Chapter-5
Role of Judiciary for the Protection of Right to Information in India
“The truth is that the law is uncertain. It does not cover all the situations that may arise. Time and again, practitioners are faced with new situations, where the decision may go either way. No one can tell what the law is until the Courts decide it. The judges do every day make law, though it is almost hereby to say so. If the truth is recognised then we may hope to escape from the dead hand of the past and consciously mould new principles to meet the needs of the present.”

--Charles John Hamson

**5.1 INTRODUCTION**

Every day the threat of free speech and expression increases. We believe that the freedom of speech and expression is an absolute and inalienable right, and is the keystone of a modern democracy.

Initially, in India Right to Information took a back seat and it was secrecy in matters of government functioning that was emphasized in British India. Nonetheless, after Independence, Judiciary played a commendable role in interpreting constitutional provisions relating to right to information and bringing a new dawn of right to information law in India. Thus, Judiciary can be said to be the backbone of the right to information in India.

**5.2 JUDICIAL RECOGNITION TO RIGHT TO INFORMATION**

There is no express provision in the Constitution of India, which specifically provides for the citizen’s right to know. However, this right can be inferred from the opening words of the Preamble ‘we the people’ constitutes India into a democracy and secures for her people social, economic and political justice, liberty of thought, expression and

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belief. The constitutional right to freedom of speech and expression under Article 19(1)
(a) is the repository of the right to information.⁴ Further Article 19(1)(a) provides that
freedom of thought and expression, which indirectly includes right to get information.
Article 21 guarantees right to life and personal liberty to citizens. Right to life is
incomplete if the basic human right is not cherished i.e. right to know. Article 39(a), (b)
and (c) provides for adequate means of livelihood, equitable distribution of material
resources of the community, to check concentration of the wealth and means of
production. All these rights shall be unfulfilled if right to information is not granted
ahead of all rights. Taking material from the above constitutional provisions the
judiciary has created and secured the right to know to citizens.⁵

The role of the Supreme Court as final interpreter is increasingly reflected in various
judgments. Right to information, known as, the brain child of Indian Judiciary, found its
existence in the realm of rights in India through various decisions of Judiciary.

In India, Courts have derived right to know from two distinct constitutional sources,
they are the fundamental right to freedom of speech and expression guaranteed in
Article 19(1)(a) and the fundamental right to life and personal liberty under Article 21
of the Constitution.

5.2.1 Right to Information as a part of Article 19(1)(a) of the Constitution

In the case of **State of Uttar Pradesh v. Raj Narain**⁶ the defendant who challenged the
validity of Mrs. Gandhi’s election required disclosure of Blue Book which contained
the tour programme and security measures taken for the Prime Minister. Though the
disclosure sought was not allowed, Justice Mathew, held that the people of this country
were entitled to know the particulars of every public transaction in all its bearing.
Justice Mathew said “In a Government of responsibility like ours where all the agents of
public must be responsible for their conduct, there can be but few secrets. The people of
this country have a right to know every public act everything that is done in a public
way by their public functionaries. They are entitled to know the particulars of every

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⁴ Peoples Union for Civil Liberties v. Union of India, AIR 2004 SC 1442.
⁵ Devinder Singh, “Implementation of Right to Information Act 2005: Some National and International
⁶ AIR 1975 SC 865.
public transaction in all its bearing. The right to know, which is derived from the
case of freedom of speech and expression- not absolute, is a factor which should
make one wary, when secrecy is claimed for transactions, which can at any rate, have
no repercussion on public security.” But the legislative wing of the State did not
respond to it by enacting suitable legislation for protecting the right of the people. Justice Mathew recognized the existence of right to know as derived from the concept
of freedom of speech and expression.

The right to know elaborated in S.P. Gupta v. Union of India the Supreme Court held
that the concept of an ‘Open Government’ is a direct emanation from the ‘right to
know’. This is implicit in the freedom of speech & expression guaranteed under Article
19(1)(a). Thus, the disclosure of information with regard to the functions of the
Government must be the rule and the secrecy must be an exception. Restriction is
justified only where the strict requirements of law or public interest so demand. In this
way the Supreme Court emphasized right to know as a Basic Postulate of Democracy.

It was also emphasized in this case that, “No democratic Government can survive
without accountability and the basic postulate of accountability is that the people should
have the information about the functioning of the Government. It is only when people
know how the Government is functioning that they can fulfill the role which democracy
assigns to them and makes democracy a really effective participatory democracy.”

The Supreme Court of India has further emphasized in the S.P. Gupta’s case that open
Government is the new democratic culture of an open society towards which every
liberal democracy is moving and our country should be no exception. In a country like
India which is committed to socialistic pattern of society, right to know becomes a
necessity for the poor, ignorant and illiterate masses.

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7 Raj Narain’s Case, AIR 1975 SC 865, for the first time in India, the right to know about the
Government’s activities was recognized by Justice K.K. Mathew in this case.
Delhi, 2005, p.3.
9 AIR 1982 SC 149, popularly known as Judge’s Transfer Case.
10 Manpreet Kaur, “Independence of Judiciary under Right to Information Act, 2005” Punjab University
11 AIR 1982 SC 149.
Seven-Judges Bench of the Supreme Court in *S.P. Gupta v. Union of India*\(^{12}\) followed the *Raj Narain case*\(^{13}\) and observed that:

“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. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy.”

The Supreme Court by a generous interpretation of the guarantee of freedom of speech and expression elevated the right to know and the right to information to the status of a fundamental right, on the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees.\(^{14}\)

These two decisions i.e. *State of U.P. v. Raj Narain*\(^{15}\) and *S.P. Gupta v. Union of India*\(^{16}\) have recognized that the right to citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19 (1)(a).

The Court declared that 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).

The Supreme Court for the first time gave a ruling on Three Judges Cases\(^{17}\) that disclosure of information with respect to functioning of the government must be a rule rather than an exception.

\(^{12}\) AIR 1982 SC 149.
\(^{13}\) AIR 1975 SC 865.
\(^{14}\) Retrieved from <http://www.rrtd.nic.in/RIGHT%20TO%20INFORMATION.html> visited on 02-02-2012.
\(^{15}\) AIR 1975 SC 865.
\(^{16}\) AIR 1982 SC 149.
\(^{17}\) S.P. Gupta Case, AIR 1982 SC 149. Also see Supreme Court Advocates-on Record Association v. Union of India, AIR 1994 SC 268 and Re Special Reference 1 of 1998, AIR 1999 SC 1.
However, despite the progressive judgments and pronouncements by the Supreme Court of India, the Government was unmoved and no serious effort was made to enact a transparency law.\footnote{Shekhar Singh, “India: Grassroots Initiatives” in Ann Florini (eds.), The Right to Know: Transparency for An Open World, CUP, 2007.}

In \textit{Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India}\footnote{AIR 1986 SC 515.} the petitioner challenged the imposition of import duty and levy of auxiliary duty on the newsprint on the ground of infringement of freedom of press. The three Judges Bench of the Supreme Court of India emphasized that freedom of press and information were vital for the realization of human rights and the imposition of tax like custom duty on newsprint is imposition on knowledge.

In \textit{L.K. Koolwal v. State of Rajasthan and Ors.},\footnote{AIR 1988 Raj. 2.} the Rajasthan High Court through its learned Justice D.L. Mehta allowed a public interest petition by a citizen to know activities of the State, the instrumentalities, the department and the agencies of the State. The Court has held that the citizen has a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in the old times that the State is not bound to disclose the facts to the citizens or the State cannot be compelled by the citizens to disclose the facts, does not survive now to a great extent. Under Article 19(1)(a) of the Constitution there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The State can impose and should impose the reasonable restrictions in the matter like other fundamental rights where it affects the national security and any other allied matter affecting the nation’s integrity. But this right is limited and particularly in the matter of sanitation and other allied matter every citizen has a right to know how the State is functioning and why the State is withholding such information in such matters.

In \textit{S. Rangarajan v. P. Jagjivan Ram}\footnote{(1989) 2 SCC 574.} the Supreme Court held that the criticism of Government policies was not prohibited though there should be a proper balance
between freedom of expression and social interests, but courts cannot simply balance the two interests as if they are of equal weight. The court’s commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest will be endangered.

In *Life Insurance Corporation of India v. Manubhai D. Shah*\(^{22}\) the Apex Court speaking through Justice A.M. Ahmadi (as he then was) observed that LIC must function in the best interest of the community and then community is thus entitled to know as whether LIC is functioning as per statute or not.

In *M. Hasan v. Government of Andhra Pradesh*\(^{23}\) the Andhra Pradesh High Court held that refusal to Journalist and Videographer seeking interview with condemned prisoners amounted to deprivation of citizen’s fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India.

The Court said that as far as the exercise of fundamental rights is concerned, the position of a condemned prisoner was at par with a free citizen. He had a right to give his ideas and was entitled to be interviewed or to be televised. The press while interviewing a person must first obtain his willingness.\(^{24}\)

In *S.K. Kanitkar v. Bhiwandi Nizampura Municipal Council*\(^{25}\) while hearing petition under Article 226 of the Constitution seeking appropriate directions for getting certified copies of the building plan or commencement certificate etc. the following observation of Justice Sabasachi Mukherji that “people at large have a right to know” and ruled that petitioner had the right to inspect the documents and take certified copies of building plan of the illegal and unauthorized construction in Bhiwandi Nizampura Municipal Town.

In *Amar Chand v. Union of India*\(^{26}\) the Supreme Court rejected the claim for privileges on the ground that statement of Home Minister did not show that he had examined the question as to whether their disclosure would jeopardize public interest.

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22 AIR 1993 SC 171.
23 AIR 1998 AP 35.
26 AIR 1964 SC 1658.
Thus, in this case the Apex Court was successful to secure freedom of information on the basis of public interest doctrine.

This principle was reaffirmed by Hon’ble Supreme Court in the case of *Onkar Lal Bajaj v. Union of India*\(^\text{27}\) observing that the right to free speech and expression includes the right to receive and impart information. The public in general has a right to know the circumstances under which their elected representatives got certain benefits. This was a case where challenge was made to the grant of outlets, dealership and distributorship of petroleum products. In the modern constitutional democracies, it is axiomatic that citizens should have a right to know about the affairs of the Government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare. To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness, transparency and accountability, these are concomitant of a free society.

In *Indira Jaising v. Registrar General, Supreme Court of India*\(^\text{28}\) the Court held that there is no doubt that in a democratic framework free flow of information to the citizens is necessary for proper functioning, particularly in matters which form part of public record. But there are several areas where such information need not be furnished. The inquiry ordered and the report made to the Chief Justice of India being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The principles stated in the above decision are in different context and those principles cannot be invoked in a case of this nature, which is of exceptional category.

In *People’s Union for Civil Liberties v. Union of India*\(^\text{29}\) the Supreme Court said every legal right carries with it several exceptions. Right to information is a fundamental right under Article 19(1)(a) of the Constitution of India. The State under clause (2) of Article 19 of the Constitution, however, is entitled to impose reasonable restrictions *inter alia* in the interest of State. Similarly any information relating to the

\(^{27}\) (2003) 2 SCC 673.
\(^{29}\) AIR 2004 SC 1442.
operation and functioning of a nuclear plant is sensitive in nature. Any information relating to any features, process or technology cannot be disclosed as it may be venerable to sabotage. It is a reasonable restriction being enforced in the interest of the State by Atomic Energy Act. The Court normally respects the legislative policy behind the same.

In **Dhara Singh Girls High School, Ghaziabad v. State of U.P.**\(^3^0\) the Allahabad High Court held that it is apparent from the perusal of the objects and reasons for enacting the Right to Information Act, that the Government desired to establish a practical regime of right to information for citizens to have access to information under the control of public authorities, in order to promote transparency and accountability in their working.

In **University of Calcutta v. Pritam Rooj**\(^3^1\) the Calcutta High Court held that in a facet of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India, the Right to Information, thus, indisputably is a fundamental right.

The Supreme Court sowed the seeds of right to information in the landmark judgment, **State of Punjab v. Sodhi Sukhdev Singh.**\(^3^2\) No doubt, this case was decided in favour of State as it was allowed to withhold documents. However, **Justice K. Subba Rao** in his dissenting opinion observed that at the time when The Indian Evidence Act, 1872, was passed, the concept of welfare State had not been evolved in India and therefore, the work affairs of State used in section 123 of the Act could not have comprehended the welfare activities of the State. He further observed that if non-disclosure of particular of State document was in public interest, the partial and uneven dispensation of justice by Court was also in public interest. Thus, the final authority to allow or disallow the disclosure of document lies with the Court after the inspection of the document.

In **Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission**\(^3^3\) the Court held that the basis of right is citizen’s right to freedom of

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\(^3^0\) AIR 2008 All. 92.

\(^3^1\) AIR 2009 Cal. 97.

\(^3^2\) AIR 1961 SC 493.

\(^3^3\) AIR 2009 (NOC) 542 (Mad.).
speech and expression which is a fundamental right guaranteed under Article 19(1)(a) of the Constitution of India. So, a legislation, which has been enacted to give effect to right to know, which is one of the basic human rights in today’s world, must receive a purposeful and broad interpretation.

5.2.2 Right to Information as a part of Article 21 of the Constitution

The right to know is part and parcel of the right to freedom of speech and expression under Article 19(1)(a) of the Constitution, but the judiciary has given it more importance than the other freedoms provided by Article 19, therefore, in some of the cases the Court has emphasised on the right by interpreting it as part of ‘right to life’ under Article 21 of the Constitution of India.34

Highlighting the importance of the right guaranteed under Article 21 of the Constitution of India, Justice V.R. Krishna Iyer, in his separate but concurring judgment in Menaka Gandhi v. Union of India35 held as follows:

“Life is a terrestrial opportunity for unfolding personality, rising to higher states, moving to fresh woods and reaching out to reality which makes our earthly journey a true fulfilment not a tale told by an idiot full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article 21. Absent liberty, other freedoms are frozen.”

For the first time the Supreme Court in Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay P. Ltd.36 Justice Mukharji recognized the right to know as emanating from right to life under Article 21 of the Constitution. The Court declared that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizen of a free country aspire in the broaden horizon of the right to live in this age on our land under Article 21 of the Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform.

35 (1978) 1 SCC 248.
36 AIR 1989 SC 190.
Under Article 21 of the Constitution, the right is a natural concomitant to free press and freedom of speech and expression. The Apex Court has given a very broad definition to the right to receive and disseminate information through any media including electronic media etc. Right to information is inherent in right to life as enshrined in Article 21 of our Constitution. Thus, right to information emanates from the fundamental freedom of speech and expression and fundamental right to life. No doubt, these freedoms guaranteed by the Constitution have to be enjoyed subject to some reasonable restrictions but these restrictions can never outweigh and dominate the freedom. After all, what is fundamental is the freedom and not the restriction.37

In Mr. X v. Hospital Z38 the question before the Court regarding claim for damages made by a person against the hospital which disclosed the fact that the patient is HIV(+), resulting in his proposed marriage being called off and the patient being ostracized by the community. The Supreme Court held that right to privacy is one of the basic human rights but cannot be treated to be an absolute right and is subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedoms of others. The Court further declared that in such a situation, public disclosure of even true private facts may amount to an invasion of the right to privacy which may sometimes lead to the clash of one person’s ‘right to be let alone’ with another person’s right to be informed. Therefore, the Supreme Court held that it was open to the hospital authorities or the doctor concerned to reveal such information to the persons related to the girl whom he intended to marry and she had a right to know about the HIV(+) status of the appellant.39

In Aruna Roy v. Union of India40 the Supreme Court located the right to information under Article 21 of the Constitution of India (composite code theory of the SC in Meneka Gandhi v. Union of India)

The Supreme Court again in Sharda v. Dharmpal41 held that the right to privacy in terms of Article 21 of the Constitution is not an absolute right. If there was a conflict

37 Ibid.
38 AIR 1999 SC 495.
39 Ibid.
40 AIR 2002 SC 3176.
between the fundamental rights of two parties, that right which advances public morality would prevail.

In the case of *Essar Oil Ltd. v. Halar Utkarsha Samiti*\(^\text{42}\) the Supreme Court held that the right to information emanated from the right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

In *K. Ravi Kumar v. Bangalore University*\(^\text{43}\) the Karnataka High Court held that the public authority cannot deny flatly any document on the ground of confidentiality. It cannot be said that the request of the petitioner in this regard is unreasonable in the given circumstances. The Court further held that in such circumstances the authorities normally have to provide information to a citizen, if the document has a nexus with the judicial remedy in accordance with law.

In *Research Foundation for Science Technology Natural Resource Policy v. Union of India*\(^\text{44}\) the Court held that the right to information and community participation for protection of environment and human health is also a right which flows from Article 21 of the Constitution of India. The Government and authorities have, thus, to motivate the public participation. These well-enshrined principles have been kept in view by the Court while examining and determining various aspects and facets of the problems in issue and the permissible remedies.

### 5.2.3 Right to Information and Freedom of Press

In the field of right to information, press plays a most significant role. The purpose of the press is to advance the public interest by providing facts and opinions without which a democratic country cannot make responsible judgments. Press includes newspaper, television, radio, magazines and even internet. Free exchange of ideas and free debates are desirable for the Government of a free, independent and democratic State. No person shall be liable to any proceedings, either civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly of a State, as the case may be,

\(^{42}\) AIR 2004 SC 1834.

\(^{43}\) AIR 2005 Kar. 21.

\(^{44}\) 2007 (11) SCALE 75.
unless the publication is proved to have been made with malice: provided that this shall not apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly of a State, as the case may be.\textsuperscript{45}

In India, there is no separate fundamental right guaranteeing freedom of press. Thus, the freedom of press is implied within the fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, after broad interpretation by the Apex Court in various cases.

A press has always been recognized as a powerful instrument to disseminate the information. The press has always been considered as an agent for the people’s right to know.

In \textit{Romesh Thapper v. State of Madras}\textsuperscript{46} the Supreme Court held that freedom of speech and expression included the freedom of propagation or circulation. In this case the notification banning the entry into or the circulation or sale or distribution in the State of Madras or any part thereof the newspaper entitled “Cross Road” published at Bombay was held to be violative of the freedom of speech and expression, as without liberty of circulation, publication would be of little value. A democratic government attaches great importance to this freedom because without freedom of speech the appeal to reasons which is the basis of democracy cannot be made. \textbf{Chief Justice M. Patanjali Sastri} observed that:

\begin{quote}
“Freedom of speech and of the press lay at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible.”
\end{quote}

In the case of \textit{Brij Bhushan v. State of Delhi}\textsuperscript{47}, the validity of censorship previous to the publication of an English Weekly of Delhi, the Organizer was questioned. The Court struck down section 7(1)(c) of the East Punjab Safety Act, 1949, which directed the editor and publisher of a newspaper “to submit for scrutiny, in duplicate, before the publication, till the further orders, all communal matters, all the matters and news and

\textsuperscript{46} AIR 1950 SC 124.
\textsuperscript{47} AIR 1950 SC 129.
views about Pakistan, including photographs, and cartoons”, on the ground that it was a restriction on the liberty of the press. The majority of the Supreme Court struck down the order as violative of Article 19(1)(a) of the Constitution of India.

In Virendra v. State of Punjab48, the Chief Justice Sudhi Ranjan Das has held that banning of publication in the newspapers of its own views of correspondents about the burning topic of the day was ‘certainly a serious encroachment on the valuable and cherished right to freedom of speech and expression’.

In Sakal Papers Pvt. Ltd. v. Union of India49 the Supreme Court has held that the right to propagate his ideas guaranteed in Article 19(1)(a) extended not merely to the matter which he was entitled to circulate but also to the volume of circulation.

The Court further held that the Courts must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution. The reason for this is obvious. The freedom of speech and expression of opinion is of paramount importance under a democratic constitution which envisages changes in the composition of legislatures and governments and must be preserved. The right to freedom of speech is infringed not only when there is a direct ban on the circulation of a publication but also when some action on the part of the government would adversely affect the circulation of the paper.50

The Supreme Court in Bennett Coleman & Company v. Union of India51 observed that the constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed. The faith of citizens is that political wisdom and virtue will sustain themselves in the free market of ideas so long as the channels of communication are left open. The faith in the popular Government rests on the old dictum ‘let people have the truth and freedom to discuss it and all will go well’. The Court struck down the Newsprint Policy as being violative of Article 19(1)(a) of the Constitution of India and held that the newspaper should be left free to determine their pages, their circulation and their new edition within their quota which had been fairly fixed.

48 AIR 1957 SC 896.
49 AIR 1962 SC 305.
50 Ibid.
51 AIR 1973 SC 106.
Justice P.B. Sawant and Justice B.P. Jiven Reddy of the Supreme Court in Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal has declared that the right to freedom of speech and expression includes the right to receive and impart information. For fully exercising the right of freedom of speech and expression, it is necessary that citizens have the benefit of plurality of views and range of opinions on the public issues. A successful democracy posits an aware citizenry. Diversity of opinions, views, ideas and ideology is essential to enable citizens to arrive at in forming judgment on all issues touching them. The Court further held that right to freedom of speech and expression also includes the right to educate, to inform and to entertain.

The Supreme Court has observed that the 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 on social and moral issues. It is the only vehicle of political discourse so essential to democracy. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. that is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom of communication or circulation one’s opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

The scope of State’s right to regulate the Right to Information regarding sports was examined by the Karnataka High Court in K.M. Nataraj, Advocate v. State of Karnataka. In this case learned counsel for the petitioners and the petitioners submitted that the power cut notified by the respondents, if it is given effect during the telecast hours of the ‘Wills World Cup’ Cricket, 1996, commencing from 14th February, 1996 to 17th March, 1996, it would seriously affect their right to information guaranteed under Article 19(1)(a) of the Constitution of India and the said right cannot be infringed except by imposing reasonable restrictions as provided under sub-clause

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52 AIR 1995 SC 1236.
53 Ibid.
54 AIR 1997 Kar. 36.
(2) of Art. 19 of the Constitution of India. They submitted that the freedom of speech and expression guaranteed under Art. 19(1)(a), guarantees the right to information and right to receive knowledge through electronic media relating to telecast of ‘Wills World Cup’ Cricket, 1996. It is submitted that imposition of power cut or depriving the public of their right to view the telecast of ‘Wills World Cup’ Cricket, 1996, which is a mega event, without properly rescheduling the timings relating to power cut to enable the public to view the World Cup Cricket would amount to depriving the citizens of this country who are residing in this State, the right to freedom of information guaranteed to them under Article 19(1)(a) of the Constitution of India, the learned counsel for the petitioners, relied upon a decision of the Supreme Court in the case of Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal\footnote{AIR 1995 SC 1236.}, wherein the Supreme Court has taken the view that the freedom of speech and expression includes right to acquire information and disseminate it, and broadcasting is a means of communication, and sports is an expression of self. In the background of the submission made by the learned counsel for the petitioners, it may be useful to extract the relevant portion of paragraph 17 of the judgment, cited supra, which reads as follows:

“It will be apparent from the contention advanced on behalf of MIB that their main thrust is that the right claimed by the BCCI/ CAB is not the right of freedom of speech under commercial right or a right to trade under Art. 19(1)(g). The contention is based mainly on two grounds viz., there is no free speech element in the telecast of sports and secondly, the primary object of the BCCI/CAB in seeking to telecast the cricket matches is not to educate and entertain the viewer, but to make money. It can hardly be denied that sport is an expression of self. In an athletic or individual event, the individual expresses itself through its individual feat. In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19(1)(a) is an expression of thought and feeling and not of the physical or intellectual process or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self-expression. 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. The former is the right.”
5.2.4 Right to Information and Prisoner’s Right

In India, eighty percent of the inmates in the jails are under trials. The major problems faced by these inmates are not only of not getting a trial but that of not being granted bail, inhuman treatment in jails, facing poor conditions, lack of proper medical treatment etc. There are various statutes such as the Prisoners Act, 1894; the Model Manual Prison India, etc. and various precedents which have been laid down in landmark cases which provide for the rights which these prisoners are entitled to. \[56\] The Chief Justice of India, Adarsh Sein Anand said that:\[57\]

“The poor, illiterate and weaker sections in our society in our country suffer day in and day out in their struggle for survival and look to those who have promised them equality- social, political and economic…a very large number of under–trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable offences, to furnish bail bonds and get released on bail.”

The aim of the Right to Information Act, 2005, is to ensure transparency and accountability in the functioning of public authority. The RTI Act is a guaranteed right under Article 19 of the Indian Constitution. Being a prisoner does not stop one from being the citizen of India. And, as far as one is the citizen of India, one can always seek information under the Right to Information Act.\[58\]

In the case of \textit{Prabha Dutt v. Union of India}\[59\] the Supreme Court directed the Superintendent of the Tihar Jail to allow the representatives of a few newspapers to interview two death sentence convicts under Article 19(1)(a) of the Constitution though with the observation that the right under Article 19(1)(a) “is not an absolute right, nor indeed does it confer any right on the press to have an unrestricted access to means of information. The Supreme Court held that right to know news and information about the functioning of the Government is included in the freedom of press. But this right is not absolute and restrictions can be imposed on it, in the interest of the society and the

\[57\] In November 1999.
individual from which the press obtains information. They can obtain information from an individual when he voluntarily agrees to give such information.

In **Sheela Barse v. Union of India** the Apex Court ordered for release of information to her regarding such under trails kept in different parts of India. Though the Apex Court did not attract the right to free speech to confer the right to information, documents were ordered to be released to her despite the fact that she possessed no such right under any statute. Though the disclosure of desired information was confined to her and the Court did facilitate a speedy trial of the detained children. As a result it emerges that a need has been shown by a person having proper standing one would be able to seek information from the Government. It means the Apex Court was in favour of release of information in the interest of public good.

In **Saroj Iyer v. Maharashtra** the Court has held that the right to interview the prisoner is not absolute, nor Article 19(1)(a) of the Constitution confers any right to have unrestricted access to means of information. A Journalist has the right under Article 19(1)(a) to publish, as journalist, a faithful report of the proceedings witnessed i.e. he has the right of access to the source of information and heard in the Court.

The aim of the RTI Act, 2005, is to ensure transparency and accountability in the functioning of public authority. The RTI Act is a guaranteed right under Article 19 of the Indian Constitution. And, a prisoner can seek information using the guaranteed right about the facilities being made available to him in the jail. The order was passed in the matter pertaining to a convict, Gulab, in the Central Jail, Varanasi, who had sought information from model jail, Lucknow on 28th March, 2011 about the facilities being extended to prisoners in the jail. In response, the Senior Superintendent of Jails informed the information seeker that his application was against the law. The Superintendent of jail asked the prisoner to send his application through a rightful channel, as seeking information under the RTI Act, and sending an application directly.

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60 AIR 1986 SC 1773.
61 AIR 2002 Bom. 97.
to the Superintendent was against the law, on the count of him being a prisoner. The prisoner, later, filed a complaint with the Commission.63

Before the Commission, too, the jail authorities maintained that there are rules laid down in the UP Jail Manual, about the manner in which a prisoner can do correspondence. The Jail authorities said before that Commission that the prisoner has directly sent the letter to the Superintendent, seeking information under RTI, which is against the rules. The Commissioner ruled that the RTI Act has an over-riding effect on the rules laid down in the Jail Manual. The Commissioner directed the Superintendent of Jails to provide the information to the prisoner within three weeks. The Information Commissioner, Brijesh Kumar Mishra, said that it is well within the right of the convicts and under trials to use RTI and seek information. Besides, Commission also wrote to the DG (Prisons) asking directing him to ensure that prisoners are allowed to use their right to information, as has been laid down in the RTI Act.64

5.2.5 Right to Information and Voter’s Right

In the case of T.N. Sheshan, Chief Election Commissioner of India v. Union of India65 the Supreme Court observed that the Preamble of our Constitution proclaims that we are in a Democratic Republic. Democracy being the basic structure of our constitutional setup, there can be no two opinions that free and fair elections of our legislative bodies alone would guarantee the growth or healthy democracy in the country. Hence, the right of a voter to know the bio-data of a candidate is the foundation of democracy.

In Common Cause (A Registered Society) v. Union of India66 the Supreme Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If an affidavit is required to be submitted by a candidate for election to disclose the assets held by him/her at the time of election. Then the voter can easily decide to cast a vote in

63 Ibid.
64 Ibid.
his/her favour or not, i.e. the voter can decide on the basis of information received or the information known to him.

The Court held that the corruption in quest of political office and the corruption in the mechanism of survival in power had thoroughly vitiated our lives and our times and sullied our institutions so much so that the corruption was the root cause of all the problems faced by the society and the country, and that unless the statutory provisions meant to bring transparency in the functioning of the democracy are strictly enforced and the election-funding is made transparent, the vicious circle cannot be broken and the corruption cannot be eliminated from the country.\(^{67}\)

It was submitted for the Election Commission that the expenditure incurred by a political party in terms of explanation I to Section 77 of the Representation of People Act, 1951, shall be presumed to be authorized by the candidate himself but the said presumption would be rebuttable, that the onus lies on the candidate to prove that the expenditure was in fact incurred/authorized by the party and it was not incurred by the candidate himself, that the entire gamut of election is under the supervision and control of the Election Commission by virtue of Article 324 of the Constitution, that the commission can direct the political parties to file details of expenditure incurred by them on the election of their candidates.\(^{68}\)

In *Dinesh Trivedi, M.P. v. Union of India*\(^{69}\) the Division Bench of Apex Court comprising *A.M. Ahmadi C.J.* once again acknowledged the importance of Open Government in a participative democracy. In this case, court has held that all the citizens of India has right to know about the affairs of the Government. In this case, court has held that all the citizens of India has right to know about the affairs of the Government. This right is implicit in Article 19(1)(a) of the Constitution of India. The court has observed that it is essential to ensure the continued participation of the people in the democratic process that they are kept informed of the vital decision taken by the Government aimed at their welfare and basis thereof. Democracy expects openness and openness is concomitant of free society.

\(^{67}\) Ibid.

\(^{68}\) Ibid.

\(^{69}\) (1997) 4 SCC 306.
The Delhi High Court in *Association for Democratic Reforms v. Union of India* had held that voter had the right under Article 19(1)(a) to know the antecedents of the candidate and that right could be restricted by passing such legislation as covered by Article 19(2), but Section 33-B could not be justified or saved under Article 19(2). In this case court has observed that Information is a many splendered virtue. It is the key to power, fortune, science and technology and even steadfast democracy. Its potential when channelized is capable of banishing ignorance, poverty, hunger and want. It plays significant role in every walk and sphere of life, including the field of politics and democracy. It can transform democratic institutions and the governance of the country.

The Court also emphasized that the right to receive information acquires greater significance in the context of elections. It is now common knowledge that there is criminalization of politics in India. It is a matter of great concern that anti-social elements and criminals are seeking to enter the politics arena through the mechanism of elections to State Legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot this evil. In this scenario, our aim has sought to cleanse the electoral process through the mechanism of the right to know of the people.

The nature and scope of right to information was considered by Delhi High Court in *Association for Democratic Reforms* case. In this case the Division Bench of Delhi High Court was relying on the *Kesavananda Bharati’s Case*, said that Parliamentary democracy is the part of basic feature of the Constitution. For the success of the democracy, right to receive information acquires great significance in the context of elections.

On appeal, the Supreme Court substantially agreed with the Delhi High Court. In *Union of India v. Association for Democratic Reforms* a landmark judgment of the Apex Court, ruled that a voter has a fundamental right under Article 19(1)(a) of the Constitution to know about the antecedents including criminal past of the candidate contesting election for MP or MLA and it is much more fundamental and basic for the

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70 AIR 2001 Del. 126.
71 Ibid.
72 Ibid.
73 AIR 1973 SC 1461.
74 AIR 2002 SC 2112.
survival of democracy. Democracy cannot survive without free and fair elections, without free and fairly informed voters. The court quoted that “… one sided information, disinformation, misinformation and non-information will equally create a uninformed citizenry, which makes democracy a farce…. freedom of speech and expression includes right to receive and impart information, which includes freedom to hold opinions”

Rejecting the argument of the petitioner that the voters do not have a right to know about the private affairs of the public functionaries, the court has observed that:

“there are widespread allegations of corruption against person holding post & power. In such a situation, the question is not of knowing personal affairs but to have openness in democracy for attempting to cure the cancerous growth of corruption by a few rays of light.”

The Supreme Court in the above said case issued 5-point guidelines to the Election Commission on the matter of voter’s right to know about the candidate’s necessary information. By these guidelines the Election Commission of India was directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination papers furnishing therein, information on the following aspects in relation to his/her candidature about: -

(i) his (candidate’s) conviction, prosecution and/or, acquittal in previous case, if any;

(ii) whether any pending case before 6 months of filing of nomination, on any case pertaining to imprisonment for two years or more or its cognisability;

(iii) his assets and of his spouse or of dependents;

(iv) his liabilities to any public financial institution or government dues;

(v) his educational qualifications.75

Thus, Apex Court in order to maintain purity and transparency in the process of election directed the Election Commission of India to call for affidavit, by issuing necessary

75 Ibid.
order in exercise of its power under Article 324\textsuperscript{76} of the Constitution of India from the candidates contesting election to Parliament or State Legislature as a necessary part of his nomination papers giving information as to his assets, educational qualification and criminal past and present record. In the instant case the Court has ruled that the right of a voter to know the bio-data of a candidate is the foundation of democracy, a facet of right to freedom of speech and expression under Article 19(1)(a) of the Constitution.\textsuperscript{77}

It will be cherished that the judiciary has used its artisans to harness the right to information to achieve an extremely commendable social objective, viz., that of preventing criminalization of Indian politics.\textsuperscript{78}

In December 2002, in response to the judgment, the Parliament amended Representation of the People’s Act. The Amended Act required a candidate for office to provide information “as to whether he is accused or convicted of any offence punishable with imprisonment for two years or more in a pending case” (Section 33A). No candidate could be compelled to disclose any additional information, including

\textsuperscript{76} Superintendence, direction and control of elections to be vested in an Election Commission: (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission); (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President; (3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission; (4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause(1); (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine; Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment; Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner; (6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause(1).

\textsuperscript{77} AIR 2002 SC 2112.

educational qualifications and assets and liabilities, “notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission” (Section 33B).

Thus, now onwards the right of the voter to know about the antecedents, credentials, assets/property of the candidate in election came to be recognized under the cover of freedom of speech and expression under Article 19(1)(a) of the Constitution of India.

In constitutional validity of amendment under section 33-B of the Representation of the People Act was challenged in People’s Union for Civil Liberties v. Union of India. It was contended that by the said amendment, the Government had arrogated to itself the power to decide unilaterally for nullifying the decision rendered by the Apex Court without considering whether it could pass legislation which abridged fundamental right guaranteed under Article 19(1)(a). All the three Judges constituting the bench namely M.B. Shah, P. Venkatarama Reddy and D. M. Dharmadhikari, JJ., in this case delivered separate judgments, however, there was unanimity among them on the point that the newly inserted Section 33-B was unconstitutional.

From the Supreme Court’s point of view it is clear that the Court goes into every aspect of voter’s right to know. According to it the Democratic Republic is part of the basic structure of the Constitution. Free and fair elections are must for it. The citizen voters should be well-informed about all aspects of a candidate for election for having healthy democracy. So the foundation of healthy democracy is to have well-informed citizen-voters. The reason to have right to information with regard to the antecedents of the candidate for election is that voter can judge and decide in whose favour he should cast his vote.

In Rakesh Sharma v. N.T.P.C. Ltd. the Commission held that the Right to Information Act is meant for exposing inefficiency and curtailing corruption.

5.2.6 Right to Information and Consumer’s Right

The right to information leads to open and transparent Government in a welfare democratic nation. It leads citizens to make informed choices about purchase of

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79 AIR 2003 SC 2363.
81 CIC/MA/A/2009/422.
consumer goods and services, which finally lead to higher consumer satisfaction. It means there can be no difference of opinion that every consumer must have access to market information including a right to be informed about the quality, quantity, potency, purity, manufacturing date, expiry date, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices. Another instance is that we buy products from markets, we have right to know how and on what basis M.R.P is calculated, what is the actual cost, what are the profit margins etc.? This will ensure transparency, impartiality and correctness.

In *Lakhanpal National Ltd. v. M.R.T.P. Commission* 82 and *Consumer Education and Research Society v. Vasu Pharmaceuticals Pvt. Ltd.* 83 the Supreme Court held that the provisions of unfair trade practices of section 36A of the Monopolies and Restrictive Trade Practices Act (which are almost identical with the provisions of section 2(1)(r) of the Consumer Protection Act) would not be attracted to the erroneous description of manufacturing company in advertisement in question.

In *Consumer Education and Research Society v. Godrej Soaps Ltd.* 84 the Court held that advertisement of the product is the backbone for higher sale of the products but at the same time to save the innocent, illiterate and poor consumers, it is necessary to regulate advertisements in such a manner that the advertisement depict the true and honest legal position and are prepared with a sense of responsibility and therefore misleading, false and deceptive advertisement should be controlled. The Court observed that the consumer must have the information about the product and its quality for his purchases.

In *Ozair Hussain v. Union of India* 85 a Division Bench of Delhi High Court has ruled that it was the fundamental right of the consumer under Articles 19(1)(a), 21 and 25 of the Constitution to know and to receive information whether food products, cosmetics and drugs were of non-vegetarian or vegetarian origin. Accordingly, the Court issued directions about declaration and different coloured symbols to be displayed on packages of the products as to whether they were of vegetarian or non-vegetarian origin.

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82 AIR 1989 SC 1692.
83 (1992) II CPJ 508 (NC).
84 (1991) CPJ 589 (Guj.).
85 AIR 2003 Del. 103.
In *A.C. Sekar v. D.R. of Co-operative Societies, Thiruvannamalai*\(^86\) the Court held that consumer is entitled to seek details regarding ration shops run by Co-operative Societies and salesman cannot claim any right to privacy if daily sales details are furnished to any citizen who seeks such information.

In *Lakshya A Relief Organization v. State Consumer Dispute Redressal Commission*\(^87\) the appellant Lakshya, an NGO sought the information from the PIO, Consumer Dispute Redressal Forum regarding detail of all consumer cases in all consumer district redressal forums of Delhi (nine forums) with the name, address, phone & mobile number of the complainants. PIO replied that the nature of information being sought by the appellant is neither feasible nor available nor easily accessible under the law.

The CIC pointed out that the appellant, a public authority cannot, under section 6(2), require an applicant making a request for information to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Even though concern for the purpose for which the information has been sought is misplaced, however, the final decision of the appellate authority, Justice Kapur has not been determined by this question, but by the nature of information being sought, which he has held is not available nor easily accessible under the law. Although, the public authority can justifiably argue that the information sought would disproportionately divert its resources, given its huge requirements u/s 7(9), this cannot exempt the public authority from providing the information in a form more convenient. In this case the concerned applicant has agreed to provide every assistance in accessing the information sought and it is open to that public authority to indicate to the applicant the cost of providing the information as determined by the PIO together with calculation made to arrive at that amount, requesting the applicant to deposit the fees u/s 7(3). However, the information provided can only be that which is actually held by the public authority and applicant cannot demand the creation of information which is not already held by or under the control of the public authority. The Commission held that under

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\(^86\) AIR 2008 Mad. 224.

these circumstances, the appellant has been advised to apply a fresh application to the PIO for the information required. The PIO is directed to provide such information as is held by the public authority to appellants on payment of the cost of collating that information and, at the public authority’s discretion, making use of the assistance offered by appellants for this purpose within the parameters laid down under section 7 of the RTI Act, 2005.  

5.2.7 Right to Information and Environment

The Directive Principle of State Policy under Article 48-A of the Constitution of India embodies protection and improvement of environment and safeguarding of forests and wild life in the following words:

“The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”

Consciousness for environmental protection is of recent origin. Scientific developments have made it possible and convenient for man to approach the places which are beyond his ken. The consequences of such interference with ecology and environment have now come to be realized. The United Nations Conference on World Environment held in Stockholm in June 1972, and the follow up action thereafter is spreading the awareness.

The Hon’ble Supreme Court in Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujrat observed that no rights in an organized society can be absolute. Enjoyment of one’s rights must be consistent with the enjoyment of rights also by others. Where in a free play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests. A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the Directive Principles in the interests of social welfare as a whole.

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88 Ibid.
89 AIR 1974 SC 2098.
The Supreme Court in **Bombay Environmental Group and Others v. Pune Cantonment Board**\(^90\) held:

(i) that people’s participation in the movement for the protection of the environment cannot be over-emphasized;

(ii) it is wrong to think that by trying to protect the environment, they are opposing various development projects;

(iii) one who is prepared to pay the requisite fees and is asking for the inspection or copies of the site plan bona fide is entitled to inspection or copies of the documents.

The Supreme Court observed that the real democracy cannot be worked by men sitting at the top or in the air conditioned comforts of secretariat. It has to be worked from below the people of every village and town. The Court recognized the concept that sovereignty resides in and flows from the people. Therefore, “who will watch the watchman?” is the vexed question before our democracy.\(^91\)

Transparency in administration is a sure technique to minimize the abuse and misuse of administrative discretion. As knowledge is a guarantee against ignorance, so Government’s openness is a guarantee against misconduct. Openness negates the ideas of fantastic, arbitrary and oppressive form of Government action. Justice Krishna Iyer in Menaka Gandhi’s case\(^92\) rightly said that ‘Government which revels in secrecy not only acts against democratic decency but busies itself with its own burial’. Public power must rarely hide its heart in an open society and system.

In **Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh**\(^93\) the Court held that preservation of the environment and keeping the ecological balance unaffected is a task which not only Government but also every citizen must undertake. It is a social obligation and let every citizen be reminded that it is his fundamental duty as enshrined

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\(^90\) AIR 1982 SC 149.
\(^91\) Ibid.
\(^92\) Menaka Gandhi v. Union of India, AIR 1978 SC 597.
\(^93\) AIR 1987 SC 359.
in Article 51A(g) of the Constitution of India. This Court is not oblivious of the fact that the natural resources have to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so that ecology and environment may not be affected in any serious way; there may not be any depletion of water resources and long term planning must be undertaken to keep up the national wealth. The Court further observed that only the informed citizenry can exercise these fundamental duties guaranteed under Article 51A of the Constitution.

5.2.8 Right to Information and Rights of the Arrested Persons

In the case of Joginder Kumar v. State of U.P. the Chief Justice M.N. Venkatachalliah observed that:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer affecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.”

The Court held that there are certain rights available to the arrested person under the Constitution of India. These rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognized and scrupulously protecting. Even though, the

right of the arrested person, upon request, to have someone informed and to consult privately with a lawyer was recognized by Section 56(1) of the Police and Criminal Evidence Act, 1984, in England,\textsuperscript{95} this section provides that:

“Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this section, that he has been arrested and is being detained there.”

For effective enforcement of these fundamental rights, the court issued the following requirements:

(i) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

(ii) The police officer shall inform the arrested person when he is brought to the police station of this right.

(iii) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

The above requirements shall be followed in all cases of arrest till legal provisions are made in this behalf. These requirements shall be in addition to the rights of the arrested persons found in the various police manuals. These requirements are not exhaustive. The Directors General of Police of all the States in India shall issue necessary instructions requiring due observance of these requirements. In addition, departmental instruction shall also be issued that a police officer making an arrest should also record in the case diary, the reasons for making the arrest.\textsuperscript{96}

\textsuperscript{95} Civil Actions against the Police Richard Clayton and Hugh Tomlinson, p. 313.

\textsuperscript{96} Ibid.
In another case D.K. Basu v. State of West Bengal the Supreme Court issued guidelines on the rights of arrested persons Justice A.S. Anand who delivered the judgment on behalf of the Divisional Bench incorporated few basic rights that encompass the right to information. The Supreme Court considers it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

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97 (1997) 1 SCC 416.
(v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(vii) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector’s Memo must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.

(x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.98

Failure to comply with the requirements herein mentioned above shall, apart from rendering the concerned official liable for departmental action shall also render him

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liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter. The requirements referred to above, flow from Articles 21 and 22(1) of the Constitution of India and need to be strictly followed.99

Keeping in view the above observations it becomes clear that the Courts in India have not declared emphatically that the right to information is a fundamental right. However, the above observations help in understanding the scope, importance and limits of the right to information apart from the prevailing position in other countries.100

5.2.9 Right to Information and Annual Confidential Report (ACR)

In Aparpar Singh v. Railway Board101 the Appellant received an adverse Confidential Report and wanted to know the reasons why certain adverse comments were made again him. The Appellant has approached the Department and the Commission for disclosure of the reasons for the adverse remarks which were made in his CR. The Commission feels that the Appellant has a right to see these. Accordingly, it directed the Respondents to either communicate the reasons for the adverse remarks in writing or show him the concerned file. The Appellant will be authorized to take photocopies of the relevant documents free of cost. However, if, as stated during the hearing, the Respondents maintained that no specific reasons had been recorded for the adverse remarks which were communicated to the Appellant, they should make a categorical statement to this effect to the Appellant. The Appellant made the point that since the adverse remarks had been expunged; it stood to reason that the grading of the official concerned should also have been changed, and accordingly wanted to know his original grading as well as all the changes made, if any. The Commission accepted the submission of this request of the Appellant and directed the Respondents to inform the Appellant of the grading that he had originally received and of the revised grading if it has been so done.102

100 Ibid.
In the case of **Madan Lal, Deputy Director, NSO, Ministry of Statistics & P.I. v. CPIO, National Sample Survey Orgn. (NSSO)**\(^{103}\) in 2003, when the appellant was working in Jammu, three lady employees working in his office had complained of sexual harassment against him and the public authority conducted two enquiries, one by Deputy Director (Administration) in January-February, 2003, and another by a Women’s Complaint Committee in May, 2003. By an application dated 02-11-2005, the appellant had sought a copy of the report along with copies of the original complaint, recorded statements of the witnesses etc. By a letter dated 02-12-2005, the CPIO declined to give the information on the ground that it has no relationship with any public activity or interest. On 5\(^{th}\) December, 2005, the appellant filed an appeal before the appellate authority and since no decision had come from him, the appellant has filed the present appeal before this Commission. Belatedly, by a communication dated 20\(^{th}\) February, 2006, the appellate authority dismissed the appeal on the ground that no formal enquiry was initiated against the appellant and the enquiries were only fact finding missions and that no action had been taken or initiated against the appellant. He had also observed that many of the witnesses had given evidence on the implicit understanding that their names will not be revealed and, therefore, disclosure of the information sought would result in invasion of privacy of the witnesses and may also affect their family life. The CIC directed that the public authority will furnish only a copy of the part of the report containing the findings and recommendations of both the reports within 15 days of the receipt of this decision to the applicant.\(^{104}\)

### 5.2.10 Right to Information and Student’s Right

In **University of Calcutta v. Pritam Rooj**\(^{105}\) the Division Bench of the Hon’ble High Court of Calcutta held that information about answer sheets cannot be denied on the grounds that answer sheets are not within public domain and will not serve public interest. The Court further held that the answer scripts written by a candidate would come into the definition of word ‘information’ and under those circumstances, such a candidate is eligible for a copy of the same.

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103 Appeal No. ICPB/A-7/CIC/2006.
105 AIR 2009 Cal. 97.
The argument was given that giving the examinees access to their answer sheets would not serve any public interest, but it was held to be untenable, the Court said that disclosure of evaluated answer scripts would as a matter of fact be conducive to improve the quality of assessment and make it fairer, more reasonable and absolutely free from arbitrariness and defects. The Court further held that every person discharging public functions must be accountable to the people and there is no reason as to why examiners, who also discharge a public duty, should not be made accountable.\textsuperscript{106}

In \textit{Km. Mehraj Khan v. Madhyamik Shiksha Parishad, Uttar Pradesh}\textsuperscript{107} the Court held that the photocopies of answer copies of the Board Examinations cannot be provided under the Right to Information Act, 2005. But the petitioner can only seek information or may be provided copies of the documents which are permissible to be provided under the law.

In \textit{Central Board of Secondary Education (CBSE) v. Aditya Bandopadhyay}\textsuperscript{108} Justice R.V. Raveendran and Justice A.K. Patnaik of the Supreme Court reaffirmed the order of the High Court by directing the examining bodies to permit examinees to have inspection of their answer books, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which ‘information’ should be furnished.

The Court elaborated that the term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information

\textsuperscript{106} Ibid.
\textsuperscript{107} AIR 2010 All. 1.
\textsuperscript{108} (2011) 8 SCC 497.
to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-a-vis another partner and an employer vis-a-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee’s conduct or acts are found to be prejudicial to the employer.  

The Court also observed that the object of the RTI Act, 2005, is to ensure maximum disclosure of information and minimum exemptions from disclosure; that an examining body does not hold the evaluated answer books, in any fiduciary relationship either with the student or the examiner; and that the information sought by any examinee by way of inspection of his answer books, will not fall under any of the exempted categories of information enumerated in section 8(1)(e) of the RTI Act. It was submitted that an examining body being a public authority holding the ‘information’, that is, the evaluated answer-books, and the inspection of answer-books sought by the examinee being exercise of ‘right to information’ as defined under the Act, the examinee as a citizen has the right to inspect the answer-books and take certified copies thereof. It was also submitted that having regard to section 22 of the RTI Act, the provisions of the said Act will have effect notwithstanding anything inconsistent in any law and will prevail over any rule, regulation or bye law of the examining body barring or prohibiting inspection of answer books.  

Further the Court held that it cannot be said that the examining body is in a fiduciary relationship with reference to the examinee who participated in the examination and whose answer books are evaluated by the examining body.

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109 Ibid.  
110 Ibid.  
111 Ibid.
In Neera Dadhwal v. Deepak Paintal and Ors.\textsuperscript{112} in response to the query made by the petitioner under the Right to Information Act, 2005, indicated that petitioner’s roll number was not indicated in the seating plan for that examination on 01-05-2006. In these circumstances, the respondent’s action in marking appellant absent cannot be justified. The Court observed that the petitioner’s result for the 5\textsuperscript{th} Semester examination should be declared forthwith. However, this cannot automatically mean that all attendance requirements have to be given a go by. The Court further observed that in this case, the issue is one of the compliance with attendance norms. And if this Court, at this stage were to permit the petitioner to appear in the 6\textsuperscript{th} Semester without her having ever been admitted to it, would be violating the attendance requirements and all other conditions. Also at the same time, denial of any relief would result in loss of two years; the petitioner would be relegated to the second year, and would be eligible for promotion to final year in 2008. The Court, therefore, has to strike a balance and mould the relief, to secure the ends of justice. Thus, the Court issued the following directions:

(i) The Faculty of Law, namely, the 3\textsuperscript{rd} Respondent shall declare the result of the 5\textsuperscript{th} Semester examination (supplementary) in which the petitioner appeared, within a week from today;

(ii) The petitioner shall be admitted to the 5\textsuperscript{th} Semester. It shall be open to her to appear in the examinations/tests conducted by the respondents in respect of the subjects which she has not cleared in accordance with the Ordinance and Statutes;

(iii) The petitioner shall be permitted to make up the deficiency of attendance, if any, in the 5\textsuperscript{th} Semester and shall be admitted to the 6\textsuperscript{th} Semester at the end of the present term, in January 2008. Therefore, subject to her fulfilling the attendance norms and other conditions, she shall be permitted to appear in the 6\textsuperscript{th} Semester examinations.

\textsuperscript{112} 2008 (1) RTI 15 W.P. (C) 17455/2006 Decided on 20\textsuperscript{th} August, 2007.
5.2.11 Right to Information and Judicial Decision

In *Indira Jaising v. Registrar General, Supreme Court of India*\(^{113}\) the Court held that the decision and guidelines of the Apex Court which are confidential in nature needs not to be disclosed.

The Hon’ble Supreme Court in *Khanapuram Gandaiah v. Administrative Officer & Ors.*\(^{114}\) has held that under section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the public authority under any other law for the time being in force. Under the Right to Information Act an applicant is entitled to get copy of opinions, advices, circulars, orders etc. have been passed, especially the matter is pertaining to judicial decisions. The Court observed that:

“\[A Judge speaks through his judgment or orders passed by him. If any party feels aggrieved by the order or judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.\]”

Thus, a judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The Court further observed that:

“\[A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions.\]”

5.2.12 Right to Information and Public Authority

In *P.V. Narasimha Rao v. State (CBI/SPE)*\(^{115}\) the Court *inter alia* considered whether Member of Parliament is a public servant. The Court held as under:

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\(^{113}\) (2003) 5 SCC 494.

\(^{114}\) AIR 2010 SC 615.

\(^{115}\) (1998) 4 SCC 626.
“A public servant is “any person who holds an office by virtue of which he is authorised or required to perform any public duty”. Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(b) of the said Act to mean “a duty in the discharge of which the State, the public or that community at large has an interest”.

In a democratic form of government it is the Member of Parliament or a State Legislature who represents the people of his constituency in the highest lawmaking bodies at the Centre and the State respectively. Not only is he, the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the State shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest......”

Thus, the Member of Parliament and State Legislative Assemblies, who perform public duties and possess higher status in public duties, have responsibility to make the requisite disclosures on acquisition of properties.

In *Nandkishore Ganesh Joshi v. Municipal Corporation of Kalyan, Dombivali*\(^\text{116}\) under the Bombay Provincial Municipal Corporation Act, 1949, the Standing Committee sought additional documents from Commissioner with a bona fide performance of its statutory functions. The Commissioner is bound to comply with such request unless there exist strong and cogent reasons for not doing so. The Commissioner cannot contend that all information have been supplied in a proforma and cannot seek protection u/s 123 of Evidence Act (privileged documents). The Court held that the Commissioner is duty bound to provide additional documents sought by the Standing Committee under rule 24 of Working Rules and Municipal Commissioner fall under the purview of ‘public authority’ in section 2(h) of the Right to Information Act, 2005.

In *Shivanna Naik v. Bangalore University & Anr.*\(^\text{117}\) the petitioner applied for the position and selection of Lecturer but his application was not considered by the University. He sought information under the RTI Act seeking information regarding the position and selection of the Lecturer. The same was rejected on the grounds that there was no such provision under the Bangalore University Regulations. At last petitioner


filed writ before the Karnataka High Court. **Justice K. L. Manjunath** held that University comes under definition of Article 12 of the Constitution and the University must conform to the principles of fundamental rights. The Court also held that the Bangalore University is an authority defined u/s 2(c) of the RTI Act.

In **M.P. Verghese v. Mahatama Gandhi University**\(^{118}\) the Court observed that the selection for admission of students has to be in accordance with the University Act, Statutes and Ordinances. Selection and appointment of teachers although made by the managements, have to be made strictly in accordance with the University Act, Statutes and Ordinances. Such appointments are to be approved by the University and the Government. In short, every facet of the functions of these aided private colleges is strictly controlled and financed by the Government. For coming within the definition of ‘public authority’ either control or financing by government need be satisfied. In this case, the conditions are satisfied. In the above circumstances, I have no doubt in my mind that these aided private colleges are bodies controlled and substantially financed directly or indirectly by the funds provided by appropriate Government. Further, these colleges deal with information relating to educational activities pertaining to students who pay fees to the Government and teachers and staff whose salaries are paid by the Government. Further, when the Act makes the same applicable to ‘public authorities’ as defined therein there is no need to give a restricted meaning to the expression ‘public authorities’ strait-jacketing the same within the four corners of ‘State’ as defined in Article 12 of the Constitution, especially keeping in mind the object behind the Act. The definition of ‘public authority’ has a much wider meaning than that of ‘State’ under Article 12. Further, the definition of ‘State’ under Article 12 is primarily in relation to enforcement of fundamental rights through courts, whereas the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution of India.

Where private or non-governmental organization, college receives financial grant from the State Government or is regulated by the provisions of the Acts, it will be public authority.\(^{119}\)

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\(^{118}\) AIR 2007 Ker. 230:2008(1) ID 251.

\(^{119}\) Committee, Shanti Niketan Inter College v. State of U.P., AIR 2009 All. 7.
In CPIO, Supreme Court of India, Tilak Marg, New Delhi v. Subhash Chandra Agarwal & Another\textsuperscript{120} the Hon’ble High Court of Delhi ruled in favour of the Respondent and stated that the Chief Justice of India (CJI) is a public authority under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a “public authority” under the Act and is covered by its provisions. Regarding whether the asset declaration by the judges of the Supreme Court is covered under “information” under the Act, The High Court submitted that the second part of the Respondent’s application, relating to declaration of assets by the Supreme Court judges, is “information” within the meaning of the expression, under section 2(f) of the Act. The information pertaining to declarations given, to the CJI and the contents of such declaration is “information” and subject to the provisions of the Right to Information Act, 2005. Regarding whether the CJI holds the said information in a fiduciary relationship, the Court submitted that the Petitioners’ argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the Applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship. The Court held that the contents of asset declarations, pursuant to the 1997 resolution and the 1999 Conference resolution, are entitled to be treated as personal information, and may be assessed in accordance with the procedure prescribed under section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the Applicant in this case is concerned, the procedure under section 8(1)(j) is inapplicable. The Court ordered that the first petitioner CPIO shall release the information sought by the respondent applicant about the declaration of assets, (and not the contents of the declarations, as that was not sought for) made by judges of the Supreme Court, within four weeks.

Further, this judgement of Single Bench was challenged in Delhi High Court in Double Bench in the case of Secretary General, Supreme Court of India v. Subhash Chandra Agarwal\textsuperscript{121} wherein the double bench upheld the learned decision of single

\textsuperscript{120}Writ Petition (Civil) No. 288 of 2009 in the High Court of Delhi at New Delhi, Judgment pronounced on 2\textsuperscript{nd} September, 2009.

\textsuperscript{121}LPA No. 501 of 2009 in the High Court of Delhi at New Delhi, Judgment pronounced on 12\textsuperscript{th} January, 2010.
Judge and observed that this decision is both proper and valid and needs no interference. It further quoted Edmund Burke, who said “All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust.” Therefore, the Court observed that:

“Well-defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant.”

In *Nagar Yuwak Shikshan Sanstha, Wanadongri, Nagpur v. Maharashtra State Information Commission, Nagpur*\(^{122}\) the Court held that the Public Trust and Engineering College which is not run by the Government either directly or indirectly and its management and affairs are controlled by the trustee’s i.e. public trust and college run by public trust are not the public authority. No doubt, the public trusts are subject to regulatory measures to be found in Bombay Public Trust Act. But that does not mean the appropriate Government who controls this public trust by virtue of the fact that such public trust is registered one and regulatory measures are made applicable. Therefore, mere control over fees structure, admissions, new courses, etc. by college/trust would not be ‘control’ contemplated by the definition of ‘public authority’.

In *Thalapalam Service Co-operative Bank Ltd. v. Union of India*\(^{123}\) the Court after admission of the provisions of the Kerala Co-operative Societies Act and the Control of Registrar, held that Co-operative Societies does not fall under the definition of ‘public authority’ under section 2(h) of the Right to Information Act, 2005.

5.3 CONCLUSION

The Indian Judiciary played a pro-active role in the growth of rights provided in the Constitution. With the growing maturity of our democracy and with the growing resources of the country, the judicial interpretation of the fundamental rights gave them a new boost. Certain rights like freedom of speech and expression under Article 19(1)(a) and right to life and personal liberty under Article 21 achieved new heights of

\(^{122}\) AIR 2010 Bom. 1.

\(^{123}\) AIR 2010 Ker. 6.
growth under the aegis of the Supreme Court. The law shed off its literal cover and it went deeper in the soul and spirit of human dignity and existence. It also good-bye to the colonial legal mindset and addressed the human problems from purely socio-psychological and human angles. It was also the result of the growth of judicial consciousness in the back-drop of Indian socio-economic and psychological conditions.