

Right to Information and Good Governance
Professor. Doctor Sairam Bhat
Department of Law
National Law School of University, Bengaluru
Judicial Precedents, Reasonable Restrictions and
Comparative perspective on RTI

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Knowledge is Power-Francis Bacon



Friends, we do understand that knowledge is power and if we exercise power without knowledge, you will probably be exercising it as an empty vessel filled with nothing. When you have knowledge, power becomes far more useful. Power becomes far more meaningful. And to acquire power knowledge is inhabitant. So, the success of power is the success of knowledge.

And hence if people who are the real sovereign power vested in democracies, because we see in democracies the real sovereign power vests with the people. If that is true, then people must be empowered in knowledge. And when people are empowered with knowledge that really empowers society that really empowers the country. And Francis Bacon rightly said that knowledge is the power.

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James Madison in his writing in 1822 said that 'a popular government without popular information or the means of acquiring it, is but a prologue to a Farce or a tragedy or perhaps both.'



I will give you one more instance where sir James Madison in his writing in 1822, has as early as that had said that, and we know this that, James Madison was involved in the American democracy movement and probably laid down the path of constitutional democracy. He, in his writing had stated something like this, 'A popular government without popular information' popular government is a democratic government, is an elected government.

Without popular information which is the information that public or the citizens require or the means of acquiring it, so either the information should be available by the government as it is because I would state that why should apply the information, it is a duty for government to supply the information. So, we generally say that the government must supply information although of its own instance, suo moto, without being asked for it because the government, if it believes that it is accountable to its people then it must share the information even without being asked for.

However, if the government is not proactive enough to supply this information, citizens must be given a mechanism to acquire. It is about James Madison, very clearly in his writing, puts it. And he says that, if this is not done, if popular information is not shared by the popular government, then it will lead to some kind of tragedy. It will lead to a farce and the

democracies will probably fail, is what he anticipated his writing in 1822.

So, this clearly lays down the values of democracy, the values of government, in a system and I think that it is very important that the information is shared, and that is what the right to information legal regime, is all about to acquire.

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The slide features the National Law School of India University logo and the NPTEL logo in the top right corner. The main text on the slide reads: "Freedom of information is reflection of our culture, institutions and growth". Below the text is a small video thumbnail showing a man in a light blue shirt.

Also and probably this is that last kind of statement that I would want to make before we continue with our discussion on the constitutional aspect on the right to information, is that freedom of information is a reflection of the culture, institution and group. It means that if Indian culture stands for secrecy, then we will probably promote secrecy and not going for transparency. I think in India the culture is very clear that even with terms of education and knowledge, please note in Indian culture, we always believe that education and knowledge is to be shared.

We have always believed that knowledge has to be open, it has to be something that needs to be communicated. Everybody must have access to knowledge. Everybody must have access to information. So, the Indian society in its culture believes in openness. Does not believe in

closed society or closed minds and the institutions that were developed in India, pre-independence and post-independence, I think some of these institutions, the institutions right from a family, to that of a society, to that of government have always believed that secrecy should only be used in exceptional circumstances.

Whereas, it must be open governance. Open and transparent governance as well. When the culture of any given country and its institution believes in openness and practise the same, I think growth in those societies are inevitable and I think people will be far more happier than they are in closed societies. And hence growth, yes in terms of economic sense but growth in the happiness index is real growth and people aspire for it, from democratic institutions.

With these 3 ice breakers of statements, I think they fortify the constitutional aspiration on right to information. We will continue with our discussion now, on the case laws or the judicial interventions. How the judges, how the judiciary ventured and contributed to the legal regime of information.

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- **Bombay Environmental Group and Ors v. Pune Cantonment Board SLP(Civil) No. 11291 of 1986, Oct. 13, 1986.** – The Supreme Court considered whether a recognised environmental group has a right to examine municipal permissions granted to private builders. The Court directed that any person residing within the area of a local authority or any social action group or interest group or pressure group shall be entitled to take inspection of any sanction granted or plan approved by which local authority in construction of buildings along with the related papers and documents if such individual or social action group or interest group or pressure group wishes to take such inspection, except of course in cases where in the interests of security such inspection cannot be permitted."
- This case established the right of a group or association of individuals to seek information from the government.



We will continue the discussion with this case. Which is a case that talked about the responsibility of local government. The Bombay Environmental group versus Pune Cantonment Board. Now the Supreme Court in this case talked about group rights. About, now who, who is responsible for this environment? Now when development takes place, the

environment unfortunately is crippled. Development actually is at always the cost of the environment.

Now if the environment is damaged, your right to clean air, your right to clean water, your right to health are all adversely affected. And hence when the government goes about sanctioning developmental projects, has the government applied its mind on environmental concerns and issues? If the government does not do it, can non-governmental organizations act as watch dogs for the protection and conservation of the environment? Can societies take up on themselves the duty to protect the environment if the government does not do the same?

So, if you talk about local bodies, that is the municipal councils or municipal corporations, generally they give permissions for various construction projects. These are construction real estate projects. All cities in India are currently growing, it is a massive growth of urban areas, apartments have come in all places. Unfortunately, when cities start growing, either they encroach upon common spaces or lung spaces or forest areas, or lake beds or they go about ramping violation of the aspect of community property or common property resources

Unfortunately, because there is connivance and corruption between the real estate mafia or the builders with the government, the government easily goes about giving sanction for such projects. And then what we see is clear violation of law, clear violation of environmental protection, and this results in infringement of rights of citizens. And hence when the government goes about in its decision making process, especially in the field of environment. Should the government involve people in such decision making process?

Should the government share information about how these projects are sanctioned? What is the process in which it was sanctioned, who sanctioned it? And what was the papers and the documents that were submitted to seek such sanction? Now interestingly, municipal authorities prefer not to disclose this information claiming confidentiality, claiming competitive interest.

But unfortunately, this information is not shared, naturally the local people will feel that the real estate builders are violating the law. They are taking the government into confidence by actually engaging in corrupt practices, thereby an irreparable damage to the environment is caused when such decisions or actions are taken. And hence in this case, the court says that when it comes to environmental impact of developmental projects, it is inevitable for the local authorities to share information with the concerned individuals or group of individuals.

Which means that NGOs who are working for the cause of the environment, NGOs looking for the cause of human rights must be able to access these grants of sanction plans. Because let them check whether there has been clear application law or whether there has been violation of law. I think it is important for all of us to understand that it is not the only business of the government to protect the environment.

I think it is the business of each individual, each citizen, who should go about protecting the environment and hence if I have to go about my right to protect my own environment, I must be acquired with the knowledge with the information that is more relevant to me. I must not be probably instigated by any group. I must be able to have an independent opinion, about what is right and what is wrong should I go with the right or should I actually go with the wrong? Is some kind of decision that an individual ought to make.

So, I think does the citizen have a right to demand these sanction plans and documents or approval letters? I think with this case it is amply made very clear by the Supreme Court that the accountability of the local bodies is towards the citizens and whenever they take any decision that may have any impact on citizens' right to clean and healthy environment. They ought to share that set information with the citizens. This was made very clear in this particular case.

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- **Dinesh Trivedi v Union of India (1977) 14 SCC 306** - Dinesh Trivedi, M.P. (Rajya Sabha), demanded that the Union Government make public the reports which were the basis for the Vohra Committee Report and that the names of individuals who would become identifiable as a result of studying the various background papers be released. He alleged that the Union Government was trying to suppress these background reports and, without them the Vohra Committee Report was "baseless"
- The Supreme Court noted that 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, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; **it is, by no means, absolute.**
- The Court refused to direct the disclosure of the supporting material which consisted of information gathered from the Heads of the various Intelligence Agencies to the general public. Because, to so direct would cause great harm to the agencies involved and to the conditions of assured secrecy and confidentiality under which they function. Full scale disclosures would undoubtedly act to the advantage of those individuals who are actually the central figures in the illegal nexus mentioned in the Report. The Court therefore held that the disclosure of the supporting material placed before the Vohra Committee to the public at large would, instead of aiding the interest of the public, be severely and detrimentally injurious to it.



I think, so far we have discussed multiple cases which the court makes the suggestion of disclosure of information, makes the suggestion of accountability. And in all these cases we have seen that the citizens were successful in convincing the judiciary about the need to share information, the need to disclose the information.

However, when we say that the freedom of information is a right, is a freedom under article 19(1)(a). We ought to know that none of these freedom or rights in any constitution can be made absolute rights. There ought to be a balance between what can be shared and what cannot be shared. There ought to be a balance, what should be kept a secret and what should be made as transparent.

And hence, in the Dinesh Trivedi versus Union of India case, Dinesh Trivedi happened to be a Member of Parliament from the Rajya Sabha demanded that the union government make a report public, this is called the 'Vohra Committee Report' and they said this committee report was made by the government and the report was submitted to the government and hence the report should be made public, it should be released, is what he demanded.

And when the government refused his request, Dinesh Trivedi went ahead to file a case in the Supreme Court, asking the supreme court's intervention to release this. Now the Union government, you know actually refused to do it, because they said that this report consisted of

information that is gathered from various intelligence agencies. In India, we know that security is something of a top priority, considering the numerous terrorist attacks, the numerous criminal cases that have risen due to you know outside intervention be it in those areas where there is terrorism, or those areas where is Naxalism.

I think India has faced numerous challenges especially on armed aggression or internal violence that has emerged from different groups, be it in the North east, or be it in the states like Jharkhand and Chhattisgarh. But you know in 1977, India had just developed some of its intelligence agencies to gather information so that it can either prevent attack from countries like China and Pakistan or to actually maintaining domestic law and order.

So, the Vohra Committee report, interestingly had access to certain of this information. And they had actually incorporated this information in their report as well. And hence the government thought the report being confidential, should not be leaked. So, this was some kind of a defence of the government, however the allegation that was made by Dinesh Trivedi was that the government was suppressing certain facts.

And hence the Supreme Court had to decide, by reading the Vohra committee whether this can be a part of disclosure in the public domain or was the government right withholding the same. And I think this is a very delicate balance, the court must perform in terms of what is necessary to disclose and what is not necessary to disclose. And hence the court in this case said that disclosure of the Vohra committee report, should not be done. Such full scale disclosure can infringe public interest instead of aiding it.

And hence there has to be some means of regulating or restricting the freedom of information. So, the government on the day was right in with holding the same and I think what the court said was, in a constitutional democracy. It is very understandable that the citizens are very anxious to know every business or affair of the government. This anxiousness is justified, however the citizen must also note that the government cannot probably release some information. Which probably is in their own welfare, in their own


interests. And hence by no means can assume that the right and the freedom is an absolute one and reasonable restrictions can definitely be applied to the freedom of information law.

This I think is something that is quite uniform all across the world, I think all democracies share information but with some exceptions as well.


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Right to know antecedents of election candidates

- **Union of India v. Association for Democratic Reforms AIR 2002 SC 2112**
- SC held that the right of the voters to know about the past history including criminal records of the candidate contesting elections for MPs or MLAs is much more fundamental and basic than the privileges of the MPs or MLAs for a democracy to thrive. Voters speak or express by casting votes and for this purpose, information about the candidates to be selected must be made public.
- The Supreme Court recognized that the **right to know about electoral candidates falls within the right to information** available under the right to freedom of speech and expression described in Article 19(1)(a) of the Indian Constitution. It further indicated that information about the criminal background of candidates, assets and liabilities of candidates and their family members, and educational qualifications of candidates should be available to the voters as part of their right.
- The public has a right to know about candidates contesting elections because such rights include the right to hold opinions and acquire information so as to be sufficiently informed in forming and disseminating those opinions throughout the election process. The Court advanced this point by observing that a successful democracy strives toward an "aware citizenry" and misinformation or non-information of any kind will create an "uniformed citizenry which makes democracy a farce".
- Sec. 33-A was inserted into Representation to People Act to reflect the above.



National Law School
of India University
Bengaluru





The next set of cases that the Supreme Court decided were very very interesting. I call them interesting for the simple reason is because they make the reading of the law all that more interesting in terms of both, if you are a constitutional law student or you are an information enthusiast. But I think here, you slowly try to notice the kind of people's move, especially through non-governmental organizations, who take the cause of disclosure transparency and accountability, they take the fight. They take it to the Supreme Court, they take it to the High Court. They want the government to be far more expressive in sharing information.

And I think that kind of social change or social reform has been caused by the non-governmental movement or the social reform movement as we call it, you know the Peoples movement. They brought this kind of a change and hence you will notice, the next set, there are two cases here. The first is the Union of India versus the Association of Democratic Reforms, this was decided in 2002.

And in this case, the issue was very simple. Do voters have the right to information? So, when I exercise the right to vote, when I exercise my adult franchise, when we talk in India that there is free and fair election. To achieve all of these three, what should a voter know before he goes and casts his ballot? Now, in India unfortunately when the elections are held, election candidates have to file the papers. They have to file their nomination papers. Now how far these election candidates should disclose their past history?

For example, do the candidates have any criminal case pending against them? Is this something that they should disclose? Now, the reason why the NGO called Association of Democratic Reforms demanded this information and they wanted candidates to disclose the same, before elections, was that, let the voters know whether the candidate has a criminal background or not? Now in India unfortunately if we look at statistics, they may be quite shocking to know that today elections are based on muscle power.

Elections are contested by people who have violated the law and these are the same people who get elected as the MLAs or MPs and are supposed to have the responsibility of making the law for the country. So, this was a strange contrast in the situation that was happening in India. Unfortunately, that muscle power would win elections and hence the freeness and fairness of elections was largely in a problem situation.

So, you know the the real or the basic information that could be available to the citizen is letting know whether this election candidate has criminal record, if so what is the crime and what is the punishment that he has already suffered. If suppose he is being punished of more than 3 years, should he be disqualified from standing for the elections? I think some of these basic things are, you know, something that we demand as voters, and we demand that if we get this information, I as a voter will become a more informed citizen.

If I become a more informed citizen, in a way, I cast my ballot, I would cast much better in choosing the right versus the wrong candidate. I think the voters have this kind of a right is

what the Supreme Court said. And the Supreme Court simply said that the voter has every right to express himself, against the candidate who is not competent enough, morally and legally to represent him and hence if I have to express my freedom of franchise, I must be given the background of this information.

And hence the Supreme Court in this case says that there is a right to know about the electoral candidates. The right to know about the electoral candidates is an integral part of right to information, as described in article 19(1)(a) of the constitution of India. Further the Supreme Court also says that it is not about the criminal background that the candidate that is alone going to be sufficient, what is most important is probably the assets and liabilities of the candidates. Not only of the candidates but also their family members.

And hence we must probably know how rich or poor the candidate is? How rich or poor he was before the election and what is his assets and liability statement if he is going to get re-elected? Because then the candidates clearly will be accountable in terms of how much wealth they have amassed, in the 5 years of the tenure, as a member of parliament or a member of legislative assembly. Very often they are not these kinds of disclosure post 2002, friends, has brought in some very very interesting numbers and statistics and this has awakened the public.

Public are more aware that here is a candidate who probably amassed wealth in public life and he must be held accountable for disproportionate asset and for corruption and he must be answerable and probably he owes no moral and legal authority to represent the citizens as being a law maker especially, if you are a member of parliament or a member of legislative assembly.

Last but not the least, the Supreme Court in this case says, it is important for the election candidates to also disclose their educational qualifications. I think whether the candidate is literate or not is not the question, I think what kind of educational qualification you are looking for a candidate. If he is a law maker does he understand the nuances of law making?

Probably you can test this, is he really, something that he can contribute to law making? Is he competent enough or should we just have somebody else represent us, or as well.

I think these are some choices that can be made, and I think the Supreme Court accepts the petition by the NGO and they say that what is being sought by the NGO is very much valid and the Supreme Court directs the election commission to amend the Representation of Peoples Act. And Section 33 A, now reflects this case and its final conclusion. And under Section 33-A of the Representation of the Peoples Act, MPs and MLAs have to disclose before they file the nomination papers along with the same they have to disclose whether they have any criminal cases pending against them, whether they have been punished for a criminal law, what are the assets and liabilities of their or their family members, and the education qualification?

This information, if the election commission beams it fit, will be disclosed or we can ask the election commission to also share this information under the Right to Information Act. So, I think it is very important that the debate in the country has begun on who are our MLAs and MPs? What is their background? What is their antecedent? Where do they come from? Which family do they come from? What qualification do they have? Interestingly even now we even know whether they have certain assets or whether they are having liabilities.

What is their salary? What are their perks and perquisite? I think all of this information, the public had the right to know. However, it took this decision of 2002 for the Supreme Court to explicitly state it, in no uncertain terms, the duty of the candidates, the duty of the public servants or the public representatives, that before you get the right to represent, you must disclose this information. So, this is pre-election information disclosure and I think you will clearly notice that these legislatures are also public servants they are accountable to the public and they have a duty and an obligation to disclose as well.

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- **People's Union for Civil Liberties v. Union of India AIR 2003 SC 2363**
- PUCL challenged the validity of Section 33B of the Representation of People Act, 1951 that provided - notwithstanding a judgment or order of the court or Election Commission, an electoral candidate is not bound to disclose any information apart from that required under the Act.
- The Supreme Court of India held that Indian voters have a right under Article 19(1)(a) of the Indian Constitution to obtain information about political candidates. In a democracy, the will of the people is expressed in periodic elections. Availability of basic information about the candidates enables voters to make an informed decision and also paves the way for public debates on merits and demerits of candidates. This in turn goes a long way in promoting freedom of speech and expression, and also ensures the integrity of the electoral process in a democracy. The Court concluded that Section 33B of the Representation of People Act, 1951, was unconstitutional.



The second case as I told you on the antecedent of elected candidates, is this case on Peoples Union for Civil Liberties, versus Union of India, this is a 2003 case, the earlier one Association for the Democratic Reforms, was a 2002 case. Now in this case, this is a NGO called a PUCL, they have filed numerous petitions in the court. And what they did in this case was, you know, when you talk about the responsibility of the candidates, holding such information, the election commission may choose to disclose or not to disclose.



So, what they held is, Section 33B of the Peoples Representation Act should be negated, should be held as being unenforceable and should be held to be unconstitutional if the association of the democratic reforms law for the judgement should be valid. So, the court in this case said that we will have Section 33A and 33B to be held unconstitutional.

So, this was trying to build the earlier case inter effect and to see that there are no inconsistencies within the Peoples Representation Act itself. In one instance you ask for disclosure and in another instance you deny it or give the power to the Election Commission, to withhold that same information. That kind of dichotomy was held to be taken away and the Supreme Court in this case clearly directs the election commission to make a new law and to remove the existing laws which probably breed secrecy. And which go against the spirit of free and fair elections. So, 33B of the representation of Peoples Act 1951 was held unconstitutional in this particular case

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Reasonable Restrictions

- Freedom of Speech and Expression enumerated under Art.19(1)(a), whereas restrictions to this freedom has been mentioned under Art.19(2).
- Grounds on which information may be denied
 - Sovereignty, integrity and security of India.
- Restrictions under RTI – S.8(1)(a)-(j) –
 - International relations; National security and public safety; investigation, detection and prevention of crime; information from outside government; internal deliberations of Government; disclosure of information affecting privacy of individuals; trade secrets, affecting government; information subject to claim of legal or professional privilege; scientific discoveries.
- Official Secrets Act, 1923 – classified information
 - Invoked in the Rafale case where records were stolen and to defend the actions of government.
- Atomic Energy Act, 1962 – S.18
 - Restriction on disclosure of certain information to public – PUCL v. UoI, AIR 2004 SC 1442. restriction under the Act were held reasonable.



Let us now discuss about reasonable restrictions. I think reasonable restrictions are very important and relevant and they give you an idea about what is the scope and ambit of the freedom of information law. I am sure most of us have realized by now that the scope and ambit is not an absolute one, though it is available, there are certain reasonable restrictions that could be imposed on the same.

Remember they are not mere restrictions, they are supposed and considered to be only reasonable restrictions. And hence, if right to know is enumerated under freedom of speech and expression which is stated in article 19(1)(a), freedom of information or right to know will be restricted under article 19(2), which is provided in the constitution. So, the constitution itself restricts some of the freedoms. And some of the grounds on which freedom of information may be denied as interpreted and stated by article 19(2), maybe the following.

First and the foremost, you may not be given information based on sovereignty, integrity, and security of India. So, when it comes to the security of India, when it comes to the supreme authority of the government of India or the integrity of the government per se, information should be denied. And hence the application of reasonable restrictions, in the constitution has huge ramifications about the manner and method in which information or this right to know will be administered, in this country.

Now if you look at the sovereignty, integrity and security of the Indian state, you will notice that the same has been incorporated under the Right to Information Act 2005 under Section 8 and the similar restrictions do appear over there and I think what is there in the constitution also gets reflected in the statute. You should not expect the statute to go beyond the expectation, if it does so the statute itself will become unconstitutional.

So, RTI just follows the reasonable restrictions, as laid by the constitution, and probably the RTI only adds to the kind of restrictions, or defines the restrictions in a much clearer and broader manner. So, these are some of the exemptions that are there in RTI, so they are kind of aligned and tuned to the constitution.

What is not developed on to the Right to Information Act, are international relations, national security and public safety. Investigation detection and prevention of crime, information from outside government, internal deliberation of the government, disclosure of information affecting the privacy of the individuals, trait secrets, anything that affects the government adversely, in terms of privileges and the kind of immunities that certain institutions like the legislature or the judiciary have are also exempted under the RTI Act.

These are the restrictions on the right to know, as we read it in the constitution, as also what is also read under the Right to Information Act.

There are other restrictions that continue to operate in India, in major one being the official secrets Act of 1923, where we know that the information is classified and that classified information cannot be shared. However what is neutralised through the enactment of the RTI Act is probably the Section 5. Whereas rest of the Section of Official Secret Act continue to be in operation and you will notice that under the Official Secrets Act, the government has the freedom to designate areas as restricted and prohibited.

And hence anyone who approaches a restricted and prohibited area or is in position or transverse any confidential information to any unauthorised person can still be prosecuted under this legislation. So, this legislation very clearly declares that there are certain secrets of the government of India, which are of national security and public safety. They cannot be handed or handled by unauthorised persons and they cannot be probably transferred to unauthorised persons. And if it is done so, it is an offence and you can be punished under the official secrets law.

The last law that we will probably have to take the note and consideration of is the Atomic Energy Act of 1962, which also says that certain information under this law is exempted, especially when one reads Section 18 of this Act. We all know that atomic energy is the national security issue. Atomic power plants are increasing in the country. As of now, as I speak nearly 3 percent of the energy requirement is coming from atomic sources.

Atomic resources are also used for defence purposes. However when it is used for civilian purposes, especially under the energy Act, one would assume that the government at the day would have less secrecy and more transparency. However the Act of 1962, rather speaks otherwise. It probably gives a large amount of exemption to the government while dealing with the atomic energy and it also tells the government that it cannot give the same information in relation to atomic energy under any other law for the time being in force.

If you had to look at Section 18 of the law, and this was also something that was challenged in the case called PUCL versus UoI. The Supreme Court said that the disclosure of information under the atomic energy Act has to be restricted and if this restriction is that I think the court after evaluating the various restrictions under Section 18 decided that they were reasonable.

It was reasonable because the raw material that was used in atomic energy is a special one, it is used for both civil as well as defence facility. Atomic energy is produced only by the central government. There are stringent sanctions on India before India could actually

develop its own autonomous and independent capacities towards atomic energy and hence keeping the international diplomatic scenario, keeping the domestic requirement of energy security in mind I think what the court in this case, the PUCL versus Union of India, 2004 case said that this is definitely reasonable and it is constitutional and there is nothing wrong if the Atomic Energy Act excludes giving information to the general public.

So, I think by this slide we definitely realized that reasonable restrictions on right to know are available not only under the constitution but under various special legislations, and hence there is a delicate balance between what to know what to disclose and what cannot be done so.

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Free Speech, Constitutionalism and right to know



- Inspection of ACR – Dev Dutt v. Union of India, C.A 7631/2002. Apex Court by developing principle of natural justice held fairness and transparency in public administration in the Annual Confidential Report of public servant must be communicated within reasonable period. Non-communication of ACR is violative of Art.14.
- Medical confidentiality, Dr. Tokugha Yephthomo v. Apollo Hospital JT (1998) 7 SC 626 – Prospective spouse has apprehension that prospective spouse is suffering from AIDS, former has right to seek information about the details of disease. This right is a part to larger right to life.
- 'X' v Hospital 'Z' 1998-Right to life, right to information, right to privacy. Community interest overrides individual interest.



In a recent case, Dev Dutt versus Union of India, the Supreme Court did hold that the government employees also have the right to know. Now in government we know that there is something called the annual confidential report, which the senior or the supervisor prepares for his subordinate. Now the term 'Annual Confidential Report' meant that this would be made by the senior or the supervisor and this would not be shared with the employees concerned on whom the ACR was prepared.

Now interestingly the Union of India, I found this case to be very important for the simple reason is, if something adverse has been remarked about me, or has been something that has been evaluated about me, should not I be informed about the same? This is a fair question that Dev Dutt raised in the Supreme Court. He said that the ACR copy should be made available to him and he should have the right of inspection.

So, if you realize that when we talk about the right to know it is not always the government versus citizens, it is government versus its employees as well. The government had a veil a secrecy in preparing annual confidential reports. And hence the seniors would actually pass remarks in the ACR or put certain adverse comments in the ACR. And unfortunately the employee would never know whether there was any adverse comment or whether he was performing well.

And look, to improve my performance I must get a feedback. And I must be shared with that kind of a feedback. Unless I get a feedback, I would say that probably my boss is happy with me, and I will continue to do the same, and hence, non communication of ACR was considered as violation of article 14 which actually advocates the rule of transparency, fairness and reasonableness and hence Dev Dutt successfully argued in the court, that even an employee in the government.

So, the government when it talks about transparency, when it talks about openness, it is not only with the citizens, but it must practise the same with its own employees. And hence it was imperative that all government records especially in terms of employee related information must atleast be shared with the employee himself or herself. It need not be shared with the public for A, B and C reasons. However, the employee has the right to know, because this will only help him develop himself, this will only help him improve if there is an adverse remark, and this will probably help him seek promotions.

And hence any adverse remark on yourself any feedback, I think the basic rule is, if you apply the principles of natural justice, if you apply the principles of fairness and transparency in public administration. I think all such hearings, all such remarks must be communicated to the concerned individual. I cannot be punished unless I know the reasons for the same. I ought to be informed before any action adverse is taken against me.

Interestingly, on medical confidentiality as well we have very interesting cases about what kind of information can be available vis-a-vis a patient and a doctor. Now we all know that as patients, you communicate information to the medical professional and you expect the medical professional to keep confidentiality of the same information. But kindly know while the doctor has access to certain information, he may have to breach that and communicate the information in case it is dealing with some epidemic diseases, or communicable or infectious diseases.

And hence you cannot claim confidentiality in such matters. I think in such cases the doctor has a duty to disclose to the district health officials or to the state health officials because only by that he will be able to control the disease. In all these cases you have noticed that communication becomes very very keen. I think different professionals and agencies must know when information can be kept as secret and when information need to be shared. It ought not to be shared in case it is vital for the community to know or it is in the interest of the individual.

So, that is the case that was there and the most popular case on this is on HIV AIDS itself. 'X' versus hospital 'Z' again you will notice in this case as well community interest was held to be overridden by individual interest and information disclosure was favoured by the court and the secrecy was overridden. We will come to the X versus hospital Z a little later in the course especially when we are talking about privacy and right to information. However, at this stage it is important just to gather this that I think community interest always overrides individual interest and information sharing is the rule rather than protecting the information otherwise.

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Right to Know and Article 21

- **R.P. Limited v. Proprietors, Indian Express Newspapers, Bombay, Pvt. Ltd. (1988) 4 S.C. 592**
- Supreme Court read into Article 21 the **right to know**.
- The issue involved was the issue of debentures by Reliance Petrochemicals and the right of newspaper to publish and print article on the debenture issue. It was contended that pre-stoppage of newspaper article or publication on matters of public importance was uncalled for and contrary to freedom of press enshrined in the Constitution and the laws; that public had a right to know about this issue of debentures which was a matter of public concern, and the newspapers had an obligation to inform.
- The Court ruled that people at large have a right to know in order to be able to take part in a participatory development in industrial life and democracy. **Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live** in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform.



This is again a case that displays right to know, especially vis-a-vis the private players or

private individuals and the Reliance Petro Chemical Limited versus Proprietors of Indian Express. The issue that was involved in this case was very interesting one. It involved the issue of debentures by Reliance Petro Chemicals. And the newspaper wanted to publish and print an article on debenture issues, because they wanted to enlighten citizens whether debenture is good or bad. Whether people should subscribe to Reliance debentures or not.

So, they wanted to educate the public about the pros and cons of debenture issues especially keeping the reliance debenture issue in the case study approach. So, they knew that the Reliance is coming up with the debentures, so they thought they would inform the citizens that this is what is coming, should you take or should not you take? Is what the newspaper was thinking to publish?

Interestingly, Reliance comes to know about this, and they go to the court seeking an injunction, they say “Please stop the newspaper from publishing such a news because if they publish it will affect our business interest, and probably citizens will not go about subscribing or prescribing to the debentures.” And hence, they said that “look this publication is not to be considered as a public interest publication, this should not be considered under the freedom of press and I do not think the public right to know is going to be affected adversely if there is a stoppage on the news publication as well.”

However, the court over ruled this and interestingly the court says that right to know is the basic human right. It is a part of right to life, if I have to live I have to know, so right to life under article 21 of the constitution enshrines the broader horizon of right to know. And it is important as a new dimension of new right that this is protected and this is granted and hence I do not think that the petition of reliance was appropriate. And they cannot probably ask for a pre stoppage of such information.

I think what they did was not right and the court rejected that contention, rather the court upheld the freedom of press to go ahead and publish, to educate, to bring about the critical, but fair and truthful perspective for the debentures and its issue so that the citizens can take

and informed decision, about whether they wish to invest in Reliance or whether they wish to stay out of it. This is exactly where trusteeship role is played by the press.

People trust the press to educate them, people believe that what is said in the media is true and hence there is a greater degree of responsibility on the media, greater degree of trust that is imposed on the media and the media is expected to fulfil that trust in an unbiased, fair, yet in a transparent and reasonable manner. So this interesting case of article 21 being invoked for right to know as being an essential part of life to right life.

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Comparative perspective



- In Japan in the case of Kaneko Japan 1969-the Supreme Court of Japan held that 'freedom to gather news for informational purposes as well as freedom to report must be accorded due respect under Art 21 of the Japanese Constitution.
- In Israel in the case of Shalit v Peres 1990 the Supreme Court held that ' there is a obligation to disclose which is entrenched in the public's right to know. In the freedom of speech and expression, additionally right to receive information' is provided for.
- Art 10 of the European Convention on Human Rights 1950 states that freedom to receive information includes the right to access to data held by intelligence agency.
- UNESCO's mandate in 1945 states that the organization shall 'promote the free flow of ideas by word and image.



Friends, before we conclude this module, there are few comparative perspectives on international and constitutional law will be apt and relevant over here. Let me just talk to you about a case in Japan, this is a case in 1969. This is Kaneko versus Japan, where the supreme court of Japan held that freedom of the press and that freedom to gather news for information purposes and the freedom to report is a part of Japanese constitution.

Interestingly, the Japanese constitution then under article 21 had the freedom of press, like we have under our Indian constitution under article 21 the right to life. So in this case again you will notice the Japanese Supreme Court retreat something that the Indian court also voiced as the freedom of the press. The freedom of information and the freedom to report the same. So,

the Japanese constitution and the Japanese Supreme Court also similarly echoed what the Indian court did at that point of time.

In 1990, an Israeli case also led the Israeli supreme court to disclose and state something like this. That said that is an obligation to disclose information that is relevant for the public to know. So, the public have the right to know and under the freedom of speech and expression additionally the supreme court of Israel says that additionally there is a right to receive this information. So, freedom of speech and expression has an additional right to receive this information and that receipt can be done only by the media and the press and the public have a right to know and that right can be only protected and ensured if information reaches the citizen directly.

Last but not the least, I am here citing article 10 of the European convention on human rights that was brought about in 1950. Article 10 states that the freedom to receive information includes the right to access data held by the intelligence agency. So, you will notice that intelligence agencies are not completely going to be excluded from the information mode, I think they are also responsible and accountable to share the information.

Interestingly, under the Right to Information Act even in India, right now we do not exclude intelligence agencies from the RTI regime at all. They will be responsible in two instances, but I think article 10 of the European Convention of Human Rights probably just reflects the same. What are the two instances when intelligence agencies will be accountable and share the information? Those are one corruption, so in case of corruption even intelligence agencies will not be excluded they have to share this information.

Second and more important human right violation. So, when intelligence agencies are the military or the police commit any human right violation they will be responsible to share the information, they will be responsible to be open, they will be responsible to be transparent. So, these two grounds still communicate the fact that the information or the freedom of application or the right to know do not exclude any agency, I think in the open government



nobody is free from disclosures. Everybody is included however with a few exceptions that can be put in place.

Finally UNESCO, this is a UN organization as we know, on culture and on science and this in its mandate of 1945 had said something like this that the organization should promote the free flow of ideas, by word and image. So, I think internationally, freedom of speech, freedom of expression and right to know have always been to point, into human rights. And you will notice that countries have always believed that this is an inalienable, basic inherent human right which cannot be done away with and I think it is the countries duty to actually protect and nurture and develop these rights as they go by in the developmental progress.

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Self Learning Questions

- 1. RTI is a 2nd generation right. True/false
- 2. Freedom of press is directly implicit into Art 21 of the Constitution of India. True/false
- 3. Civil Liberties of accused are protected under the Constitution of India. True/false
- 4. Media have under Art 19 (1) (a) Freedom to interview prisoners on death row. The same was decided in the case of _____

Finally friends, I will conclude this module by self-learning questions and I would expect you to answer the same. Let us start with the first one. RTI is a second generation right. True or false? The answer is false, it is a third generation right. Second: freedom of press is directly implicit into article 21 of the constitution of India true or false? False, it is directly implicit in article 19(1)(A).

Civil liberties of accused are protected under the constitution of India. True or false? It is true, it is protected under article 22. And through various case laws that we have already



analysed in this presentation including the Prabha Dutt case and the R. Raj Gopal case. So, the answer to question number 3 is true. 4. Media have under article 19(1)(A) freedom to interview prisoners on death row the same was decided in the case of? Prabha Dutt versus union of India, yes that is the case.

Fifth question: Lok Sabha secretary published the documents background to evolving national information policy in the year 1985. That is the right answer.


So, the self-learning questions on this slide have been answered by me. In the next slide they will be answered by you. I will not answer it but I will just go through it so that you can evaluate whether you have learnt it rightly or not.

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Self Learning Questions: contd.



- 6. Right to publish contrary view and rejoinder in public magazine was decided in the case of Indian Newspaper v UOI. True/false
- 7. 'In a Government of responsibilities 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.'-The above statement was made in the case of
 - A. State of UP v Raj Narain
 - B. SP Gupta v UOI
 - C. Bennet Coleman v UOI
 - D. Bombay Environmental Group v Pune Cantonment
- 8. Right to vote and right to know was stated in the case of ____
- 9. 170th Law Commission Report deals with right to information. True/false
- 10. Reasonable restriction of right to know are laid out in Art 19(1)(a). True/false



Sixth question is right to publish contrary views and rejoinder in public magazine was decided in the case of Indian Newspaper versus union of India, is it true or is it false? Question number 7, 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 the country have a right to know every public Act. Everything that is done in a public way, by their public functionaries. The above statement was made in the case of dash. It is quite a tough question.

I want you to probably find out, where this paragraph is quoted from, from which case? It is a very important statement, it says that the government which is responsible. Which is a democratic government, the agents of the public must be responsible for their conduct, there can be just a few secrets, there is a right to know, about everything that is done in a public way by the public functionaries that is exactly the statement that comes from this case.

So, this statement was made in which case was the question? I can give you two choices over here. One is the SP Gupta versus the Union of India case, is that the case where the judges did the same thing? Or it is any other case is what you should probably tell me. If it is not the SP Gupta case which is the other case, probably any case that we have decided way back in 1975, would you want to look into that case?

So, just check the first couple of cases, maybe the state of UP versus Raj Narayan, was it that case in which this paragraph was stated by the judges? So, that are the two choices you can come to the right answer. Let us go further I have the options here. State of UP versus Raj Narayan, SP Gupta versus UOI, Bennet Coleman versus UOI, and finally the Bombay environment versus the Pune Cantonment. So, around this 4 tell me which case was this paragraph taken from?

Eight one, right to vote and right to know was stated in the case of, two cases I think I discussed on the antecedent of election candidates one was 2002 case and one was 2003 case, both the cases were filed by the non-governmental organisations NGOs. I remember the association of democratic programs and UCA. So one of them decided to do it correctly. Right, so tell me which case.

Ninth, so tell me this one seventieth law commission report deals with the right to information true or false? The one seventieth law commission report delay with election reforms, it did not deal to the right to information. So, it is directly relevant to the election reforms that were relevant in reforming the Representation of the Peoples Act or the right to

know as to the antecedent of election candidates.

So, there was a contribution from the law commission of election about what kind of reforms are necessary in India as we progress in our democracy. So, the answer to the question number 9 is false. I am just leading. And the last question here is the reasonable restriction of right to know was laid out in Art 19(1)(A). This is something that you have to decide I will not be able to decide for you.

So, friends with these self-learning questions I think we kind of conclude module 2 on the constitution and right to know. I hope you have enjoyed this discussion. It has been an elaborate constitutional discussion about various cases and finally I think to sum up and conclude to your notice that the role of judiciary is immense in developing the right to know in India, in developing the right to jurisprudence in India. I think that lays down the clear foundation in the Right to Information Act of 2005.