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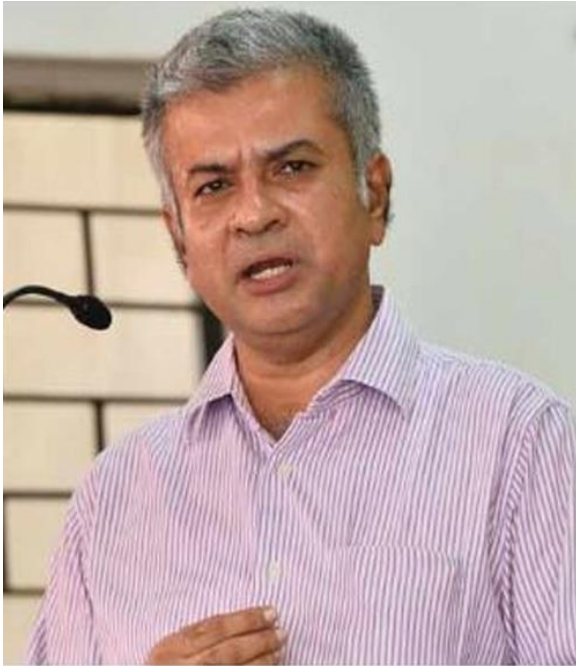
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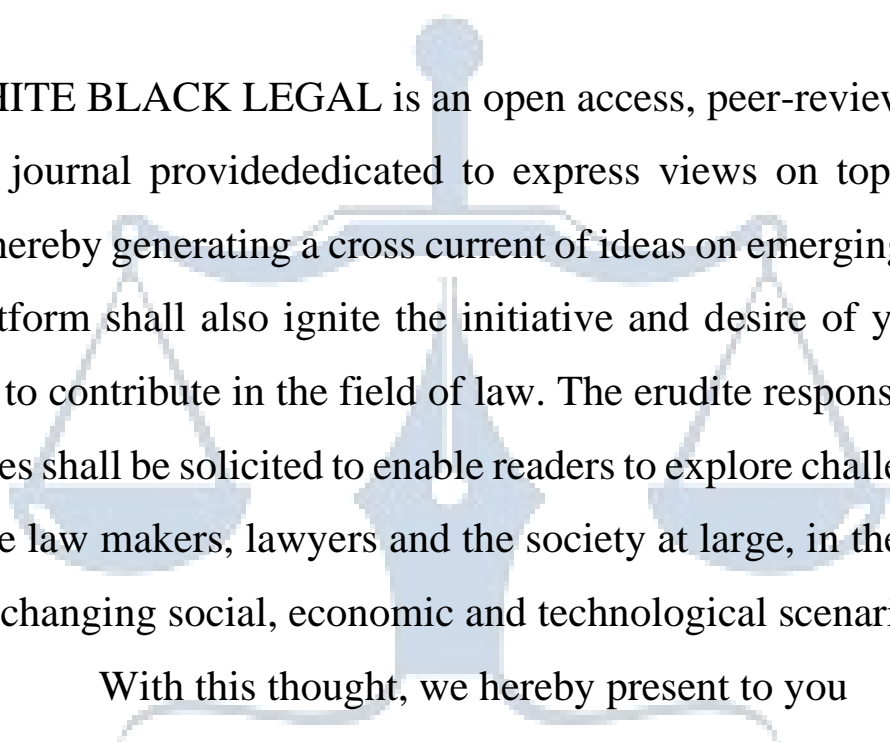


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

RIGHT TO INFORMATION A

COMPARATIVE STUDY AMONG INDIA, UK AND USA

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Abstract

The demand of the hour is for an open government. The freedom of information is important for an efficient market, government and for the growth of the economy. Right to know is closely related to freedom of speech and expression. Information is power as it empowers people by adding something new to their ideas. It is important for a healthy democracy to have a well-informed citizen. But it is the government which is keep its functions away from the umbrella of transparency. It is the government through various rules and regulations it keeps the working of its various organisation away from the public notice. But through various revolutionary movements, and various judicial judgement have pressurized the government to take up such legislation of right to information. Through the legislation of right to information, the actual meaning of a democratic nation could be fulfilled. Without such legislation of right to information the citizens of the country will not believe in the government activities. In various countries around the world there are nations, inserted the legislation of right to information in the legal system. In this paper there will be comparative study among USA, UK and India regarding how right to information as a basic right was recognised in both the countries how much there are laws for transparency and accountability in both these countries. The evolution of right to information in India is dealt with, various acts and legislations are discussed, and the role of judiciary is dealt with, regarding the emergence of right to information and the growth of transparency in the Indian administrative system. And, the Supreme Court also took a major step in increasing the accountability of the government. And lastly the emergence in the Right to Information act, 2005 in the Indian legal system is dealt. The paper also discussed about the transparency system in the United States, and also about the emergence of such legislation of right to information in the country. The UK legal system regarding right to information in its legal system is discussed. How there was no such law existed in the country and how slowly the right to information grew out of the Officials secrets act. Lastly, the paper concludes with some suggestions, as to the implementation of the right to information, and how the government can work in transparent way.

Keywords: *right to information, accountability, transparency, basic rights.*

INTRODUCTION

The right to obtain information held by government entities (RTI) stipulates that people have an essential human right to request information held by government entities. To "search and obtain information" is a basic right that is derived from freedom of expression and is acknowledged all around the world. A public entity must reply and supply the requested information in accordance with this right unless there is an overriding legal cause to do otherwise.

Government is controlled by the people in a democracy. Governments are appointed by and terminated by the people. We the people of India, acting in our collective best interests, chose and codified the Indian Constitution. Democratically elected representatives make up the two main organs of government, the legislative assemblies and the parliament, and they are chosen in "free and fair" elections. Those who represent the public make up the legislatures and the governments. However, the Constitution does not specifically mention it, there is no mechanism to support the public administrative system, which is the other branch of government.

Government secrecy that isn't required will result in haughty leadership and poor judgement. The notion of undue confidentiality has turned into a damaging factor in the erosion of citizen trust in government. However, today's populace desires an open and transparent administration. Worldwide, governance centred on information transparency is changing from a moral critique of confidentiality to a device for business management, an effective regulating framework promoting economic and technical advancement.

According to some restrictions and disclaimers, openness of information legislation is intended to grant the general community exposure to information as a lawful right. One of the major democratic achievement stories of the latter half of the 20th century has been the growth of access of information, or "right to information," that is more commonly known. Government transparency has a long past, with different edicts and rules requiring explanations to the populace in Ancient China and India. In Sweden, a real Independence of the Printing Press legislation first existed (shortly) in 1766.

RIGHT TO INFORMATION IN INDIA

The Factories Act, environmental laws, corporate laws, and other laws are only a few examples of laws in India that allow for accessing information. The Official Secrets Act of 1861, which is a legal

barrier, exists. In India, there has been an increasing call over the past ten years for the repeal of the Official Secrets Act and for laws on the Information Right that'd require the state to release information and make confidentiality an exception. Transparency and administration change were pledged in the election manifestos of each of the nation's primary political parties during this time. After consulting with several organisations, the Press Council of India and Consumer Education and Research Centre (CERC) prepared Right to Information Bills in 1996 and 1997. The CERC Bill was introduced as an individual participant's bill into Legislature, but it was not discussed. The Indian government established a working committee to investigate the matter and write a law on the right to information in 1997. All 10 members of this work team were men, and 8 of them were bureaucratic. As one might expect, the measure that this working committee generated was far inferior to the preceding civil society bills. Although the Working Group's 1997 report was completed, the proposed bill was never presented to the House of Representatives.

The Freedom of Information Bill, 2000 was finally presented to Parliament in July 2000. The administration made no attempts to promote the Bill or start a discussion about it during this period. A Parliamentary Standing Committee was tasked with reviewing the Bill after it was presented in the House of Representatives. The commission, which was situated in the nation's capital, solicited opinions and recommendations from a small group of people before publishing its findings in July 2001. Despite the many opinions and ideas that were voiced before the Commission, the Commission report only recommended minor alterations to the Bill. Indian civilized society has been campaigning for the Bill's changes. The legislation will not pass if it is passed as written. To complicate things worse, the law forbids courts from having jurisdiction over issues emerging under the Bill because there are no provisions for criminal penalties against government servants for improper information withholding, and it also does not establish a separate grievance redressal body for settling conflicts.¹

The creation of laws and the following reviews of those laws have been semi processes. This is true not just of the federal laws but also of the many state statutes that have been passed. Due to India's federal system of government, each region or state has the authority to pass laws on specific topics that are listed in the constitution. In along with the four additional states that have made this right active by giving executive directives to numerous government offices, there are six states in the Indian union that have laws pertaining to the Right to Information.²

¹ Development on Right to Information in India From Commonwealth Human Rights Initiative, available at <https://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20movement%20for%20right%20to%20information%20in%20India.pdf.pdf>, visited on 29 December, 2023

² Id.

Article 19(1)(a) and 21 would be unessential if there was no right to information. Article 39(a), (b), and(c) of the constitution make provisions for appropriate means of subsistence and equal share of communal wealth to prevent the accumulation of wealth and productivity of resources. Since information is now a valuable resource, the need for its spread cannot be overstated.

JUDICIAL ROLE

As the protector of the Constitution, the courts play a crucial role in India. One of the most crucial tenets of just democratic rule is the constitutional restraints on the scope of governmental power because they protect all people from unequal treatment, abuse of state power, and arbitrary behaviour in addition to preventing violations of the rights assured by the Constitution. Such a restriction is enforced by the fundamental provisions of the Indian Constitution. Regular elections, civil rights protections, impartial judicial scrutiny, secularism, and the democratic system of government all enable citizens to request protection from the government's acts and violations of their rights. These restrictions assist other governmental agencies in maintaining mutual and public accountability. In order to maintain the rule of law, a judicial independence is crucial, making it the most crucial component of successful management.

Over the years, the Supreme Court has repeatedly broadened the area of basic rights, vehemently rejecting state actors' attempts to violate them, and preserving the rights and honour of individuals in the real essence of good governance. The court has repeatedly given directions to law enforcers regarding a variety of issues of executive activity in general and of slashing police in specific. Therefore, it is clear that the Indian judicial system has taken an active part in ensuring that its people' different rights are realised. The United Nations General Assembly (UNGA) said that "Freedom of information is a basic human right and the benchmark of all the rights to which the UN is committed" in one of its earliest resolutions, 59 (1), passed in 1946.³

The apex Court of India has made significant contributions through its rulings in India's transition to accessible, transparent administration, which started in the early 1970s. The Supreme Court of India accorded availability to information the character of a "fundamental right" by construing article 19 (1)(a) of the Constitution to imply that openness of information is required to comprise. In

³ Anshu Jain, GOOD GOVERNANCE AND RIGHT TO INFORMATION: A PERSPECTIVE, journal of the Indian Law Institute Vol. 54, No. 4 (OCTOBER-DECEMBER 2012), pp. 506-519 (14 pages), available at <https://www.jstor.org/stable/43953611>, visited on 4 January, 2023

the case of *State of Uttar Pradesh v. Raj Narain*.⁴

The Supreme Court expedited the fight for freedom of information by making a number of additional rulings, such as *Bennett Coleman & Co. v. Union of India*⁵, *S.P. Gupta v. Union of India*⁶, and more specifically, *Centre for PIL v. Union of India*⁷. The passage of the Right to Information Act in India has also been praised as an illustration of a society with alert citizens fighting to promote transparency. As a result, the Right to Information Act was passed in 2005 and went into effect on October 12.

RIGHT TO INFORMATION ACT, 2005

The Right to Information Act's primary goal is to enable the citizens, encourage accountability and openness in the government's operation, stop corruption, and improve us in practise, democracy serves the needs of the people. It is obvious. claiming that a well-informed citizen is more capable of maintaining keeping a close eye on the tools of government and taking the governed are held more responsible by the government. The Law is a significant step towards educating the public about the government's operations.

The current legal system transforms the right to information into a citizen-wide privilege. Information encompasses all types of information in any form, including records, documents, emails, press releases, contracts, samples, electronic data, and so on. The law restricts third party information and forbids information in specific defined areas. Information that would compromise India's autonomy and integrity, the security, or the tactical, scientific, or economic interests of the state in its relations with foreign states is restricted under section 8 of the act. It is also prohibited to disclose information that would violate parliamentary or state legislative rights or that relates to commercial trust, proprietary information, or intellectual property. information pertaining to a person 's bodily safety, cabinet paper, information that falls within the Official Secrets Act of 1923's banned categories, including personal information. The second schedule of the act further restricts information about specific governmental organisations.

The regulatory body is made up of the state information commission and the central information

⁴ AIR 1975 SC 865

⁵ (1972) 2 SCC 788

⁶ AIR 1982 SC 149

⁷ (2000) 9 SCC 3

commission. The regional governments now have the authority to make rules, which must be presented to the state assembly or parliament, as applicable, for approval. Although judicial interference is prohibited, the constitutional court is exempt from this rule because judicial review is a fundamental component of the Indian constitution. In accordance with article 21 of the constitution, the act under section 8(1)(i) attempts to strike a balance between the right to information and the right to privacy.

Information from unreleased files and papers of administrative agencies may not be accessible if the Right to Information Act is considered in conjunction with the Official Secrets Act of 1923. However, the act's application faces difficulties. The right to information applies to courts as well. No matter whether a person's case is personal or impacts the entire community, they have a right to see courtrooms and judicial decisions.⁸

SCENARIO OF RIGHT OF INFORMATION IN UNITED STATES

American constitutional law does not include an explicit right to information in its oldest constitution. However, the apex Court of the United States has interpreted this right to be included in the First Amendment of the Constitution and has awarded full rights to information where there is a habit of liberalisation to the information in inquiry and where access helps the specific process required function. The first change to allow for a restricted access to executive information was made to the Administrative Procedure Act in 1946. The terminology of the act was ambiguous and offered numerous ways out.

1. No one had access to the information; only those who were directly and appropriately connected did.
2. Information was allowed to be withheld by organisations without reason.
3. No judicial review was conducted.

In order to address these shortcomings, the US Congress enacted the Freedom of Information Act in 1966. This law gives every corporation or entity, irrespective of country, a legally binding right of availability to government unreleased documents that the executives might be persuaded to maintain secret. It was determined in *National Labour Relations Board v. Robbins Tire and Rubber Co. US*⁹ that anyone who is infringing on this right may get a court order for an injunction.

There were nine well-defined exceptions, including (a) material associated with internal

⁸ I P Massey, Administrative law, Eastern Books Company, Edition 10th

⁹ 437 U.S 214, 1978

organization private use, (b) facts related to national security or foreign affairs, etc.

Following an investigation into the Act's operation, the US Congress revised the Act in 1974, providing for

- 1 Access to any part of information that is properly reachable but was not previously accessible.
- 2 stipulated a 10- to 30-day time limit for requesting information.
- 3 A simplified process for getting the information, including cost and appeal

In order to allow access to information in electronic format, the Act was revised in 1996.

According to Douglas J. in *New York Times v. US*,¹⁰ government secrecy undermines democracy and encourages clerical mistakes.

The US Supreme Court ruled in *United States v. Nixon*¹¹ in 1974 that inter-branch access to the president's Watergate recording was necessary for criminal prosecution.

Congress created the Sunshine Act in 1977 to allow the public to attend meetings of the federal government. Closed-door sessions are still permitted, though, when it comes to topics of military security, privacy violations, etc. The Act also mandated a one-week public notice period prior to the session. In regards to meetings of outside organisations advising federal agencies, the Federal Advisory Committee Act of 1972 made the same provision.

RIGHT TO INFORMATION IN ENGLAND

Prior to the implementation of the Freedom of Information Act in 2005, concealment rather than information was the focus of legislation in England. The Official Secrets Act was in effect in 1911, 1920, and 1939. The Act of 1911 established penalties for obtaining information or disseminating it against the law. Later, the Franks committee proposed that section 2 of the 1911 Act be repealed and replaced with the Official Information Act. It is a crime to divulge any governmental information unless having legal authorization, according to section 2, a catch-all section that has received much criticism. There are five circumstances in which people other than crown servants are subject to section 2's provisions, such as when they have access to material that was obtained or created in violation of the official secrets act and disclose it without authorization. The wording of section 2 is quite inclusive, covering all forms of governmental information without any bias.

The English government released a white paper on "open government" in 1993 that included a voluntary code of information sharing. There is only a mechanism for complaining to the

¹⁰ 403 U.S 713 (1971)

¹¹ 418 U.S 683 (1974)

parliamentary watchdog through the MP if the request is declined.¹²

The Local Government (Access to Information) Act of 1985 likewise established access to material for local authorities, but it also lists at least 15 types of information that is excluded from disclosure and reserves many decisions up to the body. The British Official Secrets Act of 1989 in the UK has now abolished Section 2 of the Official Secrets Act. A significant move towards government transparency is the Freedom of Information Act of 2005.

CONCLUSION

There is a global movement toward greater transparency in the political process. There is now a requirement for more clarity in how the government operates due to a number of aspects, including the shifting social and economic environment, the citizenry's rising consciousness of their rights, the necessity of having a fully answerable and attentive administration, and the increasing general populace opinion that observes attempts at confidentiality as increasing the likelihood of official misuse by government bureaucrats. Although total transparency in government operations is neither desirable nor achievable, a holistic view to transparency must be developed.

Power comes from knowledge. Indeed, democracy's lifeblood is knowledge. Everywhere it filters down, it is energising. Innumerable examples from around the world attest to the authority of this right as an instrument for guaranteeing transparency and accountability in management as well as a decrease in corruption, not only has the right to information's status as a basic right been recognised all across worldwide and regional human right law. However, this right must be protected with the best possible checks and balances because it, like other fundamental rights, cannot be unhindered and unrestrained.¹³

It should be considered as a fundamental compromise to the reality of administration that successful administration necessitates anything less than complete transparency. In fact, we shouldn't expect total transparency when doing so runs counter to achieving significant government goals and when the government itself isn't acting in a way that violates constitutional requirements, like upholding a fundamental notion of due process that puts someone's life and freedoms in danger.

¹² Id.

¹³ SHAILESH GANDHI, Protecting India's Sunshine Law, *Economic and Political Weekly* Vol. 47, No. 44 (NOVEMBER 3, 2012), pp. 12-15 (4 pages), available at <https://www.jstor.org/stable/41720322>, visited on 5 January, 2023

Transparency is now accepted as the standard. By letting for further precise confirmation of countries' adherence to global contracts and guidelines, transparency promotes better, more quiet world affairs. National markets also benefit from increased opportunities for foreign investment opportunities thanks to reliable government supervision and more effective market control. The level of openness in a nation can be used to gauge its development. It is vital for any modern democracy because it is undemocratic for a state to lack to create a mechanism that can reveal facts important for a government to be held responsible by a knowledgeable people. But sometimes it's necessary to strike a balance between openness and secrecy in order to serve the interests of the largest number of individuals. The promotion of responsibility in administering requires transparency, yet secrecy may be allowed in situations when it serves a strategic purpose. Greatest openness with fewest exclusions is the core philosophy.

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