Chapter III

Global trajectory of the right to information movement

The Interface between the right to know in India and a similar right that exists across the world is best understood through a comparative cross country analysis. The dissemination, sharing and release of information by public agencies to the stakeholders is directly related to the state of constitutional democracy, civil society activism and responsive governance in any country. Laws and statutory initiatives arrive only when the public institutions are able to inculcate confidence in their performance vis-a-vis people, failing which democracy and rights of citizens may be jeopardized. The present chapter attempts to study many such interactions between the state of country governance and the rise of information movement and law. This work attempts to study the information laws of most prominently active countries where freedom of information law is thriving within the democratic constitutional framework but primarily the United States which has an interesting history to recapitulate and the researcher benefited by being at the Yale University’s Law Department to browse through the otherwise rare literature and documents.

Is there a Legislative History on the Right to Information in India:
This chapter is an integral part of this thesis and research project because there is a complete absence of precedents in India prior to the year 2005 as far as providing access to government records is concerned, in which year the Right to Information Act was promulgated in India. Therefore, it is even more pertinent for the purpose of this research to consider the freedom of information laws of countries which have a similar legislation as that of the legislation of India, so that a comparative analysis of the complex issues that emerge may be possible. Therefore, this chapter aims to compare this Act with that of the USA, UK, Canada, Australia, New Zealand and Ireland. Freedom of Information laws now exist in 40 countries across the world (including Australia, Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Czech republic, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Israel, Japan, Latvia, Lithuania, Netherlands, New Zealand, Norway, Poland, Portugal, Slovakia, South Africa, South Korea, Spain, Sweden, Thailand, Trinidad and Tobago, Ukraine,
United Kingdom, USA.) (Macdonald and Jones 2003). In all of these countries, information from public authorities is a matter of right and the exemptions from access to the information and the appeals procedure is outlined. The right to access information held by public authorities has existed in Sweden since the 18th Century, in the USA since 1966, in France and Netherlands since 1978, in Australia since 1982, in Ireland since 1983 and in UK since 2000. There is a lot that can be learnt in the context of India, from these mature democracies with a varied range of experience in freedom of information laws.

For example, upon study of the patterns of use of the Access to Information Act of Canada, it is important to note that the largest user group has been business i.e. - 43% in 1992-3 (The Canadian Information Commissioner’s office report,1994). It is noted that many business houses sought information from the government that would in an indirect manner help the businesses to seek government contracts. Another category of business use is by persons or companies who obtain government information so that they sell it on to other interested parties at a profit. Even though this may seem as a misuse of the Freedom of Information Act however, according to the Information Commissioner in Canada, this does not pose as a problem since he says that such persons and companies pay taxes and the same information could be exploited by the government itself, if it so desired or the need for such information arises. Individuals formed the next largest group (39% in 1992-93), followed by media (7-10%), academics (around 2%) and lawyers make up the rest. The use by Parliamentarians had been very low and minimal. The Canadian task Force Report, 9 for the year 2000-1 shows that business users still predominate, with 40.9% of requests emanating from them. 31.5% came from the general public (which includes parliamentarians, who are estimated to have made about 10%, 16% from organizations, 10.8% from the media and 0.8% from academics. (The Canadian Information Commissioner’s report, 2000-1:17)

**USA:**

However, it is the developments in the USA that are very interesting to note. The highest seekers of information in the USA as in Canada is the business community and an entire industry has grown up of data brokers or surrogate requesters who gather information under the statute and then sell it forward to interested parties.
Individuals and media are usually far behind in the case of the US. (AEI Journal, March/April 1982:16)

**Ireland:**
In Ireland 64% of the queries under the freedom of information laws has been from individuals and the requests for purely personal information is around 45%.

**Australia:**
A similar case is that of Australia where there has been a predominance of requests for personal information and over 90% of requests were being made to four agencies wherein the applicant’s own information was being requested i.e. the Australian Taxation Office (ATO), the Department of Veteran Affairs, Immigration and Ethnic (now multicultural) Affairs and Social Security (now known as Centrelink) (Australian Law Reform Commission report, 1977)

The degree and extent of the availability of information is different and differs from time to time in different societies around the world. The history of the restrictions on the free flow of information can be traced back to 1476, with the advent of the first British Printing Press by William Caxton in West- Minster. There existed no restrictions on the free flow of information in the garb of laws and legislation on the curtailment of information and the printing endeavours of individuals were only restricted by their ability and imagination. However, shortly after the pursuits of William Caxton, the British Crown initiated to control and regulate the printing presses in England (Dubuque, Brown, 1984:39). The importance of daily discussion and the power of debate and dialogue have been advocated by ancient scholars. Plato has said in his Apology for Socrates: “In me you have a stimulating critic persistently urging you on with persuasion and reproaches, persistently testing your opinions and trying to show you that you are really ignorant of what you suppose you know. Daily discussion of the matters about which you hear me conversing is the highest good for man, Life that is not tested by such discussion is not worth living.” (Bury,1975:23)

As has been discussed in the previous chapters, the Indian experience is sprinkled with continous attempts to throttle the free flow of information and even now with the
establishment of the RTI Act and to make many key organizations exempt from the provisions of the RTI Act.

**Freedom of information trend in international communication:**

It is widely acknowledged that the role of freedom of expression corollary freedom of information. Various terminologies such as self-government, checking value, democratic process, etc. are frequently invoked in the defense of freedom of expression (Mehra, 1986). There has existed in this world, an information order that directs the flow of information in the world through press agencies and government releases. However, this arrangement has been quite often been accused by the world to be a tool that has been used by developed countries to exploit developing countries by monopolization of the resources of communication. In fact, in the 1980s more than 100 nations rallied together to challenge long standing information principles and pledged to create a new international information order (NIIO) (Richstad and Anderson, 1981:20)

It has often been a criticism of the United Nations documents, many of which have become templates for other countries to follow, that most of the early documents of the UN were drafted when a clear majority of the 51 original member of the United Nations were western countries or countries which were closely allied with the West. Thus it is important to understand that western liberal traditions unquestionably had a strong influence on UN deliberations at the time (Mehra, 1986). The Former U.S. Ambassador to the United Nations Daniel Patrick Moynihan has said that the U.N. Charter is a “constitutional document” drafted in the tradition of Western liberal societies…utterly opposed in spirit and hostile in its provisions to totalitarianism.” He points to the “obvious” similarities with the U.S. Constitution:

*We the people of the United States….*

*We the people of the United Nations….*

Similar templates have been followed in the Indian context, wherein the model that has been initiated by the UN has been used and the freedom of information laws of most countries that have followed this model have a distinguishing similarity. The rhetorical Anglo-American stress on “fundamental human rights,” on “dignity and worth of the human person,” and on “the equal rights of men and women” is noticed
right at the outset of the documents and recurrently thereafter. The Charter takes as given those propositions about “human rights and …fundamental freedoms for all,” which are common philosophical foundation on which the democratic societies of the West have been constructed. (Moynihan, 1976:473)

In the U.N. debates, the response of the developing countries was very meek and uninterested as far as the early years of the U.N. debates on the free flow of information are concerned. Thirteen of the developing countries i.e. Egypt, Guatemala, India, Iran, Pakistan, Saudi Arabia, Siam, Syria, Afghanistan, Argentina, Belgium, Burma and China abstained on the vote taken on the “Convention on the Gathering of News and the International Right of Correction.”. (Official record of the U.N. General Assembly, 209th meeting: 357) In such scenario, it is important to mention for the purpose of this research the position as far as India is concerned, India wanted the press to “recognize the obligation of preserving the integrity of the state and public order and morality.” It was stated that “certain restrictions were inevitable (on freedom of information) in the era of political instability in which most under-developed countries currently found themselves.” (Fascell, 1979:114-128)

**Freedom of information and USA:**

The United States of America has consistently upheld the freedom of information and was one of the key countries which were instrumental in promoting the freedom of information in the United Nations in the form of the U.S. backed Philippine draft resolution by the General Assembly of the United Nations on December 14, 1946. The resolution noted as follows: “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated; Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world…Understanding and cooperation among nations are impossible without an alert and sound world opinion, which, in turn, is wholly dependent upon freedom of information.” (U.N. G.A. resolution 59(I): www.un.org/documents/ga/res/1/ares1.htm)

‘The U.S. was a reticent part of the wars and conflicts of the world and mostly the experience of the U.S. as a British colony and in the American Revolution defined the
conceptions of presidential powers of the U.S. leaders. However, during the twentieth century the U.S. no longer avoided involvement in foreign conflicts and participated in both the World War I and World War II which changed its policy of information. The presidential right of executive privilege was reaffirmed by President Nixon to deny Congress access to official documents and presidents since Truman have issued orders classifying “national security” information. There is documented material available that analyses and discusses the history of FBI, CIA, and NSA official’s efforts to avoid releasing their agency’s records. There have been very many instances of American administrators, including the Office of the President himself, who have tried to destroy official documents in the fear of having to provide them to the public or the press. The most notable example of the same is the Nixongate. Many U.S. Presidents preferred to take official records with them upon the end of their term or upon relinquishing office and then decided the terms of the conditions as to when these records would become available and accessible to the public. However, this era of official secrecy was taken to the next level when under the Nixon-Sampson agreement of 1974 the former President of the USA claimed as his right the destruction of Oval Office Tapes claiming that they were his personal property. This culture of secrecy was further intensified in 1976 when there was a public outrage over Nixon’s destruction of records which resulted in a flurry of FOIA requests for FBI records which led to the FBI to record a disposition plan to the National Archives to destroy all closed FBI field office files on the pretext that their contents were duplicated in FBI headquarter files.’ (Theoharis, 1989: 85)

As in the case of the debate over cabinet papers in the Indian context, there has been an ongoing controversy regarding the release of documents of the Federal bureau of Investigation (FBI) of the USA under the Freedom of Information Act of the USA. However, during the 1970s the government was affected by the Watergate affair and the Vietnam war happenings and the Federal intelligence agencies were forced by the Congress to open their records to public scrutiny. The FBI tried to defend its position by giving several lame justifications. Acting FBI Director L. Patrick Gray (Theoharis 1989) criticized one proposal to limit exemptions to disclosure to only those FBI records which were kept for a particular official law enforcement purpose. He was also of the view that instead of broadening the 1966 Freedom of Information Act so that more transparency can be brought into the system, the Justice Department should
seek an amendment for the complete exemption for FBI files. In their private deliberations, FBI officials worried that if the official files were open for the scrutiny of the public, they may be misused by twisting and rephrasing factual information which would lead to loss of reputation of the FBI (Theoharis 1989). Similar excuses can be cited from the Indian experience wherein government officials have refused to part with official information and documents citing similar reasons. Recently, the Government of India has made the CBI exempt from the aegis of the RTI Act. Further, the Indian experience now seems more similar to the reaction of the FBI because when the attempt to protect the FBI records from exemption under the FOIA failed the FBI officials executed the Act by interpreting the Act very broadly and capriciously. As a result, resultant documents have not furthered the goal of development at all because they reveal almost nothing of concrete nature. In many instances, applicants have found that the information that has been revealed after a FOIA request is so innocuous that it is unclear as to why it was not revealed in the first place or in some cases official who blacked out the information was unaware that the portion that he was blacking out was actually information that was under public domain. A similar case is witnessed by this researcher when the responses of the Public Information Officers under the RTI Act and some other organizations were reviewed. Most PIOs are either very reluctant to part with information and when they do part with information, they usually black out the portions in the documents which are actually a part of the information that should be provided under the Act i.e. information in public domain. Further, the first attempt is to try to not provide the information by the public authority and the second attempt is usually to block as much information as possible. Theoharis (1989) has shared how it took him sixteen years to ensure the fullest release of Hoover’s office files. Various exemptions such as personal privacy were used to disallow access to information which was challenged by Theoharis and a summarized version of the documents that were requested for were provided to him.

Historians in the USA have faced multitude of problems in accessing records and have resorted to litigation. In some cases it took eleven years to 15 years to challenge the denial of information from public authorities. Apart from the time consumed, the cost of litigation is a major setback for applicants seeking information under the freedom of information laws. The FBI and CBI have claimed the national security
clause to withhold documents that are more than thirty years old in issues such as the Kennedy Assassination that led to the creation of the Kennedy Assassination Records Review Board.

The argument for openness has been best offered by a former CIA insider, William Colby, that, “intelligence substance can be disseminated to the public while its sources are kept secret.” Further, in his book Honourable Men, Colby wrote: “In a political debate where knowledge can be power, intelligence judgements must be supplied impartially to all factions, to help the best solutions to emerge, rather than the favoured one. Photographs must be declassified, backgrounders attributed, publications edited to protect the sources but allow the substance of the reports and assessments to circulate to Congress and the public. The estimates will then be debated and the sage unanimity of the cloistered world of intelligence will be challenged by those close to the struggle and fearful of the irrational and foolhardy, but real, surprises. Out of the process will come a better understanding of the role and value of modern intelligence, as well as better intelligence itself.” (Colby and Forbath, 1978:465-66)

Many historians and researchers have tried to access the records of the Central Intelligence Agency (CIA) of the USA since it had information about everything important that was going on in the world. However, as Theoharis (1998) opines, the history of CIA is in part the history of the conflict between secrecy and publicity and that is why a brief analysis of the public disclosure policies, or the lack of the same, is empirically a requirement for the purpose of this research. It is observed by the USA post its cold war experience that secrecy can endanger a democratic system by denying the people information about the functioning of their own government and it has a corrosive effect on the popular trust necessary for any democracy to function. Also, even though it is an accepted fact that it is necessary for intelligence, however, secrecy can harm the effective conduct of intelligence, by allowing errors, foolhardiness and criminal conduct to develop and remain uncorrected (Theoharis 1998). The same situation can be translated into the Indian experience wherein the problem of corruption coupled with secrecy has made the bureaucracy become totally despotic and unaccountable to the people. Unlike the Indian Right to Information Act 2005, the FOI Act 1966 of the USA which created an enforceable right to access
government records, the CIA and other government agencies were not exempted from disclosure of information from the Act. However, to protect the interests of national security and protection of governmental interests certain exemptions were provided in the statute on which any agency including the CIA could rely. One of the exemptions related to national security and permitted agencies to withhold information specifically required by executive order to be kept secret in the interest of the national defense or foreign policy. The authority to withhold information that was exempt under the Act was offset by empowering requesters with the right to challenge in federal courts any wrongful withholding of records by agency personnel. The courts were given the authority to conduct de novo review (i.e., to make a fresh determination) of agency claims. The report of the Senate that accompanied the legislation clearly establishes the Congress’s intent, stating that de novo review was “essential in order that the ultimate decision as to the propriety of the agency’s action is made by the court and (to) prevent (judicial review) from becoming meaningless judicial sanctioning of agency discretion.” The most important aspect of this being that the courts were given the authority to reject the denial of information orders of the executives using methods such as in camera examination of documents and order the release of documents that were improperly classified. However, it is seen that the courts were from the outset, reluctant to enforce the Act against the CIA since it is an established principle that the decision to examine disputed documents in any particular case is the discretion of the courts. In the light of the guidance of sound discretion most appeals panels have held that a court need not conduct its own in camera inspection of contested documents if three conditions are satisfied: (1) the FBI has claimed a reasonable basis for finding potential harm in the release of documents, (2) the information logically falls under national security and (3) no evidence can be found that contradicts the government’s claim or that suggests bad faith. Upon only an affidavit claiming that the information was classified, the courts granted permission to the agency for not disclosing the requested information. The process of judicial examination of classified documents exists also in India however, in the USA even though the judicial examination of secret documents provides a check on government abuse of power, however, it has one undemocratic aspect, i.e. the judicial examinations themselves are secret. The plaintiff who is seeking the information is not allowed to be present in the in-camera discussion that takes place between the judge and the government. Courts have tried to rectify this anomaly by making the
public records as descriptive as possible. A few years later, not succumbing to the pressure from the Reagan administration to exempt the CIA entirely from the mandatory review and disclosure requirements of the FOIA, the Congress instead adopted the CIA Information Act. The CIA Information Act reaffirmed the application of the FOIA to the CIA but exempted from search and review what Congress thought would be only a small category of operational files. As is seen through the course of this research, and as is in most cases of public disclosure that reach the courts in India, intelligence agencies such as the CIA are never forced to reveal information by courts but are instead compelled to re-examine the initial, overbroad claims of nondisclosure and more often than not, the CIA voluntarily releases more information. However, the case of India is peculiar because courts are actually refusing to grant information about themselves under the RTI Act and therefore there is little faith that is left in judicial redressal of complaints regarding denial of information. Thus, the FOIA worked to open up substantial quantities of CIA information and in 1980, the Centre for National Security Studies made available to interested researchers a list of CIA documents releases through the FOIA based on which numerous books and articles have been written. However, what has become routine in CIA responses are GLOMLAR responses wherein if the FOIA applicant seeks CIA records which relate to a foreign national or a specific event abroad, a frequent and common CIA response states that in all requests such as yours, the CIA can neither confirm nor deny the existence or nonexistence of any CIA records responsive to your request. As is the case in India, journalists, scholars and activists in the U.S.A. have used the FOIA to scrutinize the operations of government agencies and to expose official misconduct and lying, including the FBI’s illegal efforts to harass, intimidate, disrupt, and otherwise interfere with lawful political actions (Theoharis 1998). The experience with the Freedom of Information Act has been a success in the USA, according to statistics, in 1990 federal agencies received 491000 FOIA requests and spent $83 million responding to them. The Defense department received 118,000 requests; the Justice department, 62000: the INS, 45,000; the EPA, 39,000; the FBI 11,000; and the CIA, 4,000. The FOIA further requires that agencies report the extent of their denials of such requests: the agency with the highest denial rate in 1990 was the Office of Ethics, which refused to release 75% of requested documents. In contrast, the Department of health and Human Services denied only 2% of the requests received (Access Reports 17, Oct30 1991:5). David M. Walker (Radin
Chanin, 2010) has written that what one expects from his or her country’s government is commitment to the Constitution of the country, competency to focus on things that will generate value, mitigate risk and avoid crises, caring for the less fortunate in our society, integrity i.e. knowledge of the truth and innovation meaning thereby that new ways to address old problems should be found for which dramatic fundamental transformational change is needed and not incrementalism.

There is the latest question of digital information that is held with the government that needs to be tackled. Even though this is not a major part of this research, yet the secrecy that is generated by the e-mails exchanged within government offices that are related to work needs to be examined. Especially, in the light of the fact that these are actually records of the government that are easily destructible. A pertinent comparison in this respect is the experience of Scott Armstrong that he has underlined in the essay titled -The War over Secrecy: Democracy’s most important Low- Intensity Conflict (Theoharis 1995) in which he had to engage in a battle with the US administration to dissuade them from purging email exchanges in the White House. Armstrong also fought a long and hard legal battle with the courts in the USA and the US Supreme Court refused to grant the writ of certiorari in his case which was against the President¹. Thereafter, through its decision, the Supreme Court has assured that the activities of the National Security Council (NSC) remain secret for twelve years after Clinton leaves office and more importantly that the President and his national security adviser can decide which records they will and will not retain.²

In the essay titled - We Can’t Yet Read our Own Mail: Access to the Records of the Department of State by Page Putnam Miller (Theoharis 1995), it has been explained how documents related to the Foreign Relations of the United States (FRUS)³ which is the State Department’s respected documentary record of US diplomacy have become increasingly out of reach of the government. The First FRUS volume which was a 441 page executive document which included circulars, notes, instructions and

¹ The court case that Armstrong fought against the President’s office is titled Scott Armstrong v. Reagan which later became Scott Armstrong et al. v. Executive Office of the President et al.
³ The Foreign Relations of the United States series is the official documentary historical record of major U.S. policy decisions which first began in 1861. Is volumes contain documents from Presidential libraries, Departments of State and Defense, National Security Council, Central Intelligence Agency, Agency for International Development,etc. www.state.gov/www/about_state/history/fruswhat.html
dispatches related to foreign policy, appeared on 3rd December 1861 and was a supplement to President Abraham Lincoln’s annual message to Congress. Until 1906, the FRUS volumes were released the year following the events recorded in the documents. However, it is important to note in the context of this research, since there is continuous discussion on the increasing secrecy in the world, that by 1914, personnel shortages and constraints on access to pertinent records stretched the one-year time gap to four years and by 1921 it had grown to eight years. Following World War I, a fifteen year time gap between the date of the documents and their publication became the practice, and this continued for a number of years. (Leopold, 1963: 595-601). In the 1920s there was a drive to ensure the historical integrity of such records, and in 1925, Secretary of State Frank Kellogg ordered that the volumes contain the correspondence “relating to all major policies and decisions of the Department…together with events which contributed to the formation of each decision or policy.” There are four points contained in Kellogg’s order which are still printed at the beginning of each volume which make clear that there are to be no deletions without an indication of where the deletions occurred, no omissions to conceal or gloss over what might be regarded as a defect of policy, and no facts omitted that were of major importance in reaching a decision. Kellogg’s final point specified the criteria under which omissions are permissible: if the published information would impede current diplomatic negotiations or would contravene the confidences US officials had given to foreign governments. (Leopold, 1963: 595-601)

President John Kennedy issued a National Security Action Memorandum in 1961 observing that the publication of the Foreign Relations series has fallen in number and the time gap that approaches twenty years is unfortunate and undesirable because a democracy should have an informed citizenry. Kennedy emphasized that “any official should have a clear and precise case involving the national interest before seeking to withhold from publication documents or papers fifteen or more years old.” (National Security Action Memorandum no.91, Kennedy,1961:21) Another intriguing example of the secrecy of the American administration is the tight secrecy under which the FBI and CBI functioned after the murder of President John F. Kennedy which led to the creation of The John F. Kennedy Assassination Records Collection Act of 1992 (Public Law 102-526, 102d Congress), which was an important milestone in the people’s right to know and the culture of secrecy that evolved during fifty years of the
cold war. The main purpose of the Act was to placate theories that implicated federal agencies in a conspiracy to murder the young President however, the unintended consequence has been to reveal some deeply buried secrets of the FBI, CIA and other intelligence agencies. The absence of information breeds totalitarianism and dictatorship in the context of the concept of information as given in, where it is said that, “Just as secrecy and democracy are incompatible, so totalitarianism and an informed public cannot coexist.” (Indiana Law Journal 1952: 209-214)

**Official secrecy and the issue of national defence:**
When an RTI application is received from an applicant, the question that a public authority should ask is a). Whether the public authority has the information and b). Whether the public authority desires to disclose the information.

The trial of Peter Treu⁴ who was an electronics engineer who was accused of violating the Official Secrets Act, created a furore in Canada over the high handedness of the government as far as official secrecy is concerned. This was because it was the first criminal trial in Canada that was held entirely in secret and the image of a Canadian citizen being tried in utter secrecy lead at a lot of media attention and wrath of journalists. (Rowat1979). In the early 20th century, Max Weber (Macy 1975) opined that some secrets are to be kept secrets in functional interest and he placed military secret as one of them. He stated that tendencies towards secrecy follow the material interest of some administrative fields. He also said that secrecy is found where the power of the dominant structure is at stake, whether in the face of an economic competitor or a foreign or hostile state. Military secrets that are vital for the defense of a country are the ones that are regarded by authorities as most important.

Even in the US, even though three major kinds of classifications exist i.e. top secret, secret and confidential- yet the general attitude is to over classify material rather than to under classify it.

⁴ The Peter Treu case is a landmark case of unwarranted official secrecy in Canada. Dr. Peter Treu was accused of unlawfully retaining classified North Atlantic Treaty Organisation (NATO) documents and not taking due care of the same. Accused of the same, he was tried under the Canadian Freedom of Information Act. However, what brought attention of the public was the manner in which the trial was conducted totally under secrecy by the government.
If one were to delve into the history of FOI laws then it is found that Sweden has the longest experience with the principle of openness which goes as far back as 1766. This trend in Sweden started with the adoption of the Freedom of the Press Act which is one of the basic constitutional laws of Sweden. Therefore, now for over two hundred years, the government of Sweden has provided full information to citizens about government matters. The road till here has not been smooth and arose out of a fierce struggle in the last half of the 18th century and after the end of a period of absolutism between 1772 and 1809, the Freedom of the Press and Parliamentary form of government were re-established and this principle was soon established as part of the normal political life of the Sweden. Therefore, a reverse provision is applicable in Sweden wherein all administrative documents are open to the public until under some law they are made private. The Swedish tradition of open access for all citizens is so deeply embedded in the psyche of the institutions and the people who run the institutions that both courts and ombudsmen place a great weight on an open government initiative. Moreover, there is no permanent time period under Swedish law under which documents can be kept secret from the public which means that the Secrecy Act keeps the documents of the Foreign office or of the armed services secret only temporarily. However, one important point of difference is that the Swedish Act creates a distinction between official documents and internal working papers, which is a distinction that does not exist in the Indian context. Under the Swedish Act, the right to access documents exists only in the case of documents that are sent from one organization to another and not otherwise. However, this is not the case with India. Moreover, the most important feature in the Swedish context is the entire spirit in which the issue of transparency is created, which means that due to the open attitudes of the public officials, the entire nature and manner in which the business is conducted changes and there is a much lesser feeling of public suspicion and distrust of officials, which gives a greater confidence to individuals. However, despite this there is tremendous amount of administrative secrecy in Sweden. As in the case of India, the law provides that to protect public interest and personal privacy, certain information may be exempt from disclosure. Premature access and publicity is avoided by making a distinction between working papers and official documents. Lastly, there is constant pressure by government and officials to keep matters confidential for their own convenience. A critique of such openness in administrative societies is that government officials communicate important information to each
other orally instead of putting it down on paper (Donald C. Rowat 1977). B. Wennergren, a former ombudsman, concluded in his book that the right of access is very seldom abused in Sweden and that it does not impede the daily work of administration “to any degree worth mentioning”. (Wennergren, 1970:249)

It is interesting to note that countries which top the Human development index such as Finland, Denmark and Norway have only recently adopted laws related to public access to information. This throws light on the disjunctions prevailing between development and right to information as right to information cannot be taken at its face value but has to be looked into as one of the many other constitutional tools required for development.

Finland, Denmark and Norway have only recently adopted laws related to public access to information. In Denmark and Norway citizens, including reporters are required to ask for specific documents i.e. they must know that a document exists and then only they can ask for the document. Moreover, another important point of distinction in Scandinavian countries is that appeals against the denial of information can be made to more than one independent authority. For example in Finland and Sweden an appeal can be made to the ombudsmen, the Chancellor of Justice or the Supreme Administrative Court, while in Denmark and Norway it can be made to the ombudsman or the ordinary courts. However, even though openness exists in Sweden to a much greater extent than in other countries, however, its exemptions are very specific and certain. However, in the case of countries such as USA and India the categories of exemption are much broader and therefore leave more room for official discretion and judicial interpretation. Through the applications filed for FOI in the USA, various new pictures have come to light such as disclosure of the CIA files in MK-ULTRA case and planned assassinations of foreign leaders. In 1976, of the estimated 150,000 requests under both the Information and Privacy Acts, about 25,000 or 17% were denied in whole or in part. About 4,200 of these denials, or again about 17% produced appeals to the head of the organization. In over half of these cases, the head changed the original decision and released part of the information.

5 The MKULTRA case relates to Project MKULTRA of the CIA in the USA, which was an official US government program that began in 1975. It was a covert programme of the US government that involved the manipulation of the human mind by various unethical means using chemicals, drugs, hypnosis, torture, etc.
requested (46%) or all of it (12%). The result is that only about 15% of the documents requested were wholly denied by the departments and agencies on the ground that they fell under one of the secrecy provisions of the Act. Mainly responsible for these denials were the security and law enforcement agencies which still deny large numbers of requests for personal documents. Due to the large number of requests under both acts, compliance problems do exist for the administration, especially the welfare, defence, treasury, security and law enforcement agencies, which receive the bulk of the requests. Thus, the department of justice claims that, including the FBI, the amount of time it devoted to freedom of information and related privacy requests rose from 120,000 man hours in 1975 to more than 600,000 in 1976 and has protested that the increased workload and the potential revelation of secret information weakens its law enforcement capacity. Most business houses in the USA have used the Act to collect information about their competitors. New business and law firms have sprung up which specialize in freedom of information laws and carry appeals to courts. There is a movement of reverse freedom of information cases in which a court injunction is sought to release the requested documents and the government is having greater difficulty in collecting sensitive information from business corporations (Donald C. Rowat 1977).

The reasons for non disclosure need to be given while refusing to give information. In UK, the FOI Act came quite late in 2000 and was made enforceable only in 2005. The White Paper that was presented to the British Parliament in December 1997 which was titled Your Right to Know- The Government’s Proposals for a Freedom of Information Act starts with the following sentence, unnecessary secrecy in government leads to arrogance and defective decision making.

The report on the government of India website i.e. www.rti.gov.in gives the report on Mexico and one more country that is conducted by Price Waterhouse Coopers which serves as an insight into the workings of the comparative right to information in these two countries.

In Netherland there exists a combination of discretionary secrecy which is combined with specific provisions for openness and access. A very unique feature of the FOI Act in Netherlands is that it provides a right to information in administrative
documents rather than to the documents themselves. This leaves a lot discretionary power in the hands of the government officials and gives a lot of opportunity to the officials to interpret the contents of the documents to suit their own interests, rather than giving the document straightaway to the applicant. It is seen that keeping in view the Swedish example, there is a need to reverse the principle that everything is public unless it is made secret by law. The Swedish experience depicts that there is a possibility to have a system where the abovementioned principle is reversed by law and a strong tradition of openness can be developed, without the workings of the government coming to a halt. On the other hand according to Donald C. Rowat (1977), where there is no such tradition of openness that exists, the full establishment of the principle of public access will require a radical change in law, practices and attitudes. Moreover, the adoption of a law which clearly declares a reversal of the principle of secrecy has great symbolic and dramatic value in altering both public and official attitudes. However, a lesson can be learnt from the failure of the first American law of 1946 and the limited success of the law of 1966 until its amendment in 1974, such a law will not succeed unless it contains strong provisions for its enforcement. Public officials are too used to the old system of discretionary secrecy under which they arbitrarily withhold information for their own convenience or for fear of disapproval by their superiors and will not change their ways unless they are required by law to do so.

Moreover, in a parliamentary system of democracy, such as that exists in India, where the executive government controls the introduction of legislation, there usually exists resistance from the government to initiate such a strong law, since the promulgation of such a law would result in the government losing its power and strength and because the system of discretionary secrecy suits the government in power. In USA, the House of representatives, sub-committee on Government Operations, after speaking with 142 witnesses in the summer of 1972 noted that the bureaucracy “already set in its ways never got the message about freedom of information.” As a result of this, federal agencies took an average of 33 days to respond to initial inquiries for information. And moreover, people requesting government documents were often faced with excessive charges from the agencies for finding and reproducing records. However, it is important to note that The Federal Drug Administration received around 13,000 requests in 1975 and within a year this figure stood at 21800. Mark Feldman, the deputy Legal Advisor of the department of State,
testified before a senate subcommittee that an estimated 3500 requests were expected for the calendar year of 1977 as compared with 1812 two years earlier (U.S. Senate hearings, 1977:342). Moreover, a 1977 overview of ninety agency reports concerning the FOIA revealed that the departments of Justice, State and the treasury denied, respectively 30%, 40% and 31% of their initial requests. Only 12.5% of the administrative appeals conducted in 1977 were granted while 53.5 were denied in full and 34% were denied in part (Relyea, 1978:217). If negotiations that the government enters into with various parties is kept a secret from the public then the government negates the claims of a democracy. This is the basic tenet of a vibrant and participatory democracy, in the light of the current debate with regard to transparency and accountability for which the right to information is seen as a vital instrument.

**Conclusion:**

The chapter on global trajectories, as the name suggests, details the Indian experience with regard to the right to information act vis-à-vis other countries. The Indian experience has been fairly recent since the Act was promulgated only in the year 2005. The final draft of the present Act also underwent quite a few changes till the current version saw the light of the day. In comparison with countries such as the United States, the Indian experience is fairly new and is evolving at its own pace. The chapter makes a comparative analysis of the implementation of the Right to Information Act of India with that of U.S., Ireland, Australia, a few Scandinavia countries, etc. The ethos and democratic make up of each country with whom the comparisons are drawn is a very different, therefore the experience with regard to the freedom of information laws also varies. In the course of the comparative analysis it is seen that as a democracy matures, there is demand and pressure for more and more transparency and accountability in government functioning. The content of the chapter towards the end throws light on the major issues of participatory democracy vis-à-vis information dissemination. The continuous effort to throttle the free flow of information in democracies wherein the freedom of information act has existed for a much longer time than in India, serves as an example for our country because in many ways as elucidated above, history is being repeated as far as curbing the total implementation and effect of the Right to Information Act is concerned.