

## Right to Information and Good Governance

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### Legislating the Right to Information: Background and Challenges – IX

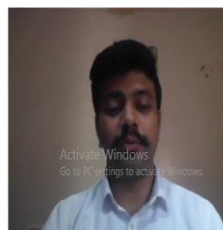
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#### Legislating the Right to Information



- COPRA 1986
- The Representation of Peoples Act, 1951
  - Amendment in 2002
- Freedom of Information Act, 2002
  - Scope and Limitations
- Civil Body Movements
  - Mazdoor Kisan Shakti Sangathan Rajasthan
  - National Campaign for People's Right to Information (NCPRI)
  - Press Council of India Draft: 1996
  - *Impact of RTI on State Legislations*
- Right to Information Act, 2005



The right to information was an implicit fundamental right that as discussed earlier, it was also made explicit under certain legislations but with limited application. One such instance of right to information that was implicit in the legislation was the Consumer Protection Act of 1986.

Indeed, the Consumer Protection Act provided that every consumer has a right to be informed about the product or services that he is obtaining from a producer or a retailer or a service provider. In this regard it is pertinent to note that this right to information pertains to all the hazards including the contents of product, these being exposed to and as such the right to information is also a culmination of various other legislative rights.

Similarly, the Factories Act of 1948 also provided for compulsory disclosure of information to factory workers regarding dangers of health hazards and other measures that they can undertake to overcome such hazards. On similar lines, the environment impact assessment regulations which were given under the Environment Protection Act of 1986 also made sure that the potential risks that persons will face over the hazardous processes or industrial process that an industry was exposing would surround us was also made evident.

And as such right to information had also formed its place in several other ministry legislations but however with limited scope of application. The Representation of People's Act as discussed earlier in the PUCL cases had also made an amendment in 2002 so as to allow for the disclosure of the status of the persons who went un testing for the elections. Now with this it is quite evident that the Right to Information Act had found its place in the legislative scenario or as an outcome of various judicial decisions and various conventions that India was obligated to.

As such its exposure as a whole standing fundamental right against the government and its information was something that was evident. The freedom of information act of 2002 was one of the first legislations that came across with regards to right to information in detail. But however, there were several controversies that marred this legislation. Few of them was that the Act exempted the disclosure of information that was exchanged in confidence between Central and State government and any authority or its agencies.

As such the particular exclusion was formed to be wide enough and would create ambiguity in dissemination of information and the right has been exercised. Secondly, the various aspects of the legislation was much regarded as toothless tiger in the sense that although there was a right that was created in the citizen to procure information using the enactment. However, there was a difficulty or ambiguity that was placed in wherein there was no penalty that was provided against officials who offended or were found to be in violation of particular enactment by way of refusing to provide information.

At this juncture it is pertinent to understand various civil body movements that actually lead across to the growth of Right to Information Act 2005. The Freedom of Information act of 2002 was held as incapable of meeting the requirements of a transparent free and fair governance system and structure that allows for free dissemination of information to the public.

On the aspect of civil body movements the role of Mazdoor Kissan Shakti Sanghatan from Rajasthan is something that is noteworthy to read and understand. The Mazdoor Kissan Shakti Sanghatan was established in 1987 by three founding activists. In a rural area called Devdari in which is in the state of Rajasthan.

It was formed by 3 major activists, one Miss Aruna Roy, who was earlier a member of elite Indian administrative service who quit the particular pivotal role and then decided to work across on the

grassroots for greater empowerment of the poor. Along with her was Mister Shankar Singh, a resident of a nearby village and Mister Nikhil Dev who all were working towards the upliftment of the poor and the rural communities in and around Rajasthan.

They formerly registered their organization in 1990, along with membership from various marginal presence and landless workers and majorly from persons belonging to the lower socio economy. Their activities took a wide span in 1994 they decided to challenge the corruption that persisted in the Rajasthan government on the issue of under payment of daily wage earners and farmers on government projects.

Initially there was an attempt made by the MKSS to obtain information from Rajasthan government with regard to the muster rules and the bills and vouchers related to the purchase and transportation of materials and the payment for these daily wages workers and subsequently there was an attempt that was made to cross check the information that was obtained from the government through public hearings against actual testimonies that was given by the workers themselves.

This method of public hearing gained immense popularity and was successful in drawing attention to corruption and exposing the linkages that were there in the system and it marred the situation of corruption. The concept of Jan Sunwais which was related to the public hearing that was conducted gain greater attention and focus from the media and it is the means of creating transparency and accountability as well as empowering the poor.

One of the major challenges and hurdles that was faced by the Mazdoor Kissan Shakti Sanghatan was with regard to the collection of the information. It was observed that they had to go and undergo a great amount of deal and stress and time to obtain these information and as such they required a need for a particular law that allowed for dissemination of government information.

In April 1995 looking into the aspects of MKSS the Chief Minister of Rajasthan had announced that the government of Rajasthan would be the first of the state government to provide for access to information to citizens in all local development and works. But however, it was not until 2000 that the government was made to legislate such an enactment.

The Dharna in 1996 held by the Mazdoor Kissan Shakti Sanghatan was one of the pivotal reasons as to why the government went across to look into the aspect of enacting a legislation on the right to information. However, the Dharna kept losing its wicker with the government elapsing in its

promises. These Dharnas involved the association that the national campaign committee for the People's right to information.

The NCPRI along with the press council of India was able to give the first draft on the right to information in 1996. We are pertinent to look into the press council of India draft which is given in 1996 wherein it perform the right of every citizen to information from any public body further, it is pertinent to understand the definition that was given across in this draft that the public body including not only an government or authority of the state but also all privately owned undertakings and non-statutory authorities.

Companies and certain other undertakings which were existing and functioning in India on account of public interest. The criteria for the information to be disclosed was kept broad and vague in manner that any information that could be sought by the parliament or state legislatures cannot be denied through a citizen either. There were also penal provisions that were given across for the failure or the breach of the duty by various authorities in dissemination of the information.

Subsequent to this, a conference of chief ministers was organized for looking into the drafting of a law on transparency and the Right to Information. Between 1997 to 2002 several other legislatures of state had passed legislation on the Right to Information. In May 2004 with new UPA government coming into power in a center, an national campaign on the right to information was given a major boosts with the UPA government common minimum program which promised that the Right to Information act will be made progressive participatory and meaningful made by requiring the repeat of the freedom of the information act of 2002.

A national advisory council was set up under the chairmanship of Mrs. Sonia Gandhi for overseeing the implementation of the government's common minimum program. The national advisory council was put in under pressure by activists such as Miss Aruna Roy who looked up across or over saw the activities of the national campaign or People's right to information act and consistently put across pressure on UPA government to have the bill passed and enacted the Right to Information Act of 2005 as you see it today.

Amidst all these measures it is pertinent to note that the freedom of the information act of 2002 which was passed by the parliament had never been given impact by way of notification in official gazette. Public interest petitions were filed by advocate Prashant Bhushan on behalf of NCPRI and the center for public interest litigation since 2002 to have the implementation for the freedom of

information act.

Consequential to the order of the Supreme Court as well as the pressure that was put in by the NCPRI and the recommendation that were taken forward by the national advisory committee, there was a decision that was taken to introduce a new bill on the right to information act based on the recommendation there.

On 10th May 2005, the RTI amendment bill of 2005 was (put) tabled before the Lok Sabha and was passed subsequently by Rajya Sabha and was given full effect by President APJ Abdul Kalam on June fifteenth 2005. With this we come to the end of the session on Legislating on the Right to Information Act which background and challenges.