



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 4 AND ISSUE 3 OF 2024

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 3 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-3-of-2024/>)

Publisher

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TRANSPARENCY ACROSS BORDERS: A COMPARATIVE STUDY OF RTI LAWS IN INDIA AND PAKISTAN

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BEST CITATION – AGAM DIXIT, TRANSPARENCY ACROSS BORDERS: A COMPARATIVE STUDY OF RTI LAWS IN INDIA AND PAKISTAN, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 4 (3) OF 2024, PG. 14-19, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

This paper provides a detailed comparative analysis of the Right to Information (RTI) laws in India and Pakistan, two nations with a common heritage but varying approaches to democratic transparency. It assesses the historical evolution, legal frameworks, and the implementation challenges of RTI laws in both countries, exploring how they facilitate or impede public access to government-held information. The analysis utilizes international best practices, particularly those outlined by ARTICLE19, to evaluate the effectiveness of these laws in promoting governmental transparency and accountability. Key challenges such as bureaucratic resistance, political instability, and legal loopholes are discussed, highlighting their impact on the enforcement of RTI provisions. Recommendations are provided to enhance the robustness and effectiveness of RTI laws, aiming for an adherence to global standards of open government.

Keywords: Right to Information, transparency, governmental accountability, India, Pakistan, comparative law, bureaucratic resistance

INTRODUCTION

The right to information (or freedom of information, as some jurisdiction may refer it) is hailed as a cornerstone of democratic governance, that enables the citizens to seek and obtain information from public authorities. ARTICLE 19 defines a freedom of information law as “An Act to promote maximum disclosure of information in the public interest, to guarantee the right of everyone to access information, and to provide for effective mechanisms to secure that right”. Therefore, such a law helps in enabling transparency, accountability, and public participation in the governmental affairs. Such a law has been recognised globally for its role in strengthening the democratic institutions, talking corruption and promoting informed citizenry. The development as well as the implementation of these laws however, vary significantly across different countries, on the basis of their unique political, social and legal contexts. These laws have the potential to be

revolutionary in nature and can built the capacity to bring the revolution in social, political and economic sphere.

Sweden was the pioneer in enacting a law related freedom of information. The first ever law on the lines of RTI was enacted in 1766, as an attempt to access the state information held by the king. The law, which later became the part of Sweden's constitution, stipulates that “to that end free access should be allowed to all archives, for the purpose of copying such documents in loco or obtaining certified copies of them,” acknowledging that press freedom depends on information access. The United States enacted the law (Freedom of Information Act) in the year 1966³⁵. Following the Watergate scandal, the law was further enhanced to allow for greater compliance. In the last 50 years, around ninety plus countries in the world have

³⁵ Helen Darbishire, *History of Right of Access to Information*, ACCESS INFO EUROPE, <https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/> (last visited May 11, 2024).

some form of act acknowledging the right to information for its citizens³⁶.

Despite their common colonial past and subsequent divergent political strategies, India and Pakistan recognize the critical importance of the right to information. This comparative study aims to understand the RTI laws in India and Pakistan, examining their legal frameworks as well as their implementation mechanisms. Ultimately, the paper aims to provide a comparative analysis of the RTI laws in India and Pakistan, highlighting the strengths and weaknesses of each system.

HISTORICAL CONTEXT

The historical context of the Right to Information (RTI) laws in India as well as Pakistan reflect the socio-political dynamics, public advocacy, and the legal frameworks that would shape their development.

India

Early Efforts

The movement for such a law started as a grassroots effort in the early 1990's. The movement was spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS), a rural worker's organization based out of Rajasthan. The demand for transparency in the village level works led to the public realization of the importance of the access to governmental information. The movement brought the issue to the national stage. The NCPRI (National Campaign for People's Right to Information), formed in 1996, played a crucial role in the lobbying for a national RTI law. The advocacy efforts of these groups, combined with the support of progressive judiciary and popular leaders resulted in the enactment of the state level RTI laws. Tamil Nadu was the first state to enact such a law in the year 1997, followed by Goa, Rajasthan, Karnataka and Delhi³⁷.

Enactment of the RTI Act, 2005

With the success of the state level laws, there was an increasing need for the establishment of a national law. The Freedom of Information Act, 2002 was therefore, enacted. The act however, was widely criticized due to the lack of enforcement mechanisms. Recognizing these deficiencies, the government drafted the Right to Information bill. The law was passed on June 15, 2005 and came into force on October 12, 2005. The law marked a significant milestone in the country's democratic journey.³⁸

The Act applied to all the levels of government, including the central, state and the local authorities. The Act also established the Central Information Commission (CIC) and the State Information Commission (SIC's) to oversee the implementation of the law.

Pakistan

Initial Attempts and Legal Framework

The country's journey of RTI began with the promulgation of the Freedom of Information Ordinance 2002 under the military regime of General Pervez Musharraf. It made Pakistan the first South Asian country to have a right to information law. However, this ordinance had restrictive provisions which resulted in limited impact that the ordinance had in the country. The ordinance was also criticized for having numerous exemptions and providing broad discretionary powers to the government to withhold the information.³⁹

Civil society organizations, however, continued to push for a more comprehensive RTI legislation. The efforts were further bolstered by international pressure. The real breakthrough, however, came in the 2010's, with significant legislative efforts at the provincial levels. The Kyber Pakhtunkhwa (KP) and Punjab introduced their acts in 2013. These laws were praised for

³⁶ *Id.*

³⁷ Ayesha A. Malik, *Judicial Review and the Rule of Law in Pakistan*, 18 ASIAN JOURNAL OF COMPARATIVE LAW 291 (2023).

³⁸ Fahd Humayun, *Gendering Hawkishness in the War Room: Evidence from Pakistani Politicians*, JOURNAL OF PEACE RESEARCH 00223433231211762 (2024).

³⁹ Shehnaz Bibi, Amna Mahmood & Manzoor Naazer, *Implementation Status of Proactive Disclosure of Information: A Comparative Study of Khyber Pakhtunkhwa and Punjab, Pakistan*, 3 JOURNAL OF HUMANITIES, SOCIAL AND MANAGEMENT SCIENCES (JHSMS) (2022).

their comprehensiveness and progressive features as compared to the earlier ordinance. Also, the 18th Amendment was introduced in the Pakistani constitution that included Article 19A which included the right to information as a constitutional right in Pakistan.⁴⁰

Enactment of the RTI Act, 2017

The Federal government eventually responded with the stronger law. The Right of Access to Information Act was passed by the National Assembly on October 2, 2017, replacing the outdated Freedom of Information Ordinance, 2002, providing a more effective framework for accessing public information. Some states and provinces however, have their own respective laws with respect to the right to information.

The Act mandates the public authorities to disclose the information requests within 10 to 20 working days. The act also established the Pakistan Information Commission (PIC) to oversee the implementation, handle the appeals and ensure compliance.

LEGAL FRAMEWORK

I shall be comparing and analyzing the legal framework in both the jurisdictions on the basis of a set principles published by ARTICLE19, an international think tank based out of London. The principles, referred to as the *The Public's Right to Know: Principles on Freedom of Information Legislation (ARTICLE19, 2019)* aims to set out best practice standards on the freedom of information legislation around the world. The principles are based on the international and regional law and standards. Therefore, they serve as a useful set of principles with help in gauging the standard of law in a respective jurisdiction. The analysis may be as follows -

Maximum Disclosure Principle

All information maintained by public bodies should be made available to the public, according to the principle of maximum disclosure, and this assumption can only be

contested in exceptional circumstances. In order to clearly state that access to official information is a fundamental right, this principle should ideally be incorporated into the Constitution. It embodies the essential basis for the idea of the right to information in international law. Enforcing comprehensive transparency should be the foremost goal of legislation. Each and every member of the general public is entitled to obtain information, and public entities are compelled to supply it. Regardless of citizenship or place of residence, the right should be accessible to all persons as well as official and informal groups. The idea's broad definition of "information" and "public authorities" is also crucial. All materials stored by the public body would be considered "information," regardless of their format, origin, or date of production. All branches and tiers of the government, quasi-governmental groups, judicial bodies, and private organizations with the capacity to make decisions are all considered "public bodies."

The Indian RTI Act defines information under Section 2(f) to broadly include any form of material, such as records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body that a public authority can access under any other law currently in force.

The Indian RTI Act also includes a broad definition of public authorities (Section 2(h)), which includes any authority, body, or institution of self-government established or constituted: (a) by or under the Constitution; (b) by any other law enacted by Parliament; (c) by any other law enacted by a State Legislature; or (d) by a notification issued or an order made by the appropriate government. It also covers any other—(i) A body that is owned, controlled, or considerably financed; (ii) A non-governmental organization that is significantly financed, either directly or indirectly, by funds granted by the appropriate government.

⁴⁰ Jamil Afzal & Chen Yongmei, *Federal and Provincial Legislation Regarding 'Right to Information' for Good Governance in Pakistan*, 1 DISCOV GLOB SOC 12 (2023).

Section 4 of the Indian RTI obligate the public authorities to maintain the records duly catalogues and indexed and also tells them to proactively publish certain categories of the information in order to facilitate easy access.

The Pakistan RTI Act defines “information” under section 2(v) as an information based on record. The “public bodies” are defined in the place of public authorities involving the federal and provincial laws covering public bodies, including the ministries, departments, as well as the organizations funded by the government. Section 5 of the act requires the public bodies to proactively publish certain categories of information.

India, has therefore, adopted a broader definition of “information” in its RTI laws compared to the jurisdiction of Pakistan which only incorporated the “information based on record” as information in its law.

Both laws stipulate that every citizen has the right to access any information. However, the scope of Pakistan's section 3 is more limited in nature, as it specifically refers to “Access to Information” rather than the broader “Right to Information.” The term “right” has not been employed in Pakistani legislation, thus restricting the comprehension of the concept of citizenship rights.

The use of the word “citizen” in both the laws signify the unavailability of these laws to the foreign nationals for asking for any form of information under the acts. Only the citizens of these countries would be able to access information under these laws.

Obligation to Publish Principle

According to the principle of obligation to publish, public entities have a duty to make important information publicly available. In addition to responding to information requests, public organizations have an obligation to publish and distribute material of substantial public interest, with only justifiable restrictions based on available resources and capacity. The relevant authority would decide which

information to publish. The concept further states that any information, whether published or made available upon request, must be made publicly available in readable formats with no limitations on its future use. The principle also lists a number of important categories that should be updated and disseminated. In India, the requirements for required disclosure were integrated into the Right to Information Act under Section 4(1)(b). The act mandates that public entities publish approximately 17 different kinds of information within 120 days of the act's implementation. This contains information about their organization, roles, responsibilities, and financial accounts of the authority, among other things.

Section 4(2) involves the component of proactive disclosure by the authorities mandating every public authority “to provide as much information Suo moto to the public at regular intervals through various means of communications (including internet)”. Section 4(4) of the act requires the information to be disseminated in a manner that would be easily accessible to the public, ensuring that it reaches the widest possible audience. This also involves making the information available in the local languages as well as through various mediums, including digital formats.

Section 5 of the Pakistan RTI mandates the public bodies to publish the information within 6 months of the enactment of the Act, also involving the details about their functions, decision making processes, finances and contracts. The sub-sections (a), (b), (c) under Section 5 mandates the operational information, financial information, public interaction duties respectively to the authorities.

Both the jurisdictions have frameworks for proactive disclosure of several key categories of information. India's act specifically requires the information to be disseminated in a manner that should be easily accessible to the public, involving the digital formats as well as in local languages. Pakistan's federal law however, lays

the emphasis on the provinces to form laws with respect to accessibility.

Promotion of Open Government

In accordance with the principle of advancing open government, it is imperative to take strong action against officials who impede access to information. Additionally, efforts should be made to enhance the management of records, provide training to public servants on promoting transparency, and increase public awareness regarding their right to access information.

Section 26 of the Indian RTI mandates the Central as well as the State Governments to conduct educational programs in order to advance the understanding of the public regarding the usage of the facilities provided under this act. It also requires the government to promote the awareness of RTI Act among the public authorities. Section 27 and 28 of the act empower the appropriate government (centre or state) to make rules to carry out the measures for public education and training of officials. Section 20(1) provides for the penalty of rupees 250 till the application is received or the information is furnished. However, the total amount shall not exceed Rs. 25,000.

Section 8 of the Pakistan's RTI mandates the government to take steps to promote an understanding of the right to information and to educate the public and official about their rights and duties. Section 9 provides for the public bodies to adopt and implement measures to improve openness and accountability, including the promotion of open government policies.

Both the jurisdictions have incorporated provisions for public awareness and education into their RTI frameworks. India's RTI Act however, specially mandated educational programs to enhance the public understanding, with a special focus on the marginalised groups. Pakistan's RTI also has no major deterrence for the officials if they obstruct the access to information (fine of mere Pakistani Rs

20000). India, however has a stricter penalty. India's framework, is comparatively, more established with Pakistan progressively enhancing its efforts to promote open government.

Limited scope of exceptions

The principle emphasizes on the understanding that the right to information must be limited under very limited circumstances. The circumstances must therefore, be narrowly defined. The principle ensures that the exceptions to disclosure are not overly broad and are subject to strict "harm" and "public interest" tests. Exceptions should be clearly articulated in the law and the disclosure must be on a case by case basis.

India's RTI laws under section 8 list various categories of information from disclosure. These categories would include information that would affect the sovereignty and integrity of India, security, strategic interests, relation with foreign states, and public safety. Other forms of exceptions are also present. Section 9 provides for various grounds for the rejection of access to information, upon the satisfaction of the public information officer.

Pakistan's RTI act under section 7 outlines the type of information that are exempt from the public disclosure, including the information that could harm national security, international relations, or other such interests.

Both India and Pakistan have a detailed list of exemptions in their RTI laws, covering quite similar issues such as national security, international relations, privacy, and commercial interests.

Costs Principle

The principle stipulates that the individuals must not be deterred from obtaining the public information due to excessive costs.

The Indian RTI Act under Section 4(4) mentions the information under the act to be available for free or at such costs of the medium of the print cost price as may be prescribed. Section 7(6)

mandates no fees to be charged from the persons who are below poverty line as determined by the appropriate government.

Section 15 of the Pakistani Act mentions “lowest reasonable cost”, primarily to cover the cost of reproducing and delivering the information. Similar to India, the act also provides for the fee waivers for individuals who cannot afford to pay.

Protection of Whistleblowers

The principle aims to protect the whistleblowers (the individual disclosing information on the wrongdoings) must be protected from retaliation. This provision ensures that the individuals feel safe to report unethical or illegal activities without the fear of repercussions.

The Indian RTI Act does not provide any address the whistleblower protections in its main provisions. There exists a separate Whistleblowers Protection Act, 2014 for the same.

The Pakistan’s act lays down the provisions for the protection of whistleblowers. Section 24 mandates the protection for individuals who disclose information on wrongdoing, ensuring the protection for the whistleblowers.

KEY CHALLENGES

Both the jurisdictions face various challenges in the proper implementation of such laws in their respective jurisdiction. In India, there is a significant backlog of cases at the Central as well as the State level, thereby hampering the timely resolution of the appeals and complaints⁴¹. There is also constant pressure of the act being diluted due to the introduction of various other amending acts⁴². Bureaucratic resistant also remains a persistent issue. In Pakistan, the implementation of the RTI laws has been hindered by the political instability and frequent

changes in the government, which has been disrupting the enforcement of such measures. Resistance from the provincial governments further complicates the implementation, leading to the inconsistent application across different states⁴³.

CONCLUSION

Knowledge of law is often understood to underlie legal compliance. The RTI law creates formal order, but its implementation helps to repetitively enmesh legal meanings, thereby generating substantive order. Further, RTI laws in India and Pakistan are new, and at the same time, they have been in existence for more than a decade. In our comparison between the RTI laws of the two countries, we have found many similarities in the provisions such as institutional structure, governance issues, functional aspects of information commission, and convergence with Open Government and Right to Information principles. It is evident that after independence, India has maintained a culture of greater openness and public disclosure through various transparency initiatives, whereas Pakistan has a legacy of protection, secrecy, and restrictions regarding public information. However, today India and Pakistan are striving to support transparency and openness for good governance in the governance and administration, as well as the public can have trust in their governments.

⁴¹ Report Card: Over 3.2 lakh pleas pending before 27 information commissions across country, THE TIMES OF INDIA, Oct. 11, 2023, <https://timesofindia.indiatimes.com/india/report-card-over-3-2-lakh-pleas-pending-before-27-information-commissions-across-country/articleshow/104351508.cms> (last visited May 11, 2024).

⁴² RTI Amendment Bill Passed; Dilutes Transparency Law, Says Opposition, NDTV.COM, <https://www.ndtv.com/india-news/rti-amendment-bill-passed-by-lok-sabha-amid-opposition-protests-2073479> (last visited May 11, 2024).

⁴³ Syed Raza Ali, *LAW: HOW CAN THE RTI LAWS BE FIXED?*, DAWN.COM (06:03:23+05:00), <https://www.dawn.com/news/1776292> (last visited May 11, 2024).