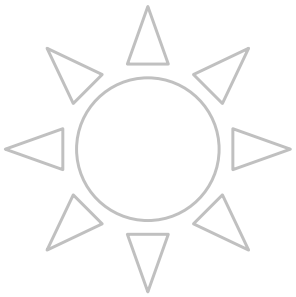
Chapter 6



RIGHT TO INFORMATION: A COMPARATIVE STUDY

CHAPTER- 6

RIGHT TO INFORMATION: A COMPARATIVE STUDY

"Real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused"

Mahatma Gandhi

In a Democratic set up, the people have a right to know every public act and conduct discharged by their public functionaries. The right to know is necessary outcome of the concept of freedom of speech and expression. At the same time open Government does not mean that the whole government transactions are to be carried out in the market place. To cover with veil of secrecy the matters relating to national safety and security is not in the general public interest. In these sense, the Right to Know has to be countered balance in just and reasonable constitutional norms. Information and communication are powerful tools and have a potential to shape and shake social and political development of the society. 'Men make their history but not as they please', said Kari Marx. It depends on the quality and quantity of information supplied to them. Accordingly, in this chapter an attempt has been made to examine the parameters of freedom of information and its pitfalls in constitutional dynamics.[1]

6.1 Significance of the Right to Information

Savoir est pouvoir (knowledge is power) is a French saying. Today information is power. Asato mam sat gamaya and tamaso mam jyotir gamaya, were not merely empty words of prayer but were demands for an open mind and open world. "I regard legislation on the right to information as vital weapon of the citizen against abuse of power", said V. R. Krishna Iyer, There is a wide information gap in our legal system in the matrix of various rights and freedoms enshrined in our Constitution. Article 19[2] confers upon every citizen a fundamental right called freedom of speech and expression. In order to meaningfully enjoy this freedom, a citizen must also have an ancillary right to secure all necessary information on matters

[1] Abhishek Shukla and Surendra Kumar Shukla, *Rule of Law and Right to Information*, Concept Publishing Company Pvt. Ltd., New Delhi, (2012) p. 174
[2] *Constitution of India*, part III, Article 19, Fundamental Rights

of public interests from public authorities.[1] Such a right is a sine qua non of an open, democratic, responsive and responsible polity. Such polity can throb and survive if its citizens are sufficiently informed and kept informed. The right to information will enable the citizens to criticize comments and approve policies and programmes of the rulers. Thus in the word of V. R. Krishna Iyer "Informational justice has constitutional basis." *Bhagwati J. in a S. P. Gupta v. Union of India*[2] described democracy as a continuous process of government, an attitude and habit of mind, in which people have to play important role only "if it is open government where there is full access to information in regard to the functioning of the government". There is hardly any need to emphasize the fact that secrecy in the working of the government would tend to promote and encourage oppression, corruption and abuse of authority. Public scrutiny and public exposure of governmental processes help achieve a clean and healthy government. Such a government has to justify its trusts of policies by giving facts for and against a selected course of action. The Court pronounced: "The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a)". In the eloquent word of Mathew J. *In State of Uttar Pradesh v. Raj Narain*[3]

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be few secrets. The people of this country have a right to know every public act, everything that is done in a public way, their public functionaries. They are entitled to know the particulars of every transaction in its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one varies, when secrecy is repercussion on public security. To cover with veil of secrecy the common routine business is not in the interest of the public.[4]

The very rationale of democratic government is that it is founded on the consent of governed. This consent of necessity has to be both free and informed; it has to be shaped by the widest possible dissemination of information from all quarters and sources. Informed citizens help informed and intelligent decision-making. At the same time open government does not mean that the whole government processes are to be carried out in the market place. The right to know has to be counterbalanced by the

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[1] M.P. Singh, *Constitution of India*, 10th edition, Eastern Book Company, Lucknow (2001)
[2] 1981 SCC 8
[3] (1975) 4 SCC 428: (1975) 3 SCR 333
[4] (1975) 4 SCC 428: (1975) 3 SCR 333

privacy of government decision-making. This right is meant to unfold the needless and excessive secrecy in decision-making processes. To focus public attention on the importance of this right in our democratic policy the public Relations society of Indian every year celebrates April 21 as a right to information day.[1]

6.2 Freedom of Information in National Laws

The right to information has been recognized in a various countries by either incorporating it in the constitituion itself or by enacting a separate legislation on the subject or by both. In some countries the right has been recognized by the activist judicial courts even in the absence of any specific text in the constitution or statutory recognisation of the right. It has been noted in the preceding chapter that Sweiden was the first country in the world which gave to its citizen's right to information way back in 1766 when her Parliament passed famous Freedom of the Press Act. It is interesting to note that this Act is today part of Sweidish Constitution[2].

The constitution of several other countries in Europe such as Polland[3], Bulgaria[4], Hungry[5], Lithuania[6], Estinia[7], Alvania[8], Belgium[9], Neitherland[10], Spain[11], Moldavia[12], Slovakia[13], Russsia[14] and Rumania[15] Incorporated Freedom of Information in their constitutions. Similarly several non-European countries also recognized right to information in their constitutions such as Nepal[16], Philippines[17], Malawi[18], Tanzania[19], Mozambique[20], Peru[21] and Argentina[22] etc.

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[1] (1975) 4 SCC 428: (1975) 3 SCR 333
[2] Chapter 2, Art 1, Para (1) of the Constitution which incorporated the Freedom of Information Law
[3] Article 61
[4] Article 41
[5] Article 61(1)
[6] Article 25(5)
[7] Article 44
[8] Article 23
[9] Article 32
[10] Article 110
[11] Article 105 b
[12] Article 24
[13] Article 26
[14] Article 24(2)
[15] Article 31
[16] Article 16
[17] Article III, Sec 7
[18] Article 37
[19] Article 18(2)
[20] Article 74
[21] Article 200(3)
[22] Article 43

Similarly most recently drafted constitution in Europe, Asia and Africa include a provision conferring right to information. Since these constitutions are drafted at a time when right to information is firmly recognized as as International human right, it is not surprising that these new constitutions give due importance to this vital right. The constitution which were drafted in the early second half of the tweinth century such as our Indian Constitution do not include a right to information in the text of their constitutions because at that point of time right to information was not given due importance in comparision to other civil and political rights which were considered more important in an era of colonialise.

Thus section 58 of 1997 Thai Constitution thus provides that a person shall have the right to get access to public information in possession of a state agency unless the disclosure of such information shall affect the security of the state, public safety or interest of other person which shall be protected by law.

Section 32 of 1996 Constitution of South Africa says that every one has the right to access any information held by the State. The constitution thus guarantees right to information not only to citizens but also to non-citizens as it uses the expression "everyone". The Constitution also imposes an obligation on the Government to pass a right to information law with in three years of coming into force of the constitution.[1]

Similarly Article 29 of the Ethiopian Constitution of 1995 says that everyone has freedom to seek, receive and impart information.[2]

In several countries where the constitutional text does not provide the right to information, it has been recognized by the superion courts such as Japan[3] where the apex court established in two high profile cases the principles of *shiru kenri* (the "right to know") is implicit in Article 21 which provides for freedom of speech and expression. In neighbouring South Korea, the right to information was similarly inferred[4]. Courts in India[5] and Srilanka[6] have also interpreted constitutional right of free speech in such a way as to include right to information.

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[1] Article 32(2) and Schedule 6, item no 23 of the Constitution
[2] Article 29 of Federal Democratic Republic of Ethiopia
[3] L. Repeta, Local Government disclosure system in Japan, (October, 1999), Paper No 16, National Bureau of Asian Research, p. 3
[4] Sung Nak-in, Korea Country Report (English Summary), presented at the Asian Conference on Civil Society & Access to Government Held Information, Tokyo, Japan, 13-14 April, 2001
[5] *S.P. Gupta v. Union of India & Others*, AIR 1982 SC 234
[6] *Fernando v. Sri Lanka Broadcasting Corporation & others*, AIR 1996, SC 16

Most of freedom of information laws was passed in last one decade or so. As noted in preceding pages, Sweden was the first country to pass a freedom of information law in 1766. Columbia also has a very long history of freedom of information law as its Code of Political & Municipal Organization, 1818 permitted individuals to request documents held by government institutions or agencies. United States enacted its Freedom of Information Act in 1966.[1] Then in the late 20th century, three Commonwealth countries took the lead, Canada,[2] Australia[3] and New Zealand[4] passed their freedom of information laws in one year i.e. 1982.

Several Asian countries have also passed freedom of information laws in the recent past. Hong Kong adopted a Code on Access to Information in 1995, South Korea enforced Disclosure of Information Act in 1998, Thailand's Official Information Act came into effect in 1997, Japan's Law Concerning Access to Information held by Administrative Organs came into effect in 2001 and India adopted a Freedom of Information Act, 2002 and Right to Information Act, 2005.

6.3 Access to Information: Provisions in Sweden's Constitution

Access to information legislation provides citizens with a statutory "right to know". In practice the specific provisions of the legislation will determine the extent to which citizens are able to obtain access to records of government activities. The intention is to provide access whenever disclosure is in the public interest, not for public officials to use the legislation as a secrecy law. Key points of freedom of Information laws are that they:

1. Provide access to records not just information;
2. Define exemptions;
3. Confer legal rights on citizens that can be enforced;
4. Seek to change the culture of secrecy within the civil service ; and(5)
5. Define rights of appeal.

FOI laws can, but do not have to, are applied retrospectively. Many countries have adopted anon-retrospective law, adopting a progressive "rolling back" approach.

[1] USC Title 5, Sec. 552
[2]Access to Information Act, 1982, Ch A-1
[3]Freedom of Information Act, 1982
[4]Official Information Act, 1982

This means that only records created after date the Act becomes effective fall under the jurisdiction of the Act. Others, such as, South Africa, have adopted fully retrospective Acts. Freedom of Information legislation not only establishes the citizen's legal right of access to information, it also confers on government the obligation to facilitate access.

The law should include provisions requiring agencies subject to the law to publish information relating to:

1. Their structure, functions and operations;
2. The classes of records held by the body;
3. Arrangement for access; and
4. The international procedures used by the agency in the conduct of its business.

Monitoring the extent of compliance with these requirements should be part of the remit of the Ombudsman. Governments should be required to actively inform citizens of the rights conferred on them by FOI and privacy legislation. This will demonstrate their real commitment to openness and increased accountability. The coverage of FOI legislation varies a great deal, and it needs to be determined by the structure of government in each country. In Ireland, as in some other countries, the Freedom of Information Act applies not only to the Executive but also to local government, companies that are more than 50 percent state-owned and even to the records of private companies that relate to government contracts (the last particularly useful for a civil society group keen to monitor a public procurement exercise). The rationale behind applying the provisions to astute-owned enterprise is that the public owns them and the "hybrid" nature of their functions as well as their roll in the community justify their inclusion in an FOI Act. Whatever the scope of FOI legislation, there will always be arguments against it and for exemptions from it. The most frequent argument against FOI legislation is one of cost and efficiency. Some claim that it diverts resources and staff away from programmers that could actually make an impact on public welfare. Yet, one must consider the cost of failing to provide such legislation, a cost, which includes a lack of accountability and transparency, and a fertile environment for corruption. Defense, national security, foreign relation, law enforcement and personal privacy and, to some extent, the

internal deliberative processes of a government agency may each have legitimate claims to protection or exemption from FOI legislation. The Swedish Secrecy Law, for example, has as many as 250 exemptions, some defined by their relation to protected interests and others by reference to categories of documents. Many exemptions contain time limitation on the life of exemption, which varies from as much 70 years to as little as two. Still other exemptions protect documents only until a particular event has occurred. The options are many and varied; butte issue appears to be one of the growing importances among civil societies around the world. It is also said that too much openness can impede free and frank exchanges of opinion between public officials and that officials cannot operate efficiently in a "goldfish bowl". This argument has some merit, but it must be weighed against the alternative: secrecy and a lack of accountability. Can anyone seriously argue that decision-making which is not accountable is better than decision making, which is subject to scrutiny?

Perhaps the best known (but by no means the only) example of FOI legislation is that of the United States, where it has been demonstrated repeatedly that reports, studies and other documents can be taken into the public domain by the press and by community groups, to the benefit of public knowledge and understanding. Equally remarkable as a demonstration of openness was the action of Ugandan government in November 1995, when it invited ten journalists to participate in (and report on) meeting of its anti-corruption stakeholders, including senior law enforcement officials. The meeting was held to review progress in implementing the country's national integrity action plan. The exchanges at the meeting were open and crisp, and the eventual reporting was considerable and highly favorable. Extraordinary, too, was decision by President Kappa of Tanzania to release the Warioba Commission Report to the press in 1996 before even his own cabinet had been able to see it- some of which were named in the report as being complicit in corrupt activities. President Mkapa's decision was the more remarkable as his country had, ever since independence in 1961, a culture of official secrecy and this was the first report of any significance to be shared with the public. The international reach of freedom of information laws, too, can be considerable. Information censored in the United Kingdom, on occasion, becomes available to British investigative journalists when the same material is held in the United States and has been made accessible to the public at large there by the more liberal FOI United States legislation. Increasingly,

investigative journalists are learning where to go to find the information that governments in their own countries deny them.[1]

Official Records: Request for Copies

Under Freedom of Information laws, citizens usually have the right to request copies of documents, not just the information contained within them. Mayfair laws provide that, where only a part of the information may be disclosed, agencies should provide copy of the document excluding the exempt information rather than refusing access. Fees may be charged for the provision of information but they should note prohibitive. Time limits for responding to requests and appeals should be set out in the FOI Act. These are legally binding. Failure to comply with these should constitute grounds for appeal to the Act's external monitors, as would the imposition of unreasonable charges.

Appeals against Refusals

The right of appeal against adverse decisions is one of the most important provisions of a Freedom of Information Act. It protects against undue secrecy by providing a mechanism for the independent review of decisions to deny people access to the information they need. Without this safeguard, the effectiveness of any FOI is minimized. Instances which should not constitute valid reasons for withholding information include that it release:

1. Would be inconvenient to the Minister (or the department).
2. Might show the department in a bad light.
3. Might embarrass the Minister politically.
4. Is no business of the requester; or that it.
5. Might be misunderstood by the requester, or by the media (in which case the wisest course may be to provide an explanation or material that will set the information in its proper context).

Where access to records is denied, the agency concerned should be required by law to notify the requester of the reasons for the refusal, citing the particular

[1] Raj Kumar Pruthi, *Manual of Right to Information Act,* Pentagon Press, New Delhi, (2006) pp. 42-45

exemption that covers the records requested. Sanctions for non-compliance should be provided for in the legislation provides for a two-stage appeal:

1. Firstly there is an administrative appeal to the agency concerned. Citizens can lodge an appeal requiring the agency to conduct an internal review of the decision. This appeal should be heard at a more senior level than the original decision-maker. If the denial of access is upheld it is important that citizens then have recourse to an independent arbitrator.
2. The second stage of the appeal process under most existing FOI Acts is to an index –pendent Ombudsman or Information Commissioner.
3. Alternatively the second appeal stage could be for judicial review, as is the case in the US. In some countries the Ombudsman could also take the complaint to the courts.[1]

6.4 Cautious Approach in England

English law seems to have adopted quite approach in this regard. Professor Campbell explained the position in England in these words: "Governmental reluctance to disclose documents is a legacy from the time public administration was simply an extension of the Crown's administration of its properties, when the distinction between private and public administrations was by no means clear cut." Yet we find a small and limited area of this right in the Crown Proceeding Act 1974 under which legal action against the Crown and Government departments can be initiated. Section 28(1) (i) of this Act provides that "in any civil proceedings….to which Crown is a party, the Crown may be required by the court to make discovery of documents and produced those documents for inspection". It is also provided that "the Crown may be required by the court to answer interrogatories…". However, the common law did not favour this right of disclosure. *Smith v. East India Co.*[2] and *Beatson v. Skene*[3] are noteworthy illustration of early setbacks. In the former the court disallowed the request of disclosure of certain documents in court as it amounted to restrain the freedom of communication between the East India Company and its Board of Control. In the other case the court refused the compulsion of production of certain documents regarding a court of inquiry conducted by the secretary of state.

[1] Raj Kumar Pruthi, Manual of Right to Information Act, Pentagon Press, New Delhi (2006) pp.45-46
[2] 1845, Ph. 50
[3] 1860, SH & M 338

Lord Chancellor Kilmuier in a later case[1] stated two grounds when such a crown privilege for documents can be claimed: (a) the disclosure of the contents of the particular documents would injure the public interest, e.g., by endangering public security, or prejudicing diplomatic relations; and (b) the document is of such a class which the public interest requires to be withheld from production. This rigid position, however, was a little liberalized in a later case[2] in which it was held that inspection by the court of documents could not cause harm. The only requirement, in the words of Lord Wilberforce, was that "there must be likelihood that the documents would support the case or the party seeking discovery".[3]

6.5 Prompt and Cheap Disclosure Approach in Australia

In Australia before the enactment of Freedom of Information Act, 1982 the courts did not favour production of documents possessed by state authorities. It was held that "counsels of the Crown are secret and an inquiry into the grounds upon which the advice was tendered" was not allowed[4], however, later on courts refused to accept the conclusiveness of the executive certificate of privilege. Thereafter the aforesaid Act was made. Its salient features were: (i) the general right to access for the public to official documents in the possession of ministers and agencies except the one that were specifically exempted; (ii) the right to correct inaccuracies; (iii) the internal law of the Commonwealth agencies to be published every year; and (iv) a proper procedure for the disposal of requests for access to documents. Thus this Act enabled prompt and cheap disclosure of information.[5]

6.6 Transparent and Crucial approach in U.S.A.

The founders of the American democracy did recognize fully of crucial importance of information.[6] Perhaps the strongest statement in support of access to information was made by James Madison: "Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information

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[1] 1942, AC 624
[2] 1968, AC 910
[3] Abhishek Shukla & Surinder Kumar Shukla, *Rule of Law and Right to Information,* Concept Publishing Company Pvt. Ltd., New Delhi (2012), pp. 176-177
[4] 1951 (83), CCR
[5] Abhishek Shukla & Surinder Kumar Shukla, *Rule of Law and Right to Information,* Concept Publishing Company Pvt. Ltd., New Delhi (2012), pp. 177-178
[6] John, Agresto, The Supreme Court and Constitutional Democracy (1986), p. 112

of the means of acquiring it is but a prologue to a farce, or a tragedy, or perhaps both." Thomas Jefferson was emphatic to give the people "full information of their affairs through the channels of the public papers, and to contrive that these papers penetrate the whole mass of the people. The basis of our government being the opinion of the people the very first object should be to keep that right; and where it left to me decide whether we should have a government without newspaper or newspapers without government, I should not hesitate a moment to prefer the latter". "Patrick Henry, who was often in disagreement with other leaders on other matters, shared their views on the necessity for an informed public opinion; said:

The liberties of the people never were, or never will be, secure, when the transaction of their rulers may be concealed from them……I am not a advocate for divulging indiscriminately all the operations of government, through the practices of our ancestors, in some degree justify it. Such transactions as relate to military operations of affairs of great consequence, the immediate promulgation of which might defeat the interest of the community, I would not wish to be published, till the end which required their secrecy should have been affected. But to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man.[1]

In the United States of America, the Original Freedom of Information Act (FOIA) was enacted in 1966 as an amendment to the Administrative Procedures Act. Its purpose was: "To establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." The Act exempted classified material, business proprietary material, information whose release would invade personal privacy and other material whose disclosure would compromise the public interest. This Act had little effect even after several years or its enactment. So in 1974, the Act was amended and time limits were provided to respond to requests. Internal appellate machinery was provided. It also empowered courts to intervene to enforce deadlines and review agency decisions. Arbitrary and capricious withholding of information by officials was made punishable. Only information relating to foreign policy, defense, national security, and trade secrets, personal and medical files are not allowed under Act.

[1] Alexander, M. Bickel, The Supreme court and the Idea of Progress (1970), p. 191

Sometimes a "segregability review" of hundreds of documents had to be undertaken to determine what material should be released and what not. This sometimes required the services of highly qualified technical and security experts. It must, however, be highlighted that if there were uses of FOIA there were its abuses too to render it "much a burden as a benefit". The New York Bar association in 1979 warned that it was not Congres's intent that the FOIA be used as a carte blanche for unrestricted access to otherwise non-public information submitted by private citizens and businesses. And yet businessman sought information on their competitors. In such mistaken disclosure case a corporation lost its domination of a $450 million per year market. Besides businessmen this law has been widely exploited by lawyers for clients who used government data to fight federal investigations, spying on the competitors and discovering how strictly regulations were really enforced.[1]

All these led to its further amendment in 1986. The criminals also have not lagged behind in abusing FOIA. Prisoners used it to know who incriminated them. Others used it to avoid prosecution. The organized criminals in Detroit had been instructed to submit FOIA requests to identify FBI sources. They were supplied over 12,000 pages of FBI documents. From 1975 to 1981, FBI was forced to release 60,000 pages of documents concerning an underground crime gang. Powerful persons have sought information about investigation of allegations of political corruption against them and have thereafter subtly changed their mode of operation.

The law has been used to get technical information about intelligence. The CIA was approached for information about its agents and informants. Ultimately, the Congress made "Operational files" of the CIA automatically inaccessible to FOIA requests. Also technical data having space or military application" were protected.

The use of FOIA by news media and public interest groups has been uneven and scattered. Some have used it extensively used by litigants against federal government. It is used to supplement the legal discovery process. It has rigid time frames enforceable by law, and makes available that material which is otherwise not available.[2]

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[1]Wattern berns, Taking the Constitution Seriously (1987), p. 19, 144
[2] Karl Barth, Current Legal Problems, (1988)

Another adverse effect of the FOIA must not be lost sight of government officials have now started to avoid to fully document the process by which they arrived at a given policy decision. Though "pre-decisional" material is exempted from the FOIA the factual information leading to a decision has to be released. Consequently, senior executives have avoided memorializing useful background information. Officials are warned to be cautious about what they write. They are ordered to destroy all draft copies after the final document is issued[1].

But in spite of its above pitfalls the FOIA has to stay. It provides a useful window to peep into otherwise dark governmental processes. Richard A. Guida has suggested the following amendments to the FOIA to build that window better. He warned that unless these reforms were enacted the costs of free information will counterbalance its benefits.

1. Requests for information should be limited to U.S. citizens, and to those who are not in prison or acting on behalf of prisoners.
2. All material from criminal investigations should be exempted FOIA requests.
3. The FOIA should be changed to prohibit its use in the legal discovery process.
4. Time limits for responding to requests, particularly those seeking many documents or old material, should be substantially increased. The responding agency should be able to establish a schedule for responses which takes into account volume, age, complexity of material, necessary review time, and so on. A request for fifty documents comprising three thousand pages of classified material might face a standard response time of several months, while the current two-week deadline could continue to apply to simple requests.
5. The full cost of administering the FOIA should be borne by the users. Though the news media are now specifically exempted from FOIA fees, this exemption should be abolished. The fees should cover search time, segregability review time, the effort required to decide whether to release material, and the cost of copying documents and mailing them to the requester.
6. The FOIA should be extended to cover congressional committees and agencies.

[1] L. Morrit, Making of document (1999), pp. 133, 144, 168

Parallel to the Freedom of Information Act at the federal level there is a more recent "open meetings" statute, called the Government in Sunshine Act 1976. There has been relatively little litigation under this statute. In general, the Act requires about fifty federal agencies, including major regulatory such as the Federal Communications Commission, the National Labour Relations Board, and the Securities and Exchange Commission, to hold their meetings in public. However, the Act allows closed sessions if the subject matter falls within FOIA, though there are some important differences. The Act also prescribes in detail the procedures that must fallow to hold a closed meeting. In addition to this federal Act, all fifty states and the District of Columbia have also enacted open meetings statutes. Though these statutes very tremendously in scope, they have much in common with each other and the federal Sunshine Act.[1]

6.7 Freedom of Information Law in New Zealand

New Zealand passed the Official Information Act in 1982. The Act starts with the basic principle that all official information should be available to the people.[2] The Act gives right a to any resident or citizen or company in New Zealand to demand official information held by public bodies, State owned enterprises such as Air New Zealand, the Post Office and bodies which carry out public functions. The bank of New Zealand is the only notable exception. One of the purposes of the Act is to increase progressively the availability of official information. The Ombudsman has used this provision to interpret the exceptions more narrowly. All requests have to be responded with in two days. The Act gives very wide rights of access to official information including access to documents and to undisclosed information.

The Official Information Act also contains a long list of exceptions where disclosure of information will not be allowed. These exception deal with releasing of information which would harm national security and international relations; information provided in confidence by other governments or international organizations; information that is needed for the maintenance of the law and the protection of any person; information that would harm the economy of New zealand and the information about trade agreements etc. In a second set of exception,

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[1] Abhishek Shukla & Surinder Kumar Shukla, *Rule of Law and Right to Information,* Concept Publishing Company Pvt. Ltd., New Delhi (2012), pp. 178-182

[2] The Official Information Act, 1982,< htpp://www.ombudsman-govet.nz/official.html>

information can be withheld for good results unless there is an "overriding public interest." These exceptions include information that could intrude into personal privacy, commercial secrets, privielaged, communications and confidences; information that if disclose could damage public safety and health and economic interests, constitutional convention and the effective conduct of public affairs, including, "the free and frank expression of opinions" by officials and employees.[1]

It is satisfying to note that decisions of the Ombudsman have limited many of these categories, requiring agencies to justify their decisions in terms of the possible consiquences of the disclosure. Lately, the focus has shifted from withholding information to setting how and when information, especially politically sensitive information should be released.[2] An Information Authority was also created under the Act, but the law had put a fixed term of five years on its existence. The Body was thus allowed to be dissolved in 1988 as Parliament failed to amend the Act with in the given time frame. The Information Authority had the responsibility of conducting audits, reviewing legislation and proposing amendments. Some of its functions are transferred to Advisory Committee and the Ombudsman.

The office of Ombudsman reviews denials of access in New Zealand. It has repeatidly commented on its lack of resources. It has recently concluded that delays in access to information or becoming too common. If the Ombudsman forms an opinion that the request for information should not have been refused, or that the decision complained of in respect of the request was, for example, unreasonable or wrong, then he makes report to the appropriate department or minister or organization. He has authority to make such recommendations as he thinks fit. The comlaint is also entitled to a copy of the Ombudsman's recommendation. Ministers collectively have the right veto recommandations of the Ombudsman to disclose information. The courts too have a role to play. The courts can review:

(a) the initial unfavourable decision by a department, minister, or a organization,
(b) Ombudsman's unfavourable determination on atleast two grounds i.e. lack of juridiscation and error on the face of record and
(c) A ministers's veto on the ground that it contains material errors of law.

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[1] Privacy International, supra note 67, at p. 28
[2] Alastair Morrison, "The Games People Play: Journalism & Official Information Act" Papers presented at a seminar held by the Legal Research Foundation, 1997

The Act also provides for the preparation of the directory of Official Information bout the structure and functions of departments, list of manuals, policies, rules etc.

6.8 Freedom of Information law in Canada

Canada's Access to Information Act establishes a qualified right to government information for all Canadians. Most Canadian governments are now subject to laws that establish a citizen's right to documents held with in ministries or agencies. The federal statute, the Acess to Information Act was adopted in 1982.[1] The Act provides Candian citizens, other individuals and Corporations in Canda have a right to apply for and obtain copies of records held by government institutions. "Records" include letters, memos, reports, photographs, films, microfilms, plans, drawings, diagrams, sound and video recordings, and machine readable or computer files. The requests for access have to be responded with in 15 days. The Access to Information Act says that the Act applies to records "under the control of" any government institution listed in the schedule of the Act. Courts have interpreted the phrase "under the control" very broadly. Thus, any record in physical possession of a government institution, no matter how that record was obtained, no matter how that record was obtained, no matter what promise of confidentiality was made to obtain the record, is subject to the Act.[2] The Act covers all government departments and most agencies including Police and Security Intelligence Services. Commercial Crown Corporations, institutions of Parliament and the Courts are not within its scope.

The Act establishes the limits to right to information by permitting institutions to withhold information. There are two categories: mandatory, allowing the government no option but to deny access- these include exceptions for information obtained in confidence from foreign governments, trade secrets etc. and discretionary. The discretionary exceptions incorporate the "harm-tests". Information in records can be withheld for number of reasons such as that they were obtained in confidence from a foreign government, international organizations probential or regional governments,

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[1] R.S.C. 1985, C, A-1

[2] Tom MCMohan, Access To Government Information-A New Instrument For Public Accountability, Government Information in Canada, Vol. 3, No. 1 (Summer 1996), at p. 4

would injure international affairs or national defense, relate to legal investigations, trade secrets, commercial or scientific or technical information belonging to government or materially injurious to the financial interest of Canada, personal information or relate to operation of the government that are less than twenty years old. Documents designated as Cabinet confidences are excluded from the Act and are presumed secret for twenty years.[1] Many of these exceptions can be claimed only if there is a reasonable expectation that disclosure would cause harm. The Office of the Information Commission of Canada oversees the implementation of the Act.

The Commission can investigate an issue recommendations does not have the power to issue binding orders. The federal court has however held that government has an obligation to answer all access requests regardless of perceived motives of those making the request. The office of Information Commission handled 1680 complaints in 2000-2001. The Commission has become increasingly critical of the government's efforts to restrict access. In 2000, Federal Information Commissioner John Reid alleged that recurring delays in responding to media requests to the Department of National Defense had been caused by the attempt to manage "political considerations including the communication needs of the minister". Reid also criticized Human Resource Development Canada for delays in processing requests relating to grants and contributions of Canada, which Reid said were driven by government's "reflexive need to control the story".[2]

The Act imposes a duty on the government to publish details about the organization and responsibilities of each government institution, a description of all manuals used by employees of government institutions.

The government of Canada established an Access to Information Review Task Force in Auguat 2000.[3] It released its final report in June 2002, stating that the structure of the Aceess to Information Act is sufficient but recommended or 100 changes.

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[1] Privacy International, supra note 67 at p. 9
[2] <htpp://www.atirtf-greai.gc.ca/home-e.html>
[3] Alasdair Roberts, The Right to Know—In a Timely Fashion,7th may, 2002, Maxwell Campbell Public Affairs Institute, Ottawa Citizen

The Access to Information Act was however amended as part of the Anti-Terrorist Act in November 2001. The Anti-Terrorist Act gave government a new power to override the Acees to Information Act in the name of national security.

Justice Minister Anne Mc Lellan said that the power was needed to protect confidential information provided by other governments. But then we had noted in the precedin paragraphs that the Access Act already provided a blanket protection for confidential information from other governments. The amendment thus allows the Attorney General to bar the release of information previously ordered disclosed by the Information Commission. Limited Judicial review, however, is provided for. But the Information Commission criticized this review as "so limited as to be fruitless for any objects and demaining to the reviewing judge".[1]

6.9 Right to Information Law in Bangladesh

On October 21, 2008, the caretaker government of Bangladesh issued in the Bangladesh gazette the Right to Information Ordinance (no. 50 of 2008), based loosely on the Indian Right to Information Act 2005.[2]

6.10 Freedom of Information Law in Germany

In Germany, the federal government passed a freedom of information law on September 5, 2005. The law grants each person an unconditional right to access official federal information. No legal, commercial, or any other kind of justification is necessary.[3]

6.11 Freedom of Information Act in Ireland

In Ireland the Freedom of Information Act 1997 came into effect in April, 1998. The 1997 Act was subsequently amendment by the Freedom of Information (Amendment) Act 2003. The Act has led to a sea-change in the relationship between the citizen, journalists, government departments and public bodies. There are very few restrictions on the information that can be made public. A notable feature is the presumption that anything not restricted by the Act is accessible. In this regard it is a

[1] <htpp:// infocom.gc.ca/ speeches/ speechesview-e.asp. intspeech. Id. At p. 5>
[2] <htpp://www.atirtf-greai.gc.ca/home-e.html>
[3] <htpp://www.atirtf-greai.gc.ca/home-e.html>

much more liberal Act than the U K Act. Decisions of public bodies in relation to request for information may be reviewed by the Information Commissioner.[1]

6.12 Freedom of Information Law in Israel

In Israel, the Freedom of Information Law, 1998, supported by the Freedom of Information Regulations, 1999, controls freedom of information. It defines the bodies subject to the legislation by a set of listed categories- essiantially, most public bodies- and provides for the government to publish a list of all affected bodies. However, this list does not seem to have been made publicly available, if indeed it was ever compiled. Many public bodies are not obliged to follow the law, which limits the potential for use by the public.

The Israeli Freedom of Information Law has actually achieved the opposite intended result. Government agencies now take the position that a citizen may only request information via FOIL, i.e. an official letter designated as such and including the (approx) $22 fee. Thus an Israeli citizen in many cases cannot simply write a letter asking a question, and can be asked to file a FOIL application with a fee and wait the minimum statutory 30 days for a reply, which the agency can easily extend to 60 days in many cases FOIL letters are simply ignored, or some laconic respone is send stating the request is either unclear, unspecific, too vague or some other legalese, anything in order to keep the information away from the public. When the 60 days are up, the anticipated result usually yield nothing significant, and the applicant must petition the District Court to compel disclosure, a procedure that requires attorneys to draft pleadings and a payment a (approx) $420 court fee. A judgement in such FOIL appeals in Israel can take years, and again the agency can easily avoid disclosure by simply not complying. There are no real sanctions for non-compliance. While there are rare successes in Courts compelling Israeli government agencies to disclose information, they are usually in non-controversial areas such as harmless civil matters. The law provides for the expected “security” execption and an applicant applying for such information can expect not to benefit from FOIL.[2]

[1] <htpp://www.atirtf-greai.gc.ca/home-e.html>
[2] <htpp://www.atirtf-greai.gc.ca/home-e.html>

6.13 Freedom of Information Law in Pakistan

President Pervez Musharraf promulgated the Freedom of Information Ordinance, 2002 in October, 2002. The law allows any citizen access to public 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 provincial governments. The bodies must respond within 21 days.[1]

6.14 Right to Information Law in India

The Indian Right to Information Act was passed by the Indian Parliament on 15th June, 2005. It came into effect on 12th October, 2005. Supreme Court of India had, in several judgements prior to enactment of the RTI Act, interpreted Indian Constitution to read Right to Information as the Fundamental Right as embodied in Right to Freedom of Speech and Expression and also in Right to Life. RTI Act laid down a procedure to guarantee this right. Under this law all Government Bodies or Government funded agencies have to designate a Public Information Officer (PIO). The PIO's responsibility is to ensure that information requested is disclosed to the petitioner within 30 days or within 48 hours in case of information concerning the life or liberty of a person. The law was inspired by previous legislation from selected states among them Maharashtra, Goa, Karnataka, Delhi etc. that allowed the right to information to different degrees to citizens about activities of any State Government body.

A number of high profile disclosures revealed corruptions in various government schemes such scams in Public Distribution Systems (ration stores), disaster relief, construction of highway etc. The law itself has been hailed as a landmark in India's drive towards more openness and accountability.

However the RTI India has certain weeknesses that hamper implementation. There have been questions on the lack of speedy appeal to non-copmliance to requests. The lack of central PIO makes it difficult to pin-point the correct PIO to approach for requests. There is also a criticism of the manner in which the Information Commissioners are appointed to head the Information Commission. It is

[1] <htpp://www.atirtf-greai.gc.ca/home-e.html>

alleged by RTI Activists that bureaucrats working in close proximity with the government are appointed in the RTI Commissions in a non-transparent manner. The PIO, being an officer of the relevant Government institution, may have a vested interst in not disclosing damaging information on activities of his/her institution this therefore creates a conflict of interest.

6.15 Parameters of Freedom of Information in India

The need for giving a statutory shape to a judicially recognized and pronounced right to know needs not to be justified. The central Government has acknowledged that, "free flow of information is a prerequisite for democracy" and assured the electorate that "the right to information will be enshrined in our Constitution"[1]. But one need, not wait for a constitutional amendment, which would require suitable political balancing to ensure adequate support in the Parliament for its passage. Even if such an amendment is contemplated it can be safely passed, it is submitted that it is not necessary. After all its incorporation in the Part III of the Constitution will be in general, broad and wide terms with attendant reasonable restrictions. Instead, it is submitted that an appropriate statute, say, Freedom of Information, may be enacted which could be passed with simple majority, unlike a constitutional amendment requiring special majority. Such a statute must provide the parameters of this freedom and make adequate provisions to avoid the pitfalls of the U.S. FOIA.

The policy underlying the U.S.FOIA, has been articulated as: (i) disclosure to be the general rule, and not the exception;(ii) all individuals have equal rights of access; (iii) the burden is on the government to justify the withholding of a document and not on the person who requests it; (iv) individuals improperly denied access to documents have a right to seek injective relief in the courts; and (v) there should be change in government policy and attitude.

Soli Sorabjee articulated the objectives of any legislation giving statutory shape to freedom of information as follows: (i) protection of the rights or individuals by giving citizens right to access to information about themselves held in government or other official files; (ii) the right to correct that information if it is misleading or

[1] Ashish Mullick, Cross Media Curbs—Unrealistic Against Public Sentiment (1997)

untrue; (iii) it should ensure wider dissemination of information gathered at the public expenses on topics such as product safety, land records, health and environmental hazards, ecological data, etc., and (iv) it should throw the spot light of public scrutiny on policy formulation and administration and thereby improves the quality of decision making; (v) access to information should be within easy reach and at affordable costs.[1]

Within the above objectives frame work a comprehensive statute delineating the parameters and defining the various components of the freedom of information should be enacted. At the same time such a contemplated statute must have adequate provisions to avoid the pitfalls and drawbacks experienced in the working of the U.S. FOIA. This will necessitate conceptual clarity on the part of law makers. In addition to these there are complex issues of social engineering in regard to balancing and counterbalancing freedom of information vis-à-vis various interests, concepts and issues.[2] Such as freedom of speech and expression of mass media and individual's defamation, contempt of courts, privacy, human rights, copy right, patients/trade marks, news gathering and confidentiality of source of news, national security, public law and order, internal secrecy rules of autonomous institutions corporations, protection against catch all provision, trade secrets, official secrets, law enforcement, coverage of court proceedings, social interest litigation, activists movements, morality and public safety, communal, election, religious and violent crime and correctional matters advertising commissions of inquiry, atomic and nuclear energy defence industry and strategies, etc. Each of these areas will need re-examination and re-evaluation in the context of freedom of information.[3]

In addition to these some very important issues will need policy decisions. For example, who should have and not have this freedom; when to have it and when not; against whom and under what circumstances; and to what extent at what costs and within how much time, machinery regarding appeals and other relief; whether we should have our own version of "Sunshine Act" what could be these reasonable restriction and exemptions of this freedom, and so on. Soli Soberjee suggested

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[1] Soli J Sorabjee,'Information Bill in Winter Session', The Telegraph, October 13, 1997.
[2] Jasjit Singh, National Security-International and External
[3] Challenges, The Times of India, 12 August, 1998

exemption permitting government to withhold access to information in respect of the following matters:

(i) International relations and national security;
(ii) Law enforcement and prevention of crime;
(iii) Information deliberations of the government;
(iv) Information obtained in confidence from some source outside the government;
(v) Information, which, if disclosed, would violate privacy of an individual;
(vi) Information, particularly of an economic nature, which if disclosed, would confer an unfair advantage on some person or subject some person or government to an unfair disadvantage; and
(vii) Information about scientific discoveries and inventions and improvements, essentially in the field of weaponry.[1]

[1] Abhishek Shukla & Surinder Kumar Shukla, *Rule of Law and Right to Information*, Concept Publishing Company Pvt. Ltd., New Delhi, (2012), pp. 182-184