

Right to Information and Good Governance

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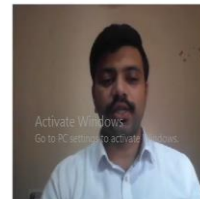
Lecture No. 14

Legislating the Right to Information: Background and Challenges – IV

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Judicial Exposition & Contribution to Right to Information

- Article 19
- *S.P. Gupta v. Union of India* [1981 SC]
- *Mr. Kulwal v. Jaipur Municipal Corporation* [1986 SC]
- *Reliance Petrochemicals Ltd v. Proprietors Of Indian Express* [1988 SC]
- *Union of India v. Association for Democratic reforms and another* [2001 SC]
- *PUCL v. Union of India*[2003 SC]



The next case for discussion is Reliance Petrochemicals versus Proprietors of Indian Express. In the matter it arose that Reliance Petrochemicals had taken the consent of the then controller of securities for the issue of compulsory convertible debentures. It so happened that this particular consent that was given by the controller of capital issues and securities was actually opted by the media.

Reliance was successful in getting an injunction against all these media personnel from making any publication on the questions of the validity of the order passed by the controller. However, that did not stop the media from publishing information about the debenture issues. Challenging the particular actions of the media personnel, Reliance Petrochemicals questioned it to be something that affected the contempt of court.

As the order of the court had given a across a prohibition from disseminating information on the validity of these issues. It is pertinent to note here that the court took then close scrutiny of the articles that are published in the newspaper. It was opined by the court that the articles published did not pertain to the validity of the order passed by the controller but rather had given information

about the issues of debentures to the public.

It was observed that the stoppage of these newspaper articles would affect the public interest and it would be uncalled for an contrary freedom of press enshrined in the constitution. It was further opined that the public had the right to know about the issues of debentures as it was a matter of public concern. And the newspaper had an obligation to inform. As such the same article was allowed to be published on strict terms.

The court held conclusively that the right to know is a basic right which the citizens of the free country aspire in the broader horizons of the right to live in this age in our land under article 21 of the constitution. As such, the right to know becomes an integral part of the fundamental rights guaranteed in part three of the constitution.

The next case pertains to Union of India versus Association for Democratic Reforms and another. In this matter a petition was filed by the petitioner which was an association wherein they had sought to make the electoral process transparent and equitable. It was the consent of the petitioner that the recommendation of the law commission in its hundred and seventieth report were to be made mandatory for us to ensure a free and fair election.

The Delhi High Court had mandated that the recommendations be fulfilled. However on appeal, in a bid to challenge the order of Delhi High Court, the matter arose before the Supreme Court. Amidst dire arguments the Supreme Court of India upheld the High Court's order mandating that the election commission is required to obtain and disclose the public background information relating to the candidates who were standing for elections.

Including the information on their assets, their criminal records, and educational background, all of which was necessary for the public to have a free dissemination of information about who they will be exercising the right to vote. It is in light of the fact that having information about the candidates that they are voting for would give the opportunity to the public to make an informed decision, was the soul genesis of the decision.

It was observed by the court that the citizens have the right to know about public functionalities which is derived from the concept of the freedom of speech and expression and which inherently includes the right to know about the backgrounds of the candidates for a public office. It was further opined that the right to know is the right derived from the right to freedom of speech and

expression.

The public has the right to know about the candidates contesting elections because such rights include the right to hold opinions and acquire information as to be sufficiently informed in forming and disseminating those opinions through the election process. The court advances the point by observing that a successful democracy strives towards an aware citizen and misinformation or non information of any kind will create an uninformed citizenry which makes democracy a farce.

Following the decision of Supreme Court in Union of India versus Association of the democratic reforms, it was felt necessary that there is a requirement for the change in 1951 legislation for the Representation of Peoples Act. Consequently, few sections were introduced such as section 33A, 33B. So, as to allow for dissemination of information.

It was provided under section 33B that the candidate is required to furnish information only that is required as per the representation of peoples act of 1951 and its rules. It so happened that the very content of section 33B became a matter of challenge in People's Union of Civil Liberties versus Union of India. In this case the petitioners challenged the validity of section 33B of the Representation of People's Act of 91 wherein it provided that notwithstanding a judgment or order of the court or the election commission and electoral candidate is not bound to disclose any information apart from what is required under the act.

This decision is pertinent to understand as to the scope of right to information of every citizen. To what extent can the right to know of a citizen be allowed for this particular matter that came up as a contention in this court. It was observed by the liberal approach with disclosure of information about an electoral candidate although desirable but the same compulsion to a person to disclose personal information would affect such a person's privacy.

It is pertinent to draw a line between the voter's right and the candidate's privacy. The legislature should apply its mind and lay down a criteria as to what information must be disclosed. The judgment of the Supreme Court in the Union of India was to apply as long as the legislatures had supplied their mind and created this criteria. A criteria being set in section 33A allows for disclosure of the criminal background and the assets and liabilities of their spouses and children but however, does not allow for disclosure of the education qualifications of the person.

On these facets, the court struck down section 33B of the Representation of People's Act 1951

stating that the possibility of nullifying a judicial order on judgment requiring disclosure of information is something that should be held as unconstitutional. And secondly, the right to information being a dynamic right should not be curtailed but rather should be grown. It also further held as stated earlier that it did not allow for disclosure of information on the criminal background of the candidates and the assets and liabilities of the spouses and children.

So, as such, non providing educational qualifications it cannot be said to be violative of the fundamental right to freedom of speech and expression. So, as such it is pertinent to understand that the privacy proceeds over the right to know of an individual. So, the right to privacy vis-à-vis the right to freedom of speech and expression which inculcates the right to information are aspects that would have a conundrum. With the discussion of these above cases we have understood as to how the judicial exposition on the matter of the right to information and how the judiciary has shaped the right wherein it was non-existent by an Act of the legislature.

One may wonder as to what is the necessity of discussion of these judicial expositions. It is to be noted that article 141 of the constitution of India provides that law declared by the Supreme Court to be binding on all courts which are subordinate to it. This is the matter which is covered under the law of precedents. So, as such whatever judgment or order that is passed by the Supreme Court becomes the law of the land. As such right to information was a right that was pre existential to its legislative form by way of judicial decisions.