

## **Right to Information and Good Governance**

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**Lecture 47**

**Exempted Information - 1**

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### **Exempted Information**

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Friends, today we will be starting with a new module. And the module is on exempted information and as we are all aware of the fact that under the Right to Information Act there are some information that are not available and that cannot be shared. And those are the categories of exempted information that we are speaking about. Now if we find the genesis of the Right to Information Act with the Constitution of India, through Article 19 (1) (a) which spoke about the freedom of speech and expression. Then we will all appreciate that, yes, the Constitution is the basis for all rights and all freedoms to be enjoyed, including the Right to Information.

And hence, the Constitution will be the guiding document and will be the vision document for restricting this right or curbing the exercise of the same if it is necessary for, it can be done so because we always believe that rights are not absolute.

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## Provisions of the RTI Act

- No right is absolute. Reasonable restriction u/Art 19(2) [security of State, friendly relations with foreign State, Public order, decency and morality, contempt of Court, Defamation, incitement of offence, sovereignty and integrity of India]
- Sec. 123 Evidence Act 1882
- Official Secrets Act 1923
- Rule 11: Central Civil Service Conduct Rules 1964



There are reasonable restrictions that have to be imposed by the state and you will notice that no liberty is going to be an absolute liberty. There will be restrictions that are imposed by the statute that could be restrictions that are imposed by the fundamental law that is Constitution of India. Restrictions can be imposed by judiciary through interpretation and this is as we say rights are evolutionary in nature that we tend to experience newer rights.

That could be newer restrictions based on the same. And hence I think what is important here for us to analyze is that when we consider the freedom of speech and expression, which is a basic freedom which what catalysis our thinking process, our expression processes. And in a democracy you will definitely want free speech because that is what makes a democracy far more right.

One of the factors that I have always looked at is when we talk about reasonable restrictions, those are restrictions that ought to be reasonable. And if you look at Article 19 (2) of the Constitution of India, they do speak about certain of those restrictions that are necessary to curb the necessary misuse or abuse of the freedoms that are guaranteed under the Constitution of India.

Now this is not unique to India. You will notice that reasonable restriction on freedoms and right is something that is there as a matter of state and international policies and even when you look at international declarations you will definitely find those reasonable restrictions that are laid out from time to time. So, when one exercises his freedom of speech under Article 19 (1) (a) you will notice that the right to express one's views and opinions at any issue through any medium be it by word of mouth, writing, painting, pictures, films, et cetera.

It is including the freedom of communication and right to propagate and publish opinions, but this right cannot be something that cannot be controlled for its abuse because when you are writing, you may publish it, you may be making a film. It could probably infringe others' rights and hence if there is no restriction on the rights. It is a tendency of abuse and misuse of the same. And hence we should not confuse and say that by imposing reasonable restrictions that is a kind of a control, but I think the control is a necessitated control and it is the control to make people exercise their freedom far more responsibly and not in an irresponsible manner.

Now one of the basic elements of a healthy democracy is to allow its citizens to participate freely and effectively in the social and political process of this country. Now when citizens are allowed to do that, I think it is very important that the citizens know that they should exercise this freedom and where they are not supposed to exercise it.

Now let us look at article 19 (2) which has certain reasonable restrictions in the Constitution of India itself. And those restrictions are very, very critical and important because as we go forward in looking at the restrictions on the Right to Information Act 2005, the Constitutional basis is something that will always be an effort to or will always be a guiding document to interpret what are the restrictions that the Right to Information Act actually gives further.

Now the reasonable restrictions are based on the security of state. Now please note under the Right to Information Act as well security of state is an exempted information. Now security of state is very vital because I think government has to protect its citizens from aggression from external neighbouring resources. And hence when it comes to the security of the state the government must have all and absolute power to impose restrictions that may affect the day to

day activity and lives of citizens.

And hence a reasonable restriction on the ground for security of state is always justified. However, the term security is a very crucial one in terms of security of state will only refer to very serious and aggravated form of rebellion or war or external aggression against the state. And you will notice that this should not be something like some kind of a civil unrest within the state. So, the security of state has serious connotations and security of state should not be invoked whenever there is say a simple unlawful assembly, a riot or something like that. So, I think the security of the state is something that affects the borders. It is some kind of external aggression and that is I think a matter of serious concern and based on security of state as a valid ground is hold there could be reasonable restrictions imposed on your freedom as well as on the Right to Information.

Friendly relationship with foreign states counting out the Constitution also has this as a reasonable restriction under Article 19 (2), the same can be found under Section 8 (1) (a) of the Right to Information. So, you will definitely find lot of parallel that can be drawn from the Constitutional interpretation of these provisions of what that has been stated in Right to Information Act.

Now when you talk about friendly relationships with foreign states, you will notice that especially in today's globalized world a country has to maintain good and friendly relationship with other countries. And sometimes there are lot of information or there could be lot of potential that if citizens in a country are allowed to exercise their freedom unabated potentially it could have an effect in the relationship that 2 governments share between themselves. And hence you will notice that there could be prohibitions on the exercise of certain freedoms and rights, especially when there is some kind of a malicious propaganda against a friendly foreign state.

So, you would never know when groups and NGOs would probably undertake such malicious propaganda and usually foreign soil is definitely used so that you can evade prosecution in that country. And hence I think one of the important elements is, you cannot have malicious propaganda against a foreign state, which is actually something that we think is prohibited and I

think anybody who jeopardizes the good relationship between India and any other foreign state can be imposed with some kind of reasonable restriction that I think is also a very important aspect in trying to understand and deal with the provisions of the Right to Information Act.

You will also notice that public order is a very important restriction, maintenance of public order you will notice is one of the most important functions of the state. The state has to maintain tranquillity, peace. That is the purpose of the collective spirit of a democratic state. The political society must exercise our responsibility and not instigate violence. It is something which is an internal regulation of the government.

But nevertheless, I think, a state has a basic duty to maintain a peace environment. And whenever there is any kind of disturbance in the exercise of a peaceful environment by the state then definitely reasonable restrictions will be imposed and you will notice that any kind of communal disturbance, strikes, which are promoted or which are conducted the sole motto of creating an unrest even if it is so between workmen or between a particular community against another community.

In those cases, I think there could be a reasonable restriction that can be imposed on the ground of public order. I think the state has a duty to check violence. The state has a duty to ensure a peaceful enjoyment of life and property of the citizens and please note the state's primary role is public safety. And when it comes to the issue of public safety the rights will have to be curtailed, the rights will have to be moderated and the rights will definitely not be allowed to be abused or misused in those contexts as well.

You will also notice that when we talk about public order, the state will have to check internal discord and rebellion if it arises in certain parts and provinces of the country. And this necessarily is not an armed rebellion, but it could be a rebellion against the state, it could be a rebellion against the interest of government and it could be something that results in unfair, untrue criticism with government that by instigating public disorder.

So, I think all of these are necessary in terms of the kind of restrictions that are to be put in place

and hence you will notice that any kind of freedom of speech expression or information as the case will be which has the tendency to create public disorder. And which would lead to the breach of peace will not be entertained under the Indian legal system. I think the reasonable restriction under Article 19 (2) continues to include decency or morality as the case maybe.

Now I think decency and morality of a society are some kind of principles, standards that govern any kind of legal system and you will notice that in case anybody breaches decency and morality, it could be a criminal offense in the sense and the Indian Penal Code could also has instances where anybody who actually conducts himself or herself in a indecent or in immoral manner could be punished by the law.

However, you will notice that nobody has the right to sell and distribute and exhibit obscene words, obscene material in any public place. Though there are no standard fixed for such kinds of moral or indecent behaviour, but I think the standards or morality has been set and though it varies from time to time and place to place, you will notice that in India the standards or morality are based on the fact that you cannot probably have obscene material, exhibit them in public place and you have misuse your freedom in those context as well.

Contempt of Court is another important restriction. You will notice that judiciary plays a very critical role in any democratic institution and the respect to such institution and order of the institution has to be maintained at all costs and please note Contempt of Court can either be civil contempt or criminal contempt. And you will notice that the only defence in contempt proceeding is truth and nothing else.

And hence the judiciary cannot be held on to issues that affect the image, the respect of the institution in terms of people who think that they do not have to abide with the orders of the court. Because if then people are escaped by non-abiding the orders of the court then it will result in chaotic society and a chaotic situation. So, I think, contempt of Court I think is a very important ground. You do not have a similar provision in the Right to Information Act, but you have certain aspects where in the privileges that are granted to the court, includes the privilege to withhold certain information as well.

Defamation, obviously, no right can be used to cause disrepute to any person or a stature and I think this is an important restriction on anybody's freedom. I think, a man's reputation is very, very critical and important and no right can be exercised to bring that down and you will notice any kind of ridicule or comment that is false that evokes hate towards that individual, I think will contempt or create the offense of defamation and could be a restricted aspect under to Right to Information Act as well.

Incitement of an offense is also very critical; you will notice this is also something that is there on the Section 8 of the RTI that any information that may and this is an issue of the degree of probability based on the content of the information. And if it leads to an incitement of an offense that could also be the reasonable restriction that can be imposed on the state.

Finally, the sovereignty and integrity of India, like the stock, the security of state the sovereignty of the country, which is protecting the supreme power of the government, protecting the supreme power of the people. And keeping the interest of the society in general in India, I think are very, very critical and important. And hence any freedom, any right that affects sovereignty and integrity of the nation will not be entertained and yes curtailment of that right, curtailment of that act is necessitated and the Constitution permits such necessitation as well.

So, what we conclude by point one here that Article 19 (2) I think is a very, very important guiding principle for the interpretation of Section 8 of the Right to Information Act. I think the Constitution from time to time has laid down those kinds of elements, which should be the basis for an objective evaluation of any kind of reasonable restriction that may have to be imposed on the Right to Information law.

Interestingly when we look at the provisions of the Act, say, you will notice that exempted information in India is not only regulated by the Right to Information Act, they could have been regulated by other legislations as well prior to the RTI 2005. For example, Section 123 of the India Evidence Act also had an aspect, which stated something like this. It said that no one shall be permitted to give evidence derived from unpublished official records.

So that is something that is provided under the Indian Evidence Act. So unpublished official records relating to the affairs of the state cannot be used as evidence unless the permission of the officer has been sought. So, this was very kind of a restriction because the government would clearly withdraw the records saying that they are yet to be published and unless they were published and unless the officer, the head of the department had given permission those government records could not have been produced as evidence in a court of law. So that was kind of restriction on how information and government recording was actually being done.

Similarly, when you look at the Right to Information Act, you will notice that it has a mention of this legislation called the Official Secrets Act. Now you will notice that the Official Secrets Act is probably the reason why the RTI Act was brought in the place.

However, the Official Secrets Act also and this was made by the British Government then the government was not democratic government it was not the government of the people nevertheless they wanted to withhold lot of information to the Indian citizens and hence the state was clearly prohibited from sharing information, especially those that are classified. And those which the government thought should not be provided for.

So, you will notice that the Official Secrets Act continued to be in force. And it denied a lot of information to the Indian citizens saying that it was government classified information and till 2005 I think this law stopped government from sharing that kind of information. However, right now this provision under the Official Secrets Act seems to have been neutralized, today the government will only apply the Right to Information Act, which is reason why we say that the Right to Information Act has overriding powers.

So, any law that is inconsistent with the Right to Information Act to the extent of that inconsistency the Right to Information Act will have an overriding power. And hence there you will notice that there has been a neutralization of the Official Secrets Act and its functioning so the government officers will now only be guided by the provisions of the RTI Act and not the Official Secrets Act.



Last but not the least the central civil service conduct rules also had restrictions on how government servants without a specific order from the government cannot share any information externally. So, they were duty bound to protect the information. They were under oath to keep it as state secret and hence any official document or any part thereof or any information that is relating to any government servant or to the government cannot be disclosed unauthorizedly.

So, the central civil service conduct rules governed the conduct of central civil service officers and they were duty bound under the oath not to disclose or share this is some issue with any other individual or with any other body. So, these were probably the kind of background to the restrictions on Right to Information Act, which I thought was very relevant in terms of laying the foundation to understanding what we do want to call as exempted information.

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## Disclosure of information: Why restrictions



- Rakesh Sanghi v. International Advanced Centre for Powder Metallurgy & New Materials, Hyderabad, 2008 the CIC held that the citizen's right to seek information is not absolute but is conditioned by the Government's right to invoke exemptions, wherever such exemption applicable.
- CIC held: 'no canon of transparency or public interest would justify that Research and technological Institutions part with their research data or vital information without expecting to benefit tangibly or intangibly from such exchange/disclosure'.



Now if we go further in trying to understand why restrictions are necessary I think the Central Information Commission in 2008 in this case called Rakesh Sanghi versus the International Advanced Centre for Powder Metallurgy and New Materials, Hyderabad held that citizens right to seek information is not absolute, but is conditioned by the government's right to invoke exemption whenever or wherever such exemptions are applicable.

The Central Information Commission has held, no canon of transparency or public interest would justify that research and technological institutions part with their research data or such vital information without expecting to benefit tangibly or intangibly from such exchange or disclosure. So, the CIC has acknowledged the fact that there is many information that are exempted and should not be made available and this is a prerogative of the government.

And the government is duty bound to protect the information and not to disclose it under the Right to Information Act.

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Most of the intelligence agencies are excluded from the ambit of RTI Act, 2005 as would be seen from Schedule 2 to the Act.



- Though the public authority is bound to disclose the information but the right to seek information from a public authority is not absolute and every information is not to be disclosed from these organizations except in cases related to corruption and human rights violation.
- Sec. 24 RTI Act
- Second schedule: original list had 18 organizations. 2005 4 more were added [Special Protection Group, Defense Research Organization, Development, Border Road Development Board, Financial Intelligence Unit, India.
- March 2008 2<sup>nd</sup> amendment to RTI Act Schedule 2.
- Oct. 2008 third amendment to schedule 2. Many other organizations were replaced.



At this point of time it is very pertinent to mention over here though this is something that is going to be covered in greater detail and depth in the coming module, but you must also note that when we are talking of exempted information there are exempted organizations under the purview of the Right to Information Act. And the statute very clearly says that the RTI Act is not be applicable to such organizations and hence which are these organizations.

The list of organization that are exempted from the application rather and since general application of the Right to Information Act are most of intelligence agencies or security agencies. Now you would notice that under Section 24 of the Right to Information Act the government by a notification can exempt organizations from the application of the Right to Information Act and if the government decides to do the same you will notice that the government has the right in terms of seeking those exemptions even through amendments later.