

# THE TRUTH IS OUT THERE.... A CRITICAL EVALUATION OF THE RIGHT TO INFORMATION

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“And ye shall know the truth  
And the truth shall make you free.”

John 8:32

The quest for the Truth has fascinated human beings since time immemorial, since they first looked up at the night sky and wondered, asked questions and sought their answers. From Biblical times to the era of the Communications Satellite and Internet, this desire for knowledge has remained an intrinsic part of human nature. After all, human are social and communication is what lies at the heart of all social intercourse.

Thus today we talk of an information revolution and information being the currency of the future. This being the case, it is patently necessary to ensure that a guarantee or right to information be granted to the citizens of a State, especially in this context.

However it is entirely justified if one pauses at this juncture and asks the question - although this may be noble principle, why is it so important to 'Me' as an individual?"

## ***CHOICE: THE HEART OF A DEMOCRACY***

To answer this question, one must look at the structure of the Nation-States as it exists today. The dominant paradigm for contemporary Nation-States is a “Euro-export” model of a liberal democracy and is centered around the concept of choice. Yet one must be in the best possible position to choose before he or she makes that decision and this is where the right to information steps in - whenever it is “allowed” to. It enables an individual to be in a better position to judge affairs both at the national and international levels and voice his or her opinion in affairs that will inevitably affect the quality of life. So it is essential that information be allowed to flow and be received to ensure that the neural network of a democracy stays healthy, dynamic and progressive.

It has been said that “Knowledge is Power”. However, one must not forget that “A little knowledge is a dangerous thing.” Add one more element to this - the need for the State to preserve and conceal certain ‘necessary’ items of information in the

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'National Interest'- and you have the beginnings of conflict. Thus a balancing act is what is called for and the Courts seem to be attempting this by including The right to information within Art. 19(1)(a)<sup>1</sup> of the Constitution. However, the lumbering behemoth that is the Indian bureaucracy still has not completely shrugged off the fetters of India's colonial past and certain rigid mind-sets exist which are anachronistic and need to be removed.<sup>2</sup> The British often hid their blatantly unjust and inhuman activities behind walls of 'official' secrecy and these are still providing protection to their Indian successors today. Thus this is the background out of which today's agitations for a greater right to dissemble and access information have arisen.

The Indian Courts have long since recognized the right to inform as it is more directly linked to the 'Freedom of Speech and Expression' clause contained in Art. 19(1)(a). It is only now that Indian societal awareness is extending to the notion of the right to information, i.e. to have the right to impart as well as imbibe information. Thus it is primarily the intention of the authors to draw the distinction between these two aspects while concentrating on the latter in this paper.

#### **THE FOUNDATIONS OF ART. 19(1)(A)**

At first glance it seems surprising that there are such a vast number of cases generated by such a seemingly innocuous Constitutional provision. Yet, if one attempts to analyze the intention behind this article, this importance is evident. It was designed as a check or guarantee against State action which might be utilised other than in the legitimate exercise of its power to regulate private rights in the public interest.<sup>3</sup> However the framers of the Constitution did place certain reasonable restricts on this Right in the form of Art. 19(2).<sup>4</sup> Yet the courts have long since recognized the scope and importance of this right. This is perhaps best expressed in the words of Fazl Ali, J. when he said, "Freedom of speech and expression is one of the most valuable rights guaranteed to citizens... and should be jealously guarded by the courts."<sup>5</sup>

The meaning of "freedom of speech" has been expounded by the judiciary as the freedom to speak so as to be heard by others and therefore to convey one's ideas to others.<sup>6</sup> "Freedom of expression" has been interpreted by the courts to mean -

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1 Art. 19(1) All citizens have the right - (a) to freedom of speech and expression.

2 Perhaps the best example of this is the Official Secretes Act, 1923 - a convenient relic of the colonial past.

3 *Samdasani v. Central Bank of India*, AIR 1952 SC 59.

4 These restrictions may be in the interest of the sovereignty and integrity of India, National security, maintaining friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defaming or incitement of an offense.

5 *Brijbhushan v. State of Delhi*, AIR 1950 SC 129, 133.

6 *All India Bank Employees Association v. National Industrial Tribunal*, AIR 1962 SC 171, 181.

what one has a right to express may be communicated to others.<sup>7</sup> This very necessarily includes the freedom of the press. Thus the judiciary has been consistent and insistent in establishing that the right to propagate one's ideas is a fundamental right<sup>8</sup> as long as it is subject to the 'reasonable restrictions' imposed upon it by Art. 19(2).<sup>9</sup>

If one look at matters in a historical context, it is easy to discern why such importance has been given to this right. When the Constitution was being forged, there were a plethora of instances to demonstrate how an arbitrary executive could warp the law and stifle all free speech and expression, which is the life-blood of any self-respecting democracy. Therefore the fundamental rights in general and this right in particular were given such paramount importance, to ensure that a repetition of such a situation should never come to pass. This is clearly indicated when one examined the judicial trend for it is easily observable that the courts have given this right an increasingly broader and fuller lease of life over the years.

#### ***"INFORMED CONSENT"- AN ANALYSIS OF THE POSITIVE JUDICIAL APPROACH***

By and large, the trend of decision in India has always been with respect to the right to propagate and disseminate information. Thus the majority of decisions in this regard have elaborated upon the freedom of the press.

*Brij Bhushan*<sup>10</sup> is perhaps the first press case where the issue of pre-censorship of a journal was dealt with. Here the courts firmly upheld the liberty of the press. This was carried a step further in *Thappar's case*<sup>11</sup> which upheld the liberty of circulation of ideas in the form of journals, papers, periodicals etc. This inclusion of the concept of 'circulation' under Art. 19(1)(a) was defended in *Sakal Papers*<sup>12</sup> where the government was prevented from taking steps which would adversely affect the circulation of the newspaper. Thus it is very apparent that right from the beginning of Indian constitutional law, the courts were very eager to uphold and defend the independence of the fourth estate. This is once again amply evident from the *Express Newspapers*<sup>13</sup> case where it was held:- "If any restrictions on the exercise of the Fundamental Rights Under Art. 19(1)(a) do not fall within the four walls of Art. 19(2), it cannot be upheld."

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7 *Id.*

8 *Virendra v. State of Punjab*, AIR 1957 SC 896.

9 *Kedar Natha Singh v. State of Bihar*, AIR 1952 SC 955, 968.

10 *Supra* n. 5.

11 *Romesh Thapper v. State of Madras*, AIR 1950 SC 124.

12 *Sakal Papers (P) Ltd. v Union of India*, AIR 1962 SC 305.

13 *Express Newspapers Ltd. v. Union of India*, AIR 1958 SC 578, 614.

However, the decision dealing specifically with the right to information may be the *Indira Gandhi case*.<sup>14</sup> From then onwards the trend seems to be more towards emphasizing the importance of reception of information along with the importance of propagating it. This is evident from the *Odyssey Communication case*<sup>15</sup> which clearly talks about both these facets concerning the Right to Information. This seems to be in accordance with the earlier *S.P. Gupta* decision<sup>16</sup> which says that the disclosure of information in relation to the functions of Governance must be the rule and “secrecy must be the exception justified only where the strictest requirements of publish interest so demands”.

As the years progress, it is possible to see how this stand has been strengthened. One need only look at the *Indian Express case*<sup>17</sup> where the court drew inspiration from a decision of the European Court of Human Rights and included the right to receive and impart informations implicit in “freedom of speech”. Finally, there is the recent *C.A.B.* decision<sup>18</sup> which is contemporary and thus very relevant. It looks specifically at telecasting rights but also, at a broader level, it looks at the entire electronic media scenario, the wave of the future. In this case, the court specifically highlighted the necessity to have the right to educate and inform as well as the right to be educated and informed, which is an equally important facet.

### CONTRASTS AND COMPARISONS

If one examines at the U.S. Bill of Rights, one finds that the Indian Constitution shares a common ideology with it. In 1966, the U.S. passed the Freedom of Information Act which made “disclosure the rule and not the exception”.<sup>19</sup> Some of its salient features are;

1. All individuals have an equal right to access information
2. The burden is on the government to justify withholding information
3. Individuals can seek legal redress if they are improperly denied access.

Thus the direct result of this “open attitude” is the tremendous freedom and fearlessness of the press combined with an educated citizenry which make the U.S. the world’s most powerful democracy today.

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14 *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

15 *Odyssey Communication (P) Ltd. v. Lokvidhyan Sanghatana*, AIR 1988 SC 1642.

16 *S. P. Gupta v. Union of India*, (1981) 3 SCC 87.

17 *Indian Express Newspapers (P) Ltd. v. Union of India*, AIR 1986 SC 515.

18 *Secretary, Ministry of Information and Broadcasting v. C.A.B.*, AIR 1995 SC 1236.

19 V.R. Krishna Iyer, *Freedom of Information*, 192 (1990).

The further the comparison one need only to take a look at the prominent place 'freedom of speech and expression' has been given in all the U.N.'s basic documents,<sup>20</sup> like the

Universal Declaration of Human Rights, 1948 (*See Art. 19*);

The International Covenant on Civil and Political Rights, 1966 (*See Art. 19(2)*);

The European Convention on Human Rights (*See Art. 10*)

Moreover, judicial thinking in different parts of the democratic world has highlighted the State's obligation to protect this right. Thus over the years, Indian Courts have evinced a deep sensitivity and understanding which can confidently stand up to international scrutiny.<sup>21</sup> This seems to firmly entrench the judicial philosophy that freedom of speech and expression includes within its compass the right of all citizens to be informed, "ensuring that they are better equipped to live in the present and respond to the future."<sup>22</sup>

#### ***THEORETICAL IMPLICATIONS AND SOCIAL REPERCUSSIONS***

As mankind prepares to move from this millennium to the next, it is no longer the science-fiction writers alone who predict that "the future is NOW!". This is the era of fiber-optics, lasers relays, 'eye-in-the-sky' satellite technology and near-instantaneous data transfer - the "information revolution" is here to stay. The speed and ease with which knowledge flows has acted as a catalyst for events as diverse as nationwide educational programmes to globalisation of world trade is truly remarkable.<sup>23</sup> Its effects can be seen in India with Motorola pagers, Nokia cellular phones and internet access becoming a practical reality for many Indians. Even in remote rural areas one finds the now-familiar signboard proclaiming "STD-ISD-FAX-PCO".

Today, communication technology has advanced to such an extent that national borders, boundaries and distance are no longer a barrier. In fact, it is these "technologies of freedom" that helped to topple restrictive, repressive regimes in Eastern Europe. However one must also not lose sight of the lurking dangers behind the all the bright colours, images and sound. Among other things this could very easily be converted into the most powerful weapon of mass indoctrination that man has ever known. Yet social workers, journalists, environmental groups and grass-root NGOs have put this powerful tool to work for them as well. Thus, as is the case with most state-of-the-art technology, it is a double-edged sword.

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20 A. Bijakumari, "The Right to Know and Access to Media", XVII CULR 297 (1993).

21 *See Hamdard Dwarkanand v. Union of India*, AIR 1960 SC 554; *Bennet Coleman v. Union of India*, AIR 1973 SC 106; *L.I.C. v. Manubhai D. Shah*, AIR 1993 SC 171

22 S.P. Sathe, *The Right to Know*, 58 (1991).

23 Kiran Karnik, "Emerging Communications Scenario", *Mainstream* 9 (Aug. 24, 1996).

However, at a much more simple and hence relevant level, the twin evils of corruption and criminalisation can be successfully combated only by introducing transparency and accountability into the functioning of the Government at all levels.<sup>24</sup> It is here that social workers and NGOs have taken up the challenge to initiate a paradigm shift in the attitude of the Government towards sharing information. Drastic measures need to be taken with regard to certain draconian laws of the Government, especially certain portions of the Official Secrets Act, 1923. One immediate suggestion is to abolish sec. 5, especially in today's context.<sup>25</sup> Apart from this, citizens themselves are more concerned with information regarding their own day-to-day affairs which do not compromise the 'security of the State' or general issues of public order or morality.

This right to information also needs to be used to fight back against the all-pervasive, institutional corruption which is rampant from police stations to public works. Furthermore, many outmoded and useless rules and procedures live on eternally and these often hinder the civil servants themselves, like Rule 9 of the All India Service Conduct Rules which do not permit them to publicize reasons for controversial decisions.

Again, this Right is especially relevant for the rural poor today.<sup>26</sup> Illiterate peasants, landless labourers and rural women also have an equal right to demand from the Government details of developmental expenditure carried out in their own villages. They should be able to ask for and receive copies of the bills and vouchers as well as names of persons who have been 'paid' wages to construct mythical 'schools and dams' that exist only on paper. This has to be done in conjunction with an escalated effort to ensure that the pace of education picks up drastically, in order to place the village in a position to gather evidence on their own. Furthermore, personal documents like records of births, deaths etc. should be made both available and easily replicable in order for this right to gain some practical significance.<sup>27</sup>

In a historic announcement in the Rajasthan State Assembly in April, 1995 the Chief Minister Bhairon Singh Shekhawat declared that citizens have the right to access such information and that they would even be given facilities to photocopy relevant documents. However, due to effective stonewalling by the bureaucracy, it has not been implemented till date. The agitation against this by the Mazdoor Kisan Shakti Sangathan (MKSS) has evoked massive popular response and the movement seems to be gathering steam not only in Rajasthan but throughout the rest of India as well. There was also a recent seminar on the Right to Information organised by the Press Council of India in New Delhi on Aug. 10th and 11th, 1996 which has initiated a national debate on this issue.

24 N.C. Saxena, "On the right to Information", 12(5) Lokayan Bulletin 69(1996)

25 K.S. Venkataraman, "Mass Media Laws and Regulations in India" 490 (1993).

26 Bunker Roy, "Right to Information, Profile of a Grass-root struggle", Mainstream 19 (May 11, 1996).

27 Rajat Banerji, "Tell Us", Down to Earth 19 (Aug. 15, 1996).

A committee headed by Justice P.B. Sawant, Chairman of the Press Council of India and Vice-President of the World Association of Press Councils, has been commissioned to prepare a draft bill on the right to information.<sup>28</sup> This will not only give the public access to information from government organisations but semi-governmental organisations as well. There is also a move to include public sector and even certain private sector organisations whose activities have a bearing on public affairs and public interests. The emphasis is on how to make the information available during the decision making process.<sup>29</sup> After all, as Subash Kashyap - a leading constitutional authority - puts it: "Information today equals power, and in a democracy power belongs to the people."

### *CONCLUSION*

Guaranteeing the Right to Information is one of the most significant political reform measures promised in the United Front's Common Minimum Programme. There have been a lot of proposals for a model bill by certain interested groups, including one by Ms. Nitya Ramkrishna, a Supreme Court advocate who has joined forces with the MKSS. The Statement of Objects & Reason reads as follows:

"The Individual's right to information is implied by the Constitution. It is also explicit in the context of certain specific legislations. However, need is felt to consolidate the legal and Constitutional provisions to make their effect more extensive. The individual's interaction with agencies of the State is increasing and getting complex. For this interaction to be democratic and meaningful, it is important that the individual have access to information. It is also necessary that the consequences of the violation of the right to information be specified and sanction be imposed in this regard to ensure greater compliance."

The government has to realize that especially in a democracy all that happens in the public domain, "in the name of the people", must be fully accessible to those self-same people. While it is true that the State needs to classify and conceal certain kinds of information, we certainly do not need a colonial-hangover type obsession for secrecy. 'Democracy' should not limit itself to a periodic election every five years, but should also encompass the Right to information as well. The people should be included in the policy formulation and implementation process in order to give the words "We, the people...." any meaning at all. Today's 'developmental projects' often displace and sweep away thousands of people who are too poorly informed to bargain for better terms. Also, this is the era of Globalisation, Liberalisation and the MNC. We need an educated and informed populace who will be in a position to critique certain policy decisions and voice their assent or dissent.

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28 S. K. Pande, "The Right to Information", *Frontline* 110 (Sep. 6, 1996).

29 Praful Bidwai, "The Right to Information: Legal Codification an Imperative", *Frontline* 103 (Sep. 6, 1996).

From a study of all the current literature available, it is the authors' recommendation that the following steps be taken to start off a process of remedial measures which may ensure that truly one day ours will be a nation "where the mind is without fear" and "knowledge is free". These may be enumerated as follows:

1. An enforceable guarantee has to be given to each citizen to access his or her personal information which is in the Government's possession, like marriage certificates, birth certificates etc.
2. There must be an "open access" office system based on the 'Ahmednagar model' in which all the documents at the district head quarters level are open to any citizen for inspection and copying.
3. Decentralise decision making, especially for developmental projects and make details more easily accessible to the public.

These are just a few of the measures which need to swiftly and surely implemented in order to ensure that 'democracy' actually has some meaning in India and the right to information takes those steps needed to transform itself from a Constitutional ideal to a living reality.

# COMMON PROPERTY RESOURCES: CONTRIBUTION AND TRAGEDY

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## **INTRODUCTION**

With world attention recently being focussed towards environment restoration and sustainable development, concern for the sustenance of rural resource system has also grown. This has inevitably led to the increase in concern for common property resources<sup>1</sup> like village pastures, minor forests, wastelands, irrigation systems and such other commodities over which a community as a whole has traditional access and depends upon for their survival and subsistence.

In this article, an attempt has been made to understand the concept of CPRs, its utility, cause for concern and the legislative and the judicial response to the concern.

## **CONCEPTUAL ISSUES**

Common property resources can broadly and residually be treated as that which is not private property. It connotes those non-exclusive resources in which a group of people have co-equal right to use. They are "resources accessible to the whole community of a village and to which no individual has exclusive property rights".<sup>2</sup> In the context of Indian villages the resources falling in this category include community pastures, community forests, waste lands, common dumping and threshing grounds, watershed drainage, village ponds, rivers, rivulets, as well as their banks and beds.<sup>3</sup> The ownership of these resources need not be vested with the village panchayat or local village community. Even if it is legally a government property, it is a CPR for the local community if it enjoys access to it traditionally. Secondly, such an access to the local community is exclusive in the sense that only the identified community has access to it and no others.<sup>4</sup> This would mean that the management of such resources would be carried out by the community by developing certain norms in this regards.

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1 Common Property Resources hereinafter referred to as CPRs.

2 N.S. Jodha, "Common Property Resources and Rural Poor in Dry Regions in India", 21 Economic and Political Weekly, 1169 (July 5, 1986)

3 Sudarshan Iyengar, "Common Property Land Resources in Gujarat: Some findings about their Size, Status and Use", 24 Economic and Political Weekly, A-67 (June 24, 1989).

4 G. K. Karanth, "Privatization of Common Property Resources: Lessons from Rural Karnataka", 27 Economic and Political Weekly, 1690 (Aug 1, 1992).