

Right to Information and Good Governance
Dr. Sairam Bhat, Professor of Law
National Law School of India University
RTI and its contribution in strengthening Transparency and International Perspective on
RTI Law

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RTI and its contribution in
strengthening transparency

- Public Guarantee of Services to Citizens Act 2011
- Whistleblower Protection Act, 2011
- CVC and CAG
- Lokpal, 2013 and Lokayukta, 1984





Friends, we will continue our discussion on understanding the background to the Right to Information law in India by understanding at the outset, what has been the contribution of the Right to Information in strengthening transparency. So, this is probably in terms of putting the reality check of contribution of RTI. Because we think RTI is one of the instruments that has strengthened the role of transparency and accountability and has contributed to good governance. But I think it is not going to be the sole tool or agency that will actually ensure transparency and good governance.

However, RTI has been a kind of an inspiration in enacting several other legislations in India post 2005. And some of them that I can just highlight over here for understanding the impact of RTI and understanding the evaluation of the Right to Information, is a law called the Public Service Guarantee Act. In fact, you will notice that it is called the Public Guarantee of Service to Citizens Act in many states. However, the law that I am referring to in the slide is a 2011 legislation that was brought in the state of Karnataka.

There were many other states, I think around 16 states have already enacted such a legislation which is in line and in tune to the Right to Information Act. In Karnataka, this law is also called Sakala, which is actually rendering public services to citizens and it actually is modeled on the Right to Information Act. Now, if you look at the Right to Information Act, the purpose of this legislation is to actually give you information from the government. And let me tell you, information is a kind of service that the government has towards its citizens.

However, there are so many other services that are also important to be delivered or guaranteed to citizens apart from information. These services could be services like a birth certificate, a death certificate, a driving license, and so on and so forth. And hence, to actually guarantee citizens that apart from information which is promised under Right to Information, apart from information being a fundamental right right now and a legal right, and apart from having a mechanism to render that kind of information to citizens, it was important that states realized that other kinds of services can also be guaranteed to citizens in a time bound manner.

I think if you look at these state legislations, they are modeled on the Right to Information Act. And I think the Right to Information Act was kind of an inspiration for states to come up with such a law. Interestingly, more than 400 services in the state of Karnataka are guaranteed in a time bound manner under this legislation of 2011, called the Public Guarantee of Service to Citizens Act. That I think is an important aspect of strengthening democracy, strengthening good governance.

Because I think what is important is that public services from the state must be rendered and delivered in a time bound manner. And I think the government has to show some kind of accountability, if the services are not rendered in a time bound manner. And thereby, a penalty is going to be imposed individually and personally on the officer who has either delayed or denied that kind of service to the citizens. And I think the model of RTI gets almost interpolated into this 2011 legislation. And I think that is an important contribution that RTI has done.

Second is the Whistleblower Protection Act of 2011, it is actually 2014. This law is, kind of a law that has been instrumentalized based on the Right to Information Act. Who are

whistleblowers? Whistleblowers are somebody who actually expose corruption. Whistleblowers are employees who know that there is something wrong that is happening in an organization, they want to actually expose it; they want to actually bring it out.

They are people who actually want to fight against corruption, and who want to bring in transparency. However, unfortunately in India we did not have a legislation that specifically protected the interests of whistleblowers. I think if you look at the law, the idea is that whistleblowers must have protection because they are people who are sharing information which are probably not shared otherwise, who are sharing information that are not available in the public domain, and who actually tend to expose corruption and bring in more transparency and accountability in the system.

And, hence a special law to protect their interest, a special law to give them protection in terms of their identity, in terms of who they are, so that they do not get targeted or exposed or even murdered, for that matter, and their life is not at risk. And hence, the law on whistleblower is something that is an extension of the Right to Information Act. And you will notice that NGOs, civil society, public spirited individuals who were behind the enactment of the Right to Information Act, continued their people's campaign, as we want to call it, in bringing the Whistleblower Protection Act as well.

Because they thought if RTI has to be instrumental, and if you have RTI activists who are seeking information, they will act as whistleblowers. They will try to expose corruption by using the information and trying to bring transparency and accountability. And hence, unless there is a law that protects their interest, their lives will be at risk and hence the Whistleblower Protection Act is an important extension of the Right to Information Act movement as well.

I think that what the Right to Information Act has also done is, strengthened two agencies that I think are very important and instrumental in ensuring transparency of government, especially the central government. We have agencies like the Central Vigilance Commission. We call them in short 'CVC', and the Comptroller and Auditor General of India, in short the 'CAG'. These two

agencies are important in terms of what I call as the watchdog principle. Interestingly, you know, in India, we always talk about the checks and balances that the government requires.

And, the checks and balances cannot be within the government; they have to be external. They have to be autonomous, they have to be independent. They have to be fearless of what they do. And I think after the enactment of the Right to Information Act, the way the CVC has functioned and the CAG has contributed in probably exposing some of the scams or corruptions that have happened.

To name a prominent scam, the 2G scam. I think the CAG has played a very critical role. And the CVC is a monitoring agency about how probably, any public authority or a public agency actually goes and performs its public function. The CVC, Central Vigilance Commission keeps an eye on public expenditure, on public awarding of contracts, on how probably public institutions go about the fair and reasonable rule.

And I think these two agencies have just got their strength. Because I think the citizens now have also an additional watchdog under the RTI. Earlier it was only these two agencies that had the role to play. However, I think through the enactment of the RTI, the CVC and the CAG also get kind of a strengthening provision. I think RTI has created that major contribution as well. Next and probably the last is, you know, the instrument of what we call as the 'Ombudsman' or 'Lokpal'.

I think, in states like Karnataka, we have a Lokayukta and it continues to be a very supreme agency to check corruption as well. And it has performed extremely well. And the Lokayukta has been very effective in I think, two states, Madhya Pradesh and Karnataka. And, I think that is kind of a check that it has on government machinery and government functioning. Any person, any individual, any citizen can complain to the Lokayukta about any matter of corruption, and the Lokayukta has a power, police power of investigation and prosecution as well.

And hence, this is a special agency that will actually check corruption and I think this is an agency that can demand information from the government. And I think what was there in the

states in terms of the Lokayukta, I think the central government decided that it was important to bring in a Lokpal and the same thing was initiated in 2003. Though, this has taken a while for it to be, you know, fortified, concretized and implemented as well.

However, one will not forget that in bringing the Lokpal, it was a people's movement, it was people's demand that actually forced the government to bring in an ombudsman called the Lokpal. However, I think, again, like the Whistleblower Protection Act, like the Public Guarantee of Services Act, I think Lokpal and Lokayukta only will strengthen the Right to Information movement which will ensure transparency, accountability and good governance.

I think these are the natural extensions of the journey on transparency in India. And I think it is a journey that has just begun and commenced. There have been significant contributions of each of these legislations, and I think all of these will probably go ahead in bringing about good governance, especially in a democratic country like India, and will also strengthen the democratic principles and also protect the larger dimension of human rights.

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International recognition of RTI

- United Nations General Assembly, 1946 – Freedom of Information is a fundamental Human Right and is the touchstone for all freedoms to the United Nations is consecrated (devoted).
- Article 19 of the Universal Declaration of Human Rights states “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”
- Article 19(2) of the International Covenant of civil and Political Rights (ICCPR) states Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”



Friends, internationally, the Right to Information has got recognition through instruments to which India has been a party. India has played a very significant role in these international instruments or international conventions. And I think from those international conventions, India

had obligations to bring in RTI law quite some time back. However, we could not get it for many reasons. Probably there was no internal demand for the same. There was no external pressure, and I think India did not comply with the obligations that they set out in some of these international conventions.

Again, you know, in many other countries as I would suggest in terms of comparative law; in other countries, RTI is called Freedom of Information law. In India, we call it the Right to Information law. So it is the FOI law, as we call it, as against RTI law. I think both go ahead to achieve the same purpose, but I think in India we did decide to call it the Right Information Act as well. What are these international recognitions of RTI?

We will talk about just 3 instruments which are very relevant to begin our discussion upon. The first is the UNGC or the United Nations General Assembly did make this declaration saying that Freedom of Information is a fundamental Human Right. And kindly note, this declaration was made in the year 1946 and the General Assembly resolution was passed to this extent. And it said that Freedom of Information is the touchstone of all freedoms.

And I think when India became a member of the United Nations, I think it was obligated to actually recognize this as a human right. However, when our constitution was adopted, we did not bring this explicitly, we did not mention it. However, we did try to follow most of the UN declarations on human rights. And I think the courts later on tried to bring this or interpolated this into right or fundamental rights under the Constitution of India.

So as early as in 1946, one would notice, the UN General Assembly makes this declaration that Freedom of Information is a fundamental human right. That is something that we should keep note of. Secondly, we have the United Nations Declaration on Universal Declaration of Human Rights as it is called 'UDHR' in short, in which we had Article 19 which explicitly states something like this, it says, everyone has the freedom of opinion and expression. Very important. And the same freedom is enumerated under Article 19(1) (a) of the Constitution of India.

What does this freedom of opinion, expression hold? It says that this right includes the freedom to hold opinions without interference and to seek, this is important, and to seek, receive and impart information. Now, the fact is that you cannot exercise your freedom of expression or opinion or speech, unless you have sought the relevant information regarding the same. And hence, you will notice that in India, while we say that there is Right to Information, we have always seen Right to Information as a part of freedom of speech and expression.

And this is exactly where you derive the interconnection of free expression, free speech along with the Right to Information Act. And look at it. What does it say? It says to seek, receive and impart information and ideas through any media and regardless of any frontiers. I think very important is the fact that your expressions will not be full unless you have the relevant information to make those expressions.

And hence, the integral aspect of freedom of speech and expression is the right to seek the appropriate information. So, information only enhances my expression. It makes my expression far more authentic. It makes my expression far more free. It makes my expression almost that much complete. Last but not least, look at the International Covenant on Civil and Political Rights. Again, an international instrument to which India is a party and it is a very important declaration that was made in 1966.

An article 19(2) of this Covenant states, very importantly, everyone shall have the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print or in any form of art, or through any other media of his choice. So it is just probably clarifying what was declared in UDHR, the same principle gets clarified in the International Covenant of Civil and Political Rights.

So I think the international recognition of the Right to Information is probably a key to how probably India had an international obligation. And that obligation finally saw the light of the day by enacting the Right to Information Act more than, you know, almost after 40-50 years through the Right to Information Act of 2005. So, these are some of the international

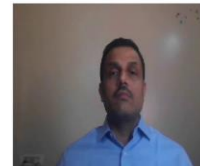
recognitions of Right to Information Act or the right as such, and I think India has just gone about implementing its obligation as well.

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Genesis and Evolution of RTI law and Policy around the world



- Sweden in 1766: 1st transparency law
- Till 1990 less than 20 countries
- 1998-2010: 60 countries
- Q: Whether RTI is a public grievance redressal law?



Next, let us move on to the genesis and evolution of the Right to Information law and policy around the world. I think, how did the world react? What is the worldview on Right to Information law? I think, we will just get an idea or capture the imagination about the world response before we try and in detail understand the India response. Now, Sweden probably had a law in 1766. And if one tracks, you will know which country had a transparency law and which country had the first transparency law.

You will obviously get into the answer of Sweden, and I think they had this law quite early in advance. And you will appreciate that some of the Scandinavian countries have ranked top in the least corrupt nation index. So because of the kind of laws that were enacted quite early on, the governments in those countries, Sweden, Denmark, Norway and Finland, always have rated very high. And because of the transparency laws that they enacted quite early on, corruption is far less as compared to other countries as well.

So Sweden takes the lead in having a law on transparency and openness. And I think, what it ensured was good governance. So transparency law and the final good governance has a very important link as well. Around the world, again, if you take statistics and start checking about, how many countries do have laws and when did they have they have it, till 1990, you will notice that less than 20 countries had a transparency law. So, what was declared in UDHR, what was declared in ICCPR was not really followed by nations.

And countries and nations, though they were democratic did not enact transparency law or the Right to Information Act. So till 1990, less than 20 countries had brought Right to Information Act. But after 1990, things changed drastically and dramatically. I think there was enough people's movement, there was enough international pressure for states to act. Because states could not just merely ensure freedom of speech and expression, they had to go one step forward and also ensure the Right to Information Act.

And hence, you will see that between 1998 and 2010, 60 countries brought about a transparency law. So that was this international kind of a movement which actually states and nations did emulate and did enact and take this forward. And they realized the importance of the Right to Information Act in a democratic setup. And hence, 60 countries joined in to bring in some law, either a RTI law or a transparency law. So, together if you calculate, it was quite a huge number how the world reacted in getting the RTI.

And please note, during that time, among the 60 countries was India as well. Right, at this point of time just to ponder, I have just put out a question to you, so that you guys can all try and relate the discussion so far. But I think, I am sure by this time after these many hours of course instruction, there would be an itching thought within your mind to raise this doubt. I have raised it so that you can address this question. Whether the RTI law is a public grievance redressal law?

I think very often than not, we have a tendency to believe that through RTI I can address all my grievances. All my problems will be solved through RTI law. So RTI law is probably the mother of all solutions. Once this brings in, I think all problems are going to be solved. The answer is absolutely no. So these countries did realize that RTI law is not a public redressal law or public

grievance redressal law. It is only a law that brings in that information that is required from the government. It brings in an accountability structure between the government and its citizens.

It is not a public grievance redressal law. It will only help you lower the kind of grievances public have because there is now more openness, there is more information that is flowing. However, when the public have grievances, we have to set up redressal mechanisms. That has to be through the courts. It may be through quasi-judicial forums. It may be through the complaint mechanism. But I think RTI just facilitates that because it only gives you that kind of information that will help you redress the gain to grievance sooner, faster, speedier.

But I do not think it is or it was meant to be a public grievance redressal law in any country. So RTI is an information law, and it is not a public grievance redressal law at all. So countries did realize this. However, they said that I think one of the most important grievances that citizens obviously have is the lack of information, the lack of openness, the lack of accountability. And an RTI should actually have facilitated that.

And I think a lot of, gap between the citizens and the government is bridged when this information is shared. So, in that sense, I think RTI is a facilitative tool to lower the grievance, to address some of the issues of grievances of the public. But it does not act as a redressal forum. It does not act as a redressal law. And hence, that is not the purpose of enacting any transparency law, around the law. Right? Let us go forward.

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Chronology of FOI laws

- Sweden 1766
 - Colombia 1888
 - Finland 1951
 - U.S.A 1966
 - Denmark, Norway 1970
 - France 1978
 - Australia, New Zealand 1982
 - Canada 1983
 - India 2005
- India became the 61st Country to enact a law on FOI.



Now, what I have in this slide is very interesting. I have a chronology of Freedom of Information laws that have been brought about worldwide. So that you will get an idea about the major nations across the world, who have brought in an RTI law or a transparency law, and in which year they actually enacted the same. We will start with Sweden. This is something that we already discussed, 1766. And you have Columbia, 1888. This is a Latin American country as we know it. It was the transparency law that was brought over there. Finland, again a Scandinavian country, 1951.

Then you had the United States, 1966. So the Americans did bring in their Freedom of Information law quite early as compared to other nations. It is quite an effective law in the United States as well. Denmark and Norway brought it in 1970 and France in 1978. So these are you know just an idea about how nations reacted, how they brought in transparency or Freedom of Information law. So that worldwide we get a perspective of what is happening, when it happened. Down south in Australia and New Zealand, it was in 1982 that the law came into place.

And Canada 1983. So I just listed some of the major nations so that we get a fair bit of an idea. However, when you look at 1966, United States and when you look at 1982, Australia and 1983, Canada, I think somewhere India was slow to react and bring in a legislation. And interestingly, it took nearly 9 to 10 years almost for people to convince the government that we need or require the enacting of RTI. So it was a struggle of 10 years, literally, to convince the government of the

deal, to convince the government saying that what is the role and the importance an RTI will play in a democratic system and how it will contribute to good governance and to bring in accountability as well.

So, major nations probably brought a transparency law quite early, and probably, if you look at their kind of progress, growth, the kind of GDP that they have achieved, or the kind of accountability that those governments have shown, probably because they enacted such a law quite early, I think there has been far greater degree of progress that has been in those countries. It is something that may strike your mind at some point. And India, 2005, so way behind of some of the developed nations in bringing in transparency.

So, I think a fair bit of an idea about the chronology of Freedom of Information law that is enacted in different nations and finally has come back in India. So, this is something just to give you an idea and a brief background about the scene. Now, again, by simple, near statistics, you can see, India became the 61st nation world over to bring in a Freedom of Information Law, so 60 other nations had a law before India.

India is the 61st country to enact a law on FOI. So, though we are the 5th or 6th largest economy, a nuclear power nation, when it came to enacting transparency law, I think we were slightly behind many other progressive nations. But I think it is, it was never too late. I think we have seen the benefits of the Right to Information Act in the last 15 years. It has been very, very significant.

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What does this photograph show you? I just want you to think some few seconds. What does this photograph show you? It shows you that this is probably a shopping mall or a shopping area or it could be an area at an airport or it could be an area at a railway station. And what do you see over there? Do not see ICE. You see this i. And I think what you see over here with i is, this is the place where you can get information. Right? i stands for information.

So when you go to a new place, when you go to a new area or a new, you would probably want know, where is what. And you would want to go to a reception, you would want to go to a lobby, and you would want to then probably ask A, B and C, right. Is not this natural? Is not this normal? So if you are not accustomed to that place, you would actually benefit from information. So i stand for information.

And it is very important for any service provider, any place to actually have a place where people can come and seek that information. Right? It is very important. So when you travel to a different country and as soon as you land in the airport, you will have numerous questions to ask. Where will you find the taxi? Where can you exchange currency? When can you get a SIM card, a mobile phone? What does a place like an i do?

It probably tells all those passengers, all those incoming citizens or people that this is the place where you can come to, and this is the place where information will be provided. Putting in the digital world, you can get information on the internet. You can just Google it. However, please

note, sometimes you are not sure about the authenticity of those information. You will still want to physically go and speak to a person at a place where there is an i mark, where information can be given to you and information can be shared.