

Right to Information and Good Governance
Dr. Sairam Bhat, Professor of Law
National Law School of India University
Role of People's Movement and Media in Evolution of RTI

(Refer Slide Time: 00:19)



  National Law School
of India University
Bengaluru

People's movement and RTI

- People's movement:
 - Labour Movement
 - Consumer Movement
 - Environment movement
- RTI movement
- MKSS
- National Campaign for People's right to information [NCPRI]
- Draft bill send to Press Council of India [J P B Sawant] [Government and non government institutions covered]



Right, let us move forward in looking at information in terms of how did RTI come into place, or how was it enacted. As we all are aware of the fact that most of the change or reform that happens in democratic societies is through people's movement. People actually champion the cause of change, people actually are the forefront of any kind of reform that is required, especially in countries that are developing.

And hence, when we see people's movement in India, we have seen people's movement happening not only in the space of RTI, but before RTI, I think people's movement was there in the labour sector, where workers actually took up the issue of collective bargaining. They did try and champion the cause of minimum wage, workmen compensation, trying to resolve industrial disputes amicably.

And I think to a larger extent, when you look at the trade union movement in India that contributed significantly in terms of how people championed the cause of change, especially when employers were actually exploiting employees, and there was a disproportionate profiteering that employers made at the cost of employees. And hence sharing the wealth

between the employer and employee and making businesses far more ethical and legal, I think the labour movement played a very important role.

And I think I must complement the labour movement for having brought about enormous change in the way and manner and method in which today, employment and business are actually run. Second, we are reminded of the consumer movement. I am sure most of us understand how the consumer movement championed the cause of consumer protection. I think to a larger extent, again the situation of the market, especially when there is a disproportionate demand as against short supply.

I think the suppliers had the tendency to exploit the demand and tendency to exploit consumers. The tendency to exploit consumers resulted from probably a couple of factors. One, primarily based on the fact that consumers were unfortunately not aware of their rights. Consumers were not literates, consumers were not demanding. I think that scenario drastically changed after few legislations and few people's movements brought about a paradigm shift in how probably manufacturers responded to consumer welfare.

I think, consumer movement in India has achieved a great amount of success, wherein manufacturers have taken the responsibility of fulfilling consumer's demand, of fulfilling consumer's needs, giving consumers the required information and actually taking consumers into confidence. So from a sellers market, I think in India, we have moved to a consumer market. So, consumer is the king right now and he can actually demand great sense of accountability from manufacturers.

I think that is a great step forward and I think we, in India, have largely benefited from the consumer movement and the people's movement regarding the same. The third movement that I am very passionate about is the environmental law movement or the environment movement. I think if one remembers Sunderlal Bahuguna and the movement called the Chipko Movement. In Karnataka there was a movement that was very similarly emulated called the Appiko Movement.

It is a movement to embrace the tree, so that the tree cannot be cut or should not be cut by the timber Mafia. I think people championed the cause of protecting the environment. Environment, as we all know, does not belong to any individual, it is not the ownership of the government, it is not something that the government can individually look forward to. And hence, protection and conservation of the environment is something that is a right of every citizen, it is a duty of every citizen.

And every citizen can step in, society and people can step in to protect their own environment. I think this is a significant step in India, where a lot of non governmental activities, non-governmental movements, people's movements, grass root, from where the people felt that they were in for the environment and not for development. We have such classic instances of people's movement, especially in the field of environment across the country.

It could be in the hilly regions of the Himalayas or the Himachal Pradesh and others, or it could be that tribals in the Niyamgiri forest, who choose to not have development and who chose that it is important to protect the environment. I think similarly we find people's movement in the Right to Information space as well. If you look at the RTI Movement in India, I think the RTI Movement in India was not, you know, in a sense a grass root movement.

It was a grass root in terms of one organization, which we will talk about a little later. However it was a movement because it was a movement of the enlightened, it was a movement of those who were actually in the power corridors, those who were able to convince the government the need to bring in this law, those who were aware of the corruption in government, those who would be actually influential vis-à-vis government.

But the RTI movement was also something that brought about two Magsaysay awards that were given to individuals. One was given to Aruna Roy, the other was given to Arvind Kejriwal. I think their work in the field of RTI was one of the reasons and purpose behind the granting of the same award. I think people realized that, to reduce corruption, to eradicate malpractices in government, to bring in some kind of transparency, RTI and the law relating to the same was inevitable.

And hence nearly a 10 year movement, not less than 10 years, is something that took to the people to convince the government to bring a legislation regarding the Right to Information Act. So I think the struggle to convince the government to pass an RTI was completely a people's movement. It started somewhere in 1985-86, sorry 1995 and 96, and it went on till 2005, when finally the RTI Act was enacted.

Now the RTI movement, at the grass root level, can be traced to an organization that patronized people's cause, that patronized public participation, that patronized local involvement of people in the decision making process, and the name of the organization is Mazdoor Kisan Shakti Sangathan. In short, we call it 'MKSS'. Aruna Roy was a part of this organization in Rajasthan and I think MKSS started with what is known as the Jan Sunwahi campaign, where she expected the local government to hold public consultation, a public hearing, before any decision had to be taken.

Now the purpose of the Jan Sunwahi that MKSS organized in Rajasthan, in the 80s, in the 90s, the basic purpose was, every decision that the government takes should be informed to the people before it is implemented or enforced. And hence when such public hearing or public consultation take place, the effectiveness of the implementation is more inclusive rather than externally imposed. The Jan Sunwahis were very successful in Rajasthan.

It was successful in the sense that, during these public hearings, or public consultations, people would ask pertinent questions, the public servant felt that they were accountable to answer, give the right information, so that the people could then decide whether the decision was good or bad. The Jan Sunwahi was probably one of the starting points for MKSS to take the movement on information and the sharing of information to the government one step forward and then trying to bring about intellect to actually try and evaluate whether a Right to Information law can be brought in place or not.

So the contribution of MKSS movement in Rajasthan is a significant movement. It has been recorded in the history, especially in terms of discussing the history on The Right to Information

Act, and I think the work of Aruna Roy in MKSS actually is a very stand out point that one should take notice of in terms of how people's movement under RTI was the real cause for enactment of this legislation.

After all of these, people from different walks of life, from different movements, came together and they created something called the national campaign for people's Right to Information. This was not a kind of registered organization or a formal organization, but it was a kind of a group of people who came together. They said, 'look we all believe that Right to Information should be enacted, it should be brought into effect, why do we not campaign together? Why do we not come together? Because it is a collective movement and only in collective movement and collective spirit can we convince the government to actually enact the Right to Information Act.'

So people like Aruna Roy, Arvind Kejriwal, Shekhar Singh so on and so forth, people who belong to different backgrounds, who probably individually thought, and who were individually working for the enactment of the RTI Act, came together to create this NCPRI, the National Campaign for People's Right to Information, which I think played the most important role in the final drafting of the legislation that was passed in 2005.

Now, if you look at the history of the drafting of the Right to Information Act, the first draft bill came from the Press Council of India, which clearly depicts that apart from people's movement, it is the press movement or the media movement that played a very significant contribution in bringing RTI into this country. Now why does the press need information? I think the press requires information because that is its sole foundation. And it requires authenticated information, it does not require fake news, it does not require twisted information, neither it requires fabricated or manipulated information.

So the only mechanism in which the press could actually go about its duty, if I may say so, of informing the community and the citizens about the functioning of the government, it had to rely on authentic Right to Information. And hence it was in the Press Council's interest, that they thought it is important that the country goes about in enacting the Right to Information Act and the press can then legitimately seek information and they need not resort to yellow journalism or

investigative journalism or any other form of journalism which probably sometimes is considered unethical, illegal or prohibited.

The first draft bill was prepared by the Press Council of India. It was presented before a sympathetic judge who was part of the Press Council of India. He was a former Supreme Court judge, by name Justice P B Sawant. Then the same bill later on was called as the Justice P B Sawant draft Bill. And this was probably the first concrete formulation of a bill in relation to the Right to Information Act.

So this was the first kind of an effort that was done by the Press Council and hence the Press Council should take credit for having championed the cause of RTI along with the people's campaign. And I think what the media represents is nothing but a collection of people's representation. Now, if one reads this draft bill that was compiled by Justice P B Sawant for the Press Council of India, one notices an important point for consideration.

And that consideration is, that at that point of time in 1996, when this bill was drafted, Justice P B Sawant said, 'We must get right to information from all organizations, be it government or be it private'. Which means even non-governmental organizations should be covered under the Right to Information Act. Which means it could be a private company, it would be a company that is doing private business. And so, the accountability that we demand from the Right to Information Act is not only to be restricted to the government, but it must be extended to all organizations.

It could be say, a public university or it could be a private school. It could be a government company, or it could be a public company, or a private company, or a private partnership. And hence that idea was a relevant idea, because when we talk about Right to Information Act, should only the government be accountable, or should all businesses, or all institutions be accountable is a larger question and a larger debate that continues to deal in the international discussion on how RTI laws should actually be framed.

Interestingly, Indian RTI Law has been emulated in Sri Lanka, and one of the most important and contentious debates, I remember was, what should the Sri Lankan law look like? Should it only cover government agencies or should it also cover non-governmental agencies? I think Sri Lanka did debate this point because they wanted to evaluate whether this is a good idea to bring in private institutions' accountability under the RTI or not. I think Justice P B Sawant's Bill makes that important contribution in including all institutions under the accountability purpose of the RTI.

(Refer Slide Time: 14:11)

  National Law School
of India University
Bengaluru

Role of Media in RTI

- Role of Media in democratic society
 - Watergate scandal in the USA.
- 2001: Press Council declared RTI as the most important legislation for media
- Secretary, Ministry of I & B, GOI and Cricket Association of Bengal 1995 2 SCC 161: disseminating, imparting and receiving information is part of 'free speech'.
- Media acts as an agent to propagate 'change'
- Maneka Gandhi v UOI 1978 AIR 597: reasons for impounding; wrong on part of the Government not to answer to a public question
- Indian Express Newspaper v UOI 1985 1 SCC 641: media and taxation
- 1997 Draft of the Press Council of India



So after discussing the people's movement and slightly entering into the media movement, let me take you through the aspect about the role of media in RTI. I think it is important that apart from the people's role and the media role, we discuss who else probably contributed to bringing this law into effect and I think that is where we have to recognize the role of the media. Now, media plays a very important role in every democratic society, is it not?

And I think when you evaluate the role of the media, you will definitely come to know that they play, you know, a significant role in aspects of bringing awareness of rights, duties and obligations of citizens. And I think the role of the media is inevitable in communicating this at

all. Which means to say, suppose there is a situation or a crisis and the citizens have to be told their do's and don'ts, how can the government actually communicate the same? I think that the media plays an important role in communicating.

Second, I think the media is also like a spokesman for the government. Now when the government actually announces certain schemes that are good for the people, certain benefits that are good for the people or certain schemes which transfer benefits or which are useful for the society, I think the one biggest outreach tool or institution that makes the government schemes, announcements and benefits reach the community and the citizen is the media. And I think the role of the media over there is very very important.

Third, I think the media plays a very critical role in bringing political news into the forefront. So any kind of political development, be it a new government, be it an old government, be it how the MLAs are given oath to, how does a parliament function, how is the lawmaking done. I think every kind of political news makes huge headlines for the media. The reason being, I think, there is a huge consumption for that news. Which means citizens are interested in the political community, citizens are interested in what the politicians do, what the MPs and MLAs are responsible for or not.

Fourth, I think the media plays a critical role in education. I think what it does is, when I talk about education, I talk about all aspects, social, economic, environmental aspects. There is so much that you can learn from the newspaper. There is so much that you can learn from watching a television. There is so much you can do in terms of reading from social media. I think the kind of education and the kind of information that the media shares is enormous, and I think every democratic society thrives on the kind of information the media actually feeds its citizens.

I think, does the media play a role in exposing corruption? I think yes, absolutely. You cannot forget the Watergate scandal here, can you? I think the media and a few people who were ethical and I think some of you must be aware of this Watergate scandal, which probably resulted in one of the presidents of the United States, Mr. Nixon's resignation because of the scandal, because he

was involved in actually an unethical practice. But you know, the media played a critical role. How did they play it?

The Watergate scandal first got exposed in the media and the media was utilised to actually propagate how the scandal took place. Interestingly, the media in this case protected the identity of the whistleblower and for maybe 30 years the name of the whistleblower was never disclosed by the media. So that is the strength of the media. The media can play a very critical role in exposing corruption, they can actually look at people coming to them, confiding with the information as a whistleblower and trying to expose government and individuals in the government for any corruption or abuse of power as the case may be.

Last but not the least, if the media plays a role, I think they play a very important role in developing resources. I think it is important that, what does media do?. I think it enhances your capacity to do something more. It enhances your capacity to go beyond, you know, your close circuit. And I think that kind of enhancement of resources is something that the media generally contributes to. So the media and its role is a very strong institution, it is one of the fourth estates that we generally call it, as I told you earlier.

And I think the role of the media in India is also an important issue for discussion, especially in the RTI movement. Now, in 2001, the Press Council has declared that RTI is the most important legislation for the media, right? And why did they do that? Because in 1996 when Justice P B Sawant's draft Bill was presented in the Press Council of India, I think after five years the Press Council had seen no light of the day. They had not seen the government being serious on bringing this legislation into effect.

And hence, in 2001 the Press Council went ahead and made a declaration. They thought at least the government will hear this declaration and they said that RTI is the most important legislation for the media. Because that would then allow the media to get legitimate information from the government and report the same and bring it to the citizens' interest and the media then will not be targeted by either the Official Secrets Act or any other legislation which prohibits media or any citizen from accessing any confidential secret information from the government.

I think the press wanted that kind of freedom. The press wanted that kind of leverage to not be targeted under the Official Secrets Act or the National Security Act. They wanted an authentic, legitimate, ethical, legal way of accessing the information and going about their business of educating communities and societies through their print, visual or social media. So that is the declaration of 2001 and I think that declaration shook the government to some extent.

The government had to take note of what the Press Council said. And probably from 2001 you will notice that some serious effort from the institution of government started coming into place for bringing the RTI Act into place. Couple of cases that will also highlight the role of the media is this case of Secretary, Ministry of Information and Broadcasting, Government of India and the Cricket Association of Bengal. This was a case about cricket being telecasted on Doordarshan because interestingly what the BCCI did including, certain of the state associations, they started giving the broadcasting right to private agencies, thereby getting more money than what probably the Doordarshan or the government media platform would do.

Now, in this case, the court, and please note this is 1995 case, so in today's context, I am not sure whether the court will have the same view, but nevertheless, I think this case still continues to hold that the Doordarshan should be used as a platform and Doordarshan should get the right to telecast cricket, especially if it is happening in India and if something that is involved with the Indian cricket team.

The reason why the Supreme Court dealt on this matter is because when you talk about private privatization and private broadcasting, it is easy to think about profits, and I think that is where the BCCI or the Cricket Associations will be interested to make more money from broadcasting and from telecasting. However, I think when there is an event that is of national importance, of public interest, of larger Indian audience that is keen to know or see, then I think it should be on something that is a government platform, something that is freely available to all citizens.

So it should not be on the fact that I should get to know something based on my power to pay, or my power to purchase. And that is what the Supreme Court said in this case that disseminating,

imparting and receiving information is part of free speech. And I think cricket being one such national passion, watching cricket should be part of the free speech and expression that every citizen is entitled to under Article 19(1)(a).

That is what the court said and I think to a larger extent, what this does is, it puts the role of the press as an important role in terms of free speech and any kind of restriction that can be made on the media are only those that can be regulated by Article 19(2) and not by any other provision. Media acts as an agent to propagate change. Yeah, this is definitely an important statement to make, because I believe that when we see the role of the media, the media has actually brought about social change or social transformation.

I think when it comes to certain social evils, let us take one issue about superstition. Now some states have already passed a law called the Anti-superstition Act or the anti-superstition law. And I think we, unfortunately, in the Indian society have many superstitions. Many of the superstitions have no scientific basis. Most of the superstitions may not have culture, spiritual or religious connotations. But we tend to actually practice the same.

I think, what does the media do? I think the media actually brings about a change in our thinking. Probably the media has played a very important role in getting a scientific temper of mind in many of us, especially in the millennial generation who probably do not believe in any of these superstitions. And I think that is where the role of the media is and it plays a critical role in influencing minds, in bringing about change. And I think one cannot forget the fact that in some instances, and these are unverified stories and reports saying that the media had the power to also topple the government.

And that is the power that the media can actually have. However, please note, a responsible media will never do anything negative, it will only do things that are positive, that are ethical, that are legal, that are permissible and that is within the purview of the constitution as well. However, the role of the media as an agent to propagate change is something that is always ever growing, ever dynamic and expanding.

The most famous case that many of us would be aware of is the Menaka Gandhi case versus Union of India. And in this case, unfortunately, Mrs. Gandhi's, Menaka Gandhi's passport was impounded. However, when the impounding was done by the government, it was done malafidely, there was absolutely no doubt about it. However, the government did not give any reasons for impounding. And so when it was asked, why the passport was taken off, the government refused to answer.

Now the court in this case, I think, contributes so significantly. See, information is about why I am being denied a particular benefit. Information is about why I am getting a particular benefit. Is the government answerable? Should the government take a position of saying 'look, why are we doing this and why are we not doing that'? See if the government does not answer this, I think it will create a vacuum, it will create a void.

It will actually result in a kind of a confrontation situation, where the public will be demanding questions and they would probably be hitting a roadblock, they would be hitting a wall and the government not showing any empathy, in actually resolving, answering or giving some explanation that are permissible by law. And I think in the Menaka Ghandhi case, the courts take this view very seriously and they said that if the government does not answer a public question, it is completely wrong.

I think the government has a duty of accountability, the government is for the people, unless the government gives those reasons that are valid, and please note, the reasons that should be permissible, valid and that must be some justification. If it is not, the actions of the government shall be invalid and the actions of the government should be illegitimate. That is the contribution of the Menaka Ghandhi case here.

And I think the media played a very important role in highlighting the Menaka Gandhi case, in giving it adequate publicity and we know how impactful this judgment was in terms of holding the government accountable as well. The Indian Express newspaper case of 1985 again highlights the role of the media, the freedom that the media requires under Article 19(1)(a) and the kind of role the media plays.

And hence, in this case the Supreme Court scrutinizes and examines the fact of how much of taxation can be there on newspapers. The reason is, as soon as tax is imposed on newspapers or on the media, the cost of information that finally goes to the citizen or the consumer also increases, because the taxation is then added to it. So the Supreme Court said, if the fourth estate has to be nurtured, if it has to be promoted, if it has to be something that we must value, I think taxation should be minimum or nil.

And the media must be able to actually communicate its ideas without the fear of taxation, without the state intervention in its functions. And taxation can be a great disincentive and I think the government was advised against taxation of newspapers and against creating hurdles in exercising their free business or free speech or expression as the case may be. So these are probably the ideas that you would get, how the media and its role started evolving in this country and how they finally contributed to the Press Council draft, and through the declaration in 2001 that RTI is the most significant legislation of the day.