

Right to Information and Good Governance

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Lecture 63

Role of NGOs and Right to Information Act

Hi, this is Raghav Parthasarathy and I work at the Centre for Environmental Law Education, Research and Advocacy, National Law School, Bangalore. Today, I will be dealing with topic on role of NGOs and the Right to Information Act. As we all know, the Right to Information Act has been enacted in the year 2005. And this particular legislation has granted our right, to the citizen which is inalienable in a democratic setup like ours.

People are a main part in a democratic form of government; therefore, it is mandatory for them to know the decision-making process and other important functions undertaken by the government. Good governance and right to know are complimentary to one another. Right to Information Act of 2005, enhances the aspect of good governance. As good governance is measured by transparency, availability of freedom, political accountability, and by responsiveness by the government towards its people. For this exact reason, citizens right to know is widely acknowledged as an important mechanism.

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ABOUT THE ACT

- Right to Information and its Genesis.
- Right to Information and its importance in a democratic set up.
- International Instruments guaranteeing Freedom of Speech and Expression.
 - Universal Declaration of Human Rights
 - Convention on Civil and Political Rights, 1966.
- Role of Mazdoor Kisan Shakti Sangathan (MKSS).
 - Demand for official records due to non-payment of minimum wages.
 - Nation wide Revolution to provide information under the various employment schemes.
- Draft law on Right to Information
 - Consumer Education Research Council, 1991
 - Peers Council of India, 1996.
 - Freedom of Information Bill, 1997.
- National Campaign on People's Right to Information (NCPRI)



This is in the background of the basic principle that in order to strengthen the pillars of democracy, the right to know is one of the foremost rights. Good governance may be termed

as a synonym for the work carried out by the governance where the maximum benefit is given to the maximum number of people. India being a huge democracy needs participation from every corner, every corner of the country for the better implementation of the objective of good governance.

Transfer of information by the authorities increases the knowledge database among the society and also it will contribute for the people to live in an enlightened society. Without the transpiring information, accountability of public authority will be minimal. And there will be challenges to the good governance. As we all know, without the proper Right to Information law, people who choose the government and pay taxes to finance the activities of the government will be kept in the dark room without knowing what is actually happening.

Well, this is the exact reason why the Right to Information law is very much required. Lack of openness, as we all know, have been one of the major norms in the country, which has actually impacted the functioning of the democracy and has also brought down the reputation of the country to a very large extent. This has not only hampered the growth of the country, but has also built in a thick wall of secrecy among the bureaucrats in the country.

Therefore, it becomes very important to understand the working of the government in order to further strengthen the democracy. Without this freedom to seek information, the functioning of democratic governance cannot be understood. Information is now the soul of every government; every democratic government is what I would like to also add on. Because this particular right brings the two most important tools; one is transparency, and the other one is accountability. This has been brought in order to eradicate corruption and the obesity that becomes a hindrance for the functioning of a democratic governance government.

Let me now try to focus on the genesis of the Right to Information Act and how some of the non-government organizations and other independent civil society organizations have contributed in the making and enactment of the Right to Information law. If you look at the history, the basic idea of right to information can be found in several international instruments.

The first one which I would like to deal with is the Universal Declaration of Human Rights, which was adopted in the year 1948. Well, if you see if you read through the article 19 of the

Universal Declaration of Human Rights, as it was adopted in the year 1949. It declares as follows; everyone has the right to freedom of opinion and expression, this right to freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of the frontiers.

Not just this, if you look at article 19 clause 2 of the Covenant on Civil and Political Rights, that is of the year 1966. Even that says, everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind regardless of frontiers. This clearly means that most of the international instruments have already laid down the fundamentals of the expression that is a freedom of speech and expression as has been enshrined in the Constitution of India.

Several other instrument also, more so, the international instruments have also provided for the right to seek information. But do you know when we actually have a campaign, when did we actually have a campaign for the right to information in our country? Well, this began in the year 1990. This particular moment was started by one of the famous organizations called The Mazdoor Kisan Shakti Sangathan, which is also popularly called as the MKSS.

This particular organization was basically nothing but a group of farmers and laborers who came together and formed this association in a small village called Devdungri in Rajasthan. These people were working under a State Employment Generation Scheme, and were paid considerably less wages than that was guaranteed under the scheme. This led them to fight for their legal rights.

The reason why this whole movement started was, though, the organization and the workers wanted to get a proper welfare measure, or the appropriate wages that were guaranteed under the scheme. But the officials were reluctant in releasing the documents. And they cited that the officials, official documents are not consistent with the necessary work or to be done by them. So, which means that the reason why they were seeking information was inconsistent to what they were actually asking.

Hence, they cited that such official documents were under the bureaucratic secrecy, and that it was unavailable, even to those persons who are related with it. Then how did Mazdoor Kisan Seva Sangh come into picture? This particular organization headed by Miss Aruna

Roy, she took some help from some of the officers and she could able to identify some of the discrepancies, which prompted this MKSS, the organization to demand official information recorded in the government files.

This movement became a big revolution and it is spread across the country. From a very small movement, this led to a nationwide revolution. This started in the villages of Rajasthan, and it is spread across the remote corners of the country. The success of MKSS is an epitome and a source of motivation for activists in India and throughout the world. This led to the origin of a wider discourse on the Right to Information law in India.

Because of this, in the year 1993, we had a draft law that was projected by the Consumer Education and Research Council of Ahmedabad. The first draft of ever was supposed to be improved. And later on, in the year 1996, by the press Council of India, which was headed by then Justice P. B. Sawant also presented a model draft law on the right to information. This was presented to the Government of India and it was later on renamed as the Freedom of Information bill of 1997.

Unfortunately, not a single of these draft legislations were honestly considered by the by the government. And during this time, the Kisan Sangathan movement got massive support. And this led to a national campaign on people's right to information as we call it, the NCPRI. The whole objective of the NCPRI was aim to work for the right to information at the central level or we call it the union level. This was instituted in the year 1996 and is situated in Delhi. The NCPRI also supports the grassroots struggles for the right to information and it actually actively lobbied with the government to enact and bring in an effective Right to Information legislation in our country.

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- HD Shourie Committee -
 - Draft Law on the Right to Information.
 - Freedom of Information Bill 1997.
 - Passing in Parliament and never to be notified.
- Amendments to the Freedom of Information Law.
- Commonwealth Human Rights Initiative (CHRI) and Passing of RTI Act.
- ROLE OF NGOs
 - MKSS, CHRI & NCPRI
 - Andarsh Housing Society Scam
 - Parivartan NGO - Public Distribution Scheme
 - World Bank Water Project - Delhi Jal Board Case.
 - Right to Water Campaign.
- Role of NGOs and other independent Organisations
- Social Audit and the transparency regime.



In the year 1997, in the year 1997 an attempt was made to enact the Right to Information both at the states as well as at the union level. A committee under the chairmanship of Mr. H. D. Shourie was set up by the central government. And they were given the task to to draft a legislation on freedom of information. They were given the task to draft a legislation on freedom of information, the committee's report and its draft; in the year 1997, an attempt to enact the Right to Information law was made both at the states as well as at the union level.

A committee was constituted under the chairmanship of H. D. Shourie by the central government, and they were assigned the task to draft legislation on freedom of information. The committee's report and its draft law were published in the year 1997. But the draft law was criticized for not espousing a high enough standard of disclosure. And the draft law passed through the two governments but unfortunately, it was never even introduced in the parliament.

However, in the year 1999 when Mr. Ram Jethmalani was the Union Minister for urban development, issued an administrative order enabling the citizens to inspect and receive photocopies of the files in his ministry. But this order never came into force because the Cabinet Secretary back then did not license this order to come into result. Again, in the year 2000, the Shourie committee draft law was reworked into the Freedom of Information bill of the year 2000, which was seen as more or less satisfactory bill than the Shourie Committee's bill.

But this was sent to the parliamentary Standing Committee on home affairs. This consulted with the civil society groups and submitted the report in July 2001. This committee recommended that the government address the flaws in the bill, which was pointed out by the civil society. But unfortunately, the government did not consider any suggestions made by the civil society organizations. And finally, the bill never got implemented.

Later on, the National Freedom of Information bill of 2000, was presented in the parliament in the year 2002 as it was approved in the year December, and received the presidential assent on January 2003, which was titled as the Freedom of Information Act of 2002. Unfortunately, a date for the bill coming into force was never notified. Therefore, it never actually came into operation. But in the year 2004, when the new government came into power at the centre, the national campaign for the right to information received a major boost.

And when the government's common minimum program promised that the Right to Information Act will be made more progressive, participatory and meaningful, in order to implement the promise, the National Advisory Committee which was set up to ensure the implementation of the government's common minimum program, since the inception, the Advisory Council took close interest in the functioning of the RTI and the very first meeting of the National Advisory Council, the members submitted a statement from the campaign for the people's right to information, calling for some action to be taken on the right to information.

Now, let me tell you how the Commonwealth Human Rights initiative participated and submitted an analysis of the freedom of information act. They have submitted several recommendations and suggestions to the National Advisory Council and to all the cabinet MPs prior to the first meeting, following the first Advisory Council meeting Aruna Roy who founded the Kisan Sangathan met with important government stakeholders, and she suggested that civil society submit a paper endorsing the amendments for the Freedom of Information Act.

National Campaign for the people's right to information suggested some amendments to the central Freedom of Information Act of 2002. During this time, a public interest litigation was also filed by the Centre for Public Interest litigation against the Union of India. This was filed before the Supreme Court of India way back in the year 1998. Since 2002, they have tried to

compel the government to notify for an effective Freedom of Information Act, and to notify or to bring into force this legislation which was already passed by the parliament, as well as also given the presidential assent.

The case was heard by the Supreme Court on July 20, in 2004. And the supreme court's order, basically set a deadline of this 15 September 2004, for the central government to act and to notify the Freedom of Information Act. Owing to the order of the Supreme Court, the Ministry of personnel public grievance and pensions finally released the draft rules under the Freedom of Information Act of 2002.

Due to so much developments happening in the field of right of information, the government thought that it was appropriate, and it was actually better to have a new law. Therefore, the right to information bill of 2004 was tabled in the Lok Sabha and the RTI bill of 2004 was mostly based on the recommendations submitted to the government by the Advisory Council. This was again, mostly based on the NCPRI's original draft bill. During the discussion, the Commonwealth human rights initiative has played a major role by suggesting amendments to the Right to Information bill.

In the year, May of 2005, the amended RTI bill of 2005, which had many recommendations of the Parliamentary Standing Committee was again tabled in the Lok Sabha. The bill got passed very quickly, as it was approved by the Lok Sabha on 11th of May 2005. And by the Rajya Sabha on 12th of May, the same year. By 15th of June 2005, then the president APJ Abdul Kalam gave his assent to the national Right to Information Act of 2005 and this became a law from the set date. With the presidential assent, the central government and the state governments had 120 days to implement the provisions of the bill in its entirety. The Act formally came into force on 12th of October 2005.

As we know, one of the primary objectives of the Right to Information Act, was to tackle corruption and to bring in transparency. The Right to Information Act of 2005 has created a framework to procure the documents, which is in the custody of the concerned authorities, and to bring to light the various misgivings or the corruption corrupt activities that are happening within the public office. And it can also point out the duties that were supposed to be performed by the concerned government official.

This legislation as empowered the citizens to question the government or its plans and projects. This law that is the Right to Information law, has also allowed the citizens to question government over any kind of misappropriation, and also any work done by the government over the money that is spent by it on any kind of projects or schemes. Information pertaining to tenders, agreements, outflows and estimates of engineering work etcetera, can also be obtained with the help of Right to Information Act.

Over the years, number of RTIs have exposed many scams, and have also resulted in further enhancing the transparency and accountability of government. We will now look at some of the cases where the RTI users have contributed tremendously towards achieving the objective enshrined under the Right to Information law.

As we know that, organizations like MKSS, that is the Mazdoor Kisan Sevak Sangathan, NCPRI, The Common Wealth human rights initiative have played a major role in the enactment of the Right to Information law. This can be considered as a pre RTI era. But for the successful implementation of any law, there are innumerable number of people and organizations who have work and brought to the limelight various issues.

Let us now see some of the cases and I would like to start with the first case the Aadarsh Housing Society Scam. It was initiated by an RTI user called Santosh Daundkar in Maharashtra. Aadarsh housing society was a 31-storey residential housing complex in Colaba, Mumbai. This was originally intended to house or to provide residential facilities to war heroes and widows of 1999 Cargill.

But the flats were sold to bureaucrats and relatives of politicians who had no connection whatsoever with the Cargill one. Mr. Chavan, or Mr. Ashok Chavan, who was also the former Chief Minister of Maharashtra. Before he became the chief minister was the revenue minister at this point of time. He had agreed to set out some of the flats to the civilians, which were specifically meant to be for defense personnel and their widows. The scam got wide media coverage, and after RTI application was filed by Mr. Santosh Daundkar.

Mr. Daundkar released several letters, and it was addressed to Mr. Chavan by many journalists, wherein it was alleged that he had agreed to transfer 40 percent of the flats to civilians. Thus, it was a case of misuse of official position and an indirect case of bribery.

The house was also given out to Ashok Chavan relatives as well as one of the reports suggested. After the very wide media coverage, it prompted the army as well as the Central Bureau of Investigation to launch different probes.

The CAG, the Comptroller Auditor General, also submitted its report, and this disclosed a murkier scam that was hiding. It was revealed that Navy had objected to the then government for issuing occupancy certificate, as it cited serious security concerns. It also found that the society failed to obtain NOC from the Ministry of Environment and Forests as it had permission to build only six floors, but it had built up to 31 floors. In order to investigate this, several authorities also joined the investigation, including the Enforcement Directorate who looked into the benami transaction aspect.

As the investigation commenced, and progressed, some documents and files belonging to the scam went missing. And this is where the Bombay High Court intervened, which ordered the protection to these files and pursued periodically the status reports from the CBI and other investigating authorities. After this, several bureaucrats got arrested, including Mr. Chavan and 12 others were named in the CBI's charge sheet. Mr. Chavan later on became the chief minister of Maharashtra, and because of the scam he had to resign from the chief minister's post.

During this time, the Ministry of Environment and Forest also takes too serious stand on the careless violation in the high rise of the building and order demolishing of the illegal illegally constructed floors. At the same time, the Mumbai Metropolitan Regional Development Authority, as we all know is called as the MMRDA also cancelled the occupancy certificate, which led to the disconnection of the power and water supplies. The Aadarsh Housing Society resident right to stop the demolition, but it was all in vain, as the Bombay High Court ordered for demolition of the building for violating the green norms.

It has also approved 12 weeks provisionally stay, observing to the plea of the Aadarsh occupants. However, the society appealed to the Supreme Court of India, in which the court granted an order of stay in the year 2018. Because of the orders of the Supreme Court, the Indian Army secured the building and pending further investigations and the appeal, they are in the possession of the building as of now. This is how one activist relentless approach helped in unearthing of bigger, big major scam.

Let us now look at the second case by an NGO called Parivartan. This is situated in Delhi, a non-governmental organization named Parivartan use the right to information as a tool to access information, following which it exposed that 90 percent of the food that was meant to be distributed to the poor under the Indian public distribution system scheme was being drained off by the corrupt ration shop dealers.

The this Parivartan NGO, obtained the sales registers and stock registers of some of the ration dealers using the Delhi Information Act. Even though this is prior to the RTI Act, this is relevant for the purpose of understanding how the Right to Information regime has evolved over a period of time. These records pertain to the distribution of rice, wheat, and kerosene during the year 2003 for the recipients who are eligible as beneficiaries. The NGO scattered this information and verified it with the recipients who were shocked to know that the ration that were supplied in their name was actually not supplied to them.

The research by Parivartan NGO revealed that out of 182 beneficiaries, only 40 family beneficiaries had received the essential commodity and that out of 595 kgs had been only distributed out of the 4650 kgs that was supposed to be distributed. Also, out of the 1820 kilos of rice, only 110 kilos of rice were distributed to the actual beneficiaries.

With these proof Parivartan NGO was able to expose the corrupt dealers with the proof of their corrupt practices. Parivartan has since acknowledged that 82 of the families have now been receiving these essential commodities at the price that is prescribed by the government and by the market. Right to Information has also dealt with several other issues and scams.

The next issue which I will be specifically mentioning, is about the Delhi Jal Board and the World Bank project with the Delhi Jal Board. This was in the year 1998 when the Delhi government issued a tender for contract in which it planned to privatize the water supply in the state of Delhi. This tender was given to a Calcutta subsidiary of the Price Water Coopers, which is all we know, as we all know, is an accounting and auditing firm. In the year 2001, despite facing strong criticism from the Delhi Jal Board, who had ranked the PwC lower than the rest of the corporation, who had bid for this.

The Parivartan obtained these documents and revealed that the World Bank had intervened on behalf of PwC too many times at the time of bidding process. Arvind Kejriwal, who was then associated with the Parivartan NGO who is now the chief minister of the state of Delhi, has had a very active role in the functioning of Parivartan.

He has, on several occasions stated that despite reservation by the Delhi JAL board, it cancelled the earlier evaluation and it invited the fresh bids. A new evaluation bid was mandated, but the Price water Cooper's again failed to clear the evaluation test. He further revealed that the World Bank subsequently asked for detailed scores being given by each member.

This particular evaluation is for each of the bidder who had independently submitted his bids and based on the evaluation by the committee and the scores that were produced by them. This campaign was also supported by the MKSS founder and the flag bearer. This campaign was also supported by Aruna Roy, who was the founder of the Mazdoor Kisan Sewak Sangathan, and she called the bank's project, mismanaged and unethical that needed to be maintained and run by the government and not by private companies.

As we all know, water is an essential commodity, and it cannot be just given to the private entities for the purpose of making profits or benefits. Parivartan also (advocate) advocated the importance of transparency and open decision making in the international organizations like the World Bank. Parivartan strongly objected to the disclosure policies of the World Bank and Parivartan demanded that interests of the public is paramount and any institution of the global nature or the global presence should have a proper disclosure policies.

And it should be changed to enable public access to such information by the citizens of any of the countries concerned. The records of the Delhi Jal Board and their correspondence with the World Bank indicated that the only way people can understand the Reasons for certain crucial decisions taken is through access to relevant correspondence or information.

The World Bank had intervened, and this was defended by the country director Michael Carter, who responded to Parivartan's accusation in a press statement and said that the bank's intervention in the contract bidding is to ensure that the development outcomes or the money borrowed are achieved properly. The bank has developed with the concurrence of its

members, a high set of standards in areas such as procurement, financial management, and environment and social safeguards to which the borrowing countries also committed.

These are accepted as global benchmarks by its supporters and the critiques alike. The World Bank also rejected the accusations made against them to favour the Price Waterhouse Coopers as completely unfounded. And on the contrary, the project's stated aim is to make available 24 hours water supply for Delhi, but the documents obtained by Parivartan revealed that the deal promises to accrue only profits and huge amount of profits for few water companies.

And this will resultantly in the lead in pushing water bills for ordinary people, and in some cases also deny water rights to those who are unable to afford these heavy bills. Under the project, the management of each of the Delhi's 21 zones, would be handed over to the water companies, which will collect management fees, engineering consultancy fees, and some amount of bonus.

Parivartan estimated that approximately 24,400 US dollars per month of management fees to each expert alone would work out to around 25 million dollars a year. Moreover, each of the water company has a say in deciding its own annual operating budget. And also, there are provisions for upward revision which can be misused to make extravagant demands on the government. Parivartan's calculation is that if the project is accepted, a family, or a middle-class family may find its water bill is increasing five times over. There was also a heavy emphasis on reducing non-revenue water.

In practical terms, this translates into making water so expensive, that poor people's access to water will be badly affected. Despite statements that some subsidies will be maintained for the poor. Several voluntary organizations, resident welfare associations and other independent organizations including the experts and citizens have come together in Delhi to form in what is known as The Right to Water Campaign.

This was initiated basically to oppose this particular project of the World Bank and the Delhi Jal Board. The Right to Water Campaign demanded that the Delhi government should immediately withdraw its loan application to the World Bank for carrying out reforms in the water sector. And due to intense public criticism, Delhi Jal Board decided not to go ahead

with the recommendations of the World Bank report that was prepared by the Price Water Coopers.

The NGOs and other Western welfare associations had a major say, in the resolution of the Delhi's water crisis. Aruna Roy stressed the importance of public participation in such a sensitive matter of water distribution, and she said that there is an urgent need for people's participation in such projects. Rather than opting for privatization, knowing very well that these multinational companies have failed miserably when implementing such projects in other countries.

Right to water campaign activists have also expressed their concerns about the water reforms that was proposed to be undertaken by the Delhi Jal Board, and the impact that the proposed water scheme is likely to have. There have been several examples of mismanagement from different cities of many developing countries, including in countries like South Africa, Bolivia, and Colombia, where water supply has been handed over to private companies.

Because of the right to information, the entire episode of the water supply being privatized was avoided, as the utilization of the Right to Information prevented in implementation of the flawed project and the policies. The case of Delhi Jal Board and the World Bank project has highlighted the need to enlighten the citizens with the information by Providing them access to detail, reliable and authentic information.

When, under the Right to Information regime, participation in governance is at the heart of any successful democracy. As citizens, it is our duty to participate not just during the elections, but also at the time of making policy or drafting of any laws. Involvement of public enhances transparency and accountability, making information available to the citizens is simply a part of the normal functioning of the government. Because the citizens have all the right that is guaranteed under the Constitution.

This leads to the concept of social audit that has been developed in the recent years to assess the functioning of these authorities. Social audit simply means independent and participatory evaluation of the performance of any public agency, or a program or scheme. The concept of social audit, as it provides for an in-depth scrutiny and analysis of the functioning of public authority and their responsibility.

Using the right to information as a tool, social audit provides the benefits like complete transparency, informed consent, speedy redressal of grievances, and other right-based entitlements. The usage of RTI by the NGOs and other independent organizations has facilitated in the improvement of the public service delivery, and has improved the efficiency of the functioning of these public authorities.

There are several ways in which these organizations can contribute in the betterment of the functioning of the RTI regime. These organizations can apply for information and verify records. Apart from that, not just these records, they can also procure documents, samples of particular works undertaken by the government, and also make a comparative analysis on various parameters. This will promote the government towards the regime of providing information, which will eventually breakdown the thick walls of secrecy.

And the greatest challenge for the NGO and the independent organization lies in the usage of this tool, called the right to information to bridge the gap that is there between the society and the concerned authorities. This has to be used for the purpose of strengthening the weak and the poor sections of the society and to reduce the inequalities, as the role of these organizations is not just to monitor the public service delivery, but their role is also in building the general awareness and capacity among the community on the usage of the right to information. Thank you.