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## Right to Information in Private Unaided Institution

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*The right to Information Act was passed to ensure transparent governance and a government that is effective, responsible, and accountable. It helps to improve democracy by serving as a check on the actions and choices of the administration. But recently, a number of governmental tasks that are vital to the public and seen as state welfare tasks, like education, have been privatised. However, despite the fact that these duties are mostly carried out by private organisations, the government has always governed and exerted control over them because they are in the public interest. However, because these private organisations were not included in the scope of the Right to Information Act, their management was free to direct their operations as they saw fit. To include Private Unaided Schools in its purview, the Chief Information Commission (CIC) attempted to interpret and correlate the term "information." But the lack of an express provision could make it difficult to use the right to information against private unaided schools. This Paper will look at the Right to Information Act's clauses and the higher courts' and CIC's rulings that are pertinent to private unaided schools. A public authority or other organisations that are created, managed, or mainly supported by the government may be asked for information by citizens. However, it is still unclear whether the definition of Section 2(h) applies to private institutions established by non-governmental organisations (NGOs) that are not subsidized by the government but are governed in part by it.*

**Keywords:** *rti, challenges, implementation, private institution.*

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## INTRODUCTION

Information is a valuable resource for problem-solving, policy-making, learning, and updating one's acquaintances, among other things. It is required by all citizens of the state and society to achieve their goals and objectives. As a result, it is seen as a powerful resource in the same way that other natural resources are. In some cases, it is sometimes more significant than many further resources. It has been playing an essential role in the inclusive enhancement of societies since ancient times. As a result, information has emerged as the teamster of all intellectual, technological, social, and economic, including political activity. At the same time, knowledge is regarded as a basic requirement of human beings, who are naturally curious. Human fascination will prevail as long as human civilisation continues. For this purpose, the "right to know" is now acknowledged as a necessary human right on a global scale. The right to information (RTI) is the foundation of democracy and development and serves as the main to all other privileges. RTI is progressively being recognised as a major human right as well as an instrument that can be utilised to fight against poverty, as well as corruption.

People's right to know can help to ensure accountability, transparency, good governance, sustainable growth, human rights, and social justice by allowing them access to information. Lowering the barriers to information acquisition. In Bangladesh, the bulk of people is not that more than aware concerning their human rights and social justice were occasionally infringed upon. Through various behaviours such as corruption, lack of accountability, and transparency in government a variety of public and private entities. It jeopardises the country's overall development strategy. The pre-requisite for the advancement of a nation is a transparent and democratic society where the status of human rights, which gives way to social justice in its turn, offers social justice in the community.

## RTI IN INDIA

The Indian Constitution's Article 19 guarantees the right to freedom of expression, which has the unintended consequence of ensuring the right to obtain information. Any public authority is required to give information within a particular amount of time under the Right to

Information Act of 2005. The Right to Information Act's ultimate objective is to promote government transparency to ensure a government that is free of corruption, effective, responsible, and accountable. By serving as a check on the activities and functions of the government, it helps to improve democracy. However, some governmental operations that are important to the public and deemed welfare benefits functions, such as education, have indeed been privatized.

These services are always overseen and supervised by the government even though they are mostly provided by private organisations. They continue to be of public interest and importance. However, these private organisations can conduct business as usual because the Freedom of Information Act (FOIA), which defends citizens' rights to information, does not include them in its purview. The executive level The Chief Information Commission (CIC) made an effort to translate and connect the information. The word "information" was created to encompass Private Unaided Schools within its purview. The absence of an express provision, however, might make it difficult to exercise the right to information. Private Unaided Schools are private educational institutions that get no government funding.<sup>1</sup>

The Indian Constitution protects certain forms of liberty of speech as well as expression, including the right to information, which is a necessary element of democratic participation. The Indian Parliament approved the Right to Information Act, of 2005, which offers a crucial means of putting the right to information into practice. By guaranteeing an effective, efficient, and accountable government the Act also seeks to increase transparency and accountability within government activities. However, in recent decades, the private sector has taken over certain of the state's functions that are of considerable public importance and interest.<sup>2</sup>

These private bodies, on the other hand, are exempt from the Act's reach. The Chief Information Commission, on the other hand (CIC), attempted to construe the phrase "information" in such a way that it would include Private Unaided Schools. These efforts, however, are too limited in

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<sup>1</sup> Dr. Harunrashid Kadri, 'Application of Right to Information Act, 2005 to The Private Unaided Institutions – A Critical Comment' (2020) 6(4) IJIDAI <<https://thelawbrigade.com/wp-content/uploads/2020/05/Dr.-Harunrashid-IJLDAI.pdf>> accessed 23 December 2022

<sup>2</sup> *Ibid*

scope to adequately safeguard the interests of the public based on constitutional principles, CIC decisions, and other court decisions.<sup>3</sup>

#### **EVOLUTION/BACKGROUND OF RTI IN INDIA<sup>4</sup>**

Below is the flow chart of how RTI in India came into force.

1975: Supreme Court of India rules that the people of India have a right to know.

1982: Supreme Court rules that the right to information is a fundamental right.

1985: Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.

1989: Election promise by the new coalition government to bring in a transparency law.

1990: Government falls before the transparency law can be introduced.

1990: Formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and the launching of a movement demanding village-level information.

1996: Formation of the National Campaign for People's Right to Information (NCPRI).

1996: Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.<sup>5</sup>

1997: Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie. The Shourie Committee submits its report to the government.

1999: A cabinet minister allows access to information in his ministry. Order reversed by PM.

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<sup>3</sup> *Ibid*

<sup>4</sup> Sanjeet Kumar, 'History of RTI Act 2005 in India: Evolution and Challenges' (*Pskpedia*)

<<https://pskpedia.com/constitutional-basis-of-rti-in-indian-constitution>> accessed 25 December 2022

<sup>5</sup> Stuti Aastha, 'Evolution & Development of Right to Information Act in India' (*Legal Service India*, 2018)

<<https://www.legalserviceindia.com/legal/article-323-evolution-and-development-of-the-right-to-information-act-in-india.html>> accessed 20 December 2022

2000: Case filed in the Supreme Court demanding the institutionalization of the RTI. Shourie Committee report referred to a Parliamentary Committee.

2001: Parliamentary Committee gives its recommendations

2002: Supreme Court gives ultimatum to the government regarding the right to information and Freedom of Information Act passed in both houses of Parliament.

2003: Gets Presidential assent, but is never notified. 2004: National elections were announced, and the strengthening of the RTI Act was included in the manifesto of the Congress Party.

May 2004: The Congress Party comes to power as a part of a UPA coalition government, and the UPA formulates a —minimum common programmer which again stresses the RTI. June 2004: Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi.

August 2004: NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its Recommendations to the government.

December 2004: RTI Bill was introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill is only applicable to the central government.

Jan-April 2005: Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.

May 2005: The RTI Bill was passed by both houses of Parliament. June 2005: RTI Bill gets the assent of the President of India October 2005: The RTI Act comes into force.”

## **THE RIGHT TO FREEDOM OF SPEECH, INFORMATION & EXPRESSION IS GUARANTEED IN THE CONSTITUTION**

One of the pillars of such a democratic state is freedom of speech and expression, which improves government accountability, promotes public interest protection, develops popular control over governmental activity, and ultimately strengthens democracy. The Indian

Constitution guarantees the right to free speech and expression to all citizens. However, to protect freedom of speech and expression, the right to information must be exercised. As a result, the right to information is a necessary precondition for the freedom of speech and expression as well as its corollary.

As a result, in *State of U. P. v Raj Narain & Ors*, the Hon'ble Supreme Court declared that "the people of this country have a right to know every public act, everything that is done in a public fashion, by their public servants."<sup>6</sup> They have a right to be informed of all the details surrounding each public transaction and all of its repercussions. The right to know, which is derived from the concept of freedom of expression but is not absolute, is a concern that should make one sceptic when secrecy is claimed for transactions that can, at the very least, have no implications on public security. Authorities' obligation to justify and defend their acts is the main defence against oppression and corruption.

In *R P Limited v Indian Express Newspapers*, the Supreme Court of India stated, "Right to know is a basic right which citizens of a free democracy strive in the wider horizon of both the right to live in this age within our land under Article 21 of our Constitution."<sup>7</sup>

- The people's right to information on each public activity and the specifics of each public transaction carried out by public authority was highlighted in the *S.P. Gupta case*<sup>8</sup>.
- In the case *People's Union for Civil Liberties*<sup>9</sup>, Expanded and elevated to the status of a human right, the right to information is crucial for transparent and accountable government. It also emphasised the value of participatory government.
- Our Supreme Court declared in the *Bennette Coleman case*,<sup>10</sup> in the Hon'ble Court held that Art. 19(1) (a) includes the right to information.

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<sup>6</sup> *State of UP v Raj Narain & Ors* (1975) SCR (3) 333

<sup>7</sup> *R P Limited v Indian Express Newspapers* AIR (1989) SC 190

<sup>8</sup> *SP Gupta v Union of India* AIR 1982 SC

<sup>9</sup> *People's Union for Civil Liberties v Union of India* AIR (1997) SC 568

<sup>10</sup> *Bennette Coleman v Union of India* (1973) SCR (2) 757

- In the case of *Raj Narain*<sup>11</sup>, Justice Mathew remarked, "It is not in the public interest to veil the normal business with a veil of secrecy. The responsibility of officials to explain and justify their activities is the fundamental protection against oppression and corruption."
- The Supreme Court has held in the *Secretary, Ministry of I&B, Cricket Association of Bengal case*<sup>12</sup> that such freedom of expression includes the right to communicate and receive information via electronic media.

## RIGHT TO INFORMATION - A STATUTORY RIGHT

The Right to Information Act, of 2005 was enacted by the Indian Parliament and provides for effective access to data underneath the control of public authorities throughout order to increase transparency in governance as well as ensure a government that is free of corruption, efficient, responsible, and accountable. This law protects citizens' rights to information first from the government, public authorities, and government institutions.<sup>13</sup>

*"Records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body that can be accessed by a public authority under any other law currently in force are all examples of information"*<sup>14</sup>. The right to information under this Act includes not only access to the aforementioned items but also the power to inspect work, records, documents, and their certified copies. Such a request must have a response from the public body within 30 days of being received. The Act requires public authorities to ensure that all of their records are appropriately computerised and connected through a nationwide network within a reasonable amount of time, subject to resource availability, and that all of their records are properly cataloged and indexed in a manner and form that also facilitates the right to information under the Act.

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<sup>11</sup> Harunrashid Kadri (n 1)

<sup>12</sup> *Government of India v Cricket Association of Bengal* (1995) SCC (2) 161

<sup>13</sup> Right to Information Act 2005, s 3

<sup>14</sup> Right to Information Act 2005, s 2(f)

It also requires them to publish information about their organisation, functions, and responsibilities, as well as the powers and responsibilities of their officers and employees, the method consists in the decision-making process, which includes channels of supervision and accountability, these same norms set from them for the discharge of their responsibilities, as well as the policies, guidelines, instructions, manuals, and records that they govern or that they control.<sup>15</sup>

Any authority, institution, or body with self-government constituted/established whilst or under the Constitution or indeed any enactment passed by Parliament or the State Legislation, as well as any person or NGO owned, directly or indirectly controlled, or substantially funded by the government, is referred to as a "public authority." Which organisations are considered "government-controlled bodies," nevertheless, is uncertain. The government exerts extensive and comprehensive control over some entities, interfering in their day-to-day operations, while the government exerts limited control over others, laying down just policy or a framework and leaving them to their own devices.

### **THE PREAMBLE OF THE RTI ACT**

An Act to Establish a Practical Right Information Regime for Residents to Secure Access to Data Under the Control of Public Authorities, in an "Effort to Enhance Transparency and Accountability in the Workings of All Public Authorities, the Establishment of a Central Information Commission and State Information Commissions, and Also for Matters Connected" and Even Incidental Thereto However, democracy requires an informed electorate and information transparency, both of which are essential to its operation, to containing corruption, and to hold governments and their agents accountable to the people. The Indian Constitution established a democratic republic.

It is crucial to reconcile these conflicting interests while upholding the supremacy of the law and the ideal of democracy, so it is necessary to set up the provision of specific information to people who need it. In practice, the disclosure of the information is likely to come up with other public

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<sup>15</sup> Right to Information Act 2005, s 4



interests such as government efficiency, the best use of scarce fiscal resources, the protection of the environment, and the protection of sensitive information's confidentiality.

## **THE OBJECTIVE OF THE RTI ACT**

The major objectives of the Right to Information Act are to empower citizens, encourage transparency and accountability in governmental affairs, fight corruption, and ensure that our democracy serves the needs of the people. A well-informed citizen is better able to keep a careful eye on the instruments of governance and holds the authorities responsible to the people. The Act is an important step toward educating the public about government policies.

## **WHAT DOES INFORMATION MEAN?**

Any object in any format is regarded as information. All electronic records, e-mails, documents, memoranda, suggestions, orders, circulars, logbooks, contracts, reports, papers, samples, models, and data material are included in this category. It also covers any private entity-related information that the government may receive by any currently in force statute.

## **EXEMPTION FROM DISCLOSURE OF INFORMATION<sup>16</sup>**

*“Regardless of anything else in this Act, there shall be no obligation to provide any citizen with:*

- 1. Information that would jeopardise India's sovereignty and integrity;*
- 2. Information that would jeopardise the State's security, strategic, scientific, or economic interests, or relations with foreign states; or*
- 3. Information that has been expressly forbidden to be released.*
- 4. Information that would jeopardise the privileges of Parliament or the State Legislature if disclosed;*
- 5. Confidential information, trade secrets, or intellectual property, the revelation of which unless the relevant authority intervenes, would undermine a third party's competitive position.*

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<sup>16</sup> Right to Information Act 2005, s 8

6. *The authority determines that the disclosure of such material is in the public interest; Unless the competent authority is notified, information available to a person in a fiduciary relationship, convinced that disclosing such material is in the public's best interests;*<sup>17</sup>

8. *Confidential information received from the foreign government;*

9. *Information that would obstruct the investigation, apprehension, or prosecution of criminals;*

10. *Cabinet papers, containing records of Council of Ministers, Secretaries, and other officers' deliberations:*

11. *Information that would jeopardise the life or physical safety of any person or reveal the source of confidential information or assistance provided for law enforcement or security objectives;"*

## **THE INFORMATION RIGHTS AND PRIVATE UNAIDED INSTITUTIONS**

The right to request information from public authorities or other organisations founded, controlled, or mainly funded by the government exists for all citizens. However, the issue of whether the private institution established by non-governmental organisations (NGOs) that are not supported by the government but are largely administered by it is covered by the definition in Section 2(h) persists. Because of this, it is not obvious from the statute whether the right to information also applies to these private organisations. Requests for information under the Act are turned down. Because of this, it's possible that citizens, stakeholders, interested parties, students, current employees, or former employees won't be able to use the Act's right to information and won't have access to crucial details about them. The management of private bodies ultimately decides whether or not to disclose such information.

Private organisations, which include unaided private educational institutions, trusts, and societies, must register with the government and submit annual audit reports and change reports. This is required by the Bombay Public Trust Act, of 1950, and/or the Societies

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<sup>17</sup> *Ibid*

Registration Act, of 1860. Their activities, which generally fall under the umbrella of the public sector, include those related to health, education, charity, and a variety of other services.

On the other hand, these organisations were established by private individuals and performed state welfare functions. Instead of receiving funding from the government, they rely on membership fees, tuition fees, school fees, other payments, and contributions from the general public, & so on, all of which deal with highly important aspects of education. Education, medical assistance, child care, and other aspects of life they do, in reality, share state functions, by performing such welfare tasks, within the bounds of the applicable legal framework laws.

Though the supervision is broad in scope, the government regulates, controls, and supervises private unaided educational institutions in terms of infrastructure, personnel credentials, and terms and conditions of service, among other things. Other institutions functioning in the domains of child care, health, and other sectors, on the other hand, must adhere to norms and regulations regarding safety, hygiene, sterilisation, infrastructure, & so on.<sup>18</sup> Depending on the requirement and nature of the function, governmental oversight may differ from department to department. In the following examples, The Right to Information Act's applicability to particular institutions is looked into.

In *Ms. Sadhana Dixit v Directorate of Education, GNCTD, Delhi*,<sup>19</sup> the Chief Information Commission held that "the Jindal Public School, whether this is a public authority or even a private body, has a duty under sections 4<sup>20</sup> and 8 of the Delhi Education Act<sup>21</sup>, to abide by the regulatory conditions of service, payment of salaries as prescribed, etc., whereby the school has to maintain the records, which even the school has to maintain." The Bombay High Court, in "*Kausa Education and Charitable Trust, Mumbai v Maharashtra State Information Commission*", reaffirmed the same position.<sup>22</sup>

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<sup>18</sup> *Shruti Ambast et al., Regulation of Private Schools In India* (Vidhi Centre for Legal Policy 2017)

<sup>19</sup> *Ms. Sadhana Dixit v Directorate of Education, GNCTD, Delhi*, File No CIC/AD/A/2013/000658-SA

<sup>20</sup> Delhi Education Act 1973, s 4

<sup>21</sup> Delhi Education Act 1973, s 8

<sup>22</sup> *Kausa Education & Charitable Trust, Mumbai v Maharashtra State Information Commission* Writ Petition No. 3650/2012

These two rulings appear to have enlarged the Act's jurisdiction to cover private, non-profit institutions. The Information Officer's power to order private schools to divulge information that they are required by law to provide has been upheld by the CIC and the Mumbai High Court. After the aforementioned decisions have been made, such information can be directly received from the private bodies as the Act's definition of "information" includes information from any third-party sources (private bodies) to which the public authority has access.

As seen above, private institutions are covered by the Right to Information Act of 2005; however, the types of information that can be requested under the law are very restricted and only include those that can be requested through a public authority that is authorised to request such information from that private body as a third party. Because of this, even though the "Sadhana Dixit case" ruling from the CIC and the "Kausa Education case" ruling from the Bombay High Court did not broaden the definition of the right to information, they did shorten the process of obtaining the same information by enabling individuals to request information that would have otherwise been provided to them.

However, even after the aforementioned decisions, it is still impossible to collect other general information that the private organisation is not required by the relevant law to provide to the public authority. As a result, the 2005 Right to Information Act does not apply to private organisations that get funding from the general public and work in the fields of education, health, child care, orphan care, and other highly publicised activities that are a component of welfare states.

Moreover, under section 4 of the Act, these private organisations are not required to publish information that must be made public. Because of this, private organisations can withhold important information concerning the use of public funds under the Right to Information Act of 2005. Due to the lack of oversight, these bodies can withhold important information about the institution's operations, the use of funds, as well as data about or in the interest of stakeholders, former or current employees, other interested parties, students, and other individuals who may be of public interest or importance.

## CHALLENGES

Since, The Right to Information Act has been successfully implemented in the majority of Indian states since its start on June 15, 2005. The legislation has been approved by Tamil Nadu (1997), Rajasthan (2000), Delhi (2001), Karnataka (2002), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), and Jammu & Kashmir (2003), In 2004 all have passed the legislation. Research indicates that the Right to Information Act has encountered several difficulties in its operational area, serious difficulties the lack of public awareness is a major obstacle that must be overcome before the program can be implemented successfully.

The Freedom of Information Act (FOIA) is a federal law that protects People, especially in rural areas, who are unconcerned about the Right to Food. Illiteracy and poverty are important barriers to the proper implementation of the Right to Information Act. The Right to Information Act is useless for those who don't have enough money to eat, are uneducated, or lack freedom. In actuality, the right to life (including the rights to food, employment, and shelter) comes first, then the right to information.<sup>23</sup>

- The majority of people, both educated and illiterate, are unaware of public information officers, methods to pay fees, and how to get information. The absence of a user guide is another significant barrier to the RTI Act's effective implementation.
- In an absence of a user interface due to a lack of an effective record management system, public information officers have trouble obtaining accurate and easy-to-access information from the relevant agency to deliver it to information seekers.
- Bureaucratic non-cooperation is another big roadblock in the way of the RTI Act. In India, it is being implemented. They use knowledge because of their 'Babu' mentality (colonial mindset) as though it were their prerogative the rich and powerful use their power to advance their interests or to demonstrate their superiority. Bureaucrats do not want citizens to have access to essential information.

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<sup>23</sup> Harunrashid Kadri (n 1)

- Bureaucracy also withholds information for fear of being chastised and to provide a positive view to the public.
- The smooth implementation of the RTI Act is hindered by departmental noncooperation with the PIO, ineffective coordination and collaboration among state information commissioners and other factors.
- The absence of monitoring and review systems makes it more difficult for India to successfully implement the RTI Act.
- The limited use of technology has made it difficult to implement the RTI Act effectively. With a few states as exceptions.
- There is no adequate IT system in place to report and track application destruction. authorities of the state.
- The RTI Act's implementation is inconsistent. It is not applied uniformly throughout all states.
- Former bureaucrats are typically appointed to the highest tier of RTI authorities, especially the federal and state information commissions. These commissions are autonomous but are run by the government. Activists think that these politicians frequently show sympathy for their fellow citizens.
- A major barrier to RTI deployment is a lack of fundamental infrastructure. Public Information Officers (PIOs) are required to provide applicants with information via photocopies, electronic copies, and other ways to enable the seamless operation of the RTI Act. At the national level, access to these facilities is challenging even when they are freely accessible at the district level.

## CONCLUSION

The right to information does not originate with the Act of 2005; rather, the freedom to seek information stems from the fundamental guarantee found in Article 19 of the Indian Constitution. Thus, under the Indian Constitution, the Right to Information is a Fundamental Right, and the Act of 2005 just establishes a formal procedure for exercising that right.<sup>24</sup> The

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<sup>24</sup> *Secretary General, Supreme Court of India v Subhash Chandra Agarwal* AIR (2010) Del 159

complete implementation of Article 19(1)(a) of the Constitution will not be achievable unless these private institutions/bodies are placed under the ambit of the Right Information Act, 2005, even though they are not entirely controlled and substantially supported by the government.

If the right to information should be enforced, the key considerations should be its kind of function and the significance it has for the public. Other than placing private unaided bodily parts into the ambit of the Act of 2005, financial aid or administrative control should never be the only consideration. In the recent trend of privatisation, many state services that are considered welfare functions of the state have been transferred to private groups, and they now possess all the authority that the government would have had if it had not been privatised, with only a minimal amount of governmental control. Because these colleges receive no government funding and are totally under the hands of private players with only a little amount of official monitoring, they may also benefit from citizens' right to knowledge. This will stifle transparency, undermine democratic processes, and undermine the fundamental reason for establishing such organisations. As a result, the legislative provision in *Section 2(h) of the RTI Act, 2005*, which denies the information right to private organisations performing public tasks, is contrary to the spirit and aim of Article 19(1) (a) of the Indian Constitution.