



## **DATA PROTECTION LAW IN INDIA: A CONSTITUTIONAL PERSPECTIVE**

**By  
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*The aim of this article is to explore how far the information, details and data of individuals and organisations are protected under the laws of India, especially under the Constitution of India. More emphasis is laid on the protection available under the Constitution of India since it is the “basic and ultimate source” from which all other laws derive their validity and force. A law in violation of the provisions of the Constitution will be unconstitutional and void, hence to retain its validity it must be in conformity with the letter and spirit of the Constitution of India.*

### **Introduction**

The compelling and much needed mandate for providing protection to the information provided by various interested parties has again set in motion the thought process and the legislative wing of the Constitution of India is facing a situation where it has to decide whether it should bring new amendments to the already existing Information Technology Act, 2000<sup>1</sup> or to enact a separate law for the same. The choice between these options is not the real issue to be addressed presently but is ancillary to a more important and overlooked perspective relating to data protection<sup>2</sup>. A law on data protection must address the following Constitutional issues on a “priority basis” before any statutory enactment procedure is set into motion:

- (1) Privacy rights of interested persons in real space and cyber space.
- (2) Mandates of freedom of information U/A 19 (1) (a).
- (3) Mandates of right to know of people at large U/A 21.

If these issues are sidelined in the zeal of providing data protection then it may have catastrophic results because the law(s) providing for data protection will be vulnerable to the attack of unconstitutionality on the ground of violation of Articles 19(1) (a) and 21 of the Constitution. Thus, the pre requisite for the enactment of any law dealing with data protection is to keep in mind the mandates of these rights.

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<sup>1</sup> The Act primarily deals with e-governance and e-commerce.

<sup>2</sup> For the purposes of this article, the expression “data” has been used synonymously for information and details of every type and is not confined to the protection as available under the regime of Intellectual Property rights.

## Constitutional mandates

There is an inherent and natural conflict between right to privacy on the one hand and the right to information and right to know on the other. A law pertaining to data protection should primarily reconcile these conflicting interests. Thus, the data of individuals and organisations should be protected in such manner that their privacy rights are not compromised. At the same time the right to information U/A 19(1)(a) and the right to know U/A 21

A law relating to data protection should be in conformity with the following mandates, as imposed by the sacred and inviolable Constitution of India:

**(i) Right to privacy U/A 21:** The law of privacy is the recognition of the individual's right to be let alone and to have his personal space inviolate. The term 'privacy' denotes the rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he thinks fit. It also means the individual's right to control dissemination of information about himself as it is his own personal possession. Privacy primarily concerns the individual. It, therefore, relates to and overlaps with the concept of liberty. The most serious advocates of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values<sup>3</sup>. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin: (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy, and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent for advertising or non advertising purposes or for that matter, his life story is written whether laudatory or otherwise and published without his consent. In recent times, however, this right has acquired a constitutional status<sup>4</sup>. India is a signatory to the International Covenant on Civil and Political Rights, 1966. Article 17 thereof provides for the 'right of privacy'. Article 12 of the Universal Declaration of Human Rights, 1948 is almost in similar terms. Article 17 of the International Covenant does not go contrary to any part of our municipal law. Article 21 of the Constitution has, therefore, to be interpreted in conformity with the international law<sup>5</sup>.

## Information Technology and the Law of Privacy

Advances in computer technology and telecommunications have dramatically increased the amount of information that can be stored, retrieved, accessed and collected

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<sup>3</sup> Gobind Vs State of MP [(1975) 2 SCC 148]

<sup>4</sup> Rajagopal Vs State of TN [(1994) 6 SCC 632]

<sup>5</sup> PUCL Vs UOI [(1997) 1 SCC 301]

almost instantaneously. In the Internet age, information is so centralized and so easily accessible that one tap on a button could throw up startling amounts of information about an individual. In terms of electronic information, a person should be able to keep personal affairs to himself. Advances in computer technology are making it easy to do what was impossible not long ago. Information in many databases can be cross-matched to create profiles of individuals and to even predict their behaviour. This behaviour is determined by individual's transactions with various educational, financial, governmental, professional and judicial institutions. Major uses of this information include direct marketing and credit check services for potential borrowers or renters. To the individual, the result of all this information sharing is most commonly seen as increased 'junk mail'. There are much more serious privacy issues to be considered. For instance:

(i) Every time you log onto the internet you leave behind an electronic trail. Web sites and advertising companies are able to track users as they travel on the Internet to assess their personal preferences, habits and lifestyles. This information is used for direct marketing campaigns that target the individual customer. Every time you use your credit card, you leave behind a trail of where you shopped and when, what you bought, your brand preferences, your favourite restaurant.

(ii) Employee's privacy is under siege as employers routinely use software to access their employee's e-mail and every move of the employee.

(iii) Field sales representatives have their movements tracked by the use of location-based tracking systems in new wireless phones<sup>6</sup>.

Thus, the law of privacy has not kept pace with the technological development. It must be noted that the right to freedom of speech and expression and right to privacy are two sides of the same coin. One person's right to know and be informed may violate another's right to be let alone. These rights must be harmoniously construed so that they are properly promoted with the minimum of such implied and necessary restrictions. The law of privacy endeavors to balance these competing freedoms.

**(ii) Freedom of information U/A 19(1) (a):** The right to impart and receive information is a species of the right to freedom of speech and expression. A citizen has a Fundamental Right to use the best means of imparting and receiving information. The State is not only under an obligation to respect the Fundamental Rights of the citizens, but also equally under an obligation to ensure conditions under which the Right can be meaningfully and effectively be enjoyed by one and all. Freedom of speech and expression is basic to and indivisible from a democratic polity. The world has moved towards universalisation of right to freedom of expression. In this context reference may be made to Article 10 of the European Convention on Human Rights. Article 10 of the Convention provides that everyone has a right to freedom of expression and this right shall include freedom to hold opinions and to receive information and ideas without interference by the public authorities and regardless of the frontiers. Again, Article 19(1) and 19(2) of the International Covenant on Civil and Political Rights declares that everyone shall have the right to hold opinions without interference, and everyone shall have the right to freedom of expression, and this right shall include freedom to seek, receive and impart

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<sup>6</sup> Praveen Dalal and Shruti Gupta; "The unexplored dimensions of right to privacy", IJCL, V-III No 2, P 45 (May 2004).

information of ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice<sup>7</sup>. Similarly, Article 19 of Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression and this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In the Indian context, Article 19(1) (a) of the constitution guarantees to all citizens' freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1) (a) of the constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a)<sup>8</sup>. It must, however, be noted that freedoms under Article 19, including Article 19(1) (a), are available only to citizens of India. An alien or foreigner has no rights under this Article because he is not a citizen of India. Thus to confer protection upon non-citizens one has to depend upon and apply Article 21 which is available to all persons, whether citizen or non-citizen.

**(ii) Right to know under Article 21:** Article 21 enshrines right to life and personal liberty. The expressions "right to life and personal liberty" are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time<sup>9</sup>. In **R.P.Limited v Indian Express Newspapers**<sup>10</sup> the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a). Thus, the courts are required to expand its scope by way of judicial activism. In **P.U.C.L vU.O.I**<sup>11</sup> the Supreme Court observed that Fundamental Rights themselves have no fixed contents, most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the Fundamental Rights by process of judicial interpretation. There cannot be any distinction between the Fundamental Rights mentioned in Chapter-III of the constitution and the declaration of such rights on the

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<sup>7</sup> India is a signatory to the aforesaid convention.

<sup>8</sup> State of U.P v Raj Narayan AIR 1975 SC 865; P.V.Narsimha Rao v State AIR 1998 SC 2120.

<sup>9</sup> Kharak Singh v State of U.P AIR 1963 SC 1295.

<sup>10</sup> AIR 1989 SC 190.

<sup>11</sup> JT 2003 (2) 528.

basis of the judgements rendered by the Supreme Court. Further, it is well settled that while interpreting the constitutional provisions dealing with Fundamental Rights the courts must not forget the principles embodied in the international conventions and instruments and as far as possible the courts must give effect to the principles contained in those instruments. The courts are under an obligation to give due regard to the international conventions and norms while construing the domestic laws, more so when there is no inconsistency or conflict between them and the domestic law<sup>12</sup>.

### **Statutory perspective**

The inherent and natural conflict between right to know and right to privacy is also permeating various statutory laws enacted from time to time. These laws, with their conflicting contours, are:

**(1) Right to information in cases of venereal or infectious diseases:** The welfare of the society is the primary duty of every civilized State. Sections 269 to 271 of the Indian Penal Code, 1860 make an act, which is likely to spread infection, punishable by considering it as an offence. These sections are framed in order to prevent people from doing acts, which are likely to spread infectious diseases. Thus a person suffering from an infectious disease is under an obligation to disclose the same to the other person and if he fails to do so he will be liable to be prosecuted under these sections. As a corollary, the other person has a right to know about such infectious disease. In **Mr X v Hospital Z**<sup>13</sup> 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 Positive status of the appellant. A question may, however, be raised that if the person suffering from HIV Positive marries with a willing partner after disclosing the factum of disease to that partner, will he still commit an offence within the meaning of Section 269 and 270 of I.P.C. It is submitted that there should be no bar for such a marriage if the healthy spouse consents to marry despite of being aware of the fact that the other spouse is suffering from the said disease. The courts should not interfere with the choice of two consenting adults who are willing to marry each other with full knowledge about the disease. It must be noted that in **Mr X v Hospital Z (II)**<sup>14</sup> a three judge bench of the Supreme Court held that once the division bench<sup>15</sup> of the Supreme Court held that the disclosure of HIV Positive status was justified as the girl has a right to know, there was no need for this court to go further and declare in general as to what rights and obligations arise in such context as to right to privacy or whether such persons are entitled to marry or not or in the event such persons marry they would commit an offence under the law or whether such right is suspended during the period of illness. Therefore, all those observations made by the court in the aforesaid matter were unnecessary. Thus, the court held that the observations made by this court, except to the extent of holding that the appellant's right was not affected in any manner by revealing his HIV Positive status to the relatives of his fiancée, are uncalled for. It

<sup>12</sup> Praveen Dalal and Shruti Gupta; "The new horizons of right to information", (2004) 1 ACE (J) p 1.

<sup>13</sup> (1998) 8 SCC 296.

<sup>14</sup> JT 2002 (10) SC 214.

<sup>15</sup> In *Mr X v Hospital Z* (1998) 8 SCC 296.

seems that the court has realized the untenability of the earlier observations and the practical difficulties, which may arise after the disclosure of HIV status.

**(2) Right to know about the information under the control of a public authority:** In our present democratic framework, free flow of the information for the citizens suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root levels and an attitude and tendency of maintaining secrecy in the day to day governmental functioning. To remove these unreasonable restrictions the Freedom of Information Act, 2002 has been enacted by the Parliament. The Act provides for freedom to every citizen to secure access to information under the control of public authorities consistent with public interest, in order to promote openness, transparency and accountability in administration and in relations to matters connected therewith or incidental thereto. The Act is in accord with both Article 19 of the constitution as well as Article 19 of the Universal Declaration of Human Rights, 1948. The act will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, Section 3 of the Act specifies that subject to the provisions of this Act, every citizen shall have the right to freedom of information. Obligation is cast upon every public authority u/s 4 to provide information and to maintain all records consistent with its operational requirements duly cataloged, indexed and published at such intervals as may be prescribed by the appropriate government or the competent authority. Information relating to certain matters is exempted from disclosure u/s 8 of the Act. Further, Section 9 specifies the grounds for refusal to access in certain cases.

It must be noted that right to receive information from public authorities, which includes judiciary, is not an absolute right but is subject to statutory and constitutional restrictions. For instance, freedom to speech and expression as provided under Article 19(1) (a) of the constitution is subject to reasonable restrictions as provided under Article 19(2). Similarly, right to know under Article 21 can be restricted by a procedure established by law which is just, fair and reasonable. On the statutory side, under the Freedom of Information Act, 2002, a citizen is not entitled to an absolute freedom of information. In the following cases information can be withheld from a citizen:

- (i) Section 8(1), subject to section 8(2), exempts from disclosure of information in certain cases, i.e. where sovereignty and integrity of India may be prejudicially affected by the disclosure or where public safety and order will be affected by such disclosure or for the protection of trade or commercial secrets etc.
- (ii) Section 9 empowers a Public Information Officer to reject a request for information where such a request is too general in nature or when it relates to information that is contained in published material available to public or where it relates to information which would cause unwarranted invasion of the privacy of any person, etc.
- (iii) Section 16 excludes the application of the Act to the intelligence and security organizations as Specified in the Schedule.

Besides the 2002 Act, there may be other statutes also where information may be withheld from a citizen. For instance, the report of an inquiry made against a judge of High Court under the provisions of the Judges Enquiry Act, 1968 may be withheld from the public by the Chief Justice of India. In **Indira Jaising v Registrar General**,

**Supreme Court of India**<sup>16</sup> an inquiry report was made by the committee to the CJI, in respect of alleged involvement of sitting judges of the High Court of Karnataka in certain incidents. The petitioner sought the publication of the inquiry report. The Supreme Court held that it is not appropriate for the petitioner to approach this court for relief or direction for release of the report, for what the CJI has done is only to get information from peer judges of those who are accused and the report made to the CJI is wholly confidential. It is purely preliminary in nature, adhoc and not final. The court further held 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. The right to information is, however, not absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002 does not say in absolute terms that information gathered at any level, in any manner and for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the CJI being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The court thus rejected the contention to release the said report. The court, however, made it clear that if the petitioner can substantiate that any criminal offence has been committed by any of the judges mentioned in the course of the petition, appropriate complaint can be lodged before a competent authority for taking action by complying with requirements of law.

**(3) Right to information and Electronic governance:** Digital technologies and new communication systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Information stored in electronic form is cheaper and easier to store. Thus, keeping in view the urgent need to bring suitable amendments in the existing laws to facilitate electronic commerce and electronic governance, the Information Technology Act, 2000 was enacted by the Parliament. The aim of the e-governance is to make the interaction of the citizens with the government offices hassle free and to share information in a free and transparent manner. It further makes the right to information a meaningful reality. In a democracy, people govern themselves and they cannot govern themselves properly unless they are aware of social, political, economic and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues, to know what is their true interest, to make them responsible citizens, to safeguard their rights as also the interests of society and State. All the constitutional courts of leading democracies have recognized and reiterated this aspect. In **U.O.I v Association for Democratic Reforms**<sup>17</sup> the Supreme Court observed that the citizens of India have a right to know every public act, everything that is done in public way by the public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision making process. The right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Thus e-governance and right to information are interrelated and are two sides of the same coin. With the enactment of the

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<sup>16</sup> (2003) 4 SCALE 643.

<sup>17</sup> (2002) 5 SCC 294.

Information Technology Act, 2000 more and more transparency is expected in governmental functioning by keeping people aware of the State's plan, policies, objectives and achievements. Section 7 of the Act is an enabling section, which provides that if any law mandates that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been satisfied if the same is retained in e-form. This section can effectively be utilised for the benefit of both government offices and citizens of India. The section must, however, be understood and interpreted in the light of the "constitutional constraints" as discussed above<sup>18</sup>.

**(4) Right to know and trade secrets:** An intellectual property right (IPR) has no value if it cannot be asserted and protected. If an individual cannot protect what he owns, he owns nothing. This is more so in case the right falls under the "Trade Secret" category. The trade secret presupposes the existence of valuable business information, which provides an additional benefit or competitive advantage over the competitors. The right in trade secret remains so long the owner can prevent its disclosure. The moment it is disclosed or becomes public, the right in it ceases to exist. Thus, if properly protected, trade secrets may last forever. It is believed that the formula for COCA-COLA is locked in a vault with no person having access to it. This shows that information, which provides a competitive edge over rivals, must be protected on a priority basis. Thus, recognizing the importance of this right, the countries all over the world provide protection to trade secrets. If trade secrets were not legally protected, the companies would lose incentive for investing time, money and labour in research and development, which is very important for the overall development of the country. Further, the existence of law also works as a deterrence for wrongdoers and discourages unfair conduct of the business. In **P.U.C.L. V U.O.I**<sup>19</sup> the Supreme Court specified the grounds on which the government can withhold information relating to various matters, including trade secrets. The Supreme Court observed: "Every right- legal or moral- carries with it a corresponding objection. It is subject to several exemptions/ exceptions indicated in broad terms. Generally, the exemptions/ exceptions under those laws entitle the Govt to withhold information relating to the following matters:

- (1) International relations;
- (2) National security (including defiance) and public safety;
- (3) Investigation, detection and prevention of crime;
- (4) Internal deliberations of the Govt;
- (5) Information received in confidence from a source outside the Govt;
- (6) Information, which, if disclosed, would violate the privacy of the individual;
- (7) Information of an economic nature (including Trade Secrets) which, if disclosed, would confer an unfair advantage on some person or concern, or, subject some person or Govt, to an unfair disadvantage;
- (8) Information, which is subject to a claim of legal professional privilege, e.g. communication between a legal adviser and the client; between a physician and the patient;
- (9) Information about scientific discoveries".

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<sup>18</sup> Praveen Dalal and Shruti Gupta; "The new horizons of right to information", (2004) 1 ACE (J) p 1.

## Amendment or Legislation

Since the “main issues” has been discussed, it’s now time to deal with the “ancillary issue” which requires an appraisal whether an amendment to the Information Technology Act, 2000 should be made or a new enactment specifically dealing with data protection should be enacted.

The Constitution is organic and living in nature. It is also well settled that the interpretation of the Constitution of India or statutes would change from time to time. Being a living organ, it is ongoing and with passage of time, law must change. New rights may have to be found out within the constitutional scheme. It is established that fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its contents in the light of its experience. The attempt of the court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by the Supreme Court<sup>20</sup>. Thus, horizons of constitutional law are expanding. In *State of Maharashtra v Dr Praful. B. Desai*<sup>21</sup> the Supreme Court observed: “It is presumed that the Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law”. At this stage the words of *Justice Bhagwati* in the case of *National Textiles Workers Union v P.R.Ramakrishnan*<sup>22</sup> need to be set out. They are: “We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree it will shed that bark and grow a living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law, which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind”. It is further trite that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation<sup>23</sup>. These changed circumstances may also create a vacuum in the legal system, which has to be suitably filled up by the legislature. If the legislature fails to meet the need of the hour, the courts may interfere and fill-in the vacuum by giving proper directions. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field<sup>24</sup>. Thus, directions given by the court will operate only till the law is made by the legislature and

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<sup>20</sup> *P.U.C.L v U.O.I, (2003) (3) SCALE 263.*

<sup>21</sup> (2003) 4 SCC 601.

<sup>22</sup> (1983) 1 SCC 228.

<sup>23</sup> *John Vallamattom v U.O.I, (2003) 6 SCC 611.*

<sup>24</sup> *Vishaka v state of Rajasthan, (1997) 6 SCC 241.*

in that sense temporary in nature. Once legislation is made, the court has to make an independent assessment of it. In embarking on this exercise, the points of disclosure indicated by this court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure there from cannot be countenanced<sup>25</sup>. The courts may also rely upon International treaties and conventions for the effective enforcement of the municipal laws provided they are not in derogation with municipal laws<sup>26</sup>.

Thus, for conferring strong data protection to individuals and organisations, an amendment in the Information Technology Act will be sufficient and is the need of the hour. It must be appreciated that it is not the “enactment” of a law but the desire, will and efforts to accept and enforce it in its true letter and spirit, which can confer the most strongest, secure and safest protection for any purpose. The enforcement of these rights requires a “qualitative effort” and not a “quantitative effort”.

## Conclusion

The role model for governance and decision taken thereon should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but also must create an impression that the decision-making was motivated on the consideration of probity. The government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play. Though on the face of it the decision may look legitimate but as a matter of fact the reasons may not be based on values but to achieve popular accolade that decision cannot be allowed to operate<sup>27</sup>. The following are the “Data Protection Principles” which must be kept in mind by the private individuals, private organisations, government or its agencies while receiving the data:

- (a) the data should be processed fairly and lawfully,
- (b) the data should be obtained for specific and lawful purpose,
- (c) the data should be adequate, relevant and not excessive,
- (d) the data should not be kept for longer than necessary,
- (e) the data should be processed in accordance with the rights of data subjects, and
- (f) measures should be taken against unauthorized or unlawful processing.

On the other hand, the “constitutional constraints” must be kept in mind while extending protection to the information sought to be protected. An equilibrium must be maintained between protection of information and data and these constitutional mandates. Every citizen has a right to impart and receive information as part of his right to information. The State is not only under an obligation to respect this right of the citizen, but equally under an obligation to ensure conditions under which this right can be meaningfully and effectively enjoyed by one and all. Right to information is basic to and

<sup>25</sup> Per *P.V.Reddi.J in P.U.C.L v U.O.I, 2003(3) SCALE 263: JT 2003 (2) SC 528(Para 122)*.

<sup>26</sup> Praveen Dalal; “Judicial review: Nuisance or absolute necessity”, [http://www.naavi.org/praveen\\_dalal/judicial\\_review\\_aug06\\_04.htm](http://www.naavi.org/praveen_dalal/judicial_review_aug06_04.htm) .

<sup>27</sup> *Onkarlal Bajaj v U.O.I, AIR 2003 SC 2562*.

indivisible from a democratic polity. This right includes right to acquire information and to disseminate it. Right to information is necessary for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can be circulated. This right can be limited only by reasonable restrictions under a law for the purposes mentioned in Article 19(2) of our constitution. Hence no restriction can be placed on the Right to information on the grounds other than those specified under Article 19(2). The said right cannot be denied by creating a monopoly in favour of the government or any other authority<sup>28</sup>. Human history is witness to the fact that all evolution and all progress is because of power of thought and that every attempt at thought control is doomed to failure. An idea can never be killed. Suppression can never be a successful permanent policy. It will erupt one day. The Constitution of India guarantees freedom of thought and expression and the only limitation being a law in terms of Article 19(2) of the constitution. Thought control is alien to our constitutional scheme. Further, 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 people of a free country aspire in the broaden horizon of the right to life 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.

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<sup>28</sup> Tata Press Ltd v M.T.N.L (1995) 5 SCC 139.