



FREEDOM OF INFORMATION: COMPARATIVE ANALYSIS AMONG SAARCH NATIONS AND ROAD AHEAD

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Abstract: *In today's global world it is important for governments to be transparent than to be secretive. Hence Right to information is a panacea to corruption and mismanagement and an important guard against abuse, mismanagement and corruption. A new era of government transparency has arrived thanks to technological advances and more aware and vigilant masses. There are various international factors which have contributed to the spread of transparency laws in SAARC nations and around the world, which will be detailed in this research paper.*

The basic function of freedom of information laws is to allow common citizen to get access to the information held by government bodies and public authorities, which is relevant for them for exploiting their rights in more effective manner. From 2002 to 2009 governments in Bangladesh, India, Nepal and Pakistan etc. implemented these laws. This research paper will critically examine the Freedom of Information legislations in the SAARC nations. The purpose of the paper is to highlight the positives and negatives of the legislations and give a comparative analysis of the same. In many SAARC nations freedom of information laws are no more than a dormant law hence this paper will throw light on how these laws can be strengthened by active participation of civil societies and media. The right to information has also been used less dramatically, but no less importantly, to ensure an efficient flow of information between government and populaces. A comparative analysis of functioning of Freedom of information system in SAARC nations will also detail; the lacunas at implementation level and possible changes with suggestions for improvement.

Keywords: *SAARC, legislation, corruption, exceptions, transparency, governance, implementation*

In today's era of government transparency freedom of information is the new torch bearer to guarantee citizens right to have access to government records. "The free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to effective respect for human rights...Central to the guarantee in practice



of a free flow of information and ideas is the principle that public bodies hold information not for themselves but on behalf of the public.”

Assistant Director-General
For Communication and Information
UNESCO

In today's global world it is important for governments to be transparent than to be secretive. Hence Right to information is a panacea to corruption and mismanagement. It is an important guard against abuse, mismanagement and corruption. Almost all government bodies are covered by transparency law. There are various international factors which have contributed to the spread of transparency laws in SAARC nations and around the world. International organizations and treaties dealing with reduction of corruption and bodies like International Monetary Fund and World Bank emphasizing on the implementation of information systems to make financial systems more responsive and effective, contributed to spread of freedom of information.

The reasons for implementing freedom of information laws are varied for example some see it as a fundamental tool for democracy, for some its important tool to tackle corruption. Others may consider it as tool for all inclusive development. It is important to understand that legislation is not sufficient there is need for active participation by citizenry and civil society engagement. If we take example of India who is appreciated worldwide for its successful implementation of right to information due to active participation by social sector as legislation only could not have brought the results it has shown.

A number of international and human rights charters, including Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights also recognize the importance of the right to information. The international recognition of the right to information has been widely attributed to the effects of globalization and democratization.

FREEDOM OF INFORMATION: AN INTERNATIONALLY PROTECTED HUMAN RIGHT

Freedom of information has been recognized not only as a fundamental human right but also vital for participatory democracy, accountability and good governance. It finds traces under international and constitutional law. Freedom of information as constitutional as well as human right includes fundamental right to freedom of expression, which includes the right to seek, receive and impart information and ideas. Every democracy requires an



informed citizenry and transparency of information which are vital for its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed¹.

Right to Information – a fundamental human right allowing access to public information. It has been swiftly gaining popularity in many parts of the world as an effective tool to strengthen participatory democracy, promote good governance, check corruption and help ensure other rights thereby building an open and accountable society. Internationally, the right to information has been recognized as a fundamental human right and a touchstone for all other freedoms.

A number of international bodies with responsibility for promoting and protecting human rights have authoritatively recognized the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These bodies include the United Nations, the Organization of American states, the Council of Europe and the Commonwealth. Collectively, this amounts to clear international recognition of freedom of information as a human right.

VARIOUS INTERNATIONAL INSTRUMENTS STRENGTHENING FREEDOM OF INFORMATION

To begin with United Nations (UN) the international body in 1946, during its first session of General Assembly adopted Resolution 59(1), which stated: "Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the UN is consecrated"². Thereafter in 1948 within short span of 2 years it adopted "the Universal Declaration of Human Rights (UDHR)". Article 19 of UDHR is binding on all States as a matter of customary international law, guarantees the right to freedom of expression and information in the following terms: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"³.

¹ Rajiv Kumar Singh, Right to Information: Need of Democracy, 1 Journal of Education and Social policy 96, 86-96(2014)

²The Universal Declaration of Human Rights ,The Guarantee of Freedom of Expression, International Standards (February, 10, 2016, 6.40) available at http://www.unesco.org/webworld/publications/mendel/inter_standards.html

³ Resolution 217 A (III), 10 December 1948 (Feb 1, 2016,8.30 am) available at <http://www.un-documents.net/a3r217a.htm>, (last visited march 10, 2016)



Another important milestone in this area is International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, which was adopted by the UN General Assembly in 1966⁴. Thereafter in 1993, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of Opinion and Expression. In its 1998 Annual Report, it was clearly stated that freedom of information includes the right to access information held by the State: "The right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems..."⁵.

In another effort of UN in 1997, the United Nations Development Programme (UNDP) adopted a Public Information Disclosure Policy, on the basis that information is key to sustainable human development and also to UNDP accountability. In his 1998 Annual Report, the Special Rapporteur stated clearly that the right to freedom of expression includes the right to access information held by the State...⁶"

In November 1999, under the auspices of Article 19 UNDHR, the three special mandates on freedom of expression were adopted by UN general Assembly i.e. the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for security and cooperation in Europe (OSCE)Representative on Freedom of the Media and the Organization of American States, (OAS) Special Rapporteur on Freedom of Expression. They adopted a Joint Declaration which included the following statement:

"Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented⁷"

The UN Special Rapporteur significantly expanded his commentary on the right to information in his 2000 Annual Report to the Commission, noting its fundamental

⁴ Resolution 2200 A (XXI), 16 December 1966, entered into force 23 March 1976.(February 2, 2016, 10.00 AM) available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, (last visited march 10, 2016)

⁵Resolution 1998/42, 17 April 1998, para. 2 (February 5, 2016, 10.15 AM) available at <https://www1.umn.edu/humanrts/UN/1998/Res042.html>, (last visited march 10, 2016)

⁶ Toby Mendel, *Freedom of Information : A comparative legal Survey* 17(Second Edition Revised and Updated UNESCO: Paris, 2008)

⁷International mechanisms for promoting freedom of expression Joint declaration 26 November 1999 (February 16, 2016, 12.30 PM) available at <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=141&IID=1>, (last visited march 10, 2016)



importance not only to democracy and freedom, but also to the right to participate and to realization of the right to development⁸. Rapporteur further noted that Governments must either review existing legislation or adopt new legislation on access to information and ensure its conformity with these general principles.

Article 13 of the American Convention on Human Rights (ACHR), a legally binding treaty, guarantees freedom of expression in terms similar to, and even stronger than, the UN instruments.

In May 2001, the European Parliament and the Council of the European Union adopted a regulation on access to European Parliament, Council and Commission documents⁹. Article 2(1) states: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation."

Now Asian part of world which is the topic for the Paper, the Commonwealth, and a voluntary association of 54 countries based on historical links, common institutional and legislative frameworks and shared values, has taken concrete steps during the last decade to recognize human rights and democracy as a fundamental component of its value system. In March 1999, a Commonwealth Expert Group adopted a document setting out a number of principles and guidelines on the right to know and freedom of information as a human right, including the following:

Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions¹⁰.

IMPORTANCE OF FREEDOM OF INFORMATION IN ENVIRONMENT RELATED ISSUES

In the present scenario of climate change freedom of information becomes all the more important, from the point of view of citizens, specifically in the area of Environment

⁸ *ibid*

⁹ Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

¹⁰ 1999 meeting of Commonwealth Law Ministers and Senior Officials, Memoranda Volume 1, Commonwealth Secretariat, Marlborough house, London September 2001



governance. Hence the issue was first substantively addressed in the 1992 Rio Declaration on Environment and Development, under Principle 10:

“..Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes...¹¹”

In 1998, as a follow-up to the Rio Declaration, Member States of the United Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)¹².

The Convention recognizes access to information as part of the right to live in a healthy environment¹³ rather than as a free-standing right. However, it is the first legally binding international instrument which sets out clear standards on the right to freedom of information.¹⁴ It represents a very positive development in terms of establishing the right to information¹⁵.

REGIONAL COOPERATION AND GROWTH OF FREEDOM OF INFORMATION IN SAARC NATIONS

“The 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

Here Mahatma Gandhi was intending to highlight the importance of self-awareness as strength to check wrong doings of authorities a true process of deepening of participatory democracy. Hence it may be put as that the essence and emergence of the right to

¹¹ Report of the United Nations Conference on Environment and Development , A/CONF.151/26 (Vol. I) (Rio de Janeiro, 3-14 June 1992), (Feb 8 , 2016) available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>(last visited march 10, 2016)

¹² 43 UN Doc. ECE/CEP/43, adopted at the Fourth Ministerial Conference in the "Environment for Europe" process, 25 June 1998, entered into force 30 October 2001.

¹³ Ibid

¹⁴ Article 19 ,The Public's right to know : Principles on freedom of information legislation, Available at <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf>, (last visited march 10, 2016)

¹⁵ Supra 8



information lies in empowering individuals to hold public authorities to account and get engaged in exercising own fundamental rights as sovereign citizens¹⁶.

The 'Swaraj' prescription by non-violence apostle Gandhi has been substantiated with increasing level of access to information in the South Asian region – characterized by high levels of poverty and population density as well as strong recent economic growth and a mixture of more or less Democratic States¹⁷. It is presumed that an informed citizenry possesses the capacity to ask question to authorities when abused and creates opportunity to participate in decision-making process.

IMPLEMENTATION OF FREEDOM OF INFORMATION AND COOPERATION ISSUES

In South Asia, the enactment of Right to Information legislation has followed closely in the wake of political reform and deepening democracy. Against a background of political change and transformation, six South Asian countries to date — Bangladesh, Bhutan, India, Nepal, the Maldives and Pakistan — have enacted Right to Information laws.

India is widely regarded as a leader on Right to Information in the region. The country's Right to Information Act 2005 was passed following a decade-long grassroots and civil society campaign. India's Supreme Court concluded in *S.P. Gupta v. Union of India* that the right to know arises not only from the right to freedom of expression but also, importantly, from the right to life¹⁸. India's Right to Information Act is widely recognized as a strong law that has been extensively used by citizens to access entitlements, redress grievances, and expose corruption and mismanagement in government programs.

Nepal enacted Right to Information legislation in 2007 and Bangladesh in 2009. However, the effectiveness of the laws in both countries has been withered by poor implementation¹⁹ and limited awareness and use of the laws by citizens. Bhutan and the Maldives have passed Right to Information legislation in 2014, while in Afghanistan; a draft bill is currently under

¹⁶SAARC: Potential Global Champion of Right to Information Available at http://sartian.org/index.php/component/k2/item/753#.Vt1_q3197IU (last visited march 10, 2016)

¹⁷ *ibid*

¹⁸ *S.P. Gupta v. President of India* (30.12.1981)

¹⁹ The Asian Foundation, Regional Synthesis Report, Citizen's access to freedom of Information in South Asia, August 2014, (Nepal), available at <https://asiafoundation.org/resources/pdfs/CitizensAccessstoInformationinSouthAsia.pdf>, (last visited march 10, 2016)



government consideration. In Sri Lanka, civil society organizations and the media have been campaigning for the legal recognition of the right to information for many years; however, legislation is yet to be enacted. In 2011, a draft bill was presented to parliament but was turned down. In Pakistan however, the federal Freedom of Information Ordinance 2002 is considered an ineffective law that does not meet international best practices²⁰.

However, over the past decade, countries in South Asia have made remarkable progress towards providing their citizens with a guaranteed right to access information from their government – through constitutional guarantees, legal statutes, and most importantly through the enactment and implementation of RTI legislation. At a regional level, the secretariat of the South Asian Association for Regional Cooperation (SAARC) can support the effective implementation of the right to information in member countries²¹.

COMMITMENT TO PROVIDE TRANSPARENT GOVERNANCE

The SAARC Charter adopted by the Heads of State and Governments at the 2004 SAARC Summit held in Islamabad, Pakistan underlined the importance of the transparent and accountable conduct of administration in public and private, national and international institutions²².

Specifically, in 2008, at a SAARC Ministerial meeting, delegates committed to adopt “appropriate legislation conferring the right to information for all citizens from governments and public authorities, to eliminate arbitrariness and corrupt practices and improve governance at the regional, national and local level.²³”

Countries in the region can learn considerably from each other’s experiences in implementing RTI. There are many areas where the SAARC member-state could collaborate for leveling up the citizen’s access to information in the region. Demonstrating political will and commitment to entrench RTI at a country and regional level, ensuring effective implementation of the law at the country level, setting a regional minimum standards for

²⁰Ibid at page 3

²¹ Ibid at page 11

²²SAARC social charter India Country report 2014, Ministry of Statistics and Programme Implementation, available at, http://mospi.nic.in/Mospi_New/upload/SAARC_Social_Charter_India_Report2014_26aug14.pdf (Feb 18, 2016 10.45 A.M.)

²³ Press Information Bureau of India, “Outcome of the 2nd meeting of the regional forum of the Ministers of Social Development of the SAARC region,” (March 11,2016, 10.00 A.M.) <http://pib.nic.in/newsite/erelease.aspx?relid=36072>.



proactive disclosure, linking RTI to broader movements for governance reform within the region, creating country-specific and regional caucuses of parliamentarians in support of RTI and good governance, facilitating dialogue and exchange visits among RTI champions in the region are some of the areas for interventions.

SAARC can play proactive and effective role in promoting RTI in the region thereby improving the state of transparency, accountability and good governance. For this, promotion of RTI in SAARC region should be included in the agenda of SAARC. The SAARC Secretariat should have its own 'Disclosure Policies' for SAARC Secretariat as well as its regional centers established in the member states.

There is huge potential for the SAARC region to showcase rest of the world the success of right to information as a cross-cutting tool for integrating deeper peace and cooperation. This is what the 18th SAARC Summit should make a broader consensus among the member-states to harness collective strengths to become the global champion of right to information for transparent, accountable and well-governed society²⁴.

LEGAL FRAMEWORK OF FREEDOM OF INFORMATION LAWS IN SAARC NATIONS

Basis of law: Constitutional Provisions

Over past two decades, right to know laws have become one of the most innovative and effective means for protecting the environment and public health²⁵. These laws, also known as information disclosure statute, serve number of broad and important societal interests. Armed with better information, consumer can make informed decision, and press for safer products²⁶. Better informed worker can negotiate for less toxic working conditions, or demand wages premiums for hazardous jobs. Investor in securities market can act more knowledgeably; indeed, studies shows that stock prices significantly to the release of environmental information; upward when information reveals a firm's superior performance; downward when poor performance is revealed.

²⁴South Asia right to information advocates network, [sartian.orghttp://sartian.org/index.php/component/k2/item/753#.V0_1p9J97IW](http://sartian.org/component/k2/item/753#.V0_1p9J97IW)(March 1, 2016, 2.24 P.M.)

²⁵Center for Progressive Reform ,available at ,www.progressivereform.org/perspright.cfm (last visited march 10, 2016)

²⁶<http://www.legalserviceindia.com/article/188-Right-To-Information.html>, (last visited march 10, 2016)



When we discuss the freedom of information legislations, Indian legislation is considered as Bench Mark legislation. Other effective legislations in this area are Bangladesh, right to information Act, 2009, Nepal Right to information Act, 2007 and legislations related to Srilanka and Pakistan. To understand the way these legislations have progressed it is important to understand the strength of legislation drawn from the Constitution of the relevant country. The scanning of constitutions of respective countries tells that the in India, Bangladesh, Nepal and Pakistan there is adequate protection given to the citizen's right to information²⁷.

In India, the movement for the right to information has been as vibrant in the hearts of marginalized people as it is in the pages of academic journals and in the media. This is not surprising since food security, shelter, environment, employment and other survival needs are inextricably linked to the right to information²⁸. The National Campaign for People's Right to Information (NCPRI) formed in the late-1990s became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. As a result of this struggle, not only did Rajasthan pass a law on the right to information, but in a number of panchayats, graft was exposed and officials punished.

Now, when we talk about the Constitutional provisions in India the first article which directly relates to freedom of information is Article 19 (1) which talks about freedom of speech and expressions. Article 21 enshrine 'right to life and a person liberty' are compendious term which include within themselves variety of right and attributes. Some of them are also found in article 19. In *R.P Ltd v Indian express newspaper*²⁹ the SC reads right to know in article 21. The SC held that right to know is a necessary ingredient of participatory democracy. However, the Supreme Court of India has interpreted through various decisions that the right to information is a part of the Right to Freedom of Speech and Expression under Article 19(1)(a) of the Indian Constitution. In addition, the Supreme Court of India in the case of *Reliance Petrochemicals Ltd. vs Proprietors of Indian Express*, has gone on to say that the Right to Know is an integral part of the Right to Life and unless

²⁷Transparency International Bangladesh Chapter [BD], available at www.ti-bangladesh.org/beta3/images/.../pub_nis_NICSA-SA_14_en.pdf (last visited march 10, 2016)

²⁸ Supra 28

²⁹ AIR 1989 SC 190



one has the Right to Information the Right to Life cannot be exercised³⁰. Voters have a fundamental right to know relevant qualifications of candidates for office, including information about their income and assets. Accordingly, a section of a law stating that candidates could not be compelled to disclose any information about themselves other than their criminal records was unconstitutional³¹. Further it was also held by Supreme Court of India that Non-disclosure of information is justifiable only if disclosure would be injurious to the public interest, and injury to the reputation of a public official should not be a consideration³².

Nepal Interim Constitution, 2007 in its article 27 has ensured Right to Information as the fundamental rights. It provides citizen the right to demand or obtain information on any matters of concern to himself / herself or to the public. However, it does not compel to provide information which is to be protected by the law. Article 27 guarantees every citizen the right to seek and receive information on matters of their interest or of public interest, unless secrecy of information should be protected by law.

Bangladesh The very constitution of Bangladesh gives freedom of thought, speech and conscience as basic right to the citizens of India. The Right to Information Act (RTI)2009 has been designed to make provisions for ensuring free flow of information. The act ensures absolute objectivity. Chapter2 and Sections 8 and 9 give the procedure for seeking information. Chapter 3 of the Act details the roles and functions of the designated authority in a very clear manner. Section 13 of Chapter 4 defines powers and functions of information commission. Under chapter2 section 7 a list of 20 areas are given where the information is not provided to citizens.

In Pakistan every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law³³. This article does not specifically grant the right to 'seek and receive' information as element of freedom of information. Nonetheless Supreme Court in Muhammad Nawaz Sharif. V/s. President of Pakistan and others ruled out that freedom of expression includes right to receive information. In a leading case it was held that "the right of a citizen to receive

³⁰ AIR 1989 SC 190

³¹ AIR 2003 SC 2363

³² AIR 1982 SC 149

³³ Pakistan Const.art 19A, Part II



information can be spelt out from the freedom of expression guaranteed in Article 19 of the Constitution³⁴.”

Scope of Freedom of Information Law

The right to information laws covers all levels of governments in SAARC nations and Pakistan is the only Nation where the ordinance related to RTI covers only federal level .When we talk about Federal level than all branches of government i.e. legislative, executive and judiciary are covered . In Pakistan military is exempt from disclosure of information. In India some national security and Intelligence agencies are exempt from RTI Act. But if there is information sought by some citizens with regard to corruption and human rights abuse than same is provided. It is relevant to mention here that Nepal is the only country worldwide which has brought the information related to political parties open for citizen’s access. Indian Supreme Court ³⁵,ruled in the year 2013 that it the private bodies, organizations and NGO’s are “substantially financed’ by public funds than they will be considered to be covered by the Right to Information Act.

In Bangladesh RTI Act Explicitly covers NGO’s Private Bodies and international organisations under section 2 (b) (iv) , (v) and (vi). Same is the situation in Nepal, where all government funded organisations are under the purview of RTI act. In Pakistan no private organization is covered irrespective of the fact that they are funded or not.

In all 4 SAARC nations legitimate privacy, fiduciary, proprietary and copyright interest is well protected under the RTI laws of all the countries for example in India section 8 and 9, Nepal 3(3), Bangladesh 7.

Key Features of Legislations in SAARC Nations

In Nepal Proactive Disclosure: Principle of right to information stipulates that public agencies are required to disclose certain key information by themselves even in the absence of any request. Such requirement is termed as proactive disclosure. Section 5 of the RTI Act requires public agencies to update and publish different information by themselves on periodic basis.

Protection of whistleblower: Section 29 of the Act is another remarkable aspect of this Act which protects whistleblowers. According to that provision it is the duty of employee of public agencies to provide information on any ongoing or probable corruption or

³⁴ PLD 1993 SC 473

³⁵Thalappalam Ser. Coop. Bank Ltd and Others Vs. State of Kerala and others (07.10.2013)



irregularities or any deed taken as offence under the prevailing laws. It protects the whistleblower whereby it mentions that no harm or punishment is done to bear any legal responsibility to the whistleblower for providing information. Furthermore, even if any punishment or harm is done to the whistleblower, the whistleblower may complaint, along with demand for compensation³⁶.

Scope of the Act extends to Political Parties and Non-governmental Organization: Another noteworthy aspect of this Act is that it covers political parties and non-governmental organizations in its section 2(a) within its scope and they are also responsible to provide the information like other public agencies³⁷.

National Information Commission: This Act has made a provision for the establishment of an independent National Information Commission for the protection, promotion and practice of right to information in its section 11. National Information Commission has been already established in accordance to this Act on June 14, 2008.

Timeframe and procedures for providing information: Section 7 of the Act has made detailed procedures to acquire the information from the concerned agencies. In addition, those agencies are required to provide information immediately and if they are not in the position to provide immediately then within 15 days of the application.

Compensation in case of harm or loss occurred as a result of not providing information: Section 33 says that if any person incur losses and damages due to not providing information, denying to provide information, providing partial or wrong information or due to destruction of information then such person are entitled to get compensation.

Legislative Provisions of Legislations In SAARC Nations

The RTI Act, 2005 is the culmination of responses generated at different corners of the country including the Government at the Centre, to people's demand for right to know initiated by MazdurKisan Shakti Sangathan in 1990 in a sleepy village named Devdungri of Rajasm and district of central Rajasthan. From 1997 onwards in several landmark judgments Supreme Court of India and High Courts of different States observed that Articles 19(1) and 21 of Constitution of India, i.e., right to freedom of speech and expression and right to life

³⁶ Narayan Prasad Panthee, Securing Protection And Cooperation Of Witnesses And whistle-blowers in Nepal, Resource Material Series no 86, 73, 80 available at http://www.unafei.or.jp/english/pdf/RS_No86/No86_11PA_Panthee.pdf, (last visited march 10, 2016)

³⁷ Citizen's Campaign for Right to Information ,available at, www.ccrinepal.org/legal-provision/rti-act-2007, (last visited march 10, 2016)



and liberty include right to information³⁸. Right to live loses much of its meaning if a citizen's right to information is denied. In the preamble to the Act this has been widely acknowledged as a necessity by way of commitment for creation of an informed citizenry, to contain corruption and enhance accountability and transparency in the working of every public authority.

The RTI Act, 2005 confers also the right to inspect office records, take extract and/or notes, inspect works and obtain certified sample of documents. Right To Information In Not Absolute. Section 3 and 30 of Right to Information, 2007 has empowered Nepalese citizens to exercise this right to obtain of information of public importance and individual concern, respectively. This Act has also made a separate provision for the classification and protection of the information in its section 27 and 28. Protection of the whistleblower and the requirement of proactive disclosure by the public agencies are considered as the remarkable provisions of this Act.

Right to Information Regulation 2009 was adopted in accordance with the section 38 of the Right to Information Act, 2007 for the implementation of the right embedded in the Right to Information Act, 2007. This regulation is also important for the proper functioning and management of the issues relating to the National Information Commission. It deals with different procedures relating to the exercise of Right to Information such as process of filing the application, contents of the application, process of appeal to the National Information Commission, provision on limitation etc.

Highlights of the Right to Information Act, 2007, is the result of the continuous effort and pressure of the civil society group of Nepal. This law has carried internationally recognized basic principles of right to information. Some of the positive aspects of the Act are as follows:

For any grievance regarding his/her request for information a person can prefer his/her first appeal to the departmental appellate authority after expiry of thirty days from the date of filing application or the date of receipt of information from the CPIO or the SPIO. The appeal requires to be filed not later than thirty days. A second appeal against the departmental

³⁸Administrative Training Institute , Government Of West Bengal , Servant Leader - A.T.I. Newsletter (April-May,2007), Making People Aware of Their 'Right To Know'(Feb 26, 2016 , 10.40 P.M), available at, <http://atiwb.nic.in/newsletter1.htm> (last visited march 10, 2016)



appellate authority can be filed in a similar way before the Central Information Commission or State Information Commission, as the case may be. The time limit fixed for the purpose is ninety days. In both the cases the appellate authority or the Information Commission can relax the time limit.

As no right can be absolute, the Right to Information has to have its limitations. There will always be area of information that should remain protected in public and national interest. Moreover, this unrestricted right can have an adverse effect of an overload of demand on administration. So the information has to be the properly, clearly classified by an appropriate authority.

Procedure for seeking information

This section details that what is the procedure for seeking information in the SAARC countries where Right to information Act is in existence. In the context of India under section 6(1) a hand written and typed application is accepted sent to the relevant officer of the Department concerned as per the Act. In Nepal under section 7(1) it is laid down that application seeking information is sent to concerned information as prescribed under the act.

To ask for information a person only needs to be a citizen of India. Information that cannot be denied to the Parliament or State Legislature cannot be denied to any person. For seeking information a person does not require to state any reason. He is to furnish only his contact details (name, address, etc.) and particulars about the information sought for³⁹. To seek information a person has to submit a written application on plain paper in English or Hindi or the official language of the area. There is no prescribed form for application. In case of a person who cannot write, the Chief Public Information Officer or the SPIO shall arrange to reduce the oral request to writing. Request for Information can be sent by e-mail. Persons belonging to Below Poverty Line category need not pay any amount as application fee. APL category persons are to pay Rs.10/- by court fee at the time of filing application for information.

³⁹Administrative Training Institute, Government of West Bengal, available at <http://atiwb.nic.in/newsletter1.htm>, (last visited march 10, 2016)



In India, Nepal and Bangladesh the fee prescribed for seeking information is very nominal. In Pakistan it is costly. Further there is time limit provided for fulfilling the request for information. In India it is 30 days , sections 7 and 11(3) , Nepal 21 days, section 7(2), Bangladesh 20 days, 9(1) (2) and in Pakistan 21 days, section 13.

Exemption Provisions of Legislations in SAARC Nations

Conventional practices relating to secrecy about government activities among civil servants; lack of trained and competent human resource in public agencies⁴⁰; failure of Act to establish monitoring mechanisms to oversee the implementation of the Act; lack of intellectual discourse; lack of awareness of the laws to the citizens; failure of civil society to take adequate initiatives and measures etc. are identified as the major reasons for the lack of proper implementation of the Act.

Right to Information can play a crucial role to change the conventional bureaucratic practices; transform Nepalese society towards transparency and accountability and; to establish a democratic society. In order to achieve it, Right to Information law needs to be implemented properly. Various stakeholders such as journalist, bureaucratic channels, government and individual information seeker needs to be educated and make aware to establish open and transparent society by utilizing Right to Information tool.

Important thing about these laws are that few countries in SAARC nations have given overriding effect to these laws that means their provisions override provisions of secrecy laws. With the exception of India, the FOI ,bill has a shorter list of exemptions when compared with other access laws in the region⁴¹. If we talk about India's section 3 (b) and Bangladesh's section 22 than these laws have overriding effect on the provisions of secrecy laws which adversely affect the right to information of citizens. But in Pakistan and Nepal under section 17 and 37 respectively clearly lays down that these laws does not have overriding effect on secrecy laws. In view of above mentioned details is may be stated that it is important to note that Transparency is not the rule when we come to the implementation aspect of RTI Acts. In India and Bangladesh Transparency is the rule and secrecy is exception.

⁴⁰Institute of Informatics and Development, Policy Brief, Issue 5 , February 2012 , RTI in Nepal, 2. available at http://r4d.dfid.gov.uk/pdf/outputs/ids/Protifolon_5.pdf, (last visited march 12, 2016)

⁴¹ Common Wealth Human Rights Initiative, Transparency International Sri Lanka, Booklet 2 of 3 , (2011), 20 available at <http://www.humanrightsinitiative.org/publications/rti/ENGLISH-2.pdf>, (last visited march 10, 2016)



Bangladesh specifically states so under Section 4 and 6(1)(2) and in India it was laid down by Supreme court of India in S.P Gupta Vs. President of India , way back in 1981.Nepal is ambiguous about it and in Pakistan non-disclosure is the rule.

The usual exemption permitting Government to withhold access to information is generally in respect of the following matters;

- 1) International relations and national security
- 2) Law enforcement and prevention of crime
- 3) Internal deliberations of the government
- 4) Information obtained in confidence from some source outside the Government
- 5) Information which, if disclosed, would violate the privacy of an individuals
- 6) Information, particularly of an economic nature when disclosed, would confer an unfair advantage on some person or object or government.
- 7) Information which is covered by legal / professional privilege, like communication between a legal advisor and his client and
- 8) Information about scientific discoveries and invention and improvements, essentially in field of weapons⁴²

Implementation mechanisms of Legislations In SAARC Nations

All these laws give rights to Citizens only. Specific provisions giving right to access are India Section 3, Bangladesh 4, Pakistan 12(1) and Nepal 3(1) respectively. Promulgation of law alone is not adequate to protect the rights of citizens. No laws meet its objectives, until and unless it is backed by proper mechanisms to implement the laws. In the context of Right to Information, different mechanisms have been set up and some of the measures are necessary to be set-up. Some of those measures have been identified as:

National Information Commission (NIC): NIC It is an independent organ established for the implementation of Right to Information in Nepal. The primary responsibility of the commission is to protect, promote and ensure the implementation of Right to Information in Nepal. Government of Nepal constituted the commission on June 14, 2008 comprising of one chief commissioner and two commissioners.

⁴²<http://www.legalserviceindia.com/article/I88-Right-To-Information.html>, (last visited march 10, 2016)



The Commission is empowered with power to hear and adjudicate case under the Right to Information Act. Likewise, it has the power to issue orders to the public agencies, to recommend and suggest the government and other public bodies in different issues relating to right to information. It can also impose fine and compensation, make necessary orders and can prescribe timeframe to the public bodies to provide information.

Public Information Officer: Right to Information Act, 2007 requires each and every public agency to appoint Public Information Officer for the purpose of disseminating information held in its agencies. They are appointed with the view of disseminating information to the concerned individuals. Public agencies may create Information Section also for the purpose of disseminating information as per necessity.

Present situation of implementation: Right to Information law came with huge expectations from various section of civil society. Civil society expressed high appreciation and expectation on the promulgation of those laws. Despite the separate Act on Right to information, current situation of implementation is not promising. Till now only dismal sections of Nepalese society have been able to exercise this right. Various studies and researches carried out by NGOs and experts working in this area shows that situation of implementation of this Act is not adequate. In addition, many national and international organizations are dissatisfied with the situation of implementation of this Act and there are debates on the efficacy of the law. National Information Commission has also accepted the fact that Right to Information Act, 2007 has not been properly implemented. Many institutions have rationalized the necessity of creating a favorable environment for its implementation.

Similarly, since the drafting of Right to Information Act, 2007 there has been growing demands from civil society as well as government agencies for the proper implementation of this Act. Experts believe that one of the common and ongoing problems in Nepal is that laws and regulations are made but, are not implemented properly. The situation of Right to Information laws in Nepal is also facing the similar experience.

Review and Appeal mechanism of Legislations in SAARC Nations

In all the countries there is inbuilt mechanism in the freedom of information Laws. And if the information given is not complete or refused than there is inbuilt mechanism of appeal to the superior officer. This mechanism is provided under the respective legislations. The



relevant sections are in India section 19, Nepal section 9, Bangladesh section 2 and Pakistan section 19.

In India, Nepal and Bangladesh there is provision for Information Commission. It functions as external, independent and autonomous body. If we take the case of India and Nepal than if the citizen is not satisfied with the decision of information commission than they have a remedy to approach the Apex Court of the Country. On the other hand in Pakistan and Bangladesh office of Ombudsman is provided as complaint and appeal authority. Same is authorized to receive complaint and also appeal with regard to right to information. These information commissions are not constitutional bodies but creation of Act.

In these countries there is a system of preparing the Report and presenting the same before the Parliament. In India the act have section, Nepal also the section is 25, in Bangladesh section 30. In these countries the report needs to be published and placed before the Countries Parliament.

LEVEL OF AWARENESS REGARDING FREEDOM OF INFORMATION AMONG CITIZENS

The most important aspect of the any RTI legislation is its implementation and awareness among citizens in this regard. In most of the SAARC nations awareness among citizens is very limited as most of them are either not aware of any such law or if aware than are not sure of its filing procedure. Further there is no awareness as regards to the utilization for their benefit by seeking information relevant for their own purposes from government. In a democracy government is single largest holder of public information.

The performance of freedom of Information in SAARC nations largely depends upon the performance of Civil Societies ,organized awareness programmes, which are in sink with governmental efforts. Hence the civil society or non-governmental organisations play a pivotal role in the success of freedom of information system.

It is relevant to note that the success of Freedom of Information Laws among SAARC nations depends on presence of a vocal and well organized civil society . Further the media is the biggest advocate for transparency and exposes . As it gives them TRP's and in turn their coverage of news related to freedom of information expose make people aware of the strength and positives of this right in success of democratic governance.



CONCLUSION

Every citizen has a right to impart and receive information as part of his right to know. The state is not only under the obligation to respect this right of the citizen but equally under an obligation to ensure condition under which this right can be meaningful and effectively enjoyed by one and all. Right to know is the indivisible from a democratic governance. This right include right to acquire information and it disseminate it. Right to information is necessary for self-expression, which is an important means of free conscience and self - fulfillment. It enables people to contribute on social and moral. Issues. It is the best way to find a truest model of anything. The right can be only limited by reasonable restriction under a law for the purposes, as mention in article 19(2)of Indian constitution. Despite all these shortcomings, legislation guaranteeing the right to information is a major step towards ensuring a participatory developmental process in the SAARC countries. For the law to be truly effective, it will need the active participation of the community at large, including non-government organizations and the press, who will need to simplify and disseminate the possibilities under the new branch of law to citizens, which empowers them directly.

The comparative study highlighted the fact that in India and Nepal the legislation is in a functional state and citizens are aware of their right to seek information. Especially in India there are very many social workers and common citizens who have exposed officers and nexus of criminals in the government functioning. On the other hand the in case of Pakistan the awareness level is very less among citizens regarding their right to freedom of Information. Further even the legislation concerned is restrictive and most of the relevant information is kept out of reach of common man. It is the weak law which is in effect in Pakistan, which provides no appeal mechanism and no remedy against delay in providing information is included in the legislation.

Hence in view of above mentioned details it is concluded that

“We must never forget that the free flow of information is essential to a democratic society.”

Bill Clinton