

Chapter-2

Right to Information: Global Perspective

The right to information has been recognised at the global level as a basic freedom, which in today's world is a necessary component of any governance system that claims to be a system representing the will of its people. Kofi Annan, former Secretary-General of the United Nations said:

“The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today. Our task your task...is to make that change real for those in deed whenever they may be. With information on our side, with knowledge of a potential for all, the path to poverty can be reversed.”¹

2.1 Global Concern

The world community is not mute on this issue. The right to information held by the state has been recognized in Swedish law for more than 200 years.²The right to information has been secured in various international documents, multilateral and bilateral agreement. The first and the foremost in this chain is Universal Declaration of Human Rights (UDHR), which through various provisions highlighted the vital importance of freedom of information.

Universal Declaration of Human Rights(UDHR, 1948)

Universal Declaration of Human Right is a *Bible* of Human Right; it incorporates the Right to Information. It says that “Everyone has the Right to freedom of opinion and expression; the right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers.”³Information is the source of knowledge and UDHR truly adheres to this principle as information can be gained from any media not only from government but also private authorities.

¹<http://deepsky.com/~madmagic/kofi.html> visited on 13 October 2011.

²Saxena, Ambrish, *Right to Information and Freedom of Press*, Kanishka Publisher, New Delhi, 2004, p.8

³Article 19 of Universal Declaration of Human Rights

International Covenant on Civil and Political Rights (ICCPR, 1966)⁴

International Covenant on Civil and Political Rights also supports the Right to Information. Civil and political rights are the foundations on which any democratic society develops and flourishes. In Article 19 of ICCPR states that everyone can hold opinion without interference and have freedom of expression; this right includes freedom to seek, receive and impart information and ideas of kinds in writing or in print through any other media of his choice. But this right also carries with it special duties. It may be subjected to certain restrictions but these shall only be such as are provided by law and are necessary for respect for the right or reputation of others and for the protection of National Security or of public order or of public health or morals.

European Convention on Human Rights (ECHR, 1950)

The ECHR also guarantees right to information:

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprise.
2. The exercise of these freedoms, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interest of national security, territorial integrity or public safety, for the prevention of disorders or crime for the protection of health or morals, for the protection of reputation or rights of other, for preventing the disclosure of information received in confidence to maintain the authority and impartiality of the judiciary.⁵

American Convention on Human Rights 1969⁶

The American Convention on Human Right is an international human right instrument. It was adopted by the Nation of Americas meeting in San Jose, Costa Rica, on November 22, 1969 and it came into force on July 18, 1978. Article 13 (freedom of thought and expression) of this Convention supports right to know indirectly and says

⁴Article 19 of ICCPR

⁵ Article 10, European Convention on Human Rights

⁶http://www.hrcr.org/docs/American_Convention/oashr4.html, visited on June 4, 2011

that everyone has freedom of thought and expression. This right includes freedom to seek, receive and impart information in any medium of one's choice. The exercise of the right provided for in the forgoing paragraph shall not be subject to subsequent imposition of liability which is necessary in order to insure respect for the rights or reputation of others or the protection of national security, public order, public health or morals. This right may not be restricted by indirect means like the abuse of government or private controls over newsprint, radio broadcasting frequencies or by any other means tending to impede the communication and circulation of ideas and opinions. But simultaneously the Article specifies that any propaganda and advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

UNESCO Declaration (1978)

UNESCO is committed to remove all the barriers on the free flow of information. The right to know along with the right to communicate provides the basis of a new World Information and Communication Order. The UNESCO Declaration of 1978 recognizes that freedom of opinion, expression and information is an integral part of human right and fundamental freedom.⁷ Benjamin Disrali has rightly said that “*As a general rule, the most successful man is the man who has the best information.*” Without information a man cannot be successful. Information is the key to success.

Commonwealth Countries and Right to Information

Commonwealth countries have been issuing declaration on freedom of information since 1971. In March 1999, the commonwealth expert group in London adopted a document on Right to Know as a human right including the following:

“Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any

⁷Shrinkhal, Rashwet and JaipriyaSwapnil, *The Emerging Dimensions of Right to Information as Human Right in India*, Bharat Book Centre, Lucknow, 2010,p.10

government owned corporation and any other body carrying out public functions.”⁸

These principles and guidelines were supported later at the Commonwealth Heads of government meeting in November 1999.

The Rio Declaration on Environment and Development (1992)

This declaration also elaborated the right to information. It says that “each individual shall have appropriate access to information on hazardous material and activities in their communities... state shall facilitate and encourage public awareness and participation by making information widely available.”⁹

African Commission on Human and People’s Right, 2002¹⁰

Development on freedom of information at the African Union is more modest. The Commission adopted a Declaration of principles on freedom of Expression in Africa at 32nd session in October 2002. This declaration also supports right to information. It says that information held by public bodies is not for them but for the public so they must have the right to access this information. It further says that everyone has the right to access information held by public bodies and private bodies. For any refusal to disclose information, a person can go for an appeal. Public bodies shall voluntarily publish important information for the public. Secrecy laws can be amended if it clashes with freedom of information principles. It further says that everyone has the right to update his personal information.

Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950¹¹

In Article 5, it says that everyone who is arrested should be informed the reasons for his arrest in the language which he understands. Further in Article 10 it says that everyone has the right to impart information and hold opinion without interference. It does not prevent states from requesting the licensing broadcasting, television or cinema enterprises. With these freedoms, there are some duties also like restrictions and penalties which are necessary in a democratic society for public safety,

⁸Khandelwal, Dheera and Krishna Khandelwal, *op-cit.*, p. 63

⁹Goel, S.L., *Right to Information and Good Governance*, Deep & Deep Publications, New Delhi, 2007, p. 36

¹⁰Shrinkhal, Rashwet and Jaipriya Swapnil, *op-cit.*, p.10

¹¹ Article 5, Convention for the Protection of Human Rights and Fundamental Freedoms

for the prevention of disorder or crime, for the protection of health and morals, for the protection of the reputation or rights of others, or for maintaining the authority and impartiality of the judiciary.

International Convention on the Elimination of All Forms of Racial Discrimination, 1996¹²

In Article 7, it says that states parties should take immediate steps specifically in the field of teaching, education, culture and information to combat prejudices and promoting understanding and friendship among nations and racial and ethnic groups as well as propagating the purpose and principle of the Charter of the United Nations, Universal Declaration of Human Rights, The United Nation Declaration on the Elimination of all Forms of Racial Discrimination and this convention.

European Union

European Union gave the legal status to the right to information in 1997 through the Amsterdam treaty. European Union Charter also guarantees access to the document of the European Parliament, council and commission. In 2001, EU has passed a regulation to ensure widest access possible to documents, Ombudsman Code of good administrative behaviours, information requested, and to inform it about their rights.¹³

The Council of Europe Take a Lead in Freedom of Information Legislations

The Council of Europe is an inter-governmental organization having 43 memberStates. It is devoted to promoting human rights, education and culture. European Convention on Human Rights is one of its fundamental documents which guarantee freedom of expression and information as a fundamental human right.¹⁴So, one can say that at global level the right to information has been supported for many times. Many international conventions, commissions, and covenant tried their best to make this right a reality of today's world.

2.2 Right to Information in Select Countries

Right to Information has existed since as long in various forms in many countries of the world, according to their culture, government and civil society. The

¹² Shrinkhal, Rashwet and JaipriyaSwapnil, *op-cit.*, p.10

¹³ *Ibid*, pp. 12-13

¹⁴ Saxena, Ambrish, *op-cit.*,pp.10-11

first law creating a right to government information was enacted in Sweden in 1949, though the basic principle of access to official information had been recognized there in 1766. Finland adopted an access law in 1951. The influential United States Freedom of Information Act was passed in 1966. A number of European countries enacted access to information legislation in the 1970s. Countries with Westminster systems of government soon followed, with Australia, Canada and New Zealand all enacting freedom of information (FOI) legislation in the early 1980s.¹⁵ Over 85 countries around the world have implemented some form of such legislation and Sweden's Freedom of the Press Act of 1766 is the oldest in the world.¹⁶ People's right to know has been accepted as a basic prerequisite for the effective functioning of a democracy. Administrative secrecy has become the barrier in the development of democracy. So many democratic countries realised the need of Right to Information. Many countries of South Asian region also adopted this right. The status of Right to Information in different countries is as follows:

U.S.A.

The American constitution is the oldest constitution of the world but it does not contain specific right to information. However U. S. Supreme Court has read this right into first Amendment of the constitution and granted access to information where there is a tradition of openness to information in the question and where access contributes to the functioning of the particular process involved.¹⁷ The basic purpose of the US Freedom of Information Act, according to the US Supreme Court is, "To ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."¹⁸ Administrative Procedure Act, 1946 (APA) was the first enactment which provided a limited access to executive information by giving limited access to information and by permitting the agencies to withhold information without justification with no provision of judicial review. So taking these deficiencies into consideration, the Congress in 1966 passed freedom of information Act in, 1966 which gave every citizen legally enforceable right to access government files and documents. However, this right

¹⁵<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0608-e.htm> visited on 7 June 2011

¹⁶http://en.wikipedia.org/wiki/Freedom_of_information_legislation#cite_note-60 visited on 7 June 2011

¹⁷Shrinkhal, Rashwet and JaipriyaSwapnil, *op-cit.*, p.13.

¹⁸http://en.wikipedia.org/wiki/Freedom_of_information_legislation#cite_note-60 visited on 7 June 2011

recognizes nine well defined exceptions.¹⁹ The bill of 1966 had three weaknesses; agencies had no minimum period to respond the request, there were no penalties.²⁰ If any agency failed to comply with the request, and there were no limits set on how much an agency could charge. Watergate provided impetus for amendments in 1974 and 1976. President Clinton signed additional changes in 1996. *In the United States the Freedom of Information Act (FOIA) was signed into law by President Lyndon B. Johnson on July 4, 1966 and went into effect the following year.* The law was a major step in "shining sun" on the workings of government; it requires that federal agencies provide access to records when requested by a citizen in writing. The Electronic Freedom of Information Act Amendments was signed by President Bill Clinton on October 2, 1996.²¹ This Act is applicable on all the governmental agencies. The word 'Agency' includes executive Arms, military departments, Government Corporation and government controlled corporation.²²

United Kingdom

Freedom of Information Legislation came into effect for United Kingdom and Scotland for the first time on 1 January 2005: the *Freedom of Information Act 2000* (the U.K. FOIA) applies to U.K. government departments and public authorities in England, Wales and Northern Ireland. The Act had been passed four years previously; its effective date was subject to a delay to give authorities time to prepare for its implementation. In addition to departments and public authorities, the legislation also applies to the House of Commons, the House of Lords and to the Welsh and Northern Ireland assemblies.²³ After a draft bill of 1999 and a following consultative process through the year 1999, the U.K. Government developed a draft of the Freedom of information Bill 2000. At the time these notes were made, the draft was under discussion in the House of Lords (through now the bill has been passed by the parliament and has become an Act). The Act is lengthy and has seven (7) Schedules.²⁴ According to this Act the request has to be written in English and there is no duty to assist the requester to make request. The information should be provided

¹⁹Shrinkhal, Rashwet and JaipriyaSwapnil, *op-cit.*, pp.13-14.

²⁰<http://uspolitics.about.com/od/usgovernment/a/foia.htm> visited on 7 June 2011

²¹<http://uspolitics.about.com/od/usgovernment/a/foia.htm> 7 June

²²<http://www.ccrinepal.org/resources/rfi-legislation-world> 8 June

²³<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0608-e.htm> 8 June

²⁴Jain, N.K., *Right to Information, concept, law and practice with position in other countries and case studies*, Regal publication, New Delhi, reprint edition 2010.p.33.

within twenty days from the day of the receipt of the request. Two other related statutes came into effect at the same time: The *Environmental Information Regulations 2004* (EIRs), enacted in compliance with a European Union Directive, which provides a separate right of access to environmental information held by U.K. public authorities and some private bodies including utilities and contractors providing environmental services on behalf of authorities; and the amended Data Protection Act 1998, which entitles individuals to see many kinds of personal information about themselves that is held by public or private bodies. The right to information held by private bodies was not affected by the amendments. The U.K. Information Commissioner enforces information rights across of the United Kingdom, including Scotland.²⁵

Freedom of information legislation in the United Kingdom is controlled by two Acts of the United Kingdom and Scottish Parliaments respectively, both of which came into force on 1 January 2005

- Freedom of Information Act 2000
- Freedom of Information (Scotland) Act 2002

In 2007, the Freedom of Information (Amendment) Bill was introduced as a private members bill in the House of the Commons by the Conservative M.P. David Maclean. The bill proposed to exempt MPs and Peer from the provisions of the 2000 Act, but at the same time it successfully completed its passage in the Commons but failed to progress through the House of Lords after failing to find a sponsor.²⁶

France

The germs of right to information are seen in 1789 Declaration of Rights of Man and Citizen that called for free access to information about the. It provides: “All citizen has a right to decide, either personally or by their representatives as to the necessity to the public contribution to grant this freely, to know what uses it is put.”²⁷In France, the accountability of public servants is a constitutional right, according to the *Declaration of the Rights of Man and of the Citizen*. Act No. 78-753 of 17 July 1978. On various measures for improved relations between the Civil Service and the public and on various arrangements of administrative, social and fiscal

²⁵<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0608-e.htm#fn4> 8 June

²⁶http://en.wikipedia.org/wiki/Freedom_of_information_in_the_United_Kingdom#HistoryCCRI%20Estabishes%20Legal%20Support%20Desk%20to%20Promote%20Right%20to%20Info 7 JUNE

²⁷Art. 14 of 1789 Declaration of Man. visited on 9 June, 2011

nature. It sets as a general rule that citizens can demand a copy of any administrative document. The *Declaration of the Rights of Man and of the Citizen* is a fundamental document of the French Revolution.²⁸ The commission on access to administrative documents (CADA) which is an independent administrative authority may help in the process. Regulation specifies maximal fees of reproduction. Only final versions, not work documents, may be requested. There exist a number of exemptions. CADA don't have power to order administration to surrender documents though it may strongly incite them. Citizen can challenge the refusal of the administration before the administrative courts.²⁹ The concept in the Declaration came from the philosophical and political principles of the age of Enlightenment such as Individualism, the social contract as theorized by the French philosopher Rousseau and Separation of power theorized by Baron de Montesquieu. The declaration is in the spirit of what has come to be called natural law, which does not base itself on religious doctrine or authority.³⁰

Sweden

The world's first freedom of information law; Freedom of Press, 1766 was passed by 'Riksdag' (Swedish Parliament) to be followed by Freedom of Press Act 1949 which was further amended in the year 1976.³¹ In Sweden, the Freedom of the Press Act of 1766 granted public access to government documents. It thus became an integral part of the Swedish Constitution, and the first ever piece of freedom of information legislation in the modern sense. In Swedish this is known as the Principle of Public Access. The Freedom of Press Act has been amended several times. The Act was amended for the first time in 1772, second time in 1949 and then in 1982.³² General rule in Swedish is that all government information is public. Denial of access matters specifically listed as exemption is considered exception. Information may be withheld of such as "necessary" to protect national security, foreign relation, economic policy, and supervisory activities of public authority, police investigation, public economic interest, prevention and prosecution of crime, privacy and

²⁸http://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen#History 9 June

²⁹ Jain, N.K, *op-cit.*, pp.45-46

³⁰http://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen#History 9 June

³¹ Rashwet Shrinkhal and Jaipriya Swapnil, *op-cit.*, p.15

³²http://en.wikipedia.org/wiki/Constitution_of_Sweden#Freedom_of_the_press_and_freedom_of_expression 7 June

preservation of patent and animal species, but the government is bound to give a written statement quoting legal authority for withholding the documents.³³

South Africa

Right of Access to Information is a constitutionally guaranteed right in the South Africa. South Africa passed The Promotion of Access to Information Act on 2 Feb 2000. It is intended "To give effect to the constitutional right of access to any information held by the State and any information that is held by another person and that is required for the exercise or protection of any rights".³⁴ The right of access to *privately* held information is an interesting feature, as most freedom of information laws only covers governmental bodies. The objectives of this act are to foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information and actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights.³⁵ The Act contains two separate parts each deals with the right of access to records of public bodies and private bodies respectively. The Promotion of Access to Information act, 2000 which came into force in March 2001³⁶ is one of the most comprehensive and unique pieces of South Africa Legislation because it provides public access to information swiftly, inexpensively, effortlessly and reasonably.

Ireland

In Ireland, the Freedom of Information Act 1997 (the Irish FOIA)³⁷ allows members of the public to obtain access to official information to the greatest extent possible consistent with the public interest and the right to privacy. The Act contains eight chapters. It creates rights enabling individuals to have personal information in a record amended where it is incomplete, incorrect or misleading; and to obtain reasons for decisions affecting the person. There are also requirements that public bodies publish information about themselves, the information they hold, and the internal rules and guidelines they use in decision making. The most recent amendments to the Irish FOIA, the *Freedom of Information (Amendment) Act 2003*, came into force on 11

³³Freedom of Press Act chapter 2, Art (2) visited on 7 June 2011

³⁴Promotion of Access to information Act visited on 7 June 2011

³⁵According to the Preamble of Promotion of Access to Information Act Visited on 7 June 2011

³⁶Promotion of Access to information Act visited on 7 June 2011

³⁷Freedom of Information Act 1997 visited on 8 June 2011

April 2003. The declared purpose of the 2003 amendments was to ensure the Irish FOIA's efficient operation; they extended additional protection to certain sensitive government records, and clarified certain technical procedures. However, these amendments created considerable controversy, and the government was accused of trying to scale back the scope of the Irish FOIA. The amendments included a provision severely curtaining access to government documents predating the introduction of access legislation, and introduced wider protection for ministerial communications and advice to government, along with a new fee system for requests.³⁸

Canada

In Canada the Access to Information Act³⁹ provides access to information under the control of the Government of Canada. Anyone who is a Canadian citizen, or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act*, has a right to ask information about any record under the control of a government institution. A request for access to a record under this Act should be made in writing. The head of a government institution shall refuse to disclose any record requested under this Act that contains information about the government of a foreign state or an institution; an international organization of states or an institution; the government of a province or an institution; a municipal or regional government established by or pursuant to an Act of the legislature of a province or an institution of such a government and an aboriginal government. There is also a complementary Privacy Act introduced in 1983. The purpose of the privacy act is to extend the present law of Canada that protects the privacy of individuals with respect to personal information about themselves held by the federal government institutions.

³⁸<http://www.parl.gc.ca/Content/LOP/researchpublications/prb0608-e.htm> visited on 9 June 2011

³⁹Access to Information Act visited on 8 June 2011