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Freedom of speech and the Right to Information: Article 19(1)(a)

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Silence, in a constitutional democracy, does not always require censorship as a means; it could also resort to secrecy. Whereas the right of the citizen to express himself and even voice out his criticisms, and even publish his ideas and organize protests may appear meaningful enough, in view of the fact that the State will deny him access to any information needed to form his opinion, they shall all be meaningless. Hence, **Article 19(1)(a) of the Constitution of India's** guarantee of free speech and expression is not merely the right to voice out one's mind.

And so we come to the justification of the Right to Information (RTI) on the basis of constitutional doctrine. Over and over again, the courts of India have declared that knowledge of information is the prerequisite for free speech, at least within the democratic setting of governance. In other words, whereas a democracy cannot live by opinions, it must thrive on opinions based on knowledge.

ARTICLE 19(1)(A): BEYOND THE RIGHT TO EXPRESS ONESELF

According to Article 19(1)(a) of the Constitution, all citizens have a fundamental right to freedom of speech and expression. From its wording, it might appear that the right pertains only to expressions done externally through actions such as speaking, writing, printing, publication, broadcasting, and communication of information. However, for many years, the Supreme Court has interpreted this provision to include not just the freedom of expression but also the right to be well-informed and the right to knowledge of issues relating to public importance.

This wide interpretation of Article 19(1)(a) makes perfect sense since the right to freedom of speech cannot stand on its own. How would the citizens talk about government policies or hold their representatives accountable for their actions without having adequate knowledge?

EVOLUTION OF THE RIGHT TO KNOW BY JUDICIAL DECISIONS

The Indian judiciary had already established the foundation for the fundamental right to information prior to the enactment of the Right to Information Act, 2005.

Amongst the early judgments, there was *State of Uttar Pradesh v. Raj Narain*. In this judgment, the **Hon'ble Supreme Court** observed that "In a government of responsibility like ours there can be but few secrets, and the people must be told almost everything." [1] This case is acknowledged to be one of the most important judgments supporting the constitutional right to know.

The importance of this principle was reiterated in *S.P. Gupta v. Union of India*, wherein it was held that disclosure of information is a key element of an open government that stems from the right to know. [2] And this flows from freedom of speech and expression guaranteed under Article 19(1)(a).

The question of transparency in the process of conducting elections was furthered by the Court in the case of *Union of India vs. Association for Democratic Reforms*[3], wherein it was held that there is an inherent right of the voter to know the antecedents of the candidates contesting the election. It was also established in the case of *People's Union for Civil Liberties vs. Union of India*[4] that the right of the voter to be informed falls under Article 19(1)(a).

Hence, from all these decisions, it can be said that the constitutional principle of receiving information being an integral part of the freedom of speech has been well-defined by the Court.

THE RTI ACT, 2005: MAKING CONSTITUTIONAL PHILOSOPHY PRACTICABLE

While Article 19(1)(a) expressed the constitutional doctrine, the Right to Information Act, 2005 made it possible. According to this act, citizens have a right to receive information from public authorities. The information refers to records, memos, emails, circulars, reports, or any other document held by the public authority.

In practice, the RTI act has become one of the most influential means of accountability in India. It has been used for discovering instances of corruption, procedural irregularities in the recruitment process, inadequacies in the functioning of social welfare programs, embezzlement of public funds, and administrative blunders.

LIMITATIONS AND CONSTITUTIONAL BALANCING

However, the right to information is not absolute. Article 19(1)(a), while itself subject to limitations set out in Article 19(2), can also be limited on the grounds of the existence of a “compelling” need to restrict information, either under another constitutional provision or statutory law.

In this regard, the RTI Act makes provision for exceptions relating to national security and sovereignty; strategic information; trade secrets; confidential relationships, such as between attorney and client; personal information unless in the larger public interest; and so on.

Following the landmark decision in *K.S. Puttaswamy v. Union of India*, which recognized the right to privacy as a fundamental right under Article 21 of the Constitution,[5] it was even more relevant. Therefore, in contemporary India, the law of information must be viewed as constitutional balancing, where the right of the people to know is balanced against the right of the individual to privacy and dignity.

This tension is addressed directly in Central Public Information Officer, *Supreme Court of India v. Subhash Chandra Agarwal*, in which the Supreme Court opines that the role of Chief Justice of India is subject to the RTI Act but emphasizes that such transparency must coexist with judicial independence, confidentialities, and concerns regarding privacy.[6]

WHY THIS LINK MATTERS

The relationship between freedom of expression and the right to information is not merely an academic one but rather forms the fundamental foundation of constitutional democracy. There would be no freedom of expression without information. A journalist can conduct a research only if he or she has access to the relevant documents. Citizens can cast their votes for the correct candidate only if they have the required information.

It is this reason that makes the right to information fall under Article 19(1)(a) – enabling freedom of expression with adequate information.

CONCLUSION

Though Article 19(1)(a) provides for freedom of speech and expression, it also ensures the rights which are necessary for ensuring meaning to that freedom. It is through important cases like that of ***Raj Narain, S.P. Gupta, Association for Democratic Reforms, and Public Union for Civil Liberties (PUCL)*** that the constitutional setting for the right to know has been made clear. Later, the enactment of the Right to Information Act, 2005, gave statutory backing to this right. The constitutional doctrine was further refined through subsequent decisions like ***Puttaswamy and Subhash Chandra Agarwal***, wherein it was laid emphasis on maintaining a balance between transparency and privacy.

The point is that without the constitutional right to know, the right to free speech stands ineffective in its own regard.

CITATIONS

- [1] *State of Uttar Pradesh v. Raj Narain*, (1975) 4 SCC 428.
- [2] *S.P. Gupta v. Union of India*, 1981 Supp SCC 87.
- [3] *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.
- [4] *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.
- [5] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
- [6] *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.