**CASE ANALYSIS OF SHRI DINESH TRIVEDI M.P. & ORS VS UNION OF INDIA & ORS**



BY

**MAHELAKA ABRAR**

**(JUNIOR RESEARCH AND INTERNSHIP COORDINATOR)**

1ST YEAR,

**FACULTY OF LAW, ALIGARH MUSLIM UNIVERSITY**

**ALIGARH**

**Gmail-**mahelaka10@gmail.com



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**BACKGROUND OF THE CASE**

During the summers of 1995, a young political activist named Naina Sahni was murdered and one of the culprits arrested in that regard happened to be a proactive politician who has held significant political positions. There was widespread public outraged as newspaper reports, magazines published a series of articles on the criminalization of politics within the country and the expanding links between political leaders and underworld mafia members .In no time the attention of public was drawn towards the existence of the Vohra Committee Report which was submitted as early as 1993.There was a popular suspicion that the contents of the Reports were such that the Union Government was reluctant to make it public . As a consequence of the resulting controversy, the Union Government assented to table the Report before Parliament. On 1st of August 1995, the report came to light in Parliament, where it became the subject of a prolonged, vigorous and intense debate.

**THE PETITION**

Shri Dinesh Trivedi, an M.P (Rajya Sabha), who is the first petitioner, actively participated in the debates in parliament. On August 16, 1995, he made a written representation to the erstwhile minister for Home Affairs demanding that the Union Government make public the reports which were the basis for the Vohra Committee Report, and that the names of individuals who would become identifiable as a result of studying the various background papers be released. He also alleged that the Union Government was trying to suppress these background reports and, without them the Vohra Committee Report was "baseless".

 Being unsuccessful in securing a satisfactory response to his representation, Shri Dinesh Trivedi, in conjunction with the public Interest Legal Support and Research Centre (PILSARC) and the Consumer Education and Research Centre (CERC), both of which are nongovernmental organizations, filed the present writ petition in public interest. The following were included as respondents: **the Union of India, the Ministry of Finance, the Director, RAW, the Director, CBI the Director, IB, and the Special Secretary to the Ministry of Home Affairs**.

**FACTS IN ISSUE**

1. The petitioners state that since the Report reveals such alarming trends, it is of the utmost importance that it be made the subject of considerable scrutiny. They allege that the document tabled in the Parliament is not the complete report but betrays an incomplete substitute prepared hurriedly for the purpose of meeting the demand in parliament and suppresses vita information regarding the unholy connections between politicians, bureaucrats, criminals and anti-social elements. They base this assertion on the statement made in the Lok Sabha, a day prior to the publication of the Report, by the erstwhile Minister for Parliamentary Affairs that the Report extended to about 100 pages, and the fact that the document placed before the House numbered only 11.5 pages. In this respect, the petitioners have also pointed out that the Report, as it was tabled in Parliament, is not in the form of continuous paragraphs; on the contrary, after reaching paragraph 3.7, the next recorded paragraph is numbered as paragraph 6.1. The petitioners’ further state that the Report is itself based on a number of reports that had been placed before it and, without this supporting material, the Report is incomplete. Thus, the genuineness of the Report was shrouded in suspicion.
2. The petitioners aver that the people at large have a right to know about the full investigatory details of the Report. Such disclosure is stated to be essential for the maintenance of democracy and for ensuring that transparency in government is secured and preserved. Towards this end, the petitioners have urged to direct the Union Government to make public the annexures, memorials and the written evidence that were placed before the Committee. A direction to the Union Government to reveal the names of all bureaucrats, police officials, Parliamentarians and Judicial personnel against whom there is tangible evidence, to enable action to be taken in accordance with law, is also being sought. The petitioners asked the judiciary to direct the Union Government to present to it an effective package of the follow-up measures taken in accordance with law. The judiciary was also asked to direct the Union Government to present to it an effective package of the follow-up measures taken or that are proposed to be taken with regard to the Report.
3. Lastly, a declaration to the effect that [Section 5](https://indiankanoon.org/doc/190959557/) of the Official Secrets Act, 1923 is over-broad, unreasonable by the formulation of a Freedom of Information policy, was also sought.

**PETITIONER’S ARGUMENT**

The petitioners allege that a cursory analysis of the Report reveals the following disturbing aspects:

 (1) Several governmental agencies have, in their written reports, indicated that they are aware of the vast local, national and international links of criminal syndicates. These links are such that they amount to a parallel system of government. The common citizen is unprotected and must live in constant fear of his life and property. Even the members of the judicial system have not escaped the embrace of the mafia. And hence, along with the reports of Vohra Committee, various notes, letters and other form of written evidence that was placed for the consideration of Vohra committee be made public as the citizens of India have the Right To be Informed.

(2)The existing criminal justice system is unable to deal with the activities of the mafia. Under the existing system, there is no provision by which the various intelligence agencies can coordinate with each other in properly utilizing the information relating to the links developed by crime syndicates which comes their way.

**RESPONDENT’S ARGUMENT**

The case for the Union of India has been made out in a sworn affidavit filed by Shri K. Padmnabhaiah, the Home Secretary in the Ministry of Home Affairs and the Successor- in-office of Shri N.N. Vohra.

1. In the affidavit, one of the annexures to which is an authenticated copy of the Report, the Home Secretary has stated that the copy of the Report which was tabled in Parliament was the genuine and authentic document. One of the other annexures to the affidavit is a copy of the correspondence upon this aspect between Shri N.N. Vohra, the author of the Report and the present Home Secretary. In his response, Shri N.N. Vohra clarifies that though he had access to the reports, notes and letters furnished by the Director, IB, Secretary (Revenue) and the Director, CBI, while making his final Report, he did not consider it fit to include them as annexures for the Report was meant to be a summary of discussions held and of the contents of the documents which were already on record. As for the incorrect numbering of the paragraphs, Shri Vohra explained that it arose as a result of a typographical error committed by his stenographer and his own omission to detect and correct the error.
2. While apprising the Court of the follow-up measures initiated pursuant to the Vohra Committee Report, it was stated that the Vohra Committee was set up with a view to facilitating the establishment of a nodal agency to supervise and coordinate the functioning of enforcement and intelligence agencies towards controlling the crime syndicates existing in the country. After the Report was placed in Parliament and as a result of the views expressed by the Members of Parliament during the debates, the Union Government set up a Nodal Agency on August 2, 1995, in conformity with the recommendation of the Vohra Committee Report and was to be chaired by the Home Secretary. The Committee also comprises the Secretary (Revenue), the Director, IB, the Director, CBI and the Secretary (RAW). This Nodal Agency was assigned the task of coordinating, directing and supervising the activities of the Central and State investigative agencies responsible for controlling the growth of crime syndicates without purporting to be a substitute for them. Thereafter, the Nodal Agency met and considered issues of inter-agency cooperation and support. At the first meeting of the Nodal Agency, it was decided to hold a discussion with the leaders of different political parties with a view to evolving a code of conduct for politicians and bureaucrats which would help expose the links developed by the mafia syndicates. In this regard, an All party Meeting was convened by the erstwhile Home Minister on September 15, 1995 which was attended by parliamentarians representing the major political parties. From the minutes of this meeting, it appears that several issues of grave importance relating to the findings of the Vohra Committee Report were discussed at length. On January 5, 1996 the Union Government issued a further order appointing the Cabinet Secretary as the Chairman of the Nodal Group, while retaining the Home Secretary and all the other Members in the Nodal Agency.
3. The affidavit further points out that under our constitutional scheme, the maintenance of law and order is essentially the responsibility of the State Governments. The role of Central Intelligence Agencies, such as the CBI, the IB and of the Revenue Department is, therefore, limited cases, consisting of cases transferred by the State Governments to the CBI, cases in Union Territories, and the cases being investigated by Central Revenue Agencies. Much of the investigatory work in the country falls within the purview of CID and Intelligence Agencies within State Governments. The task of the Nodal Group is, therefore, limited to ensuring that the investigative efforts of all these separate agencies are synchronized towards their smooth functioning.

**RIGHT TO INFORMATION IN INTERNATIONAL LAW**

A number of international bodies have authoritatively recognised the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These include the UN, the Organisation of American States, the Council of Europe and the African Union.

Significantly, in his 1998 Annual Report, the Special Rapporteur stated clearly that the right to access information held by the State is included in the right to freedom of expression: “The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems. …”

ARTICLE 19 has published a set of principles, The Public’s Right To Know: Principles on Freedom of Information Legislation (the ARTICLE 19 Principles), setting outbest practice standards on freedom of information legislation. These Principles are based on international and regional law and standards, and evolving State practice. Some of them are mentioned below.

1. PRINCIPLE 1: MAXIMUM DISCLOSURE: **“Freedom of information legislation should by guided by the principle of maximum disclosure.”**

The principle of maximum disclosure holds that all information held by public bodies should presumptively be accessible, and that this presumption may be overcome only in very limited circumstances.

1. PRINCIPLE 2: OBLIGATION TO PUBLISH: “**Public bodies should be under an obligation to publish key information.”**

Freedom of information implies not only that public bodies should accede to requests for information, but also that they should publish and disseminate widely documents of significant public interest.[21] Otherwise, such information would be available only to those specifically requesting it, when it is of importance to everyone.

### PRINCIPLE 3: Limited Scope of Exceptions: “Exceptions to the right to access information should be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.”

### It is obviously important that all legitimate secrecy interests are adequately catered to in the law, otherwise public bodies will legally be required to disclose information even though this may cause unwarranted harm.

**RIGHT TO INFORMATION IN INDIA**

The first landmark pronouncement in this respect was made by Justice Mathew in **State of Uttar Pradesh v. Raj Narain** wherein he stated, “In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries.’’ However, he added “Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security”.
Repeated pronouncements were made in **SP** **Gupta, Rajagopal, ADR, R.K. Jain Vs. Union Of India , Canara Bank Vs. Shyam and others** and other landmark cases reiterating the ideology and principle, recognizing the right to information **as a fundamental right flowing from Article 19 (1) (a)** of the Constitution of India. The Right to Information Act, 2005 has codified this right and also listed certain areas for which the information may be denied; and these exempted areas were on the same lines as that spelled out in Article 19(2) of the Constitution of India.

In the case of **S.P Gupta vs. Union of India** The Court held that the disclosure of documents relating to the affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case.

**ARTICLE 19**

Article 19 of the Constitution states:

 (1) All citizens shall have the right-

 (a) To freedom of speech and expression;

 (b) to assemble peaceably and without arms;

 (c) to form associations or unions, co-operative societies;

 (d) to move freely throughout the territory of India;

 (e) to reside and settle in any part of the territory of India;

 (g) to practise any profession, or to carry on any occupation, trade or business.

 (2) Nothing in subclause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

**THE OFFICIAL SECRETS ACT, 1923**

Section 5(2) in The Official Secrets Act (OSA), 1923 states that:

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section. And that the person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

**VALIDITY OF THE ACT**

The Official Secrets Act needs to be viewed in the context in which it was framed. It was enacted under the British rule in 1923 because of an overwhelming colonial mindset of distrust and the need to restrain the revelation of ‘sensitive’ information. Section 22 of the RTI Act states that it can override the OSA and seek information .Therefore, in the light of the Constitution and the Right To Information, all these laws have become completely outdated and unconstitutional and needs a thorough check.

**ON SETTING UP OF A NODAL AGENCY**

The Report, while recording the widespread development of crime syndicates within the country, points out that under the existing system, there is no provision by which the various intelligence agencies can coordinate with each other in properly utilizing the information relating to the links developed by crime syndicates which comes their way. Sharing of such information is rare, and much of it is discarded without being put to any productive use. The Report, therefore, recommended the setting up of a **Nodal Agency** to which all existing intelligence and enforcement agencies (irrespective of the Department under which they are located) shall promptly pass on any information relating to crime syndicates which they may come across.

 After the Report was placed in Parliament on August 1, 1995, and as a result of the views expressed by the Members of Parliament during the debates, the Union Government set up a Nodal Agency on August 2, 1995, in conformity with the recommendation of the Vohra Committee Report and was to be chaired by the Home Secretary. The Committee also comprises the Secretary (Revenue), the Director, IB, the Director, CBI and the Secretary (RAW). This Nodal Agency was assigned the task of coordinating, directing and supervising the activities of the central and State investigative agencies responsible for controlling the growth of crime syndicates without purporting to be a substitute for them.

However, the Nodal Agency suffers from certain limitations. Being only a supervisory body, without having clearly delineated powers, it cannot effectively control the pace and thrust of investigative efforts. **.**[**In Balaji Raghavan v. Union of India**](https://indiankanoon.org/doc/171223892/), a Constitution Bench of the Supreme Court had recommended the establishment of a high level Committee to examine the guidelines relating to the conferment of the National Awards. Therefore, similar body must be created to examine the scenarios available in the case in hand.

**JUDGEMENT AT GLANCE**

1. Having examined the copy of the Report which has been placed before the court, the court said that the allegations regarding its authenticity, the explanation forwarded in this behalf by the Home Secretary and the copy of the communication with Shri N.N. Vohra in this respect, it found that there is nothing on record to raise a doubt that the Report, as tabled in parliament and as presented to it, is not genuine, authentic and unabridged. That apart, there is no other ground for doubting the genuineness of the Report. Since it has been tabled in Parliament, it now enjoys the status of a public document.
2. The court directed the non disclosure of the supporting material placed before the Vohra Committee to the public at large as it believed that instead of aiding the interest of the public, it would be severely and detrimentally injurious to it.
3. In that view of the above matter, the court pointed out that there was no necessity for it to express themselves on the constitutionality of [Section 5](https://indiankanoon.org/doc/190959557/) of the Official Secrets Act, 1923.
4. In the absence of any existing suitable institution or till its creation, the court recommended that a high level committee be appointed by the President of India on the advice or the Prime Minister, and after consultation with the Speaker of the Lok Sabha. The Committee shall monitor investigations involving the kind of nexus referred to in the Vohra Committee Report and carry out the objectives described earlier.

**OVERVIEW OF THE JUDGEMENT**

The court was reluctant to direct the disclosure of the supporting material which consists of information gathered from the Heads of the various Intelligence Agencies to the general public as it pointed that to do so would cause great harm to the agencies involved and to the conditions of assured secrecy and confidentiality under which they function. The disclosure of these reports would lead to a situation where public servants and elected representative who, though entirely innocent, are compelled by virtue of their offices to associate with individuals whose culpability is beyond doubt, will also find themselves mired in suspicion. Such a situation would, in the long run, prove to be disastrous for the effective functioning of government. This is because it would make every governmental functionary overcautious about taking the simplest of decisions. Therefore, in consonance with the exception guaranteed under access to Right to Information, it ordered the non disclosure of the supporting material in the public interest.

The court then turns its focus to the Report and the follow- up measures that need to be implemented. The Report revealed several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians, bureaucrats and criminal elements in our society has been on the rise, the adverse affects of which are increasingly being felt on various aspects of social life in India. The situation has worsened to such an extent that the president of the country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997. The matter, therefore, the court decided, is one that needs to be handled with extreme care and circumspection. In the light of the existing scenarios ,

 Ahmadi, CJI rightly pointed out that “Democracy in modern India is on the threshold of completing fifty years of existence. Milestones such as this have traditionally been occasions to embark upon wide- ranging assessments to survey the achievements and failures, highpoints and pitfalls, as well as the future prospects of the institution concerned. In our times, it is widely acknowledged that democracy in India has not risen upto the high expectations which heralded its conception. Many reasons have been advanced to explain the causes for the malaise which seems to have stricken Indian democracy in particular, and Indian society in general. The matter which we are presently concerned with professes to identify one of the primary causes for the present state of affairs.”

**SUGGESTIONS**

The honorable court did not say much about the legality of the Officials Secret Act,

However, in the light of the current circumstances prevailing over the country, it is felt that there is an urgent necessity to do a thorough check and revision of this colonel era law drafted to serve colonial purposes.

The honorable court very rightly pointed out the need for a change in the existing socio-legal structure of the country to deal with such high handed nexus as pointed out in the above case and that such matter needs to be addressed by a body which function with the highest degree of independence, being completely free from every conceivable influence and pressure and that such a body must possess the necessary powers to be able to direct investigation of all charges thoroughly before it decides, if at all, to launch prosecutions. To this end the facilities and services of trained investigators with distinguished records and impeccable credentials must be made available to it.

**REFERENCES**

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2. [S.P. Gupta v. Union of India](https://indiankanoon.org/doc/112850760/) [1981] AIR 149 (SC)
3. [Balaji Raghavan v. Union of India](https://indiankanoon.org/doc/171223892/) [1996] AIR 361 (SC)
4. R Rajagopal and Anr. v State of Tamil Nadu [1994] AIR 264 (SC)
5. ADR/PUCL case [2002] AIR 294 (SC)
6. R.K. Jain v. Union of India JT [2013] AIR 430 (SC)
7. Canara Bank v. CS Shyam and ors. Civil appeal no. 22 of 2009

**BRIEF ABOUT THE AUTHOR**

Mahelaka Abrar is a first year student from Faculty of Law of Aligarh Muslim University. She has keen interest in Corporate Law, Constitutional law and IPR. She is hard working, meticulous, organized while handling work and has basic fundamental understanding of a situation with respect to wide areas of different laws. She is associated with the team of Indian Society for Legal Research and working comprehensively on the judgments of International Court of Justice. She has also been actively involved in doing volunteer works and has served as Campus Ambassador for significant organsitaion. She is associated with the team of ProBono as Junior Researcher and Internship Coordinator. By being part of team ProBono she is contributing to the society through legal aid.