JUDICIAL INTERVENTION IN ADMINISTRATIVE PROCESS
CHAPTER VI

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Access to justice is a foremost human right, as recognised by the new world order. An integral accessory to this right is the access to information which throws light on the issues of disputes, confidentiality, secrecy, privilege and other variants and restrictions deprive the people from the ability to collect and place facts before the adjudicatory agencies.¹

The power of the court, acting on its own to secure testimony which are necessary for arriving at the truth and doing effective justice between the parties, is sometimes conditioned and curtailed by the laws themselves. Thus, the judicial verdicts become like a blind-man’s baff.²

In India, during the worst days of British rule, repressive statutes like Rowlatt Act, 1919 which transacted freedom to adduce evidence were imposed upon the Indian citizens. Under such martial law situation and the rule of dictatorship and imperialism, free discovery of true testimony has been the first casualty.³

There is another dimension of distortion of individual freedom, which is the denial of public trial and statutory sanction of in-camera hearings. It keeps the public in the dark about the formalities of the tribunals in some public enquiry commissions, dark room tactics have been resorted to thereby reducing the enquiries and trials vis-à-vis the public, only the mere rituals.⁴
The juristic callousness anaesthetizes peoples' sensitivity regarding evidentiary fairness. Hence, rebuttable and irrebuttable presumptions deny to the people the right to information and proof in court. §

Adjudication process is a sovereign function and is not just a private activity. More public access must be there with the people in the spheres of judicial justice and administrative justice. It is a public process and is decisive of public rights and public justice. In that view of the matter, the public have a right to be informed, to intervene and participate in a justifiable manner in enlivening the democracy of forensic remedies. In that context justice Iyer opines that the right of the press to publish proceedings, of the power of the courts to hearings in-camera, the abmit of the contempt law in the publication area and allied matters are still penumbral reasons of jurisprudence.  

Secluded judicial hearings, exclude the people from the right to know and to participate in the justice process. The Supreme Court of India wobbled while upholding the importance of public hearing. However, judicial intervention provides some safeguards to the citizens against the arbitrariness of the govermental machinery in the matter of official secrecy and in withholding of government-held information. It is the court which determines as to whether disclosure of such information to the people is justified in the public interest.

The trend of judicial intervention in India, in conferring the right to information a constitutional status, has started after about one and half decade of India's getting independence. The court while holding that budget proposals were closely guarded secrets, until it is presented before the house. The
reason set forth was that, an individual might after getting the information of the budget proposals before its presentation to the house, might otherwise take steps to forestall them and their premature disclosure would be against the public interest.

Right to information is concomitant to the working of a republic and democratic forms of government. Thus, the right is a part of the basic structure of the Constitution as set out by the full-bench of the Supreme Court of India\textsuperscript{9} for the first time.

The Supreme Court said that some aspects of the Constitution of India were so sacrosanct and inalienable that they form the basic structure of our society and even parliament, whatever the majority it might command, could not alter it. Democracy, the preamble of the Constitution contains, is undoubtedly a part of our society's basic structure. Besides, right to information is the life line of democracy and therefore right to information forms the basic structure of our Constitution.\textsuperscript{10}

In India, the evolution of democracy reveals a story of conflict between those persons who sought to preserve hegemony over power and those who wanted to disperse it. In every democratic society there grows a tendency in seeking to increase the citizen's rights as an antidote to those who retain the power to rule.\textsuperscript{11}

In the growth and development of the Indian states, and in conformity to the global social order, the Supreme Court of India has sought to interprete constitutional provisions, both express and implied, even by abridging the gap between them where-so-ever necessary, making them citizens friendly.\textsuperscript{12}
In the interest of understanding the judicial trend in India, establishing the freedom of information as an implied constitutional right, the inspiration the Indian judiciary obtained from several pronouncements made by the Supreme Court of U.S.A. is worthy of discussion.

The U.S. Supreme Court while deciding a question whether it has the power to issue injunction restraining the publication of news having repercussions on the security of the United States, negatived the claim for injunction of the government. According to Justice Black, the press was protected in disseminating the information on the secrets of government to the people. Only a free and unrestrained press could effectively expose deception in government.

The paramount responsibility of a free press is the duty to prevent any part of the government from deceiving people. He further said that guarding of military and diplomatic secrets at the expense of informed representatives government does not provide real security for the republic.

In the aforesaid case, Justice Stewart and Justice White jointly observed that the absence of governmental checks and balances which are present in other areas of the national life is the effective restrain upon executive policy and power in the areas of national defence. An informed and critical public opinion alone can protect the values of democratic government. Therefore, the press, which is alert, aware and free most vitally serve its basic purpose of the first amendment relating to freedom of the press.

Justice Douglas, in the same case said that secrecy in government is fundamentally anti-democratic, and it perpetuates bureaucratic errors. Hence,
open discussion based on full information and debate on public issues are vital to the national health of the republic.

The proposition laid down by the above case reveals that unless a clear case is made out wherein the national security is in jeopardy, the press will be free to carry-out its historical duty of educating the public on all matters including the management of military matters.

Thereafter in 1974, the Supreme Court of U.S., while hearing on the alleged right of the President to withhold information both from the Congress and the court, which during the presidency of Nixon was used as a doctrine under executive privilege, restricted that White House tape recordings, which were relevant to criminal proceedings, could not be withheld.

The courts in the United States of America, have the power to examine classified documents in-camera to determine whether the classification is justified. The court can also require disclosure of some information about the documents to attorneys for seeking access in order to argue whether the classification is proper. The court may also permit the government to submit affidavit supporting classifications exparte for examination in-camera. Any part of such affidavit may be ordered by the court to be made public.

Though the courts in the U.S., rarely exercise their full power to order the disclosure of records, when it is found that a classification was not justified under the relevant Act, the court of appeal has upheld the order of district court for disclosure, even when the party seeking disclosure withdrew their claim for disclosure. The process of judicial review and the prospect of making order to disclose classified records, leads to voluntary disclosure.
The U.S. Supreme Court ordered disclosure of case summaries of ethics hearings, at the Air Force Academy after removal of identifying details of protected personal privacy, containing information which is claimed to be wholly internal to the agency.\(^{18}\)

In another case\(^{19}\) the disclosure of information, containing instructions for the Federal Bureau of Investigation's "COINTELPRO" programme for harassment of political dissidents, was ordered on the ground that they had nothing to do with the Bureau's lawful functions.

The Supreme Court\(^{20}\) rejected the claims that the instructions, to agency staff are "internal" on the ground that it would affect a member of the public because "secret law is an abomination" and, therefore, it must be released.

Later on, another matter, wherein information which has been exempted from disclosure by another statute, was brought before the Supreme Court\(^{21}\) for interpretation. The Supreme Court decided on the basis of the statute's legislative history, that Congress had intended for existence of such statutes authorizing secrecy, to continue in force.

The exemption applies, only if it can be shown that disclosure would either impair the ability of the government, to obtain the information in future or it would cause substantial harm to the competitive positions of the parties, from whom it has been obtained.\(^{22}\) The impairment test does not justify a refusal to disclosure, if the government has legal authority to require that the information be provided to it.\(^{23}\) The court further observed\(^{24}\) that a government promise of confidentiality in obtaining information is not, in itself,
sufficient to bar disclosure.

"The substantial competitive harm" test is an objective one, and it includes corporate information such as assets, profits, losses and market shares.^{25} Where the information has been made public or is available from another source, this test does not apply.^{26}

The exemption does not prohibit discretionary disclosure, but provides only for a reason for refusing disclosure. The Freedom of Information Act, which was amended in 1974, makes it a crime for civil servants to disclose certain kinds of information, including "trade secrets" without the consent of the originator of the information. The argument that if it is an offence to publish trade secrets, without the consent of the originator, the court should enjoin such disclosure, even if, it is to be made pursuant to a request, under the Freedom of Information Act.^{27} The court has rejected the above argument.

The Freedom of Information Act does not have provisions for notice to submitters if information provided by them is to be disclosed to a requester. Submitters, from various parts of the country, while taking action to oppose disclosure of information, there resulted into complicated questions of jurisdiction and venue. The Supreme Court, in a series of such related actions, made important interpretation of the exemption.^{28}

The Supreme Court^{29} emphasized that although the exemption might justify secrecy; they did not require it. The court also ruled that neither the federal criminal trade secret statute, nor the Freedom of Information Act, gave any right to the petitioner, who was trying to stop the government from releasing information, in response to a Freedom of Information Act request, in
order to stop disclosures by bringing a civil action. However, the court found that there was a basis for such actions in the Administrative Procedure Act.\footnote{30}

The United States department of justice, after the above decision, announced that federal civil servants would not be prosecuted under the criminal statute for making disclosure of such information in response to any request under the Freedom of Information Act.\footnote{31}

The Supreme Court, in the sphere of exemptions or internal records, has drawn a line between pre-decisional documents and post-decisional documents. The pre-decisional documents are protected and the post-decisional documents are not protected. The court observed that the exemption does not apply to “statements of policy and interpretations which have been adopted by the agency”, and “instructions to staff that affect a member of the public.”

Factual information such as statistics or laboratory studies, are not included in the exemption. The exemption does not protect confidential advice after a decision is taken.\footnote{33} The Supreme Court rejected the request for policy directives, about the sale and purchase of government securities.\footnote{34} The court held that they are not required to be released earlier, because of the value of having confidential advice in such matters. The court also observed, that it was similar to both attorney-client privilege and executive privilege. In another case, the court said that this is also closely related to a third privilege, called the “attorney work-product” privilege for documents prepared by an attorney.

The Federal Rules of Civil Procedure\footnote{36} provides an exemption
from ordinary discovery for confidential commercial information, which is also incorporative into the Freedom of Information Act exemptions, to the extent that it is generated by the government itself before awarding a contract. While the matter was brought under the judicial scrutiny of the Supreme Court, it observed that the policy is “not that the flow of advice may be hampered, but rather the government will be placed at a competitive disadvantage, or that the consummation of the contract may be endangered... the rationale for protecting such information expires as soon as the contract is awarded or the offer withdrawn.”

In the field of personal privacy, the Supreme Court observed that the “clearly unwarranted invasion of personal privacy” test, applies to all files relating to individuals, and there is no separate status for “personal and medical files.”

The law on “leaking”, the unauthorized disclosure of government information by civil servants, is different from the official disclosure of information, under the Freedom of Information Act. Such disclosure invites major sanctions, under the espionage law and law of contempt. There are also administrative sanctions, subject however, to the limitations established by the Civil Service Reformation Act of 1978.

The espionage law imposes penalties, for an unauthorized disclosure of classified information, to a foreign power. A serious question arises, where there is an unauthorized disclosure, to the press. There is a constitutional distinction, observed by the Supreme Court, as the Pentagon papers...
case demonstrated, between a civil court order restraining the press from publishing such information and later criminal prosecution of those who made the disclosure.

In the United Kingdom, parliament has, for centuries, the power to call for persons and papers and has also the power to punish for contempt, those persons, who refuse to answer such a call. Similarly, the courts have the power to order disclosure of information, for the purposes of litigation. Since 1968, it is a power, which can not be automatically overridden, by claims of executive privilege against disclosure.

It may be mentioned that relying on the decision in Conway v. Rimmer, the courts in India specially the Supreme Court of India, exercised its power in establishing the foundation of the freedom of information, as an implied fundamental human rights. Therefore, discussion on the judicial trend in the United Kingdom, like that of the U.S.A., is equally important in this regard.

In U.K., the civil service neutrality argument for continued secrecy concerning policy advice has gradually lost its force in the face of the ever-growing public demand of openness in the government, and the disclosure of information. However, it remains arguable that the policy formulation should not be conducted, in the "goldfish-bowl" of full public disclosure. Because, it might inhibit consideration of politically sensitive policy issues and options. That is an argument for deferment of public access, as the Crossman Diary's Case acknowledges. Therefore, civil servants should not be permitted to the use of the "internal candour" argument as a permanent
shield against exposure of their policy advice to public examination. The extraordinary power by virtue of which, the government may seek injunction from the court, to restrain publication of confidential material where its disclosure would be contrary to the public interest, may be one of the late Richard Crossman's major legacies to posterity, is the product of overt judicial law-making. Because, Crossman was an ardent opponent of the excessive secrecy of British Government.

The basis of decision in Jonathan's case was that the public interest in good government, required that discussion in cabinet should be uninhibited by the prospect of publication, of the record of such confidential discussion. The court further held that disclosure of cabinet discussions of a decade earlier, would not be detrimental to the public interest, because of the time lapse. The court, however reserved its position expressly in respect of subsequent volumes, stating obiter that it could enjoin publication, where the public interest so required and where there was no overriding public interest in disclosure.

Government may also recover official documents disclosed without authority, and to ascertain the identity of the civil servant responsible for disclosure, through court. It would, therefore, discourage the practice of leaks to the media. In the same manner, government has approached the court to punish for contempt, those persons, who disclose material provided under discovery of legal proceedings.

The civil servants undertake to abide by the Official Secrets Act, 1989 and are also bound not to disclose official information, barred by the
provisions of the Establishment Officers' Guide. All official information, the
disclosure of which, has not been authorized, are subject to an obligation of
confidence arising either by contract or in equity. All such official information,
as they are potentially confidential, disclosure thereof may be restrained by
civil suit for an injunction against breach of confidence. In a case the court
ordered the defendant to disclose the identity of an employee of British Steel
Corporation, who had disclosed documents to the defendant.

Peter Wright, a retired former member of intelligence service,
sought to publish a volume of memoirs of his years in the security of intelligence service. It was known as “Spycatcher”. The Attorney General sought injunctions, in the courts of New South Wales in Australia, New Zealand, Hong Kong and United Kingdom, to restrain the publication of the book and any extracts there from, and newspaper reports of various allegations contained in the book. However, the courts, though initially granted interlocutory injunctions, have declined to issue permanent injunctions. The public interest in disclosure, was held to outweigh any public interest in keeping some of the information in “Spycatcher”, as secrets. In Australia, the New South Wales Court of Appeal, explicitly declined to enforce the criminal law of a foreign state.

In context to public interest immunity, the claim for public interest immunity is made in respect of the contents of the documents or the class of documents. The essence of content’s claim is that, disclosure of the content, would be injurious to the public interest, eg., the plans for a new submarine particularly in war time. On the other hand, the justification for a class claim
is that disclosure of documents of that kind, would be contrary to the public interest, in the efficient functioning of the public service. However, the knowledge that documents might be disclosed in court, would inhibit the public servants in their communications with each other and with ministers.  

The court could not question the claims for Crown Privilege, prior to 1968 and the minister making claim was the sole and final judge of the public interest. However, excessive use and abuse of the immunity by the government ministers, during the post-war era exhausted the patience of the judiciary. The judiciary, therefore, asserted the ultimate power of the court to determine where the balance of public interest lay, as between the proper administration of justice and the government’s interest in the maintenance of secrecy.

The judiciary exercises the above mentioned power sparingly, and in appropriate cases, overrides ministerial claims to immunity from production. It develops a healthy scepticism of class claims, based on the need for candour in internal communications in the public service. It has been observed by the judiciary, that in order to persuade the court to examine the documents in question, and in order to reject the claim, the litigant must satisfy the court by shouldering a heavy burden of proof.

In the Matrix Churchill affair, several government ministers, on the advice of the Attorney-General resisted production of internal documents, concerning government policy on the sale of arms to Iraq. The documents confirmed the defendant’s assertions that government ministers have actively encouraged the company to sale the goods in question to Iraq, and that M16
had recruited one of the defendants to gather intelligence for the United Kingdom government. The court held that the public interest in administration of justice, particularly in a criminal case where the liberty of an individual may be at stake, outweighs the government's interest in keeping the documents secret.

The councillors of the local government, have a common law right of citizen, to seek access to all official information necessary for them to carry out their functions as councillors. That right was judicially strengthened in a controversial decision, to encompass highly confidential, personal, social services records, even though the councillor seeking access was, not a member of society services committee.

The political past and cultural fatalism in India, generated in the mind of the people of India, a syndrome of worshipping power. They never demand audit and answerability for abuse or excess done to them, by the government. Indian republic's instrumentalities, including the judiciary, have cultivated an ethos of unquestionable authority, which had developed prior to India's getting freedom. Under such situation, raising the people into the role of dynamic participants of a progressive republic, requires an informational freedom and generating informational awareness among the people. Because, lack of information to the people in a democracy, is the same as lack of air in the lungs in an individuals.

The Constitution of India guarantees to all citizens the freedom of speech and expression. The right to freedom of speech and expression has been considered by the courts, to include freedom of the press. A citizen can enjoy freedom of speech and expression, freely through mass media. Freedom
to propagate one’s own views is an important ingredient of his right of free speech.  

As mentioned earlier, there is no express provision in the Constitution of India, guaranteeing the right to freedom of information. Prior to the enactment of the Freedom of Information Act, 2002, there was no recognition of the freedom of information, even as a statutory right. Necessary rules are not made months after passing the law. The Central Services Conduct Rules have to amended suitably. However, the courts in India, specially the Supreme Court by incorporating the principles formulated by the judiciary in the United States and the United Kingdom, as discussed above, have laid the foundation of freedom of information and have gradually conferred the right an implied constitutional status.

In India, the jurisdiction and power of the Supreme Court, in their nature and extent, are wider than those exercised by the highest courts of any other country. The Constitution of India provides that the Supreme Court, *inter alia*, is a guardian of the Constitution and the law declared by it, is binding on all other courts within the territory of India.

The Supreme Court of India, unlike the American Supreme Court, besides being a guardian of the constitution, is also the highest court of appeal relating to civil and criminal cases, apart from cases relating to the interpretation of the constitution. It has an extraordinary power, without any limitation upon its discretion to entertain appeal from the decision of any court or tribunal, within the territory of India. The American Supreme Court does not
have such power.

The Constitution of India vests upon the Supreme Court, the power to deliver advisory opinion on any question of fact or law to any reference, the President of India, makes to it. The Constitution of India vests with the Supreme Court the original and exclusive jurisdiction to determine justiciable dispute between the union and the states or between the states inter se.

The Supreme Court of India, like the House of Lords in England, is the final appellate tribunal of the land. In some respects, the jurisdiction of the Supreme court, is wider than that of the House of Lords.

It is true, that the Constitution of India, does not expressly empower the court to invalidate laws. However, it has imposed definite limitations, upon each of the organs of the states. Any transgression of those limitations, would make the law invalid. It is for the court, to decide whether any of the constitutional limitations, has been transgressed by any of the organs. Because, as the constitution is the organic law, in compliance to which, the legislatures being the creation of the constitution, make ordinary laws.

Any law, made by the legislature, which contravenes any of the provisions of the Constitution providing fundamental rights, shall be void. The Supreme Court has observed, that the courts have the power to declare any enactment, which transgresses a fundamental right, as invalid even without the specific provisions of the Constitution. The jurisdiction of the Supreme Court to entertain an application, for the issue of a constitutional writ, for the enforcement of fundamental rights, is an original jurisdiction of the Supreme Court.
The Supreme Court formulated the principle of the basic structure of the Constitution. Later on it safeguarded the two basic features of the Constitution, viz.,

1) The limited nature of the amending power, and
2) Judicial review, which the parliament tried to take away, by a constitutional amendment.

Like the Supreme Court, the High Courts in India also possess an extraordinary jurisdiction, which the Constitution of India confers on the High Courts, and it can be taken away, only through an amendment of the Constitution. A High Court has a writ jurisdiction to issue writs, where a fundamental right of a citizen has been infringed by the state action, and also where an ordinary legal right has been infringed. The High Court can also mould the relief to meet the peculiar and complicated requirements in India.

Judicial review is a powerful weapon, to restrain the unconstitutional exercise of power, by the legislature and executive. The Supreme Court has been assigned the role of a sentinel by the express provisions of the Constitution for judicial review, specially in the case of violation of fundamental rights of citizens.

In the implementation of the directive principles, as contained in part IV of the Constitution, parliament or the legislature of a state make laws, in respect of matter or matters allotted to these legislative organs. The higher judiciary has the authority to test the validity of such laws, on certain criteria, viz.,
1) Whether the appropriate legislature has the legislative competency to make the law;
2) Whether the said law infringes any of the fundamental rights; and
3) Whether the infringement only amounts to reasonable restrictions on such rights in public interest.

The conclusiveness of decision, under the purview of judicial review, is regarded as one of the features of judicial power. The Supreme Court of India, while considering the constitutionality of an order banning the entry and circulation of a journal in the state of Madras (presently Tamil Nadu) observed that freedom of speech and expression undoubtedly includes, freedom of propagation of ideas, and that freedom is ensured by the freedom of circulation.

The Supreme Court reiterated that the right to freedom of speech and expression includes the right to publish and circulate one's ideas, opinions and views with complete freedom by resorting to any available means of publication. However, the right to freedom of speech and expression is subject to legitimately imposed restrictions of the Constitution.

The constitutionally imposed restrictions, on the fundamental freedom of speech and expression, must be reasonable and it can be imposed only in the interest of the sovereignty and integrity of India, the security of the state and the other ground set forth in the Constitution. These restrictions must be imposed by law, and have to be within the constitutionally prescribed ambit and
any executive action restraining exercise of the above right must be done, only with appropriate legislative authority.  

The Supreme Court observed that where the documents containing information relates to the affairs of the state, it is up to the head of the concerned department to decide, as to whether the documents are to be produced before the court. The court would not go into the question, as to whether the public interest would be injured or not. However, subsequently the court took a different view by holding that the court had a residuary power derived from the Constitution, to decide whether the disclosure of a document is in the public interest or not. For that purpose, the court can inspect the document along with the statement of the concerned head of the department, if that disclosure would injure the public interest.

On the other hand, where the subtle state policy, such as non-publication of legislation or high-priced publication or making the rules, regulations and notifications, are made to reach only official centres, marking them as “confidential”, democratic legality becomes a lawless luxury. It deprives the people from free access to legal information, and their liberty is infringed through inaccessible laws.

The supremacy of the rule of law, requires the people's representatives to realistically enact legislation for the people, with adequate publicity. The above perception of the legislative process, emphasizes the need of legislative facts and events, to be within the ken of the people. Freedom of information has this legal dimension, which is equally applicable in making available to
the people judgements of the higher courts. When rulings of the courts are not made accessible to the people, it defeats the rule of law, and runs counter to the right of legal information. The Supreme court observed that natural justice requires that a law, to become operative, must be promulgated or published. It must be broadcast in some recognizable way, to make all men to know about such a law.

The court further observed that if the state by devious methods like by pricing legal publication monopolize it, and thereby, denying the equal protection of the laws to and imposing unreasonable restrictions on exercise of fundamental rights of its citizens, it is a legislative tyranny, which may be unconstitutional.

In a democracy, unfettered flow of information, is a condition precedent to freedom of speech and expression of the people, including the press, to make them meaningful. Suppression of information and censorship are anathematic to democracy. The grammar of right to information, is the science of democracy.

The Supreme Court reinforced the right of free expression of the people, while going into the basic rules of democratic policy. In democracy, freedom of expression is the rule. Every one has a fundamental right to form his own opinion, on any issue of general concern. He is entitled to the legitimate means, to form his own opinion and to inform others.

The Supreme Court sets out the basis for giving the above right the "preferred position", deriving the principle from the U.S. Supreme
Court. The court observed that democracy is based on free debate and open discussion. If democracy means government of the people and by the people, every citizen, therefore, is entitled to participate in the democratic process, which is absolutely essential in a democratic government. Free and informed press only can enlighten people. Thus, freedom of the press constitutes one of the pillars of democracy.

The right to information extends, in addition to court hearings, to all proceedings of the administrative tribunal, public inquiry commissions and other like agencies whose findings affect the people's rights and status, both individual and collective. The right to know is a part of the evolving principles of natural justice. Information means everything relevant to a fair, just and reasonable disposition of human rights of the individuals.

The Supreme Court while dealing with the requirement of reason for conclusions to be given by an arbitrator in an award, observed that the governments and their instrumentalities should ensure, that whenever they enter into agreements for resolution of disputes, by resort to private arbitrations, the requirement of speaking award is expressly stipulated and ensured, as it involves a matter of policy and public interest. The governments have to face the legitimate criticism, that government failed to provide against possible prejudice to public interest.

In the Judges' Transfer case, the Supreme Court, while examining the question of whether a correspondence between the Chief Justice of India and Union Law Minister ought to be disclosed, observed that it is absolutely essential that such communication as far as possible, be in writing, whether
by way of note or by way of correspondence. Moreover, such a practice would tend to promote openness in society, which is the hallmark of a democratic polity.\textsuperscript{105}

The court while dealing with "public interest immunity"\textsuperscript{106} observed, that the interpretation of every statutory provision must keep pace with changing concepts and values, and it must, to the extent to which its language permits, suffer adjustments through judicial interpretation, so as to accord with the requirements of the fast changing society, which is undergoing rapid social and economic transformation.\textsuperscript{107}

The Constitution of India established a democratic form of government. Where a society has chosen to accept democracy as its credal faith, the citizens ought to know what their government is doing. The court observed that no democratic government can survive without accountability. The basic postulates of accountability requires, that the people should have information about the functioning of the government. The citizens' right to know the true facts about the administration of the country, is one of the pillars of a democratic state.\textsuperscript{108}

The demand for openness of the government, is based on principle that the people should not only cast intelligent and rational vote, they should also have the right to exercise sound judgement on the conduct of the government, and the merits of public policies. In a democracy, it is an open government, where full access to information to the people is possible, in regard to the functioning of the government.\textsuperscript{109}
In the functioning of the government, if the processes of government are kept hidden from public scrutiny, it promotes and encourages oppression, corruption and misuse or abuse of authority, which are possible under the veil of secrecy. However, if there is an open government with means of information available to the people, there would be greater exposure of the functioning of the government, and a better and more efficient administration will be available to the people. An open government is transparent government, and is a powerful safeguard against political and administrative aberration and inefficiency.

The court further observed that above is the new democratic culture of an open society, towards which every liberal democracy is moving, and India should be, no exception. The concept of an open government, is the direct emanation from the right to know, which is implicit in the right of free speech and expression. The disclosure of information in regard to the functioning of the government, must be the rule and secrecy an exception, justified only where the strictest requirement of public interest when so demands.

The Supreme Court clubbed together, the right of a person to express his ideas or opinions and his right to information. The court observed that in the domain of freedom of speech and expression, the right to inform and the right to be informed are co-existent.

The apex court ordered the release of information, regarding the undertrials kept in different parts of the country, to the petitioner. It is made
clear by the court that a person, having proper social standing like a journalist, would be able to seek and obtain information from the government, when the person can show the bonafide need of such information, in the public interest.

The Supreme Court\textsuperscript{115} held that in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government, however, with recognized limitations. The court further held that in order to ensure continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the government, with the basis thereof. Democracy expects openness and openness, is concomitant of a free society.

In a recent case\textsuperscript{116} the Supreme Court observed that the people of the country, have a right to know every public act, everything that is done in a public way by the public functionaries. The court further observed that public education is essential for functioning of the process of popular government, and to assist the discovery of truth, and in strengthening the capacity of an individual in participating in the decision-making process. The decision-making process of a voter, would include his right to know about public functionaries, who are required to be elected by him. In a democratic form of government, voters are of utmost importance.\textsuperscript{117} In a democracy, the electoral process has a strategic role.\textsuperscript{118} The court has also observed that the right, to get information in a democracy, is recognized all throughout and it is a natural right flowing from the concept of democracy.\textsuperscript{119}
The Supreme Court, while striking down the amended provision of the Representation of People (Amendment) Act, 1951 as unconstitutional held that a voter has a fundamental right to know the antecedent of a candidate, and the right was independent of the statutory rights under the election law. The right to vote will be meaningless, unless the citizens are well informed about the antecedent of the candidates. The court further held that the casting of a vote, marked the accomplishment of the right to the freedom of expression of the voter, and the new electoral reforms law was not adequate to safeguard the right to information of the voter. The citizen's fundamental right to information, should be recognized, and fully effectuated.

In the above case, the court further held that the exercise of legislative power by the legislature, is subject to constitutional provisions and therefore, it cannot enact a law, which is violative of fundamental right of a citizen.
1. V.R. Krishna Iyer, Freedom of Information, supra, p.308
2. id.
3. id.
4. id.
5. id.
6. ibid, p.309
7. In Naresh v. Maharastra, AIR 1967 SC 1
8. In Nand Lal More v. The State (1965)1 GLJ. 392(Pb)
11. ibid, p.8
12. id.
17. As decided in Baez v. National Security Agency civ-No.76 19212(D.D.C. April 7 and November2, 1978)
25. supra note 22, p. 765; 547 F. 2d 673 (D.D.Cir., 1976)
27. 18 U.S.C., 1905
30. 441 U.S. 281, 294, 316, 317; and 5 U.S.C. 702
36. Rule 26 (c)(7)
38. supra note 18
42. In Conway v. Rimmer (1968)AC 910
43. id.
44. Rodney Austin, Freedom of Information; Constitutional Impact, supra p. 398
46. supra note 44, id.
47. As observed by the court in Janathan's case (1975) 3 All.E.R., 484
49. W. Bagehot, the English Constitution (1963), Crossman's Criticism of the Secrecy of the Cabinet and of Ministers, in his introduction to that book.
50. supra, note 47
51. In Secretary of State for Defence v. Guardian Newspapers Ltd.(1984) 1All E.R. 453 (The Sarah Tisdall case in which the Guardian was ordered to return the 'cruise memo' as a result of which the police were also able to identify Miss Tisdall as the source of the leak)
54. Section 2 of the Official Secrets Act, 1911
55. In Duncan v. Cammell-Laird (1942) AC 624
56. Rodney Austin, supra p.418
57. supra, note 42
59. In Air Canada and Others v. Secretary of State for Trade and Another (1983) 1All E.R. 910; (1983)2AC 394
61. Access to Personal Files Act, 1987
63. V.R. Krishna Iyer, supra pp. 332-333
64. Article 19(1)(a) of the Constitution
65. supra, note 63, p.364; quoted from the observation made by Justice Sujata Manohar of Bombay High Court in Indira Jaising v. Union of India, AIR, 1989, Bom. 25
67. Article 141 of the Constitution
68. Articles 133 and 134
69. Article 136
70. Article 143
71. Article 131
73. Article 134 (i)(a) and (b)
75. As per Article 13
76. supra, note 74
77. Article 32
78. D.D. Basu, supra, p. 292
80. Under Article 368
81. In Minerva Mills v. Union of India, AIR 1980 SC 1789(paras 22-26)
82. The Constitutional (42nd Amendment) Act, 1976, inserting clauses (4) and (5) to Article 368
83. Article 226
84. As decided by the Supreme Court in Dwarka Nath v. I.T. Officer, AIR 1966 SC 81(para 4)
85. In Arif Hameed v. State of J & K, AIR 1989 SC 1899 (para 17), the Supreme Court observed, following the observations of Frankfurter J.of the U.S.Supreme Court dissenting in the controversial expatriation case of Trop v. Dulles (1958) 356 U.S. 86
87. As decided by the Supreme Court in Neelima Misra v. Harindar Kaur Paintal, AIR 1990 SC 1402 (para 27)
89. In Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305
90. Article 19(2) of the Constitution
93. In the State of U.P. v. Raj Narain, AIR 1975 SC 865
94. V.R. Krishna Iyer, supra, p.112
95. ibid, p.114
96. In Harla v. State of Rajasthan, AIR 1951 SC 467
97. In Sunil Batra v. Delhi Administration, (1978) 4SCC 494(paras 193 and 194)
98. V.R. Krishna Iyer, supra, p. 164
100. In Maneka Gandhi v. Union of India, (1978) 1SCC 248, per P.N. Bhagawati J.
101. In Near v. Minnesota, 283 US 697
102. The Supreme Court exhaustively dealt with this subject as a branch of public law in Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405
105. ibid, para 58
106. Section 123 of the Indian Evidence Act, 1872
107. supra, note 104, para 63
108. ibid, para 64
109. ibid, para 65
110. ibid, para 66
111. Article 19(i)(a) of the Constitution
112. supra, note 104, para 67
113. In the Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal, AIR 1995 SC 1236
117. ibid, para 22
118. ibid, para 46(4)
119. ibid, para 46(5)
120a. As reported in “The Hindu”, a national Daily in its March 14, 2003 issue (Delhi)
120b. Section 33(B) of the amended Act which provides that “notwithstanding anything contained in any judgement of any court or any order of Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or rules made thereunder”.