was a confidential matter.

3. The people of a locality had been going to the local ration shop for two weeks to get their share of the sugar and rice. Every time they were told that the rice 'had not come and the sugar had been distributed. After several such responses, the people asked to see the register of the supply and distribution of the rations. The person at the shop got furious and started abusing the people. He said he was under no obligation to maintain or show them any register.

4. Shabbir and Sunil had given their names in the employment exchange five years ago. Every time they asked the officers about their position, they were not given any clear reply. Then they come to know that Shankar, who had the same qualifications but had registered after them had been given a job. They demanded that they should be shown the rolls. The employment exchange refused, saying that this was official information and could not be shown to anybody.

5. Many senior government officers and politicians had been staying in government houses long after their terms were over. Some were not even paying the rent. A Parliamentary Committee was formed to look into the matter. When some journalists asked for the list of names of persons

in illegal occupation of the houses, the Committee replied "this is confidential information, no-one is supposed to know this."

6. Ramlibai inherited some property from her father. She wanted to transfer it to her name in the land records. Someone disputed her claim and the Tehsildar asked her to get the old records of the land. She applied to the office of the land records but the records were in such a bad condition that she could not get them. The officials said that they could do nothing about it.

These responses are not new to any of us no matter where we are. It happens in the village, in towns, in cities and even in the capital of the country. Whenever we ask for any information from any public body, we are generally refused saying that it is a part of secret records, or that it is confidential or that it just cannot be given. Most people continue to believe this and accept this as correct.

However, what most people do not know is, that we have a right to know most of the things about the functioning of government and other public bodies. We have a right to know what work is being undertaken by these bodies and how, how much money is being spent and on what. This is called the Right to Information.

In a democracy, we form the government for us, through our elected representatives. All government and public work is carried out for us, with our money. For the work to be done in

accordance with our needs we must be able to take part in the decision making. For this we need to know details of the work. For instance, the people of Rampur have a right to know how the decision to make the bridge was taken and how much money has been allocated for it. This is called participation.

Government takes many decisions, which affect our lives in many ways. We have the right to know about the things, which affect us. If everybody openly knows the details and the expenditure of any project or work, the chances of corruption are minimized. This is called transparency of government.

Government is for the people and is not above the law. If things are not done properly, then the Government can be held responsible. If the bridge made in Rampur collapses, people have a right to know who was responsible for it and what action is taken against that person. This is called accountability.

To know decisions, be informed on issues, ask for accounts, know details of various things and hold people responsible for their acts, we need information.

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Courtesy : RTI Cell : YASODA

