



RIGHT TO INFORMATION A COMPARATIVE STUDY

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INTRODUCTION

So, this paper basically talks about the concept of Right to Information at large. It talks about the Right to Information in India, United Kingdom and the United States of America.

When the public has the right and freedom to ask for the work of the government with no costs involved, the government comes directly under the control of the public and in democracies where the governments are supposed to be for the people, by the people and of the people, this is very vital in the functioning of the country. The government therefore, is not in a position to exercise autonomy or autonomous rule and exercise undue influence of their powers over the people by claiming that they have the power. The right to information also serves as the preventive measure for the government to be in the limits of their power and not go beyond because anytime anyone can raise a question as to the policy or the other decision taken by the government, therefore if theoretically the government is an institution of the people their work ought to have been public in order to maintain the transparency of their work and in order to actually frame the meaning of the term democracy.

India has been the largest democracy of the world, and no doubt it takes pride in that too. But prior to the commencement of the Right to Information act, things were quite different, although we were democratic but there was no accountability created on the part of the legislature, and that we could not have contacted them as frequently as we do in the modern world. It was with the commencement of the Right to information Act in 2005 that the government became accountable, interactive and participatory democracy. Which means that the government was now directly answerable to the public at large and the interaction between the government and the citizens became more often than rare. Therefore, it increases the amount of trust and interaction between the citizen and the state, therefore diminishing the level of secrecy and status quo between the government and the citizen.

So, the Freedom of Information like the right to information gives the right to access all the information that you want regarding various subject matters by the government and the public authorities. Therefore, like the right to information in India, freedom of information in the United Kingdom serves as the role legislation of the country and the state.

No provision in the U.S. Constitution expressly establishes a procedure for public access to executive branch records or meetings. Congress, however, has legislated various public access laws. We will see in the upcoming chapters as to how the right to information in the United States function.

LITERATURE REVIEW



For the first Chapter i.e. Introduction to Right to Information, Right to Information by Dr. S. B. M. Marume, Dr. A. S.Chikasha and Dr. T, M.Chiunye has been used. This article consistently talks about the introduction to the right to information and discusses the extent of the right to information.

For the Second chapter, i.e. Introduction to Right to Information In India , we referred to The Right to Information in India: Implementation and Impact by Prof. Smita Srivastava. This article consistently talks about the effect of Right to Information in India and how is the system of Right to Information in India organized and also discusses about the various problems faced by the Indian Right to Information.

For the third chapter i.e. the Right to Information in India and Its Impact, we majorly relied onto the article of the Right to Information Act 2005: Operational Issues and Major Concerns by Manish Kumar Khunger. It basically describes in detail the procedures involved and that how is the Right to Information not that successful in India and how it is more of a hippocracy.

For the fourth chapter, i.e. the Freedom of Information in the United Kingdom, we relied majorly on the campaign for the freedom of information a short guide to the United Kingdom Freedom of Information. This helped us understand in a comprehensive manner the nature of Right to Information in the United kingdom and how it is different from the Indian context.

For the fifth chapter, i.e. the Freedom of Information in the United States, I have majorly relied on the article by Wendy Ginsberg Analyst in American National Government who clearly defines the relationship between the citizen and government through the freedom of information in the United states and that also says that there is no particular one law but four statutes that govern the right to information in the States.

STATEMENT OF THE RESEARCH PROBLEM

This paper primarily focuses on the concept of Right to Information and the Freedom of Information and the issue that it deals with majorly is the nature of Right to Information that binds the relationship between the government and the citizen of the country. The paper begins with the introduction to concept as a whole and then moves further to the introduction of the Right to Information and discusses how and what it means. It then talks about the concept of Right to Information in the light of Indian context and what all problems that India faces and how it is of utmost importance. As we further move towards the motive, we talk about how the Right to Information attains growth through the Global administrative law describing the details in the European continent especially the United Kingdom and then relating with the Indian context. Then it also discusses about the Right to Information in the United States and it also discusses about the extent of freedom available to access the information in comparison with India. It then also



compares about the nature of relationship between the government and the citizen through the right to information in India, USA and UK and how they are similar in their motive and just the methods are different. Last but not the least, it concludes with the synopsis of the same and analyses the various points discussed.

OBJECTIVES AND RESEARCH QUESTIONS

I To determine the meaning and scope of Right to Information.

Questions

- (1) What do you mean by the term Right to Information and what is the scope of Right to Information ?
- (2) To whom is the Right to Information available and to what extent can it be used ?

II To determine the meaning and scope of Right To Information in the Indian Context

Questions

- (1) Whether the Right to Information in India, makes the administrative process anyway transparent ?
- (2) Whether the introduction of Right to Information in India has led to accountability of the legislature or the administrative process that has gone against the biased rules of the administrators ?

III To determine the nature of Freedom of Information or Right to Information in the United Kingdom

Questions

- (1) Whether the nature of freedom of Information in the United Kingdom same as the nature of Right to Information in India ?
- (2) Whether it helps in enhancing the advent of transparency in the United Kingdom and gives a role model kind of a picture to the world ?

IV To determine the nature of Freedom of Information in Australia

Questions

- (1) Whether there exists a Freedom of Information which is similar to that of the Right to Information In India ?
- (2) Whether the information given to the individuals in the state anyway discusses the problems that the individuals face overall in the development of the concept of Freedom of Information ?

DISCUSSION AND DIVISION OF CHAPTERS

As we have already seen in the introduction part, that this paper will be discussing about the Right to Information in detail and analysing its context in the objective of its introduction, i.e. whether the amount of transparency that was aimed to be sculpted in the administrative system really achieved. We will now further discuss part by part or chapter by chapter, that how Right to Information is a global concept and is derived from the Global Administrative Law and has led to the introduction of transparency in the system to a whole new



level. This project will be discussing that how the process of RTI has affected the administrators at the large and the dilemmas the nation state is facing as a whole. This project also discusses how the RTI has become an integral part of our lives and that how there is no alternative to it and also discusses the concept of the RTI or Freedom of Information in other countries such as the United Kingdom and Australia. Whole discussion of the project is divided into chapters so that the process of learning becomes more easy. Chapterization has been done in order to make sure that the concepts are clear enough to move forward in the approach of fulfilling the purpose of the project.

- (i) Chapter 1 - Introduction to Right to Information
- (ii) Chapter 2 - Introduction to Right to Information in India
- (iii) Chapter 3 - Right to Information in India and Its effects and Problems
- (iv) Chapter 4- Freedom of information in United Kingdom
- (v) Chapter 5 - Freedom of Information in USA
- (vi) Chapter 6 - Conclusion

CH-I INTRODUCTION TO RIGHT TO INFORMATION

So, this chapter basically talks about the concept of the right to information like what is right to information and where did the concept of right to information evolved

from, what is its purpose and what is the need for having a right to information especially in a country like India and other democratic countries.

Right to information can be defined in the manner that it means the freedom of the people of the region or the country to have access to the information of the government or in other words, when a person has the right to seek information regarding the policy of the government and raise question as to transparency, this is what right to information means. It implies that the citizens and the non-governmental organisations should enjoy reasonably free access to all files and documents pertaining to the governmental decisions, operations and performance¹. In other words, it means openness and transparency in the functioning of the government. Thus it is antithetical to secrecy in public administration.

When the public has the right and freedom to ask for the work of the government with no costs involved, the government comes directly under the control of the public and in democracies where the governments are supposed to be for the people, by the people and of the people, this is very vital in the functioning of the country. The government therefore, is not in a position to exercise autonomy or autonomous rule and exercise undue influence of their powers over the people by claiming that they have the power. The right to information also serves as the preventive measure for the government to be in the limits of their power and not go beyond because anytime anyone can raise a

¹ Sri Keshabananda Borah. on the Right to Information Act: a key to good governance



question as to the policy or the other decision taken by the government, therefore if theoretically the government is an institution of the people their work ought to have been public in order to maintain the transparency of their work and in order to actually frame the meaning of the term democracy.

When we talk about secrecy as a component of executive privilege or transparency through right to information which of the two be adopted as a paradigm for the governance. Both offer public interest as rationale. Which in fact serves the public interest. Therefore be it the secrecy as a component of the executive privilege or the transparency through right to information both are an ingredient of the public policy and serve the interest of the public. When we talk about the public interest we also mean that the public at large is benefitted of such provisions in the foreplay. The public should undoubtedly be at the beneficial side and they may be able to access the information at no cost so that no matter what the economic and financial position of the person, considering the economic disparities prevailing especially in the Indian society, the information can be accessed by anyone and everyone. This is where the public interest will deemed to be served². When the public can access whatever it suspects, the concept of suspicion for the government disappears and as a result of the same the confidence for the government arises and it builds a trust in the public that the representatives that they have chosen through their votes actually stood up to their

²Dr. A. S.Chikasha and Dr. T. M.Chiunye on the Introduction to Right to Information, Right to Information by Dr. S. B. M. Marume.

expectations or are capable of the trust that public confides in them. Therefore, right to information also serves as a trust building process for the government and decreases the state of suspicion and ill feelings for the government. Also, it is significant to note that in 1922, the World Bank released a document entitled Governance and Development³. The document has mentioned seven aspects or elements of governance and one of them being the transparency aspect and information. So, this clearly indicates that the right to information is not a new concept rather people believed in this concept in the 20th century too.

All this that we have seen till now is not the constructed definition of what right to information is although we have had enough idea as to what the right to information in general is but we need to have a construed definition for the same. The definition of right to information therefore, turns out to be "the freedom of permanent responsible citizens and registered or well known non-governmental organisations to have a reasonably free access to all files and documents pertaining to the governmental decisions, operations and performance with a clear view to enhancing the principles of openness and transparency, on the one hand and on the other hand, respecting the factor of confidentiality as a component of the executive privilege in the modern democratic government⁴.

³ World Bank on Governance and Development at <http://documents.worldbank.org/curated/en/711471468765285964/pdf/multi0page.pdf>. Visited on 06-09-2017.

⁴S. B. M. Marume on the Right to Information, 1988.



Therefore, in order to compile the elements of the Right to Information, let us relook at the definition of the right to Information provided above. It says :-

- (a) Freedom of Permanent Responsible Citizens,
- (b) Registered or a well known non-governmental organisations.
- (c) Reasonably free access
- (d) All files and documents
- (e) Governmental Decisions, operations and performance
- (f) Enhancing principle of openness and transparency
- (g) Respecting the factor of confidentiality as a necessary componential part of the executive privilege and
- (h) Modern Government and Administration⁵.

To understand the definition, what is more important is the understanding of its components. So, the first component that says freedom of permanent responsible citizens means that the citizens of the country first need to be permanent as in they should not be NRI's or people who travel from place to place and take any other country's citizenship, they should be a permanent citizen of one country in which they reside and earn. They should be responsible enough to be able to ask relevant questions in order to see whether the

government is taking appropriate policies or not. They should be responsible enough to understand that the legislature is not just answerable to them through Right to Information but also has other works especially the legislative procedures, therefore no stupid questions should be asked and the policies should be dealt with thoroughly before asking a question or raising a right to information.

The second element talks about the registered or well known non-governmental organisations. The question that arises is that why does it want the institution to be registered and it needs to be a well known non-governmental organisation? The answer to this is that well known non-government organisations are non state actors that help to represent the country in the international forums apart from the government itself. Therefore, the answers given to these type of organisations will be much more attention and accuracy than to any other non registered organisation. But the fact still remains that the answer to each of the right to information is given correctly, the difference arises only in the fact that the answer to these organisations can also be published and also the media coverage can be given to the answers by the non-governmental organisations, therefore in order to maintain a healthy reputation in the country the respected ministers or departments of the ministry needs to respond to the non-governmental organisations more effectively. Also, these organisations are a better way to enforce the right to information or ask for the answer if not provided with. They can initiate protests and other democratic activities which otherwise

⁵Dr. A. S.Chikasha and Dr. T. M.Chiunye on the Introduction to Right to Information, Right to Information by Dr. S. B. M. Marume.



if conducted by an individual would not have a much larger effect.

The third element of the definition talks about the reasonably free access which means that the free access to information is not an absolute right it also comes with exceptions and restrictions. The reasonable restrictions imposed are for the benefit of the larger public and not for the purpose of concealing itself. Mere concealing is not allowed in the right to information but the likelihood to conceal the information is provided in the restrictions to the right to information which means that the information which is restricted to be asked about in the Act, is the one which is necessary to be concealed and therefore, the access to such information becomes reasonably restricted and the right to access information becomes limited and not absolute.

The next element talks about the all files and documents which means that subjected to the limitations on the right to information, the other files which are available for free access, can be accessed by anyone and everyone on demand through the right to information. Therefore, the restrictions that are reasonable are limited to its scope only and not to the other files which are not within the scope of restriction or restricted subject. Therefore, all the files and the documents can be accessed which are not restricted for the public to access.

The another element of the definition talks about the governmental decisions, operations, and performance, which means that the information can be accessed relating to all the governmental policies, operations and decisions. They can also be asked to

present the performance scale and the performance parameter which also helps the public analyse the scale of the growth of the government as well as the country through their performance. The public can also analyse the importance of the vote which they have casted through which their representatives have found a place in the parliament.

Another important element is the element of enhancing the principle of openness and transparency which basically is enshrined in the definition so as to ensure the sole and the main motive of the right to information is served through the transparent functioning of the government and their policies. Transparency in the policy enhances the scope of trust and reliability on the government and diminishes the chances of being suspicious regarding the government. Therefore, ensuring the open and transparent functioning of the government this provision becomes extremely important in its nature.

The definition also contains an element of respecting the factor of confidentiality as a necessary part of the executive privilege which means that the concealment of the important information by the legislature as discussed above as well, is a part of the executive privilege that they have. Which also means that it is a part of their duty to disclose the certain facts which can be disclosed but at the same time it is their duty in the larger interest of the public to hide some of the information which is not supposed to be revealed or showed before the public such as in the cases of defence ministry not everything related to the defence of the country need to be shared because it can prove to be fatal in the case of



revealing the information. Therefore, when they hide certain things, it is not because they are corrupt or immoral politicians but because it is a part of their duty to take care of the public as *parens patriae* and a part of their duty to consider the welfare of the country and its citizens. Therefore, the general public should consider these facts and respect the duty of the legislature.

The last element of the definition is the modern government and the administration, which means that the government should not be outdated. It should be equipped with the problems of the modern world and be able to come up with the laws that solve these modern problems. Thereby, ensuring the better administration of the country. The right to information is a great example of the modern administration because it brings accountability to the public.

Now, that we have dealt with the definition of the same, another important question that arises is that we talk about the principle of openness and transparency while on the other hand we say to maintain the confidentiality of the information as a necessary componential part of the executive privilege in the modern government and administration. Thereby, contradicting the definition itself.

Well, as discussed above the right to information is not absolute therefore, when even the right to life and liberty is excepted by the provisions of the law, then even the right to information cannot be absolute in its nature.

CH-II INTRODUCTION TO RIGHT TO INFORMATION IN INDIA

So, basically this chapter talks about the right to information in India. As we have seen in the previous chapter that what right to information is, this chapter will be dealing more with the Right to Information in India and how does it impact the nation or what impact does it have on the nation as a whole. We will also see that how with the coming up of the right to information how the scenario has changed so much so that the democracy has actually come into being since the inception of this act.

India has been the largest democracy of the world, and no doubt it takes pride in that too. But prior to the commencement of the Right to Information act, things were quite different, although we were democratic but there was no accountability created on the part of the legislature, and that we could not have contacted them as frequently as we do in the modern world. It was with the commencement of the Right to information Act in 2005 that the government became accountable, interactive and participatory democracy. Which means that the government was now directly answerable to the public at large and the interaction between the government and the citizens became more often than rare⁶. Therefore, it increased the amount of trust and interaction between the citizen and the state, therefore diminishing the level of secrecy and status quo between the government and the citizen. Earlier it was the scenario that the government was not accountable to the

⁶Manish Kumar Khunger on the Right to Information Act 2005: Operational Issues and Major Concerns.



general public though in theory it was and the elections were done according to the procedure, but the public could not have done the direct interaction as it is possible in today's era due to the existence of the Right to information.

The right to Information has catapulted the Indian citizen on a pedestal from where he can take stock of administrative decisions and actions and make sure that his interests are protected and promoted by the Government⁷. This means that the right to information has served as a step forward for the general public and has allowed the Indian citizen to be accessible to the administrative decisions, be it policies, operations or documents anything, which is not restricted for the interest of the public. This has made the Indian public raise questions regarding anything they found susceptible to the autonomy of the legislature which has indeed given a rise to the practical democracy in the country except for the voting and the electoral system in the country. It has also ensured, that the general public is never deprived of its rights and legal and constitutional bindings. Which means that the citizen can even give a demand to the government this way and ensure that his interests which are inherently the interest of the general public, can be fulfilled without delay and the government is able to answer and fulfil and understand the needs of the general public in order to be more accountable and available to the service of the public.

The Right to Information, thus is an important landmark in the Indian history which has served the main purpose for the

Indian democracy. By this act, the citizen of India has been empowered like never before, because he has been given the power to question whatever he feels wrong or right. He can now question the audit system, review, examine and assess the government acts and decisions to ensure that these are consistent with the principles of the public interest, good governance and justice. This act promotes the transparency and accountability in administration by making the government more open to public scrutiny. This means that the citizen now has the power to raise obligations, questions and the inconsistency of the government policies, decisions, operational orders and laws, if they are not in compliance with the public interest and moreover vitally, the principles of the natural justice which ensures the highest level of public interest⁸. It has also made the government of the country more responsible in a manner that they have become more sensible to the needs of the general public than to the need of the autocratic governments. This has also made the governance easy and transparent raising to another level of democracy in India. This way it is also seen to be dispensing justice in an appropriate manner and the level of the satisfaction that the individual gets on the answer received to the right to information also determines the level of satisfaction the individual has from the existing government. Thereby, increasing the scope of government being open to the public scrutiny.

⁸Smita Srivastava on The Right to Information in India: Implementation and Impact

⁷ Ibid.



The right to information Act was passed on 15th day of June 2005 by the United Progressive Alliance Government and came into effect from 12th day of October, 2005. It has been now 12 years since the right to information has been implemented and the results are quite noticeable. We can now ask anything, to the legislature which is not contained in the exceptions of the right to Information and we will receive the information we want, such is the nature of the Right to Information in India. the 12 long years have been sufficiently enough to give us an idea of its worth and value. The RTI act was enacted by the National Parliament to dismantle the culture of secrecy and to change the mindsets of the bureaucrats and political leaders to create conditions for taking informed citizens⁹. The right to information provides for a framework for the promotion of the citizen government relationship and partnership in carrying out the programmes for the welfare of the people. the principle of the partnership is derived from the fact that the people are not only the ultimate beneficiaries of the development but also the agents of the development. Therefore, the process of development of the country becomes two fold and the accountability of the government is increased giving rise to the people or the common masses being more powerful than the government itself, but it is for sure that there are certain restrictions which come within the framework of their duty to conceal and hide from the general public for the welfare of the general public

⁹ Ansari MM in a lecture entitled, "Impact of Right to Information on Development: A Perspective on India's Recent Experiences", delivered at UNESCO headquarter, Paris, France, May 15, 2008.

itself, that is the reason why even if the restrictions are being imposed on the right to information in certain aspects, it is for the ultimate benefit of the people and not the government.

The stakeholders participation in the decision making and the enhancing of the accountability of the government, leads to a better project and more dynamic development¹⁰. The author here, compares the right to information act as a stock in the market and the stakeholders are the general public. He means to say it is because of the participation of the stockholders that lead to the more efficient raise or decline in the market, similarly it is the participation of the general public which leads to the better and efficient functioning of the government through the right to Information.

The idea of the Right to Information started taking shape in the 1970 itself and is not a new concept. It started with the liberal interpretation by the judiciary of the various fundamental rights specifically the right to freedom of speech and expression. The Supreme Court in a case held that the 'freedom of speech and expression includes within its compass the right of all the citizens to read and to be informed¹¹. Which means that the court indirectly said that the right to information is included within the ambit of Article 19 of the Indian Constitution, which is a fundamental right of the citizen and the citizen cannot be

¹⁰ Ansari MM in a lecture entitled, "Impact of Right to Information on Development: A Perspective on India's Recent Experiences", delivered at UNESCO headquarter, Paris, France, May 15, 2008.

¹¹ Bennett Coleman and Co. v. Union of India.



deprived of this right except according to the procedure established by law.

In another judgement of the Supreme Court¹², it was reaffirmed by the Court that the basic purpose of the freedom of speech and expression is that all the members of the country should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. In this judgement the court definitely meant that the Freedom of Speech and expression cannot arise when people are not given the right to know and therefore, within the meaning of the constitution when the rights cannot be taken back except according to the procedure establishment of law, the right to know cannot be alienated due to the fact that it has not been expressly mentioned in the constitution.

There have been numerous cases favouring the disclosure of the information of the government and making the government more accountable and transparent in its approach. as a result of lack of clear legislation on this, then , people had to knock at the doors of the courts every time they wanted to enforce this right. The courts have almost always responded positively. But this was not the solution to the problem in common they all had, because after the resolution of their problem they would only stick to the solution while the information regarding the judgement was not made public therefore, the Right to Information could not been brought earlier than 2005. the common citizen had neither the means nor the time and inclination to get into the

process of never ending litigation process and even the public interest litigation was a tool which could reach only a few and not all because of the prevalence of illiteracy in our country. The movement for the Right to Information was fresh and received impetus from a courageous and a grass root struggle for the rural poor for the right to information to combat the rampant corruption in famine relief works. This meant that the problems existed as to corruption and unaccountable government that the rural poor suffered to the extent of death and famine. The struggle of the Right to Information was lead by an organisation of the people, Mazdoor Kisan Shakti Sangathan that literally means the organisation for the empowerment of the workers and peasants. The reverberations of this struggle led to the nation wide demand for the law to guarantee the right to Information to every citizen, with wide spread support from the social activists, professionals, lawyers and media who are committed to the transparent and accountable governance and people's empowerment¹³. Growing public concern about the callousness and corruption in the government resulted in a clamour for greater transparency culminating in a demand for the right to Information act. The consumer protection law created and strengthened the notion of citizens as consumers of government services. The Mazdoor Kisan Shakti Sangathan movement in Rajasthan was a turning point in the Right to Information in India and showed that even though these people were not educated they were civilised enough.

¹² Manubhai D. Shah. v. Life Insurance Corporation of India.

¹³Sri Keshabananda Borah. on the Right to Information Act: a key to good governance



CH-III RIGHT TO INFORMATION IN INDIA AND ITS IMPACT

So, this project basically talks about the Right to Information in India and its impact and other issues that it is facing. Since in the previous chapter we have dealt with the introduction to the right to information in India, now let us deal with the impact of right to information in India. Right to Information has been seen as the most path breaking and historic legislation of our country where the power of the people was supported rather than the power of the politicians. It has generated tremendous impact in the matters of the citizen's democratic right monitoring the public good, curtailing corruption and improving governance. With increasing levels of education and awareness among the rural and urban public, RTI act has proved to be a potent weapon for solving a number of problems. citizens are now using their statutory right to be informed and to get any kind of information which lies in the public domain. This clearly means that the information which is accessible to the public can only be accessed by them due to the various security and secrecy reasons which lie within the scope of the legislative administrative authority. The various subjects on which the Right to Information can be filed are the utilisation of the public funds, progress in ongoing projects, state of civic services, distribution under public distribution system, access to answer sheets, disclosure of cut off, disclosure of question wise marks, patient's right to his treatment records, for obtaining driving license and passport and the list never ends. Moreover, the Right to Information act is very potential tool for strengthening democracy.

This new law empowers Indian citizens to seek any accessible information from a Public Authority and makes the government and its functionaries more accessible and responsible. Logically, therefore, the right to information has helped to increase transparency in the government and public dealings. So, what basically happens is that the Right to Information when gives access to the information which public is anyway authorised to have, claims to be diminishing the secret veil of the government, to a certain extent which is possible but what if the veil of the information given or provided are actually not true and claimed to be true. How will the citizen know that the information given is substantial in nature.

Practically, however it is difficult to comment on it because of the so many reasons of rampant corruption and the so called dedicated ministers of their legislative seat. Therefore, whether practically it has helped to increase transparency or not is a thought to be pondered upon and a contagious issue to be looked at.

There are certain challenges that the implementation of the Right to Information is facing since its inception in the country. Some of the major concerns in relation to implementation of Right to Information Act as expressed from various quarters may be considered. They are as follows :-

(1) Revealing of File notings¹⁴

One of the most detectable and important concerns raised in respect of the Right to information act from the very beginning is

¹⁴Manish Kumar Khunger on the Right to Information Act 2005: Operational Issues and Major Concerns.



regarding the disclosure of the file notings. the government and the bureaucracy are concerned over the exposure of the file notings to the public that it will act adversely against the requirement of free and frank opinion by the public officials in the decision making process. Which means that the government is tensed as to the application of the Right to Information in the context that if it reveals the public notings then it will not be able to give as well as receive the free and frank public opinion on various legislations and policies.

In this context, therefore, it will be appropriate to mention that the file notings are ad hoc written notes added to file by the officials and thus can give a critical insight into the decision making process which is the part of the legislature's duty to be performed with the help of the right to information. The exclusion of the file notings would undermine the spirit of the bureaucratic openness and accountability which the law embodies. The purpose of the act is to open and transparent government's decision making process to public scrutiny as discussed in the previous chapter. In this context then it would be appropriate to consider the records which says that according to Section 2(i)(a) of the right to information act defines 'record' as any document, manuscript and file to cover 'notes' and appendices to notes. Further under public record rules, 1997 'file means a collection of the papers relating to the public records on aspecific subject matter consisting of the correspondence, notes and appendices to the notes thereto.

Thus from a legal and technical point of view the term file as understood in the

aforementioned section includes file notings and it can legally be disclosed as per the requirement of law. In addition the disclosure of the notings will certainly ensure the application of mind of the decision maker to the issues involved and thereby enhance the quality of the decisional process. Thus it practically, ensures that the government worker or the legislature has fulfilled his duty of applying the mind in making the laws and the policy which in the form of notices and appendices to notices will be made accessible to the general public.

The second problem that they face is the cost of implementation of the right to information¹⁵.

Such concerns keeping in plea the actual facts, the savings of the government through the reduction in the level of corruption and maladministration by implementation of the act would be more than the cost on its implementation. Additionally, it may also be noted that the total cost on the administration of the nation certainly comes from the taxes which eventually the citizen have to pay to the government and the cost of implementation of the right to information would be negligible as compared to the total cost on administration. this may also be said that the other way round that the taxpayers have all the right to know that how their government is making expenditure of their money. Thus the concern relating to the cost of implementation of the right to information act has been blown out of the proportion and

¹⁵Manish Kumar Khunger on the Right to Information Act 2005: Operational Issues and Major Concerns.



ill founded. Which also means that if we see, the information regarding the cost of implementation of the right to information is less provided therefore, when we talk about the transparent procedures and accountability of the government to the citizens of the nation, we also see, that though the citizens pay the tax and everything, but the information at the end has to be given by the government officials only and not the individual body therefore, the answers can be simply manipulated and the citizens can be subject to deceit by the government.

(3) The third and the foremost problem of the right to information is the Misuse of the information¹⁶.

With the passing of the right to information act, 2005 any citizen of India can access the information required by him, from the public authority, any information about the public servant etc. This is a marvelous step in the direction of transparency. However, what to do of a dummy right to information applications, i.e. after filing the applications and all correspondence are returning undelivered than what could be the rational of the act. Therefore a good law like right to information was being misused to ask the irrelevant and intrusive questions seriously impeding the working of the concerned authorities. There has also been the apprehension that the information sought under the right to information Act would be misused or used to blackmail the officials and the organisations involved. In this context it is a threat to the security of the officials and the people involved. In this context it should be remembered that the

this law can be used to access the truth and therefore it may be said that how can someone blackmail the officials on the basis of the true information received and it is not against the law as well. The situation of blackmailing would arise when the official is placed in a privilege position to maintain the secrecy of the sensitive information. It is the situation of the secrecy coupled with the unguided discretion of the authority which creates a situation of the blackmailing in favour of the official person and not the other way round which means that it is the official which is supposed to answer the query of the citizen under the right to information act, therefore, why would it dispense any information which can be used against him to blackmail him or other authorities involved. Therefore, again raising the question of misuse of the information.

(4) Another important issue that the Act faces is the choice of information commissioners¹⁷.

This is because the information commissioners appointed at both the centre and the state levels have been retired high ranking members of the bureaucracy. One of the major concerns is that it is they who were part of the secrecy regime in the functioning of the public administration system for a long period of time, therefore, their mindset may not be in favour of promoting transparency which again is against the motive of their job itself. Yet another strong reason, which may go against such appointments is the requirement of the

¹⁶ Ibid.

¹⁷Manish Kumar Khunger on the Right to Information Act 2005: Operational Issues and Major Concerns.



act itself. The act requires the commissioners may be appointed from the category of the persons having "eminence in public life with wide knowledge and experience in law, science and technology, social science, management, journalism, mass media and administration and governance. In the view of this appointment of retired bureaucrats in majority may not be justified rather goes against the express provision of the act. In addition, this may also give an impression that all those who are responsible for the administrative culture of secrecy are now trying to ensure transparency.

So, these were the problems that the Right to Information in India broadly faces and encounters whereas other countries right to information may be looked at in the following chapters.

CH-IV FREEDOM OF INFORMATION IN THE UNITED KINGDOM

So, this chapter basically talks about the Right to Information or otherwise known as the Freedom of Information in the United Kingdom itself. till now, we have seen the introduction to the right to information and the various problems that it faces for implementation with reference to India, now we will be dealing with the right to information in the United Kingdom and comparing them as to what they actually possess in nature that is similar to or different from the Right to Information in India.

So, the Freedom of Information like the right to information gives the right to access

all the information that you want regarding various subject matters by the government and the public authorities. Therefore, like the right to information in India, freedom of information in the United Kingdom serves as the role legislation of the country and the state.

Any citizen can use the Act to find out about a problem affecting the community and check whether an authority is doing enough to deal with it. Also, to see how effective a policy has been made and what are its kinds of effects on the society. It is also to find out about the authority's spending and the national of paying the tax to the extent of the expenditure of the authorities on the public property and not their own properties, it is also to check whether the authorities is doing what it is claiming to do and to learn more about the real reasons for decisions¹⁸. The point to be noted here is that the notices and the appendices to notices however, has not been specifically mentioned as in the case of the Indian Right to Information which means that the government of the United Kingdom is reluctant to give the reasoning for the laws that they have made which is quite unusual in its very nature.

Another provision of the Freedom to Information which matches that of the right to information is that the right to conceal any kind of information is allowed until and unless it falls within the purview of the authority of the legislature. Even exempt information may have to be disclosed in public interest in the United Kingdom unlike

¹⁸A Short Guide to the Freedom of Information Act and Other New Access Rights



the Indian Right to Information. If any citizen thinks that the information has been withheld improperly, then the complain can be filed with the Information Commissioner, who can order the disclosure of the information required by the general public. the point to be noted here is that in the UK whenever any information is concealed the information can be received by filing a complaint with the Information Commssioner whereas in the Indian Right to Information, any information which is concealed by the legislature is supposed to be within the limits of his authorities and for the public good. Therefore, the level of accountability that the government of the United Kingdom has is more than the level of accountability of the Indian context because the information which is not revealed by the Indian government, implies the maintenance of secrecy in that matter, for the benefit of the people, but the information that is concealed in the United Kingdom, can be enforced by the citizen by filing a complaint to the Information Commissioner regarding the information concealed and then the information can be received on his orders. Therefore, raising the level of accountability and trust in the government than the scenario in the Indian context.

The information in the United Kingdom can be relating to the issues relating to the environment, the request will be dealt with under the Freedom of Information but under the new Environmental Information Regulations. These implement a European Union directive and provide a stronger right of access than the freedom of information act. A notable feature is that the information about the emissions to the environment

cannot be withheld on the grounds of commercial confidentiality. So, analysing closely, it can be seen that for a particular issue to be dealt with they have a separate commission or an organisation which deals with the issue, which implies the good organisation within their departments however in India, the right to information is not dealt by a particular section relating to the issue, it is a bit unorganised than the Freedom of Information in the United Kingdom¹⁹.

Personal information can also be received through the Freedom of Information in United Kingdom. Here, the personal information refers to the information of the public authorities. The Data Protection Act,199 already entitles any citizen of the country to access many kinds of personal information about himself, whether held by public or private bodies. This law has been amended by the Freedom of Information act to improvise on the rights to see personal information held by the public bodies²⁰. The right to information held by private bodies has not been affected. The United Kingdom Information Commissioner enforces the right across the whole of the United Kingdom. So, the right to information in India does not have such a provision especially regarding the information held by the private authorities which definitely serve as a loophole when compared to the Freedom of Information of the United Kingdom.

The UK Freedom of Information Act applies to public authorities at all levels: central government departments and

¹⁹ Ibid.

²⁰ Ibid.



agencies; local authorities; NHS bodies including individual GPs, dentists, opticians and pharmacists; schools, colleges and universities; the police, the armed forces, quangos, regulators, advisory bodies, publicly owned companies and the BBC and Channel 4 (though not in relation to journalistic materials). The Houses of Parliament, the Welsh Assembly and, if reconvened, the Northern Ireland Assembly are all also covered. UK authorities which operate in Scotland are covered by the UK Act²¹.

Before requesting information under the FOI Act or EIRs it is usually worth checking what information the authority has already published. In particular, have a look at the authority's 'publication scheme'.

The Act requires every authority to have a publication scheme describing the classes of information that it publishes or intends to publish and saying whether there is any charge for it. These should be available on the authority's website and in hard copy on request. The schemes must be approved by the Information Commissioner and are then legally binding.

Where an authority's scheme commits the authority to publishing all information of a particular description it is obliged to publish *all* that information (unless the definition itself excludes certain information). The information should be supplied to you within a few days of you asking for it or be available for download

on its website. The Information Commissioner can if necessary take enforcement action against an authority which fails to publish information specified in its publication scheme. At the moment many authorities' schemes are made up mainly of information that they had already been publishing and add relatively little that is new, though there are some notable exceptions.

CH-V FREEDOM OF INFORMATION IN THE UNITED STATES OF AMERICA

So, this chapter basically talks about the right to information in Australia. Till now, we have discussed about the Right to Information in India and the Freedom of Information in United Kingdom. Now in this chapter we will be analysing the Freedom of Information in the USA with that of India.

No provision in the U.S. Constitution expressly establishes a procedure for public access to executive branch records or meetings. Congress, however, has legislated various public access laws. Among these laws are two records access statutes,

- the Freedom of Information Act²² and
- the Privacy Act²³ and two meetings access statutes,
- the Federal Advisory Committee Act²⁴ and
- the Government in the Sunshine Act²⁵

²¹For the full list of bodies covered see: <http://www.foi.gov.uk/coverage.htm>

²² (FOIA; 5 U.S.C. §552),

²³ (5 U.S.C. §552a),

²⁴ (FACA; 5 U.S.C. App.)



These four laws provide the foundation for access to executive branch information in the American federal government. The records-access statutes provide the public with a variety of methods to examine how executive branch departments and agencies execute their missions. The meeting-access statutes provide the public the opportunity to participate in and inform the policy process. These four laws are also among the most used and most litigated federal access laws. So, unlike India, the United States of America does not have a right to Information act specifically but they have four different statutes that give access to the information the general public is in need of.

FOIA established, for any person—corporate or individual, citizen or otherwise—presumptive access to existing, unpublished agency records on any topic.²⁵ The law specifies nine categories of records that may be exempted from the rule of disclosure. Agencies within the federal intelligence community are prohibited from making any record available to a foreign government or a representative of same pursuant to a FOIA request. Disputes over the accessibility of requested records may be settled, according to the provisions of the act, in federal court or may be mediated in the Office of Government Information Services (OGIS).²⁷ Fees for search, review,

or copying of materials may be imposed, while certain types of requesters may be granted fee waivers or reductions.²⁸ FOIA was amended in 1996 to provide for public access to information in an electronic form or format. These amendments are often referred to as e-FOIA.

In 2007, FOIA was further amended to :-

- redefine qualifications for fee waivers for those seeking records,
- require the National Archives and Records Administration to establish OGIS to act as a centralized FOIA oversight office and FOIA dispute mediator, and
- require agencies to create tracking systems that allow requesters to determine the status of their information requests, among other modifications.²⁹

So, unlike the Indian Right to Information, the Freedom of Information Act that the United States of America has does not face a problem of the fees or the costs of implementation that India faces. They have waived their fees and the public can have access to the information free of cost and the various organisations have been set up to handle disputes between the public and the government as in the United Kingdom as well, but unlike the Indian context.

Individuals, groups, and organizations all possess a right to access some government

²⁵ (5 U.S.C. §552b).

²⁶ For more detail on FOIA, see CRS Report R41933, The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues, by Wendy Ginsberg

²⁷ 5 U.S.C. §552(4)(B). See U.S. Congress, House Committee on Government Reform, A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government

Records, H.Rept. 112-689, 112th Cong., 2 nd sess. (Washington: GPO, 2012), at <https://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guideon-Using-FOIA.2012.pdf>.

²⁸ 5 U.S.C. §552(h)(3).

²⁹ P.L. 110-175; 121 Stat. 2524.



information. Both government and private groups publish guides to the information acts in paper and on the Internet as well. The U.S. House of Representatives Committee on Government Reform has published several editions of its report, A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records—most recently in September 2012.³⁰ In addition to the text of the acts, the Citizen's Guide contains descriptions and explanations, sample document request forms, and bibliographies of related congressional and non-congressional material.

Among many nongovernmental groups that publish information about freedom of information are Public Citizen and the National Security Archive. Public Citizen, a non profit organization that represents a variety of citizen interests, maintains a website that provides FOIA resources and information.³¹ The National Security Archive, a collective of journalists and scholars who “check rising government secrecy,”³² maintains a website that contains a number of FOIA guides, including “Effective FOIA Requesting for Everyone:

A National Security Archive Guide,” which was published in January 2008.³³

So, Even in India we have a website for Right to Information which provides the citizens with all the information that has been solved and has been dealt with, till date. This means that it makes the information more accessible and accountability of the legislature increases when the right to information is actually published. sometimes, even the newspapers and the news channels give coverage to the information revealed from the right to information.

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CH-VI CONCLUSION

So, in this research paper we have seen till now that we have dealt with the right to information in India, the freedom of Information in United Kingdom and the Freedom of Information and other acts in the United States of America. So, after analysing each and every point in the paper, we have come to a conclusion that the main objective of the right to information is that it wants to raise accountability of the government officials so as to make the system of governance transparent and efficient but sometimes it does not seem to be possible.

Right to Information Act, 2005 was enacted on 15 June 2005 and was come into force from 12 Oct.2005. In India the act is

³⁰ U.S. Congress, House Committee on Government Reform, A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records, H.Rept. 112-689, 112th Cong., 2 nd sess. (Washington: GPO, 2012), at <http://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf>.

³¹ Public Citizen, “Freedom of Information Act and Government Transparency,” at <http://www.citizen.org/Page.aspx?pid=5171>.

³² The National Security Archives, “About the National Security Archive,” at http://nsarchive.gwu.edu/nsa/the_archive.html.

³³ National Security Archive, “Effective FOIA Requesting for Everyone: A National Security Archive Guide,” at http://nsarchive.gwu.edu/nsa/foia/foia_guide/foia_guide_full.pdf.



implemented in just 4 months, which is low as compared to the similar acts in other countries. The awareness of the people has increased about the act and the request for the information is increasing in various departments. Due to the increase in request for the information and the lack of preparedness for the act different types of organizations are facing difficulties due to the implementation of RTI Act, 2005. Organizations are divided in three categories on the basis of the use of information technology, which is as follows:

- **Low use of information technology:** In these organizations minimum level of information technology is used and these organizations are facing a lot of difficulties in collecting the information from the concerned department. Thus these organizations are facing many difficulties due to the implementation of RTI Act, 2005.
- **Medium use of information technology:** In these types of organizations information technology is used in different department but these departments are not integrated to share the information through the common platform. These organizations are facing fewer problems due the implementation of the RTI, Act.
- **High use of information technology:** In these organizations information technology is highly used in different department and these departments are integrated by Central Database Management

System (CDMS). These organizations are not facing any difficulties due to the implementation of the RTI Act, 2005.

The organizations of high use of information technology are not facing any problem due to the implementation of RTI Act, 2005 where as the organizations with low or medium use of information technology are facing problems in collecting and disseminating the information due to the implementation of RTI Act, 2005. It is also suggested by the Public Information Officers that fully dedicated executive should be there for the smooth dissemination of information as per RTI Act, 2005.
