

Right to Information and Good Governance
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Lecture No. 07
Constitution and Judicial perspective on RTI

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**Constitution of India and the Right
to Know**

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Right to know is nothing but another way of looking at right to information. You want to know is something of a curiosity, something that is a need of human being to know and understand so that they can appreciate what has been done and hence, in very democratic institution, you will know that governed is made by the people and hence the real power of any democracy is within its people and if you look at the preamble of Indian constitution, we all know that it starts with the words we the people.

It means we the people have given this constitution to ourselves and it is a country, it is a government that we have chosen and we think this is something that is good for us and hence finally it is a people that are sovereign, the people that are supreme and the government is just

made to organize and believe in people's interest. And hence it is a people that appoint the government, it is a people that dismiss them and obviously it is in the people's interest that any government of the day shares the information that it is required by its people.

So, the accountability finally is taken by the people and the community and by society and hence every government must be answerable to what the people need and demand to know and think this is one of the most important principles that courts have termed and again insisted upon and have actually looked at administering through various decisions when it came before them.

I think when government does any function in a democracy, every function that the government does has to be tested on what is good for its people and what is not good for its people? And hence I believe that every action and reaction of the government should be tested on the public interest or the public purpose test. Which means if any action or omissions is not serving public interest, does not serve in the best interest of the people of this country then those actions and omissions can be neglected and held to be unconstitutional and the constitutional test of every action in India becomes the most test.

Which means does it benefit the people, is it in larger community interest and do to the people of this nation want that thing to happen or do not they want that thing to happen? I think this is where the constitutional test of rights, the constitutional test of duties, the constitutional test of what is good or bad is always something that we are all keenly observing especially in democratic system like ours.

It should also be noted that courts have been established in the constitution and hence we say that Supreme Court and High Court are the constitutional courts, it is because of the fact that the constitution actually creates them and constitution also empowers them so they are constitutional courts in the sense that they have the power to interpret the constitution.

They have power to actually say what or how to read the constitution and what does the constitution look in reality or in practice? It is also important to note and understand that if you go by article 141 and 142 of the Constitution of India, we should come to this conclusion that the Supreme Court, when it says something in its terms of judgments, directions and orders, it is considered the law of the land.

So, the Supreme Court is empowered by the constitution to lay the law, to state the law, to interpret the law and that becomes a final basis on which we understand how rule of law plays in this country. And hence what the Supreme Court would ordinarily do is to check governed actions, to check government institution and to see whether they have acted in public interest and whether they have not acted in public interest.

And what is a public interest test? The public interest test is obviously the fact that does it serve the people of this country, is it good or in the best interest of the people of this country? If it is yes, it is constitutional, if it is no, it is unconstitutional.

The two major institutes of governance in India are the parliament and the state legislators. Especially when I look at state representatives who actually are supposed to make the law for its citizens, the constitution promises its people free and fare election because obviously you need to have a vibrant democracy in this country and vibrant democracy can only come to existence if there is free and fare elections

And hence I think over a period of time, in India, we have successfully been able to protect the institution of elections and try and ensure that India has free and fare elections in the sense that those who are in the legislator, both either at the state or the center are actually representing the people's mandate.

They represent people's aspiration, they represent what the people look forward to in terms of the law that can be made to govern them and hence the constitution also protects the institution of the legislator, it actually means the legislator autonomous and independent, it lays down those processes in which legislator can be brought into the place. Finally please note the parliament and the legislator are then there by accountable to the people at large.

And hence when you are talking about good governance, it is not only about a robust judiciary that is being aspired for, it is also an independent, autonomous, fair legislative body that one aspires for in terms of creation through the principles laid down in the constitution of India. And hence, armed with information, the citizens are capable of participating the process of government, decision making and policy formulation and hence it is very important that once the information is granted to the citizens, they are capable of demanding the right answers, they are capable of asking the reasons for decision making.

I think in a true democracy, unless people have been empowered to ask the right and relevant questions, unless people are informed why a decision is being taken, I do not think a democracy will survive over a period of time. Democracy is based on the continuous communication that flows from the government to its people. It flows from the fact that in a democracy, the citizen can demand accountability from the government and the government has to answer to the interest of the citizen.

So this is like a two flow method. It is a flow of information which actually bridges the gap between the government and the governing. It bridges the gap of communication that is required. It actually builds a about a trust in the government that actually gets a power to rule on its citizen and hence I think the constitution is governing the law between the government and its citizens.

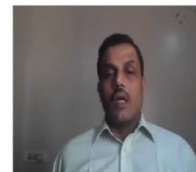
And the constitution is that document that lays down that fundamental norm, that fundamental law and without the constitution, I do not think that government and its citizen can move any fair foul because that is the fundamental document, the fundamental law that governs the principle, the relationship between the two institutions.

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Importance of Right to Know in the Democracy



- In a democracy sovereignty lies in the people. People appoint governments and dismiss them.
- Constitution of India was adopted and enacted in the name of 'We the people of India.' Everything to be tested on the basis of what Serves the people of this country.
- The two major institutions of governance, namely the Parliament and the State legislatures, are constituted by representatives of the people and are elected through "free and fair" elections. The legislatures and the governments are made of the representatives of the people.
- Armed with information the citizens are capable of participating in the process of government decision making and policy formulation, thereby adhering to the true meaning of a democracy. 'reason's for decision making.



Right to know is nothing but another way of looking at right to information. You want to know is something of a curiosity, something that is a need of human beings to know and understand so that they can appreciate what has been done and hence, in very democratic institution, you will know that governed is made by the people and hence the real power of any democracy is within its people and if you look at the preamble of Indian constitution, we all know that it starts with the words "we the people".

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And the constitution is that document that lays down that fundamental norm, that fundamental law and without the constitution, I do not think that government and its citizen can move any way forward because that is the fundamental document, the fundamental law that governs the principle, the relationship between the two institutions.

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Constitutional Entitlement to the Right to Know



- Post-independent India has a liberal democratic political system, a written Constitution that incorporates the rule of law, social justice development, adult franchise, periodic elections, and multiparty system.
- These rights have received dynamic interpretation by the Supreme Court over the years and can be the basis for the development of the Rule of Law in India. Of these are the Right to Freedom of Speech and Expression, Art 19(1), and the Right to Life, Art 21, and the Right to Constitutional Remedies, Art 32.
- No specific right to information in the Constitution of India, but the right has been read in to these Constitutional guarantees, primarily the Right to Freedom of Speech and Expression.
- Generation of rights as pronounced by the courts
 - 1st generation: Civil and Political
 - 2nd generation: Economic and Cultural and social
 - 3rd generation: Environmental, consumer and informational



The constitutional entitlement to the right to know has been there for quite some time, however the right to know obviously came about after we received independence. Prior to independence, we had a colonial government, it was not the government of the people and hence, probably we least expected a British Colonial Government to actually share information with the people of India.

However post independence when we adopted the parliamentary system of democracy, we did realize that it is the people who would have finally created the system of law, have adopted the constitution and have gone about the rule of law and the social justice platform that was necessary for our country to actually grow about.

And hence having chosen the kind of government, having chosen the kind of development, the social justice development model, I think people of this country laid the path to what the government must do and what the government need not do. I think it was a choice that our founding fathers who adopted the constitution and who adopted constitution principle were

clearly given that option. So, post independence, I think we decided what kind of law, what kind of development we actually wanted to do.

And I think it was very important that when we developed this kind of democratic principle, we must have adopted a principle where the government could be held accountable to its people. And hence the kind of post independent India, the liberal independent India that we are speaking about believes in government that is vocal, believes in a government that respects the rights of its citizens, believes in performing its duties under the rule of law principle, believes in the equality of the system, believes that it is important that overall development especially social, cultural and economic must be the basis on which the government goes about its daily functions.

And hence, I think the constitution is a reflection of those aspirations. The aspiration of the forefathers that was there and adopted in the year 1950 as we came from the colonial rule into independent rule but also in terms of the fact that it was an aspiration that is continuous and hence you do not expect the constitution to be a static document. You expect the constitution to reflect the aspiration of every generation, you expect the constitution to be a dynamic document and hence what was adopted in 1950 need not be the same.

Basically the basic structure of the constitution continues to be same, that cannot be changed. However I think the aspiration of every generation gets reflected in the way the constitution is adopted, the constitution is interpreted. And hence the principle rule of constitutionalism or how the constitution works actually reflects the current generation. The millennium generation has different aspirations from the constitution and hence if I look at the new aspiration of the current generation, I think the constitution is actually is the reflection of the same and right to know is probably the new aspiration that we require in this current generation.

The Supreme Court of India, the apex court or what we call as the final authority on the

constitution over the years has been continuously developing the rule of law. Now what is rule of law? Say, it means that law needs to be administered as it is and it cannot change to who it is. So it is not rule by men, it is rule by law.

And hence when I talk about rule of law in India, it means the law must be equally applicable to all citizens and hence it is important that discretion or administrative orders must not be arbitrary, unfair or unreasonable and hence whenever governments of the day turn out to be arbitrary, unfair or unreasonable then obviously you cannot have a surviving democracy, you will have a system which is exploitative in nature and probably results in more violence and not peace.

In India, I think over the period of time, the rule of law on freedom of information or freedom of speech and expression as we talk about in article 19, as we know the constitution of India divides its parts into articles and article 19 is a sectioned in part 3 of the constitution. Part 3 talks about fundamental rights and article 19 is a part of that and article 19 has several freedoms. There are freedoms of speech, expression, movement of association, so on and so forth and freedom of speech and expression is the first freedom that is enshrined in this article.

Free speech is an important aspect of a human being. A human being aspires to express, a human being wants to speak, this is part of his freedom and this is enshrined in the constitution, it is a privilege that is given to you. However please note that this is not an absolute privilege and under article 19 (2), there are reasonable restrictions on free speech as well. However, one needs this kind of a freedom.

Then you have right to life as enshrined in article 21 of the constitution which probably is the most dynamic article. Right to life has meant or interpreted to mean so many different facets including right to education, right to clean and healthy environment, right to health, so on and so forth. And the third most important aspect for our discussion under this course is article 32 which

talks about the right of every citizen to approach the supreme court of India for the infringement of his or her fundamental right.

The constitutional remedies are very important because it protects fundamental rights to an extent that a citizen need not go to different other forums for adjudication office, infringement of rights but can reach the Supreme Court which is the apex court to actually look at the adjudication of those kinds of infringement of his rights. These are well known provisions in the constitution. They only add impetus for our understanding of the course on right to information.

As I told you previously, when you look at the constitution of India, information is not listed in the Seventh Schedule, it is not a subject that is defined or not allotted either to the state or the center and hence it is one of those that are residuary in nature which is not mentioned. And hence the state or the central government had an option to bring such a law which can be then part of the freedom of speech and expression.

And hence when freedom of speech and expression becomes a constitutional guarantee, I think there are several rights under the freedom of speech and expression that actually are necessitated to actually make the freedom of speech and expression a reality and one of those rights which contribute to freedom of speech and expression is the right to know. Interestingly, when we look at the genesis or the growth of rights as we call them over a period of time, say over a period of past 70 to 80 years, I think rights have just grown and every generation has its own emphasis on these rights. If I look at it, our founding fathers aspired for certain kinds of rights.

Then our fathers had aspired for different kinds of rights and currently the new generation aspires for different kinds of rights because that is what growth of rights theory actually contributes to. So, rights do not remain static. So there is a different aspiration, there is a different requirement to actually experience rights as we move forward, as we grow as a

community, as a legal system and as a country. And hence just to give you an idea about generation of rights as we have seen and as it has grown, let us just look at those kinds of generation of rights that came by.

The first generation of rights that we fought for or for which our forefathers really struggled and they wanted to experience this as a very important kind of a development of their own contribution, they are civil and political rights. I think when the constitution was adopted when we got independence from British, I think the first thing that we did was to get political autonomy and political independence. I think this is very important. We wanted civil rights, civil liberties. Those that are probably in terms of arrest, detention, bail, the right to be produced before a magistrate within 24 hours.

The basic aspects which dealt with how the state can actually infringe my liberties. What are the grounds, what are the fair rules? I think the civil and political rights were the first generation of rights for which we as a nation, we as a society actually went about aspiring for. The second generation of rights which means once we have achieved civil and political rights, once we have experienced civil and political rights which means we have experienced a democratic polity, we have experienced civil liberties, we know when the state can deny your liberties and on what rule of law?

I think then we went about experiencing the economic, cultural and social rights. This is called the second generation of rights where we wanted social development, where we wanted to experience our cultural rights. Cultural rights could be in terms of my art, my expression, my drama, my production of a film. It could be a culture in the form of dance, it could be any other form where I would want to speak, criticize, economic development, my right to do business, my right to flourish, my right to export, my right to move across not only in India but across the words.

So, all of these became our priority as second generation rights. So, once civil and political rights were achieved, I think India started aspiring for economic, cultural and social rights but I think the supreme court from time to time did try and delve on these rights and granted to its citizens by interpreting the constitution to reflect the aspirations of that generation to give the second generation right.

The third generation right are those rights that were in relation to consumer rights where the consumer fought for making the manufacturer accountable, liable. I think that was the third generation right that citizens in India as consumers demanded and aspired for. We also demanded for environmental rights where we wanted clean water, clean air, we wanted the state to actually control or regulate business so that your right to health, your right to the environment is not damaged but I think that third generation of right became very critical as we moved in the liberalization era post 1991.

And finally if you look and add in the third generation era is the informational rights. I think informational rights are very critical to holding the government accountable and right to information only means today in the digital era, I am seeking information at my fingertips on my phone, on my laptop through the internet and I will probably get this information free of cost.

Informational rights have a huge mandate, they are of huge magnitude and you will notice that informational rights also include privacy, it includes data protection and so on and so forth. However for our course, we are looking at informational rights as being the right to know. The right to knowledge, the right to seek information, right to receive and right to transmit the same information across frontiers and beyond borders.

That third generation of rights is something that the millennium generation has fought for, has aspired for and that is something that the Supreme Court from time to time, right from 1975 if I

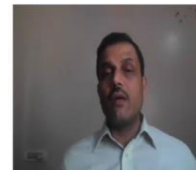
am not mistaken, has granted to its citizens and continues to grant the same through the statutory enactment of the Right to Information Act, 2005.

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Freedom of Speech: Judicial pronouncements on right to know



- In **Bennett Coleman v. Union of India (1972) 2 SCC 788**, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19(1)(a) not only for the freedom of press but also for the benefit of the public.
- It also observed that the **right to know is implicit in the right to free speech and expression**. Disclosure of information regarding the business of the government is a must.
- The Court struck down the newsprint control order [restriction on acquisition, sale and consumption] saying that it directly interfered with the publishing house's right to freely publish and circulate the newspaper.
- The court observed that it is indisputable that freedom of press meant the right of all citizens to *speak, publish and express their views* and freedom of speech includes within its purview the right of all citizens to read and be informed.



Let us now look at the judicial pronouncements on the right to know, what we are trying to understand friends, is the constitutional history on the right to know. What the supreme court said before 2005, how did the supreme court contribute to the domain of right to know, how did it take it forward? What are all the challenges that India faced?

And please note, some of the pronouncement that we see right now in terms of right to know, not some but I think almost all have great implication in understanding the Right to Information Act of 2005 because the constitutional interpretation finally is the best interpretation. It is having the precedence of law, it actually governs the manner and method in which the right to information is now administered.

So, the constitutional basis on right to know becomes the foundation to how the right to information act is being implemented in the current state and hence, we ought to understand the

judiciary's involvement, the judiciary's contribution which I think has been very significant, which I think is very prominent and let us try and look at how the freedom of speech contributed to right to know and how did the judiciary come about its business on the same.

The first and the foremost is that you would have to highlight here is this Bennett Coleman versus Union of India case. Now this case is critical because Bennett Coleman as we all know is a newspaper agency, it is a journalistic, journalism company. The Times of India is a major contribution from Bennett Coleman. Apart from that, I think they have gone into visual media right now as well.

Way back in 1972, they had petitioned to the court on whether article 19 (1) (a) is something that is granted to only an individual or can it be granted to the public or to the press? Friends, I think what is relevant and important for us to understand is, there are rights that can be given to individuals but most of the rights can also be exercised collectively as a group. And I think when the Supreme Court was deciding whether the press have certain freedoms because generally when the press exposes a political party or political person, they naturally get threats.

They feel that their expression is curtailed. To what extent can the press go about writing about individuals? Because remember when we talk about the colonial law that is still relevant and important in India, we also talk about the law on defamation? So, very often not if you report about an individual, they immediately target you with the suit under which they say that you have defamed me and hence you should be liable to pay compensation.

So, the press was literally kind of fearing the defamation suits and they did not know to what extent they can go about writing about individuals, about politicians, about political parties and to what extent their freedom of expression in the media, in the press is to be protected on the constitution. So, the Bennett Coleman case probably is one of the starting features on defining

the freedom of the press as the supreme court wanted it to be defined under article 19 (1) (a).

Now, we all know that the press has a public function. The press informs the people. The press gives information to the public and hence what the press does I would assume, does for the benefit of the people and hence, when the press is acting in public interest for public benefit, I think it is important for the court and the constitution to protect this institution.

It is important for the court to give independence, autonomy to this institution so that when finally the information through the press reaches the public, it is fair information. It is not biased information. It is not something that is instigative, it is not something that is fabricated. It is not something that unnecessarily infuriates the public rather it feeds the public with the necessary information as necessary in public interest.

Now in Bennett Coleman, it was observed that the right to know is implicit. So, explicit means something that is written, implicit means something that is read into into the right of freedom of speech and expression and hence, when the press is trying to enshrine, trying to communicate, trying to reach to know to the public, it is duty of the government to protect that kind of institution called the Press freedom.

And hence, in this case, you will notice that the government should try and help the press, the government should be more vocal, the government should address the press with the necessary information so that the press then communicates that necessary information as authentic information to the public. But if the government does not share the information with the public, the press will have to probably imagine about the information and when they imagine about this information, when they actually try and construct this information, then that information becomes distorted.

And hence, I think what the court said in this case is, it is a duty of the government to share and disclose this information about what the government does. So it is the duty of the government to actually, it must be one of its business in terms of having what is known as Press Bureau Information or someplace where authentic information of the government is relayed to the press and the same is then relayed by the press to the citizens.

So, this is something that the court did recognize in the Bennett Coleman case and for that, the court said that if the government comes up with an order that either restricts or diminishes the freedom of the press then such a law may actually be not in public interest. And hence, the News Print Control Order that was made by the government wherein they wanted to control the kind of paper that was consumed, the kind of sale that was being done, the kind of consumption that newspapers were doing.

Somewhere the court felt and suspected that the fact that the government wants to control the media and hence, they actually wanted to control how much of sale or how much of distribution is happening about news prints. They wanted to actually bring this under some kind of control order. The court said “Unfortunately such a control order is against public interest, it, is unconstitutional. It infringes the printing house’s right to freely publish and circulate the newspaper and hence, freedom of the press becomes an implicit part of freedom of speech and expression of not only individuals but the collective institution called a press.”

So the Court struck down the News Print Control Order, they said it is not constitutional and they said that this control order cannot control the print media as well. Finally what did the court hold in this case? They said it is indisputable that the freedom of the press meant the right of all citizens. so what the press is? Press is just a reflection of society and citizens to speak, publish and express their views and the freedom of speech includes within its purview the right of all citizens to read and to be informed.

I think it is important to note here when I talk about freedom of speech, it is not only to speak but also to publish and express my views and where can I publish and express my views, in those days, in 1972, please note the only platform on which I could publish and express my views was the print media, was the newspaper. And hence the freedom of speech, if it has to be expressed, it has to be expressed in the newspaper, that platform needs protection, that platform cannot be regulated and controlled by the government unless it was necessary to do so.

That is what the Bennett Coleman case actually spoke about and I think it laid the foundation for freedom of press as we know under article 19.