

Freedom of Expression and the Right to Receive Information: A Constitutional Perspective

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Introduction

The freedom of expression holds a special spot in constitutional democracies. It is popularly considered to be the matrix of all other freedoms since it allows participation in politics, accountability and encourages the marketplace of ideas (Meiklejohn, 1948). Although the traditional domain of doctrinal analysis has been concerned with the safeguarding of the speakers journalists, political dissenters, artists and the players of civil society the democratic role of free speech cannot be achieved fully without the assurance of to receive information.

In representative democracy, the citizens are not subjects but engage in the process of governance. The meaningful participation assumes the ability to have access to information about the actions of the government, the governmental policies, and other issues of the common interest. Informed consent is compromised and democratic choice turned into a mere formality by the denial or hindrance of information (Sen, 1999). The right to know is therefore not only given as a derivative right but substantively guaranteed in the constitution.

In this paper, the author believes that the freedom of expression by the Indian Constitution is inherently two-way; it safeguards the release and the reception of information. It discusses the constitutional principles of this right, the judicial development of this right, and challenges modern that undermine its successful implementation.

Conceptual Foundations: Expression, Information, and Democracy

The assumption of the constitutional democracies is that the citizens are supposed to have rational self-government which further becomes meaningless when the people are deprived of the

means of accessing information which they may need in order to form opinion and make political decisions. The expression and the information are consequently not only personal liberties but structural conditions of the democratic legitimacy.

Contemporary constitutional theory appreciates that democracy should not be reduced to a given periodic vote but is a process of dialogue, engagement and accountability of the citizenry. In this process, information serves as the blood of the democratic deliberation. The situation where information is limited, distorted, or monopolised leads to distorted democratic decision making which in turn leads to what has been termed as democratic deficit. Freedom of expression thus cannot be taken alone but rather as a component of the wider communicative ecology that encompasses the right to know, access and spread the information.

Freedom of Expression as a Democratic Guarantee (Judicial Elaboration in India)

The freedom of expression has always been a democratic guarantee that has been acknowledged in Indian constitutional jurisprudence. Article 19(1)(a) has been construed by the Supreme Court not only as a personal freedom, but also a group right that was necessary to democratic governance. This is a strategy that is informed by the fact that constitutional democracy is based on the use of informed citizens and the free flow of ideas with regard to matters of the people.

Significantly, the Court opposed the idea of the State monopoly of electronic media by stating that this form of monopolisation would suppress pluralism and cripple democratic discourse. This ruling represented a major change in perspective of the prior negative conception of free speech to a

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more structural interpretation of access and diversity and audience rights.

The argument of the Court in Cricket Association of Bengal is the Meiklejohnian vision of the democracy, where the main role of free speech is informing self-government. The Court constitutionalised the communicative process, therefore, supporting democratic justification of freedom of expression by recognizing the audience's access to knowledge. The ruling is also close to the deliberative democratic theory in that it considers that not only the freedom to talk is needed but organization of institution in such a manner that facilitates the free flow of information.

The Right to Receive Information: Constitutional Recognition and Democratic Accountability

The right to access to information has been entrenched in the Indian constitutional law by the judicial interpretation. This right is not explicitly stated in Article 19(1)(a), however, the Supreme Court has time and time again ruled that freedom of expression would be illusory should citizens not be able to access information that is needed to exercise the democratic choice.

Justice Mathew once noted that people of this country were entitled to know all the public acts, all that is done publicly by their public delegates in a way that is public. The Court denied in a status of blanketed government secrecy and argued that secrecy in a responsible government should be an exception and not the rule.

Raj Narain is also noteworthy as it theorised informational access as a democratic right and not a privilege of discretion. The Court connected the right to know with how a democratic polity operates to highlight that the lack of access to information is a constitutional failure of electoral participation. This judgment therefore provided normative basis to future development of the transparency jurisprudence such as the subsequent passage of the Right to information act, 2005.

In the case of Secretary, Ministry of I&B v., the Court further expanded this body of precedent. The Cricket Association of Bengal (AIR 1995 SC 1236) said unequivocally that the right to

information is not limited to political or governmental information but was to all kinds of information that leads to a discussion of the people. The Court acknowledged that contemporary democracy functions in a mediated public space and that access to electronic media is important in the formation of any opinion of the people. The limitation of any communication or reception of the information, in this way, directly affects the quality of the democratic deliberation.

All these decisions are representative of a substantive conception of democracy that is contained in the Indian Constitution. The courts have outgrown the formalistic interpretation of the Article 19(1)(a) and recognized that in a democratic government, the citizenry must be enlightened to review the authority. The right to information is therefore the mediator between personal freedom and institutional responsibility, which supports the constitutional promise to participatory democracy.

Constitutional Framework under Indian Law

One of the principles of the Indian Constitution that seeks to establish democratic government is the freedom of speech and expression. Integrated into Part III, Article 19(1)(a) does not just constitute a personal right, but an institutional right to participatory democracy, transparency, and accountability. This provision has increasingly been through progressive interpretive rights of the Supreme Court into becoming not merely a narrowly interpreted textual guarantee, but a changing principle of the Constitution which varies in response to social, technological, and political transformations.

Article 19(1)(a) and Its Scope

To the degree allowed by Article 19(2), which includes the interests of India's sovereignty and integrity, state security, civic harmony, decency, morality, and other legitimate purposes stated in Article 19(2), Article 19(1)(a) To all people. Although the restrictions can be used in the text, the Supreme Court has always stressed that these restrictions should be limited and well grounded in a constitutional context that focuses on liberty.

In *Maneka Gandhi v. The Court* overturned the meaning of fundamental rights in *Union of India* (AIR 1978 SC 597). Even though the case was caused by Article 21, its rationale had a significant impact on the jurisprudence of Article 19. The Court declared that all laws that interfere with fundamental rights should be not only just, fair, and reasonable, but must meet a proportionality test balancing individual liberty and legitimate State interests. This has led to the fact that restrictions under Article 19(2) are no longer examined based on formal legality alone but on the necessity to limit, rather, on its reasonableness and effects on democratic freedoms.

Article 19(1)(a) has over the years found its way to other derivative rights important to the operation of democracy through judicial interpretation. (*Romesh Thappar v. State of Madras*, AIR 1950 SC 124), are the right to broadcast, recognised to be part of the communicative process in a modern, media-oriented democracy. *Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal*, (1995) 2 SCC 161). The Court has opposed monopolisation of information channels by the State considering that the diversity of opinions and access to media avenues are part and parcel of free expression.

The Court determined that the internet has turned into a source of distributing and receiving information, and that any unlimited curfew on internet access is unconstitutional. This recognition underscores the elastic nature of Article 19 (1) (a), which evolves with technology and social patterns to uphold democratic engagement.

Thus, Article 19(1)(a) has morphed from being a negative liberty to being a substantive democratic right which enables access of information, platforms for communication and spaces for participation all of which allow for citizens to engage in informed citizenship.

Judicial Recognition of the Right to Receive Information

This combination of giving the right to knowledge a constitutional status, and restorative activism, heralded one of the great contributions to our democratic philosophy as alluded to in Indian

constitutional jurisprudence under article 19(1)(a). The Supreme Court has consistently upheld the right to free speech, and it would be absurd to deny individuals access to information concerning public affairs and governmental operations.

This principle is among the first and most powerful formulations of it, which is found in *State of Uttar Pradesh v. Raj Narain* (AIR 1975 SC 865). Here, the Court upheld the right of citizens to access the exercise of governmental power in their own government, noting that government secrecy is necessarily unrelated to the democratic accountability. Transparency as a constitutional value had a normative foundation that was established by Justice Mathew who claimed The decision appreciated that in order to avoid power abuse and in order to maintain the validity of democratic institutions, the public needs to engage in informed scrutiny.

The Court ruled that airwaves are a state asset and their utilisation should be controlled in a way that enhances opposed to being a monopoly of information or controlled by the State. In identifying the rights of the audience and denying monopoly of the broadcast media, the Court reaffirmed the structural position of informational access in maintaining the democratic discourse.

Later decisions have widened the right to information access to certain democratic situations, the most notable of them being the situation of electoral participation. *People United to Civil Liberties v. The Court* rationale was that voting is an expression and it is covered by Article 19(1)(a) and that to have a meaningful democratic choice, informed voting is a prerequisite. Refusal to provide such information, the Court said, is a defeat to the very principles of representative democracy.

All these decisions reveal a steady judicial adherence to substantive democracy, where the freedom of expression cannot be divorced is a constitutional balancing point between civil liberties and democratic accountability because citizens are not passive participants of the governmental system but active participants of the democratic process.

Right to Information and Constitutional Democracy

The right information is one of the greatest constitutional changes in the democratic history in India. The Right to Information Act, 2005 (RTI Act) was aimed at re-striking the balance between the State and the citizen by amending an implied constitutional guarantee into a statutory right. It realises the constitutional dream of participatory democracy by instilling transparency and accountability in the practices of governance.

From Judicial Right to Statutory Framework

The right to information existed prior to the RTI Act's enactment as a consequence of the judicially recognized right to information under Article 19(1)(a). Nevertheless, this right was not as practically enforceable as it could have been due to the lack of a full statutory mechanism.

With the passing of the Right to Information Act, 2005, there was a radical transformation in a proclamatory constitutional doctrine into an enforceable statute. The Act set up positive duties on the authorities to release information, which had procedures that citizens could use to inquire about information, and it formed independent information commissions to decide on a dispute. This way, the RTI Act transformed transparency into an issue of discretion of the government, to an issue of law.

The constitutional pedigree of the RTI Act has always been upheld by judicial interpretation. In *CBSE v. In the case of Aditya Bandopadhyay* (2011) 8 SCC 497, the Supreme Court decided that the RTI Act is an effective mechanism of applying transparency and accountability and is a direct derivation are in a better position to supervise governance, uncover corruption and hold accountability. Information access therefore guarantees the citizens to transcend the passive electoral involvement to the active, constant democratic involvement.

Another principle that the RTI Act supports is the concept of open governance through the reversal of the traditional assumption of secrecy when making administrative decisions. The reference of key

categories of information as part of Act requires less responsibility on the citizens to request information and enhances proactive disclosure. This change represents a constitutional commitment to substantive democracy, in which information is a donated as a resource of the people, and not property of the State.

Limitations and Challenges

Even with its transformative potential, the right to information has strong structural and institutional challenges that are likely to make it fail to deliver on its constitutional promise. Among the key issues, is the scope of application and exemption of Section 8 of the RTI act. Although constitutional exemptions in the name of national security, diplomatic affairs and classified information can be used, the broad and indiscriminate application of the exception is dangerous in making secrecy a new norm. As demonstrated by the case law of the judiciary, public authorities widely use these exemptions while largely failing to satisfy the necessity or proportionality test.

This is another challenge which a symptom of the bigger problem of bureaucratic resistance and administrative inertia. Often, the RTI regime is diluted in its efficacy because of delays in response to information request, lack of adherence to disclosure requirement and bureaucracy. This is an indirect limitation to the right of access to information and this raises alarm bells on the territory contained within Article 19(2) where it notes that every restriction placed on those basic rights must be reasonable and proportional.

Today, the independence of Information Commissions as an institution is also under question. Changes to the status and tenure of Information Commissioners, along with increasing dependence on the executive branch as provided in these amendments have been widely criticized as sufficient to gut enforcement under the RTI Act. Since these bodies are quasi-judicial custodians of right to information, the erosion of their independence converts directly into accountability under Constitution and availability of redresses.

Furthermore, there is a new challenge of the increasing reliance on confidentiality statements and data protection scenario. While State can lay

down legitimate interests, the absence of rigorous oversight mechanisms may pose a risk to executive secrecy. The secrecy should not be the rule of a constitutional democracy, and whether it is needs to move from being focused directly as an exception that is compelling.

This whole problem stems of the question of transparency and State power in modern governance. The triumph of the right to information is not merely legal, but effective and persistent judicial oversight, institutional autonomy and a culture of openness in the Constitution. In the absence of such protections, the freedom of information will turn into a hollow promise of a democratic tool that is akin to formalizing the right to information but does not produce the substantive change in reality.

Right to Receive Information and Constitutionalism

The right of receiving information is placed in the main position of the wider area of constitutionalism. Constitutionalism is not simply about the fact that we have a written constitution or formal separation of powers, it is about the fact that we limit the power of the State by law, reason and accountability. Availability of information also empowers the citizens to question power, to effectively engage in the process of governance and to impose intrinsic constitutional restrictions on power. In the absence of informational transparency constitutional guarantees would become formal abstractions that lack any practical efficacy.

Transparency and Reasoned Governance: The board of directors is required to disclose information to the necessary individuals to guarantee shareholders are informed about the company 's activities (Hong Kong Institute of Directors and Governance, 2011).

The transparency is one of the key features of constitutional governance. Public power in a rule of law system should be exercised in a way that is transparent, comprehensible and capable of justification. The flow of information is an unavoidable condition of the enforcement of these requirements since citizens are unable to assess the activity of the government or require any

accountability without knowing how the decisions are made and put into practice.

The Supreme Court has continuously underscored that rational decision making is a critical aspect of natural justice and a constitutional provision. In *Kranti Associates v. In the case of Masood Ahmed Khan* (2010) 9 SCC 496, the Court said that the recording and disclosure of reasons have several constitutional functions: they allow fairness in decision making, they enable judicial review and they create a feeling of confidence amongst the people to the process of administration. The Court noted that justification was the lifeblood of any conclusion, thus making it clear that the unreasoned decision was the suspect of a constitutional democracy.

This principle is reinforced by the right to information which allows citizens to obtain the factual and legal basis of governmental action. Reasons and information publicity permit the individual to question arbitrariness, abuse of authority and remedies through institutional means. Furthermore, transparency creates trust in the population by establishing that the action of the State is not based on a sense of discretion or secrecy but instead on rationality. In this regard, the access to information is a constitutional protection mechanism that upholds the normative force of law and legitimacy of governance.

Although the entitlement to information is a fundamental right of constitutionalism, it is not absolute. The bans on information access might be reasonable in specific situations, including protection of the national security, national order or privacy of individuals. Nonetheless, constitutionalism stipulates that these limitations are put under intense analysis to avoid abuse and caprice.

Restraints on accessing information are evaluated within the framework of the doctrine of proportionality which presents the main analytical instrument. The Supreme Court established a stated proportionality criteria it must be well adapted to said purpose, must be necessary in the sense that no other restriction of the same kind is possible, and must be proportionate between the conflicting interests at stake. It is a framework in

which the allocation of constitutional liberties is not unduly trammled by State action.

It is the same with information constraints: proportionality suggests that secrecy or censorship should be an exception, not a rule." Vague exemptions, blanket bans or restrictions that cannot be limited are "suspect under the constitution " because it is not demonstrated that what is being done is necessary and if there will be minimum impairment. Proportionality also mandates procedural safeguards like reasoned orders, periodic review and redress avenues to ensure that restrictions are subject to oversight and time-bound.

It is the exposure of information control to the proportionality trial that stops, at least in theory and for the present, regulatory power from becoming executive play. The doctrine is such, also, that restrictions on access to information are linked to constitutional values and democratic necessity in balancing State interests and individual freedoms. Ultimately, proportionality strengthens the role of the right to communication as structural guarantee of constitutionalism --- to remind a context in which power's exercise must occur within legally and morally acceptable limits.

Comparative and International Perspectives

The right to receive information has advocates in the comparative constitutional jurisprudence and international human rights law that assert it as one of the necessary democratic guarantees. In constitutional democracies, courts and international institutions have been recognizing the fact that meaningful engagement in the life of the people assumes that one has access to information. These developments represent an evolving global consensus that informational freedom is not merely a peripheral characteristic of free speech, but rather one such structural necessity of democratic governance.

In South Africa, there is a pronounced political will to maintain transparency. Constitution Right of access to Information Section 32 (1)(a) Everyone has the right to access any information held by the State and (2)(b)-(5) everyone has a right of access to information held by another person which is

necessary for the exercise or defence of any rights. The court argues that this clause is indispensable for democratic accountability and participatory governance.

There is significant political commitment towards keeping the lights on in South Africa. The Constitutional Court explains that this provision is fundamental to participatory democracy and democratic accountability.

In particular, at the supranational level, the European Union has embedded transparency into its laws as a constitutional value. Access to documents is also a right guaranteed, e.g. in the EU Charter of Fundamental Rights, thereby reinforcing the normative link between transparency and democratic legitimacy. Such provisions manifest the recognition that in complex systems of governance transparency is required for trust, participation and accountability.

International human rights legislation provides additional support for this consensus. Article 19 of the International Covenant on Civil and Political Rights has been interpreted by the UN Human Rights Committee in such a way that it carries with it a positive duty by States to give access to information in the custody of government bodies, but only to a restricted and reasonably proportionate degree. The Committee has stressed the fact that transparency is the key to fighting corruption and providing the right to participation of people as well as effective supervision of the power of the State.

All these comparative and international developments give a solid ground to support the interpretation method of the Indian judiciary in the context of Article 19(1)(a). When the protection of free speech and expression include the right to know, the Indian constitutional jurisprudence is in line with a bigger worldwide trend that perceives informational access as the foundation of democratic constitutionalism. Comparative views therefore do not only legitimize the domestic doctrinal trends, but also reinstate the universal democratic requirement of transparency and free information flow.

Conclusion

Realizing the freedom of speech is impossible without the right to knowledge. In a constitutional democracy, the citizens should have the freedom to not only speak, but also to know. This has gradually been acknowledged by Indian constitutional jurisprudence, interpreting the right to receive information as applying to Article 19(1)(a) and supporting it with statutory and doctrinal changes.

Nonetheless, the modern issues of censorship and internet blockage as well as regulation of platforms and national security arguments present a greater menace to the freedom of information. These issues can only be dealt with through a strong constitutional obligation to transparency, proportionality and accountability.

The conclusion of this paper is the freedom of expression should be redefined as a two-way constitutional right. The guarantee of the right to the information is necessary to uphold the democratic legitimacy, empower the citizens to participate in the process, and reinforce the rule of law in the context of the ever more information-intensive constitutional order.

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