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RIGHT TO INFORMATION AS A PART OF CONSTITUTIONAL RIGHTS: A CRITICAL ANALYSIS

Authored by - Neelam Jhajharia

INTRODUCTION

The Right to Information, being an aspect of the right to free speech and expression becomes the constitutional right and is derived from Article 19(1) (a) of the constitution which guarantees the fundamental rights to free speech and expression. However, in this paper the interrelation of Right to Information with other constitutional provisions is examined under following headings:

- Preamble and Right to information;
- Fundamental Rights and Right to information;
- DPSP and Right to information.

Preamble and Right to information

The Preamble to the Constitution declares -

“WE, THE PEOPLE OF INDIA having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR ,DEMOCRATIC REPUBLIC and to secure to all its citizens:

- *JUSTICE, social, economic and political;*
- *LIBERTY of thought, expression, belief, faith and worship;*
- *EQUALITY of status and of opportunity; and to promote among them all;*
- *FRATERNITY, assuring the dignity of the individual and the unity and integrity of the Nation; and*

IN OUR CONSTITUENT ASSEMBLY this twenty- sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES, THIS CONSTITUTION."

The fundamental lines of the Constitution's Preamble express the collective Indian mind on the subject of the Republic that is being founded. Justice, liberty, equality, fraternity, and respect for the worth of every person permeate every aspect of life in our independent and democratic republic. The people of India are the ultimate arbiters of the Republic's sovereignty. The Republic is a type of governance by the people, for the people, and based on the principles of democracy. Until the people of India are given a say in how their Republic is run, the Sovereignty and democracy would be useless. Lack of knowledge about the problems that influence one's life and society renders one's right to vote useless. False or biased information turns democracy into a farce.¹ The Indian people serve as guides for the governing bodies that make up the Republic. The public interest should be the driving force behind these organisations. The public has a right to know how these institutions work to ensure that they continue to uphold the public interest. Justification rests on the assumption that individuals know what they are owed and how to go about claiming those benefits. In a free society, people are allowed to speak their minds without fear of retribution. He is entitled to an open forum in which he can express his views, including those with which the government disagrees. Beliefs, religion, and worship of the person are not to be founded on fits of fanaticism but on freely pursued knowledge. Achieving status and opportunity parity requires that individuals be aware of the means at their disposal for doing so. Social interaction may foster camaraderie, but this, in turn, calls for unrestricted communication and open dialogue among people. When people are allowed to speak their minds freely and are treated with respect by those around them, the country as a whole is able to keep its dignity.

So, it is clear that the right to access information is established by the Constitution's Preamble.

Fundamental Rights and Right to Information

Human Rights in modern Bharat may be traced back to the Constitution of India, which is a landmark document in this noble area of law. To have a just social order blossom into existence in the fullness of time where the feeblest of the Indian fraternity shall have fulfilment, not frustration, the great vision of our founding fathers was influenced by the Charter of the United

¹ Secretary, Ministry of I & B Vs. Cricket Association of Bengal, (1995) 2 SCC 161

Nations (1945) and the Universal Declaration of Human Rights (1948). Where people's autonomy and democracy rule, and the State works to dry every tear it can. The Indian Constitution's Section III, which outlines the country's Fundamental Rights, is a manifestation of the founders' lofty ideals. Natural rights have been renamed as fundamental rights in the modern era.²

In *Maneka Gandhi Vs. UOI*³, the Hon'ble Supreme Court stated:

The Hon'ble Supreme Court wrote in the case Maneka Gandhi Vs. UOI : "The fundamental rights in Part III of the Constitution represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They establish negative responsibilities on the state not to infringe on individual liberty in its different aspects and create a "pattern of guarantee" on the foundation of human rights.

Articles in Part III of the Constitution dealing with diverse basic rights do not reflect fully independent streams of rights that do not overlap at numerous places," it was also mentioned. The Constitution treats them as interrelated components. For that massive, uninterrupted flow to occur, their streams must converge. equality (of status and of opportunity, which imply absence of unreasonable or unfair discrimination between individuals, groups, and classes), freedom (not just of thought, expression, belief, faith, and worship, but also of association, movement, vocation or occupation, and acquisition and possession of reasonable property), and fraternity (assuring dignity-of the individual and the unity of the nation).

Hence, 'liberty, equality, and fraternity' serve as the Constitution's overarching theme throughout Article III, which guarantees fundamental rights. On November 25th, 1949, in his final remarks to the Constituent Assembly, Dr. B. R. Ambedkar said:

There is no trinity to be formed out of the ideals of freedom, equality, and brotherhood. Together, they create a holy trinity, since separating any of the three would be antithetical to democratic ideals. Freedom and justice go hand in hand; you can't have one without the other. Freedom, equality, and justice are meaningless without brotherhood. Liberty would lead to the dominance of the few at the expense of the many if equality were not guaranteed. Without

² Golak Nath Vs. State of Punjab, AIR 1963 Sc 1643

³ AIR 1978 SC 597

freedom, equality would be destructive to initiative.”⁴

Right to equality under Article 14 of the Constitution aiding the Right to information

Equality is one of the magnificent corner-stones of Indian democracy⁵. It is a basic structure of the Constitution of India. Article 14 of the Constitution lays that –

“The state shall not deny to any person equality before the law or the equal protection of the law within the territory of India.”

Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. Every action of the state must be informed by reasons and guided by public interest. Actions uninformed by reason may be questioned as arbitrary. It follows, therefore, that every party affected by the decision has the right to be informed of the reasons for the same.

Further, with a view to control arbitrary action, the Courts have insisted upon the right of hearing before passing of administrative orders. In *Maneka Gandhi’s* case⁶, the Court held that –

“Even executive authorities when taking administrative action which involves any deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice”

In *Haji Abdool Shakoor & Co. Vs. UOI*⁷, it was held that –

“An order depriving a person of his civil right passed without affording him of an opportunity of being heard suffers from the vice of violation of natural justice and is thus an arbitrary

⁴ PREAMBLE, *The Spirit and Backbone of the Constitution of India*, Justice R. C. Lahoti, First Ed. Eastern Book Company, Lucknow, 2004, Page 94

⁵ THOMMEN J., in *Indra Sawhney Vs. UOI*, AIR 1993 SC 477

⁶ *Supra*, 7.

⁷ JT 2001 (10) SC 438

order.”

The right of impartial hearing again presupposes that the concerned party is informed of all the facts and issues that form the subject of enquiry.

Freedom of speech and expression guaranteed under Article 19 (1) (a) as the essence of Right to Information

The right to freedom of speech and expression has been regarded as a ‘basic human right’, ‘a natural right’. In *“Civil Liberties & Human Rights”* authored by **David Feldman**, the justification for freedom of expression has been stated in the following words -

“The liberty to express one’s self freely is important for a number of reasons. Firstly, self-expression is a significant instrument of freedom of conscience and self-fulfillment. Second justification concerns epistemology. Freedom of expression enables people to contribute to debates about social and moral values. The best way to find the best or truest theory or model of anything is to permit the widest possible range of ideas to circulate. Thirdly, the freedom of expression allows political discourse which is necessary in any country which aspires to democracy. And lastly, it facilitates artistic scholarly endeavors of all sorts.”⁸

The cornerstone of a democratic society is the right to freely express oneself. Democracy refers to a form of government in which power is vested in the hands of the governed. Until the people are educated about the social, political, economic, and other concerns they face, they will not be able to rule themselves effectively. They need access to many perspectives on the topics at hand so that they may reach an informed decision. To make an educated decision on such topics, to know what is in their actual interest and to preserve the same, they must have access to a wide range of perspectives, views, and ideas.

When we talk about free speech, we're talking about the right to spread ideas, to have conversations about controversial topics, and to challenge those views and those who hold them.

The freedom of expression and expression itself are regarded as fundamental human rights on

⁸ Quoted in Secretary, Ministry of Information & Broadcasting Vs. Cricket Association of Bengal & Anr. 1995 AIR 1236

a global scale. "Freedom of information is a basic human right and... the touchstone of all the freedoms to which the United Nations is committed," the UN General Assembly stated at its very first session in 1946."⁹

In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. Article 19 (1) (a) of the Constitution guarantees that

"All citizens shall have the right to freedom of speech and expression"

Speaking about the significance of freedom of speech and expression, in *Maneka Gandhi Vs. Union of India*¹⁰, **BHAGWATI J.** stated -

"Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential"

Over the years, the Courts in India have authoritatively interpreted the freedom of free speech and expression to ensure and protect the fundamental rights of the citizens from encroachment in various situations as also to guard against an unfettered freedom.

In *Bennett Coleman & Co. & Ors. Vs. Union of India & Ors.*¹¹, the Court held -

"Although Art. 19(1) (a) does not mention the freedom of the Press, it is the settled view of this Court that freedom of speech and expression includes freedom of the Press and circulation. The Press has the right of free propagation and free circulation without any previous restraint on publication."

Underlining the importance of the freedom of press in democratic society, the Court, in *Indian Express Newspapers (Bombay) Private Limited & Ors. Vs. Union of India & Ors.*¹², stated that-

⁹ Resolution 59(1), 14 December 1946

¹⁰ *Supra*, 7

¹¹ AIR 1973 SC 106

¹² AIR 1986 SC 515

'Freedom of press is the heart of social and political. Intercourse.....The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.....'

It was observed that –

'The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect 'themselves'.

A very important aspect of 'freedom of speech and expression' is seen in the judicial exposition of its scope by the Courts recognizing the right to know as part of thereof. In its various judicial pronouncements, the Hon'ble Supreme Court has interpreted and held the freedom of speech as involving not only communication, but also receipt, of information and that the right to receive information springs from the right to freedom of speech and expression. The Court has time and again recognized the right to know as a basic right of the citizens of a free country and added multiple dimensions to it.

In *State of U.P. V. Raj Narain*¹³, **MATHEW J.** observed -

"In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security... They (the public) are entitled to know the particulars of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine.

¹³ AIR 1975 SC 875

The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.

In *S. P. Gupta V. Union of India*¹⁴, **BHAGWATI J.** observed-

“The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception.....No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy....”

The above two decisions are regarded as landmarks in the judicial discourse of right to information to its present form. The later decisions of the Court fortified the legal and constitutional status of this right, which grew from strength to strength in every case and finally in the case of *People’s Union of Civil Liberties & Anr. V. Union of India & Ors.*¹⁵, it was clearly held to be a fundamental right. The said various decisions have already been dealt in detail in chapter II and clearly establish the right to information as an important facet of the right to freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution.

Fundamental right to life and personal liberty under Article 21 promotes right to information.

Article 21 assures to every person the right to life and personal liberty. It lays down that –

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 21 is regarded as the heart of fundamental rights¹⁶. According to **BHAGWATI J.**,

¹⁴ AIR 1982 SC 149

¹⁵ AIR 2004 SC 1442

¹⁶ Unni Krishnan Vs. State of Andhra Pradesh, AIR 1993 SC 2178

Article 21 “embodies a constitutional value of supreme importance in a democratic society.”¹⁷

Iyer J., has characterized Article 21 as “the procedural magna carta protective of life and liberty.”¹⁸

Article 21 uses three crucial expressions, viz. ‘life’, ‘personal liberty’ and ‘procedure’.

In *Chameli Singh Vs. State of Uttar Pradesh*¹⁹, the Hon’ble Court observed -

“In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society...”

The expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights, which go to constitute the personal liberty of man.²⁰ It includes the right of a detenu to socialize with family members and friends as well as to have interviews with friends.²¹

As is clear from the above judgments, the matrix of right to live and personal liberty, invariably, includes all that, which is necessary for a just human existence, viz. the right to expression of the human self, social interaction and education, the right to live with human dignity, the right to food, clean water, shelter, decent environment all presuppose a **flow of information** necessary to make a person aware about the various entitlements and enables him to realize the same. This is where the right to information becomes relevant.

The judgment of the Hon’ble Supreme Court in the case of *Reliance Petrochemicals Ltd. V. Indian Express Newspapers*²², is pertinent in the above regards. The case is related to the issue of freedom of press and fair trial. The Court interpreted the right as within the realm of right to live under Article 21. It observed -

¹⁷ Francis Coralie Vs. Administrator, Union Territory of Delhi, AIR 1981 SC 746

¹⁸ P.S.R. Sadhanantham Vs. Arunachalam, AIR 1980 SC 856

¹⁹ AIR 1996 SC 1051

²⁰ *Supra*, 7

²¹ *Supra*, 46

²² AIR 1989 SC 190

*“We must remember that the people at large have **a right to know** in order to be able to take part in a participatory development in the industrial life and democracy. Right to Know is a basic right which 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.”*

Article 21 envisages a fair trial, a fair procedure and a fair investigation,²³ which again presupposes that the accused must be fully informed of the case against him, the reasons of his indictment and the fundamental and statutory rights to his avail. Thus, we see that the right to information is a necessary corollary to the right to live and personal liberty.

Right to information in Article 22 of the Constitution

Article 22 provides for protection against arrest and detention in certain cases and gives right to information to detained persons. Article 22(1) lays that –

“No person who is arrested shall be detained in custody without being informed, as soon as may be of grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.”

Article 22(5) lays that –

“When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

Right to constitutional remedies under Article 32 of the Constitution safeguarding the right to information.

Article 32(1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of the fundamental rights enumerated in the Constitution. Underlining the

²³ Jayendra Vishnu Thakur Vs. State of Maharashtra, (2009) 7 SCC 104

significance of Article 32, **GAJENDRAGADKAR J.**, observed²⁴ that –

“The Fundamental Right to move to this Court can therefore be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should regard itself ‘as the protector and guarantor of Fundamental Rights’ and should declare that “it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights....In discharging the duties assigned to it, this Court has to play the role of ‘sentinel on the qui vive’ and it must always regard it as its solemn duty to protect the said Fundamental Rights ‘zealously and vigilantly’.”

So far as regards the relationship between Article 32 and right to information is concerned, it is very obvious that the Supreme Court has elevated the right to information to the status of fundamental right as such in cases of violation of such right a person can have recourse to the Supreme Court under Article 32.

Further, it is settled that in cases where the action taken by a quasi-judicial body is procedurally ultra vires, for example, when principles of natural justice are infringed²⁵ as for instance it fails to inform the person against whom an order to his prejudice may be passed about the charges against him or fails to give the reasons for the decision arrived at against him, in such cases, the person aggrieved can take recourse to Supreme Court under Article 32 against the same.

Thus Article 32 acts as the savior of the right to information.

Directive Principles of State Policy and right to information

A very relevant aspect of the right to information can be seen as reflecting in the directive principles of state policy enshrined in Article 51 in Part IV of the Constitution, which lays as under –

“Promotion of international Peace and Security.- The State shall endeavor to—

- a) promote international peace and security;*
- b) maintain just and honorable relations between nations;*

²⁴ Prem Chand Garg Vs. Excise Commissioner, U.P., AIR 1963 SC 996

²⁵ Coffee Board Vs. Jt. Commercial Tax Officer, AIR 1971 SC 870

- c) *foster respect for international law and treaty obligations in the dealings of organized people with one another; and*
- d) *encourage settlement of international dispute by arbitration.*”

Now, India is a signatory to the Universal Declaration of Human Rights (‘UDHR’), 1948. Article 19 of UDHR lays that –

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

As a party to these obligations, India is under an international obligation to effectively guarantee the right to information. Article 51 (c) directs the State to foster respect for international laws and treaty obligations. This casts a duty upon the Government of India to create suitable conditions to implement international laws and obligations with respect to the right to information in conformity with Article 19 of the UDHR.

Conclusion

The right to information is grounded on other constitutional articles such as Articles 14, 21, 22, 32, and 51, even though it is derived from Article 19(1)(a) of the constitution, which guarantees the basic rights to free speech and expression. The Supreme Court has often upheld this in a wide range of circumstances.