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# **A COMPARATIVE STUDY OF RIGHT TO INFORMATION WITH U.S, U.K AND INDIA**

Authored by - Joshua Thomas VJ

## **Abstract**

Democracy has become an essential tool for most of the present days society, democracy is the voice of the people where the citizens of the country elect their representatives and they in turn will act on behalf of the people when this function is not carried out in an appropriate manner, people will lose the faith in the system that they are a part of. Right to information is on such Legislation which prevails in most of the democratic countries so that the people will have the right to question the elected representatives if they feel the decisions taken by these officials are not binding or favouring the society. The researcher in this paper focuses on the aspects, provisions and various other lacunae challenges faced when the necessary information is not provided and who should be held Accountable, the methodology used is doctrinal. Along with this a comparison with other countries is made so that we can take the help of the legislation world-wide and improve our system by bringing in necessary changes to the existing framework. The people are sovereign and have the right to know all the actions and actions of their government to combat corruption and partisanship. In this regard, Right to Information has been introduced in India and is considered as an important step in the process of transparency.

**Key-Words** - Right to information, transparency, democracy, accountability, corruption.

## **Introduction**

The beginning of the twenty-first century is considered to be the era of information and technology. With the help of technology one can gain access to information and with the proper information provided by the government will create confidence among the people that their elected representatives are functioning smoothly without any corruption and selfish nature. Information has an unlimited potential and it is considered as the heart of all the

process of the governance and also it is essential for the smooth functioning of the democracy as it is an instrument of social justice and equity<sup>1</sup>. In a democratic setup or a country, it is seen that information is empowering the of being the real sovereign and it makes the subjects to act more meaningfully and be more vigilant, and it is stated that the concept of democracy is set to become more vibrant.<sup>2</sup> The access to information is said to be an key aspect for the development of a vibrant society, if the people aren't allowed to access information then it is said to be dictatorship society where the people or the subjects cannot question the administrative authority if they do they will be subject to punishment. A guaranteed right to information is considered to be an essential aspect as well as the practical antidote towards tackling corruption. With the help of the role of media it can act as a watchdog as well as scrutinize the power and expose the mismanagement and corruption. The main purpose of this Act, is to ensure that justice is extended to all the sections of the society and there is the element of transparency and accountability in the functioning of the public officials, at the same time this law does not become a tool to obstruct the national development and the integration or to destroy the peace, harmony and tranquillity among the citizens.<sup>3</sup>

## **Significance of Right to Information**

The word information is derived from the Latin word 'informare' which means to create or give form to. We are living in a society where we elect our representatives in the form of democratic form of government and it is necessary for them to provide its subjects who elected them with accurate information in the affairs, they deal with concerning the public affair. Any person who is well informed stands a better chance to exercise his legal as well as other right better than those people who doesn't have access to any information. With the help of RTI one can gain access to various information he or she wishes to gain knowledge of which relates to their benefit, but one cannot gain access to all the information, certain information is prohibited such as disclosing of trade secrets, matters concerning the national security, maps, designs etc of the armed forces these will be withheld by the government, it is right on part of the government to withhold such information so that the interest of the society will be protected and will prevail throughout.

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<sup>1</sup> G. Palanithurai, Right to Information Act in India: A note on praxis social action, Vol.62, p.283. Accessed on 13<sup>th</sup> November 2022.

<sup>2</sup> Avinish Sharma, Right to Information: A constitutional Perspective, Vol.43, No.2, p.76. Accessed on 13<sup>th</sup> November 2022.

<sup>3</sup> Vinay N. Paranjape, Right to Information law in India, CLA, Allahabad, first edition 2013, p. 2. Accessed on 13<sup>th</sup> November 2022.

Information can be defined as the human right to secure access to the publicly held information and it is the corresponding duty of the public body to make sure that such information is available to the public or the person who seeks it.<sup>4</sup>

Information includes materials in all forms, including records, documents, memos, e-mails, comments and statements, opinions, circulars, orders, logs, contracts, reports, paper forms, models, data materials and electronically stored information. Section 2(f) of the Right to Information Act 2005 refers to persons provided to government agencies under existing legislation. Whereas section 2(i) of the Act also defines the word record as and it includes:

- Any document, manuscript and file.
- Any microfilm, microfiche and facsimile copy of a document.
- Any reproduction of image or images which is embodied in such microfilms and
- Any other material produced by a computer or any other device.<sup>5</sup>

## **International Principles on Right to Information**

Across the globe the legislation on right to information varies significantly, however we can see that there are some similarities that exist and can be identified as the regular features of a freedom of information regime. It is argued that the freedom of information and the right to access information detained by the public bodies is a fundamental right and it is considered to be a part of freedom of expression where when can express his concerns and get a view or the desired answer one desires.

One of the main principles of the right to information is that of the principle of maximum disclosure where it talks about everyone must benefit equally from the laws, there are various other principles on right to information.

- Obligations to publish- where the public bodies should be under an obligation to publish key information.
- Promotion of open government- public bodies must actively promote the concept of open government.

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<sup>4</sup> M. Sarojanamma, Right to Information for a Transparent and Democratic Government, Andhra Law Times: 2013, June 01;3 (11), p. 20. Accessed on 14<sup>th</sup> November 2022.

<sup>5</sup> J.N. Barowala, Commentary on Right to Information Act, universal law publishing co. ed III, 2013 p 108. Accessed on 14<sup>th</sup> November 2022.

- Limited scope of exceptions- the exceptions should be clearly narrowly drawn and subject to strict harm and public interest.
- Processes to facilitate access- the requests for information should be provided without undue delay and it should be fairly and an independent review of any refusals should be made available.
- Open meetings- the meetings of the public bodies should be open to the public, this ensures a transparent and accountable government.
- Protection must be provided to the whistle blowers who release information on the wrong doing.

These are some of the primary principles that are being laid down under the concept of the Public's right to know. <sup>6</sup>

## **Issues Involved in the Right to Information**

The RTI Act,2005 is a revolutionary legislation in the history of India. The Act has a unprecedented potential to transform governance and it tries to bring about the accountability and transparency in the functioning of the government. This Act is a potential tool in the hands of the common men of the country but we can see that fortunately or unfortunately people makes use of such a tool. The main issue that arises is that of the politicians using such a mechanism against their rivals, journalists and some RTI activists. Even till date this Act did not become a tool of the common man even if it did the concept of free will is taken away of the people by the elected representatives. Obviously, the reasons are traced to be the lacunas of the Act and the lack of the administrative zeal to implement the Act in the letter and the spirit. Another issue that we can is that one person can file an RTI against another man and get details of the property one possesses and this is a clear violation of right to privacy one has. Along with this there is a need to study the various provisions of the RTI Act, 2005 along with the legislations that exists in different countries, when one does this we can see where the areas of RTI in India can be added some changes because of the comparison made.

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<sup>6</sup> Pankaj K.P Shreyaskar, RTI Act in India Future and Implications, Mecgraw Hill Education (India) Private limited 2015 p, 17. Accessed on 16<sup>th</sup> November 2022

## **Comparative study of RTI with Different Countries**

The right to information in the global scenario is not a new but a concept where the evolution can be traced mainly in the 18<sup>th</sup> century that followed many countries in the modern times mainly by the end of the 19<sup>th</sup> century. The RTI was recognized by the U.N at its very inception in the year 1946, where the general assembly resolved that the freedom of information is a fundamental human right and the cornerstone of all the freedoms to which the U.N was concerned<sup>7</sup>. The researcher in this paper tries to make a comparative study on the provisions of the right to information of different countries in order to see and understand whether the provisions of the Indian Act fulfil the international criteria of free information or not and upto what extent.

### **1. India**

The Indian freedom information bill 2002 was finally accepted as law in December 2002, although it never came into force. The United progressive alliance came into power in the year 2004 and this set up the national advisory council to monitor the implementation of the common minimum programme including the right to information movements. Finally the right to information bill was passed by the parliament in 2005 and the president's assent was attained in June 2005. The official recognition of RTI in India finds its genesis in the decisions of the S.C holding that it is included in the constitutional guarantees of freedom of speech and expression.

#### **➤ The right of access:**

The Act provides that all the citizens shall have the RTI, defined as the right to obtain information from the public authorities' subject to the provision of the Act.<sup>8</sup>

#### **➤ Definitions:**

The Act defines information as the material in any form, including records, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, paper, samples, models and information relating to the private body which can be accessed by the

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<sup>7</sup> UN General Assembly, Resolution 59(1) 65 the plenary meeting, December 14, 1946. Accessed on 17<sup>th</sup> November.

<sup>8</sup> Bill No. 98-C of 2000. Available at: <http://www.freedominfo.org/news/india/foi2002.doc>. Accessed on 17<sup>th</sup> November 2022.

public authority under any other law for time being in force.<sup>9</sup> These definitions in broad terms is a type of information but it limits the scope of the Act.

➤ **Process**

The requests must be made in writing or through the electronic means in Hindi, English or in the official language where the individuals have any difficulty the PIO is required to assist them.<sup>10</sup> Requests must be dealt within 30 days, and the request may be accepted subject to the payment of fee as prescribed or it may be rejected where the information requested falls within the scope of any exception or is deemed to be invalid.

➤ **Duty to publish**

The public authorities at regular intervals prescribed by the government should publish certain information such as, powers and duties of the officers and employees, the procedure followed by them, norms, directory of its officers, system of compensation etc. these bodies are required to publish all the relevant facts relating to the important decisions and the policies.<sup>11</sup>

➤ **Appeals**

Within 30 days or an extended period of time, a requester may file an internal appeal against any decision made by a public information officer to an officer of higher rank. A decision on the appeal must be made within 30 days, or within a longer period not to exceed 45 days. Within 90 days of the Central Information Commission's or State Information Commission's decision on the initial appeal, as applicable, another appeal may be filed. An appeal by a third party must be filed in 30 days.<sup>12</sup>

➤ **Promotional measures**

Given the availability of resources, government agencies must organize, index, and computerize records so that the information can be accessed within a reasonable time and connected through a global network. You must also appoint a PIO responsible for handling inquiries and providing support. At the end of each year, the Intelligence Committee must prepare a report and send a copy to the competent authority.

<sup>9</sup> S.2(f) OF Right to Information Act of 2005.

<sup>10</sup> S.6(1) of Right to Information Act of 2005.

<sup>11</sup> S.4(1)(b) of Right to Information Act 2005.

<sup>12</sup> S.19 of Right to Information Act of 2005.

This is a general overview of the right to information Act in the Indian Scenario, along with this a comparison with U.K and U.S will be discussed during the course of the research and how is it different will be conveyed in the paper.

## **2. United Kingdom**

In the United Kingdom there exists the freedom of information Act of 2000, unlike in India's right to information Act of 2005, however in United Kingdom there exists a mystery on the concept of freedom of information, there is a contrasting vibrant media operating in an environment of relatively high respect for the freedom of expression with a government which has, at least until, been obsessed by confidentiality. This explains the odd situation where by the freedom of information law was not passed in the U.K until November 2000<sup>13</sup>, long after everyone had established such a law. It is seen that freedom of information Act in U.K includes a very good process of guarantees along with a number of innovative promotional measures.

### **➤ The Right of Access**

The first provision of the freedom of information Act of 2000, provides that any person who is making a request for any information to a public authority he or she is entitled to be informed in writing whether or not such body holds the information and if it does the information must be communicated to him<sup>14</sup>. However, it is seen that this right is not restricted only to the nationality or residence, it includes any reasonable request by the body for further information, the payment of fees, any exceptions for various repeated requests.

### **➤ Definitions**

The Act very simply defines information as "information recorded in any form." The Act is silent that it includes any information whatsoever held by the public authorities, this Act also provides that information is understood to be detained by the public authority, if it's held other than on behalf of another person, or if someone holds it on behalf of the authority.

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<sup>13</sup> The Freedom of Information Act, 2000 Available at: <https://www.cfoi.org.uk/foiact2000.html>. Accessed on 17<sup>th</sup> November 2022 at 10:30am.

<sup>14</sup> S 1(1) of freedom of information Act of 2000.

### ➤ **Process**

Anyone wishing to access information must submit a written request with their name, address, and a description of the data they are looking for. If a request is electronically acknowledged, it is deemed to be in writing as long as it is legible and can be used as a reference in the future. When a request is acknowledged electronically, so long as it is legible and can be used as a reference in the future, it is considered to be in writing. The Act permits public authorities to withhold information from being disclosed until any fee must be paid in full within three months of the due date. The information requester may specify the format in which he or she wishes to receive the information under the UK FOI Act. The information seeker has the following three options for how to communicate information a fair chance to examine a record containing the information, in permanent or another form, or a digest or summary of the information, in permanent or another form.<sup>15</sup>

### ➤ **Appeals**

Three different levels of appeal are available under the UK's Freedom of Information Act: the public authority that holds the information, the Information Commissioner, and a specialised Information Tribunal. The two bodies mentioned were created and acknowledged in accordance with the Data Protection Act of 1998 as, respectively, data protection tribunal, as well as the data protection commissioner. The Commissioner is appointed by Her Majesty , and the Tribunal is composed of a chair, a number of deputy chairs chosen by the Lord Chancellor (effectively the Minister of Justice), as well as additional members chosen by the Secretary<sup>16</sup>. Despite the appointment process, both serve as effective representatives of the State unbiased organisations.

### ➤ **Promotional Measures**

A number of promotional measures is contained in the U.K freedom of information Act, in this it protects the public authorities from defamation claims while disclosing the information as provided by the third parties as long as it does not act with malice. There are two codes of practice the information provides for, the first being is code of practise that is developed by thr secretary state to provide the guidance to the public authorities and second the chancellor shall issue and may from time to time revise a code of practise providing the guidance to the public authorities.

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<sup>15</sup> S 16 of freedom of Information Act 2000.

<sup>16</sup> Data protection Act 1998, section 6(4).

These are a brief overview of the concept of freedom of information in the U.K, a comparison can be seen with India under the similar headings.

### **3. United States**

After Sweden it was the united states the one of the very first countries that embraced the freedom of information, in 1966 this right was given effect. Since that time ups and downs, it is fair to say that a significant culture of openness and transparency has developed into the government, in this it included not only the FOI Act but also it included the whistle blowers as well as the privacy Act, where the access to those personal information held by the public authorities. In addition to this all the states now have freedom of information Acts of their own.

- **Right of Access**

The Act outlines the fundamental right that anyone has to promptly request information from the agencies listed and receive it from them, provided that they do so in accordance with the law's rules and certain basic requirements. The request must be in accordance with the published rules regarding time, place, any fees, and the procedures to be followed, and it must rationally describe the record sought. Due to the lack of restrictions based on citizenship or place of residence, foreigners frequently use the law.

- **Definition**

The definition of "record" in the Act is "any information that would be in an agency record subject to the requirements of this section when maintained by an agency in any format," which is the term used throughout to refer to the subject of a request. The United States Supreme Court has interpreted and explained that this includes any record created or obtained by the agency in question that is under that agency's control at the time the materials are requested.<sup>17</sup> And the information is held by the agency.

- **Process**

Any request for information may be made by anyone, subject to the formalities noted above regarding clarity and any procedural guidelines established by the relevant agency. The Act

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<sup>17</sup> Department of Justice v. Tax Analysts, 492 US 136 (1989), pp. 144-145. Accessed on 17<sup>th</sup> November 2022.

has detailed regulations regarding deadlines. Requests that fall under the purview of the law and are not exempt will be considered eligible. Answered "promptly," as decisions are typically made within 20 business days. Inwriting the language is not defined unlike India.

- **Duty to Publish**

Different obligations to proactively make information available to the public are provided by the Act, and it is the duty of the agency to to publish certain information in the federal register. The various data that must be published in the Federal Register include descriptions of central and field organizations, policy statements and generally applicable legal provisions, where and from whom the data may be requested, and an overview of general functions. And all the official procedures. The law also requires agencies to make various information available for public inspection and copying, unless it is soon to be available for disclosure or acquisition in accordance with published regulations.

### Appeals

Requesters must first appeal any denial of information disclosure to the head of the concerned agency. This internal appeal must be resolved within 20 working days, and the requester must be informed of the possibility of judicial review if it is rejected in whole or in part<sup>18</sup>. It can be filed internally and by the court.

- **Promotional Measures**

The law has procedures for considering cases of impediment to entry. The special prosecutor is investigating whether disciplinary action is warranted if the prosecution of a public official is upheld and there is a concern about "arbitrary and negative acts" related to the withholding of information provided by an agency employee. In addition, each agency head must prepare and publish a manual for obtaining all records with descriptions of key information, as well as an index of all key information systems..

<b>India</b>	<b>United Kingdom</b>	<b>U.S. A</b>
The right of access is available to every citizen.	The right of access is available to every person and not restricted only to the nationality or residence.	There is no restriction as a citizenship or residence, foreigners can frequently use it.

<sup>18</sup> Clause (a)(6)(A)(ii).

Process is made on request in writing or through electronic means in Hindi, English or through the official language.	The process is in writing but the language is not specified.	Same as United Kingdom.
Appeal shall lie internally as well as with the information commission.	Same as India	It lies internally as well as with the court.

## Conclusion

The words "transparency" and "accountability" are currently used carelessly in relation to governance, not just in India but also by governments and international organisations around the globe. The principle that underpins the right to freedom of information is that public institutions hold information not for themselves but rather for the general populace. The fundamental tenet of information is that everyone should have access to all information, unless there is a compelling public interest to keep it secret. Such a right is also supported by some strong democratic ideals, such as respect for all human rights, democratic participation, and effective government. On the basis of the comparative study that is made between the different countries, it is observed by the researcher that on the international level India's right to information law is one of the best laws, however the actual implementation of the law leaves a lot to be desired.