

CHAPTER-3

A GLOBAL PERSPECTIVE OF INFORMATION LAWS AND IMPLEMENTATION

3.1. Overview

Open government is an essential element of a functional democracy in improving transparency and accountability that can strengthen governance and foster economic growth. Empowering the people to have an access to all kinds of information that concerns them brings in credibility in the governance. A transparent monitoring of progress and accountability for action and people-led monitoring, in particular could change the dynamics of accountability and bring in development outcomes. A proponent of transparency, Joseph Stiglitz argues: “Citizens, who own government information, should rightfully have access to it: “The question is, given that the public has paid for the gathering of government information, who owns the information? Is it the private province of the government official, or does it belong to the public at large/I would argue that information gathered by public officials at public expense is owned by the public”¹

A concern over such openness in governance was for the first time felt when Sweden became the first country to pass legislation on the Freedom of Press Act in December 2, 1766. Exactly after two centuries, the United Nations General Assembly adopted a resolution declaring Freedom of Information as a fundamental human right. Thereafter, granting this right to the people of every nation became a necessity for good governance around the globe. Majority of the nations of the world today have freedom of information or access to information or right to information laws (referred by different names by different countries) to promote openness in governance. Access to information has become a global concern and almost all international organisations promote universal transparency today.

¹ Joseph Stiglitz “On Liberty, the Right to Know and Public Discourse: The Role of Transparency in Public Life,” 7 The Oxford Amnesty Lectures, (1999)

According to John Rawls “In the territory of fairness, the core idea is that those who accept the benefits of fair share of cooperation have a duty to do their allotted part under that scheme: if others obey the law to our benefit, we owe them a duty not to take a free-ride on their compliance”² Therefore it can be said that transparency in governance is indirectly responsible for a nation to thrive.

Freedom of Information was recognised as a fundamental human right soon after the constitution of the United Nations. With the adoption of Resolution 59(1), the U.N. General Assembly in 1946, freedom of information became the touchstone of all the freedoms. Thereafter, the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights, 1966; the UN Commission on Human Rights 1993; the Commonwealth, 1991; Organisation of American States, 1969; the Council of Europe and African Charter advocated for realisation of right to information by drafting guidelines or model legislation to promote access to information.

Importance of the right to information has been well recognised as fundamental in good governance by the other International agencies like the World Bank, the International Monetary Fund (IMF), the United Nations Development Programme (UNDP), Asian Development Bank (ADB) and the World Trade Organisation (WTO). These agencies have been encouraging countries to adopt access to information laws as part of an effort to increase transparency in governance and reduce corruption.

The present chapter delves into the various international organisations and agencies that have promoted openness in their administration and has set an example for global credibility. It also throws light on the information laws of select countries across the continents highlighting the progress and hindrances in their implementation.

3.2. A Global Concern for Access to Information Laws

Today major countries of the world have information laws. Various factors have been responsible for the growth of information laws across the nations. For some countries, it the initiative of the government and for many others it was the media and the civil society groups that have been the driving force in enacting access to

² John Rawls: “Legal Obligation and the Duty of Fair Play” in (Ed.) S. Hook: Law and Philosophy [New York, 1964]

information laws and making government more responsible towards its citizens. In India it was people's movement that led to the enactment of the Act. Credit can be given to the various international organisations that have been instrumental in promoting access to information laws by making it a condition precedent for granting loans and aid to the countries. These organisations have voluntarily incorporated sound disclosure policies by publishing annual reports and displaying all kinds of information in their websites promoting openness in their administration.

3.2.1. Promotion of Freedom of Information by the United Nations

To prevent or expose abuses, improve delivery of services and also to protect public health and welfare, the UN General Assembly gave formal recognition to the freedom of information as a fundamental human right.³ The UN Declaration of Human Rights in 1948 accepted the role of media as the source to seek receive, impart information beyond territories.⁴ In this statement the UN just expressed its ideal; it had no legal binding on any State to protect this 'human right'. Further, the International Covenant on Civil and Political Rights, 1966 reiterated the same.⁵

Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, 1966⁶ directed the State Parties to 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 Racial Discrimination ,and this Convention.

In 1998 Report, the UN Special Rapporteur, clarified the meaning of freedom of information under Article 19 of the ICCPR in unequivocal terms as "impos[ing] a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems."

³ United Nations General Assembly Resolution 217 (III), dated 10th December, 1948

⁴ Article 19 UDHR, 1948

⁵ United Nations General Assembly Resolution, 2200A (XXI), dated 16th December, 1966

⁶ United Nations General Assembly Resolution, 2106(XX) ,dated 21th December, 1965

The United Nations Convention against Corruption⁷ was approved by the General Assembly in October 2003 and adopted in December 2005 after 30 countries ratified it. The convention applies to five main areas including preventive measures, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange. The Convention also deals with various forms of corruption, such as bribery, trading in influence, abuse of functions, etc. The Conference of the States Parties (COSP) is the main policy making body of the Convention, supporting state parties and signatories in their implementation of the Convention and giving policy guidance to UNODC to develop and implement anti- corruption activities.⁸

Article 10 of the Convention on Public Reporting encourages countries to adopt measures to improve public access to information as a means to fight corruption declares “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 process, where appropriate⁹.”

Also, the Article 10 of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950¹⁰ acknowledged freedom to hold opinions and receive information beyond boundaries without the intervention by the public authorities. It shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

In 1992, the Rio Declaration on Environment and Development¹¹ stated, “Individuals, groups and organizations should have access to information relating to environment and development held by national authorities, will inform on products and activities likely to have impact on environment and inform protection measures”

⁷ United Nations Convention Against Corruption *available at:* <https://www.unodc.org/treaties/CAC> (last visited on April 4, 2019)

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Held at Rome, 4th November, 1950; came into force on 3rd September, 1953

¹¹ *Available at:* www.unesco.org (visited on March 12, 2019)

3.2.2. Enforcement of Information Laws by the Commonwealth

A voluntary association of 53¹² countries that were once part of the British Empire formed the Commonwealth, which recognises democracy, human rights and the rule of law and commits to promote peace and prosperity to improve the lives of the people of the member states.¹³

In 1980, the Commonwealth Law Ministers Meet¹⁴ in Barbados, the Law Ministers of Commonwealth declared that “Public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information”. This led to the formation of an expert group on right to know that was endorsed by the Commonwealth Law Ministers Conference and were adopted in 1999.

The Commonwealth Freedom of Information Principles, 1999, advocated that- (i) the member countries should regard freedom of information as a legal and enforceable right; (ii) a culture of openness should be promoted by the government of the member countries and there should be a presumption in favour of disclosure; (iii) exemptions on the right to information should be narrowly construed; (iv) the member countries should maintain and preserve records and (v) an independent review should be carried on the decisions of refusal to access records and information.¹⁵

3.2.3. Disclosure Policy of the Council of Europe

The Council of Europe is an inter-governmental organisation of 47 member states that is devoted to promote human rights, democracy and rule of law. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 which is one of its foundational documents guarantees freedom of expression as a fundamental human right that include freedom to hold opinions, impart and receive information and ideas. It further prevents the public authority from any

¹² Earlier it was an association of 54 countries .On 3 October, 2013 the Government of the Gambia withdrew its membership from the Commonwealth.

¹³ The Commonwealth, *available at*: thecommonwealth.org (last visited on April 4,2018)

¹⁴ Commonwealth Secretariat (1980),1980 Meeting of Commonwealth Law Ministers : Barbados,28 April-2 May 1980: Memoranda, Commonwealth Secretariat, London *available at*: <https://doi.org/10.14217/9781848593084-en> (last visited on May 18, 2019)

¹⁵ Communiqué, Commonwealth Functional Co-operation Report of the Committee of the Whole (Durban: Commonwealth Heads of Government Meeting, 15 November, 1999), para 20

intrusion except for matters requiring prior approval of the state. However this right is subject to several restrictions ¹⁶

3.2.4. The Role of Organisation of American States in Promoting Accountability

In Articles I and IV of American Declaration of the Rights of Man, 1948¹⁷ provides as under: “Article I. Right to life, liberty and personal security- Every human being has the right to life, liberty and the security of his person. Article IV. Right to freedom of investigation, opinion, expression and dissemination- Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.” This was reaffirmed by Article XIII of American Convention on Human Rights, 1969 (Pact of San Jose, Costa Rica).

3.2.5. Disclosure Policy of the African Charter

Article 9 of African Charter on Human and Peoples’ Rights, 1981¹⁸ enshrines right to receive information as one of the rights. It lays down that every individual shall have the *right to receive information*. Every individual shall have the right to express and disseminate his opinions within the law.

In 2002, the African Union’s African Commission on Human and People’s Rights adopted a Declaration of Principles in a Resolution which recognised the right of citizens to access information the role of the public bodies in the good of the society. Part IV of this Declaration of Principles on Freedom of Expression in Africa deals explicitly with the right to information, and while it is not binding, it has considerable persuasive force representing as it does the will of a large section of the people of Africa.

3.2.6. Draft Model on Right to Information 2000

To prevent corruption and bring in transparency and accountability, international institutions such as the United Nations, European Council, Commonwealth,

¹⁶ E.T.S.No.5,adopted 4 November,1950,entered into force 3 September,1953

¹⁷ Adopted by the 9th International Conference of American States, Colombia, 1948 and reprinted in the basic document pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V /11.82 doc.6.rev.1, 1992

¹⁸ Came into force for each member state which has accepted it in accordance with its constitutional procedure, three months after the Secretary – General has received the notice of acceptance.

South African Human Rights Charter, Bangkok Declaration advocated for adoption of right to information laws by the countries.

To give effect to this objective, a draft model was prepared for the countries to incorporate right to information legislation. Keeping in mind the significance of disclosure of information to every member of public and also the need for protection of certain information for the safety and security of the state, the draft model advocated maximum disclosure to be the general rule subject to certain restrictions for the safety and security of the State. The draft model expressly lays down the exceptions which include disclosure of information that would jeopardise national safety and security; affect confidentiality in affairs of the state, harm the pursuit of criminal proceeding or enforcement of law and order; violate personal privacy; likely to affect peace and tranquillity of the country and also if such revelation is substantially harmful to the government or public interest or public safety.

The draft recommended a procedure that would make a practicable procedure ensuring easier and faster access to information in exchange of a nominal fee and establish an independent administrative authority to supervise its implementation. The authorities would be empowered to penalise the erring officials and also provide immunity to acts done in good faith. Besides these provisions, the draft also provides for protection of whistleblowers and RTI activists to risk their lives in exposing corruption.

3.2.7. Joint Declaration for Promoting Freedom of Expression and Information, 2004

A joint declaration on international mechanism for promoting freedom of expression and information was issued by the United Nations Organisation of American States and Organisation for Security and Co-operation in Europe in 2004. The declaration affirmed the right to access the information as a fundamental human right of all citizens. It also advocated for adoption of suitable laws based on UN Principles on freedom of information ensuring maximum disclosure.

3.3. Transparency and Accountability in the International Organisations

Across the globe the International and Regional organisations have advocated accountability and transparency. The core objective is to uphold the fundamental human right and participation of people more meaningful.

3.3.1. Disclosure Policy of the World Bank

With 189 member countries presently, the World Bank works for sustainable solutions that reduce poverty, build shared prosperity and promote sustainable development in developing countries.¹⁹ In 1985 it issued instructions on disclosure to its staff. Further it adopted a detailed policy on Disclosure in 1993 followed by more openness and access to information of documents every year from 1995 to 1999.²⁰

Further, a new World Bank Policy on Disclosure of Information was adopted in 2001 which came into force in January 2002.²¹ On July 1, 2010 disclosure policy on Access to Information that has enabled the public to access information was launched. It made available all information and knowledge through initiatives like Open Data, Open Knowledge Repository and Open Finances.

Under the policy, access to information relating to projects under preparation and implementation, details of board meetings and other activities have been made possible for the public. The principle lays down that the World Bank will disclose any information in its possession that is not on its list of exceptions.²² Further, since April 1, 2014, the World Bank publishes monthly summaries of access to information requests submitted to the Bank, without reflecting personal information of the requesters.²³

The World Bank Policy governs the public accessibility of information in the possession of the Bank. The policy is based on five principles.²⁴

- (i) Maximising access to information
- (ii) Setting out a clear list of exceptions

¹⁹ Available at : <https://www.worldbank.org/en/who-we-are> (last visited on 12 Dec, 2018)

²⁰ *Ibid.*

²¹ *Supra* note 18

²² *Supra* note 18

²³ *Id.*

²⁴ Bank Policy: Access to Information *available at*: <http://policies.worldbank.org> (last visited on 12 Dec, 2018)

- (iii) Safeguarding the deliberative process
- (iv) Providing clear procedures for making information available; and
- (v) Recognising requesters' right to an appeals process

However, the Access to Information Policy does not provide access to documents that contain or refer to the information including-Personal information; Communications of Governors and/or Executive Directors' Offices; Ethics Committee; Attorney – Client Privilege; Security and Safety; Information Restricted under separate Disclosure Regimes and other investigative information ;Information provided by member Countries or Third Parties in confidence; Corporate Administrative Matters; *Deliberative* Information and Financial Information (Forecast, Analysis, Transactions, Banking and Billing).²⁵

It is noteworthy that the trend towards proactive disclosure policies from organisations like World Bank reflects the growing significance of transparency in its functioning. However, the World Bank has also been criticised for being dominated by a handful number of countries that funds the Bank. Its accountability has been a subject of suspicion and has been termed as Global Apartheid by activist Titus Alexander who has compared the World Bank to South African Development Bank during the apartheid.

3.3.2. Promotion of Transparency by the International Monetary Fund

The International Monetary Fund is an international organisation consisting of 189 countries. Its core functions include securing financial stability, facilitate international trade, foster global monetary cooperation, promote high employment and sustainable economic growth, and reduce poverty around the world.²⁶ It is accountable to all the countries and practices a system of checks and balances ranging from internal and external audits, risk management and evaluations of its policies and operations. The staff members of IMF are expected to observe the highest ethical and workplace standards of the conduct.²⁷

²⁵ *Ibid*

²⁶ Available at <https://www.imf.org> (last visited on March 24, 2019)

²⁷ *Ibid*

The audit mechanism includes an external audit firm, an independent External Audit Committee and an internal audit function. The annual audit is overseen by the Committee that works independent of IMF's management. In addition to this, the Office of Internal Audit and Inspection provides advice and assesses the effectiveness of the IMF's governance, risk management and internal controls; and acts as consultant to improve the IMF's business processes.

IMF has also been subject of criticism due to various reasons. It works with a select group of central bankers and finance ministers to make policies without input from other government agencies and work behind the veil of secrecy. It has also been avoiding public scrutiny and independent evaluation. It is believed that the IMF exerts pressure on the economies of developing and under developed countries and gives them directions on how much expenditure they can make on education, healthcare and environmental protection.²⁸

3.3.3. Openness in the United Nations Development Programme (UNDP)

The United Nations Development Programme ranked as one of the World's most transparent global development network, aims at encouraging global development, eradicating poverty and reduction of inequalities and exclusion.²⁹ It helps countries to find solutions to global and national development challenges. According to the UNDP, public access to information enables the stakeholders and the ordinary people to participate in the human development process.

Public access to information is ensured by UNDP's Information Disclosure Policy. Under the Policy UNDP is directly accountable to its UNDP Executive Board comprising of Member States of United Nations (UN) and indirectly accountable to their parliaments, their taxpayers and the public in donor and programme countries. Large amount of Information is made available through - (i) UNDP corporate website; (ii) Programme and Operations Policies and Procedures and (iii) UNDP Transparency Portal.

²⁸ Nasir Mahmud, Assignment on IMF 16.03.16.docx available at: www.academia.edu/29855315/Assignment_on_IMF_16.03.16 (last visited January 24, 2019)

²⁹ Available at: <https://www.undp.org> (last visited January 25, 2019)

All information relating to its programmes and operations is made to public unless there is compelling reason for confidentiality and are subject to exceptions. The The Disclosure Policy is based on four principles that includes maximising access to information; wider access to information by narrowing down the exceptions ; employing simple, time bound and effective procedures to facilitate access to information and providing reasons for refusal of information and the right to review such decision by the Information Disclosure Oversight Panel.³⁰

3.3.4. Accountability from the Asian Development Bank (ADB)

With the aim to eradicate poverty in Asia and the Pacific, the Asian Development Bank was established in 1966 and presently has 68 members .The organisation has played an important role in providing loans, technical assistance, grants and other aid to promote social and economic development. The Public Communications Policy (PCP) of the ADB has promoted proactive disclosure of information since 2005.

With effect from 1 January 2019, Access to Information Policy has replaced Public Communications Policy. The Policy promotes disclosure of information and aims for ‘clear, timely and appropriate disclosure. However, dominance of USA and Japan in voting rights and ignorance towards the emerging economies like China and India has led to criticism.

3.3.5. Access to Information from the World Trade Organisation

World Trade Organisation (WTO) established in 1995 replaced the GATTT which was in existence since 1948, is an intergovernmental organisation that regulates international trade prohibits exceptions for environmental protection, national security and other important goals.³¹ The disputes relating to trade are resolved by independent judges at the WTO through a dispute resolution process.³²

Transparency in regulations and policies are essential to review the countries and their performances. Under WTO, transparency is defined as the degree to which trade policies and practices and the process by which they are established are open and

³⁰ *Ibid.*

³¹ Available at: <http://www.wto.org> (last visited on Feb18, 2019)

³² *Ibid*

predictable. The general obligations of WTO agreements reflect the basic “right to know” principle.³³

Monitoring takes place in the various WTO committees, but peer review is also found in the Trade Policy Review Mechanism (TPRM), which aims at achieving greater transparency in, and understanding of, trade policies and practices of Members. However, it is believed that WTO has always favoured richer countries.

3.4. Information Laws of Select Countries of the Continents

The international conventions and regional instruments have encouraged the countries to incorporate transparency laws in their domestic legislations. The researcher has chosen two countries from each continent around the world to analyse these laws, on the progresses made and the hurdles faced in making information accessible by the people and reducing corruption. It also highlights the impediments and challenges in proper implementation of the laws in these countries.

3.4.1. Freedom of Information Laws of Europe

3.4.1.1. Denmark

Denmark is one of the least corrupt countries of the world according to Transparency International Report.³⁴ Although there is no provision relating to access to information in the Danish Constitution, Denmark has been promoting openness in governance since long. The Danish Access to Public Administration Files Act, 1985 is the principal Act of Denmark that allows access to government records in Denmark.³⁵ The Act has replaced the Public Records Act, 1970 that was found inadequate in providing access to information.

³³ Mark Halle and Robert Wolfe, A new approach to transparency and accountability in the WTO, available at: <https://www.iisd.org/library-new-approach-transparency-and--accountability-wto> (last visited on Feb 21, 2019)

³⁴ Transparency International Corruption Perception Index 2018 Available at: <https://www.transparency.org> (Last visited Jan 25, 2019)

³⁵ Available at: <http://www.vissenbjergkom-mune.dk/postli/offlov.htm> (In Danish) (last visited on February 4, 2019)

The Act allows “any person” to demand documents held by the administrative authority in the course of its activity.³⁶ It includes all activities exercised by the public administration and to electricity, gas and heating plants but does not apply to matters relating to criminal justice or the drafting of bills before they are introduced in the Folketing,³⁷ Coverage of the Act can be extended by the Minister of Justice to companies and other institutions that are using public funds and making decisions on behalf of central or local governments.

Under the Act, an administration authority may allow wider access to documents unless they are not barred under the rules on secrecy etc.³⁸ The right of access to administration files applies to all documents relating to the matter in question, including duplicate copies of letters issued by the authority concerned, provided that such letters must be assumed to have reached the addressee; and entries in journals, registers and other lists relating to the documents of the matter in question.³⁹

Exemptions include internal case material prior to a final decision; records, documents and minutes of the Council of State; correspondence between authorities and outside experts for use in court proceedings or deliberations on possible legal proceedings; material gathered for public statistics or scientific research; information related to the private life of an individual and documents on technical plans or processes of material importance.⁴⁰ Also includes documents containing essential information relating to the security of the state and defence of the realm, protection of foreign policy, law enforcement, taxation and public financial interests.⁴¹ The Act also the obligation to maintain secrecy.⁴²

Ministers can also exempt authorities that are subject to exceptions. Factual information can be released even if it is exempt of material importance. When a request is made for disclosure of documents, the grant or rejection of request depends on the

³⁶ Access to Public Administration Files Act, 1985 s.4(1)

³⁷ Folketing is the Parliament of Denmark established in 1849 that shares powers with the Danish Monarchy.

³⁸ *Supra* note.24

³⁹ Danish Access to Public Administration Files Act, 1985, s.5(1) & (2)

⁴⁰ Access to Public Administration Files Act, 1985, s.7-14

⁴¹ *Id.*s.13

⁴² *Id.* s.27

administration authority possessing the document.⁴³ Separate appeal shall lie to the authority otherwise empowered to hear appeals in the matter to which the request for disclosure is related.⁴⁴

In 1991, exemption of EU documents was lifted from Denmark. In 2000, certain amendments were made to the Act that related to data on the employees of the Government. The Security and Intelligence Service as well as the Act on the Defence Intelligence Service are governed by Public Records Act of 2013. Appeals against the decisions can be made to Folketingets Ombudsman that review decisions and deliver opinions but such decisions are not binding. Further, the Public Records Act, 2014 was enacted to strengthen the project of open government and extend the list of institutions covered by the Act.

The reason for Denmark's success in bringing transparency is primarily due to press freedom, access to information about public expenditure, stronger standards of integrity, independent judicial systems and dedicated public officials. Nevertheless, the Act also had to face serious criticism owing to the presence of some of the provisions being considered to be restrictive in the legislative proceeding and transparency in the government.

3.4.1.2. UK

The United Kingdom took a long time to pass legislation on freedom of Information. The government advocated a secrecy regime that dominated UK for ages in the form of Official Secrets Act, 1911, 1920 and 1939. The FOIA was initiated in 1997 when a white paper on "Your Right to Know" was published. Freedom of Information Act, 2000 was enacted on 30 November 2000 and came into force on 1 January 2005. The Act applies to all public authorities in England, Wales and Northern Ireland except Scotland which is governed by the Freedom of Information (Scotland) Act, 2002.

The Act allows an individual of any nationality, age and gender a general right of public access to all types of recorded information held by public authorities, sets out exemptions from that general right and places a number of obligations on public

⁴³ *Id.* s.15(1)

⁴⁴ *Id.* s.15(2)

authorities but not to private entities.⁴⁵ The person seeking information does not have to be the subject of that information.

Private entities that are wholly or largely owned by a public authority will also be subject to the Act.⁴⁶ Persons of any age or nationality can seek information under the Act.⁴⁷ The public authorities are under an obligation to timely publish such information as to be approved by the Information Commissioner.

A person seeking information from the public authorities must make such request in writing and such request are also acceptable through facsimile or email along with the prescribed fee in accordance to the Fees Regulations. Information also includes drafts, emails, notes, CCTV recordings and audio conversations.⁴⁸ Time frame for State authorities to respond is 20 working days which may extend depending upon the complexities of the request. An important feature of the Act is that the institutions responding to the requests will be obliged to provide information recorded both before and after the Act was passed.⁴⁹

Another important feature of the Act is that the institutions are under no obligation to comply with vexatious requests, or repeated requests, if the institution has recently responded to an identical or substantially similar request from the same person, but there is a duty to provide advice and assistance to anyone making a request.⁵⁰

The Act lays down twenty three exemptions⁵¹ that categorises information that is qualified for disclosure. Information relating to national security, law enforcement, commercial interests data protection, parliamentary privilege, personal information, information provided in confidence, information prohibited by an enactment or that which constitutes contempt of court fall under the category of absolute exemption and cannot be disclosed.

⁴⁵ The Freedom of Information Act, 2000 s.4

⁴⁶ *Id.* s.6

⁴⁷ *Id.*s.7

⁴⁸ *Id.*s.9

⁴⁹ *Supra* note 44 s.14

⁵⁰ *Id.*s.16

⁵¹ *Id.* ss. 21 - 44

However information relating to policy formulations, ministerial communications, investigations and proceedings conducted by public authorities fall into the category of qualified exemptions where the institution concerned must consider whether withholding the information requested outweighs public interest.

The Information Commissioner, an independent Public official is responsible for the implementation of the Act and reports directly to the Parliament.⁵² A person who is denied information may apply before the Information Commissioner.⁵³ In response, the Commissioner may serve decision notice on the public authority and applicant, setting out any steps that are required for compliance with the Act.⁵⁴ He also has power to serve information notices and enforcement notices on public authorities.⁵⁵ The public authority if not satisfied with the decision of the Commissioner can approach the Cabinet Minister to obtain a signed certificate overriding the Information Commissioner's notice. However, there is no right to appeal against the ministerial certificate.

An independent Information Tribunal may hear appeals from the complainant and the public authority, which may uphold, overturn or vary the notice.⁵⁶ Further, either party may move the High Court against the decisions of the Tribunal.

The Data Protection Act, 1998 amended in 2018 allows the individuals to view the information held by private entities and the government and further mandates that the information is not passed outside European Economic Area.

3.4. 2. Access to Information Laws of North America

3.4.2.1. USA

The Freedom of Information Act, 1966 establishes a statutory right to access government information .It allows any person or organisation, regardless of citizenship or country of origin, to ask for records held by federal government agencies including executive and military departments, government corporations and other entities which

⁵² *Id.* s. 18

⁵³ *Id.* s.48

⁵⁴ *Id.* s. 50(3)(b)

⁵⁵ *Id.* ss. 51 & 52

⁵⁶ The Freedom of Information Act, 1966 s.57

perform government functions except for Congress, the courts or the President's immediate staff at the White House. The Act provides that any person should have access to identifiable, existing records of a federal government agency without having to demonstrate a need for the requested information.⁵⁷

Time frame for furnishing information is 20 days. Requests made are classified into three categories. Simple requests that are processed in 39 days; complex requests that takes 89 days to complete; Fast track requests which need a month.

Fees are charged for complex requests requiring more than two hours. The information exempts nine categories of information which are exempt from disclosure.⁵⁸ These include national security, internal agency rules, information protected by other statutes, business information, inter and intra agency memos, personal privacy, law enforcement records, financial institutions and oil wells data. The Act requires the government to disclose the deliberations of multi agency bodies such as the Federal Communications Commission.

The Act underwent several amendments in 1974 post the Watergate scandal⁵⁹ which has strengthened the Act substantially. In 1982 an executive order was issued to deny information requested under the FOIA which was later withdrawn by President Bill Clinton. In 1996 Electronic Freedom of Information Act came into force to make information available electronically. Furthermore, the Privacy Act of 1974 allows individuals to access their personal records held by the federal agencies.⁶⁰

A series of legislations and administrative measures including USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act 2001, the Homeland Security Act, 2002 were adopted to restrict access to sensitive information post the terror Act of 11 September, 2001 to protect national security.

Appeals of denials or complaints relating to inordinate delays can be made internally to the agency concerned or to the federal courts. Therefore, it is noteworthy

⁵⁷ *Id.* s.58

⁵⁸ *Id.* s.552(b)

⁵⁹ *Supra* note 52

⁶⁰ Privacy Act of 1974, 5 U.S.C.552a

that the executive has been given excessive power to establish the criteria for deciding which information shall be protected; the exemption alters distribution of power among the three branches found elsewhere in the FOIA and creates the possibility of abuse by the executive. In 2007, the office of Government Information Services (OGIS) was established to remove such hurdles. The Whistleblower Protection Act of 1989 ensures protection to the federal whistleblowers in the USA.

3.4.2.2. Canada

There is no express mention of right to information under the Constitution of Canada. The Canadian Charter of Rights and freedom under Sec 2(b) of the Constitution Act, 1982 provides for right to freedom of speech, freedom of press and media of communication. This section has been broadly interpreted by the Supreme Court to include the right to access to information in the famous case of *Canadian Broadcasting Corporation v. New Brunswick* [1996] 3 S.C.R.

Access to Information Act, 1982 has inspired countries like Australia, Denmark, Netherlands, Sweden and New Zealand to enact similar legislations. Under the Act, the Canadian citizens, permanent residents and corporations have the right to apply for and obtain copies of records held by government institutions.⁶¹ Such information is subject to specific exclusion and exemption. Information can be obtained in 15 days from the public offices.

Exemptions include information obtained in confidence from a foreign government, international organization, provincial or municipal or regional government; would injure federal – provincial or international affairs or national defence; relate to legal investigations, trade secrets, financial, commercial, scientific or technical information belonging to the government or materially injurious to the financial interests of Canada; include personal information defined by the Privacy Act; contain trade secrets and other confidential information of third parties; or relate to operations of the

⁶¹ Access to Information Act, 1982 *available at*:C.A-1,<http://Canada.justice.gc.ca/STABLE/EN/Laws/Chap/A/A-1.html>. (Annotated) (last visited on Sep 15, 2018)

government that are less than 20 years old.⁶² Documents designated as Cabinet confidences are excluded from the Act and are presumed secret for 20 years.⁶³

The implementation of the Act is done by the Office of the Information Commissioner of Canada.⁶⁴ His orders are not binding but he can only investigate and issue recommendations.⁶⁵ Further, appeals can be made to the Federal Court of Canada that is empowered to examine any record in dispute.⁶⁶

Post the terror attack in New York, the Act underwent amendment in 2001 allowing the Attorney General to bar the release of information previously ordered disclosed by the Information Commission. The Canadian Federal Court has ruled that the government has an obligation to answer all access requests regardless of the perceived motives of those making the requests.

Despite being one of the first few countries of the world to enact freedom of information law and lauded for its implementation, Canada has been criticised due to its inordinate delays, excessive secrecy, improper record-handling practices, fees as barriers to access, inadequate searches and political interference. The Privacy Act, 1983 protects the privacy of individuals with respect to personal information about themselves held by a federal government institution and provides individuals with a right of access to that information.

3.4.3. Information Laws of South America

3.4.3.1. Mexico

The Constitution of Mexico, 1917 guarantees the right of information.⁶⁷ The amendment to include this right was made in 1977. Like India, the Supreme of India played a significant role in expanding this right.

The Federal Law of Transparency and Access to Public Government Information Law enacted in 2002 allows all persons to demand information from

⁶² *Id.* s.13

⁶³ *Ibid.*

⁶⁴ *Id.* s.30

⁶⁵ *Id.* s.37

⁶⁶ *Id.* s.41

⁶⁷ The Constitution of Mexico, 1917, Art.6

government departments, autonomous constitutional bodies and other government entities.⁶⁸ Agencies must respond to requests in 20 working days. Every government body is required to publish an extensive amount of information in electronic form including structure, directories, aims and objectives audits, subsidies and contracts. The State Information Committees reviews classification and nondisclosure of information.

The law creates five categories of classified information including national security, public security or national defence; international relations; financial, economic or monetary stability; life; security or health of any person at risk; and verification of the observance of law, prosecution of crimes, collection of taxes, immigration or strategies in pending processes that can be withheld if their release will harm the public interest.⁶⁹ Other exemptions include information protected by another law, commercial secrets, prior investigations, judicial or administrative files prior to ruling, liability proceedings before a ruling, deliberative process prior to a final decision.⁷⁰

For twelve years or less information can be classified if the reasons for non-disclosure no longer exist.⁷¹ All departments must produce a regular index of all classified files. Sanction is imposed on the public servant under Federal Law of Administrative Responsibilities of Public Servants for non-compliance.⁷²

The establishment of a National Commission on Access to Public Information is empowered to order government bodies to release information and apply sanctions and carry out investigations. Appeals are allowed in the Federal Courts.⁷³ A robust Information Commission and an advanced information system make the legislation of Mexico one of the best legislations in the world.

⁶⁸ The Federal Law of Transparency and Access to Public Government Information Law ,2002 Art.2

⁶⁹ *Id.*Art.13

⁷⁰ *Supra* note 68 Art 14

⁷¹ *Supra* note 68 Art 15

⁷² *Id.*Art.63

⁷³ *Id.* Art. 51

3.4.3.2. Colombia

The Constitution of Colombia, 1991 provides for a right of access to government records.⁷⁴ Article 15 of the Constitution provides a right of ‘habeas data’ that allows individuals to access information about themselves held by public and private bodies.⁷⁵ Prior to this, in 1888, the Code of Political and Municipal Organization was adopted that allowed access to information held by the government excluding certain exempted information.

Also, the anti corruption statement of Law 190 of 1955 also known as Anticorruption Act in its 51st Article mandates public offices to display in a visible area all the contracts and purchases made every month.

In 1985, the Law Ordering the Publicity of Officials Acts and Documents was adopted. The law permits any person to examine the actual documents held by public agencies and obtain copies, unless these documents are protected by the Constitution, another law, or national defence or security considerations. Furthermore, the Act makes it clear that after 30 years, all secrecy is removed and the document becomes a public record. Time frame for disclosure of information is 10 days. Appeals can be made to an Administrative Tribunal. The Act was amended in 1998.

The Colombian law is criticised due to its haphazard and unsuccessful enforcement policies and also for its frequent attacks on journalists for publishing information that is considered sensitive to the officials. The erstwhile law has been replaced with the Access to Public Information Law in 2012.

3.4.4. Access to Information Laws in Africa

Africa has been promoting access to information throughout its continent. Countries like Seychelles have enacted information laws in 2018.

⁷⁴ Constitution of Colombia, 1991 available at: [http:// confinder.richmond.edu/Colombia_const2.html](http://confinder.richmond.edu/Colombia_const2.html) (visited on January 9,2018)

⁷⁵ *Ibid*

3.4.4.1. South Africa

South Africa was the first state to enact legislation in the African continent. History is witness to the abuse of power predominantly existing in South Africa where the government kept almost everything confidential. In 1996, the constitution of South Africa introduced the right of access to information held by the state and private entities.

Thereafter, the Promotion on Access to Information Act (POTIA) 2000 was enacted to give effect to the constitutional right to access public information that allowed individuals and government bodies to access records held by private bodies and enforce people's rights if such information causes public harm. The Act came into force in 2001.

The Human Rights Commission has been mandated to compile a guide in each official language containing information that includes objects of the Act and details of the Information Officers and the manner in which request may be made by a person who wishes to exercise rights under this Act.⁷⁶

The time limit for disclosing information is 60 days to respond to requests. One of the rarest features is present in the legislation of Australia is that it allows access to records held by private entities if it affects an individual's rights. It also offers legal protection to people exposing corruption.⁷⁷

Most of the exemptions require some demonstration that release that the information would cause harm. The exemptions include personal privacy, commercial information, confidential information, safety of persons and property, law-enforcement proceedings, legal privilege, defence, security and international relations, economic interests and the internal operations of public bodies.

The Act clearly lays down that the exemptions must be balanced against public interest test that require disclosure if the information showed a serious contravention or failure to comply with the law or an imminent and serious public safety or environmental risk.⁷⁸ Appeals must be made initially to the agency concerned and can then be reviewed by a general court empowered to review any record and can set aside

⁷⁶ Promotion on Access to Information Act , 2000 s.10

⁷⁷ *Id.*s.50

⁷⁸ *Id.*ss.33-46

decisions and order the agency to act. There are criminal fines and jail terms for those who destroy damage, alter or falsify records.

The Human Rights Commission is designated to oversee the functioning of the Act and issue a guide on the Act and submit reports to the Parliament.⁷⁹ It can also promote the Act and make recommendations and monitor its implementation. According to the 2001 Annual Report of the Commission, lack of funds prevented it from conducting any work on the Act.

An Annual Report to the National Assembly consisting of details relating to number of requests received, accessed, partially or fully refused, number of internal appeals, number of applications made by court etc.⁸⁰

Inadequate resources and insufficient record keeping system are the major impediments of the Act. The law is not clear on what sanctions can be imposed on state bodies that fail to meet their statutory obligations in terms of the time frames prescribed for responding to requests. It requires clarification. Also the exemptions are difficult to interpret and are comparatively limited. It has been reported Apartheid era documents reported destroyed in 1993.

3.4.4.2. Zimbabwe

The Access to Information and Protection of Privacy Act came into force in 2002 and further amended in 2003, 2004 and 2007. The Act creates a right of access by any citizen or resident to records held by a public bodies to prevent unauthorised collection of personal information, to protect personal privacy and to regulate mass media. It also provides for establishment for a Media and Information Commission to ensure its people wider access to information.⁸¹

The applicant can seek information by filing a request in writing specifying all the details of the information and the public body is duty bound to respond in 30 days.⁸² This right is not available to an unregistered media agency or foreign government.⁸³

⁷⁹ *Id.s.32*

⁸⁰ *Id. s.84*

⁸¹ The Access to Information and Protection of Privacy Act,2002 s.39

⁸² *Id.s.8*

⁸³ *Id.s.5(3)(b) and (c)*

The Act overrides other legislations that conflicts with access to information, protection of privacy and the mass media specified under the Act.⁸⁴ Transfer of request is also if the information requested is in the custody of other public body.⁸⁵

Exemptions include cabinet documents and deliberations of local government bodies, advice given to public bodies, client-attorney privilege, law enforcement proceedings, national security, intergovernmental relations, public safety, commercial information and privacy.⁸⁶ Public interest disclosure provision include provision allowing the government to release information even if there is no request for a variety of reasons, including matters that threaten public order ;the prevention, detection or suppression of crime and national security.⁸⁷ The Information pertaining to third party may be protected from disclosure if such disclosure affects the interests or invades the personal privacy of the third party.⁸⁸

The Act also enables correction of erroneous personal information that is in the custody of a public body and provides for ensuring adequate security to protect them from unauthorised access, collection, use, disclosure or disposal.⁸⁹ Further, a Media Council has been established for exercising disciplinary control on the journalists for the purpose of preventing or broadcasting injurious allegations by them and impose penalties for breaches of the Code.⁹⁰

The Media and Information Commission which has mostly been used to register and harass journalists has the power to review the decisions or action of an agency.⁹¹ It can also conduct inquiries into the Act and order release of documents that can be further reviewed by the Commission on the request of the applicant. ⁹² The orders given by the Commission may enforced by the High Court. Penalty for contravention of

⁸⁴ *Id.* s.3(2)

⁸⁵ *Id.* s. 12

⁸⁶ *Id.* s.14-25

⁸⁷ The Access to Information and Protection of Privacy Act, 2002 s.28.

⁸⁸ *Id.*s.26

⁸⁹ *Id.*s.33

⁹⁰ *Id.* s.42 A

⁹¹ *Supra* note.65

⁹² The Access to Information and Protection of Privacy Act, 2002 s.53

orders by Commission include a fine or imprisonment not exceeding six months or both.⁹³ Appeals can be made to an Administrative court.⁹⁴

3.4.5. Middle East

3.4.5.1. Israel

Israel has an unmodified constitution. The Freedom of Information Law 1998 came into effect in 1999. Any citizen or resident or legally registered corporation can access information held by government offices, including Parliament and the courts, local councils and government – owned corporations of both private and public nature.⁹⁵ The information can be in any form, including written, recorded, filmed, photographed or digitised.⁹⁶

The time frame of processing requests is 30 days which may extend to sixty days and the Departments have 15 days after processing to provide the information.⁹⁷ The Freedom of Law Regulations provides for a display of limited number of public bodies that would come under the purview of Act which is not disclosed to the public.

The Security services and other national security and foreign policy departments are excluded from coverage under the Act. There are 10 exemptions which are loosely based on the U.S. Freedom of Information Act.⁹⁸ One unusual exemption requires authorities to withhold information that would invade the privacy of deceased individuals. Also requests may be made only through an official letter or FOIL letters designated accompanied with a fee.⁹⁹

Appeals may be made to the District Courts for disclosure of information which can also review information that is withheld.¹⁰⁰ However for The website foi.gov.il enables people to contact many authorities and department heads where all information

⁹³ *Id* s.42G

⁹⁴ *Id*.s.90A

⁹⁵ Freedom of Information Law,1998 s.2

⁹⁶ *Ibid*.

⁹⁷ *Id*. s.7

⁹⁸ *Id*.s.9

⁹⁹ *Id*.s.18

¹⁰⁰ *Id*.s.17

between the government and private entities are made available for public scrutiny to empower the citizens with the right to information.

The Ministry of Justice is responsible for implementing this law and is entitled to institute regulations for its implementation with the approval of the Knesset Constitution, Law and Justice Committee.¹⁰¹

The public officials often deny information to citizens. They are often asked to file FOIL, an official letter accompanied with a fee of 95 shekel are often rejected and the appeals take years and the public bodies often do not comply with the orders as there is very low number of sanctions.

3.4.5.2. Lebanon

The Right of Access to Information 2017 applies to scheduled public authorities and selected private companies and organisations. Any natural or legal person residing in Lebanon can access information under the Act.¹⁰²

Information that is partially exempted from disclosure include information classified as national defence, national security and public security secrets; external relations; financial and economic interests of the state; integrity of the national currency; private life of people and their physical and mental health; professional and commercial secrets.¹⁰³

Other exemptions that are absolutely barred from disclosure are documents relating to pre-trial proceedings of secret trials and trials related to juveniles and personal status; minutes of private meetings of the Parliament and its committees unless otherwise decided; deliberations of the Council of Ministers labelled secret; preparatory and administrative documents; consultative opinions issued by the Council of State, except by the relevant parties in the context of a trial. ¹⁰⁴The Electronic Transactions and Personal Data Law was passed on October 10, 2018 ensuring protection of personal data.

¹⁰¹ *Id.s.19*

¹⁰² The Right of Access to Information 2017,s.2

¹⁰³ *Id.s.6*

¹⁰⁴ *Id.s.26*

3.4.6. Legislations on Transparency in the Pacific

3.4.6.1. New Zealand

The Constitution of New Zealand does not guarantee any right to information. The Official Information Act, 1982 provides for disclosure of all official information held by public bodies, state-owned enterprises and bodies which carry out public functions. The Act also empowers the citizens or permanent residents or body incorporated in New Zealand to seek access to personal information and gives them the right to request correction of such information and also to know the reasons for such decision.¹⁰⁵ The applicant need not have sufficient personal interest in seeking information under the Act. The Act also provides for voluntary disclosure of information.¹⁰⁶

The Act applies to all central government departments and Ministers of Crown. The Act makes it mandatory to disclose information unless good reason exists under the Act for withholding it. The time frame for disclosing such information is 20 days.¹⁰⁷

Exemptions include national security and international relations; information provided in confidence by other governments or international organizations; information that is needed for the maintenance of the law and the protection of any person; information that would harm the economy of New Zealand; and information related to the entering into any trade agreements. Information can also be withheld for good reason unless there is an overriding public interest including information that could intrude into personal privacy, commercial secrets, privileged communication and confidences; information that if disclosed could damage public safety and health, economic interests, constitutional conventions and the effective conduct of public affairs, including the free and frank expression of opinions by official and employees.¹⁰⁸

The Office of the Ombudsman reviews denials of access. The decision of the Ombudsman is binding. In case information to an applicant is denied by an officer,

¹⁰⁵ The Official Information Act, 1982 s.12(1)

¹⁰⁶ *Id.* s.20

¹⁰⁷ *Id.* s. 29A(1)

¹⁰⁸ *Id.* ss. 6-11

another officer of the concerned department or organisation may review the decision.¹⁰⁹ The Chief Ombudsman established under the Act investigates and reviews the decisions and is empowered to make a report to the concerned department. An Information Authority established under the Act for a fixed term to conduct audits, review legislation and proposes changes was dissolved in June 30 1988 due to Parliaments failure to amend the Act.¹¹⁰

The Local Government Official Information and Meetings Act, 1987 provides for access to information held by local authorities. The Privacy Act, 1993 allows individuals to obtain and correct records about themselves held by public and private bodies and gives them opportunity to obtain and correct records about themselves held by public and private bodies. The Protected Disclosures Act of 2000 protects the whistleblowers.

3.4.6.2. Australia

There was secrecy regime in Australia before legislation on access to information came into force. The Constitution of Australia does not guarantee the right to information.

The Federal Freedom of Information Act was enacted in 1982 that provides every person access to documents held by Commonwealth agencies without assigning any reason to exercise such right.¹¹¹ The Act seeks to promote openness, fairness, participation, impartiality and rationality in decision- making. It empowers every person to access documents of agencies and official documents of Ministers.¹¹² The two Regulations – the Freedom of Information (Fees and Charges Regulation 2001 and Freedom of Information (Miscellaneous Provisions) Regulations 2004 provide for smooth implementation of the Act. The states and territories of Australia have separate freedom of information legislation.

¹⁰⁹ *Id.* s.28

¹¹⁰ *Id.* s.53

¹¹¹ Freedom of Information Act, 1982, *available at:* http://www.austlii.edu.au/legis/cth/consol_act/foia1982222/ (last visited on Feb 12, 2019)

¹¹² *Id.*13

The Act is applicable to all ministers, departments and public authorities of the Commonwealth but excludes the courts.¹¹³ However, the obligation to disclose information of agencies and ministers differs. The Commonwealth Attorney –General’s Department is the agency responsible for the legislation. Each government agency is empowered to implement the legislation.

The Act besides giving access to documents held by ministers and agencies allows any person who seeks information to amend or annotate any information they hold. It also provides for an information publication scheme requiring agencies to publish online details about their functions and structure and also allows agencies and ministers to release documents that would be exempt under FOIA Act, unless prevented by a secrecy requirement in any other law.¹¹⁴ Time frame for furnishing information shall not exceed 45 days.¹¹⁵ Fees for furnishing information may be charged from the applicant if required.¹¹⁶ Reasons for refusal must be given to the applicant.

One interesting feature of the Act is the discretion given to the agencies to neither deny nor confirm the existence of such information. There are nine exemptions that include documents relating to national security, defence or relations between states; documents submitted to, generated by, or reveal deliberations of, the Cabinet or Executive Council. Internal working documents including those regarding law enforcement and public safety, personal privacy, the national economy, privilege and confidentiality are also exempted.¹¹⁷ Cabinet and Executive Council documents are also exempt and also information that would be against public interest. The government agencies are legally bound to furnish reasons for their refusal. The appeals under the Act are dealt by the Office of the Australian Information Commissioner.¹¹⁸

Internal Review Process, the Commonwealth Ombudsman deals with complaints about personal failures. Merits Review (appeals) of adverse decisions is provided by the Administrative Appeals Tribunal while appeals on points of law are referred to the Federal Court. Australia’s government Ombudsman has found that the

¹¹³ *Id.*s.6

¹¹⁴ *Supra* note 81 s.21

¹¹⁵ *Id.* s.22

¹¹⁶ *Id.* ss.17 2A & 2B

¹¹⁷ *Id.* ss.32-47

¹¹⁸ *Id.*s.6B

Australian FOI Act works well in facilitating public access to personal information but not so well in providing access to policy-related information.¹¹⁹

The Act underwent amendments in 1983, 1986, 1988 and 1991 to bring reforms in the Act and to cover deficiencies and also for simplifying various procedures. The personal data held by the government and private companies are governed by the Privacy and Data Protection Act of 2014 that empowers the people to request access to their personal data.

3.4.7. Asia

3.4.7.1. Thailand

Thailand recognised Right to Information in its Constitutions of 1997 and also 2007. The Official Information Act came into force in December 1997 and in this country too it was the initiation of the civil society groups that led to the adoption of the Act. Under the Act, the state agencies are required to publish or make available various types of information and allow citizens to demand official information that is not published. The agency must respond within a ‘reasonable time’¹²⁰ and are also required to keep indices of documents. There is no fixed timeframe prescribed under the Act which is subject to misuse. This provision is one of the major lacunae in the Act and restricts the individual’s right to access information.

The Act provides for absolute exemption if disclosure of information could harm the interests of Thai monarchy.¹²¹ The Act also lays down discretionary non-disclosures on information dealing with national security and international relations, law enforcement, opinions and advice and anything that may threaten the life or safety of any person. Information that may jeopardise the Royal Institution cannot be disclosed.¹²²

The Official Information Board supervises and gives advice on implementation, recommends enactment of Royal Decrees, receives complaints on failure to publish information and submits reports. However, its decisions are not binding.

¹¹⁹ R.K .Saini R.K. Gupta (eds.), Right to Information Act, 2005 Implementation and Challenges 413
Deep & Deep Publication (New Delhi) 2009

¹²⁰ The Official Information Act,1997 s.11

¹²¹ *Id.* s.14

¹²² *Id.* s.15

The Information Disclosure Tribunals hear appeals if information is denied. The decision of the Tribunal is deemed final. The Office of the Official Commission (OIC) is in direct control of the Prime Minister and has supervisory and advisory functions over all agencies for performance of duties and implementation of the Act.¹²³

In spite of such a remarkable commencement, the Act has not been effectively implemented. In 2014, the Southeast Asian Press Alliance (SEAPA)¹²⁴ organised a forum in which it was brought into notice that the civil servants fear discouraged them to provide information to the applicants and suggested various changes in the Act.

The Act has attracted a lot of criticism due to its failure in implementation that includes inadequate and unrealistic time frames; difficulties arising out from overlapping laws and non-enforcement of the decisions of the Tribunals; irregular attendance of *ex-officio* members of the Commission etc. The Act has been a great disappointment as the government has been wilfully delaying and denying information without any reasonable reason. The Act has several lacunae that leave enough room for its abuse. It is disheartening that Thailand being one of the first countries to legislate a law on access to information has made the law dysfunctional.

On February 28, 2019, the Parliament has passed Cybersecurity Act giving extensive powers to state cyber agencies that includes the National Cybersecurity Committee (NCSC) to summon individuals for questioning and entering private property without court orders in case of actual or anticipated “serious cyber threats”.¹²⁵ It gives unbridled power to the government to take arbitrary action without any reasoned decision. Absence of transparency in carrying out such actions undermines the objective of ensuring freedom of information.

¹²³ *Id.* s.27

¹²⁴ Southeast Asian Press Alliance is regional non-governmental organisation campaigning for genuine press freedom in Southeast Asia. It provides a forum for the defence of press freedom, giving protection to journalists and nurturing an environment where free expression, transparency, pluralism and a responsible media culture can flourish. Available at: <https://www.seapa.org> (last visited March 3, 2019)

¹²⁵ Thailand passes internet security law decried as ‘cyber martial law’ Reuters February 28, 2019 available at: <https://www.reuters.com> (last visited March 3, 2019)

3.4.7.2.China

The Constitution of China guarantees to its citizens freedom of speech, freedom of press, freedom to assemble and form association, procession and demonstration but does not guarantee right to information.¹²⁶ The movement for Right to Know in China began with the initiation of local regulations on access to information in small provinces and municipalities. It was a result of civil society movements and international pressure for being a member of the WTO that China had to introduce Regulations promoting transparency.

The People's Republic of China Open Government Information Regulations (OGI Regulations) was enacted in 2003 that came into effect on May 1, 2008. The Regulations aimed to ensure that citizens, legal persons and other organisations obtain government information and enhance transparency of the work of the government and promote administration .It was formulated to serve people's production and livelihood and their economic and social activities with the help of government information but excludes the judiciary, legislature and the Communist party.¹²⁷

The Regulations make it mandatory for the government to disclose various categories of information voluntarily without any exception. Since these regulations were less progressive than the local regulations, it underwent change in 2012.

Recently a draft was released by the State Council of China for public opinion on the amendment to enhance government transparency and to increase the publishing of government information. The People's Republic of China has signed the ICCPR in 1998 and UNCAC in 2006. The law was further amended in 2010. In addition to the above the Criminal Law of the People's Republic of China and the National Security Law of the People's Republic of China, the State Council, the State Councils' departments and provincial governments are empowered to issue state secrets regulations, which generally govern implementation issues widely.

¹²⁶ China (People's Republic of)'s Constitution of 1982 Art.35

¹²⁷ Article 2 of the Regulations of the People's Republic of China on Open Government Information defines Government Information as information made or obtained by administrative organs in the course of exercising their responsibilities and recorded and stored in a given form.

China being one of the main members of WTO has been under an obligation to bring in greater transparency and accountability.¹²⁸ Implementing regulations under the State Secrecy law has attracted criticism since its adoption in 2014. Although the regulations are in place, the weak mechanism to access information has been a setback in bringing transparency in China. The non-compliance of the Regulations with other international standards has been a hurdle in its poor implementation.

Although there are laws that protect Chinese state secrets and the laws protecting the privacy of personal data restricting disclosure of information within and outside China but there is no law on national data protection on the regulations of how a company can collect, process and retain personal data. However, there are enactments on data privacy such as General Principles of Civil Law, Tort Liability Law and the Criminal Law that often overlaps with other legislations.

A set of personal data guidelines was recently issued in China – “Information Security Technology-Guidelines for Personal Information Protection within Public and Commercial services Information Systems” applying to all organisations and institutions other than government agencies which has not been effectively implemented.

The Law on guarding State Secrets, 1998 is misused to deny information to public. The anti – corruption policies and institutions of China have been criticised for lack of transparency and independent oversight, the political dependency and vulnerability of the judiciary, weak systems for routine prevention and the exclusion of civil society actors.¹²⁹

Although the OGI was enacted with the objective to provide a comprehensive mechanism to provide accessibility to the citizens of China, but in practice its implementation has been depressing.

¹²⁸ Towards a More Open China –Initiative for Policy Dialogue *available at* : <http://policydialogue.org> (Last visited 20 Jan, 2019)

¹²⁹ China and the UN Convention Against Corruption: A 10–year, *available at*: theasiadialogue.com/2016/08/06/china-and-the-united-nations-convention-against-corruption-a-10-year-appraisal/(last visited December 5, 2018)

3.5. Right to Information Act in India: A Global Comparison

India is placed at the 6th position out of the 123 countries in the list prepared by Access Info Europe and the Centre for Law and Democracy on the performance of countries with functional right to information law.¹³⁰ According to the study, from the second position in 2011 it has tumbled down to sixth position in 2018 owing to several factors that include the inordinate delays in appointing the Information Commissioners in the States and Central Information Commissions; inaccessibility of RTI online; poor maintenance of records and failure in updating the records.¹³¹ Also the blanket exemption provided in the Second Schedule and exclusion of private entities from the purview of the Act despite carrying out public functions has contributed to its poor performance.

Suo motu disclosure of information is one of the basic aspects for making information available to the public. The study on the various organisations and nations discussed above indicates that voluntary disclosure has been one of the essential prerequisites to transparency and has become a norm in the global scenario. The countries that have been open with their administration have made a mark ensuring participatory governance.

Although major countries across the world exclude private entities from its ambit, private bodies involved in public functions and utilising public fund are held accountable and are exempted from disclosure. The legislation of South Africa brings under its purview private entities carrying out public functions. Although the RTI Act provides for disclosure of information by the public authorities, due to ambiguities in the legislation, citizens cannot approach the authorities for seeking such information.

A fixed time frame is prescribed in all the legislations which can be extended if it requires additional time. Refusal or delay in providing information enables the applicants to approach the appellate authorities. One striking feature of the UK Act is that vexatious requests or repeated requests or identical requests may not be answered by

¹³⁰ Access Info Europe available at <https://www.access.info.org>(last visited February 25,2019)

¹³¹ *Ibid.*

the institutions.¹³² This feature should be added in the Indian legislation with such a huge population which can save a lot of time and money.

Almost in all the countries studied above, autonomy of the appellate authority which is often under the control of the executive caused dissatisfaction among the people. The procedure to obtain information is almost the same across the countries. In comparison to other countries the procedure for obtaining information is easy and simple in India. It is interesting to note here that in spite of this, citizens of India are not very keen in exercising their right.

Furthermore, all the international organisations advocate transparency subject to certain exceptions in order to protect the safety and security of the state. Most of the countries in Americas and Europe have expanded their list of exemptions post the terror Act. The study proves that too many exceptions and failure to severe the information to be disclosed has resulted in poor implementation of the legislations. The Indian legislations expressly provides for rule of severability and the public interest test to determine the disclosure of information .

Also for many nations, freedom of press is often in jeopardy as the journalists are victimised by the government for disclosing sensitive information. Countries like Zimbabwe and China have curbed minimum freedom from the media and as a result the people have little independence to raise their voice and have access to public information. In India, the RTI Act has been a boon for the journalists in the promotion of investigative journalism and has given them a huge impetus to question the public authorities on behalf of the citizens but due to the existence of the Official Secrets Act, 1923 the government often refuses information and also book the journalists and reporters for publishing official information.

Thailand, one of the first countries of Asia to enact law on access to information has been discouraging transparency and public participation in governance. The factors that have attributed poor implementation of these laws have been predominantly exclusion impediments to successful implementation of the law uniformly.

¹³² Freedom of Information Act (FOIA) 2000, s.14 (1) &(2)

Although most of the countries have ensured protection to whistleblowers in their legislations the government of India so far has not taken up adequate measures in providing protection to them. Inability to protect the whistleblowers often deter them to come in the forefront and file complaints against the officials guilty of corruption. Involving the Human Rights Commission to oversee the functioning of the Act in the likes of South Africa would also inculcate a sense a security for the RTI applicants.

Protection of personal data is another area where India is lagging behind. While most of the countries have protection of personal data in their access to information legislations that allows access to personal information for correction, India has not been able to bring into force any such legislation till date as the Personal Data Protection Bill, 2018 is still pending before the Parliament.

3.6. A Sum up

In the last decades various international organisations and countries across the globe have shown increased concern for transparency and accountability and have enforced access to information laws. According to Prof. M. Sridhar, former Central Information Commissioner, “the reason for the growing awareness of this law is the collapse of authoritarianism and the emergence of new democracies that has given rise to new constitutions specifically guaranteeing the right to information.”¹³³

A global recognition of right to know and right to information has made those in authority more accountable and less prone to arbitrariness. Due to the sound disclosure policy adopted by the organisations, not only stakeholders but also the people at large have been made aware of their administration and practice. The UNDP has been ranked one of the most transparent development aid organisations in the world by the Aid Transparency Index by Publish What You Fund.¹³⁴

Worldwide aggregate governance indicators also include voice and external accountability which refer to a government’s preparedness to be accountable through its

¹³³ Dr.Madabhushi Sridhar, *Right to Information Law & Practice* 367 (Wadhwa, Nagpur ,2007)

¹³⁴ UNDP again ranked as one of world’s most transparent development aid organisations, *available* at: <https://wwwundp.org> (last visited on February 5, 2019)

own country's feedback.¹³⁵ Although major countries in the world today have enacted access to information laws, poor implementation of the law and government's reluctance to part with public information remains a common phenomenon in most of the countries. Across the globe the approach of the government towards denying disclosure of information remains the same. There are only few countries that have succeeded in ensuring openness in governance. Countries like Denmark, UK, Canada, New Zealand, Australia and USA have performed better in bringing in transparency in their administration but post the terror attack of September 2001, these rights have been circumscribed to some extent. Despite such restrictions, information policies of these countries have set new standards for establishing interactive relationship between the people and the government.

However, the study on the various countries across the different continent suggests that besides the participation of inquisitive and vigilant people, political will, freedom of press and the role of the civil society organisations remain essential factors to guarantee this right to the people. This is apparent from the position of Zimbabwe, Thailand and China where excessive use of exemptions, restrictions on the freedom of press and absence of participation of the public and civil society organisations have made the laws ineffectual in practice.

India's position is better in this regard owing to the involvement of the citizens, freedom accorded to the press, and active participation of the non-governmental organisations in reaching out to the people and protecting their rights. The Act has brought in a significant link between the individual and the state and also gained global credibility over the years. However, to attract more benefits from the global economy, greater vigilance is required from the public. Although India's RTI Act meets the international standards, lack of awareness of the Act among all sections of the society, poor delivery of services by the public authorities, increasing number of cases pending before the Information Commissions remain major hurdles. Nevertheless, it can be deduced that greater transparency can be ensured if the provisions of the Act are implemented in word and spirit. The researcher is of the opinion that only empowered citizens and diligent officials can take India ahead.

¹³⁵ Philips Alston and Marry Robinso (eds.). *Human Rights and Development: Towards Mutual Reinforcement* 356 (Oxford University Press, 2006)