



**RIGHT TO INFORMATION:
COMPARISON OF INDIA'S
LEGISLATION WITH THAT OF
UNITED KINGDOM AND CHINA**

*By Sandeepani .A. Neglur
From School of Law, Christ University*

Abstract

Right to know is a fundamental right that comes under Article 19 (1)(g) of the Constitution of India. In order for people to enable the people to enforce this right, the Government enacted the Right to Information Act, 2005 which was considered a landmark legislation in India to enable the people to access the information which is held by the public authorities and ensure that there is an atmosphere of accountability and good governance in the nation. After that, there were several RTI applications filed over the years on the various administrative bodies. But the replies or the information that was sent back lacked clarity and in many cases the applications were rejected through the exemptions as provided under section 8. This soon turned out to be a problem area for all those who wanted to ensure that the Government could be accountable and there is no arbitrary functioning of its activities. So, there arises an immediate need to ensure that there is a new system that is set in place that can ensure that public knows what the Government does. So, the legislations of the foreign countries must be looked at so as to understand their effectivity of law and some of the procedures that can be borrowed from those nations so as to develop a better model.

¹ SHREYASKAR, PANKAJ K. P. "Investigating Compliance of the RTI Act., 48, no. 9," *Economic and Political Weekly*, pg - 20 , 2013.

So, legislations of various countries have various defects which need to be highlighted using comparative analysis. The relevant legislations that will be compared are China, United Kingdom and India on the parameters of history, *Suo moto* disclosure of public body or authority and the process of obtaining information. The author by the means of doctrinal research aims to bring about that analysis.

KEYWORDS : Accountability, Good governance, Comparative analysis, Exemptions, Right to Information, *Suo moto* disclosure

Introduction

Citizens in a country always have a right to know about the various important information available which is important for the progress of any nation. Along with that right, the government also has a duty to ensure that the citizens are well informed of their rights and the means to access those rights. This is one fundamental right which ensures expeditiously that the Government is kept free of corruption and maladministration¹. If relevant information of this kind is withheld, the result will be a total absence of meaningful public debate and public participation in the affairs of the country². The first part of this paper will deal with the history of the laws. The second part of the paper will deal with the process of *Suo moto* disclosure. The third part will deal with the process of access of information. The fourth part is the conclusion.

1. History

² BURMAN, ANIRUDH. "Transparency and Political Parties: Finding the Right Instrument" , 48, no. 28 *Economic and Political Weekly*, pg – 35, 2013.



Any legislation can only be fully understood by the history that goes behind making that Act as the various problems and circumstances are highlighted in the history of that Act.

1. India

RTI movement in India started after the British left and the Official Secrets Act, 1923 was still in place and the various bureaucrats began misusing this act as it provided a veil of security under which these officials began to operate in a corrupt manner. However, the judiciary took it upon themselves to ensure free flow of information which was upheld in *Romesh Thapar vs State of Madras*³. The right to information was later recognized and read into Article 21 of the Indian Constitution⁴ in the case of *S.P Gupta v. Union of India*⁵. After that, movement for RTI grew in size and Mazdoor Kisan Shakti Sangathan (MKSS) movement was started in Rajasthan to bring in transparency in village accounts of Government spending. MKSS's advocacy gave rise to the National Campaign on People's Right to Information (NCPRI), to campaign for the right to information at the national level which worked with the Shourie committee to create the Freedom of Information bill which was passed in 2002⁶. This bill was not notified and later, Right to Information Act was passed in 2005.

2. China

In the late 1980s, there were "open village affairs" at the village level to ensure disclosure of information which then led to a Two Disclosures and One Monitoring." Which was campaign started by the Communist party to disclose administrative rules, procedures, and results and to accept public monitoring at every level of government⁷. Since then, open government information practices have gradually spread among villages, townships, and cities. China's first government information access legislation at the municipal level, the Guangzhou Municipal Provisions on Open Government Information, took effect on January 1, 2003. This legislation stated that all government information should be disclosed and there would be exceptions⁸. In 2004, following the city of Guangzhou's lead, Shanghai, Beijing, Shenzhen, Hang Zhou, Chongqing, Chengdu, and Wuhan all adopted local open government information policies. Building on developments at the lower governmental levels, a nationwide policy was put on the agenda of the State Council in 2003. The State Council of China approved the Regulations of the People's Republic of China on Open Government Information on January 17, 2007⁹.

3. British

The history of RTI can be traced all the way back to 1975 when the Labour party had promised a legislation to access information from the Government, but failed to keep up

³ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124

⁴ Indian Const. art 21

⁵ *S. P Gupta v. Union of India*, AIR 1928 SC 149

⁶ Jitendra Mishra, *Right to Information: An Arduous Journey from British Raj to Independent India*, 11, US – China Law Review, 282, 2014

⁷ Milind Murugkar, Xu Zhiyong, *Stepping towards transparency: India's Right to Information Act and China's Open Government Information Regulation*, 2014, <https://indiachinainstitute.org/wp-content/uploads/2014/04/Murugkar-Zhiyong-Working-Paper.pdf>

⁸ *Id*

⁹ *Supra* note 7



to its promise as it lost its office to the Conservative party in 1979. Before that, in 1960s the people began to realize that control of state over the information is detrimental to national growth and public right to information was needed¹⁰. Various CSOs civil society organizations and professional groups such as lawyers, journalists, academics and workers were the two main parties that advocated Access to information (ATI) on the basis that individual liberty was threatened by growth of administrative state and the lack of efficient mechanisms to protect that liberty and they were joined by health and safety campaigners, environmentalists to target the ill effect of massive industrializations¹¹. These two parties joined hands to form the Campaign for Freedom of Information (CFOI) in 1984. However, Margaret Thatcher was the Prime Minister and the party leader of the Conservative party and she opposed the ATI with all her might. However, in the 1997 General elections, the Labor party won and Tony Blair was elected as the president, the bill was not presented as there was a shift in the cabinet power, and he ensure that the bill was presented before the parliament¹². It was presented in the year 1999 and it went through several amendments as various clauses were objected by various lawmakers and it went through several amendments in the second and third reading before being passed in the year 2000¹³.

¹⁰ Implementing the Right to Information, a Case Study of the United Kingdom, World Bank, 2, 2012, https://www.right2info.org/resources/publications/publications/wb_implementing-rti_2012

¹¹ *Supra* note 10 at 3

¹² *Supra* note 10 at 4

¹³ University College London, What is Freedom of Information and Data Protection, <https://www.ucl.ac.uk/constitution->

4. *Suo Moto* Disclosure

The next parameter is the way in which the three countries make sure that their public authorities disclose all the information in a ready manner. For this, the definition of public authority is important as range of various bodies which have a duty or obligation to release information can only be ascertained from the definitions.

In India, section 2(1)(h) defines Public authority in such a way that only government owned, controlled directly or indirectly through substantial funding is only allowed to disclose information¹⁴. So, a private body is excluded from the ambit of the RTI act, 2005. Section 4 lays down the various duties of these public authorities Section 4 of the act lays down the duties of these public authority where subsection (1) a) states that all the records must be duly indexed and catalogued in a computerized format so as to ensure that information is accessible. Subsection (1) b) states the different categories of information and keeps the deadline for providing the information¹⁵.

In China, the definition of public body is not directly given as Article 4 and 6 states that the peoples government and its administrative organs must disclose information in a prompt manner and article 36 and 37 supplement the meaning of public authority by stating that organization managing public affairs or providing public services would come under the obligation to disclose information¹⁶. The

unit/research/freedom-information-and-data-protection/what-freedom-information-data-protection

¹⁴ Right to Information Act, 2005, No 22, Acts of Parliament, 2005

¹⁵ *Id*

¹⁶ Jamie P Horseley, China Adopts First Nationwide Open Government Information Regulations, Yale law school,



regulations also lays down a list of information that is to be disclosed as per Article 9, 10, 11 and 12 which relates to government structure, procedures, functions as well as information that affects the vital interests of the public and the matters that society broadly need to about or participate in and its procedure is through gazettes, websites, press conferences and other mean as per Article 15 and 16¹⁷.

In UK, the definition of public authority is in Schedule 1 consists of Government departments, the Houses of Parliament, the Northern Ireland Assembly, the National Assembly for Wales, the armed forces, local government bodies, National Health Service bodies, schools, colleges and universities, police authorities and Chief Officers of Police and it does not apply to elected officials of the Federal Government, including the President, Vice President, Senators, and Representatives or the Federal judiciary¹⁸. Also, as per the amendment in 2013 any company which is wholly owned by the Crown, by the wider public sector or by both the Crown and the wider public sector also includes public authority¹⁹. Section 19 states that each public authority must maintain as set of publication scheme so as to specify the different classes of information that needs to be published and it must be in electronic form with the approval of the Information commissioner²⁰.

5. Access of Information

https://law.yale.edu/system/files/documents/pdf/Intellectual_Life/CL-OGI-China_Adopts_JPH-English.pdf

¹⁷ Open Government Information regulations, 2000

¹⁸ Freedom of Information Act, 2000

¹⁹ *Id*

In India, every public authority must have a public officer at central or state level who will provide information to the people requesting for it. A request can be made only by a citizen to be made in writing to the officer along with the fee prescribed by the office as per section 6²¹. The public officer must process that information and provide it within 30 days and in case it is third party information, he must send a request to that party for permission to disclose as per section 7 and there are various categories of information which is specified in section 8 under which any request can be denied and information shall not be furnished. Any appeal against the officer for the denial of information or furnishing wrong information will be heard by public officer higher than the one to whom a request was made or to the information commission established by the central or the state government within 30 days of making that request or denying it as per section 19²².

In China, the citizens, legal persons or organizations can file request to the office of information created as per Article 4, in writing to the office as per Article 4 and the request for information must be for the information laid down in article 12 which include policies, expense and funds and other plans which is very limited in nature. So, juristic persons can file a request under the regulations which is absent in India. The office may provide an on-spot reply or can reply within 15 days of receiving the request as per Article 24. Any information apart from the one's specified in article 12 and state

²⁰ *Supra note 18*

²¹ Right to Information Act, 2005, No. 22, Acts of Parliament, 2005

²² Right to Information Act, 2005, No. 22, Acts of Parliament, 2005



secrets, commercial secrets and individual's privacy cannot be furnished as per Article 13²³. This is an important article as China always uses this article to hide its administrative defects and control the access of information and there is no free flow of information in any manner and the Government uses the excuse of state secret to refuse or turn down the application²⁴. An internal system of appeal is available to citizens as per Article 33, but it does not specify which body or time limit and remains ambiguous in its interpretation and is often not provided to the citizens²⁵.

In UK, Section 8 of the Freedom of Information Act, 2000 states that the any person can make a request in writing to the public body or authority along with the specified fee as per Section 9 and as per Section 1 the person must be communicated whether the public body has the information or not and that response must be sent within the twentieth working day of receiving that request as per Section 10²⁶. The presence of any person is an important phrase here as any person who is not a citizen or can be interpreted to mean a juristic person as well. This aspect is missing in Indian laws, but it is present in the Chinese laws. A code of practice must be issued by the Minister or the Cabinet office which is the desired procedure to be adopted so as to ensure the disposal of requests²⁷. This code of practice is unique as it lays down a standard for the public bodies to follow in case they are, for some reason,

unable to conform to the sections in the Act due to difficulty of interpretation. There are various exceptions under this law which go from section 23 to 44 and no information from these sections can be furnished. These exceptions are in tone with the long reigning policy of secrecy in the nation. However, very few information is withheld and the percentage of requests that are denied because of exemptions is less than 10% except in the cases where information is requested on investigations which is exempted as per section 30²⁸. There are three sets of appeals, the first one goes to the public body, second one goes to the Information Commissioner and the third one goes to the special information tribunal and a further appeal lies to the courts under the Act which is beneficial for the information seekers as there is a faster disposal of cases in the court and there are no pending cases unlike those in India²⁹. So, the system of appeals in UK and India are in a way similar, though the bodies are different.

6. Conclusion

The information system of Britain is remarkable with respect to the accessibility, exemptions and the appellate authority. The laws made by China is also satisfactory, but the country does not serve any information in any way whatsoever and the legislation over there is quite useless as the courts have also used various ways so as to uphold the non-disclosure of information and the public still

²³ Open Government Information Regulations, 2007

²⁴ Yongxi Chen, Privacy and Freedom of Information in China: Review through the Lens of Government Accountability, 1 EDPL, 265, 273, (2015).

<https://edpl.lexxion.eu/article/EDPL/2015/4/5>

²⁵ Article 19, Asia Disclosed: A Review of the Right to Information across Asia,

<https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf>

²⁶ Freedom of Information Act, 2000.

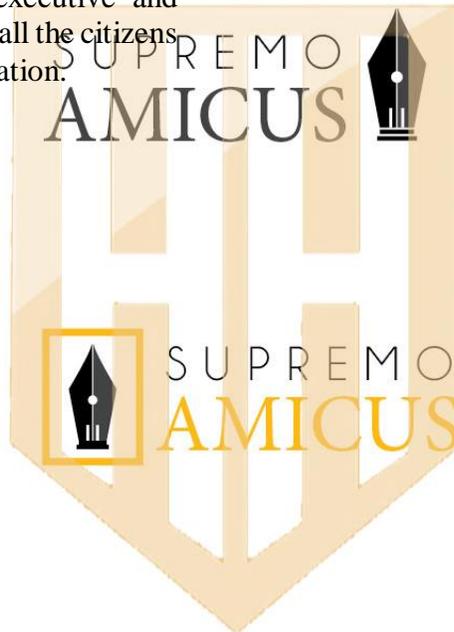
²⁷ Freedom of Information Act, 2000

²⁸ *Supra note 10* at 20

²⁹ Ben Worthy, Access of Information in UK and India, SSRN, pg 4, 2014, <https://dx.doi.org/10.2139/ssrn.2579336>



remains unsatisfied with the lack of information and the atmosphere of secrecy that prevails³⁰. However, the process of appeals and the lack of secrecy which is only restricted to security matters is one aspect that India can implement with sufficient amendments brought to the RTI Act. However, one aspect that the UK laws lack is with respect to the *Suo moto* disclosure that is needed to be done by the public authorities which is not followed in an adequate manner similar to that of China whereas India fares better here. The three legislations have a problem of implementation in key areas which will require stronger executive and bureaucratic will to ensure that all the citizens have the right to access information.



³⁰ *Supra note 24* at 266.