

Right to Information and Good Governance
Dr. Sairam Bhat, Professor of Law
National Law School of India University
Introduction to Transparency,
Accountability and Good Governance
Part - 02

(Refer Slide Time: 00:13)

Why 'Right to Information':
Importance and significance

- 'Forma' and Information
- Why should citizens get information?
- From being powerless to being powerful: role of information in our daily lives
- Development of Knowledge based society; political, cultural and social



The next point of discussion is on the fact that when we talk about Right to Information and trying to understand its significance is to see how the Right to Information actually empowers citizens with key knowledge that is relevant in our daily lives. Take the instance of the example of the fact that we are all used to reading newspapers every day in the morning. What does the newspaper do? It captures all the information of the previous day or till the time the newspaper is gone to the print.

What does the newspaper give us? It give us information about politics, it gives information about what is happening in your city, it gives information about stock market, about opinions, about sports, about what is happening in different dimensions of say, other countries and hence, I think, when we talk about information, what it does is to give you that kind of a power and hence, what we would say is being, giving information is trying to put people from being powerless to making them powerful.

And I think, every democratic society and every legal system that aspires to make its citizens powerful must actually enact the Right to Information law. This is also important from the view that we are also talking about accountability. Now, when you talk about public institutions, you expect public institutions to actually have a lot of accountability. And, that accountability can only be ensured if public institutions actually answer the queries that are raised by its citizens.

And when citizens have the real power with them to ask the relevant and pertinent questions, then you will notice that is where the accountability does come, and hence, the power will then be shifted from the government to its citizens. So the real centre of power lies with the people, we the people and that is the reason why Right to Information becomes a very significant accountability aspect as well.

Interestingly, we should also understand and note that in India when we talk about government we already have a three-tier government. We have a central government; that is where we all talk about a very federal structure that is existing in this country. There is a lot of power that is there in the federal or the central government. The constitution also mandates that kind of centralization and the central government actually enacts a lot of legislations that are dealing with those subjects or which the central government has the power to do that and hence, the accountability of that government is also essential.

The second tier of government that we see is the state government and hence, from the state governments, we have states that deal with say, public health issues, they deal with police, they deal with several other issues including water. I think accountability that is required in all these cases is also from the second tier of government, that is the state government.

The third tier of the government is the local governments. We include the municipalities, the Panchayats and others, which also thereby are involved in citizens' interface and they are also involved in delivering key services to citizens and hence, if these three tiers of government have to actually be accountable, they have to really trust the power in the citizens and they have allow citizens to ask them the pertinent questions that are relevant to bring in that kind of accountability as well.

And hence, a citizen has to be able to get an opportunity to ask the government in either center, state or local to ask how the government is actually functioning, how does it go about its daily business? and what are the objectives of the government of that particular day?

I think it is also important to understand that we did have a colonial hangover when it comes to the issue of accountability. And if you look at our legal system and history that we have carried all throughout, unfortunately, that colonial hangover has meant that the power has always stayed with government and because we were colonized by the Britishers for a long period of time, they had probably kept the power with them and that same kind of mentality continued even after independence and we did not probably think of actually implementing the aspect that it is important that the power shifts from the government to the people.

And it is a collective responsibility that citizens have, it is a collective bargain that the citizens have, to keep the government of the day in check and to ensure that the power that is there with the government is utilized for the interest and the benefit of the citizens and is not abused.

The next point or probably the last point in the first slide and what I would just want to probably discuss with you in terms of significance of this course broadly or significance in the understanding the concept of Right to Information is about tone, the development of the knowledge-based society. I think, when we talk about, say, developed economies, sometimes we refer to some of the Western economies or the developed economies and we tend to believe that the Indian economy is a developing economy.

I think developed economies are developed because it is an, it is probably a knowledge-based economy. To a larger extent, market instruments, capitalism, business, economic interest do create into what is known as a 'developed country'. However, the real development is not in terms of money or material wealth, the real development is in terms of what knowledge the people and the citizens of a given country actually have. The knowledge that is required to essentially have political knowledge, cultural knowledge, social knowledge. And I think in India, we were deprived of all these aspects for a long period of time till probably we have come out

with the era of liberalization, which to a larger extent meant that the government had to have an open mind.

An open mind results in an open culture, an open society and open governance. And hence, the government of the day has to look at openness rather than the aspect of secrecy. Openness is critical to the kind of society that one aspires. What does an open mind do? An open mind is susceptible to change the ambit of secrecy, to accept views considered by others. To actually develop your own knowledge, you need to be acceptable to different ideas and for which, you should actually access knowledge as well.

Knowledge that is there in your friends, in your society, knowledge that exists with government, knowledge that exists internationally. And I think, this is where an open society actually does not look inward but looks outward and I think, it is very important to develop our human ingenuity to bring the best of innovation in human beings that we must have a knowledge-based society that cultivates us politically, culturally and socially.

And hence, I think stating some of these aspects will give you an idea about probably why there is so much of importance to understand this Right to Information as an integral part of a societal change that happened in India 15 years back, and how did this change occur is very critical to the way we understand government and its functions.

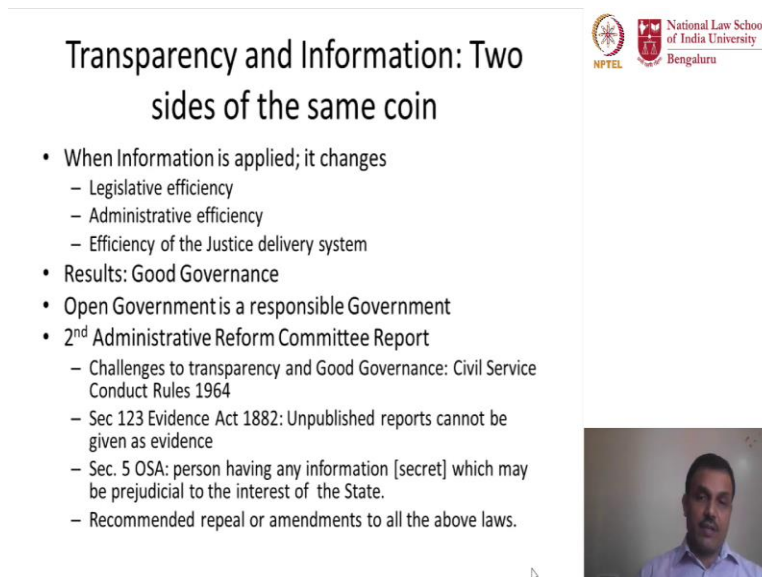
At this point of time, I think it would be very important and pertinent to understand how we can relate Right to Information with the Right to Education as I was talking about the knowledge-based society. Friends, we say Right to Education today is a fundamental right. It is fundamental because we did not bring about an amendment to the Constitution to say Right to Education is fundamental, at least of the age of 14 years. The state has a duty and the citizen has the right to seek that kind of education.

When we talk of education and when we say education is so relevant and important to a human being and it is an integral, intrinsic human right that we say. Education is all about information and when we talk about education, it is about empowering yourself with the kind of knowledge

that is required and it is probably a basic human right and I think when you talk about right to education, there is an interface and a interlink to right to information, which means I must be educated about government. I must be educated about public institutions. I must be educated about how I have been governed and what are the positions that are relevant in a given society.

Because remember, finally, society is a collection of individuals, where all the individuals collectively hand over the power to the state so that the state administers that kind of necessary public services for the benefit of its citizens and hence, the state is just the creation of its people and the state is not independent and cannot be alien from the people that it actually administers. And hence, I believe that the Right to Education and Right to Information have an integral approach the way we talk about the Indian society and the Indian Constitution.

(Refer Slide Time: 09:44)



The slide features a title "Transparency and Information: Two sides of the same coin" in a large, bold, black font. To the right of the title is the logo of the National Law School of India University, Bengaluru, which includes the NPTEL logo and the university's name. Below the title is a bulleted list of points. The first point is "When Information is applied; it changes", followed by three sub-points: "Legislative efficiency", "Administrative efficiency", and "Efficiency of the Justice delivery system". The second main point is "Results: Good Governance". The third main point is "Open Government is a responsible Government". The fourth main point is "2nd Administrative Reform Committee Report", which has three sub-points: "Challenges to transparency and Good Governance: Civil Service Conduct Rules 1964", "Sec 123 Evidence Act 1882: Unpublished reports cannot be given as evidence", and "Sec. 5 OSA: person having any information [secret] which may be prejudicial to the interest of the State.". The final sub-point is "Recommended repeal or amendments to all the above laws.". In the bottom right corner of the slide, there is a small video inset showing a man with a beard and mustache, wearing a light blue shirt, speaking.

Transparency and Information: Two sides of the same coin

- When Information is applied; it changes
 - Legislative efficiency
 - Administrative efficiency
 - Efficiency of the Justice delivery system
- Results: Good Governance
- Open Government is a responsible Government
- 2nd Administrative Reform Committee Report
 - Challenges to transparency and Good Governance: Civil Service Conduct Rules 1964
 - Sec 123 Evidence Act 1882: Unpublished reports cannot be given as evidence
 - Sec. 5 OSA: person having any information [secret] which may be prejudicial to the interest of the State.
 - Recommended repeal or amendments to all the above laws.

Friends, I think, the next point that I would like to discuss with you all is on transparency and information, which I believe are the two sides to the same coin. Why I believe they are the two sides of the same coin is because of the fact that if we have to ensure transparency, information becomes inevitable. When we speak about information, I think the result of information is probably ensuring transparency. So it is the same thing that we are speaking about, however, they have different implications altogether.

Now when we talk about transparency and information, it is important to understand that when I speak about information and when I want to ensure that information flows under the law on Right to Information, what does it apply to? What will information do? What will it change? When is this going to bring about an effect and on what situations or what circumstances?

I believe there are three elements that we must believe in. When I believe about information that would ensure transparency? The first thing that information will do or when information is applied, it will change or it will bring about legislative efficiency. Now, what is legislative efficiency? Today, when we talk about the law that is made by the parliament or law that is made by state assemblies, I think law governs you, law disciplines you, law regulates your behavior. And there are many laws that are enacted from time to time by the government and I think one of the basic functions of the legislature is to actually enact legislations.

So, those legislation for example, could be on privacy, which is a major contemporary issue today. It could be on the goods and service tax that was recently introduced. So, when you talk about the legislature making or empowering or performing its own functions, we do talk about the fact that when legislations are made, let us assume and ask ourselves whether there is adequate public consultation; Are all the stakeholders involved in the law-making process; are concerns of the stakeholder recorded? Do we have enough information how legislations are actually made and why they are made and what objectives do they tend to achieve?

Because when would we talk about law-making, we are talking about just law-making. The law has to be just, the law has to be for the benefit of the citizens and it cannot be an unjust law and hence, what does probably information about the legislative process do is probably if I am able to ask the government, for example, the first question that I can ask is, 'Was there public consultation before the bill was presented in the Parliament? Who were consulted on this? Was there adequate representation from different stakeholders? What were the opinions given? What did the opposition say? What was the debate? What questions were asked? What amendments did take place?

Then probably what I do is, I bring in a system where I impose checks and balances so that the government of the day does not assume that it has complete legislative autonomy to pass any legislation. However, there is a scrutiny that the public can do by asking the relevant questions and this, thereby then ensures that when the legislature goes about its business of lawmaking, they do it in a fair, more transparent manner, which also then brings in the element of accountability that look, when the law actually being made for the stakeholders, it is the stakeholders who have to actually voice their opinion, it is the stakeholders which have to be taken into consultation.

Because we are not talking about imposed law. We are talking here of a democratic law. We are talking of law that is useful for its own people and it is not superimposed or it is not going to be coerced or unduly imposed upon its citizens. So, I think legislative efficiency is insured if information is actually shared and I think that is one of the major achievements if we go about a robust legal regime on Right to Information. So, legislative efficiency is something that RTI made, bring about and this is one of the objectives that I believe that RTI will actually achieve.

Second, I think if the legislature is efficient and the legislature is transparent with its legislative process, inevitably, we probably have to go about achieving administrative efficiency. Because every legislature has to be administered by the bureaucracy. It could be the executive organ of the government, which probably is both at the state and the center. There are different other missionaries that operate on the administrative part.

And hence, I think what I believe is, once the legislature shows the way about lawmaking, it does not do it in a secret under the carpet kind of a mechanism. If it can show the kind of levels of transparency and accountability by sharing information about how law is made and what are the concerns before the law was enacted, and whether the law is just or not and if it can go ahead and defend the same, I think the administrative confidence to implement the law is automatically there.

There is a greater consensus among the administrators to actually implement the law in a far more effective manner. Because it has already taken the concerns of the people, the people are on

board. They know that the law was made for their own benefit and for their own good. The administrators can go about immediately implementing the law.

However, what is also important to understand over here is, administrative efficiency is about even the way the executive goes about making the rule-making functions. Because when we talk about delegated legislations, because what the Parliament does, is no, they only make the act, they only make the substantive law, whereas the administrator agencies actually make the procedural laws.

So, all the rules, regulations, circulars that are actually brought about to bring an act into force are made by the administrators. And hence, the administrative efficiency is probably something that has to be paramount. It is one of the most important milestones that information age or information system or the right to information legal regime ought to achieve or ought to ensure and I think, it is very important that once you talk about information that can flow from administration, I am sure that is one exact position of achievement that can be brought about in the transparency age.

The third, I think when information is applied, what it changes is the efficiency of also the judiciary. The efficiency of the justice delivery system, I think is core. It is core because of the very fact that we are talking of the judiciary as the third organ of the government. But please note, the judiciary is supposed to be something that is a watchdog.

The judiciary checks the legislature and the administrator and hence, the checks and balances, that mechanism that we have developed with the doctrine of separation of power, the manner or method in which we expect the judiciary to step up and render justice to the citizens, you will notice that if information is applied in the justice delivery system, it will also bring about efficiency. For example, what we are talking about over here is, how are judges appointed? What is the process? What is the autonomy of selection of judges? How are judges transferred?

This information, if applied, will also bring in some kind of efficiency in the justice delivery system because we expect justice to be delivered by people who are competent. It should be

merit oriented. I think, it is something that we can ensure and I think what information will do is, it will immediately bring in that level of transparency from the institution of the judiciary. And once that transparency is brought about, efficiency automatically increases and I think, once efficiency increases it becomes a key to development, it becomes key to knowledge-based society, it key, it is key to the method and manner in which governance is actually brought about in any given delivery system.

So, I think these are three important efficiencies that are said to be achieved when information is applied. And, I think what efficiency does is it brings about transparency. That is the method and manner in which we must understand that transparency and information are two sides of the same coin.

Finally, please note, all these three efficiencies are going to result only good governance. There are no parameters of good governance any way, but one of the essential parameters of good governance is administrative efficiency, one of the parameters of good governance is a transparency, one of the parameters of good governance is information. And hence, what is good governance? It is nothing but governance that is essentially for the people, by the people and of the people.

And these are going to be achieved if it is governance on a citizen or people-centric government, it is not governance for the government, it is governance for its people. And good means that I am fair, I am transparent, I am open and I would be efficient in providing information whenever asked for. I have no secrecy. My basic element of governance is to ensure that whatever is done is in an open society, in an open-mind and the best interest and the best objectives of the society ought to be achieved and I think, a government that is open will always result in a good government.

An open government is also supposed to be a responsible government. Yes. I think this is a very broad statement and when we say this, we always say that an open government is like a government that does not hesitate to share any information that is required by its own citizens.

But, when you look at open government, it is not possible for every government to share every information. So, we should know this.

Governments have their own restrictions, their own regulations. I think, there are so many informations, probably the government will not be able to share, which is completely understandable because we do not think that any law on transparency and information expects the government to share every information, because let's take the instance of state security; I do not think anybody expects the government to share this.

However, I think everything that is civil in nature, everything that is communicable in nature, I think government should be responsible to do the same and hence, we are talking about such kind of government which understands the difference between a right and the wrong. Right. What information can be shared and should be shared, should be given to its citizens? What information need not be shared to the citizen, but can be probably shared with the cabinet, with the few responsible individuals who should have this information, which is so-called confidential in nature?

So, I think the government of the day, if it is a responsible and open government, does know to pick up the choices of information that should be given between what can be shared with its citizens and what need not be shared with its citizens. I think that is what is known as a responsible government. It is not an irresponsible government, so we are talking about an absolute rule of information, information is probably restricted at times there could be reasonable restrictions and please note if information today is a right, no right is going to be in absolute right.

You will have reasonable restrictions on those rights and hence, a responsible government must also define what kind of information is going to be shared and what information is not going to be shared. Now, that is the balance that the government has to achieve when it goes about its business when it goes about its role as an open government as well.

Friends, it is very pertinent here to bring about the Second Administrative Reforms Committee Report, which is an interesting aspect of bringing in. They brought in a report on good governance and I think you should read this, it is part of the reading material that is going to be provided for the course.

It is a very interesting report, which actually identifies the elements of good governance and this was headed by Mr. Veerappa Moily and it was submitted very recently. And the Second Administrative Reform Committee Report actually makes certain suggestions. They identify the challenges for good governance and they say there are certain elements that need to be changed.

There are certain challenges that need to be overcome if we have to bring about transparency and information, and thereby result in good governance. And hence, if you look at the recommendations of this Committee, let us look at it very briefly and please note these points are only relevant and pertinent to the aspect of our course that is Right to Information. So, they are not covering all the suggestions, but those that are relevant and important for us to understand the aspects of change that are relevant in the Right to Information movement.

Now, what did the Second Administrative Reforms Committee Report do? They said that the challenges in India currently to transparency and good governance are plenty. You will have many challenges, one of them they identified was with this very interesting legislation called the Civil Service Conduct Rules. Now, this applies to all central civil service government officials and under the Central Civil Service Conduct Rules, the rules clearly mandate that a government officer without the requisite permission of his head of the department cannot share any information.

So, there was kind of an obligation on civil servants to keep confidentiality of government information. So, no government officer, under the Civil Service Conduct Rules, was authorized to share this information and if he does so, and if the information is very, very pertinent and the state can decide at any given point of time that an information is confidential, the information is necessary for national interest, then the officer who has shared that particular information unauthorizedly shall be punished for violation of the Civil Service Conduct Rules.

Which means that these kinds of rules and regulations that are enacted even after Independence, had a tendency to tell government servants that ‘you ought not to be open, you ought not to share information, you ought to not practice transparency’, which means it is an inward position. It is not an outward position. It is not saying that we are ready to share any and all information that is relevant and that is necessary to citizens, rather my conduct rules, so my employment rules very clearly says, if I share, I will be in violation of the same. I may probably lose my employment.

And hence public servants, though they are so-called public servants, did not act like public servants and because of the Conduct Rules, they tend to not share the same information with the citizens. So, I think the Second Administrative Reforms Committee Report says that if Right to Information has to be meaningful, if Right to Information has to be implemented in the right way, I think changes in the Civil Service Conduct Rules are relevant, it is important.

Public servants must be told that look there is a law that expects you to share this information, there is something that we have to achieve in terms of good governance, and then good governance is an open government and hence, as public servants you ought to be answerable to the public. And hence, if the public is demanding some information that you can share with the public, it is your duty. It is your moral, ethical, legal obligation to share that said information and what these will do is to, in turn, largely bring about a very transparent system of government.

So see, government is consisting of public servants. The government does not have a face of its own. The public servants that represent the government are the face and if these public servants are told and there is a practice that is brought about in saying that ‘please share this information, please disclose this information, this is your duty, this is part of an obligation, we are accountable finally to the citizens of large, government may be just your employer, but finally, your masters are the citizens, your masters are the society to which you are supposed to serve’, I think the whole attitude of the public service will probably change and I think very importantly in terms of understanding transparency is about change of attitude. I think it is very important for us to understand that if you have to bring about a transparent society, especially with the

government and its servants, we have to change their attitude towards the people. I think that is one of the challenges that the Second Administrative Reforms Committee actually identifies.

The second important aspect that I just picked up from this report is something that they have identified in the Indian Evidence Act 1882. Section 123 is what they have identified, which clearly prohibits public servants from giving any evidence of any unpublished report. So if it is published, they can submit it as evidence in a court of law. If it is not published, then public servants are prohibited from submitting the same as evidence in a court of law.

Now, this clearly is a restriction on the way even the judiciary may access certain of information, because remember, publication of reports takes a huge lot of time and there could be an interim report, there could be a draft report, there could be lot of other information that comes and hence, in the interim time, if a civil servant is prohibited from showing it in a court of law or producing it as evidence in a court of law, because remember, it is already a document in the government.

I think the Administrative Reforms Committee does rightly say that this Section in the evidence law is actually retrograde. It is actually something that demotivates me from going ahead and disclosing something because it is not going to be acceptable as evidence, so I will not do it. And the courts are not supposed to take or the courts are not supposed to force their civil service officers to actually come up with them as well. So, that is another pertinent change that is required to ensure transparency in the information age, is what the Second Administrative Reforms Committee Report has identified.

The last but not the least. I think the most important one is the Official Secrets Act of 1923. Kindly note, we are going to revisit the Official Secrets Act from time to time. It is something that we will have to do as a part of understanding the legal system in India, in understanding the information system in India, and in trying to balance the interest of the State to keep secrets at the same time, the right of the citizen to seek the information. However, the Second Administrative Reforms Committee does point out very pertinently, the challenges of this colonial law.

The Britishers, when they enacted the Official Secrets Act, had a different purpose. The Britishers, when they governed India and they brought in this legislation, it was a colonial government, it was not a democratic government, it was not an elected government. It was not accountable to the citizens. The British government was accountable to the, to the English society, if I would say so or to the Queen in England.

And hence, when they brought in this legislation, their idea was very clear that they wanted to not share information with the Indian citizens and hence, they very clearly said that look, if at any point of time the government decides any information to be secret, confidential or anything, then you will not have this information at all, and this was completely a discretion. So the government or its officers, at any point of time can demarcate an information secret, and once it is a secret, and once an officer deems it that this information is very important for the interest of the state, then that said information will never be shared with the citizens.

So, if you look at the Official Secrets Act, the Evidence Act, the Civil Service Conduct Rules, a combination of these three laws clearly meant that government servants absolutely had no obligation to share information with its citizens and hence, if information is not shared, it is a closed government, it is closed economy, it is a closed legal system.

And if it is a closed legal system, it is a system in secrecy. It is a system that breeds secrecy. It is a system that advocates for secrecy, it is a system with says information is something that is belonging to the government, it is information that is to be kept confidential, it is something that will not be shared either in the court or with the public, which mean that if there is secrecy, often it breeds contempt, it often breeds corruption.

And this is probably the combination of issues that resulted in the Second Administrative Reforms Committee to suggest and say that if we have to have to achieve transparency and information, please note, when the Second Administrative Reforms Committee probably makes the suggestion and says that if we have to achieve this, then inevitably these three, Civil Service Conduct Rules, Evidence Law and the Official Secrets Act have to be neutralized.

There has to be amendment, there has to be change and unless we have these amendment, then you will not be able to achieve anything that is required in terms of information and I think, Section 5 of the Official Secrets Act has direct implication on the way and manner and method in which the Right to Information is to be administered.

Last, what does the Second Administrative Reforms Committee do? It recommends repeal and amendment to the above laws and it says it is inevitable for the country to not only bring in RTI law, but also change these three legislation so that RTI becomes far more effective.