

**Right to information and good governance**  
**Professor. Doctor Sairam Bhat**  
**Department of Law**  
**National Law School of India University, Bengaluru**  
**Lecture No. 08**  
**Judicial Activism and RTI**

(Refer Slide Time: 00:14)

- **Life Insurance Corporation v Manubhai D. Shah (1992) 3 SCC 637:** concerned an academic publication criticizing LIC schemes. The magazine run by LIC published a reply to this research paper but refused to publish the rejoinder written by the author of the paper.



Another interesting case came about Life Insurance Corporation of India versus Manubhai Shah. This was decided in the year 1992 by the Supreme Court of India which involves a very interesting issue of publication by the Life Insurance Corporation of India. Now, Manubhai Shah was a consumer activist. He was somebody who was campaigning the cause of consumer protection and he was trying to bring about sense of accountability from different agencies that were giving consumer services. Among them the Life Insurance Corporation of India.

LIC in fact, had a magazine and it would actually publish this magazine and while publishing this magazine they would actually bring about a lot of aspects about how LIC is coming up with plans, schemes, policies, how many customers it had so on and so forth. And this is like a news letter, this was like a publication magazine that would be circulated among various stake holders who had subscribed to the Life Insurance Corporation of India.

Now, interestingly Manubhai Shah was critical about Life insurance Corporation of India and its policies and hence he actually wanted his critic to be also be published by Life Insurance

Corporation of India. Now obviously LIC took a position saying that this was their platform and hence only those that are necessary for promotion of LIC schemes have place for publication.

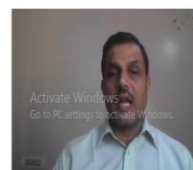
So, Manubhai Shah felt that this was not correct because LIC while in its publication was using public funds and public money because LIC is a public sector undertaking. It is tax based money that was finally been reflected in how LIC was going about its function against being a public institution it was expected that it must play very fairly. And its platform should not be only used for its propaganda material for its publicity or marketing material but also for any critical view that citizens may have about the functioning for LIC.

Because every public institution must be amenable to public view. It must be amenable to public scrutiny and it must be amenable to fair criticism by its users. And that is probably a mechanism for feedback where public institutions can only improve their services towards the citizens and towards the consumers. So, unless institutions that are providing services are open to hearing views, critic or feedback from its citizen I do not think the institutions that are providing services will actually improve their services.

And hence, in this very interesting case of LIC versus Manubhai Shah, the Supreme Court accepts the petition of Manubhai Shah. They see that this is a very important game changer that public sector may undertakings will have to adhere to and hence they said that the magazine that was published by LIC must also publish rejoinders if there are any.

(Refer Slide Time: 3.37)

- **1985: Lok Sabha Secretariat published a document 'background to Evolving a National Information Policy'.**
- **Life Insurance Corporation v Manubhai D. Shah (1992) 3 SCC 637:** concerned an academic publication criticizing LIC schemes. The magazine run by LIC published a reply to this research paper but refused to publish the rejoinder written by the author of the paper.
- The Court held that freedom of expression includes not just the freedom to circulate one's views but also the right to defend them.
- In recognizing this right, it placed a greater burden on publications made using public money. Thus, the claims of discretion was rejected.
- Where the State rejects content, it is obligated to present reasons that are valid in law. Reasons such as the content only presents one side of the debate goes against the principle of freedom to express one's perception about an event. Therefore, such reasons were held to be invalid. If official media or channel is made available to one party to express its view or criticisms, the same should also be available to another contradictory view.



It is like saying that if somebody has expressed a view, somebody has expressed the counter view as well. And I think that is exactly where the Manubhai Shah case becomes a very important case in the freedom of expression development in India because what it said is if one way of communication can be expressed, the other way of communication can also be expressed. So, this is like you know, defense and counter defense. This is like argument and counter argument.

I think every kind of expression, it need not always be an expression that favors the government. It may not be an expression that favors the agency. I think counter views and expressions and which we in popular democracy call dissent; must have space, must have a platform, must be taken equally seriously. Now this is important because then by looking at defense and counter defense, people can make their own choice. People can make their own, you know selections, about which is right and which is wrong.

And I think in a democracy it is not one view or one expression that should find means of publication. I think every view must be able to be communicated and I think that is where the free speech or free expression finally finds its attainment of good, attainment of human expression is finally achieved by all these purposes. I think the freedom to circulate ones view is the start of freedom of speech and expression.

So, if I wish to circulate it, I can circulate it either through leaflets, pamphlets, either through my own blog or through my own magazine. However, when public magazines are being published, I think they should give space to all kinds of views and hence I think both the majority view or the minority view need that equal amount of freedom and execution as well.

The court said that in recognizing such a kind of right, the right to express the dissent, the right to express different views, the right to criticize fair criticism. Kindly note it should not be a right to criticize in terms of defamation but the right to fairly criticize is something that the government must facilitate upon and hence any kind of discretion in this is to be absolutely rejected. So, all public platforms, all public publications or government publications that are using public money must provide expression for both aspects, positive as well as negative. And I think this is where real free speech and expression gets protection, recognition under article 19(1)(a) of the constitution of India.

The last paragraph on this case is about the contention of the state. It was rejected by the court because the court said that look, you are using public function, you are using public money and

hence anything that you do in public money and in public function should be public interest. And public interest can only be served if all views are taken onboard and the same provides equal expression as well.

Interestingly, just to add a development over here we are talking of press freedom. Press which is organized press, it could be like Bennett Coleman, it could be like Indian Express, it could be NDTV, it could be any other online media. But I think press also includes publication which can be those kinds of publications that are government sponsored, those kind of publications that are government patronaged. And I think press means anything that has been communicated as information which reaches a section of a community.

It can be a section of community in the Indian railways where there is a news letter. It is a section of community protecting minority interests. It is section of community protecting labor interests. It is section of community that is protecting consumers interests. I think these are all within the domain of the press. I think press is not only restricted to national, newspapers and national news television. I think press is all about where this communication can take place and what is the basis for this same communication.

What is important and pertinent to note at this point of time is a very interesting policy that was published by the Lok Sabha secretary in the year 1985. In 1985, they published a document which said something like this 'Background to Evolving a National Information Policy'. Which very clearly meant that the Lok Sabha Secretary did understand, appreciate and acknowledge the role of the press in our democracy. And they said that it is important that the press be evolved in the national politics, in the national elections, in national policy making.

And hence it is pertinent and important for the parliament to actually publish its methodology, processes and its functions through the press medium. And hence it is important for a communication policy to be developed which they call the national information policy. Wherein the secretariat would then probably lay down the way and manner in which the Lok Sabha, functions could be bought about through the press. And that is an interesting development that happened in the year 1985, National Information Policy. That is what Lok Sabha secretariat actually published.

(Refer Slide Time: 9:09)

- Freedom of Speech serves to protect two kinds of interest; 1. Individual. 2. Community [group]
- **Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India AIR 1986 SC 515** - Imposition of the import duty on newspaper was found to have the direct effect of crippling the freedom of speech and expression guaranteed by the Constitution as it led to the increase in the price of newspapers and the inevitable consequence of reduction of their circulation.
- Freedom of expression 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 is the **people's right to know**. Thus, the **right to acquire information includes the right to access the sources of information**.



Let us go forward and in going forward, the next case for discussion or the next kind of intervention that the court did, the Supreme Court did was through the Indian Newspaper case versus Union of India. The case was decided in the year 1986. Now, one would appreciate and know that the government of that day unlike the Bennett Coleman case that was decided in 1972, in 1986 the government decided to have an import duty on newspaper.

Naturally it is the government discretion, prerogative to bring about a regime of taxation and they can actually decide to change tax policies as they wish they can do so by laying it down to the parliament and getting it enacted in the parliament. However, in this case when import duty on newspaper was decided by the government, Indian newspapers, they went to the court stating that if import duty is fixed it would actually increase the cost of communication of newspapers.

So, what would that do? It will provide disincentive for citizens to actually buy newspapers because it will be that much more expensive than what it was before. So, import duty thus contributed to the cost of production of the newspaper itself. Now increased cost, does it have an impact on containing the freedom of speech and expression? This was the question posted in the Supreme Court of India.

Now, the Supreme Court in this case did consider the fact the role of government why was the import duty done? Was it something in public interest? Should it be something that the court should permit? Would it have a crippling effect on freedom of speech and expression? Will it affect the guarantee of rights and should there be some kind of intervention on the taxation policy of the government?

These were a few things that the court was asked to intervene upon in this particular case. Now, the

court in this case highlights the role of the press, they actually reiterate I must say. This was the first time that Supreme Court did so but I think they found a great opportunity to impress on the government the role of the fourth estate.

The role of the watchdog called the press. The role of the press in bringing accountability and transparency in governance. I think by this time probably the water gets scandal and so many other scandals in different other countries had actually brought to the forefront the role that the media can bring in, the role that the media can do and it was actually becoming quite a powerful institution in itself.

And hence, the court says that the freedom of expression has probably four broad social purposes. First of all what does the freedom of expression do? It helps an individual attain self fulfill. So, through expression I tried to become a human being that I wish to be. And I can express myself as a full human being. So, that is what the freedom of expression does.

Second, it assesses the discovery of truth. Now this is very important what the press will do or probably is expected to do is to give information that is authentic, that is something reliable, that is truth but nothing else. And I think what it helps us to do is to find out what is the fact as against what is the myth. And I think this is very critical and important and the press assists us in doing the same and freedom of expression actually brings out the best in human beings.

Third, it strengthens the capacity of individual in participating in decision making. Because see when the press reports something I either want to vote for or vote against it. I want to be in favor or be against it. I think it is important for individuals to take positions. It is important for individuals to express their satisfaction or dissatisfaction on a particular matter and participate in decision making which is the foundation in democracy where people are involved in every decision making process can only be strengthen if we strengthen the forth state that is the press.

The court went ahead to also see that if you are looking at social change and we are looking at stability, I think the press has a very important role to play. Friends, I cannot reiterate enough and probably there are not enough words that I can insist on the role of the media in bringing about social change or social reform. The media I think has gone about in bringing more change in so many aspects of our day to day life. For example, overruling untouchability.

The media has played a very important role. It is about education, it is about communication, it is

about changing our methodology, our way and manner in which we treat the untouchables. I think in eradicating untouchability the media has played a very significant and important part. If today we have eradicated child marriage in India to some extent, and I believe almost absolutely, I think the media has played an important role.

While we say that the law brings about social transformation. Please note that the communication of the law, the knowledge of the law, I think the reach of the law can only be enhanced through the press and the media. Recently if you look at the position of Triple Talaq, I think the social change that was attempted was also something that was championed by the media. And hence, while the social change is relevant and the role of the media is important in bringing social change, one cannot forget the fact that you need proper quoting, need proper information and that kind of a social change can only see the light of the day if it is brought through some kind of stability.

You do not expect social change to bring about instability in the legal system. So, social change is a necessity. It is something that every generation as per I saw I do not think any law or any legal system is going to be static. It has to be dynamic, changes are expected but it should be done in a manner that does not bring about instability in the society. I think the media plays that critical role. Freedom of expression through media plays those critical roles and it helps us achieve the 4 broad social purposes is what the court had to say in this case called Indian Express newspaper versus Union of India as it was decided in the year 1986.

Friends, it would be important to note that when I talk about the right to know, right to know also has what I call as right to access this information, the right to receive that information, right to be able to form your own belief in that information and the right to communicate the information. I think these are all aspects that are covered under the right to know. So, let us sum it up in this sense and this is something to take the observation of the court ahead. What does freedom of expression have?

Freedom of expression has one; do I have the right to acquire the information? Yes. Do I have the right to access the source of information? Yes. Do I have the right to communicate my information? Also yes. I think in all these 3 there is affirmative answer to the way in which I understand freedom of expression as in article 19(1)(a) as in the constitution of India. And hence, if we have to learn from the couple of cases that are relevant and important at this stage.

I think what it probably gives you is that the freedom of speech serves to protect two kinds of interests. First; it tries to protect individual interest that is about an individual citizen, a consumer,

an individual who probably wants to access that freedom of speech and expression. It is very important for us to as a human being to have this kind of right and please note we always say that the freedom of speech and expression is an inherent human right. It is an inalienable human right. It is something that cannot be transferred, assigned or granted to individual.

And second I think it is about community rights. Because we as human beings have always lived in the society. We do not live alone and hence it is a group activity that also needs a certain degree of protection. And that community of group activity's protection of right comes through the freedom of press is what the Supreme Court wanted this nation to believe in and take it forward. I think press in India is the reflection of our society, it is the reflection of individual aspiration and it is a reflection of what we stand as a nation for.

That is what freedom of speech and expression in terms of individual and community rights and interest goes forward to.



(Refer Slide

Time: 18:11)

## Civil Liberties and rights of accused

- Prabha Dutt v UOI AIR 1982 SC 61.: Media to interview prisoners [Ranga and Billa] in death row.
- R Rajagopal v State of T N 1995 SCC
- Gopalana v State of Madras 1950 SCR 88.: access to information about arrest, report on physical condition of the accused, place of detention etc.



Interestingly, the right to know as we think is, is not restricted to those who are enjoying their liberties or those who are part of the free society. If you look at the couple of cases that we had come across vis-à-vis we want, the Supreme Court wanted us to look into, I think free speech and expression was something that the court said is not available to free citizens but it is also available to prisoners. And prisoners also have certain rights.

Now in Prabha Dutt versus Union of India a case decided in the year 1982. The media wanted to interview two prisoners who were actually under death row. These were two notorious gangsters called Ranga and Billa. They were quite popular at that point of time. They had committed numerous crimes and they were actually sentenced to death. Now, the interesting facet is we are quite inquisitive as human beings, we are inquisitive in not only in our lives but in the lives of other human beings. We are inquisitive to know how did ordinary people turn as convicts, how did ordinary people turn as criminals?

Now why is this information relevant if you ask me this information is relevant because probably we can stop others from being criminals. So, it is important here to understand and realize that it is a study of why the crime took place and what made these criminals do the same crime. So, I think

that kind of a study is only relevant and important for the media to highlight the same so that there is a larger education about the community about what is the consequences of a crime. What will happen finally of a crime? How did ordinary individuals actually turn into criminals? I think this is great information to have.

However, the media in this case was denied the permission by the jail authorities to interview the prisoners. They said “Look you can interview under trials, you can interview those who have committed the minor offenses but not these two Ranga and Billa. Because they are prisoners who have been given death sentence. So, probably they were dangerous and probably they had done certain crimes in connivance with very powerful people or they did the crime for powerful people.” And I think the jail officials did not allow the media into the prison and to undertake the interview.

However, the Supreme Court again reiterated the fact that the media has a role to play. And the media cannot be gagged and the media cannot be stopped from interviewing the prisoners. The only thing is they have to follow the prison manual, they have to seek the permission, and probably the interview will have to be recorded and probably it has to be something that the jail authorities can view and based on that I think the media's freedom to interview the prisoners cannot be contained is what the Prabha Dutt versus the Union of India case did say.

Which means in the prisoner, if an undertrial prisoner or a convict wants to express, wants to publish his own story about how he did the crime, why did he become the criminal so on and so forth. I think they have a story to tell and it is a story that is quite fascinating at times for all of us to read and understand because I think crime stories are quite imaginative, they are quite captivating and I think they make big movies as well. I think there are a lot of books that are written. There are biographies that are written by criminals and I think that is something that citizens have the right to know is what was decided in this case called Prabha Dutt versus Union of India.

I also at this point of time remember a very interesting case called the Auto Shankar case. This is the case called R Rajagopal versus the State of Tamil Nadu. This was a rowdy by the name Auto Shankar. He had actually committed a lot of murders and he was also sentenced to death. Now Auto Shankar wanted to write a biography and he hired a pressman, Nakkerran, to write a biography for them. He wanted to write his biography in the prison obviously. So, before he could be hanged probably he wanted to tell the world why did he do that and what he did.

At this point of time the State of Tamil Nadu decided that Rajagopal cannot, Auto Shankar cannot

do the same. And they insisted that he should not write it and there must be an injunction against the publication of his biography. Now, why did the State of Tamil Nadu do? I think there was suspicion in Tamil Nadu saying that Auto Shankar will disclose the names of prominent politicians in his book. And prominent police officers who helped him do the crime. And they all, the politicians and police men felt that they will be defamed in the book. And hence they wanted that book not to be released.

But again in this case I think what the court said is I think every accused has the right to express. I think if you look at death row I think you have the right to make the last wish before you are hanged. In this case expression of views by a person in the death row is not something that can be prohibited. I think media has every right to express the same. However, please note the media also takes the wrath of being sued for defamation if it is not true. So, what media has to do is to protect its own interest by reporting only truth, facts, and not stories that may unfortunately either infringe the privacy of individuals or defame individuals as well.

So, I think the media will have to be very, very careful when they exercise their freedom and please note every freedom under article 19 comes with restrictions under article 19 (2). And one of the most important restrictions that is made in article 19(2) is the following. First public order, you cannot by your own publication, damage or disturb public orders. Second, you cannot from your publication defame I mean, individual. So, defamation is the great restriction on the freedom of the press and hence while the information has been shared, defamation is to be avoided as well.

So, the R Rajagopal versus State of Tamil Nadu case I think is another great addition in understanding the rights of accused to free speech and expression through the instrument of media. I think that is what we say right to know and please note ordinary individuals cannot go to the prison. They cannot interview prisoners, the media can do it. They can use the power of communication to put the story across the whole world and they can communicate it to the whole world including those that are interested to know about it.

I think when we had talked about civil liberties and the right of the accused, please note we say an accused has the right to information and this is protected by the constitution in article 20 and accused has the right to be informed about the grounds of his arrest and accused has the right to being produced before magistrate in the 24 hours. And accused has the right to inform that he can be represented by a lawyer. These are basic information that an accused has.

Now please note this is his right to information. So, when I have been curtailed of my liberties, when I have been curtailed about my freedom, I must be told why it is being done so. And probably, I must also be told how I can actually get back my liberty and freedom. I think right to legal aid, right to legal aid information or right to be informed why my liberties have been curtailed in the democracy, I think is the fundamental right and something that adds to the freedom of information legal regime.

And hence in Gopalana versus State of Madras the Supreme Court says that every accused should have access to his arrest information. So, I think whether you know what you have done is bailable offence or non bailable offence. Whether this requires a warrant or not a warrant and I think if you are not in a good physical condition you have the right to be examined by the doctor. And in case you require medical help I think you have the right to be sent to medical aid. And I think these are basic information that have to be shared with the accused.

What is relevant important here is, friends please note, the family or the relatives also have the right to information. So, it is not only the accused. Why does the family have the right to information? The family has the right to be told where you have been kept or detained, the place. So, if they wish to visit you, if they wish to apply for bail, if they wish to perceive the matter and prove your innocence I think the required information that the family has or should have is something that the family has the right to information.

So, I think here by these 3 cases one gets a view and an idea about how far and to what extent family can access that kind of information in case of prisoners, in case of those who have been detained and whose similar duties have been curtailed by the state. The state has the duty and an obligation to disclose the same information to these citizens. So, I think this is the kind of legal development that we are looking forward to in the right to information age.

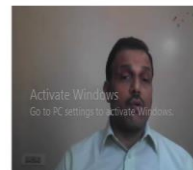
I think the police, the state through its agencies like the police have the duty to inform and that duty to inform clearly is the duty on right to know. And I think that is an important aspect about understanding the right to information legal regime prior to the statutory law of 2005, in which RTI was inactive as a basic law. Kindly note, Right to Information Act 2005 applies to the police department. It applies to prison authority, it applies to the state, the prosecuting agencies as well.

So, apart from the constitutional obligation as you see in these three cases apart from the obligation that the Supreme Court has lead on by guidelines from time to time under the RTI act 2005 now

there is a statutory obligation, there is the process and the mechanism in which these 3 agencies the police, the prison authorities, the prosecution department may have to share with the citizens as well.

(Refer Slide Time: 28:55)

- In **Printers (Mysore) Ltd. v. CTO (1994) 2 SCC 434** SC has reiterated that though freedom of the press is not expressly guaranteed as a fundamental right, it is implicit in the freedom of speech and expression.
- Freedom of the press has always been a cherished right in all democratic countries and the press has rightly been described as the **fourth chamber of democracy**. The fundamental principle which was involved in **freedom of press is the people's right to know**. It therefore received a generous support from all those who believe in the free flow of the information and participation of the people in the administration;
- It is the primary duty of all national courts to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom, are contrary to the constitutional mandate.



Plenty of cases where we see judicial activism, where we see the courts trying to protect, ensure the rights of citizens. Another case in the addition is the Printers Limited versus CTO. Where the Supreme Court reiterates that freedom of press is not expressly guaranteed. However, it is very much implicitly guaranteed for free speech and expression.

The court in this case says that the fourth chamber of democracy is the press. And the press have the right to know. It is a collective right. It is an important right that the press must ensure. And it is the fundamental principle of democracy to grant this to the press and free flow of information and participation of people in the administration is something that is very, very crucial for democratic institutions to survive and for the aspiration of people to be projected.

So, it is the primary duty of national courts, this is what the court says. To uphold this freedom and hence the courts have to check and balance administrative institutions that violate this kind of a freedom. It is the duty of the court to look at whether the law curtail freedom or whether administrative actions interfere with freedom of the constitution mandate. So, the courts on themselves took up on the task about regulating the two other institutions the legislature and the executives in case they went about infringing the right to know and hence they said it is our duty to protect the right to know, it is our duty to protect the freedom of the press, it is our duty to protect the democratic principles in the country.

So, in Printers Limited versus CTO the Supreme Court says it is the duty of all the national courts to uphold the required freedoms. And it is something that the constitution has mandated the judiciary

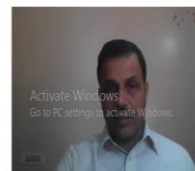
to rule. And hence you will notice that whenever the state action or whenever any law be it the news print control order, be it the import duty. If there was the law that actually influence the freedom of speech and expression I think the institutions that felt that they were aggrieved went to the court. Wherever individuals thought that their right was being infringed, again they went to the court and court that protected the right it was the court that adjudicated the matter.

And hence if I look at the legal development in there I own the right to know. I think the right to know was expressed by the court. It was defined by the court and it was protected by the court till we got the right to information act in 2005. So, the role of the court, the role of the judiciary has been very crucial till the time the statutory enactment of 2005 was needed and the court I think performed extremely well, exceptionally well in trying to protect this kind of individual as well as community right on right to information.

And I think that is where the growth of this law. I think the transparency rule, the accountability rule, slowly started coming in the forefront in this country.

(Refer Slide Time: 31:55)

- In **Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal** (1995) (2) SCC 161 SC while taking into account of news print control order allotment of news print to news paper was restricted held that such restriction had not only infringed news paper's right to freedom of speech but also readers right to read was cut down.
- The **reader's right to access the news papers was his right to information** which was implicit in the right to freedom of speech and expression.



I think we have discussed this case previously as well but this Ministry of Information and Broadcasting versus Cricket Association of Bengal also is another addition to the constitution history. It is another addition to what kind of information a person is entitled to read and what should be brought and what should not be brought about it.

The reader's right to access the newspapers was his right to information and I think it is important

that everybody gets the information about what is happening with a sports event. I think this kind of news, information is very critical. As I told you in the past you know, we all have our own requirement of information. Some of us may need information about newer forms of cooking, newer dishes to be made. Some of us may need information about our interest is. I may be interested in sports, I may be interested in business, I may be interested in stock exchange, I may be interested in lending, I may be interested in international trade, I may be interested in some other.

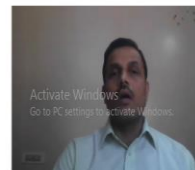
So, I think while human beings have varied interests in their requirement I think it is the press that feeds this information. It is the duty of the press to give the different kind of information that can be consumed by citizens and hence it is in the reader's interest, it is in the citizen's interests or it is in the consumer's interest as the case may be to access this information. And the only means of accessing this information before the social or digital media came in before media, you know, started giving this information through the internet. I think the only mechanism, authentic way of getting that information was through newspapers.

And I think what this case again reiterates is the role of the media through newspapers in reaching out this information to the communities and to the citizens. And hence sports related information is also information that you are entitled to and the same should be given unbiased, without any discrimination and without any preference between the private media and the public media.

(Refer Slide Time: 34:06)

### Transparency in actions of public functionaries

- **State of UP v Raj Narain, AIR 1975 SC 865**, - Raj Narain requested the government of Uttar Pradesh to disclose the document "Blue Book" which contained security guidelines and expenses regarding the Prime Minister of India's travel. Government officials declined to produce the document, claiming that it was an unpublished official record and against the public interest.
- Mr. Justice K.K. Mathew explicitly stated that "it is not in the interests of the public to cover with a veil of secrecy the common routine business.... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption." It was further held that "in a Government...where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... **have a right to know every public act, everything that is done in a public way, by their public functionaries.**"



Let us now come to the real focus of say the right to know the name. The right to know the name from fiction to this case of 1975. The case is Sate of UP versus Raj Narain. A very popular case in terms of constitution history, popular case in terms of government functioning, popular case in



terms of how the government of the day is accountable for its registration making process. I think in 1975 when the situation in India was quite volatile and when Raj Narain asked a few relevant but pertinent questions.

The state actually denied it because at this point of time I think the kind of attitude state had especially in 1975 where it was almost a single party system where opposition was very weak in the legislature. The administrative bureaucracy in the government literally took upon itself only being a government servant and to a public servant. These were the times when the Supreme Court had to take up this case of State of UP versus Raj Narain.

And I think at this point of time you notice that the judiciary was slowly waking up to the reality that it had an onerous responsibility in ensuring social, economic and political justice. The judiciary had to probably intervene in certain matters. So, the time was right for the judiciary to start asserting itself. The time was right for the judiciary to implement the spirit of the constitution as it was and hence they got an opportunity in this case 1975.

Now, what did Raj Narain ask? He wanted the government to disclose two things; first the security guidelines from the Prime Minister of this country and second I think most important and probably he was concerned about the expenses involved in the Prime Ministers time. Security is one concern and the expenses were the second concern that Raj Narain wanted to know. So, he said why do not you disclose this?

Now the Prime Minister is the chief, kind of chief officer of the government. He is not only part of the legislature, he is also the part of the executive system. And the Prime Minister makes sure that he is also probably implementing the law through the cabinet and through his government. And the Prime Minister's office is a very powerful office and probably when the Prime Minister travels they use public money and the probably the only question that I would want to ask you is can the expenses of Prime Minister travel be disclosed under your right to know? Should it be disclosed under your right to know?

See interestingly many of these security guidelines or expenses of the Prime Minister office are not published. So, there are many documents, there are many information that are generally do not get published. They are all kept but never published. Now publication is an official way or manner in which the government communicates. Now, how are these communications of publication done? They are done through what is known as an annual report of a particular department or particular

ministry or they are published in the form of some memos, circular and so on and so forth. However, many of what the government does is never publish.

And hence it is never available to citizens at all. Now when a public functionary involves public money, should not there be sense accountability? Should not there be a sense of disclosure? Is what the court had to evaluate in the State of UP versus Raj Narain. And I think what Justice K.K. Mathew in his dissenting opinion said was very, very relevant. He said' look in democracy like us in the interest of the public the veil of secrecy has to be removed. In, if it states security one can understand the meaning of security. But if it is common routine business of say Prime Ministers travel, what is the secrecy that the government wants to justify? Why should the government withhold this information?

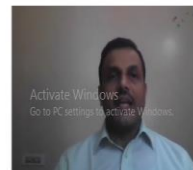
I think what Justice K.K. Mathew in this case said was if you decide to have a veil of secrecy it will only breed contempt, it will only breed corruption and hence contempt and corruption only will breed oppression. And hence it is very important for agents of the public. Now what are the agents of the public? It is government officials. They represent people, they do not represent the government. The government is only employee so when you are an agent or public it is your responsibility, it is your conduct in public interest which would say that we should have only a few secrets and we should try and disclose certain relevant information that the public ought to know on which the public have the right to information.

I think what is important over here is that you know that the Supreme Court said in democracy transparency should be the rule and secrecy should be the exception. Not that you cannot have secrecy, you ought to have secrets in terms of national security and national interest. I think if you look at section 8(1)(a) of the right to information act 2005. Even the law that currently stands does provides exemption for information of national security and national interest. However, that is an exception that is something that you can exercise if it is necessary to do the same.

However, the rule is disclosure, the rule is transparency, the rule is sharing of information. And hence, I do not think the government understood the implications of this case. I think the implication of this case were very, very huge, it had an impact of international character because the Supreme Court as early as 1975 did say what should a democracy stand for? What should a government stand for? I think the democracy and government should stand for disclosure, for transparency and secrecy should be an exceptional principle that the government must follow upon

(Refer Slide Time: 40:34)

- **SP Gupta v. Union of India AIR 1982 SC149**
- Petitioners sought the disclosure of correspondence between the Law Minister, the Chief Justice of Delhi, and the Chief Justice of India on the appointment and transfer of judges. The Court reasoned that a particular document regarding the affairs of the state is only immune from disclosure when disclosure is clearly contrary to public interest and in this case the appointment and transfer of judges is of immense public interest.
- SC rejected the Central Government's claim for protection against disclosure and directed the Govt. to disclose the requested documents. The Court ruled that an open and effective participatory democracy requires accountability and access to information by the public about the functioning of the government. Exposure to the public gaze in an open government will ensure a clean and healthy administration and is a powerful check against oppression, corruption, and misuse or abuse of authority. **The concept of an open government is the direct emanation from the right to know, which is implicit in the right to freedom of speech and expression guaranteed under Article 19(1)(a).**
- Disclosure of information in regard to government functioning must be the rule and secrecy the exception, justified only where the strictest requirement of public interest demands it.



The next case for discussion is the SP Gupta versus Union of India case. A case decided in 1982. This is popularly known as the judges transfer case and at this point I think petitioner he did not want the information from the legislature. He did not want information from the executive. He wanted information from the judiciary. Now we say the legislature executive and the judiciary are the 3 organs of the government and if I want to implement the transparency rule, I think it has to be equally applied to all the 3 organs of the government.

Now in this case, generally you notices that you know appointments are generally made by the government or executive win by the government. But the judiciary in cases like this SP Gupta case decided that appointment of judges or transfer judges should be done by the judiciary itself so that it can protect autonomy of the institution and it can protect independences of the institution.

So, political interference in appointment and transfer can be taken out is what the judges thought. And that is the reason they passed the judgments when they took on themselves the appointment and transfer processes. And this was probably quite a landmark decision on judge's appointment that happened in this country. However, how do or what is the process and mechanism for transfer of judges? Are they rules, are they regulations and are they adhere to.

Second; how the appointments of judges happening? What is the process? What is the mechanism in which judges are been appointed? I think the SP Gupta case very clearly said that the government had an obligation to disclose the same. It is not the discretion or not an arbitrary decision that the government can take. And the Central government said that you know appointment and transfers are

secret information. This will not be given is something that court rejected and the court said that the government of the day must need fair and transparent.

They may provide reasons for transfer; they must provide process of selection and appointment and there must be a sense of accountability about who is appointed as a judge and why is he transferred from one place to another. I think these are certain necessary functions that the government must perform and please note unless the government is open, unless the government is disclosing the reasons, I think the institution of the judiciary may be adversely effected.

The autonomy of the institution maybe adversely effected and the judiciary may lose the credibility and the faith that the citizens have in that kind of an intuition. This is something that the court said that government of the day, had a duty. And if it violated that duty the judiciary thought it is best to take away this function from the government and the judiciary to cope on itself, the role of appointing and transferring the judges.

The SP. Gupta case versus Union of India case again reiterates the fact that judicial related information must be disclosed and must be in the open form. It is the duty of the court to actually put this into the public domain.