

CHAPTER – II

RIGHT TO INFORMATION: GLOBAL SCENARIO

2.1 INTRODCUTION

Right to information is universally recognized as a fundamental human right and pre-requisite for transparent and accountable governance. Many countries have enacted legislations to give their citizens access to information. The reason for the freedom of information is evolving from internal and external pressure upon governments. In most countries civil society, media, human rights group and pressure groups including many areas have played immense role in the promotion and adoption of such laws. The driving force behind these legislations was the first freedom of information related legislation in the world, the Swedish Parliamentarian Anders Chydenius.¹ After that legislation at global level many international and regional organizations enacted related laws. Very early freedom of information was recognized as a fundamental human right with in the U.N. In 1946, the United Nations General Assembly passed a resolution 59(1) which stated that:

“Freedom of Information is a fundamental human right and the touch stone of all freedoms to which the UN is consecrated.”²

In ensuring international human rights instruments, freedom of information was set out as a part of the fundamental right of freedom of expression, which includes the right of freedom of expression which includes the right to seek, receive and impart information. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) which guarantees freedom of opinion and expression:

“Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinion without interference and to seek, receive and import information and ideas through any media regardless of frontiers.”³

¹ Virrankoski, Pentti, *The Biography of Finland : Anders Chydenius*, 1998 Available at <http://haku.kansallisbiografia.fi/FMPro?-db=umkbnet.fp5&-format=%2fkb%2fum%2f2record%5fdetail.htm&-lay=www&-sortfield=lajittelukentt%e4&-op=eq&cSukunimihaku=Chydenius&-op=eq&etunimi=Anders&-max=40&-recid=108&-find=> visited on December 22,2012.

² United Nation Resolution, No. 59, 1(1946).

The UN proclaimed UDHR which was followed by the adoption of the International Convention on Civil and Political Rights (ICCPR) 1966. The convention explicitly recognizes right to information as a fundamental human right under Article-19 states that:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and import information and ideas of all kinds regardless of frontiers, either orally in writing in print, in the form of art or through any other media of his choice.”⁴

Along with these international instruments on human rights, ‘European Court of Human Rights’⁵held a convention on human rights in 1950 provides freedom to hold, receive and import ideas and opinions. American Convention of Human Rights 1969⁶also supports right to know indirectly.

2.2 REGIONAL STANDARDS

All three main regional human rights systems at the Organization of American States, the Council of Europe and the African Union have formally recognized the right to information.

2.2.1 The Organization of American States*

The Organization of American States (OAS) adopted a legally binding international treaty in 1969 called the American Convention on Human Rights. Twenty four countries of OAS, out of total membership of thirty four have ratified the American Convention on Human Rights, 1969.⁷ In 1997, the special repartee has recognized right to information as a fundamental right. Inter-American Declaration of

³ Universal Declaration of Human Rights, Article-19,(1948).

⁴ Christopher D.O Sullivan, *The United Nations: A Concise History*, (Florida: Krieger Publishing Company, 2005).

⁵ European Convention on Human Rights, Article-10,(1950).

⁶ <http://www.hrcr.org/docs/American-convention/Oashr4.html> visited on August 28, 2012.

*The Organization of American States (OAS) is a regional international organization, headquartered in Washington, D.C., United States. Its members are the thirty-five independent states of the American Continent. The OAS is composed of a General Secretariat, the Permanent Council, the Inter-American Council for Integral Development, and a number of committees. For more information on the OAS visit: <http://www.oas.org>.

⁷ Ibid

principles on freedom of expression adopted in 2000. In June 2003,⁸ the OAS General Assembly adopted a resolution on “Access to Public Information: Strengthening Democracy.” In 2006, the Inter-American Court of Human Rights made history being the first international tribunal to recognize the human right to access information. In the case of *Claude Reyes et al v.*, ordered⁹ to establish an effective legal mechanism that guarantees the right of all persons to request and receive information, held by government bodies.

2.2.2 Council of Europe*

The Council of Europe (COE) is an inter-governmental organization devoted to promote human rights. The COE formally recognized the people’s right to access information in 1950, when the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) 1950,¹⁰ under Article-10¹¹ provides freedom of expression and information as a fundamental human right. Article-10 differs slightly from guarantees found in Article-19 of the UDHR and ICCPR, and Article-10 of the ECHR, in that it protects the right to receive and import but not the right to ‘seek’ information.

2.2.3 African Union*

Development on the right to information at the African Union has been a more modest. However, the African commission on human and people’s right adopted a declaration of principles on freedom of expression in Africa, at 32-sessions in October

⁸ <http://www.humanrightsinitiative.org/programs/ai/rti/international/intlstandards.html> visited on August 21, 2012.

⁹ [www.justicoinitiative.org;http://www.elaw.org/node/2546](http://www.elaw.org/node/2546) visited on September 2, 2012.

*The Council of Europe was founded on 5 May 1949 by the Treaty of London. The Council of Europe is an international organization promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It has 47 member states and is an entirely separate body from the European Union (EU), which has only 27 member states. Unlike the EU, the Council of Europe cannot make binding laws. For more details on the Council of Europe, visit: <http://www.coe.int/aboutCoe/index.asp>

¹⁰ www.article19.org/data/files/pdfs/publications/south-asia-foi-survey.pdf visited on December 18, 2011.

*The African Union (AU) consists of 53 states. Established on 9 July 2002, the African Union (AU) was formed as a successor to the Organization of African Unity (OAU). The African Union is made up of both political and administrative bodies. The highest decision making organ is the Assembly of the African Union, made up of all the heads of state or government of member states of the AU. The AU also has a representative body, the Pan African Parliament. For more details, visit: <http://www.africa-union.org>

¹¹ Ibid

2002.¹² The declaration is an authoritative elaboration of the guarantee of freedom of expression found of Article-9 of the African Charter on 'Human and Peoples Rights'. In clearly endorse the right to access information held by Public bodies, stating:

“Public bodies hold information not for themselves but as custodians of the public goods and everyone has a right to access this information subject only to clearly defined rules established by law.”¹³

2.2.4 The Commonwealth*

The Commonwealth countries take important steps to recognize human rights. In 1980, the law ministers of the Commonwealth meet at Barbados and stated that:

“Public participation in the democratic and governmental process would be most meaningful when citizens had adequate access to official information.”¹⁴ Along with that the commonwealth has taken a number of steps to elaborate that right. In 1999, the commonwealth secretaries met together with a common wealth expert group to discuss the right to information. The expert group setting out a number of principles and guidelines on freedom of information which were endorsed by the commonwealth law ministers in May, 1999.¹⁵ It includes freedom of information should guaranteed a legal and enforceable right.

¹² Shrinkhal Rashwet and Jaipriya Swaphil, *The Emerging Dimensions of Rights to Information as Human Right in India*, (Lucknow: Bharat Book Centre, 2010), 10.

¹³ <http://www.achpr.org/english/declarations/declarations-freedom-exp-en.html> Visited on December 22, 2011.

*The Commonwealth of Nations is a voluntary association of 54 independent states, of which India is a member. The member states cooperate within a framework of common values and goals which include the promotion of democracy, human rights, good governance, the rule of law, individual liberty, egalitarianism, free trade, multilateralism, and world peace. The Commonwealth is not a political union, but an intergovernmental organisation through which countries with diverse social, political and economic backgrounds are regarded as equal in status.

¹⁴ <http://www.article19.org/pdfs/publications/foisurvey.pdf> visited on December 30, 2011.

¹⁵ <http://www.fas.org/sgp/foia/comparative.pdf> visited on January 12, 2012.

* UNESCO was created in 1945 to respond to the stiff belief of nations to maintain peace on the basis of humanity's moral and intellectual solidarity. UNESCO has 195 members and 8 associate members. It is governed by General Conference and Executive Board. For more details on UNESCO visit <https://en.unesco.org/about-us/introducing-unesco>

**The Rio Declaration on Environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations Conference on Environment and Development" (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide future sustainable development around the world. For further details, visit: [http:// www.unep.Org /Documents, Multilingual / Default.asp? documented](http://www.unep.Org /Documents, Multilingual / Default.asp? documented).

2.2.5 UNESCO* & RIO Declaration**

The UNESCO declaration of 1978,¹⁶ recognizes that freedom of opinion, expression and information is an integral part of human right and fundamental freedom. It committed to serve all the barriers on the free flow information.

Along with all this, the adoption of 1992 RIO declaration on Environment and Development was a significant milestone in this process. It put enormous pressure on international institutions to adopt policies to encourage access to information. Since the adoption of the RIO declaration, the World Bank and all four regional development banks; the inter American Development Bank, the African Development Bank Group, Asian Development Bank and the European Bank for Reconstruction and Development have adopted and implemented disclosure policies.¹⁷

In 1998, as a follow up to the RIO declaration, member states of the UNECE and the European Union signed the legally binding convention on access to information, public participation in decision making and access to justice in environmental matter (the Aarhus Convention).¹⁸ The Aarhus convention was the most impressive elaboration of Principle-10 of RIO declaration, which emphasis on citizens' participation in environmental issues and for access to information.

2.3 RIGHT TO INFORMATION IN PROMINENT COUNTRIES

Right to information has widely accepted as a touchstone for all freedoms. It has been in existence from more than 200 years. In present era there is a veritable wave of right to information legislation which is sweeping the globe. It has existed in various forms in many countries of the world. A large number of other countries have made a commitment to adapt right to information legislation. As of July 2012,[#] 93 countries had nationwide laws establishing the right to information, procedures of information and to request and receive government held information.¹⁹In the last

¹⁶ Shrinkhal Rashwet and Jaipriya Swaphil, *The Emerging Dimensions of Rights to Information as Human Right in India*, (Lucknow: Bharat Book Centre, 2010), 10.

¹⁷ <http://www.fas.org/sgp/foia/comparative.pdf> p.22 visited on Feb.24, 2012.

¹⁸ <http://www.unece.org/env/pp/documents/cep43e.pdf> visited on Feb.18, 2012.

[#] According to 'Open Society Justice Initiative' as of July 2012, 93 countries have access to information provisions in their national/federal laws. In these countries four have actionable Access to information decrees/regulations (Argentina 2003, China 2007, Niger 2011, Tunisia 2011) excluding these 93 countries; three countries (Costa Rica 2002, Kenya 2010, Philippines 1987) have actionable constitutional provisions.

¹⁹ <http://right2info.org/access-to-information-laws> visited on Sep.4, 2012.

decade governments around the world have become more open and transparent and adopted access to information legislations.

Freedom of information law existed since 1766 when Sweden passed its freedom of the press Act. In 1766 Rikshag (Swedish Parliament) formally approved 'Freedom of Press Act' and in the same year it comes in effect.²⁰The current version of the Act was adopted in 1949 and amended or latest version takes place in 1976.²¹After that in 1951, Finland approved 'Act on the Openness of Government Activities' which come in effect in 1951. In 2009, Finland revised this Act.²²Finland has a long tradition of access to government information. The world's first freedom of information law (Swedish Law, 1766) was introduced by a Finnish Member of Parliament named Anders Chydenius. As a Swedish governed territory, the Act applied to Finland. In 1919 Finland become an independent republic and its new constitution was based on Swedish one and included freedom of information.²³The United States FOI Act was passed in 1966 and come in effect in 1967. The U.S. law was amended many times and latest revision of U.S. FOI ACT took place in 2007. Along with that many countries adopted or passed freedom of information laws as continent wise,* in Africa, nine countries have freedom of information Act while in American continent including Caribbean; twenty countries have freedom of information Act/law. In Asia including Middle East, nineteen countries have FOI Act and in Europe, forty two countries have provided access to information or adopted through law. In Oceania three countries have access to information laws.²⁴After the realization that freedom of information is an indispensable instrument for human development and survival many counters as above mentioned, all over the world legitimate the right of freedom of information.

²⁰ <http://right2info.org/resources/publications/fringe%20special%20-%20%20overview> visited on Sep.1, 2012.

²¹ Niraj Kumar, *Treatise on Right to information Act 2005*, 2nd edition, (Jaipur: Bharat Law House 2009).

²² <http://www.right2info.org/resources/publication/fringe%20special%20-20overview> (visited on 1Sep.2012).

²³ Niraj Kumar, *Treatise on Right to information Act 2005*, (Jaipur: Bharat laws House, 2009).

* List of these countries with year of formal approval, year of affect and year of latest revision is available with the name of FOIA is available in Fringe special 'Overview of all FOI laws' at <http://www.right2info.org/resources/publication/fringe%20special%20-20overview>

²⁴ <http://www.right2info.org/resources/publications/fringe%20special%20%20%20overview> & <http://www.justiceinitiative.org> visited on June 9, 2012.

2.3.1 United States Freedom of Information Act

USA enacted the Freedom of Information Act in 1966. United States was one of the first countries to enact the right to information after Sweden and Finland* US law has been amended a number of times since it was adopted. Some amendments regarding exemptions including in freedom of information Act taken place in 1976. In 1996 Electronic Freedom of Information Act amendment bill provides records in electronic form.²⁵ Recent amendment in FOI Act took place in 2007 when amendments to the law were adopted in the form of 'Open Government Act' of 2007.²⁶ In America there are three Acts which upheld the freedom of press and information one is FOI Act, second is Privacy Act 1974, protected individual privacy against the misuse of federal records while granting access to records concerning them and third is Sunshine Act 1976, which opens government agencies meeting to the public.²⁷

The FOI Act makes disclosure a rule and non-disclosure an exemption. Individuals have been given a right to access information and in case the information is withheld, the government has to justify the reason for withholding documents. In case of denial of access to documents the individuals have a right to seek injunctive relief. However, all the states as well as District of Columbia and some territories comprise similar legislations requiring disclosure of information by the agencies of the state and local government. But all citizens holding the US citizenship are entitled to the right to freedom of information under the Act.

2.3.2 UK's Freedom of Information Act, 2000

UK's FOI Act passed by the British Parliament in 2000 and came into effect in 2005. It is the result of labor party's election manifesto of 1997 elections.²⁸ After a long period of conservative rule labor party came in power and fulfilled its promise to

* Sweden adopted legislation in 1776. The Swedish law originally Finland as a Swedish governed territory. Finland adopted its own protection for the right to information when it becomes independent in 1919 and a fully fledged law in 1951.

²⁵ <http://right2info.org/resources/publications/fringe%20special%20-%20overview> visited on June 12, 2012.

²⁶ Noorjahan Bava, "A Comparative study of freedom of information Act in India", *Indian Journal of Public Administration: Special Issue on RTI Act*, LV, 3,(2009).

²⁷ Niraj Kumar, *Treatise of Right to information Act 2005*, (Jaipur: Bharat Law house, 2009), 54-55.

²⁸ Noorjahan Bava, "A comparative study of freedom of information Acts in India", *Indian Journal of Public Administration*, Vol. LV, 3(2009).

adapt right to information legislation. The Act had been passed in 2000 and came into effect after five years as it was subject to a delay to give authorities time to prepare for its implementation and the attack of 4 September in US delayed its implementation.²⁹In United Kingdom, FOI legislation is controlled by two Acts of United Kingdom's FOI Act, 2000 and Scottish FOI Act, 2002. Both Act come into force on same date i.e. January1, 2005. Some sort of information can only be obtained under the environment information regulations.³⁰ The FOI Act 2000 applies to U.K. government departments and public authorities in England, Wales and Northern Ireland. In addition to departments, public authorities, the legislation also applies to the House of Commons, the House of Lords and to the Welsh and Northern Ireland assemblies.³¹ Whether there have been some attempts in the form of the Maclean Bill to remove parliament from the ambit of the law, these were strongly criticized and now appear to be dead.³²

In UK, the Act covers any recorded information that is held by a public authority in England, Wales and Northern Ireland and by U.K. wide public authorities based in Scotland. The Act does not give people access to their own personal data such as their health records or credit reference life. If a member of the public wants to see information that a public authority holds, they should make a subject access request under the Data Protection Act 1998.³³

2.3.3 Sweden Freedom of Information Act

Sweden has a long history of information. In Sweden the culture of openness is strong and enthroned after over about 245 years of experience with right to information. World's first FOI Act was the Riksdag's (Swedish Parliament) Freedom of the Press Act of 1766³⁴ which is now part of the constitution. The latest revision of the Act took place in 1976.³⁵ In Sweden the right to access and to correct personal data is provided for by 'Personal Data Act' which comes into force on 24 October

²⁹ Niraj Kumar, Treatise on Right to information Act 2005,(Jaipur: Bharat Law House, 2009)

³⁰ [En/wikipedia.org/wiki/freedom-of-information-in-the-united-kingdom](http://en.wikipedia.org/wiki/freedom-of-information-in-the-united-kingdom) visited on June 12, 2012.

³¹ <http://www.parl.gc.ca/content/Lop/researchpublications/prb0608-e.htm> visited on June 8, 2012.

³² http://www.bbc.co.uk/blogs/opensecrets/2007/06/maclean_bill_lacks_a_lords_spo.html visited on June 14, 2012.

³³ www.ico.gov.uk/for-organizations/freedom-of-information/guide/act.aspx visited on April 19, 2012.

³⁴ Niraj Kumar, Treatise on Right to information Act 2005,(Jaipur: Bharat Law House, 2009).

³⁵ Fringe Special, "Overview of all FOI laws" on <http://right2info.org/resources/publications/fringe%20special%20-%20overview> visited on June 12, 2012

1998.³⁶The Secrecy Act 1980³⁷ is also effectively incorporated into the RTI law as the regime of exceptions and it contains various provisions implementing the right to information.

The current version of FOI Act was adopted in 1949 and amended in 1976. Chapter-2 on the public nature of official documents decreases that ‘every Swedish subject (and residents) shall have free access to official documents.’³⁸ Sweden has extensive constitutional protection for the right to information. Article-1 of chapter 2 of the instrument of government guarantees that all citizens have the right of “freedom of information: that is the freedom to procure and receive information and otherwise acquaint oneself with utterance of others.”³⁹

2.3.4 Canada Access to Information Act

In Canada, ‘Access to Information Act’ provides Canadian citizens and other individuals* the right to access records held by government institution or federal bodies. The Canadian Access to information act’ comes into effect in 1983⁴⁰ and Privacy Act is also introduced in the same year. The Privacy Act extends the existing law of Canada to provide personal information about individuals. In Canada, each province and territory⁴¹ has its own access to information legislation.

The Access to Information Act was amended as part of the Terrorism Act in November 2001. The original government proposals have authorized the Attorney General of Canada to, “at any time personally issue a certificate that prohibits the disclosure of information for the purpose of protecting international relations on national defense or security”.⁴² There was no review of this order by the information commissioner or the federal courts. This provision was strongly criticized. The final amendments allow the Attorney General to bar the release of information previously

³⁶ <http://www.sweden.gov.se/content/1/c6/01/55/42/6451922d.pdf> visited on January 9, 2012.

³⁷ Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, (Paris: UNESCO, 2008) available at <http://www.unesco.org/webworld/en/foi> assessed on January 12, 2012.

³⁸ http://www.riksdagen.se/templates/R_page-6307.aspx Assessed on February 19, 2012.

³⁹ Ibid

* Originally the right of access was for Canadian citizen or permanent residents but in 1989 this right was extended to any person or organization present in Canada.

⁴⁰ Access to information Act, Canada, available at: <http://www.Canada.justice.gc.ca/STABLE/EN/Laws/Chap/A/A-1.html>.

⁴¹ <http://en.wikipedia.org/wiki/freedom-of-information-legislationcanada> Assessed on February 23, 2012.

⁴² <http://infocoin.gc.ca/speeches/speechview-c.aip?intspecchld=65> Assessed on April 5, 2012.

ordered disclosed by the information commission. In August 2000,⁴³ the ministry of justice and the president of the treasury board launched a task force to review the access Act. The committee's report delivered in June 2002, found a crisis in information management within government. The information commissioner expressed disappointment with the report and states "the recommendations for legislative change in the report would significantly expand the zone secrecy in Canada."⁴⁴

2.4 Right to Information in Neighboring Countries

The enactment of freedom of information legislation not only takes place in developed countries, similar trends are seen in the developing countries as well. The status of RTI/FOI is not similar in India's neighboring countries. In its neighboring countries, Pakistan became the first country in South Asia who has a law which provides access to official information and records by FOI Ordinance, 2002.⁴⁵ In 2007, Nepal enacted RTI Act and China's State Council of the People's Republic promulgated the, "Regulation of the People's Republic of China on Open Government Information" which comes into effect on May 1, 2008.⁴⁶ The Act is available on official site, which is provided in Chinese language.⁴⁷ On the other side, in Maldives no particular law in regard of right to information is available. There is a regulation implemented on right to information in Maldives. Currently there is no RTI Act. The regulation named as 'regulation of right to information' made under Article-29 of the Constitution of Maldives confers the freedom of acquiring and imparting knowledge.⁴⁸ In November 2009, the Right to Information Bill, 2009 was tabled in Majlis which was closely modeled on the existing RTI regulation. Still it has not enacted. This regulation is available under Department of Information on official site in Dhivehi Language.⁴⁹

⁴³ <http://www.atirtf-geai.fc.ca/homeehtml> Assessed on April 6, 2012.

⁴⁴ <http://www.infocan.gc.ca/pressreleases/predeaview-e-asprint-pressrelease=7> Assessed on January 18, 2012.

⁴⁵ Centre for Peace and Development Initiative (2009) Freedom of Information Ordinance 2002 and its implementation; Background Concern and recommendations. Islamabad

⁴⁶ <http://en.wikipedia.org/wiki/freedom-of-information-legislation#cite-ref-18> Assessed on December 18, 2011

⁴⁷ http://www.gov.cn/zw/gk/2007-04/24/content_592937.html Assessed on December 26, 2011.

⁴⁸ <http://en.homeaffairs.gov.mu/?page-id=16> Assessed on December 26, 2011.

⁴⁹ www.maldivesinfo.gov.mu/home/files/downloads.php

Bangladesh enacted RTI Act in 2009, while it was formally adopted in 2008. Bangladesh RTI Act considers right to information as an inalienable part of freedom of thought, conscience and speech.⁵⁰ In Bhutan, Constitution provides access to information under Article-7(3) as “A Bhutanese citizen shall have the right to information.”⁵¹ In 2012, right to information bill was introduced by an M.P., Sangoy as private members bill which still is pending or not pursued. While in Sri Lanka, there is no right to information Act. It is lagging behind. The right to information bill was presented in parliament on 21 June 2011⁵² but was defeated by opposition party (United National Party) in the parliament.

2.4.1 Bangladesh RTI Act 2009

Bangladesh enacted RTI Act in 2009, while it was formally approved in 2008. All sections (except 8, 24 and 25) of this Act come in force on 20th October 2008 while these sections come into force on July 1, 2009. Bangladesh RTI Act considers right to information as an inalienable part of freedom of thought, conscience and speech. It is necessary for ensuring transparency and accountability in all public, autonomous and statutory organizations and in other private institutions.⁵³ Bangladesh RTI Act has eight chapters having thirty seven sections and many sub section and clauses. In the enactment of RTI Act, NGOs, civil society organizations, journalists and media play a tremendous role. Other milestones include “a law commissions working paper on a draft RTI law in Bangladesh (2002), and the declaration of 28 September as ‘Right to Know Day’ by a network of international NGO’s in Sofia, Bulgaria (2002).”⁵⁴ In Bangladesh, there is no reference in the constitution to the right to information however Article-39 of the constitution guarantees freedom of thought, conscience and speech.⁵⁵

⁵⁰ Bangladesh, Preamble of Right to Information Act (2009).

⁵¹ <http://www.constitution.bt/html/sources/royal.htm> visited on September 25, 2012.

⁵² <http://asiapacific.ifg.org/en/articles/sri-lanka-government-rejects-right-to-information-bill> visited on September 26, 2012.

⁵³ Bangladesh, Preamble of RTI Act (2009).

⁵⁴ Tahmina Rahman, “RTI law Implementation in Bangladesh, “Taking it to the next phase” in, *Transparent Governance in South Asia*, ed. Shekhar Singh et al. (New Delhi: IIPA, 2011)11.

⁵⁵ <http://www.humanrightsinitiative.org/programs/ai/rti/international/laws-&-papers.html> visited on September 1, 2012.

2.4.2 Pakistan Freedom of Information Ordinance, 2002

In Pakistan, government put into effect the FOI Ordinance in 2002. It comes in force at once as per its section-1(3).⁵⁶ The aim of this ordinance is promoting transparency and accountability and providing citizens their right to information.⁵⁷ With the promulgation of freedom of information ordinance 2002, Pakistan became the first country in South Asia⁵⁸ to have a law which provide access to official information and records. In Pakistan from the colonial period civil societies make efforts for right to information. However these efforts were in context of freedom of speech and expressions while primary focus was on freedom and independence of print media. In early 1990s Senator Khurshid Ahmad introduced a private member bill on FOI. Government of Benazir Bhutto set up a committee to examine the causes of corruption and make recommendations. The committee recommended enactment of law on FOI. These efforts could not become a reality. In 1997, again an ordinance on freedom of information promulgated by Malik Miraj Khalid but failed to turn into an Act and lapsed.⁵⁹ The existing FOI Ordinance 2002, promulgated by General Pervaiz Musharraf. This ordinance has 25 sections⁶⁰ and many subsections and clause. Pursuant to the powers conferred by section-25 of the FOI Ordinance 2002, the federal government of Pakistan promulgated the FOI Rules 2004, on 18th February 2004.⁶¹ These rules are applicable to all public authority and layout the procedures for filing request for information as well as for filling complaints under FOI Ordinance, 2002.

2.4.3 Nepal Right to Information Act 2007

Nepal Right to Information Act, 2007 is specific legal instrument to regulate right to information in Nepal. The Act was enacted by the parliament on July 18, 2007 for giving effect to the constitutional guarantee of right to information provided under Article-27 of the Interim Constitution, 2007.*It empowers citizens to have access to

⁵⁶ Bangladesh Right to information Act, (2009).

⁵⁷ Pakistan Freedom of Information ordinance, (2002).

⁵⁸ "Freedom of Information Ordinance (2002) and its implementation, Background concern and recommendations", (Islamabad: Centre for Peace and Development Initiatives, 2007).

⁵⁹ Ibid p. 6-7.

⁶⁰ Pakistan *Freedom of Information Ordinance*, 2002.

⁶¹ Salim Ahmed 'Freedom of Information'

* As per Nepal's Interim Constitution, Article 27 in Fundamental Rights chapter provides right to information.

information. RTI Act, 2007 is the result of the continuous efforts and pressure of the civil society group of Nepal. The Act ensures the right to information to its citizens, subject to certain exceptions. Nepal RTI Act have six chapters with thirty eighty sections. This right to information is late recognized as citizen's right to information in Nepal as compared to other fundamental rights. It has been around two decades that the state acknowledged people's access to information as fundamental right with the adoption of the 1990 Constitution.⁶² It was given effect in 2007 after long efforts. The efforts are also indispensably seen for the establishment of National Information Commission (NIC) as independent body for the promotion and practice of RTI in June 2008 as well as the ratification of right to information regulation on 9 Feb., 2009.⁶³ The first RTI centre established in August 2012 to promote and protect citizen's right to information in country. A toll free number is also provided to get information free of cost.⁶⁴

2.5 Comparative Analysis of FOI/RTI in Neighboring Countries

Today all democratic countries of the world have some form of law on freedom of information or other. India enacted its RTI Act in 2005 while Nepal in 2007, Bangladesh in 2009 and Pakistan's FOI Ordinance came into force in 2002. In present section a comparison of four countries RTI/FOI Act has done on the basis of different major provisions of the acts. Here these provisions of the Act/legislation have been analyzed comparatively.

- (i) The Right of Access to Information
- (ii) Procedural Guarantee (request, fee, response time)
- (iii) Obligatory Information Disclosure
- (iv) Exemption from Disclosure
- (v) Appeal & Complaint
- (vi) Disciplinary Action & Penalty
- (vii) Protection & Compensation

⁶² www.freedom.org/regions/cast-asia/nepal/ Assessed on January 3, 2012.

⁶³ Ibid

⁶⁴ www.ekantipur.com/the-kathmandu-post2/08/21/metro/nations-first-rti-centre/238658.html Assessed on January 3, 2012.

(I) Right of Access to Information

Providing a right, to access information held by various public bodies and departments is a fundamental reason for adopting a right to information law. In Nepal the Act was enacted by the parliament to give effect to the constitutional guarantee of right to information provided under Article-16⁶⁵ of the 1990 Constitution and Article-27 of the Interim Constitution of Nepal. The Interim Constitution of Nepal, 2007 has expanded the ambit of this right to cover personal information.⁶⁶ Sections- 3(1) of the RTI Act 2007, states that subject to its provision all citizens[#] have the right to information. The right to information is defined in section-2(c) of the Act as right to request or to obtain, observe documents verified sample visit the place or to obtain Information held in any type of machine. In India, RTI Act 2005 states that, all citizens shall have the right to information.⁶⁷ The right to information is defined in section-2(j) as the right to information accessible under the law. It include the right of inspection of work, document, records, taking notes, extracts and certified copies of documents, records, taking sample of material and obtaining information in electronic mode. The purpose of the Act is to promote transparency and ensuring accountability. On the other hand preamble of Bangladesh RTI Act, 2009 stated its purpose “to make provisions for ensuing free flow of information and people’s right to information.”⁶⁸ In Bangladesh every citizen have right to information and it means right to obtain information from any authority.⁶⁹In Pakistan the purpose of FOI Ordinance, 2002 is to ensure transparency by providing access to information. Somehow the purposes of RTI laws are same in these countries. Section-3 of FOI Ordinance, 2002 provides right to access public records to all citizens of Pakistan. The ordinance does not explain ‘right to information’ as other countries Acts explains the meaning. As per provision above mentioned, all countries provided access to information to its citizens not for other countries people.

⁶⁵ Constitution of Nepal 1990, Article-16: every citizen shall have the right to demand or obtain information any matters of his/her own or of public importance provided that nothing shall compel any person to provide information on any matter about which secrecy is to be maintained by law.

⁶⁶ Shekhar Singh et al., *Transparent Governance in South Asia*, (New Delhi: IIPA, 2011).

[#] As per Sec 7(1) of Nepal RTI Act, all citizens refer to Nepali Citizens.

⁶⁷ Sec. 3 of RTI Act 2005, India

⁶⁸ Preamble of RTI Act 2005, India

⁶⁹ RTI Act 2009, Bangladesh

Along with purpose and right to information, the term ‘information,’ is defined as well in the Act. In Nepal ‘Information’ include any document material or any information related to the functions, proceedings or decisions of public importance.⁷⁰ In India ‘information’ include any material in any form, including information relating to any private body, memos, email, opinion, advices, press release, circular and orders, report, papers, logbooks, information etc.⁷¹ In Bangladesh ‘information’ is defined broadly in section-2(f) of the Act with some bindings not to include note sheets and copies of note sheets. While in Pakistan FOI ordinance ‘information’ is not defined though record is defined in the ordinance.⁷² It includes printed, written and information used for official purpose by the public body.

The preamble of the Nepal RTI Act 2007 provides access to information held in public bodies which includes a body under the Constitution or by Act/law/ Government of Nepal, registered political parties, organizations and organized institutions, NGO’s bodies which are obtaining money directly or indirectly, taking grant or under an agreement with Nepal government.⁷³ In India as well, public body/authority means any authority under constitution, law by parliament, law by state legislature owned, controlled or financed by government. NGO’s are also included in public authority. In Bangladesh authority means, directly or indirectly related to government in reference of aid, establishes notifications undertakings, foreign aid and contract made on behalf of government.⁷⁴ While in Pakistan any ministry, division or attached department of the federal government secretariat of Majlis-e-Shoora (Parliament); any office of any board, commission, council or other body established by or under a federal law, courts and tribunals⁷⁵ is defined as public body under the ordinance. It is noteworthy that only in Nepal; registered political parties are mentioned as authority and in the ambit of RTI provisions.

(II) Procedural Guarantee (Request, Fees, Response, Time)

There are some variations among different laws for processing request for information. All laws/acts provide provision for request to be made in writing

⁷⁰ Sec. 2 (b) of RI Act 2007, Nepal

⁷¹ Sec. 2 (f) of RTI Act 2005, India

⁷² Sec. 7 of FOI Ordinance 2002, Pakistan

⁷³ Sec. 2 (a) of RTI Act 2007, Nepal

⁷⁴ Sec. 2(b) of RTI Act 2005, India

⁷⁵ Sec. 2 of FOI ordinance 2002, Pakistan

including electronic mode. In Nepal request shall be made in written to concerned information officer and it is obligatory to state reason to receive such information.⁷⁶ In Nepal Act there is no provision of application through electronic mode. While in India, request shall be made in writing or through electronic means in English, Hindi or in the local official language to the concerned information officer⁷⁷ and no need to state any reason for obtaining the information. In Bangladesh, pursuant to section-8(1), request shall be made in writing or through electronic mode or through emails and no need to mention reason for obtaining information. On the other hand in Pakistan, along with application in prescribed format, the applicant have to give the purpose for request and declare that the requested information would not be used for any other purpose.⁷⁸ In same context Nepal's Act has also provision of not to use the information for other purpose that was not considered.⁷⁹

In some countries laws, there is a provision of urgent request if information is related to some sensitive issue. In Nepal information should be provided in 24 hours if it is related to security of life of a person.⁸⁰ While in India time for response to urgent request is 48 hours if request is related to life and liberty of a person.⁸¹ In Bangladesh also there is a provision of urgent request, if information concerned life, death, release or arrest of a person that shall be provided in 24 hours.⁸² On the other hand in Pakistan there is no provision of urgent request in regard of life or liberty of person. In normal course, information is provided immediately as within 15 days⁸³ (as per nature of the application) in Nepal while in India it takes 30 days.⁸⁴ In Bangladesh, it is obligatory to respond an application in twenty working days⁸⁵ in normal course while in Pakistan it takes 21⁸⁶ days from the date of receiving of the request.

In terms of transfer of request there is some variation in different laws. In Nepal there is no provision of transfer of request to other body if it is not related to

⁷⁶ Sec. 7(1) of RTI Act 2007, Nepal

⁷⁷ Sec. 6 of RTI Act 2005, India

⁷⁸ Pakistan Freedom of Information Rules (2004)

⁷⁹ Sec. 31(i) of RTI Act 2007, Nepal

⁸⁰ Sec. 7(2) of RTI Act 2007, Nepal

⁸¹ Sec. 7 of RTI Act 2005, India

⁸² Sec. 9(4) of RTI Act 2009, Bangladesh

⁸³ Sec. 7(2) of RTI Act 2007, Nepal

⁸⁴ Sec. 7 of RTI Act 2005, India

⁸⁵ Sec. 9(1) of Act 2009, Bangladesh

⁸⁶ Sec. 13(1) of FOI Ordinance 2002, Pakistan

that body information officer should give notification to the applicant immediately.⁸⁷ While in India there is a provision of transfer of request if it is not related to that public body.⁸⁸ Though there is no provision of transfer of request in Bangladesh and in Pakistan as well.

In all laws, the fee structure for access to information is differing. Somehow all mentioned reasonable cost for information. In Nepal there is a provision that access may be made conditional upon the payment of a fee and that fee shall be based on actual price and with the provision of prevalent law.*It is significant in Nepal that if the fee is deemed more than actual price, the concerned person shall make on appeal before the commission.⁸⁹ While in India there are some differences in fee provision at centre and state levels. As per central regulation rules Rs.2 shall be charged for each page and Rs.50 for diskette.⁹⁰ The first hour for inspection is free and a fee of Rs.5 shall be charged further.⁹¹ It is significant waiver that no fee shall be levied on persons below the poverty line.⁹² While in other countries, there is no provision of exemption of fees for other categories. Along with that provision, there is provision that no fee may be charged if a public body fails to respond in established timelines.⁹³ On the other hand in Bangladesh, the price shall not exceed the actual expense of providing information.⁹⁴ In Pakistan also, prescribed fee is essential for seeking information but the decision to prescribed fee should take into account that it should be lowest and reasonable.⁹⁵

As above discussed some laws, provide assistance to applicants where they cannot make a written request due to some disability. The level of assistance is varied. In India and Bangladesh this facility provision is available. In Bangladesh if applicant is perceptual handicapped, the information officers are required to provide assistance

⁸⁷ Sec. 7(8) of RTI Act 2007, Nepal

⁸⁸ Sec. 6(3) of RTI Act 2005, India

* As per Nepal RTI Regulation, 2009 Sec 4(I) the cost for small page is Rs.5, for bigger page Rs. 10 and Rs. 50 for information in electronic device and Rs. 50 for per hour observation. No fees shall be charged for Public library & public places.

⁸⁹ Sec. 8(4) of RTI Act 2007, Nepal

⁹⁰ RTI Regulation of fee & cost Rules 2005, India

⁹¹ RTI Regulation of fee & cost Rules 2005, India

⁹² Sec. 7(5) of RTI Act 2005, India

⁹³ Sec. 7(6) of RTI Act 2005, India

⁹⁴ Sec. 9(7) of RTI Act 2009, Bangladesh

⁹⁵ Sec. 12, Sec. 25(2) & Sec. 3 of FOI Ordinance 2002, Pakistan

to access information and for inspection.⁹⁶ While as per Indian RTI Act PIO are required to provide assistance to the seriously disabled⁹⁷ to enable them to access information including inspection. If applicant is unable to write a request he may seek the help of PIO to write his application.⁹⁸ On the other hand there is no provision of assistance in Pakistan and Nepal's law.

III Obligatory Information Disclosure

All discussed laws, impose a duty on public authority/bodies to publish certain key information even in the absence of a request. Nepal RTI Act 2007 includes obligations of proactive or routine publication. Every public authority within three months of the commencement of the Act, publish the information relating to their public body such as structure, nature, duties, powers, responsibilities, number of employees and much more as mentioned in section-5(3) (a-m) of the Act while in India RTI Act includes broad obligation of proactive disclosure of 17 types of information voluntary and that information shall be published in 120 days from the commencement of Act.⁹⁹ It is somehow similar to Nepal's information. It includes particular of organization, power functions, duties rules, regulation instructions and manuals; all categories of documents it holds, procedure followed in decision making and all information which includes in section 4(1) of the Act. In Bangladesh and Pakistan also, there is provision of suo motu disclosure. In Bangladesh,(four kind of information) every public authority is bounded to publish all information related to decision taken and proceeding executed and proposed, every policy and decision along with reasons if necessary.¹⁰⁰ While in Pakistan, (four kinds of information) also voluntarily the Acts and subordinate legislation, notifications by laws, manuals orders having the force of law in Pakistan shall be duly published and made available at reasonable price.¹⁰¹ In Pakistan and Bangladesh there is no time limitation for publication of this information. On the other hand in Nepal, it is three months¹⁰² and in India it mentioned 120 days from the commencement of the Act, in both cases.

⁹⁶ Sec. 9(10) of RTI Act 2009, Bangladesh

⁹⁷ Sec. 7(4) of RTI Act 2005, India

⁹⁸ Sec. 6(1) (b) of RTI Act 2005, India

⁹⁹ Sec. 4(1) (b) of RTI Act 2005, India

¹⁰⁰ Sec. 6(1) & Sec. 6(4) of RTI Act 2009, Bangladesh

¹⁰¹ Sec. 5 of FOI Ordinance 2002, Pakistan

¹⁰² Sec. 5(3) of RTI Act 2007, Nepal

Many laws i.e. India, Bangladesh and Nepal provide regular updating of the information published. In Nepal, it needs to be updated in three months¹⁰³ while in India¹⁰⁴ and Bangladesh¹⁰⁵ there is a provision of annual updating. While in Pakistan, there is no provision of updating of published information.

Some countries laws address the issue of making information, subject to proactive disclosure or publication, widely accessible. In Bangladesh it is published through press note or any other means.¹⁰⁶ The report prepared by authority for suo motu disclosure shall be made available free of charge for public information.¹⁰⁷ While in Nepal, use of different languages and mass media is open while publishing broadcasting or making information public.¹⁰⁸ In India various means of communication including internet¹⁰⁹ may be used for dissemination of information. The mode of dissemination should be in cost effective mode of communication such as notice boards, news paper, media broadcast, public announcement, internet or any other means.¹¹⁰

IV Exemption from Disclosure

Mostly laws include a huge list of exemptions or ground for refusing to disclose information on some part. In Nepal a committee classified¹¹¹ the information and determines the number of years the information should be kept confidential and this period is based on the nature of information; maximum period is 30 years¹¹² while in India some exempted information¹¹³ shall be provided on a request which has taken place from the data of request.¹¹⁴ On other side, in Bangladesh and Pakistan laws no such provision is existed.

The main exemptions are set out in section-3(3) of the RTI Act in Nepal, which indicates that no information will be released if it affects the sovereignty integrity, national security, peace, international relations, relation between various

¹⁰³ Sec. 5(4) of RTI Act 2007, Nepal

¹⁰⁴ Sec. 4(1) (b) (xvii) of RTI Act 2005, India

¹⁰⁵ Sec. 6(3) of RTI Act 2009, Bangladesh

¹⁰⁶ Sec. 6(7) of RTI Act 2009, Bangladesh

¹⁰⁷ Sec. 6(5) of RTI Act 2009, Bangladesh

¹⁰⁸ Sec. 4(3) of RTI Act 2007, Nepal

¹⁰⁹ Sec. 4(2) of RTI Act 2005, India

¹¹⁰ Sec. 4(4) of RTI Act 2005, India

¹¹¹ Sec. 27(1) of RTI Act 2007, Nepal

¹¹² Sec. 27(5) of RTI Act 2007, Nepal

¹¹³ Here some exempted information includes Sec. 8(a), 8(c), 8(i) of the Acts

¹¹⁴ Sec. 8(3) of RTI Act 2005, India

cast and communities and much more information as mentioned in section-3 of the Act. Along with that provision, there is a provision that public body shall provide adequate reason for not to flow information. On other hand, India provides a list of bodies¹¹⁵ which are completely excluded from the range of RTI law. The main exemptions are set out in section-8 of the Act which provides a comprehensive regime of protection for various public and private secrecy interests. If applicant request to access that information which have an agreement of copy right may be rejected under section-9 of the Act. In Bangladesh, section-7 provides a list of information which is not mandatory to publish or to provide. It includes all information which cause a threat to security, integrity and sovereignty of Bangladesh, may affect international relationship, affect the intellectual property right to third party, personal information and all information's that are included in section-7 (A to T) of Bangladesh Act. In Pakistan, information under section-8 and section-14 to 18 are restricted to publish and exempted from disclosure. It includes file noting, meeting details, information related to personal privacy of individual, record of financial institutions, records related to defense service, national security, international relations and economic affairs of the country and so on.

In some countries RTI/FOI laws leave in place of secrecy laws and in a few it has an overriding force. In Nepal, all included matters in RTI Act will be carried out according to the Act whereas other matters will be dealt according to prevalent law.¹¹⁶ In Pakistan provisions of FOI Ordinance need not to detract or deviate from any other existing law.¹¹⁷ In Bangladesh also, provisions of Limitation Act 1908 are applicable in preferring an appeal or complaint¹¹⁸ while in India, RTI Act 2005 has overriding force.¹¹⁹ Indian law specifically mentions that it take precedence over the Official Secret Act 1923.

V Appeal & Complaints

Right to lodge a complaint or appeal is the best endeavor to give great effect of the law. It is widely recognized that if an applicant feel that his application have

¹¹⁵ Schedule II of RTI Act 2005, India

¹¹⁶ Sec. 37 of RTI Act 2007, Nepal

¹¹⁷ Sec. 23 of FOI Ordinance 2002, Pakistan

¹¹⁸ Sec. 28 of RTI Act 2009, Bangladesh

¹¹⁹ Sec. 22 of RTI Act 2005, INDIA

not dealt in proper way that person should have the right to file complaint or appeals against concerned official. Different countries provide different complaint options. Some laws provide internal complaint as well as complaint to independent body or specialized bureau. In some cases internal complaint is pre-requisite to lodging a higher level appeal. In Nepal, if citizens/applicants does not receive information, partially or wrong information, deny providing information or does not provide information by stating that he/she is not stakeholder; the applicant may lodge a complaint a complaint to chief of the body within seven days.¹²⁰ In India anyone including a third party, who either does not receive a decision within specified time frame or who is aggrieved by a decision under RTI may lodge first appeal within thirty days from the expiry of such period or after receipt of such decision to the senior officer in rank.¹²¹ While in Bangladesh, if person fails to receive information within specified time or not satisfied by the decision of the officer may lodge an appeal with in thirty days or receipt of the decision, to the administrative head of that unit.¹²² In Pakistan also same process is adopted like Bangladesh and India. Here time limit is also same as within thirty days or the communication of the order of the official.¹²³

The provision of second appeal is also available in these countries though the appellate authority is different and time period is also varied. In Nepal, applicant may file an appeal to the Commission within 35 days of the notice received if he/she is not satisfied with the decision of departmental head.¹²⁴ The appeal may be made through concerned public body, district administration office or any post office.¹²⁵ In India a second appeal may be made within 90 days¹²⁶ of receiving the decision to CIC/SIC. While in Bangladesh, provision of complaint is provided in place of second appeal. If an applicant is aggrieved by the decision on his appeal he/she may lodge complaint to the Information Commission at any time if he gets no information or within thirty

¹²⁰ Sec 9(1) of RTI Act 2007, Nepal

¹²¹ Sec 19(1) of RTI Act 2005, India

¹²² Sec 24(1) of RTI Act 2009, Bangladesh

¹²³ Sec 19(1) of FOI Ordinance 2002, Pakistan

¹²⁴ Sec 10(1) RTI Act 2007, Nepal

¹²⁵ Sec. 5(2) Right to Information Regulation 2009, Nepal

¹²⁶ Central or State Information Commission may admit the second appeal after the expiry of that period on sufficient cause under sec. 19(3). Sec. 19(3) of RTI 2005, India

days from the date of such decision.¹²⁷ On the other hand in Pakistan, in place of appeal, second complaint may be filed to ‘Mohtasib’ and if it is related to revenue department or its subordinate offices, department, agencies applicant may complaint to federal tax ombudsman.¹²⁸ For second complaint no time limit is provided in the ordinance.

The disposal time of appeals is different in all laws. In Nepal it takes 60 days¹²⁹ while in India first appeal must be decided in 30 days or an extended period up to 45 days¹³⁰, however no time is mentioned for disposal of second appeal in India. In Bangladesh, appellate authority have to decide something within 15 days¹³¹ and in case of complaint the CIC or IC ought to complete the enquiry and prepare a decision within thirty days¹³² and dispose of any complaint within 45 days of receiving such complaint and in special cases, it should not exceed time limit of 75 days.¹³³ In Pakistan no time limit is provided for disposal of complaint or appeal.

VI Penalty & Disciplinary Action

It is widely recognizes that if a person lodge a complaint or appeal, some steps should be taken against concerned official in response of it. The provision of penalty and disciplinary action is the real strength of these laws. It provides real teeth to the law, which ensure that the information officers could not treat citizen’s demand for information in a cavalier manner. In most of the countries, grounds for penalties are somehow same while amount of fine or penalty is different.

In Nepal, the ground of penalty includes refusal of information, provided partial or wrong information or information is destroyed or held back, delay in providing information and most important if applicant found misusing the acquired information instead of its purpose there is provision of fine/penalty in these cases.¹³⁴ On the other hand in India, ground of penalty includes; if PIO refused to accept application or obstructed the process in furnishing information or not provided

¹²⁷ Sec. 24(1), 24(2) of RTI Act 2009, Bangladesh

¹²⁸ Sec. 19(1) FOI Ordinance 2002, Pakistan

¹²⁹ Right to Information Regulation Rule 2009, Nepal, Sec. 10(4) of RTI Act, Nepal

¹³⁰ Sec. 19(6) RTI 2005, India

¹³¹ Sec. 24(3) RTI Act 2009 Bangladesh

¹³² Sec. 25(6), (9) RTI Act 2009, Bangladesh

¹³³ Sec. 25(10) of RTI Act 2009, Bangladesh

¹³⁴ Sec. 32, Sub Sec 1,2,8,4, of RTI Act 2007, Nepal

information with in limited time period¹³⁵ are the main reasons to impose penalty though other reasons are somehow same with Nepal's Act. In Pakistan if an official intentionally destroy record for preventing its disclosure commits an offence punishable with imprisonment (for a term not exceeds of two years)¹³⁶ or fine or both. Along with this provision; if a complainant files malicious, frivolous or vexations complaint 'Mohtasib' may impose a fine on complainant.¹³⁷

In Bangladesh the ground for penalty or fine is same as Indian RTI Act. If officer in charge refused to receive any request or an appeal without any reasonable cause or not provided information in specified time frame or provided wrong, incomplete, confusing and distorted information or creates impediments in receiving information the information commission may impose fine to the officer- in- charge.¹³⁸

In all laws amount of fine/penalty is different. In India it is from Rs. 250 per day to total 25000 maximum¹³⁹, in Bangladesh it is from 50 taka per day to maximum total 5000 taka¹⁴⁰, in Nepal it is from NRs. 1000 to 25000¹⁴¹ to be charged by concerned Chief Official or Information Officer, while for delay of information Rs. 200¹⁴² per day may be punished. For misuse of information a fine between NRs. 5000 to 25000¹⁴³ may be imposed. If the order/decision of the commission in accordance with the Act is not obeyed, the commission may impose a fine up to Rs 10000¹⁴⁴ to concerned person. While in Pakistan up to Rs. 10000 may be imposed on complainant for useless purpose, having hatred or for vexations complaint.¹⁴⁵

Along with penalty provisions, some laws provide a provision of disciplinary action. In India, Nepal and Bangladesh this faculty is available while in Pakistan this provision is not exist in the law.

¹³⁵ Sec. 20(1) of RTI Act 2005, India

¹³⁶ Sec. 21 of FOI Ordinance 2002, Pakistan

¹³⁷ Sec. 20 of FOI Ordinance 2002, Pakistan

¹³⁸ Sec. 27(1) of RTI Act 2009, Bangladesh

¹³⁹ Sec. 20(1) of RTI Act 2005, India

¹⁴⁰ Sec. 27 of RTI Act 2009, Bangladesh

¹⁴¹ Sec. 32(1) of RTI Act 2007, Nepal

¹⁴² Sec. 32(2) of RTI Act 2007, Nepal

¹⁴³ Sec. 32(4) of RTI Act 2007, Nepal

¹⁴⁴ Sec. 32(5) of RTI Act 2007, Nepal

¹⁴⁵ Sec. 20 of FOI ordinance 2002, Pakistan

In Bangladesh, if Information Commission is satisfied that concerned officer has created problems/hurdles for applicants in getting information, in addition of fine it may recommend to take departmental action against him/her.¹⁴⁶ In Bangladesh, only for created impediment disciplinary action can be taken while in India it has huge coverage including if information is not provided in specified time or malafidly denied for information or giving incorrect, incomplete or misleading information or destroyed information or creating obstruction in furnishing information, CIC/SIC may recommend for disciplinary action under service rules applicable on concerned CPIO /SPIO.¹⁴⁷ In Nepal also, ground for recommendation of disciplinary departmental action is very vast. In Nepal, if departmental action is recommended by the commission, it is requisite that such chief or information officer should be in a post to be punished by department.¹⁴⁸ The concerned public body will have to take departmental action within three months and notify the Commission thereon.

VII Protection and Compensation

All the discussed laws provide immunity for the authorities carrying out their functions under the Act. All these countries give protection to officers against any suit or civil action or any other proceedings launched against them so long as their actions are done in good faith or in pursuance of its rules.[#]

Though all Act provide protection to officials, while no specific protection is provided to whistle blowers in India, Pakistan and Bangladesh. On the other hand Nepal's Act provides specific protection to whistle blowers. According to that provision, it is the duty of employee of public agencies to provide information on any ongoing or probable corruption or irregularities or any deed taken as offence under the prevailing laws.¹⁴⁹ It mentions that no harm or punishment is done to bear any legal responsibility to the whistle blower for providing information.¹⁵⁰ Furthermore even if any punishment or harm is done to the whistle blower, the whistle blower may complaint along with demand for compensation.¹⁵¹

¹⁴⁶ Sec. 27(3) of RTI Act 2009, Bangladesh

¹⁴⁷ Sec. 20 of RTI Act 2005, India

¹⁴⁸ Sec. 32(1) & Sec. 32(3) of RTI Act 2007, Nepal

[#] In Nepal this protection provided under sec. 36 of the Act, in India under sec. 21 of the Act, in Bangladesh under Sec. 31 and in Pakistan Sec.22 of the ordinance provides protection.

¹⁴⁹ Sec, 29(1) of RTI Act 2007, Nepal

¹⁵⁰ Sec. 29 (3) of RTI Act 2007, Nepal

¹⁵¹ Sec. 27(4) of RTI Act 2007, Nepal

With provision of protection of officials and whistle blowers some laws have provision of compensation. In Nepal Act, section-33 says that if any person incurs loss and damage due to not providing information, denies providing information and providing partial or wrong information or due to destruction of information then such person is entitled to get compensation. Whistle blowers can demand for compensation if any punishment or harm is done to them.¹⁵² On the other hand in India¹⁵³ and Bangladesh¹⁵⁴ Information Commission encompass the power to give compensation to the applicant for any loss, damage or other detriment suffered. In Pakistan, there is no provision of compensation is available under FOI Ordinance.

¹⁵² Sec. 29(4) of RTI Act 2007, Nepal

¹⁵³ Sec. 19(8) (b) of Act 2005 ,India

¹⁵⁴ Sec. 25(11) (b) of RTI Act 2009, Bangladesh