Right to Information: A Quest for Constitutional Jurisprudence

Dr.Partha Pratim Paul[1]
Biswajit Das[2]

Abstract

In Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, (a three judge Bench, B.P Jeevan Reddy. J concurring) Supreme Court has declared that "The freedom of speech and expression guaranteed Article 19 (1) (a) includes right to acquire information and to disseminate it". Article 19 (1) (a) does not specifically define the meaning of "Freedom of Speech and Expression" and has also not declared what it ought to be and ought not to be and very eloquently connected the indispensability of information and exercise of speech or expression in a democratic country like India. Therefore, the recognition of "Right to Information" as Fundamental Right is one of the milestones in the way of development of Constitutional jurisprudence of India. Later on in 2005, another milestone was constructed when as part of statutory recognition, Right to Information Act has been enacted by Parliament of India, which has framed up necessary guidelines. In the context of this Constitutional and legal frameworks, basically three aspects have been looked into. ***Firstly,*** *by tracing the origin of this Constitutional development, the Supreme Court recognised "Freedom of Press" as Fundamental Right. This declaration paved the way for discovering many unnamed rights into Article 19 (1) (a).* ***Secondly,*** *as far as "Right to Information" is concerned, the judgments which are credited to make the prelude to "Right to Information" becoming the Fundamental Right have been deeply analysed.* ***Thirdly****, Rule of interpretation of Constitution especially Fundamental Rights have also been deliberated upon along with the significance of Fundamental Rights.* ***Finally,*** *the judgment in Ministry of Information and Broadcasting v. Cricket Association of Bengal, has been critically analysed only to find out that that there are ten numerous flaws inherent in the judgment for which "Right to Information" stands on a very weak jurisprudential (Fundamental Rights) foundation. This achievement could not become a full bloomed success-it is partial in nature, for which the article gives some recommendations to make "Right to Information" a strong and positive Fundamental Right.*

[1] Assistant Professor, Department of Law, Assam University, Silchar
[2] Ph.D Scholar, Department of Law, Assam University, Silchar

Keywords: Right to Information, Right to Freedom of Speech and Expression, Constitutional Jurisprudence

I. Introduction

Democracy is undoubtedly a political value, reflected in particular pattern and form of governance. But it is incomplete if democracy is made to be propagated or practiced as mere form of governance or people's voting rights only. It has wider connotations in diverse social, cultural, political and economic lives of the people, which ultimately finds its place in much broader phenomena of philosophical and ideological value system. It transcends the barrier of a system of governance i.e. a running of government by the people, for the people and of the people, merges with a larger canvas of a virtue of individual life, a value of social, political, economic, cultural and international fields. Former US President Woodrow Wilson, emphatically views Democracy as "Democracy is not so much a form of government, as a set of principles.[3]"He continuesby stating that "It is for this that we love democracy: for the emphasis it puts on character; for its tendency to exalt purposes of the average man to some high level of endeavours; for its just principle of common asset in matters in which we all are concerned; for its ideals of duty and its sense of brotherhood.[4]" In a democratic country, the sovereignty is vested with the people from political point of view. People in the society are actually powerful than the ruler-it is because the government is owned by the people. Democratic form of governance demands from its citizens an active and intelligent participation in the affairs of the country. Not only they take part in the decision making process of all levels of the government, but also take part in its implementations. For the afore-mentioned objectives, formation of opinion is very crucial, towards which direction the nation will move on. Therefore, in a peaceful way, to take the nation towards fulfilment of its goal (set out in the Preamble to Constitution of India), through people's participation, open discussion (to find the views of majority of the people or all) including airing of dissenting view, to have a collective decision is pre-requisite. Democratic environment also values critical opinion of an individual or a group, different from a set of established practice

[3] Woodrow Wilson, *Democracy and Efficiency,* Vol-LXXXVII, THE ATLANTIC MONTHLY, 289, 298 (March, 291).

[4] *Id.* at 290.

of the society, whatever radical in nature (with certain limitations). It teaches the society to honor the worthiness and potentiality of other views. All these come under the purview of "Right to Freedom of Speech and Expression."

Democracy means freedom and liberty. Constitution of India guarantees for its citizens certain basic freedoms, one of such is declared as: **ALL CITIZENS SHALL HAVE THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION**[5]. This "Freedom of Speech and Expression" is a Fundamental Right and if any pre-Constitutional law is inconsistent with it or any post-constitutional law contravenes this, then to the extent of inconsistency or extent of contravention, this law will be void[6]. As it is very essential for all round development of people, it is also a sine-qua-non for the flourishing of democracy in all its dimensions. Hence, when "Freedom of Speech and Expression" is so indispensable to the functioning of democracy, law must ensure that exercise of "Right to Speech" (including any expression) is not based on falsehood. Therefore, pre-requisite to "Freedom of Speech and Expression" is access to all information, either about affairs of government or private bodies". Correct information is a base over which the whole structure of "Freedom of Speech and Expression" is built upon, and again over which effective functioning of democracy depends. Therefore, guaranteed 'Right to Information' on demand or suo-moto disclosure is very vital, without which first "Freedom of Speech" will lose its value and later on democracy would collapse down. Speech and expression premising upon wrong information, partial information, false information or suppressed information cannot be true and fair. In this context, Supreme Court in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal observed[7]:

> 84. True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. **The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views**. One-sided

[5] INDIA CONST. art.19, cl.(1)(a).

[6] INDIA CONST. art. 13.

[7] Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, AIR 1995 SC 1236.

> information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchic organisations.

In the history of Constitutional jurisprudence of India, a milestone was created when Supreme Court conferred the status of Fundamental Right on "Right to Information" under Article 19 (1) (a) of Constitution of India. While including the "Right to Information" within the purview of "Freedom of Speech and Expression", it actually had shown the real horizon of this named Fundamental Right. This judicial journey started in India when an unnamed right i.e. Freedom Of Press was recognized within the purview of "Freedom of Speech And Expression" long back which paved the way for "Right to Information" as Fundamental Right today.

II.Significance of Fundamental Right in Indian Constitution

Deliberating on the significance of Fundamental Rights in lives of people of this country, Supreme Court in Maneka Gandhi v. Union of India[8] (speaking through P.N.Bhagwati J) observed that Fundamental Rights are pre-requisites to all round development of human beings and is rooted in India's tradition, culture and heritage:

> **These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.** They weave a 'pattern of guarantees on the basic structure of human rights' and impose negative obligations on the State not to encroach on individual liberty in its various dimensions. (page 669).

III. Freedom of Press: First Recognition of Unnamed Right as Fundamental Right under Article 19 (1) (g)

[8]Maneka Gandhi v. Union of India, AIR 1978 SC 597.

In RomeshThappar v. State of Madras[9],is the first judgment of the Supreme Court of India, where a six judge Constitution Bench (Saiyid Fazal Ali. J. dissenting), planted the sapling of unnamed right i.e. 'Freedom of Press' in the garden of Fundamental Rights (without expressly mentioning it as such) as facet of 'Freedom of Speech and Expression', under Article 19 (1) (a) of Constitution of India, as is clearly evident from the following observation (in the form of propagation of ideas), but fact remains that 'Freedom of Speech and Expression' and 'Freedom of Press' are explained under two separate headings not as inclusive to each other:

> "There can be no doubt that **freedom of speech and expression includes freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.** Liberty of circulation is as essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value."
>
> "...this was doubtless due to the realisation **that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible**."

Thereafter, **Brij Bhushan v. State of Delhi[10]** is the most significant judgment (delivered on the same day with the RomeshThappar v. State of Madras), where the same six judge Constitution Bench (Saiyid Fazal Ali. J. dissenting), echoed the same thinking that "Freedom of Press" is essential part of "Freedom of Speech and Expression", in a direct way for the first time, by unequivocally expressing it, what Supreme Court in RomeshThappar v. State of Madras did not do. This judgment is engraved in the Constitutional jurisprudence of India, not only due to the reason of recognition/discovery of FREEDOM OF PRESS by it as first recognition/discovery of an unnamed right under "Freedom of Speech and Expression" of Article 19 (1) (a) but also an instance of first recognition/inclusion before any other named Fundamental Right under Part III of Constitution of India itself. The construction of Article

[9] RomeshThappar v. State of Madras, AIR 1950 SC 124 (delivered on 26th May, 1950).

[10] BrijBhushan v. State of Delhi, AIR 1950 SC 129 (delivered on 26th May, 1950).

19 (1) (a) paved the way for further recognition/discovery of many unnamed rights in future not only for Article 19 but also for Article 21 of Constitution of India. If the Ratio-Decidendi of this judgment is seen, then it would be crystal clear:

> "There can be little doubt that the imposition of pre-censorship on a journal is a restriction on **the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Article 19 (1)(a).** As pointed out by Blackstone in his Commentaries "the liberty of the press consists in laying no previous restraint upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press".

The Supreme Court (five judge Constitution Bench) in **Sakal Papers (P) Ltd v. Union of India**[11](unanimous view) applied the above-mentioned Ratio-Decidendi regarding 'Freedom of Press' by stating that **"Our Constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in "Freedom of Speech and Expression" guaranteed by clause (1)(a) of Article 19 vide Brij Bhushan v. State of Delhi."** It continues to state that "The right to propagate one's ideas is inherent in the conception of freedom of speech and expression. For the purpose of propagating his ideas every citizen has a right to publish them, to disseminate them and to circulate them."

In another five judge Constitution Bench, **Bennett Coleman & Co. v. Union of India**[12] **(**Mathew, KuttyilKurien JJ dissenting), Supreme Court, clearly underscored the settled position about 'Freedom of Press' by terming it as ark of the covenant of democracy because public criticism was so essential to the working of its institutions:

> Article 19(1) (a) provides that all citizens shall have the right to freedom of speech and expression. Although Article 19(1) (a)does not mention

[11] Sakal Papers (P) Ltd v. Union of India, AIR 1962 SC 305.

[12] Bennett Coleman & Co v. Union of India, 1973 SCR (2) 757.

> the freedom of the Press, it is the settled view of this Court that 'Freedom of Speech and Expression' includes 'Freedom of the Press' and circulation.It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views.
>
> Freedom of the press is no higher than the, freedom of speech of a citizen under Article 19(1)(a). Article 19 does not specifically provide for the freedom of the press as the First Amendment of the Constitution of the U.S.A. does. The freedom of the press is simply an emanation from the concept of fundamental right of the freedom of speech of every citizen.

The direct linking of 'Freedom of Press' with 'Freedom of Speech and Expression' got a fillip whenin**Express Newspapers v. Union Of India**[13]**,** a six judge Constitution Bench (unanimous view), viewed '**Freedom of Press'** as inclusive of 'Freedom of Speech and Expression' under Article 19 (1) (a) and restrictions imposed on it, not saved by Article 19 (2), were absolutely unconstitutional:

> 207. It would certainly not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. **Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty on its right to choose the instruments for its exercise or to seek an alternative media, prevent news-papers from being started and ultimately drive the press to seek Government aid in order to survive, would therefore be struck down as unconstitutional. Such laws would not be saved by Article 19 (2) of the Constitution.**

While recognising unnamed right as Fundamental Right within pre-existing named Fundamental right under Article 19 (1) (a), the apex Court did not

[13] Express Newspapers v. Union Of India, AIR 1958 578.

formulate any principle in the preceding judgments. To fill-up the vacuum of Constitutional jurisprudence, Supreme Court in Sakal Papers (P) Ltd. v. Union of India[14] observed that "**On the other hand the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions**."

In **Express Newspapers v. Union Of India**[15]Supreme Court also found another dimension for theorising it under Article 19 (1) (a): "**The guarantee of an abstract freedom of expression would be meaningless unless it contemplated (anticipate, envisage, envision, think of) and included in its ambit all the means necessary for the practical application of the freedom.**"

IV. Right to Information: A Facet of Right to Freedom of Speech and Expression

The guarantee of "Freedom of Speech and Expression" would be meaningless unless necessary "Right to Information" is included in its ambit. It would enable the citizens to enjoy the rights guaranteed by it in the fullest extent. Exercise of "Freedom of Speech and Expression" is wholly dependent on information; or to put it differently, information is pre-requisite to any exercise "Speech and Expression." Information is required for a person to say something or not to say something with conviction or confidence. Unless a person is truly informed about the matter, then how is it possible for that person to give an opinion, make a comment about the pros and cons of an issue or to critique it and to fairly judge the performance? If the system does not ensure the self disclosure of the information or disclosure on demand, there is no guarantee that the opinion, comment, criticism, advice, judging of performance, would be true and fair; these are definitely going to be biased, wrong, misleading and far from truth. There would be a question of the acceptability of any opinion which is not supported by facts or true information. It would hinder the process of forming an individual or group opinion which finally takes a shape of national opinion. If

[14]Sakal Papers (P) Ltd v. Union of India, AIR 1962 SC 305.

[15]Express Newspapers v. Union Of India, AIR 1958 SC 578.

the basic premise is based on wrong and falsehood, ultimately it would not lead anywhere, might be misdirected and finally the basic object for which the decision is taken will remain unfulfilled, leading towards total failure of policy and implementation. **In this background, four leading judgments are analysed where the issue of "Right to Information" directly or indirectly involved to trace out the origin and nature of Constitutional jurisprudence of it.**

In **Express Newspapers v. Union of India**[16]**,** theSupreme Court (a five judge Constitution Bench), by referring to passages from "Freedom of the Press-A Framework of Principles" (Report of the Commission on Freedom of Press in the United States of America), tacitly recognised the importance of "Right to Information" as an obligation of the PRESS and people's expectation to access to information. Though PRESS is not State under Article 12, even then, it gives a new dimension to building up a new dimension, which will go a long way in transforming the vertical nature of Fundamental Right into a horizontal one by expanding its base towards non-State entities. **Rightly speaking, 'Right to Information' started emerging in the Constitutional field of India from this judgment by reminding the obligation of press to collect and disseminate information to the citizens for making the democracy viable:**

> **183.** Press freedom means freedom from and freedom for. A free press is free from compulsions from whatever source, governmental or social, external or internal.….For these ends it must have full command of technical resources, financial strength, **reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market**.
>
> 199. In United States of America: **(b). the freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public;**(c). Such freedom is the foundation of free government of a free people.

[16] Express Newspapers v. Union of India, AIR 1958 SC 578.

In **State of Uttar Pradesh v. Raj Narain**[17]**,** a five judge Constitution Bench (Kurien Mathew. J concurring), apex Court admitted (in a negative way) the necessity of disclosure of documents (regarding the affairs of the State) before the Court by ignoring the "Protection Clause" of section 123 of Indian Evidence Act 1872, if it is not against public interest. In this case, Raj Narain, in his Election Petition, made an application to produce following documents, before court: (a). the circulars received from the Home Ministry and the Defense Ministry of the Union Government regarding the security and tour arrangements of Prime Minister Indira Gandhi, for the tour programs of Rae Bareli District or any general order for security arrangement; and (b). all correspondence between the State Government and the Government of India and between the Chief Minister and the Prime Minister regarding police arrangement for public meeting of Prime Minister by State Government and the necessary expenses incurred:

> "It is that injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld, is to be weighed against the public interest in the administration of justice that court should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. It is in public interest that confidentiality shall be safeguarded. The reason is that such documents become subject to privilege by reason of their contents."

In this case, majority of the judges did not pronounce any decision on "Right to Information" as facet of "Article 19 (1) (a). Even K.K.Mathew J also looked at the matter from the perspective of "Right to Know" under Article 19 (1) (a). From the governance perspective, the apex Court felt the indispensability of keeping the confidential information (documents which were sought to be submitted before court) under veil of secrecy due to the reason of public interest. **The facts of this case have a direct bearing on 'Right to Information' though in a covert way, because the access of the above-referred documents to the court will result in its disclosure to the person concerned, later.**

[17] State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428.

In **S.P. Gupta v. Union of India**[18] the crux of the issue was the transfer of judges from one High Court to another High Court. The main question was disclosure of information (regarding the correspondences/consultations between the Govt of India and Chief Justice of India, by relying on which Govt of India formed an opinion about transfers, conveyed to President of India for issuance of order) before apex Court which were needed to determine the constitutionality of existing process of transfer of judges. The second impediment for the required disclosure is section 123 of Indian Evidence Act which stated: "No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit". So the apex Court takes the stand by stating that disclosure of information in regard to the functioning of Government must be the rule and secrecy is an exception justified only where the strictest requirement of 'Public Interest' so demands and advices for maintaining a balance between 'public interest' and 'state interest':

> 73. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say that to order production of the document in question would put the interest of the State in jeopardy.....The court has to balance the detriment to the public interest on the administrative side which would result from the disclosure of the document and the detriment to the public interest on the judicial side which would result from non-disclosure of the document though relevant to the proceeding.

The facts which emerge from this judgment are: **Firstly,** the Supreme Court in this judgment never opines that "Right to Information" is inclusive of

[18] S.P. Gupta v. Union of India, 1981 SCC SUPP 87.

"Freedom of Speech and Expression" under Article 19 (1) (a); what the Supreme Court emphasised was "Right to Know" and that was also "seemed to be implicit in the right of 'Free Speech and Expression' guaranteed under Article 19 (1) (a)". Moreover, the indispensability of "Access to Information" to the public again was placed not in the context of Article 19 (1) (a), but in the context of good governance of the country. **Secondly,** the observation of Supreme Court that "people should have information about the functioning of the government" is merely obiter dictum.The following passages of this judgment are indicative of it:

> 64. **Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing**..... No democratic government can survive without accountability andthe basic postulate of accountability is that the people should have information about the functioning of the government.
>
> 67. The concept of an open government is the direct emanation from**the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a).**

Finally, in **Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal**[19], (a three judge Bench) Supreme Court has expressly stated that 'Right To Freedom Of Speech and Expression' includes 'Right To Information':

> **44. The freedom of speech and expression includes right to acquire information and to disseminate it.** Freedom of speech and expression is necessary, for self expression which is an important means of free conscience and self fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy.

[19] Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal, AIR 1995 SC 1236.

> 78. **However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained.**
>
> **124. [ii] The right to impart and receive information is a species of the right of freedom of speech and expression-the best means of imparting and receiving information and as such to have an access to telecasting for the purpose.**

V. Ministry of Information & Broadcasting v. Cricket Association of Bengal: An Analysis

As Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal is a Supreme Court judgment which unequivocally declared for the first time that "Freedom of Speech and Expression includes right to acquire information", therefore it has become incumbent to have its in-depth analysis in fathoming many untold points, which are given in the following:

Cricket Association of Bengal (CAB) is affiliated to Board of Control for Cricket in India (BCCI) and officially controls games of cricket in West Bengal. The main objects are to promote cricket, to foster the spirit of sportsmanship and ideals of cricket, to impart cricket education through media, and for achieving the said objects, to organise cricket matches-national and international. But neither CAB nor BCCI was established either by an executive order of Government or by a Statute. Neither of these organisations is controlled by any Governmental agency nor receives any financial assistance or grants from Govt, of whatsoever nature. **Therefore, it is amply clear that CAB/BCCI is not State or instrumentality of State falling under "Other Authority" created or established by Article 12 of Constitution of India.**

Dispute between CAB/BCCI and MIB/DD arose with regard to the right to live-telecast the event, viz., the cricket matches organised by CAB. In telecasting, there are three methods: (a) terrestrial, (b) cable and (c) satellite. In this case, it is the telecasting was to be done through satellite T.V. operation which involved either the use of a frequency generated, owned or controlled by the national Government or the Governmental agencies, or those generated,

owned and controlled by other agencies. CAB wanted to live telecast the cricket matches, organised by it through satellite, by a foreign agency and did not want DD to do it (which rejected CAB's proposal for up-linking the terrestrial signal to the foreign satellite). Now the question is why and to what extent, CAB/BCCI required the government's permission for up-linking. Moreover, though CAB/BCCI had not made any demand on any of the frequencies generated or owned and controlled by MIB/DD (Govt of India), is it permissible under law to exclude MIB/DD for telecasting the event? These questions are naturally surfacing because in India, there is a monopoly of broad-casting/telecasting in favour of Government of India and that is created by Indian Telegraph Act, 1885[20] (where telegraph[21] includes telecast in its entirety). As part of this monopoly, the statute vests the power of licensing for establishing, maintaining and working a telegraph to it on conditions and payments. Over here, no permission to establish or maintain telegraph even was sought by CAB from Government. CAB/BCCI only desired to telecast the cricket matches through a frequency not owned by Government but owned by foreign agency. To this end, what CAB/ BCCI sought from VSNL (as it controls the airwaves/frequencies on behalf of Govt of India) was to uplink to the foreign satellite, the signals created by its own cameras and its earth station or the cameras and earth station of CAB/BCCI's its foreign agency to a foreign satellite. The permission is sought technically only for operating a telegraph and that too for a limited period of time and for a specified purpose. Regarding airwaves/frequencies which are available with Government of India, it is scarce and limited; so there has to have equitable distribution of resources which sometimes needs prioritization (sometimes denial or sometimes allocation of limited resources as this is the only way to marshall

[20] 4.(1) Within India the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs: Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India.

[21] 3.(1) "Telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electromagnetic emissions, Radio waves Hertzian waves, galvanic, electric or magnetic means.

scarce resources to ensure their optimum enjoyment by all including those who are not affluent enough to dominate the media). Thereforethe argument that telecasting will suffer for want of frequency or denial is justified for public interest, does not exist. When, there was no a demand of a share of limited resources by CAB, the claim of MIB/DD that it wanted to telecast the event for fair or equitable use of limited resources, does also not hold any ground:

> 80. What is claimed is a right to an access to telecasting specific events for a limited duration and during limited hours of the day. There is no demand for owning or controlling a frequency. Lastly and this is an important aspect of the present case, to which no reply has been given by the MIB, there is no claim to any frequency owned and controlled by the Government. What is claimed is a permission to uplink the signal created by the organiser of the events to a foreign satellite.
>
> 81. Airwaves/frequencies are a public property and are also limited; the airwaves/frequencies have to be used in the best interest of the society. Best Interest of the society through its right, fair, equal and equitable use can be done either by a central authority by establishing its own broadcasting network or regulating the grant of licences to other agencies, including the private agencies. When, however, there are surplus or unlimited resources and the public interests so demand or in any case do not prevent telecasting, the validity of the argument based on limitation of resources disappears.

It should not be forgotten that organising of cricket matches, its production, recording, transmission and telecast (either by own-self or by agent) are under "Freedom of Speech and Expression" guaranteed by Article 19 (1) (a). hence, the above-stated activities related to cricket matches cannot be restricted/prohibited except on the grounds under Article 19 (2) by government or any of its instrumentality, i.e. in the interests of sovereignty and integrity of India, the security of the state, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence, in addition to a limitation imposed by the nature of the public property i.e. airwaves/frequencies involved. In this background, apart from other contentions, CAB/BCCI, put forward that the right to disseminate/circulate information is a part of the Fundamental Right to

"Freedom of Speech and Expression" which is subject only to the restrictions under Article 19(2). Therefore, as cricket match generates information (becomes document after televising), the citizens (interested in sports by way of education, information, record and entertainment) including the organisers have a right to such information, knowledge and entertainment. By not allowing the telecasting by a foreign agency planned out by CAB/BCCI, Union Govt would be violating Fundamental Rights of citizens of this country.

Was MIB or DD opposing the recognition of "Right to Information" as integral part of "Freedom of Speech and Expression"? From the submission of MIB/DD it is absolutely clear that it did not refuse to telecasting the cricket matches per se, organised by CAB/ BCCI. They are of the view that when the agency like DD has access to the largest number of viewers agrees to telecast the events, their right as well as the viewers' right under Article 19 (1) (a) is absolutely satisfied (though "Right to Information" was not specifically mentioned as such but it was implied). A mere creation of the monopoly-agency to telecast in favour of Govt of India does not per se violate Article 19 (1) (a) as long as the access is not denied to the media or to any private entity either absolutely or by imposition of terms which are reasonable under Article 19 (2). In the present case, the refusal by MIB/DD for up-linking of signals regarding cricket matches created by CAB/BCCI to a foreign satellite whose airwaves/frequencies are to be used does not attract any of the reasonable restrictions under Article 19 (1) (a) of Constitution of India, what Supreme Court, opined.

It is a milestone in the history of Constitutional jurisprudence of India when Supreme Court declared that "Freedom of Speech and Expression" included right to acquire information. However, if delved deeper, this judgment has some inherent limitation for which it has failed in getting transformed into a full bloomed accomplishment, which are as follows: **Firstly,** this judgment is not a declaration of a simple or larger Constitutional Bench of Supreme Court. **Secondly,** there was no issue framed up by Supreme Court by stating that "whether right to information forms the basic upon which freedom of speech and expression is built upon as an integral part of it"? **Thirdly,** no natural citizen of India, filed a writ petition to any of the Constitutional Courts after being denied by the govt or by its instrumentality or by any public authority, the access to a document or information. **Fifthly,** no citizen of India nor any

organisation directly filed a writ petition to Supreme Court to make a declaration that "Right to Information" is inclusive of Article 19 (1) (a) of Constitution of India. **Sixthly,** Supreme Court made a non-state entity responsible to provide the citizens of India with the information. The primary obligation to furnish the information to the deserving sections lies with a non-State entity like CAB/BCCI in this case. **Seventhly,** according to existing Fundamental Rights jurisprudence, it is the obligation of State or its instrumentality under Article 12, to realise the Fundamental Rights of the people (either positively or negatively) and if there is any violation of it, it is to be enforceable against State or its instrumentality as mandated. By deviating from the existing system, the Supreme Court must have done a great deed (by trying to make the Fundamental Rights horizontal), but on the same point, it has weakened the realisation of "Right to Information" as in this case the apex Court did not make it an obligation of State or its instrumentality fully, by directing the MIB/DD (or approving its proposal) to televise the event, instead of getting the event televised by a foreign agency, for which information (it exists in the form of cricket matches) the people of this country have to pay for it unlikely to the service if provided by DD, the people have not to pay. This arrangement gives an impression that that "Right to Information" has to be purchased, because the foreign channel has to be subscribed by countrymen. The opposite approach could have been adopted by Supreme Court either on the ground of morality (Constitutional morality) under Article 19 (2) or in the interest general public under Article 19 (6) by excluding India from the operation of agreement of CAB and the foreign agency. Had the Supreme Court divided the responsibility among CAB/BCCI and MIB/DD for televising the cricket matches (foreign agency for foreign countries and Doodarshan inside India), thedecision would have been much more reasonable. For effective realisation of citizens' Fundamental Right" any court of record, can't divest off or disallow the State (partially or fully) from performing its obligation. **Eighthly,** according to this judgment, the responsibility to realise "Right to Information", by whatever way it may be, the role of State or its instrumentality is very limited i.e. the authority concerned will have to permit CAB/BCCI to link the signals to the airways/frequencies, generated, owned and controlled by a foreign agency, so that people's "Right to Information" according to Supreme Court, can be realised in India. **Ninthly,** definition of "Information" has not been given in

this judgment including what will be the grounds of non-disclosure. **And finally,** the information which was generated (which according to Supreme Court, needs to be accessible to the people of India), in this case in the form of sports activity-cricket match, did not derive from the activity or affairs of the State or its instrumentality, it did derive from the activity of a private body and some private persons (cricket players, who also were not paid by the government). **In a nutshell, it can be commented that the recognition of "Right to Information" by Supreme Court is premised on a week foundation of Constitutional jurisprudence.**

Lastly,N.N.Vohra Committee was constituted by Govt. of India. "To take urgent stock of all available information about the activities and links of all Mafia organizations/elements, to enable further action". In main Report, by analyzing various sub-committee reports, it was noted that the growth and spread of crime syndicates in Indian has been pervasive and these criminal elements have developed an extensive network with bureaucrats, government functionaries, politicians, media personalities, strategically located persons in the non-Governmental sector and members of the judiciary; some of these criminal syndicates have international links including foreign intelligence agencies. After the report was tabled in Parliament, Dinesh Trivedi, demanded to Government to make the ground-reports public which were the premise of main report (without which the main report is baseless) including the names of individuals who would become identifiable as a result of studying the various background papers. When it was not met, he in conjunction with some NGOs filed this writ-present in public interest which gave rise to **Dinesh Trivedi v. Union of India**[22]. One of the main contentions was that the people have a right to know about the full investigatory details of the report. Such disclosure is stated to be essential for the maintenance of democracy, for ensuring that transparency in government and section 5 of the Official Secrets Act, 1923 is over-broad, unreasonable. A two judge Bench of Supreme Court opined that people have a 'Right to Know' (by not even linking it to Article 19 (1) (a)) by totally departing from the Ratio-Decidendi of Ministry of Information & Broadcasting v. Cricket Association of Bengal, a larger Bench in this regard and

[22] Dinesh Trivedi v. Union of India, (1997) 4 SCC 306.

> In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare....To ensure the continued participation of the people in the democratic process, they must kept informed of the vital decisions taken by the Government and the basis thereof.Democracy, therefore, expects openness and openness is a concomitant of a free society.

VI. Enactment of Right to Information (RTI) Act and Salient Features

A big development occurs in the history of Indian legislations, when Parliament enacted Right to Information Act in 2005[23]. This is one of the most important legislations in the first decade of 21st Century in India, which recognises "Right to Information" as a Statutory Right.

A. Objective of RTI Act

As Constitution of India has established democratic republic and democracy requires an informed citizenry which are vital to its functioning and to contain corruption, therefore, the basic purpose of Right to Information Act is to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability (towards the citizens of this country) in the working of every public authority.

B. What is Right to Information

A pertinent question is what is "Right to Information"?'Right to Information'[24] means the information[25] accessible under this Act which is held by or under

[23] Right to Information Act, 2005, No. 22, Acts of Parliament, 2005 (India).

[24] *Id.* s 2(j).

[25] **'Information'** means any material in any form, including records[25], documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public

the control of any public authority and includes the right to (i). inspection of work, documents, records; (ii). taking notes, extracts or certified copies of documents or records; (iii). taking certified samples of material; (iv). obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

C. Obligations of Public Authorities

Primary obligation to disclose the information lies with 'Public Authority'. Apart from many duties (1).every Public Authority[26] shall (a)maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated; (2) it shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo-motuto the public at regular intervals through various means of communications, so that the public have minimum resort to the use of this Act to obtain information.

C. Duties of Information Officers

An information seeker under this Act, shall make a request in writing or through electronic means, with a deposit of prescribed fees, either to (a) the CPIO or SPIO, of the public authority concerned; the information seeker is not required to give any reason for the disclosure of information or any other

---

authority under any other law for the time being in force (defined in section 2 (f) of RTI Act).

[26]**'Public Authority'** means any authority or body or institution of self-government established or constituted -(a) by or under the Constitution;(b) by any other law made by Parliament;(c) by any other law made by State Legislature;(d) by notification issued or order made by the appropriate Government, and includes any-(i)body owned, controlled or substantially financed;(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government (defined in section 2 (h) of RTI Act).

personal details except what may be necessary for contacting him[27]. The CPIO or the SPIO after receiving a request u/s 6 shall, within thirty days of the receipt of the request either provide the information (may be on payment of such prescribed fee if necessity arises) or reject the request for any of the reasons specified in sections 8 and 9[28]. However, where the information sought for concerns the life or liberty of a person, the information shall have to be furnished within forty-eight hours of the receipt of the request.

D. Exemption from Disclosure of Information

The information under Right to Information Act may be denied for the following grounds[29]: (a) information, disclosure of which would prejudicially affect the sovereignty, integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence; (b) information which are expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless larger public interest warrants the disclosure; (e) information available to a person in his fiduciary relationship, unless larger public interest warrants the disclosure; (f) information received in confidence from foreign Government; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers for certain period of time; (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless larger public interest justifies the disclosure. **(2) Notwithstanding**

[27] *Id.* s 6.

[28] *Id.* s 7.

[29] *Id.* s 8.

anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with section (8) (1) of, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

E. Rejection for being Third Party Information[30]

Where a CPIO or SPIO intends to disclose any information or record, or its part under this Act, which relates to or has been given by a third party to public authority or is confidential in the opinion of that third party, the CPIO or SPIO, shall give a written notice to that third party regarding that RTI letter and the desire of the CPIO or SPIO to disclose the information or record, or its part to the information seeker and invite the third party to make a written or oral submission, regarding the disclosure of such third party information, which shall be kept in view while taking a decision about disclosure of information. However, except trade or commercial secrets protected by law, disclosure of third party information may be allowed if the public interest outweighs in importance any possible harm or injury to the interests of that third party.

F. Personal Liability of Information Officer

RTI Act, fixes up the responsibility of the information officers by penalising them for non-performance of their duties, where the CIC or SIC at the time of deciding any complaint or appeal is of the opinion that the CPIO or SPIO has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or denied the request with mala-fides for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or, obstructed in any manner in furnishing the information[31].

VII. A Concluding Comment: Little Is Done, Vast Remains Undone

[30] *Id.* s 11 (1).

[31] *Id.* s 20.

Democracy succeeds in a country where "Freedom of Speech and Expression" is guaranteed, and as natural corollary, this freedom cannot be properly functional where there is no "Right to Information". A milestone was constructed in history of Constitutional jurisprudence of India when in Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal, Supreme Court expressly recognised "Right to Information" as Fundamental Right as inclusive of "Freedom of Speech and Expression" under Article 19 (1) (a), Constitution of India in spite of some having some major shortcomings. However if "objective clause" of Right to Information Act is looked at, it will be seen that it was not at all enacted to put in place in the legal regime, once declared "Right to Information" as Fundamental Right under Article 19 (1) (a).Whatever, may the limitations of Ministry, Information and broadcasting v. Cricket association of Bengal, the objective clause should have declared that the objective was to give effect to the apex Court's recognition to "Right to Information" as Fundamental Right. As far as analysis of Constitutional jurisprudence of India with regard to "Right to Information" is concerned, the following points need attention so that Constitutional jurisprudence behind it, can become a sound, robust, living and model framework for India.

Factually, "Right to Information" is an interpreting right. This right is not the only interpreting right under Part III of Constitution of India, there are many such interpreting rights under the umbrella of some expressed Fundamental Rights in Part III. At the time of adoption of Constitution of India, these unnamed rights were not thought to be parts of the named Fundamental Rights but gradually, Supreme Court took the lead and by construing the meaning of named Fundamental Rights, conferred the status of Fundamental Rights on many unnamed rights under the tagging of Articles 19, 21, 25 respectively. Some of the recognitions/inclusions were interpreted by Constitution Benches while some of those are not like "Right to Information" Here lies a serious Constitutional flaw with the approach of judiciary. Given the significance of Fundamental Rights in the law and life of people of India, the conferment of status of Fundamental Rights on unnamed rights (which fulfils the criteria set out by the Supreme Court itself), should not be admitted in the garden of Fundamental Right unless it is construed by Constitution Bench. Therefore, it is recommended that a Constitution Bench be constituted for the purpose of formal

recognition/inclusion of "Right to Information" as integral part of "Freedom of Speech and Expression" under Article 19 (1) (a), Constitution of India, the way it was done for "Right to Privacy" in K.S Puttaswamy v. Union of India[32], to maintain the dignity of Fundamental Rights and its superlative character. State of U.P v Raj Narain or S.P Gupta v. Union of India would have been the ideal cases for expressly declaring "Right to Information" as Fundamental Right under Article 19 (1) (a) as facts were related to demands of citizens to have access to the information/document related to the affairs of states (though in indirect way).

In Maneka Gandhi v. Union of India judgment, for the first time a non-named right i.e. "Right to Go Abroad" was recognised as a Fundamental Right under "Personal Liberty", by a seven judge Constitution Bench. Its Ratio-Decidendi becomes integral part of Article 21, so also is occupying the legal field as law in itself due to the implication of Doctrine of Stare Decisis. The above Ratio Decidendi, paved the way for the recognition/inclusion of many un-named rights as Fundamental Rights under "Right to Life" or "Right to Personal Liberty", such as "Right to Livelihood", "Right to Dignity", "Right to Clean Environment" or recent "Right to Privacy" etc. Except "Right to Elementary Education" as Article 21 (A), no otherinterpretingright(newly discovered Fundamental Rights)was inserted in the relevant Article by amendment of Constitution. People, interested (without law or political science backgrounds) in knowing Indian Constitution after going through the bare Act of Constitution, will not find these developments, --significant features of Constitutional jurisprudence. Even the children/young people in educational institutions in India, who are to be oriented with constitutional values, have to read the voluminous books or huge judgments to know the scope of Fundamental Rights. Constitutional amendment needs to be done by clearly inserting/expressing, those unnamed rights (interpreting rights) including "Right to Information" under the relevant Articles in Part III, as distinct Fundamental Rights, by following procedure of Article 368 of Constitution of India.

The criteria adopted by Supreme Court for recognising "Freedom of Press" (equally applicable for "Right to Information"), as Fundamental Right, if compared with the criteria set out in Maneka Gandhi v. Union of India, for

[32]K.S Puttaswamy v. Union of India, AIR 2017 SC 4161.

doing the same under Article 21, it will be crystal clear that the later is more comprehensive than the former. The verbatim transcriptions of the relevant parts of Ratio Decidendis of both are reproduced below:

(A). (1). "the Court must interpret the Constitution in a manner which would enable the citizen to enjoy the rights guaranteed by it in the fullest measure subject, of course, to permissible restrictions" (Sakal Papers (P) Ltd v. Union of India). (2). "The guarantee of an abstract freedom of expression would be meaningless unless it contemplated and included in its ambit all the means necessary for the practical application of the freedom."(Express Newspapers v. Union Of India).

(B). (1)."The expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19" (Maneka Gandhi v. Union of India). (2). Every activity which facilitates the exercise of a named fundamental right is not necessarily comprehended in that fundamental right nor can it be regarded as such merely because it may not be possible, otherwise to effectively exercise, that fundamental right. What is necessary to be seen is, and that is the test which must be applied, whether the right claimed by the petitioner is an integral part of a named fundamental right or partakes of the same basic nature and character as the named fundamental right so that the exercise of such right is in reality and substance nothing but an instance of the exercise of the named fundamental right.

It is pertinent to understand the difference between restriction under a 19 (2) and sections 8 and 11 of RTI Act. **Firstly,** Under Article 19 (2) of Constitution of India, Security of State, Friendly Relations with Foreign States, Public Order, Decency or Morality, Contempt of Court, Defamation, Incitement to an Offence and Sovereignty and Integrity of India, make any restriction or prohibition by the State on Article 19 (1) (a) constitutionally valid. On the other hand, if the exception clause embedded in Right to Information Act, is perused, it will be seen that the exceptions under sections 8 and 11 for which informations can be barred from disclosure are not absolute in nature as on larger public interests those protections from disclosure can be done away with, which is absent in Article 19 (2), wherein reasonable restrictions on Article (1) (a) can be given up. **Secondly,** a comparison between the reasonable restrictions under Article 19 (2)

and exceptions under sections 8 and 11 of Right to Information Act, reveals that as far as the former is concerned, the numbers are less compared to the latter. **Thirdly,**the statutory right i.e. Right to Information Act allows more restrictions than what were not envisaged/allowed in/by the Article 19 (2) as Fundamental Right. A pertinent question arises in the Fundamental Rights jurisprudence: can a statute do impose more restrictions on Statutory Right (which happens to be a Fundamental Right) than the Constitutionally permissible restrictions? Are the additional or statutory restrictions not stultifying Article 13 (2) which reads: "the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void". Hence, the exemptions under section 8 of RTI Act should be reconsidered, so that a more viable Right to Information regime can be created for the full realization of democracy in India.

Fundamental Rights are enforceable against State which is according to Article 12 of Constitution of India (a). Government of India; (b) Governments of States; (c). Union Parliament; (d). State Legislatures; (e). Local authorities and (f). Other Authorities. Fundamental Rights cannot be enforced against private entities, which make the system a vertical one; so no citizen cannot seek information from private bodies regarding their activities under Article 19 (1) (a). In the same way, "Right to Information" as statutory right, permits a citizen to get information only from "Public Authorities" which according to section 2(h) are any authority, body or institution of self government established or constituted (a). by or under Constitution; (b). any law of Parliament; (c). any law of State Legislature; (d). by notification issued or order made by appropriate Government and includes (i). anybody owned, controlled or substantially financed; (ii). Non-Government organization substantially financed, by appropriate government. Unless, all private bodies, not covered by Article 12 or Section 2 (h) of RTI Act, are brought within the purview of "Right to Information" so that citizens can have access to information from them, by making the system a horizontal one, basic objects of Fundamental Rights as envisaged in Preamble to Constitution of India and OBJECTIVE CLAUSE of Right to Information Act 2005 will remain un-fulfilled. To some extent, the enforcement of "Right to Information" has been made horizontal under Article 19 (1) (a) when (in spite of all limitations) Supreme Court in Cricket

Association of Bengal judgment, put the primary obligation of realizing the citizens' "Right to Information" upon a non-State entity (CAB/BCCI) with a little bit touch of State and in Right to Information Act, whiling fixing up the responsibility upon "Public Authorities" to furnish the information to the citizens, the Government has gone some steps away from Article 12 of Constitution of India (enforceability of "Right to information" as Fundamental Right against State) and brought many non-State entities within the purview of "Public Authorities" which are not considered as state under Article 12 of Constitution of India, but it is not complete horizontal in nature, because many other non-State (non-Govt.) entities remain outside this trajectory of Fundamental Right and Statutory Right.