CHAPTER – II

A STUDY OF RIGHT TO INFORMATION IN GLOBAL PERSPECTIVE WITH REFERENCE TO PROACTIVE INFORMATION

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2.1: Introduction

The study of the previous chapter clearly states that the right to information is a unique human right and is a potent tool in the hands of the general public who can use it to keep a check on the bodies that govern them. Information is a power which provides us the knowledge to demand political, economic and social rights from our government. In the present chapter an attempt has been made to identify the protective role of RTI at International level by keeping in view the initiatives taken in this regard by UNO and legislative body of some leading nations of the Globe. This chapter does not highlight only the specific protection of RTI but tries to know the level of its recognition and widely acceptability by International Human Rights Treaties, such as the International Convention on the Rights of the Child, 1989 and the United Nations Convention against Corruption, 2003. RTI in the light of proactive disclosure has been discussed n detail at the international level by collecting data from different parts of the world such as Sweden, Australia, Columbia, Hongkong, Canada, France, Pakistan, Srilanka. A comparative study has also been made with India in order to find out its effective role in these countries under study.

2.2: Freedom of Information

RTI is the improved stage of freedom information which imposes legal and mandatory obligations on public authority by removing their discretionary approach. An attempt has been made to highlight the position of freedom of information as found effective in different parts of the country. The role and approach of UNO in the light of freedom of information have also been analysed in this section of the study.

2.2.1: The Historical Perspective

Over the years, freedoms of information laws have made headlines in more than eighty countries all over the world. During the last decade or so,
many countries have enacted new legislations, thereby giving their citizens access to government information. This is so because the concept of freedom of information is evolving from a moral indictment of secrecy to a tool for market regulation, more efficient government, and economic and technological growth. Governments around the world are providing information about their activities. Over eighty countries from around the world have implemented some sort of freedom of information legislation.

As a matter of fact; many countries have adopted comprehensive freedom of information laws to facilitate access to records held by various government agencies. While such legislations have been around for several centuries, over half of these have been adopted in the last decade only. The growth in transparency is primarily in response to the demands of a progressing civil society in general and civil society organizations, the media and International financial organizations in particular. In addition, many countries have also adopted other laws that can provide for limited access. These, inter-alia include, data protection laws that allow individuals to access their own records held by government agencies as well as by private organizations. Specific statutes have been enacted that give right of access in certain areas such as health, environment, executive orders and/or codes of practice.

2.2.2: International Perspective

There have also been a variety of external and internal pressures upon governments to adopt freedom of information laws. In most countries, pressure groups such as the press, human rights groups and environmental societies have played a key role in the promotion and adoption of such laws. International organizations demanded improvements and finally governments themselves recognized the need to modernize such information laws.

More and more countries are guaranteeing citizens’ right to know, even while the United States of America has erected new barriers to openness. Even as freedom of information moves into the mainstream worldwide, few
governments are fighting back, ratcheting up fears about their national security to introduce new secrecy laws and tighten restrictions upon the sharing of public information. It was observed from the study that there should be struck between the interests served by governmental openness, and need to protect national security not only in the United States but in many other countries as well. However, in the last decade, dozens of countries have enacted formal statutes guaranteeing their citizens’ right to access to government information.

2.2.2.1: Universal Declaration of Human Rights (UDHR)

An attempt has been made to highlight the provision of universal declaration of human rights (UDHR) 1948 in respect of freedom of information. Article 19 of Universal Declaration of Human Rights, 1948 says that "Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Thus, it is fully supported by this law as found from its study.

2.2.2.2: International Covenant on Civil and Political Rights

This covenant has also the same feeling and Article 9 (2) of International Covenant on Civil and Political Rights,. 1966, clearly states that "Anyone who is arrested shall be informed at the time of his arrest, of the reason for his arrest and shall promptly informed of any charges against him."

It further says that "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 print, in the form of art, or through any other media of his choice."

Article 19(3) of this covenant give emphasis on certain duties and responsibilities in order to exercise this right to freedom of information or expression which have been clearly spelt out in paragraph 2 of this article. It
clearly states that freedom of information must be supported by law and are necessary for respect of rights of reputation of others as well as for the protection of national security or of public order (order public) or of public health and morals."

The United Nations Special Rapporteur who was appointed in 1993 by the U.N. Commission on Human Rights to monitor and report on the implementation of the right to freedom of opinion and expression in its Report of 1998 regarding Article 19 of International Covenant on Civil and Political Rights clarified its meaning as imposing 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.

2.2.2.3: Joint Declaration on International Mechanism for promoting freedom of expression

A joint declaration on International Mechanism for promoting freedom of expression was issued by the free expression rapporteur of the United Nations Organisation of American States and Organisation for Security and Co-operation in Europe in 2004. This declaration affirmed the right to access information as fundamental human rights of all citizens. The Government should respect this right by enacting laws based on principles of maximum disclosure for ensuring democratic participation, accountability in Government and for preventing corruption. The Special Rapporteurs put the emphasis on fundamental importance of access to information so that democratic participation, accountability in Government and prevention of corruption must be ensured.

2.3: Freedom of Information with regard to Pro-active Disclosure

The study was made to analyse the role of United Nation Organization (UNO) in respect of proactive disclosure of information.
An attempt has been made to highlight the United Nations principles on RTI with reference to proactive disclosure. RTI position as regional level with reference to proactive information has also been studied in detail. An endeavor has been made to find out the international approach on proactive disclosure.

2.3.1: UNs Principle on Right to Information with regard to Pro-active Disclosure

The study of united nation principles on RTI with respect to proactive disclosure goes to highlight the points which have been arranged in the following manner:

(a) It clearly states that public bodies have an obligation to disclose information and every member of public has a corresponding right to receive information according to UN principle; "information" includes all records held by a public body, regardless of the form in which it is stored.

(b) The UN principle on proactive disclosure clearly says that public bodies publish and disseminate widely documents of significant public interest, operational information about the functioning the public body and the content of any decision or policy affecting the public interest must be made available for public knowledge.

(c) It has also been stated in UN Principle that the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information. The law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;

(d) UN Principles are of the view that a refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrong doing; a complete list of the legitimate aims which may justify non-disclosure should be provided in the law and
exceptions should be narrowly drawn in order to avoid material which does not have the legitimate interest;

(e) All public bodies should be required to establish open, accessible internal system for ensuring the public's right to receive information as found from the study of UN Principle. It further says that the law should provide for strict time limits for the processing of requests for information and require that any refusal be accompanied by substantive written reasons for the refusal(s);

(f) The cost of-gaining access to information held by public bodies should be so high as to deter potential applicants and negate the intent of the law itself as observed from the study on UN Principles on freedom of information.

(g) The law should establish a presumption that all meetings of governing bodies are open to the public;

(h) The law should require that other legislation be interpreted, as far as possible, in a manner, consistent with its provisions; the regime for exceptions provided for in the freedom of information law should be comprehensive and other laws should not be permitted to extend it;

(i) Individuals should be protected from any legal, administrative or employment related to sanctions for releasing information on wrongdoing, viz., the Commission of a criminal offence, a miscarriage of justice, corruption or dishonestly or serious failures in administration of a public body."

(j) One of the important principles of UN which has been identified as RIO declaration on environment and development. This clearly states that individuals, groups and organizations should have access to information relevant to environment and development held by public authority including information on products and activities that have or likely to have a significant impact on the environment and information protection
measures. Fourteen European and central Asian countries have supported this approach of United Nation.

2.3.2: Freedom of Information / RTI at regional level with reference to proactive information.

The study was conducted to find out the position of RTI in regional association of the countries at international level.

2.3.2.1: Asia Pacific

The Asia-Pacific nations with a specific and functional law implementing the right to information are Australia, Azerbaijan, Georgia, India, Israel, Japan, New Zealand, Pakistan, South Korea, Tajikistan, Thailand and Uzbekistan. It is found from the study that neither Asia nor the Pacific has an over-arching regional body that sets or monitors human rights standards in the regions. But the recognition of the people’s right to information has not been ignored. It has been observed from the study that it just comes from different fora. Rather than being recognized in human rights related treaties, the Asian and Pacific countries have generally recognized the importance of the right to information in different ways. It has been seen that there is a Steering Committee for Human Rights (CDDH) which defines policy and co-operation with regard to human rights and fundamental freedoms. It fixes the priorities as concerns the implementation of the activities of its committees of experts and groups of specialists. The CDDH assumes in particular tasks which aim to develop and promote human rights, as well as to improve procedures for their protection. One more human rights charter namely Arab charter on Human Rights ii has been found effective which guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through and medium, regardless of geographical boundaries.” iii
The association of South East Asian Nations (ASEAN) and the Asia Development Bank organization for Economic Co-operation and Development (ADB-OECD) also exist in this region for ensuring protection to general public interest especially on corruption matters by giving freedom to receive and impart public information to the person concerned. It was also found the study that recognizing the importance of sharing information, the Pacific Islands Forum Secretariat63 is in the process of developing its own internal disclosure policy certainly protect the national interest of the region.

2.3.2.2: The Commonwealth

There have been a number of dialogues with the member countries of common wealth nations on the right to know and freedom of information as a Human Right. After their discussion they all were of the view that freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, legislative and the judicial arms of the State, as well as any government-owned corporation and any other body carrying out public functions.

On the basis of the observations as explained by these member countries five principles and guidelines have been developed in respect of RTI and freedom of information which are to be followed by them compulsorily these are:

(i) Member countries should be encouraged to regard freedom of information as legal and enforceable right;

(ii) There should be a presumption in favour of disclosure and governments should promote a culture of openness;

(iii) The right of access to information may be subject to limited exemptions but these should be narrowly drawn;

(iv) Government should maintain and preserve records; and

(v) In principle, decisions to refuse access to records and information should be subject to independent review. Thus it is quite obvious from the study
that these principles are moral bindings on the member countries to develop domestic which will not only serve the interest of the individual public but the interest of the Govt. may also be protected.

2.3.2.3: The African Union

The study about the African Union clearly states that there are 53 states in this union, but so far implementation of RTI is concerned it is followed only in six countries such as

The African Union (AU) consists of 53 states. The only African nations with a law implementing the right to information are Angola, South Africa, Uganda and Zimbabwe. In Zimbabwe, the Access to Information and Protection of Privacy Act, 2002, in effect restricts the flow of information instead of facilitating transparency in government bodies. However, Article 9(1) of the African (Banjul) Charter on Human and Peoples’ Rights explicitly recognizes the right of people to seek and receive information and says that “Every individual shall have the right to receive information.”

In 2002, the African Commission on Human and Peoples’ Rights reinforced the view that: “public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information.”

The African Union’s Declaration of Principles on Freedom of Expression in Africa, 2002 also recognizes that everyone has a right to access information held not only by public bodies, but also by private bodies when this information is necessary for the exercise or protection of a human right. Though not binding, the aforesaid Declaration has considerable persuasive force as it represents the will of a sizeable section of the African population. The Declaration lays down the following principles:

However, there are several sittings of the Nations of African Union where it was found that every member recognized the right of people to seek and receive information and clearly says that every individual shall have the right to receive
information. After a number of meetings of the Nations of this Union certain principles have been developed in order to ensure the effectiveness of freedom of information in these states. These are:

- Everyone has the right to access information held by public bodies.
- Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right.
- Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts.
- Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest.
- No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment.
- Secrecy laws shall be amended as necessary to comply with freedom of information principles.

However, these principles are standing norms of the member countries but they are not followed by most of the member nations of this group. Hence, RTI & freedom of information has not been found effective in the African Union, Asia Pacific & Common Wealth Nation.

The African Union’s Convention on Preventing and Combating Corruption, 2003 further recognizes the role that access to information can play in facilitating social, political and cultural stability. For this reason, Article 9 requires that every State adopt: “legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences.”

2.3.2.4: The Organization of American States (OAS)

On position of RTI and freedom of information has been studied in the Organization of American States (OAS). It was found from the study that there are thirty four countries in this organization and out of these countries only twenty four countries are exercising this freedom information. They were of the
opinion that excess to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right.

This principle allows only exceptional limitations to the right that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” The Declaration was approved by the Inter-American Commission on Human Rights in October 2000.

There have been three developments as found from the study on RTI position in OAS. One is American convention on Human Right. Secondly is Inter-American Commission on Human Rights and thirdly Inter-American Court of Human Rights. After going through the matter discussed in these bodies it is found that all Government held information must be made accessible to the public with few exceptions. The court has approved the approaches of convention and commission. The court is of the view that public access to information is essential to democratic participation and freedom of expression.

“In a democratic society it is indispensable that state authorities are governed by the principle of maximum disclosure, which establishes the presumption that all information should be accessible, subject to a restricted system of exceptions,” the court stated, before concluding that the burden is upon the state “to prove that in setting restrictions on access to information in its possession it complied with the restrictions” laid out by the court.xiii

The judgment of the Inter-American Court had an important impact on the development of the right to information at the national level in the Americas. In those countries where the American Convention had been incorporated into domestic law, individuals and groups cited the Claude Reyes judgment to assert a right of access to government-held information.
2.3.2.5: The Council of Europe \textsuperscript{xlv} and the European Union

The Council of Europe formally recognized the people’s right to access information as early as in the year 1950. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 states that everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information\cite{Oxford} and ideas without interference by public authority and regardless of frontiers. This commitment has been developed and interpreted over the year by the European Court of Human Rights. This was also included as Article 11(1) of the Charter of Fundamental Rights of the European Union which has become legally binding on all members of the European Union except Poland and the United Kingdom after signing of the Treaty of Lisbon.

The European Union has also shown its commitment to the right to information by implementing regulations that provide mechanisms through which people can access information from the institutions of the European Union. In March 2008, the Council of Europe’s Steering Committee on Human Rights (CDDH), adopted the Convention on Access to Official Documents at Strasbourg.

However, the Convention has been criticized as it falls short of many national laws on access to information and of the new international standard set by the Inter-American Human Rights Court.

It is obvious from the study that initiative taken by European Union in the area of RTI has been said satisfactory. Right to freedom of information and protection of human rights have been supported by the charter of fundamental rights of European Union and the European Court of Human Rights.

2.3.3: International Approach on Proactive Disclosure

A number of international human rights bodies have recently made specific recommendations on proactive disclosure. These recommendations are “soft law,” which means that they are interpretations of international and
constitutional guarantees; by developing and explaining these standards, they point to good practices that governments are encouraged to adopt and implement. At the European level, the Special Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE) has noted that there is currently a “Copernican revolution” taking place in the development of the public's right to know. Proactive disclosure is posited as an integral part of that shift to a new paradigm for government transparency. It has been found from the study that transparency in action only ensures public access to information.

Government bodies should be required by law affirmatively to publish information about their structures, personnel, activities, rules, guidance, decisions, procurement, and other information of public interest on a regular basis in formats including the use of ICTs and in public reading rooms or libraries to ensure easy and widespread access.

In the Americas, standard setting has been lead by the Organization of American States' Inter-American Juridical Committee, which in 2008 developed a set of Principles on the Right of Access to Information. Included at Principle 4 is guidance on proactive disclosure:

Public bodies should disseminate information about their functions and activities—including, but not limited to, their policies, opportunities for consultation, activities which affect members of the public, their budget, and subsidies, benefits and contracts—on a routine and proactive basis, even in the absence of a specific request, and in a manner which ensures that the information is accessible and understandable.

UNCAC, the first legally binding international anti-corruption instrument, includes proactive disclosure in the chapter on preventing corruption. UNCAC obliges 142 countries to publish information about matters that include: recruitment, promotion and retirement of civil servants; funding of candidatures and political parties; and public procurement systems. UNCAC also requires transparency of anti-corruption policies and the
publication of periodic reports on the risks of corruption in the public administration.

2.4: Right/Freedom of Information Law in Different Countries with Reference to proactive Disclosure

An attempt has been made to find out the existing position of RTI implementation or freedom of information in different countries of the world. It is found from the study that freedom of information laws has been effective since 1766 when the freedom of the press act was passed in Sweden. But in spite of a long history of this law the position of its implementation and effective exercise of this act is not up to the mark in the globe even after expiry two and half century (250 years), however the study shows that almost eighty country have implemented this legislation in different forms the study further shows that four countries in Africa, Seventeen countries in the Americas (including the Caribbean), nineteen countries in Asia, thirty seven countries in Europe and three countries in the Oceania have legislations pertaining to freedom of information. This is indicative of the positive world-wide trend in support of the right to information.

After observing the effective implementation and public awareness of the different countries of the world some leading nations have been selected for study taking from different parts of the world. These are:

2.4.1: Sweden

Sweden has been the first country where freedom of information legislation was supported by the Freedom of the Press Act as passed in 1766. This Act has now become an integral part of the Swedish Constitution. Sweden's Freedom of the Press Act required the disclosure of official documents on request. This act clearly states that “every Swedish subject shall have free access to official documents”. However some exceptions are also there were this act provides for a right to appeal to courts in case of refusal to
grant access. Thus it is obvious from the study that freedom of information and public awareness regarding right to know have been very effective in Sweden.

2.4.2: Australia

The study shows that Australia has framed legislation on RTI in 1982 which was totally based on Freedom of Information Act 1967 as enacted in USA. The study further shows that RTI has been very contributory it’s Australia particularly in ensuring the accountability of the public authority.

2.4.3: Columbia

It has been seen that Columbia could not succeed in enacting separate law in the area of freedom of information. But it has code of political and municipal organization which is very much effective in ensuing proactive disclosure of information.

2.4.4: Hong Kong

A Code on Access to Information was adopted in Hong Kong in March 1995, and in Thailand, the Official Information Act came into effect in December 1997. In South Korea, the Act on Disclosure of Information by Public Agencies came into effect in 1998, and in Japan, the Law Concerning Access to Information Held by Administrative Organs was enacted in April 2001. The study shows that these acts are very much effective there is awaring the person about their rights.

2.4.5: South Africa along with Angola, Uganda and Zimbabwe are the only African country to have actually passed freedom of information legislation. The 1996 Constitution of the Republic of South Africa is perhaps unique, not only in the breadth of its guarantee of freedom of information, but also in that it requires the adoption of national legislation to give effect to this right, within three years of its coming into force. The enabling legislation, the Promotion of
Access to Information Act, came into effect in March 2001. It applies to a record of public body as well as a record of a private body, regardless of when the record came into existence. The right to access information privately held is an interesting feature of this law as most of the laws on right to information the world over cover only the information in the public domain.

Since the 1980s, the collapse of authoritarianism and the emergence of new democracies have given rise to new constitutions that include specific guarantees of the right to information and this has spurred this flurry of interest in transparent governance. Even older democracies such as the United Kingdom saw wisdom in enacting a specific legislation on the right to information.

2.4.6: Canada

The 9/11 incident in the United States of America has actually led some countries to limit information access. The restrictions have been most profound in the United States and in Canada where proposals to limit national and local freedom of information Acts have been enacted. Human rights treaties concerned with the protection of particular groups of people have also recognized the importance of right to information. For instance, the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979; the Convention on the Rights of the Child (CRC), 1989;75 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 199076 all place an obligation on State Parties to guarantee them their right to access information from governments.

Access to Information is also a central element of the UN Convention Against Corruption, 2003, with Article 13 specifically recognizing the importance of information to facilitate public participation in the fight against corruption.
2.4.7: Right to Information in the United States of America

So far the freedom of information in USA is concerned, it is found from the study that the American constitution is the oldest written constitution of the world but it does not contain specific right to information. However, with the initiative of the US Supreme Court first amendment was made is US constitution where access to information was granted. In the light of this amendment the Administrative Procedure Act (APA) 1946 was passed for granting freedom of information but with this Act every person did not have right to information and only persons.

The Administrative Procedure Act (APA), 1946 was perhaps the first enactment which provided a limited access to executive information. The 1946 Act was vague in language and provided many escape clauses, for example, every person did not have right to information and only persons ‘properly and directly connected’ could have access, agencies were permitted to withhold information without justification and there was no provision for judicial review. Taking these deficiencies into consideration, the US Congress in 1966 passed the Freedom of Information Act, 1966, which gives every citizen a legally enforceable right of access to government files and documents which the administrators may be tempted to keep confidential. If any person is denied this right, he can seek injunctive relief from the court.

The freedom of information Act, 1966 has been the leading act of USA and it has certain features. As per the provisions of this act, all federal agencies are requested to respond to Freedom of Information Act requests within 20 business days excluding Saturday, Sunday and legal public (official) holidays. This time begins only since the request is actually received by the Freedom of Information Act Office of the JD’s component that maintains the records sought. An agency is not required to send out the releasable documents by the last business day; it can send a letter informing the applicant of its decision and then send the document within a reasonable time afterwards.
A component may extend the response time for an additional 10 business days when:

(i) the component needs to collect responsive records from field offices;

(ii) request involves a 'voluminous' amount of records that must be located, compiled and reviewed; or

(iii) the component needs to consult with another agency or other components that have a substantial interest in the responsive information. When such a time extension is needed, the component will notify the applicant about it in writing and offer him an opportunity to modify or limit the request. Alternatively the requester may agree to a different time table for the processing of the request.

When a determination on the request is not made within the applicable time period and the requester has not agreed to a different response timetable, the requester may file a suit in a federal court to pursue a response. If, however, the court concludes that the applicant has unreasonably refused to limit, his/her request or to accept an alternative timetable for response.

The *Freedom of Information Act* divides the categories into three:

(i) Commercial requesters who may be charged fee for searching of records, processing and photocopying them;

(ii) Educational or noncommercial scientific institutions and representatives of media who are charged only for photocopying and that too after the first 100 pages of copies; and

(iii) All other requesters are charged only for record searches and photocopying. For this category there is no charge for the first two hours of the search time or for the first hundred pages of photocopies or their equivalent. In all cases if the total cost does not exceed a minimum amount, currently $14, the Justice Department will not charge a fee at all.

The applicant may indicate in his request letter the amount he/she is willing to pay as fees. If this is not so, the Justice Department will assume that
the applicant is willing to pay up to certain amount, currently $25. If a component estimates that the total fees for processing a request exceeds $25, it will notify the requester in writing and offer him an opportunity to narrow the request in order to reduce the fees. If he continues to want all the records involved, he will be asked to express his commitment to pay the estimated fees and the processing of the request will be suspended until he agrees to do so. One will not be ordinarily required to actually pay the fees until the records have been processed and are ready to be sent to the requester. If however, the requester fails to pay the fees within thirty days of billing in the past, or, if the estimated fee exceeds $250, he will be required to pay the fees in advance, that is, before the records are even processed. If one agrees to pay the fees and then fails to do so within thirty days of billing, he may be charged interest on his overdue balance and the JD will not proceed with the request any further until payment in full has been paid. If one agrees to pay the fees, one has to pay even if the search does not locate any responsive records, or if the records located, are withheld as being completely exempt.

The Freedom of Information Act, 1966 also provides for nine exceptions that address issues of sensitivity and personal rights. These are:

(i) Information specifically required by an executive order to be kept Secret in the interest of national defence or foreign policy.

(ii) Information related solely to internal personal use of the agency.

(iii) Information specifically exempted from disclosure by statute.

(iv) Information relating to trade, commercial or financial secrets.

(v) Information relating to inter-agency or intra-agency memorandums or letters.

(vi) Information relating to personal medical files.

(vii) Information compiled for law enforcement agencies except to the extent available by law to a party other than the agency.

(viii) Information relating to agency regulation or supervision.

(ix) Information relating to geological and geophysical maps.
After investigating the operation of the *Freedom of Information Act*, the US Congress amended it in the year 1974. The amendments provided for disclosure of “any reasonable segregable portion” of otherwise exempted records; for mandatory time limit of 10-30 days for responding to information requests and for rationalized procedure for obtaining information, appeal and cost. The study shows that maximum use of this Act is being made by business executives and their lawyers and editors, authors, reporters and broadcasters etc. etc. whose primary job is to inform. The common people have made very little use of this Act.

In order to provide access to the Federal Government meetings, the US Congress passed the *Sunshine Act*, 1977 which mandates open meetings for regular session of the federal agencies. However, closed door meetings are allowed in cases of national defence and foreign policy; confidential, commercial, financial information; invasion of privacy; law enforcement and criminal investigatory records; pre-decisional discussion of general policy; bank examiner's records; and Information which may lead to financial speculation. The 1977 Act provides that an injunctive relief may be obtained to force a pending meeting to be open and to force closing of a meeting held in violation of law. After the enforcement of the 1977 Act, all meetings of the US federal agencies are to be open with at least one week’s public notice unless the prescribed exceptions are attracted. In the same manner, the *Federal Advisory Committee Act* contains similar provisions regarding the meetings of the outside groups advising the federal agencies.

In 1996, the US President Bill Clinton signed the Electronic Freedom of Information Act Amendment Bill that provided that records created by all federal agencies on or after November 1, 1996 should be made available electronically, that electronic reading rooms should be made available to citizens to access records and increased the response time to 20 days from the earlier stipulation of 10 days. President Bill Clinton's Executive Order allowed
release of the previously classified national security documents more than 25 years old and of historical interest as part of the *Freedom of Information*.

Under the Open Government Act signed by President George W. Bush on December 31, 2007, an Office of Government Information Services has come into existence in the National Archives and Records Administration to review agency compliance of the *Freedom of Information Act*. The newly established Office of Information Services will mediate to resolve disputes as non-exclusive alternative to litigation. Further, this law calls upon every agency to designate a *Freedom of Information Act* Public Liaison who "will assist in the resolution of any disputes".

In order to ensure active disclosure of information open government act was passed with the signature of resident George W. Bush in 2007 with this act openness in government activities has been ensured to the larger extent as obvious from the study.

2.4.8: United Kingdome

The study shows that England promoted secrecy in the place of releasing information. The thrust of legislation was on “Secrecy” not on “information”. The official secrets act was passed in England in 1911 which said to make everything a secret, even those matters which should not be kept secret.

As per the provisions of this Act Leak of Information was on punishable offence and if the authority fails to retain or to take reasonable care of information, they are going to be punished with two years imprisonment. However, this Act was replaced by official secrets Act, 1989 after certain improvements in other Acts such as local Government Act, 1985 and other administrative laws. In 1993, the Government in England published a white paper on “open government” and proposed a voluntary code of Practice for providing information. But in spite of that disclosure of Government information was moral not legal. The convention for the protection of Human and
Fundamental Rights, 1950 emphasized freedom of speech and expression but even it was not found effective.

It has happened first time in the history of England where labour party's election manifesto 1997 highlighted this fact that there should be a law under which the public must have a legal right to know about the functioning of the public authorities and the result of that freedom of information Act, 2000 was passed. According to the provision of this act, any person can request information under the Act, that is, the right allows a person to do two things: (1) to ask whether the public authority concerned has the information that the person specifies, and (2) if it has the material, to give copies of it in the form the person wants it, that is, photocopies or electronic files provided the information is not legally exempt from disclosure. The organisation must intimate the requester about the availability of the information sought and give it to him or her within twenty working days. In many cases even if it withholds the information, it at least has to inform the person that information has been withheld. The organisation can refuse vexatious requests and those that would be disproportionately expensive to meet, but under the Act it is required to help the person as far as reasonable.

The public authorities in United Kingdom include all government departments, National Health Services, bureaus, boards, public sector corporations, schools, colleges, universities including legal entities like companies, and councils. The Act was sought to be amended in 2007 by a private member's bill to exempt Members of Parliament including Peers from the purview of the Act but it failed to become a law. Unlike the codes it replaced, the 2000 Act gives the public legal rights of access to official information and makes alteration and destruction of records to prevent disclosure a criminal offence.

The Freedom of Information Act strengthens the right of the British citizen under the Data Protection Act, 1998. Currently the citizen is allowed access to electronic personal data and the so-called ‘structured personal data’ held in
manual files such as medical and personnel records. From January 1, 2005 a citizen can also access 'unstructured personal data' held by a public authority, which include, for example, notes and memos.

The *Freedom of Information Act* is applicable to all public authorities at the Central and local levels. As a matter of fact, Schedule I of the Act sets out a long list of the authorities covered under this Act.

Under the *Freedom of Information Act*, the Lord Chancellor has issued two Codes of Practice, of which the first relates to the disclosure of information, and the second on management of records. If the Commissioner believes that a public authority has committed a breach of the Act, or anyone of the Codes, he can issue so-called Practice Recommendations, which set out the corrective measures the authority should take. If any requester believes that his information request has been dealt with incorrectly by an authority, he can apply to the Commissioner for a decision. In response, he can issue three types of notice against the authority:

(i) **Decision Notices:** If the Commissioner finds the request in favour of the applicant, he can issue a decision notice, setting out the necessary steps for compliance with the Act, plus a deadline.

(ii) **Information Notices:** If he needs more information about the disputed request, he can issue one of these notices to demand more details.

(iii) **Enforcement Notices:** If the authority does not comply with the decision notice, the Commissioner can issue an enforcement notice which again must specify the action required and a deadline.

If the authority fails to comply with any of the notices, the Information Commissioner can write to the High Court which can then declare the authority in contempt of court. While either party can appeal against the decision notices, only the authority can appeal against information or enforcement notices. Appeals are considered by the Information Tribunal which was previously known as the Data Protection Tribunal. Subject to
the court on a point of law or to judicial review, the Tribunal’s decision is final.

The UK Freedom of Information Act grants the right to know not just to its own citizens but to every member of the public. The request has to be in written form (including e-mails). An applicant need not give his real name. Only a contact address is required. No explanations or reasons are to be cited.

Although the Freedom of Information Act in UK allows the public the right of access to most information held by public authorities, some information still remains protected. Such information is exempt from disclosure. There are two types of exemptions- Absolute and Qualified. All qualified exemptions require a judgment to be made on whether the release of information will prejudice the interests specified in the particular exemption. This is known as the 'Prejudice Test' and sometimes as the 'Harm Test'. Some of the exemptions overlap, for example the country's defence (Section 26 of the Act) and national security (Section 24 of the Act). Sometimes only a part of the information contained in a document will be exempt and not the entire record.

There are eight categories of Absolute Exemptions. Requests for information falling into anyone of them will not require the 'Public Interest' test or judgment of a public authority whether the release of the information will be in public interest or not. Such requests can be rejected and it also relieves the authority of the duty to confirm or deny that it has the information. The eight absolute exemptions are:

(i) Information accessible by other means (Section 21 of the Act). It is available on the website of each agency/authority.

(ii) Information relating to the State Security Bodies (Section 23).

(iii) Court records (Section 32) are left to the discretion of the courts.

(iv) Parliamentary privileges (Section 34) include proceedings in both Houses of the Parliament, and background data supplied to various Committees of Parliament.
(v) Information that could prejudice the efficient conduct of public affairs (Section 36).

(vi) Personal data (Section 40). It is covered by the Data Protection Act and is generally available to the person who is the subject of the information.

(vii) Information provided in confidence (Section 41), the disclosure of which will constitute breach of confidence-actionable by the other 93 person. This exemption is particularly important in relation to the Commercially sensitive information provided by private suppliers.

(viii) Information disclosure which is legally prohibited (Section 44). There are three types of prohibitions- the UK Human Rights Act, 1998 (Section 6); Local Government Finance Act (Section 21), and EU obligations including various commitment regulations. Sometimes known the 'Balanced Exemptions' or 'Public Interest Exemptions', the qualified exemptions are left to the judgment of the public authorities to decide whether it will be in public interest to confirm what information it has, but not to release it. There are 17 Qualified Exemptions which are divided into two sub-classes: The Prejudice Test and the Class Test. While the 'Prejudice Test' denotes the judgment of the public authority on whether or not the information requested is prejudicial to the specific interests included in a particular exemption, the 'Class Test' means whether or not the information sought contains or furthers any public interest.

The Prejudicial Test Exemptions include the country's national defence, international relations, relation within UK, the country's economic interests, law enforcement, audit functions, efficient conduct of public affairs, health and safety, and commercial interests.

The Class exemptions include material intended for future publication, national security, investigations and proceedings by public authorities, the formulation of government's policy, communication with the Queen, environment information, personal information, legal professional privilege, commercial information
(Section 43 and 41) such as trade secrets and information relating to any private sector involvement with public authorities.

A close look at the Absolute and Qualified Exemptions of *Freedom of Information Act* of the United Kingdom shows that it has influenced the lawmakers in India when they enacted the *Right to Information Act* in 2005. The Indian legislation does not classify the exemptions into absolute and qualified exemptions, nor the qualified ones into prejudicial and class exemptions as in UK. Nevertheless, almost all exemptions mentioned in the *Freedom of Information Act* find their echo in the Indian law as well. There are a number of provisions in the *Right to Information Act* that empowers the CPIO/SPIO in each office to judge if public interest outweighs other interests in the information sought. If it does, it can release the information.

**2.4.9: Philippines**

The study shows that Philippines is the first state in Asia where the right to access information was recognized at the earlier stage. However, separate legislation has not been enacted as yet in respect of proactive disclosure of information under freedom of Information or RTI but in spite of that number of code of conduct and ethical standards for public officials and employees have been formulated in 1987. A number of amendments have also been made and with this initiative freedom of information and proactive disclosure have been ensured to a greater extent.

**2.4.10: France**

France has been a developed nation from very beginning France has been very active in awaring the people through its academic contribution in form of Journal, Newspaper. The legislation of the different countries are being critically examined by French people time to time. The level of awareness is france is very high, hence there are a number of laws which ensure the freedom of information by posing responsibility on public authorities. It has
been found from the study that desired information is made available for people of different language, ability and literacy on education level. It goes to make this actively more effective.

2.4.11: Mexico

Proactive disclosure of information by public authority is very common as available free of cost in Mexico.

Mexico’s Transparency Obligations Portal was launched in 2007 by the office of the Information Commission (the oversight body). The portal is both a means to provide the public with information, but also allows the Information Commission to ensure compliance with the rules on proactive disclosure outlined in the Federal Law on Transparency and Access to Information (2002). The portal cost $300,000 to build and was not an obligation under the law. The portal has given the public access to millions of registers, the most popular of which is the directory of public servants which includes details of salaries.

2.4.12: Pakistan

The Constitution of Pakistan does not expressly give a right of access to information. Article 19 States:

Every citizen shall have the right to freedom of speech and expression, and there shall be Freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality or in relation to content of court. The legal framework in Pakistan includes a number of laws which impose severe restrictions on the free flow of information, both by imposing secrecy and by subjecting the media to excessive restrictions and government interference. These problems are compounded by poor record-keeping practices and a secretive government and bureaucracy which use every means at their
disposal to deny people access to information. They are further compounded by extensive government control over broadcasting and news agencies.

Pakistan does not presently have a law providing for access to official information. The Freedom of Information Ordinance, 1997 was briefly in force but was allowed to lapse before it had been passed into law. A process to introduce a second freedom of information Ordinance began in 2000, but this initiative effectively stalled when its sponsor, the former Minister of Information and Media Development, resigned. However, the cumulative effect of these developments, along with efforts by civil society, has been to promote public consciousness of the importance of freedom of information and demands for legislation to implement this right. It is now imperative that the authorities respond to these demands and pass effective legislation guaranteeing a right to access information held by public authorities.

The Supreme Court ruled in 1993 that Article 19 includes a right of citizens to receive information.

In October, 2002, President Perviz Musharraf promulgated the Freedom of Information Ordinance, 2002, largely at the urging of the Asian Development Bank. Although the Ordinance should have lapsed within 6 months, the President has issued a constitutional decree which has ensured the continuance of the Ordinance. The Ombudsman ruled in April, 2004 that the Ordinance still was in force even in the absence of the regulations. Rules were issued in June 2004, but without any input from stakeholders. Civil society groups have since lobbied the Government to implement Model Rules, but to no avail.

It allows any citizen access to official records held by a public body of the federal government including ministries, departments, boards, councils, courts and tribunals. It does not apply to Government-owned corporations or to provincial governments. The bodies must respond within 21 days. There is some ambiguity about what information is accessible. The Ordinance allows access to “official records” and then sets out an exceptions regime subject to a
harm test for international relations, law enforcement; invasion of privacy; and economic and commercial affairs of a public body. However, it also allows access to “public records” which it specifically defines as only policies and guidelines; transactions involving acquisition and disposal of property; licenses and contracts; final orders and decisions; and other records as notified by the government. It then makes these public records subject to mandatory exemptions for: notings on files; minutes of meetings; any intermediary opinion or recommendation; individuals’ bank account records; defense forces and national security; classified information; personal privacy; documents given in confidence; other records decreed by the government.

Government bodies are required to appoint an official to handle requests. They also have a duty to publish acts, regulations, manuals, orders and other rules that have a force of law, and maintain and index records. It specifically requires that those records covered by it are computerized and networked throughout the country within a reasonable time, subject to finances, to facilitate access. Appeals of denials can be made to the Wafaqi Mohtasib (Ombudsman) or for tax-related matters, to the Federal Tax Ombudsman. The Ombudsmen have the power to make binding orders. Officials who destroy records with the intention of preventing disclosure can be fined and imprisoned for up to two years. The Mohtasib can fine requesters Rs10, 000 for making “frivolous, vexatious or malicious” complaints. The law says that it applies notwithstanding other laws such as the Official Secrets Act, which is based on the original UK OSA, 1911 and sets broad restrictions on the disclosure of classified The Consumer Rights Commission of Pakistan has called for the repeal of the OSA to facilitate freedom of information. Media groups and NGOs report that the Act has not been fully implemented and access is still difficult. In March 2006, the Centre for Peace and Development Initiatives held a workshop for the Cabinet Division of Government following which it commented that many information officers are still not fully aware of their roles and responsibilities under the Ordinance. CPDI complained that implementation of the Ordinance still requires
a major cultural and attitudinal shift on the part of government officials. It recommended that the government improve the current restrictive legislative framework, organize training and sensitization workshops, provide clear and detailed guidelines to designated officers about dealing with information requests and ensure that all ministries prepare lists and indexation of records held by them and publish them on websites. It has also demanded that all parliamentary committees promote greater access to information to open up government decision making processes, because most committees considering legislative bills or performing oversight duties hold their meetings privately without disclosing their minutes. The National Assembly rejected an attempt by the opposition Pakistan People’s Party in October, 2004 to introduce a bill to create a comprehensive law on freedom of information. None of the 4 provinces has adopted FOI laws for information held by provincial bodies. Two ministers from the North Western Frontier Province (NWFP) promised in August, 2004 to adopt a FOI law for NWFP.

It was found during the study that by virtue of the 18th Amendment of 2010, article 19A has been inserted in the Constitution of Pakistan. It gives the right to access to information the status of a fundamental constitutional right. Article 19A "Right to Information" reads: "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".

2.4.13: China

The study presents the mixed picture of Right to know specially in the light of Suo motu disclosure of information in China. Administrative organs may not disclose government information that involves state secrets, commercial secrets or individual privacy. However, government information involving commercial secrets or individual privacy may be disclosed by administrative organs with the consent of the right holder(s) or if administrative organs believe that non-disclosure might give rise to a major impact on the public interest.
Article 8 explains that the government information disclosed by administrative organs may not endanger state security, public security, economic security and social stability. In addition to government information disclosed by administrative organs on their own initiative provided for in Articles 9, 10, 11 and 12, citizens, legal persons or other organizations may, based on the special needs of such matters as their own production, livelihood and scientific and technological research, also file requests with departments of the State Council, local people’s governments at all levels and departments under local people’s governments at the county level and above to obtain relevant government information. Article 14 explains that Administrative organs should establish and perfect mechanisms to examine for secrecy the government information to be released, and clarify the examination procedures and responsibilities. Prior to disclosing government information, administrative organs should examine the government information to be disclosed in accordance with the provisions of the Law of the People’s Republic of China on Safeguarding State Secrets and other laws, regulations and relevant state provisions. When an administrative organ is unable to determine if certain government information may be disclosed, it should submit the matter for determination to relevant departments in charge or departments for safeguarding secrecy at the same level as the administrative organ. Administrative organs may not disclose government information that involves state secrets, commercial secrets or individual privacy. However, government information involving commercial secrets or individual privacy may be disclosed by administrative organs with the consent of the right holder(s) or if administrative organs believe that non-disclosure might give rise to a major impact on the public interest.

Article 9 of the Act states that Administrative organs should disclose on their own initiative government information that satisfies any one of the following basic criteria:
1) Information that involves the vital interests of citizens, legal persons or other organizations;
2) Information that needs to be extensively known or participated in by the general public;
3) Information that shows the structure, function and working procedures of and other matters relating to the administrative organ; and
4) Other information that should be disclosed on the administrative organ’s own initiative according to laws, regulations and relevant state provisions. Article 10 states that People’s governments at the county level and above and their departments should determine the concrete content of the government information to be disclosed on their own initiative within their scope of responsibility in accordance with the provisions of Article 9 of these Regulations, and emphasize disclosure of the following government information:

1) Administrative regulations, rules, and regulatory documents;
2) Plans for national economic and social development, plans for specific projects, plans for regional development and related policies;
3) Statistical information on national economic and social development;
4) Reports on financial budgets and final accounts;
5) Items subject to an administrative fee and the legal basis and standards there for;
6) Catalogues of the government’s centralized procurement projects, their standards and their implementation;
7) Matters subject to administrative licensing and their legal bases, conditions, quantities, procedures and deadlines and catalogues of all the materials that need to be submitted when applying for the administrative licensing, and the handling thereof;
8) Information on the approval and implementation of major construction projects;
9) Policies and measures on such matters as poverty assistance, education, medical care, social security and job creation and their actual implementation;
10) Emergency plans for, early warning information concerning, and counter measures against sudden public events;
11) Information on the supervision and inspection of environmental protection, public health, safe production, food and drugs, and product quality. Article 11 of the Act says that the government information to be emphasized for disclosure by the people’s governments at the level of cities divided into districts and the county level people’s governments and their departments should also include the following contents:
1) Important and major matters in urban and rural construction and management;
2) Information on the construction of social and public interest institutions;
3) Information on land requisition or land appropriation, household demolition and resettlement, and the distribution and use of compensation or subsidy funds relating thereto; and
4) Information on the management, usage and distribution of social donations in funds and in kind for emergency and disaster relief, special care for families of martyrs and military service personnel, and assistance to poverty stricken and low income families. Article 12 states that People’s governments at the township (town) level should determine the concrete content of the government information to be disclosed on their own initiative within their scope of responsibility in accordance with the provisions of Article 9 of these Regulations, and emphasize disclosure of the government information:

In addition to government information disclosed by administrative organs on their own initiative provided for in Articles 9, 10, 11 and 12, citizens, legal persons or other organizations may, based on the special needs of such matters as their own production, livelihood and scientific and technological
research, also file requests with departments of the State Council, local people’s governments at all levels and departments under local people’s governments at the county level and above to obtain relevant government information. Administrative organs should establish and perfect mechanisms to examine for secrecy the government information to be released, and clarify the examination procedures and responsibilities. Prior to disclosing government information, administrative organs should examine the government information to be disclosed in accordance with the provisions of the Law of the People’s Republic of China on Safeguarding State Secrets and other laws, regulations and relevant state provisions. When an administrative organ is unable to determine if certain government information may be disclosed, it should submit the matter for determination to relevant departments in charge or departments for safeguarding secrecy at the same level as the administrative organ.

2.4.14: Srilanka

Sri Lanka lacks a freedom of information law. Instead, there are a number of pieces of legislation that promote secrecy and undermine the free flow of information. In addition, government has become used to operating in secret, and a number of routine practices prevent information from reaching the people. There is some judicial interpretation that suggests that the right to information may be included in the constitutional guarantee either of freedom of expression or of thought. However, existing laws cannot be ruled unconstitutional and there is only a very limited window of opportunity to challenge bills before they become law. There is, therefore, a vital need to effect change both in relation to the legal framework, in particular by adopting freedom of information legislation, and the official practice.

2.4.15: India\textsuperscript{xvii}

India presents a mixed picture with much secrecy legislation still in place restricting the free flow of information, but at the same time some significant developments at state level in terms of promoting freedom of information laws,
as well as draft national legislation. To some extent, these legislative developments represent the implementation of the constitutional right to information, which has been progressively developed by the courts over the last two decades. They are also in important ways a response to effective advocacy and mobilisation work by civil society and grass-roots organizations. Unfortunately, the draft law presently being considered by the central government is woefully inadequate. It lacks any independent oversight mechanism, providing only for internal appeals within the government apparatus. It contains an excessively broad regime of exceptions and lacks a provision providing for disclosure in the public interest. The requirements in terms of proactive, or *suo motu*, publication are weak and the draft fails to provide protection for whistleblowers. Cumulatively, it is a weak law which will fail to implement in practice the right to information. It is essential that decision-makers fundamentally rework this draft, to ensure that legislation is passed which protects the public’s right to know and promotes the free flow of information in India.

2.5: Findings

From the above discussion, it is obvious that there is a trend world-wide to have increasing openness in the system of governance. Various factors like changing socio-economic milieu, increased awareness of public about their rights, the need to have a fully accountable and responsive administration and growing public opinion which views efforts at secrecy as enhancing the chances of abuse of authority by the government functionaries have led to a demand for a greater transparency in government functioning. Though complete openness is neither feasible nor desirable, a balanced approach to openness in government functioning has to be devised.

In summation, we can see that there is no dearth of commitment by the international community to providing the public with the access to information about their policies and actions. Countries across the globe have recorded this
commitment to transparency in both binding human rights instruments and in the declaratory statements. What has been slow in coming is the political will to translate this commitment into action - with only eighty of the 193 nations of the world having access to information laws.
2.6: References:

i. http://en.wikipedia.com. For country wise legislations on freedom of information, see the Table of Statutes

ii. The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004


v. For further details on the Aarhus Convention, see: Aarti Gupta, "Transparency under scrutiny: Information Disclosure in Global Environmental Governance", *Global Environmental Politics*, Vol. 8, No. 2, 2008, pp. 01-07; Vera Rodenhoff, "The Aarhus Convention and its Implications for the 'Institutions' of the European Community


vii. For further details, visit: http://www.achpr.org /english/ratifications/ratification_african%20charter.pdf.


ix. Declaration of Principles on Freedom of Expression in Africa was made by the African Commission on Human and Peoples' Rights in its 32nd Session between 17 to 23 October, 2002 at Banjul, Gambia.

x. Ibid.


xiii. www.elaw.org/node/2546; and http://www.soros.org/initiatives/justice/


xv. Freedom of information around the world 2015-A Global Survey Report

xvi. Freedom of information around the world 2015-A Global Survey Report

xvii. The relevant cases of the Supreme Court are Bennett Coleman & Co. v Union of India, AIR 1973 SC 783, dissenting judgment of Justice KK Matthew in particular; State of UP v Raj Narain, AIR 1975 SC 865; Reliance Petrochemicals Ltd v Proprietors of Indian Express Newspapers Bombay Pvt Ltd, AIR 1989 SC 190; Indian Express Newspapers (Bombay) Pvt Ltd v India (1985) 1 SCC 641; Secretary, Ministry Of Information & Broadcasting, Govt. Of India, And Others, V. Cricket Association Of Bengal And Others, 1995(002) SCC 0161 SC People's Union For Civil Liberties (PUCL) And Another, V. Union Of India, 2003(001) SCW 2353 SC.