

Chapter-2

Right to Information: World Scenario

The right to information got the recognition at the world level. This right was the major demand of the people all over the globe. The right to information has been recognized as the basic right and the need of all democratic and civilized society. The free flow of information is very necessary for people to exercise their right to vote, to expose corruption and to give their opinion on any issue in a democracy. The people of a democracy do not receive proper information within time, then the democracy will become meaningless to them. The RTI is a tool in the hand of the people against the corrupt officials and government. The freedom of information is the basic human right to lead a dignified human life and to hold the government accountable, responsive, transparent and responsible. The roots of this right can be traced back in the 18th century when the government of Sweden and Finland gave the freedom of information to the people of the country. Swedish government was the first to adopt Freedom of information legislation in the world in 1766. In the 2006 Sweden, Finland celebrated her 240th anniversary of Freedom of Information. Many countries in the world have adopted the freedom of information legislation. The right to information now has been recognized by many international organizations like United Nation Organization, the Commonwealth, and Organization of American States etc. In 1990s there were only 13 law relating right to information at the global level but now the number has reached to 70 and 20-30 legislation regarding right to information are under the consideration.¹ Some other countries do not give directly the right to information but they have passed such laws through which people have access to their personal records held by government bodies and private institutions.²

This right is also supported by UNO very strongly as the General Assembly of UNO stressed very clearly on the right to information by with the statement that “Freedom

¹http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

²https://www.ndi.org/files/freeinfo_010504.pdf

of Information is fundamental right and the touchstone for all freedoms to which the UN is concerned.”³

2.1. Global Concern

Universal Declaration of Human Right (UDHR, 1948)*¹

Universal Declaration of Human Right (UDHR, 1948) is *The Bible* of human rights. It gives importance in its Article 19 with the statement that “The Universal declaration of Human Rights as a common standard of achievement for all people and all nations, the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching an education to promote respects for these rights and freedom and by progressive measures, national and international to secure their universal and effective recognition and observance, both among the people of member states themselves and among the people of territories under their jurisdiction”⁴

This Article signifies the democratic rights and right to information also. Further the Article also states that “everyone has the right o freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media and regardless of frontiers.”⁵

United Nation Convention against corruption (2003)

The United Nation Convention Against corruption was approved by the General Assembly of U.N. in 2003. After the ratification of 30 countries it was adopted in 2005. Article 10 of this convention is about ‘public reporting’. This Article encourages the member states of U.N. to adopt such measures which facilitates people to get information easily as information is considered a powerful to fight with corruption.⁶ Article 10 of the Convention states that:

³ Dr. Goel S.L. “Right o Information and good Governance”, Deep & Deep Publications Pvt. LTD. New Delhi, 2007, p.35

⁴ Article 19 of Universal Declaration of Human Rights

⁵ Article 19 of Universal Declaration of Human Rights

*² The American Declaration of the Rights and Duties of Men s also known as Bogta Declaration. This was the first international human right instruments which came after the Universal Declaration of Human Rights. This Declaration was adopted by the nations of the America at the Ninth International Conference of American States in Bogta Colombia in 1948.

⁶ United Nation Convention Against Corruption 2003 .

“Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes, where appropriate. Such measures may include, inter alia:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and
- (c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.”⁷

American Declaration of the Rights and the Duties of Men (1948)*²

In the preamble and its Article 4 clearly supports the right to information. It’s Article 4 and Preamble specifies that “the American people have acknowledged the dignity of individuals and their national constitutions recognize that judicial and political institutions, which regulates life in human society, have as their on principal aim to protect the essential rights of men and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness.”⁸

Further Article also the right to have opinion, investigation and discrimination of views. The article states that “every person has the right to freedom of investigation, of opinion, and of expression and discrimination of ideas, by any medium whatsoever”⁹

⁷ Article 10 of United Nation Convention Against Corruption.

⁸ Das P.K. “ The Right to Information Act” , Universal Law Publishing House Co. Pvt. Ltd., New Delhi, 2010.p. 16

⁹ Article 2 of The American Declaration of the Rights and Duties of Men, 1948.

*³ European Convention on Human Rights is an international treaty to protect human rights and fundamental freedom in Europe. It was drafted I 1950 by the newly elected Council of Europe. This convention came into force I 3 September 1953and all the members state of the council was the party of this convention. New member state has to ratify this convention. This convention also established

European Convention on Human Rights (ECHR, 1950)*³

European Convention on Human Rights also guarantees the right to Information. Article 10 of ECHR states that:

1. Everyone shall have the right to freedom of expression. This right shall include freedom to hold opinion and to receive and to impart ideas without interference by public authority and regardless of frontiers. This Article shall not prevent state from requiring the licensing of broadcasting, television and 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 disorder or crime for the protection of health or morals, for the protection of the rights and other, for preventing the disclosure of information received in confidence to maintain the authority and impartiality of the judiciary.¹⁰

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

International Covenant on Civil and Political Rights (1966, ICCPR) also supports the right to information. Civil and political rights are the foundation on which any democratic society flourish. Article 1 (a) of ICCPR emphasized that “all people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹¹

European Courts of Human Rights any person who feels his rights are violated under the convention can go in this court and the judgments of the Court are binding on the concerned state.

¹⁰ Article 10 of European Convention on Human Rights

^{*4} The International Covenant on Civil and Political Rights is a multilateral treaty. This treaty was adopted by the General Assembly of United Nations on 16 November 1966 and came into force in 1976. This treaty is committed to civil and political rights of individuals including the right to life, freedom of religion, freedom of speech and freedom of assembly. This treaty is monitored by the United Nations Human Rights Committee which submits its reports after regular intervals.

¹¹ Article 1 of International Covenant on Civil and Political Rights

Further Article 19 of ICCPR states that;

1. Everyone shall have the right to hold opinion without interference
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided in the paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be as are provided by law and are necessary.¹²

The American Convention on Human Rights (1969)*⁵

The American Convention on Human Rights (1969) is an international human right instrument. It was adopted by the Organization of American States in 1969 at a meeting held at San Jose, Costa Rica. This international instrument came into force on 18th July 1978.¹³ This convention supports the right to information indirectly in Article 13 (Freedom of Thought and Expression). The article says that everyone has the freedom of thought and expression. This right includes freedom to seek receive and impart information in any medium of one's choice. This right also has some reasonable restrictions which are necessary in order to ensure for the rights or reputation of others or the protection of national security public health and moral. This right may not be restricted by the indirect means like the abuse of government and private control over newsprint, radio, broadcasting frequencies or by any other means tending to impede the communication and the circulation of ideas and opinions. But simultaneously the Article also specifies that any propaganda and advocacy of national, racial or religious hatred that creates lawless violence or any other similar action against any person or group of person on any ground that includes race, colour, religion, language or national origin shall be considered as offence. And these offences are punishable by law.¹⁴

¹² Article 19 of International Covenant on Civil and Political Rights (1966, ICCPR)

^{*5} The American Convention on Human Rights, also known as the Pact of San Jose. It is an international human rights instrument. It was adopted by the countries of the western hemisphere on 22 November 1969 and came into force in 1978. This instrument is observed by Inter- American Commission on Human RIGHTS and Inter-American Court of Human Rights both are the organs of Organization of American States.

¹³ http://www.hrcr.org/docs/American_Convention/oashr4.html

¹⁴ Article 13 of The American Convention on Human Rights (1969)

International Convention on the Elimination of all forms of racial discrimination (1969)*⁶

International Convention on the Elimination of all forms of racial discrimination, 1969 is an international treaty against all type of racial discrimination. This is a step in the series of law against racism. This treaty was adopted on 21 December 1965 and came into force on 4 January 1969. It has three parts and 25 articles.¹⁵ Article 7 of the Convention supports the Right to Information. it states that “ States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racialism.

African Charter on Human and People’s Right (1981)*⁷

African Charter on Human and People’s Right 1981 was adopted to promote basic freedoms and Human Rights in the African Continent. This Charter was adopted in 27 June 1981 and came into force in 21 October 1989. The Preamble and Article 9 of this Charter gives importance to the right to information.¹⁶ Preamble of this Carter says that “ Reaffirming their adherence to the principal of humans and people’s rights and freedoms contained in the declaration, conventions and other instruments adopted by the organization of African Unity, the movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human rights and freedom taking into account the importance traditionally attached to these rights and freedom of Africa.”¹⁷

Article 9 of this Charter clearly spells out the importance the right to information and says that “Every individual shall have the right to receive information; Every

*⁶ international Convention on the elimination of all the forms of Racial Discrimination is an international treaty. This is a step in the series of law against racism. This treaty was adopted on 21 December 1965 and came into force on 4 January 1969. Now it’s treaty has 88 signatories and 177 parties.

¹⁵ International Convention on the Elimination of all forms of racial discrimination, 1969

¹⁶African Charter on Human and People’s Right,1981

¹⁷ Preamble of African Charter on Human and People’s Right, 1981

individual shall have the right to express and disseminate his opinion within the law.”

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Commonwealth*⁹ Countries and Right to Information

Commonwealth took firm steps to promote right to information. Commonwealth recognizes human rights in its various decisions. Commonwealth countries have taken many steps on issuing declaration on Freedom of information. In March 1999, an expert group in London adopted a document which supports the right to information. This Document states that:

“Freedom of information should be granted 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 government owned corporation and any other body carrying out public functions.”¹⁹

These guidelines later supported in 1999 by the Heads of the Government. Another report presented by the Law Minister later it was approved by the Heads of the Governments stated that: “The Committee took note of the Commonwealths Freedom of Information Principles endorsed by Commonwealth Law Minister and Forwarded to Heads of Government. It recognized the importance of public access to official information, both in promoting transparency and accountable governance and in encouraging the full participation of citizens in the democratic process.”²⁰

Rio Declaration on Environment and Development (1992)

Rio Declaration on Environment and Development (1992) also incorporates the idea of right to information. In its principle 10 it states that: “Environment issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information

¹⁸ Article 9 of African Charter on Human and People’s Right, 1981

*⁹ Commonwealth is an organization having 53 members’ states. The member states of the Commonwealth are mostly the territories of the former British Empire. It came into existence formally in London Declaration in 1949

¹⁹Khendelwal, Dheera and Krishna Khendelwal, “A Commentary and Digest on the Right to Information Act. 2005”, The Bright House Law, New Delhi, 2007, p. 63.

²⁰http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

on hazardous material and activities in their communities, and the opportunities to participate in the decision making process. State shall facilitate and encourage public awareness and participation by making information widely available.”²¹

This declaration was approved by UN General Assembly in 1997 “ access to information and broad public participation in decision making are fundamental to sustainable development.”²²

African Commission on Human Rights and People’s Rights, 2002

This commission very clearly supports the right to information. In its 32nd Session in October 2002, the commission adopted declaration of Principles on freedom of Expression. The Declaration in Guarantees on Freedom of Expression states that:

“Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. Everyone shall have an equal opportunity to exercise the right of freedom of expression and to access information without discrimination.” ²³

Further about Freedom of Information the Declaration states that “Public Bodies hold information not for themselves but for the public good and everyone has right to access this information... everyone has the right to access and update or correct his personal information, where it is held by public bodies.”²⁴

Council of Europe

Council of Europe is an intergovernmental organisation which came into existence in 1949 after London Treaty. Now this council has 47 member states.²⁵This council has taken many important moves in the promotion of right to information as a fundamental human right. In 1981 the council adopted recommendation on access to

²¹Principle 10 of Rio Declaration on Environment and Development ,1992

²² Dr. Goel S.L, op, cit., p. 36

²³ African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, the Gambia.

²⁴African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, the Gambia.

²⁵http://www.strasbourg.mfa.gov.pl/en/council_of_europe_in_brief/coe_in_brief/

information which supports the right to information²⁶. It states that: “Everyone within in the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.”

In February 2002 the council adopted some other recommendation. These recommendations include the provision to promote right to information. It states that “Members states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground including national origin.”²⁷

European Union

It is not compulsory for the member states of the European Union to adopt the freedom of information law. But this union has issued some directives to its members states which makes it according to those directives the members states are required to adopt some laws providing information on some issues including environment protection, consumer protection and re-use of public information.²⁸ European Union Charter also gives access on information. A resolution on Freedom of Information was passed in 2001 which ensures the access on documents which are drawn and received by it.²⁹ The member states are also required to follow the on freedom of information. Article 255 of the treaty of European States that “ Any citizen of the union, and any natural or legal person residing or having its registered office in a member state, shall have a right of access to European Parliament ... each institution referred to above shall elaborate in its own rules of procedure specific provisions regarding access to its documents.”³⁰

2.2.Right to Information in prominent Countries

Right to information exist in many countries in the world according to their culture, government and civil society. In some countries the freedom of information is very

²⁶http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

²⁷http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

²⁸http://www.freedominfo.org/documents/global_survey2006.pdf

²⁹ShrinkhalRashwet and JaipriyaSwapnil, op.cit., p. 12

³⁰http://www.freedominfo.org/documents/global_survey2006.pdf

strong and some countries are having legislation on freedom of information with some weaknesses. The very first country in the world who gave recognition to the right to information is Sweden. *AdersChydenius*, a thinker and a politician played a major in the formation of the new law regarding access the information. People's right know has been accepted as the basic condition for the effective functioning of a democracy. Administrative secrecy has become the barrier in the way of democratic development. Keeping this in mind many countries has realised the need of the right to information and adopted legislation regarding right to know. The status of right to know in different countries is as follows:

United States of America (1966)

The constitution of America is considered as the oldest written constitution in the world. The constitution of America did specified right to know at the time when it was adopted. But after the first amendment the American constitution gives the right to access information where access contributes in the functioning of a particular process.³¹ Though the U.S. government also provided limited access on information in Administrative Procedure Act (APA) 1946, but this had many weaknesses and had many clauses to escape. According to the APA every parson did not have the right to demand information, agencies are not required to give justification for holding the information and the provision of judicial review was also not there. These clauses had made the APA very weak and there was a demand for a comprehensive legislation to have access on information.³² In U.S.A John Moss was the very first person who supported the idea of public access on government documents. Before Freedom of Information in U.S.A. there was no such legislation according to which people can get information about the government policies and decisions. So FOIA was a very important issue for the members of Congress but it was not supported by Executive Branch. The Bureau of budget stated that "The requirement that the information be made available to all and sundry, including the idly curious, could create serious practical problem for the agencies."³³ but due to the strong support of the congress the bill passed by the congress on 20 June 1966 despite the unfriendliness of Johnson Administration and became a law on 4th July 1966. The FOIA was the most

³¹Shrinkhal, Rashwet and JaipriyaSwapnil, op.cit., p. 13

³² Ibid

³³<https://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf>

comprehensive Act on access to information at that time in the world with huge access on information. It has proved the most effective tool to make government transparent and accountable.³⁴ The U.S government had amended FOIA in 1974 and 1986 to make it more comprehensive and progressive. The FOIA is applicable to all the government including military departments, government corporations and government controlled corporations and independent regulatory agencies. It is the duty of all the agencies to provide all the record on the public request.³⁵ The FOIA also defined nine areas which are in the category of exemption. These exemptions includes, national security, internal agency rules, trade secret, information exempted by another federal statute, information regarding personal privacy, investigatory records, internal agency memoranda and some other information which are mostly not related to most FOIA requests.³⁶

In 2001 there was a setback in the free flow of information after the incident of 9, 11, 2001 terrorist attack in America. Attorney General issued a statement in 20001 that the Justice department would defend any agency who withhold information on a reasonable ground. The Bush administration also did many attempts to prevent access on information. Many federal websites were closed after the incident of 9/11.³⁷ President Obama issued an memorandum on 21 January 2009 by stating that the Act should be administered with a clear presumption. The memorandum states that; “All agencies should adopt a presumption in favour of disclosure, in order to renew their commitment to the principal embodied in FOIA, and to usher in a new era of open government. The presumption of disclosure should be applied to all decisions involving FOIA.”³⁸

Information is very necessary for the successful working of any government. This idea is also supported by *James Madison*. He stated that “A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own Governors, must arm themselves with the power with

³⁴<https://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf>

³⁵ Jain, N.K., “Right to Information Concept, law and Practice with Position in other Countries and Case Studies”, Regal Publication New Delhi, 2010 , p. 30

³⁶<https://www.citizen.org/documents/FOIABrochureWEB.pdf>

³⁷ Dr. Kumar, Niraj, “Treatise on Right to Information Act, 2005”, Bharat Law House, New Delhi, 2009, p. 381.

³⁸<https://www.fas.org/sgp/crs/secrecy/R41933.pdf>

knowledge gives.”³⁹In 1977 the Sunshine Act passed by the congress which made it compulsory for the agencies to conduct opens meetings. However there are also some areas on which closed door meeting are allowed.⁴⁰ According to the FOIA a request should be respond within 10 days from the receipt of the request and in acre of first appeal this time limit is 20 days from the receipt of the request. In case of no response the applicant can go to the court. It is mandatory to submit their annual report to the Speaker of the House of the Representatives and President of the Senate.⁴¹

United Kingdom (2000)

In England there is a culture of secrecy instead of openness. In United Kingdom providing information is a punishable offence under the Official Secret Act. 1911, 1920 and 1939. Keeping in view the demand of public access on government information Frank Committee recommended to abolish the Section 2 of the Official Secret Act and replace it with the Official Information Act. The Committee also recommended some areas for wrongful disclosure. But instead of implementing the recommendations of the Frank Committee the U.K. replaced Section 2 of 1922 Act with a more restrictive Official Secret Act.⁴² After the draft Bill of 1999 another Daft of the Freedom of Information bill was developed by the U.K. government in 2000. The draft was discussed in the House of Lords and after a long discussion it was passed by the Parliament and now has become a law.⁴³ But Freedom of Information legislation was implemented after four years on 1 January 2005. The Act is applicable to U.K. government departments and public authorities in England, Wales and Northern Ireland. The reason for delay in the implementation of the Act was to give authorities time to prepare for its implementation. This Act gives people right to have access on information held by a board array of public authorities. Time limit to give response on a request on 20 days from the receipt of the application. But the Act is not so powerful and has many weaknesses. Intelligence agencies are not covered under the Act. It is criticised by politicians and NGOs for not having strong disclosure and for not been so effective.⁴⁴ United Kingdom Freedom of Information Act 2000 contains eight Schedules, eighty eight Sections. The Act is being divided into eight

³⁹<http://www.americanuniversitylawreview.org/pdfs/34/34-4/Moon.pdf>

⁴⁰Shrinkhal, Rashwet and JaipriyaSwapnil, op.cit., p.15

⁴¹ Jain, N.K., op.cit., p. 32-33

⁴²Shrinkhal, Rashwet and JaipriyaSwapnil, op.cit., p.19

⁴³ Jain, N.K., op.cit., p.33

⁴⁴Dr. Kumar, Niraj, op.cit., p. 379.

parts. The Act describes about information, public authorities, fee, and exemption etc.⁴⁵ Under this act a request for information can be made in writing with the name and correspondence address of the applicant along-with the description of the information which is required.⁴⁶ A public authority is required to send a fee notice to the applicant and the fee has to be submitted within three months from the date on which the fee notice is received by the applicant. After submission of the fee by the applicant the information should be given by the public authority within twenty working days from the date on which the fee is received by the concerned public authority.⁴⁷ Two other statutes in U.K also provide access on information. One is Environment Information Regulation 2004 which gives on information held by U.K public authorities and other is Data Protection Act 1998 which provides right to the individuals to see any kind of personal information that is held by public bodies.

France (1978)

The germs of the right to information in France can be seen in the Declaration of the Rights of the Men and of the citizens of 1789. Article 14 this declaration provide access to information about the budget to be made freely available. This Article states that “All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what use it is put; and to fix the proportion, the mode of assessment and the collection and the duration of the taxes.”⁴⁸

In 1978 another law regarding access on information was passed by the French government which provide access to administrative documents held by public authority. The word ‘document’ includes “ files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or a description of administrative procedures, recommendations, forecasts and decisions originating from the state, territorial authorities, public institutions or from public or private law organisations managing public service.”⁴⁹ The law also specifies the information which do not come in the definition of documents. These include documents of the State Audit Office,

⁴⁵ Freedom of Information Act. 2000

⁴⁶ Section 8 of Freedom of Information Act. 2000

⁴⁷ Section 9 and 10 of Freedom of Information Act 2000

⁴⁸ Article 14 of Declaration of the Rights of Men and Citizens

⁴⁹ Dr. Kumar, Niraj, op.cit., p. 354.

proceedings of the parliament assemblies, recommendation issued by the Conseil d'Etat and administrative jurisdiction, documents regarding the investigation of complaint referred to the Ombudsman of the republic and documents prior to the drafting of the health origination accreditation report.⁵⁰ The citizen can demand for a document but only for the final version not for the document which is under work. In this process (*Commission d'Acces aux Documents Administratifs*) CADA can help in this process but it cannot order the concerned authority to surrender the documents it only can motivate them to do so. The citizen can challenge the denial of a request in administrative court. But the courts are overbooked that the applicants often wait for many years. The European court has declared France guilty of excessive delays many times⁵¹

In recent years the Law on Free Access to Administrative Documents is a subject to criticism because it is lagging behind from the laws on access to information in the world. In 2008 it was the thirtieth anniversary of the Law.

Sweden (1766)

The very first country in the world who gave recognition to the right to information is Sweden. *AdersChydenius*, a thinker and a politician played a major in the formation of the new law regarding access the information. World's first document on freedom of information was passed by the 'Riksdag' (Swedish Parliament) in 1766 with the name 'Freedom of Press Act. 1766'. The circumstances in which the act was passed was not because of Jean-Jacque Rousseau, but was the parliamentary rule between 1718 and 1772. The new party which came in majority in 1766 wanted to see all the documents kept by pervious government in secret.⁵² The main points of the 1766 Act were public access to the documents hold by the government and the abolishment of political censorship.⁵³ The Freedom of Press Act is amended many times. First time it was amended in 1949 and further in 1976. The Act also specifies exempted information. Information mentioned in the as exempted is discretionary. It can be withhold if necessary to protect national security, economic policy, and foreign relation including diplomatic negotiations, public investigation, prevention and

⁵⁰http://www.freedominfo.org/documents/global_survey2006.pdf

⁵¹ Jain, N.K., op.cit., pp.45-46

⁵²http://www.humanrightsinitiative.org/programs/ai/rti/articles/foi_advocacy_swedish_oddity.pdf

⁵³http://www.chydenius.net/pdf/worlds_first_foia.pdf

prosecution of crime, supervisory activities of public authority, public economic interest and privacy and prevention of patent and animal species.⁵⁴The Act specifies that the information for which a request is being made should provide immediately with no charge. The Freedom of Press is an integral part of Swedish Constitution decrees that “every Swedish citizen shall have free access to official documents.” The citizens have broad access of ‘official documents’. The documents are only available when the matter on which the request is being made is settled or are sent to another authority. Some documents are not considered official documents such as drafts, memoranda and outline unless they contain factual information.⁵⁵ It is mandatory for each public authority to maintain the records of official documents and most of these are publicly available. In the secrecy Act of 1980 a comprehensive list of exempted information is provided. The Act says that the information between 2 to 70 years can be kept in secret. If there is denial for the information the citizen can go to supreme administrative court and parliamentary ombudsman. In 2002 the government started an ‘open Sweden campaign’ to make public more aware, increase public sector transparency and to encourage citizens for the active involvement in the debate. Sweden has ratified Aarhus convention in 2005. Now citizen can get information about environment under freedom of press Act. In Sweden citizens also have the right to get correct personal information under Personal Data Act.⁵⁶

South Africa (2000)

Article 32 of the constitution of South Africa states that:

“(1) every has the right of access to – (a) any information held by state and (b) any information that is held by another person and that is required for the exercise or protection of any right.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measure to alleviative the administrative and financial burden on the state.”⁵⁷

⁵⁴Shrinkhal, Rashwet and JaipriyaSwapnil, op.cit., p16

⁵⁵ Dr. Kumar, Niraj, op.cit., p.376

⁵⁶ Dr. Kumar, Niraj, op.cit., p 377

⁵⁷ Article 32 of the constitution of the Republic of South Africa 1996

This Act provides access to information held by government. On 2 February 2000 the government of South Africa passed a law with the name 'the Promotion of Access to Information and came into force in March 2001. The Act is intended to " Foster a culture of transparency and accountability in the public and private bodies by giving effect the right to information and " Actively promote a society in which the people of South Africa have effective access to information and enable them to fully exercise and protect all of their rights."⁵⁸The Act has a unique feature with the provision that allows citizens to get information held by private bodies when it is necessary to enforce people's right. Initially the time limit to respond on a request was 60 days but it was amended in March 2002 and now it is of 30 days. The Act also has the number of mandatory and discretionary exemption. The Act does not apply on individual members of Parliament and provincial legislatures, cabinet records and its committee, judicial function of the courts and tribunals.⁵⁹

Canada (1983)

The 1983 Access to Information Act gives Canadian citizens the right to get information to obtain the copies of the records from the government bodies. The Act is intended to " provide right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exception to the right of access should be limited and specific...and not replace existing procedure for access to government information and is not intended to limit in any way access to the type of government information that is normally available to the general public."⁶⁰

Every person who is the citizen of Canada or a permanent resident in Canada has the right to access on the records held by government institution. 'Records' includes films, reports, photograph, memos, letters, microforms plans, drawing diagrams, sound and video recordings and machine-readable or computer files. The institution to which the request is being made is required to reply within 15 days.⁶¹The request should be made in writing along-with the fee not more than twenty-five dollars to the concerned authority. The request can be denied if the information is not available or it

⁵⁸ According to the Preamble of Promotion of Access to Information Act 2 of 2000

⁵⁹ Dr. Kumar, Niraj, op.cit., p 374

⁶⁰Section 2 of Access to Information Act 1985,

⁶¹https://www.ndi.org/files/freeinfo_010504.pdf

may be transfer to the other institution to which the request is more related.⁶² The information commissioner of Canada can investigate the issues but it cannot issues binding orders for any institution. It is mandatory for The Federal Court of Canada to answer all the access request. The Access was amended in November 2001 as part of Terrorism Act. This gave the power the Attorney General of Canada “at any time personally issue a certificate that prohibits the disclosure of information for the purpose of protecting international relation or national defence or security”⁶³

2.3.Right to Information in Neighbouring Countries

Bangladesh (2009)

Right to information Act 2009 is milestone in the history of Bangladesh. This Act paved the way for the citizens of Bangladesh to get information from the government authorities. Unlike India this Information Act 2009 is not the result of one day but is the outcome of a long time struggle. Many NGOs, social group, intellectuals, media persons and individuals did effort to make this right a reality. The preamble of the Law clearly states the rationale behind the Law;

“The right to information shall ensure that transparency and accountability in all public, autonomous and statutory organisations and in private organisation run on government and foreign funding shall increase, corruption shall decrease and good governance shall be established. It is expedient and necessary to make provisions for ensuring transparency and accountability.”⁶⁴

The demand for the right to information in Bangladesh was first articulated in early 1980s by the Press Council. The demand for the right to information was a response to restrictions on Press freedom by the doctorial regime. After 1980s people in Bangladesh started demanding for the right to information as result in 2002 the Law Commission prepared a working paper on RTI.⁶⁵ The Act was passed by the government on 29 March 2009. But just to pass a law is not enough to fill the gap between the representative of the people and the common masses. The effective

⁶² Section 6,7,10 and 11 of Access to Information Act 1985,

⁶³ Dr. Kumar, Niraj, op.cit., p 348

⁶⁴ According to the Preamble of The Right to Information Act, 2009

⁶⁵ file:///C:/Users/Admin/Downloads/24042013045156pmE_book_Right_to_Information_Act_Challenges_Nov_2012.pdf

implementation is also very necessary for the required outcomes. With the effective use of the Act the areas of improvement can be identified to make the government more effective. NGOs in Bangladesh making awareness among common about the use of the right to information. Though the is very young but people are getting information about the welfare schemes to get benefited from those schemes like health care, food, education and other schemes. Often these schemes never reach to the people to whom they are design for.⁶⁶ In the support of the right to information Act, *the Prime Minister of Bangladesh Sheikh Hasina*, stated once; “The enactment of the Right to Information Act is an epoch-making incident in the history of Bangladesh... it will greatly help establish accountability and transparency in every sphere of society and the administration ... the government will continue to work to safeguard the people’s right to information.”⁶⁷

All provision of the act came into force on 20 October 2008 except three provisions. These three provisions are section; section 8, regarding obtaining information, section 24 regarding appeals and section 25 regarding complaint mechanisms.⁶⁸ The Act defines “information” as “any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority.”⁶⁹ The Act provides the right to information to all citizens and the authority is bound to provide the information on the demand of citizens.⁷⁰ But section 7 of the Act also provide a huge list of exempted information such as information that may caused threat to the security of the nation, information relation to any aspect of foreign policy. The request for information can be made in writing or in printed form along-with the fee prescribed by the government. The concerned officer is bound to give the information within twenty working from the date on which the request was received if more than one unit are involved with the sought information then the time limit will be thirty

⁶⁶http://foiadvocates.net/wp-content/uploads/Publication_WBI_ATIBangladesh.pdf

⁶⁷https://www.ti-bangladesh.org/beta3/images/max_file/RTI-Paper_ED.28.09.2010.pdf

⁶⁸ Section 1 of The Right to Information Act 2009, Bangladesh

⁶⁹ Section 2 (f) of The Right to Information Act 2009 (Bangladesh)

⁷⁰ Section 4 of The Right to Information Act 2009 (Bangladesh)

days.⁷¹ If a person does not get information within the time specified in the Act then he/she can appeal to the appeal authority within thirty days after the expiry of the time limit. The appellate authority within fifteen days will direct the concerned officer to furnish the information. The applicant can also lodge a complaint to the information commission.⁷² If the concerned authority is found guilty in not giving the information then the Information Commission can impose fine fifty taka per day from the on which such fine is imposed till the day of providing information. This fine should not exceed more than five thousand taka.⁷³

Pakistan (2002)

The constitution of Pakistan was passed by the National Assembly on 10th April 1973 and was authenticated on 12th April 1973. Article 19 of the Constitution deals with the freedom of speech but does not directly give the right to get information for the government authorities. It states that;

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, friendly relation with the foreign state, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.”⁷⁴

The first step in Pakistan in the direction of the right to information was made in 1990s through a private bill introduced in Senate by Khurshid Ahmed of Jamaat-e-Islami. But the bill was not considered in the Senate. Later in the government of Benazir Bhutto a committee was made to examine the cause of corruption and solution. The committee recommended some solution and one of them the enactment of Right to Information Bill. But because of the dismissal of Bhutto’s government and the rigid behavior the recommendations gave by the committee could be a reality.⁷⁵ In 1993 the Supreme Court of Pakistan observed that it is the duty of the government to provide information to the citizens about the decision-making process to increase accountability in the governance. The Court also stated that right to receive is the part

⁷¹ Section 7,8 and 9 of The Right to Information Act 2009 (Bangladesh)

⁷² Section 24 and 25 of The Right to Information Act 2009 (Bangladesh)

⁷³ Section 27 of The Right to Information Act 2009 (Bangladesh)

⁷⁴ Article 19 of Constitution of the Islamic Republic of Pakistan

⁷⁵ http://www.pildat.org/publications/publication/FOI/MoreEffectiveRighttoInformationLegislationinPakistan_BackgroundPaper.pdf

of Article 19 of the constitution which gives freedom of speech. But the judgment of the court did not receive any attention. In 1997 after the Bhutto's government, the interim government led by Malik Miraj Khalid introduced access to information ordinance but it did not taken into consideration by any government.⁷⁶ The new legislation on right to information passed in October 2002 with the name 'Freedom of Information Ordinance'. But only after six month the ordinance was lapsed. Though the PersidentPervizMusharrf announced that the ordinance will continue in future. In 2004 the Ombudsman announced that even in the absence of the rules the ordinance is still in the continuance. The rules for the ordinance were announced in 2004 but no input from the stakeholders was taken. Since then civil society in Pakistan is trying to implement Model Rules for the ordinance but all is vain.⁷⁷

The new Article 19 (A) is added in the constitution of Pakistan to promote the right to information. It states that; "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law."⁷⁸

Media group in Pakistan reported that the ordinance is not being implemented properly. There is a lake of political will to apply this ordinance. In march 2006, Center for Peace and Development(CPID) reported that most of the information do not know their role and responsibility and there is a need for a attitudinal shift on the part of government officials. CPID also recommended for training programmes and awareness workshops for the information officers that how to deal with an information request. CPID also suggested that all ministries should publish their indexation records on websites.⁷⁹

The information allows all the citizens of Pakistan to have access on information held by government authorities. The Preamble of the ordinance states that; "To provide for transparency and freedom of information; - WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal

⁷⁶http://www.pildat.org/publications/publication/FOI/MoreEffectiveRighttoInformationLegislationinPakistan_BackgroundPaper.pdf

⁷⁷http://www.freedominfo.org/documents/global_survey2006.pdf

⁷⁸ Article 19(A) of Constitution of the Islamic Republic of Pakistan

⁷⁹http://www.freedominfo.org/documents/global_survey2006.pdf

Government more accountable to its citizens, and for matters connected therewith or incidental thereto;”⁸⁰

The ordinance applies to whole of Pakistan. No person can be denied to any official record from any ministry, division or attached department to the federal Government except the exempted information listed in the ordinance. The ‘records’ includes any form printed or in writing including maps, photography, diagram, microfilm, film which is used by the public body for an official purpose.⁸¹ The ordinance has the provision that every public body will designate an officer to whom the request will be made and such officer will assist the requester to make the request if it is necessary. In case of the absence of the designated officer the person in-charge will be the designated officer. A person can make a request for information in the prescribed form along-with the application containing necessary particulars and with the fee as prescribed.⁸² The designated officer is bound to give the information sought under the ordinance within twenty days of the receipt of the request. The designated officer will also give a certificate along-with the information that the information is correct and is a true copy of records.⁸³ The ordinance contains a long list of exempted information from section 14 to 18 including information regarding international relation, economic affairs, personal information, information that facilitates an escape from custody. If a requester is denied to give the information then he/she can file a complaint to the head of the public body within thirty days from the date on which he/she got the denial decision of the designated. If he fails to get information from the head of the body he/she can file a complaint to the Mohtasib or the Federal Tax Ombudsman as the case may be.⁸⁴ If the complaint is found malicious, frivolous or vexatious then the Mohtasib can impose a fine up-to an amount of ten thousand rupees to the requester.⁸⁵

Nepal (2007)

The right to information got recognition in Nepal very late. The Nepal interim constitution of 1009 gave the right to information for the first time in Nepal in its

⁸⁰ Preamble of Freedom of Information Ordinance 2002

⁸¹ Section 2 and 3 of Freedom of Information Ordinance 2002

⁸² Section 9, 10 and 12 of Freedom of Information Ordinance 2002

⁸³ Section 13 of Freedom of Information Ordinance 2002

⁸⁴ Section 14 to 19 of Freedom of Information Ordinance 2002

⁸⁵ Section 20 of Freedom of Information Ordinance 2002

Article 16. The Article states that; “every citizen shall have the right to demand and receive information on any matter of public importance; Provided that nothing in this Article shall compel any person to provide information on any matter about which secrecy is to be maintained by law.”⁸⁶

The current constitution of 2007 in Nepal also made a similar provision under Article 27 of the constitution. The demand for right to information in Nepal was started by the media community and after the establishment of democratic government in 1990 a draft bill was introduced in the Parliament in 1992 but could not be passed. The judiciary of Nepal also played an important in the development of right to information in Nepal. In 1997 another initiative took by the media community and a seven member independent RTI Law drafting team prepared a new draft bill on RTI. Media expert, lawyers and members of Parliament were the members of the team. Finally the draft was tabled in the parliament in 2002. Unfortunately the bill was not taken into consideration because of the dissolution of the Parliament and political instability. Another RTI ordinance prepared by the Nepal Law Commission in 2004 was put on Hold due to the bloodless coup in 2005. Jan Andolan of 2006 forced the King to reconsider the right to information. In September 2007 a new taskforce was formed to draft bill on right to information based on the earlier draft prepared by the government to regulate right to information on 18 July 2007. Stakeholders and civil society did numerous efforts to improve the earlier draft and prepared a new draft on right to information which was enacted on 21 July 2007 and came into force on 20 August 2007. The rules on the right to information were ratified and implemented in 2009.⁸⁷ Right to information in Nepal comes almost after two decades of its recognition as fundamental right in the interim constitution of Nepal 1990. The actors a very important role to make right meaningful; Nation information Commission (NIC), Public body and civil society. Public bodies have a lot of information that can be sheared on the request by any person. Civil society has the responsibility to demand that information by making the request and National Information Commission can issue order to the public body to provide information as per the

⁸⁶ Article 16 of Interim Constitution of Nepal 1990

⁸⁷<https://www.article19.org/data/files/medialibrary/38121/FINAL-Asia-Disclosed-full.pdf>

request of information. Until the all three actors are equally competent the right to information cannot be a meaningful right.⁸⁸

The right to information Act 2007 describes information as “the right to ask for and obtain information of public importance held in the Public Bodies and this term shall also include the right to study or observation of any written document, material held in Public Body or proceedings of such Public Body; to obtain a verified copy of such document, to visit or observe the place where any construction of public importance is going on and to obtain verified sample of any material or to obtain information held in any type of machine through such machine.”⁸⁹ Section 3 of the Act states that every citizen has the right to get information held by public bodies. The word ‘information’ includes any written document, material or information related to the functions, proceedings and decision of public importance made by public body.^{*190} it is the responsibility of every public body to classify and publish the information in a simple way and to conduct its function with transparency and openly. The Act also specifies that every public body will provide information that will provide information on an information request made by any citizen. The requester has to give the reason for making a request and the information should be provided within fifteen days by the information officer and if the information is related to the security of life of a person in that case it will be provided in twenty four hours.⁹¹ The information also has to pay fee for the information and the fee will be according to the actual cost of the information. If the information is denied or does not provided by the information officer then the requester can make a complaint to the Chief within seven days from the date on which the information is denied. If the requester is not satisfied with the decision of the Chief then he/she can make first appeal to the Commission within

⁸⁸<http://fdm.com.np/files/download/National%20Strategic%20Plan%20of%20Action%20on%20Right%20to%20Information%20in%20Nepal.pdf>

⁸⁹ Section 2 (9) (e) of the Right to Information Act 2007.

^{*1} Under the Act public Body means “A body established by an Act, A body formed by the Government of Nepal, Institution or foundation established by the law, public service. Political Party or organization registered under the preventing law, Body Corporate under the full or partial ownership or under control of the Government of Nepal or such body receiving grants from the Government of Nepal, Body Corporate formed by a Body established by the Government of Nepal or the law upon entering into an agreement, Non-Governmental Organization/Institutions operated by obtaining money directly or indirectly from the Government of Nepal or Foreign Government or International organization/institutions.”

⁹⁰ Section 2 (9) (b) and 3 of the Right to Information Act 2007.

⁹¹ Section 4, 6 and 7 of the Right to Information Act 2007.

thirty-five days from the date on which the decision is received.⁹² If the chief of the public body provide wrong information or destroyed information or held back information or provide partial information in that case the commission can impose a fine from rupees 1000 to 25000 on them. The commission can also right to the concerned body for departmental action. If the chief or information delays information without any reason then the commission can punish with a fine of 200 rupees per day. If the requester is not satisfied with the decision of the commission then he/she can appeal to the appellate court within thirty five days of decision received.⁹³

⁹² Section 8 and 9 of the Right to Information Act 2007

⁹³ Section 32 and 34 of the Right to Information Act 2007