

**COMPARATIVE STUDY OF EXEMPTIONS**  
**UNDER RTI ACT IN DIFFERENT**  
**COUNTRIES**

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## 1. ABSTRACT

Legislation was passed by the Indian Parliament in 2005 which was about the citizen's right to obtain information from any public authority relating to its administration, operations or decisions. The law was passed on 15<sup>th</sup> June 2005 but came into force on 12<sup>th</sup> October 2005. The first application was given to a Pune police station. Right to Information Act is an act made by the Parliament of India to offer a setting out of the government of right to information for citizens and replaces the erstwhile Freedom of Information Act, 2002. Under the provisions of the act any citizen of India may request information from a public authority, be it a body of Government or instrumentality of state, expeditiously or within 30 days.

It is fundamental democratic right. It is a human right to access information, to seek, receive and impart information. Right to freedom of expression is a fundamental right and upon which all other rights depend. RTI is the "oxygen of Democracy" as it gives meaning to participatory democracy. It also supports participatory development and is a proven anti-corruption tool as 9 out of 10 most developed countries have RTI. The power of this act is that it makes citizens part of the decision-making process and makes government responsive and also strengthen the foundation of democracy.

Till now secrecy was the key as the Indian Bureaucracy has inherited administrative culture of secrecy as colonial and feudal legacy. Secrecy has been the most common feature of bureaucratic culture. So far as it can, bureaucratic administration 'hides its knowledge and actions from criticism...the concept of the official secret is the specific invention of bureaucracy'<sup>1</sup> and height of same has emerged as Official Secret Act, 1923.

The main objective of the act is to provide democracy that requires to be an informed citizenry and transparency of information of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed.

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<sup>1</sup> Max Weber observed.

## 2. INTRODUCTION

Information as the name itself says it is fundamental human right as adopted by the General Assembly of UN in 1946. The very first important document in the field is “**Universal Declaration on Human Rights (Article 19)**.” It provides “everyone has a right to freedom of opinions without interference and to seek review and import and ideas through any media and regardless of any frontier.

**International Covenant on Civil and Political Rights, 1966 (Article 19)** is 2<sup>nd</sup> important UN document which confers similar rights i.e. Right to Freedom of Opinions and Expression which includes freedom to hold opinions.

In year 2000 UN adopted certain principles on freedom of information commonly known as (UN principles on freedom of information 2000). These principles were adopted to set standard against which any one can measure whether inland laws genuinely permit access to official information.

Giving to due regard to above quoted developments in international scenario, Republic of India gave it importance in the form of finally emerged Right to Information Act, 2005. **Information** is defined under section 2 (f) It means any material in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbook, contracts, reports, papers, samples, models, data, materials, held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.<sup>2</sup>

In a democracy, we begin with the premise that people are supreme and governments work on behalf of the people. Constitution of India also proclaims this when it says in its preamble that, “we the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to protect all its citizens: Justice, social, economic and political.”<sup>3</sup>

Constitutionally, government gets the mandate and power to administer the affairs of the country from the people who are the sovereign and source of power. People have every right to

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<sup>2</sup> Right to Information Act, 2005, Bare Act.

<sup>3</sup>Preamble to the Constitution of India, 1950, p.1.

know what the dispensation is doing in their name so as to adjudge the performance of the government by getting information on each and every decision being taken by the government. These exemptions from disclosure of information should not go beyond the restriction provided under Article 19(2) of the constitution.

In other words, information has to exist. The PIO has to give information from existing records. The PIO is neither expected to nor supposed to provide his opinion, justification or clarification which does not exist in any file or record. The PIO must provide the information within 30 days of receiving the RTI application. Not giving the information without reasonable cause attracts the penal provisions of RTI Act.

If the requisition concerns the 'life and liberty' of a person talk to the appropriate people and provide the information immediately. The information should be over 20 year old. If the information asked for is over 20 years old only exemption clauses under Section 8 (1) (a), (c) or (i) apply. This means only three of the ten exemption clauses apply, if the information is over twenty years old. Thus seven of the exemption clauses do not apply to information which is over 20 year old.

Transparency was named the word of the year by Webster's Dictionary in 2003; transparency might well prove to be the word of the last decade and half. Imagine that in two hundred and thirty years from 1766 when the first transparency law was passed in Sweden, till 1995 less than 20 countries had such law. From 1995 to 2010, in the last fifteen years around 60 additional countries have either passed transparency laws or set up some instruments to facilitate public access to institutional information.

In India, the state of Tamil Nadu was the first to pass the freedom of information law way back in 1997. Though the law was essentially weak and ineffective, it was soon followed by somewhat more effective laws in many of the other states.

Sweden was among the 1<sup>st</sup> countries to adopt the Freedom of Information (FOI) to its citizen's way back in the year 1766. Then the country that followed was Finland in the year 1951. Then Denmark and Norway opted for the act in the year 1970. In the year 1966 USA introduced its FOI Act just 200 years after Sweden introduced its FOI with amendment in 1974 to make it easier for citizens to enforce their right to access and to provide for penalties against

officials who treat Freedom of Information Act request in an arbitrary or capricious fashion. Then the introduction of Freedom of Information was later followed in the subsequent countries:

- i. France in 1978
- ii. Canada in 1982
- iii. India in 2005

### **3. EXEMPTIONS UNDER RTI ACT**

#### **3.1. CONCEPT**

The Right to Information Act, 2005 has been probably the most discussed law of the recent times and also has given a lot of power to the people than any other law. Its basic aim is to “provide reign of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority”.<sup>4</sup> The right to information is not absolute. Not all information that the government generates will or should not be given out to the public as if such sensitive information is released to the public they might actually some cause serious harm to more important interests. For example, at the time of conflict, if someone wanted to know how many troops were deployed and the place of their deployment, the Government might legitimately refuse as they would want to keep it secret as if this information is fallen into wrong hands it could pose a great risk to national security of India. But if someone asks about the same information 2 years after the war it would be less clear that the information should be kept a secret as the likelihood of harm being caused by disclosure of such information is less.<sup>5</sup>

Section 8 is important in the sense that it mentions nine grounds for exemption from disclosure of information. Commissions, activities and common people must be very clear about these provisions for non-disclosure as the restricted interpretations pose a serious danger of

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<sup>4</sup>DeoulPathak, Exemption From disclosure of Information Under RTI, <http://www.legalserviceindia.com/article/I345-Exemptions-from-disclosure-of-information-under-RTI-.html>

<sup>5</sup>Right to Information: User Guide, What type of information is you not able to access? , [http://www.humanrightsinitiative.org/programs/ai/rti/india/user\\_guide/info\\_not\\_access.htm](http://www.humanrightsinitiative.org/programs/ai/rti/india/user_guide/info_not_access.htm)

somehow legalizing secrecy and confidentiality. These restrictions must not go beyond the restrictions prescribed in Article 19 (2) of the Constitution, which places limitations on the freedom of Speech and expression.

Through the public authority is bound to disclose the information but every information is not to be disclosed and the following information is exempted under the Act:

- i. Information disclosure of which the sovereignty and integrity of India, the security etc. (section 8)
- ii. Information which involves infringement of copyright subsisting in a person other than the State (section 9)
- iii. The intelligence and security organization or any information furnished by such organization to Government (section 24).

Information can be kept a secret legitimately in some circumstances but only where disclosure would likely to cause serious harm to specific important public interests. All right to information laws involve therequirements that allow certain type of information to be withheld from community. These are commonly called “exemption provisions” or “exclusion clauses”.<sup>6</sup>

**Section 8 of the Right to Information Act** deals with exemptions which says the following:

- i. An information disclosed which could prejudicially affect the sovereignty and integrity of India and also affect the security, strategic, scientific or economic interests of the state, also affect the relation with foreign states or even lead to incitement of an offence;
- ii. If the court of law or tribunal has expressly forbidden any information to be published as the disclosure of this information may constitute the contempt of court;
- iii. Any information disclosed which could cause a breach of privilege of parliament or state Legislation;
- iv. The disclosure of the information which would harm the competitive position of the third party by the disclosure of the commercial confidence, trade secrets or intellectual

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<sup>6</sup>Right to Information: User Guide, What type of information is you not able to access? , [http://www.humanrightsinitiative.org/programs/ai/rti/india/user\\_guide/info\\_not\\_access.htm](http://www.humanrightsinitiative.org/programs/ai/rti/india/user_guide/info_not_access.htm)

- property unless the 3<sup>rd</sup> party is satisfied that larger public interest warrants the disclosure of such information;
- v. Information available to a person in his fiduciary relationship.
  - vi. The information received in confidence from any foreign Government
  - vii. Any information which could endanger the life or physical safety of any person or identify the source of information or any assistance given in confidence for law enforcement or security purposes;
  - viii. Any information which would impede the process of investigation or apprehension or prosecution of the offenders;
  - ix. Any information from cabinet papers including records of deliberations of the council of ministers, Secretaries and other officers provided that after the decision has been taken by the cabinet ministers thereof the decision should be made public and the matter has been completed and also that those matters which come under the exemptions shall not be disclosed;
  - x. Any personal information which relates to disclosure has no such relationship to any public activity or interest or would cause unwarranted invasion of the privacy of the individual unless the central Public Information officers or the State Public information Officer or any appellate authority as the case maybe is satisfied that the larger public interest justifies the disclosure of such information. Provided that the information that is not denied to the Parliament or a State Legislature that information should also not be denied to the any person or individual.
  - xi. A public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interest.
  - xii. Any information relating to any event, occurrence or matter which took place or occurred or happened 20 years before the request of information was made under section 6 shall be provided to any person making a request under this section. Where any question arises as to the date from which the said period of 20 years has to be computed the decision of the central government shall be final as the subject to the usual appeals provided for in this act.

**Explanation** of the sub sections of section 8 are as follows:



**Section 8 of the Right to Information Act** deals with exemptions which says the following:

**i. Prejudicially affect the sovereignty and integrity of India; Sub Section 1 (i) (a)**

As mentioned above that every public authority is bound to disclose information except when it is covered under section 8. However, section 8 (1) (a) provides that information, disclosure of which affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign state or lead to incitement of an offence is not to be disclosed. Judiciary has beautifully explained information covered under section 8 (1) (a) in following case:

In the case of **Shri SC Sharma v Ministry of Home Affairs, Appeal No. CIC AT/A/2006/000056**<sup>7</sup>, the commission had taken the view that the matters connected with interception of telephones were governed by the provisions of Indian telegraph Act, 1885 and were distinctly related to the security of India. Any matter, except the most obvious such as the officer designated to authorities' interception of message and the organization so authorized, must therefore be construed to be security related. And such information related to security of India is covered under section 8 (1) (a) of the act. Moreover, the character of the information will not be altered if the charges subsequently brought against the person are not for violation of any security-related law but under provisions of anti-corruption law and therefore, it is held that the information as sought by the appellant relates to security and strategic interest of the state and therefore, it is held that the information as sought by the appellant relates to security and strategic interest of the state, and therefore exempted from disclosure under section 8 (1) (a) of the act.

**ii. Information that may constitute the contempt of court; Sub Section (1) (b)**

In **India**, The CIC reiterated its decision in the case **Nanak Chand Arora v. State bank of India**<sup>8</sup>, F.No. **CIC/MA/A/2006/00018**, that there is no provision in the Act which restrict the disclosure of Information merely on the ground or the fact that matter is pending with the

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<sup>7</sup>Appeal No. CIC AT/A/2006/000056

<sup>8</sup>F.No. CIC/MA/A/2006/00018

Consumer Court. In the instant case, the CIC has not forbidden the disclosure of investigation report or inspection of record.

**In United Kingdom, 32.Court records, etc.—**

(1) Information held by a public authority is exempted information if it is held only by virtue of being contained in—

(a) Any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) Any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or

(c) Any document created by—

(i) A court, or

(ii) A member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.

(2) Information held by a public authority is exempted information if it is held only by virtue of being contained in—

(a) Any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or

(b) Any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.

(4) In this section—

(a) “Court” includes any tribunal or body exercising the judicial power of the State,

(b) “Proceedings in a particular cause or matter” includes any inquest or post-mortem examination,

(c) “Inquiry” means any inquiry or hearing held under any provision contained in, or made under, an enactment, and

(d) Except in relation to Scotland, “arbitration” means any arbitration to which Part I of the Arbitration Act 1996 applies.

**Explanation of Section 32** exempts information contained in those litigation documents and court, tribunal and inquiry records to which it applies. It exempts information held by a public authority if it is held solely by virtue of its being contained in those categories of document.

The information must be included in a particular type of document and must be held by the public authority only by virtue of this. However, if the information is so held, it will be exempt regardless of its content and for the reasons set out below public authorities should refuse the request. This applies both to the document itself and to any copies of that document or copies of the information which it contains.

There are separate and specific regimes for access to information held by courts and tribunals, designed to give those bodies themselves a measure of control over that information. For example, Rule 5.4 of the Civil Procedure Rules deals with access to court documents in civil proceedings in the county courts, the High Court and the Court of Appeal. It allows any person, on payment of the prescribed fee, to inspect and take a copy of (a) a claim form which has been served, (b) a judgment or order given or made in public, and (c) any other document if the court gives permission. Where a person has the right to inspect a document without permission, a request can be made to the court staff. Where permission is required, an application must be made to a judge. The Civil Procedure Rules do not include any guidance on the court's exercise of its discretion but the court will take account of all the circumstances of the case and the competing principles of open justice and the right to privacy of persons who may be mentioned in court documents.

The principle most likely to be relevant to the disclosure of information under the Freedom of Information Act is the first principle. This requires personal information to be:

- processed 'fairly'
- processed 'lawfully'
- not processed at all unless one of the 'conditions' for fair processing is met

Processing in this context includes disclosure. In most cases, personal data will be exempt if disclosure would be 'unfair'. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party

that this information would remain confidential. The court of contempt has been given these following sections:

- Limits liability for contempt under the "strict liability rule" (sections 1- 7)
- Prohibits the use of tape recorders etc. in court or bringing sound recording equipment into court without leave of the court and deems publication of a sound recording as a contempt (section 9)
- Provides limited protection against contempt for a person refusing to disclose the source of information contained in a publication for which he is responsible (section 10)
- Empowers magistrates' courts to deal with contempt in the face of the court by imposition of a fine of £2500 or committal to custody for a maximum of one month or both (section 12)
- Restricts the period of committal to prison for contempt where there is no express limitation to 2 years for a superior court and one month for an inferior court (section 14).<sup>9</sup>

In **United States of America**, Contempt of court is an act of disobedience or disrespect towards the judicial branch of the government, or an interference with its orderly process. It is an offense against a court of justice or a person to whom the judicial functions of the sovereignty have been delegated. Contempt of court is defined as any act which is calculated to embarrass, hinder, or obstruct a court in the administration of justice, or which is calculated to lessen the authority or dignity of a court. In light of this broad definition, it should come as no surprise that the federal contempt power has included a wide range of "casualties". It has also been reported that the late (no pun intended) federal judge William Daniel Murray once held himself in contempt of court and self-imposed a fine following his failure to arrive on time for court. Going a step further, on Federal bankruptcy judge held a Nations Bank computer in contempt of court.

In **United States vs. United Mine Workers**<sup>10</sup>, the Supreme Court applied Gompers analysis to disapproval of fines. This opinion, however, only served to muddle the already confusing distinction between civil and criminal contempt. By equating the coercive use of fines

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<sup>9</sup> The Crown Protection Service (CPS), Contempt of Court and Reporting Restriction, [http://www.cps.gov.uk/legal/a\\_to\\_c/contempt\\_of\\_court/](http://www.cps.gov.uk/legal/a_to_c/contempt_of_court/)

<sup>10</sup>330 U.S. 258 (1947).

with the coercive use of improvement, new confusion arose as the court approved of the use of fines as a method for coercing compliance with court orders. As a result, “the court made it possible for courts to set out prospective fine schemes and then levy fixed fines in subsequent civil rather than criminal contempt proceedings”. Thereafter, lower courts basically saw this as an opportunity to punish future acts of contempt with prospectively affixed sanctions- but without procedural requirements of criminal contempt proceedings”.<sup>11</sup>

In **Mexico**, There is no such provision as contempt of court in the Mexican Information Act.

In **Slovenia**, Information acquired or drawn up for the purposes of civil, non-litigious civil procedure or other court proceedings, and the disclosure of which would prejudice the implementation of such procedures. Information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution or misdemeanors procedure and the disclosure of which would prejudice the implementation of such procedure.

**iii. Any information disclosed which could cause a breach of privilege of parliament or state legislation; Sub Section (1) (c)**

Under this any information which would cause breach of privilege of Parliament or state legislature is not to be disclosed. In India, Constitution has given certain powers and privileges to the parliament and the state legislature. These privileges of parliament and state cannot be breached. Articles 105 and 194 of the Constitution deals with powers and privileges of the members of parliament and of the state legislature respectively. Therefore, any information disclosure of which causes a breach of privileges of the parliament or the state legislature as provided under articles 105 and 194 of the Constitution is exempted.

**iv. Third party information; Sub Section (1) (d)**

In **India**, This clause deals with information including:

- a. Commercial confidence;
- b. Trade secrets;
- c. Intellectual Property.

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<sup>11</sup> BERG & ANDROPHY, Federal Contempt of court, by Joel M. Androphy and Keith A. Byers  
<https://www.bafirm.com/publication/federal-contempt-of-court/>

Disclosure of which would harm the competitive position of 3<sup>rd</sup> party. However, where the public authority is satisfied that larger public interest warrants the disclosure of such information then it is not exempted.

In the case of **Bhagawal Seth vs. Bank of Baroda**<sup>12</sup>, Appeals no. **CIC/PB/A/2008/00558-SM, decided on 12-1-2009 (CIC)**, CIC observed that apart from commercial confidence there exist fiduciary relationships between bank and its customers. Therefore, information about borrowers of the bank was denied because such information is obviously held by the bank in trust and disclosure of such would lead the breach of that trust and may also affect the competitiveness of 3<sup>rd</sup> parties.

In **United Kingdom**, the information, disclosure of which would harm the 3<sup>rd</sup> party is NOT applicable.

In **Mexico**, the information, disclosure of which would harm the 3<sup>rd</sup> party is NOT applicable.

In **United States of America**, the 3<sup>rd</sup> party information is applicable.

In **Slovenia**, Information is protected by the intellectual property rights of third parties.

**v. Information available to a person in his fiduciary relationship; Sub Section (1) (e)**

In **India**, it is important to note that RTI cannot be exercised to disclose any information which is available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

In the case of **Nellie Wapshare v. Pierce Lasha & Co. Ltd**<sup>13</sup>, AIR 1960 Mad 410, it was observed that by the Madras High Court, while explaining fiduciary relationship, that such relationship “may arise in the context of a jural relationship. Where confidence is reposed by one in another that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately comes into existence.

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<sup>12</sup>Appeals no. CIC/PB/A/2008/00558-SM, decided on 12-1-2009

<sup>13</sup>AIR 1960 Mad 410

**vi. The information received in confidence from any foreign Government; Sub Section (1) (f)**

In **India**, Where any information is provided by foreign government to Indian government to Indian government and foreign government wants that confidentially of that information must be maintained by the Indian government and such information should not be disclosed to others. In fact, it is based upon international or bilateral relations between the two countries. The disclosure of such information which is received from foreign country is also against the interest and welfare of that country, such information is exempted under this particular section of the act.

**In United Kingdom, 27. International relations.—**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice

(a) Relations between the United Kingdom and any other State,

(b) Relations between the United Kingdom and any international organization or international court,

(c) The interests of the United Kingdom abroad, or

(d) The promotion or protection by the United Kingdom of its interests abroad.

(2) Information is also exempt information if it is confidential information obtained from a State other than the United Kingdom or from an international organization or international court.

(3) For the purposes of this section, any information obtained from a State, organization or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, Organization or court to expect that it will be so held.

(4) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a)—

(a) Would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or

(b) Would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a State other than the United Kingdom or from an international organization or international court.

(5) In this section—

“International court” means any international court which is not an international organization and which is established—

(a) By a resolution of an international organization of which the United Kingdom is a member, or

(b) By an international agreement to which the United Kingdom is a party;

“International organization” means any international organization whose members include any two or more States, or any organ of such an organization;

“State” includes the government of any State and any organ of its government, and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

In **United States of America**, (b) this section does not apply to matters that are--

(1)(A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy.

In **Mexico**, Mexico played a minor role through most of its history. Since 19<sup>th</sup> century it focused on the United States, its northern neighbor, etc.

In **Slovenia**, The foreign policy of the Republic of Slovenia is founded on the values of Slovenia's independence and statehood, the Constitution of the Republic of Slovenia, the values of the European Union and the principles of the Charter of the United Nations. The position and activities of the Republic of Slovenia in the international arena are based on the Constitution of the Republic of Slovenia, the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, the Foreign Affairs Act, and other internal legal instruments and international law that is binding on the Republic of Slovenia. The Republic of Slovenia is a Central European and Mediterranean country, lying at the heart of the Alpine-Adriatic-Danube region and the meeting point between the Western Europe and the Western Balkans. The Republic of Slovenia is a maritime state.

**vii. Any information which could endanger the life or physical safety of any person; Sub Section (1) (g)**

In **India**, This clause exempts any information:



- i. Which either endanger life or liberty of a person; or
- ii. Which identifies the source of information or assistance given in confidence for law enforcement or security purposes?

In the case of **Singh (AK) v. Delhi Police**<sup>14</sup>, No. CIC/AT/A/2006/00330, question before CIC was that whether camera recording in the police station is exempted under this section. Certainly the answer to this question is YES. Delhi Police took plea that the camera recording may contain movements of witnesses and of other and of other people, who might have visited the police offices to assist the police authorities in their investigation or for other purposes. And as such disclosure of such recordings would put such people to wholly avoidable risk and would also exempted under section 8 (1) (g) of this act. The Central Information Commission accepted the plea of respondents and held that cameras recording at police offices may and do contain movements of witnesses and other person who assist the police in their law enforcements functions, which if disclosed is likely to endanger the life or the physical safety of such person and therefore, such information is exempted from disclosure under this section. It was further held that the other information requested by the appellant is in the nature of personal information, with no demonstrable relation to any public activity, interest or purpose and this section exempts such information from disclosure. Hence, it was held that there is no obligation of Delhi Police to disclose the camera recording to the appellant.

In **United Kingdom**, this clause is not applicable.

In **United States of America**, Section (7) (F) could reasonably be expected to endanger the life or physical safety of any individual.

In **Mexico**, this clause is NOT applicable.

In **Slovenia**, this clause is not applicable.

**viii. Any information which would impede the process of investigation or apprehension or prosecution of the offenders; Sub Section (1) (h)**

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<sup>14</sup>No. CIC/AT/A/2006/00330

In **India**, This clause deals with information which would impede the process of investigation and apprehension or prosecution of offenders. However, mere existence of investigation process cannot be a ground for not disclosing the information. The public authority shall substantiate that withholding such information would affect the investigation process.

It is important to note here that under the code of criminal procedure, the investigation starts after the police officer receives information regarding any offence and it involves following steps:

- a. Proceeding to the spot;
- b. Finding facts and circumstances of the case;
- c. Discovery and arrest of suspected offenders;
- d. Collection of evidence relating to commissions of the offence; and
- e. Formation of opinion that whether on the basis of material collected there is a case to put accused to trial.

The apex court in the case of **TT Antony v. State of Kerala**,<sup>15</sup> AIR 2001 SC 2637 held that the court cannot supervise the investigation by police but can interdict the investigation in case police transgresses its statutory power to meet the ends of justice.

In **United Kingdom**, The investigation which the public authority has a duty to conduct with to being ascertained whether a person should be charged with an offence or when he is found guilty.

In **United States of America**, this clause is not applicable.

In **Mexico**, this clause is not applicable.

In **Slovenia**, this clause is not applicable.

**ix. cabinet papers; Sub Section (1) (i)**

The information includes records of deliberations of the council of ministers, Secretaries and other officers provided that after the decision has been taken by the cabinet ministers thereof

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<sup>15</sup>AIR 2001 SC 2637

the decision should be made public and the matter has been completed and also that those matters which come under the exemptions shall not be disclosed;

In the case of **Dr. RK Garg v. Ministry of Home Affairs**<sup>16</sup>, F.No. **CIC/AT/A/2006/00363**, CIC explained the meaning of the file noting as that part of the file in which an officer records his observations and impressions meant before his immediate superior officers. Especially, when the file, in which the noting's are contained, classified as confidential, entrustment of the file note by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a third party (in this case, the officer writing the note to the next higher officer). Therefore, when any application is filed to disclose such information provisions of section 11 must be applied for disclosing such information.

In the case of **Union of India vs. Major Bahadur Singh**,<sup>17</sup> (2006) 1 SCC 368, apex court opined that the state must be a model employer and must act fairly towards its employees. Any entry in ACR of any employee must be communicated to that employee within reasonable time period. Only then good governance would be possible. However, here also the court clarified that this decision will not apply to military officers because the position for them is different.

**x. Invasion of the privacy of the individual; Sub Section (1) (j)**

In **India**, When it is read a whole it is apparent that Personal information does not mean information pertinent to information seeker since the question of invasion of privacy does not arise in his own case. Therefore, when a citizen seeks information about his own case and as long as the information sought is not exempted in terms of other provisions of section 8 of RTI Act, this section is not applicable to deny the information. The documents submitted by individual applicants contain a lot of information as personal details, income, PAN, Sources of funds, partnership details, plans to run dealership, affidavit, etc. which are personal documents and contain a lot of confidential nature, submitted by third parties, NOT TO BE GIVEN.

**In United Kingdom, 40. Personal information---**

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<sup>16</sup>F.No. CIC/AT/A/2006/00363

<sup>17</sup>(2006) 1 SCC 368

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) It constitutes personal data which do not fall within subsection (1), and

(b) Either the first or the second condition below is satisfied.

(3) The first condition is—

(a) In a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) Any of the data protection principles, or

(ii) Section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) In any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) was disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) Does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) Does not arise in relation to other information if or to the extent that either—

(i) The giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1) (a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A (1) of that Act were disregarded, or

(ii) By virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) (a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “The data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “Personal data” has the same meaning as in section 1(1) of that Act.

If information is exempt under section 40 because it is the personal data of the applicant then its disclosure must be considered under the subject access provisions in the Data Protection Act 1998; the Act may require the disclosure of information which would otherwise have been exempt under the FOI Act. For most government departments that receive requests for personal data of someone other than the applicant, the application of section 40 will in most circumstances turn on whether disclosure of the information to a member of the public would be 'unfair'. Officials must be alive to the need to consult experts where the application of section 40 is difficult or unclear: getting a decision wrong may result in breach of the Data Protection Act 1998. The majority of section 40 is not subject to a public interest balance.<sup>18</sup>

In **United States of America**,(b)(6)personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

In **Mexico, Article 12**.All public information generated, obtained, acquired, processed or held by the regulated entities is public and will be accessible to anyone, for which reason all the means, actions and efforts available on the terms and conditions established by this Act, the Federal Act and those corresponding to the States, as well as other applicable rules should be enabled.

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<sup>18</sup> Freedom of Information, FOIA Section 40 Exemption,  
[https://foiwiki.com/foiwiki/index.php/FOIA\\_Section\\_40\\_Exemption](https://foiwiki.com/foiwiki/index.php/FOIA_Section_40_Exemption)

In **Slovenia**, The disclosure of personal data of which would constitute an infringement of the protection of personal data in accordance with the act governing the protection of personal data.

**xi. A public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interest; and Sub Section (2)**

In 2009, there was case of **Public Relation Officer Hyderabad v Andhra Pradesh Information Commissioner<sup>19</sup>, 2009 (2) CCC 293 (A.P.)**, it was held by the Andhra Pradesh High Court that Section 3 of the act, confers on every citizen the right to information and unless such a right is curtailed by law made by a competent legislature or by executive constructions, the purpose of law cannot be defeated. Parliament has exempted only certain categories of information as mentioned under Section 8 of the act with regard to which there is no obligation to furnish the information. It was also observed by the court that explicit exemption of information under section 8(1) of the act conclusively presupposes that the act permits the disclosure of information as defined under section 2 (f) read with section 2(i) of this act.

**xii. Disclosure of 20 year old information. Sub Section (3)**

Any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section. It is significant to mention that where any question arises as to the date e.g. from which date the said period of 20 years has to be computed, the decision of the central government shall be final, subject to the usual appeals provided for in this act.

In the case of **Canara Bank v The Central Information Commission,<sup>20</sup> AIR 2007 Kerala 225**, the information demanded was related to transfer of clerical staff by the canara bank and the applicant in this case had specifically stated that he required information in respect of clerical staff transferred to Ernakulam District of the Canara Bank for the period from 2002 to 2006. The concerned bank took plea that the information requested for by the 2<sup>nd</sup> respondent related to a period of 5 years and it would require tremendous man power and time to gather such

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<sup>19</sup>2009 (2) CCC 293 (A.P.)

<sup>20</sup>AIR 2007 Kerala 225

information. The High court did not find any merit in such plea. It was observed that it is not that the bank transfers an employee every day and at the most the transfers would be once in a year.

### **3.1.1. Right to Information Act exempts the following organizations**

Twenty five government organizations are exempted from the purview under the 2<sup>nd</sup> schedule of the RTI act. These include intelligence agencies, central economic intelligence bureau, etc.; research bodies working with the countries security agencies are also immune to the law, as are paramilitary forces.

The Directorate of Enforcement, Narcotics control board, Special Service Bureau, Special branch of the Police in Andaman and Nicobar, Lakshadweep and Dadra Nagar Haveli are excluded from RTI Act. These organizations are however required to provide information if the panel believes the appellants query relates to a case of corruption or abuse of human rights.

### **3.2. NEED FOR SUCH PROVISIONS (WITH CASE LAW)**

Such provision of exemptions are very much required in such a way that it is not affecting basic right of citizen, major stake holder of democracy, to provide the full information regarding his/her fundamental right to information according to article 19 (1) (a) so that he may exercise his right to freedom of speech and expression with authority and confidence, simultaneously helping exemptions help CPIOs to ensure that information is not falling in wrong hands, which may even affect national interests. It helps a person to get information regarding his/her complaints but at the same time restricts that person from getting the same information till the time the complaint has not been resolved it may also be given to the person after 2 years when there is no need to hide the information. Similarly, privacy of other citizens regarding data or information available with CPIO also to be protected as their right of privacy. There are few cases which tell us why there is a need for such provisions.

In the case of **Namit Sharma vs. Union of India**<sup>21</sup>,2012 (8) SCALE 593, where in the Apex court held that “in terms of the statement of objects and reasons and reasons of the act of 2002, it was stated that this law was enacted in order to make the government more transparent

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<sup>21</sup>2012 (8) SCALE 593

and accountable to the public.” The scheme of the act contemplates for setting out the practical regime of right to information for citizen’s to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. However, this right is subject to the restrictions inbuilt within the act and secondly the constitutional limitations emerging from article 21 of the constitution. Thus, the Apex Court stated that the disclosure of personal information i.e. names and addresses of the members of the interview Board which was received by the Bihar Commission in fiduciary relationship would *ex facie* endanger lives or physical safety of the members of the board and is exempted under sections 8 (1) (e), 8 (1) (g), 8 (1) (j). The possibility of failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and on the other hand; such disclosure would serve no public purpose. Furthermore, the view of the High Court in the judgment under the appeal that section of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The transparency that is expected to be preserved in such process that would not take within its ambit the disclosure of the information called for under query No. 1 of the application. Marks are required to be disclosed but disclosure of individual names would hardly hold any relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the act. Therefore, the appeal was accepted and the court set aside the judgment of the High Court and held that the commission is not bound to disclose the information asked for by the applicant under query no.1 of the application.

### **3.3. EXEMPTIONS UNDER RTI LEGISLATION IN DIFFERENT COUNTRIES**

“National legal framework for RTI in countries around the world is constantly changing. As a result of these changes and as a result of our constant and ongoing process of monitoring and expert review, several countries have seen their scores rise or fall in the months since the RTI Ratings were launched. This is expected to ongoing phenomenon.” Says the center for law and democracy. (CLD)



The following are the comparative analysis in Right to Information Act or Freedom of Information Act in different countries: United Kingdom, United States of America, Mexico, France, India, and China.

### **3.3.1. UNITED KINGDOM**

The **United Kingdom's** constitution looks confusing as most states have a written constitution which is a document with special sanctity, a declaration of the country's supreme law, all laws and all institutions of their state subordinate to a written constitution and intend to be an enduring statement of fundamental principles. The UK does not have a constitutional bill of rights and the right to information does not find constitutional expression. However, the European court of human rights has refused to find a right to access information held by public bodies as part of general guarantee of freedom of expression, and it is most unlikely that British Courts would understand this right any more lavishly.

The United Kingdom presents an interesting conundrum on the right to information, contrasting a vibrant media operating in an atmosphere of relatively robust respect for freedom of expression with a government which has traditionally been extremely secretive. This explains the odd situation whereby the Freedom of Information Act 2000 (RTI Law) was not passed in the United Kingdom until November 2000, long after most established democracies had adopted such a law, and even then did not come fully into force until January 2005.

The RTI Law of the UK includes good process guarantees and broad scope application, along with a number of innovative promotional measures. For example, it introduces the idea of publication scheme for proactive publication, providing a flexible tool for increasing the scope of information subject to disclosure overtime. At the same time, it is extremely undermined by a very wide-ranging regime of exceptions. These are not only broad on their face but much lack any harm test and are not subject to public interest override.

### **3.3.2. MEXICO**

**Mexico** was one of the earlier countries in Latin America to pass right to information law, significantly with the signing into law by President Fox of the Federal Transparency and access to Information Law in June 2002. The law like the constitutional amendments was

adopted unanimously by both chambers of the congress, part of the commitment by the new administration to tackle corruption and foster democracy in Mexico. The oversight body has the power under the law to adopt regulations on various matters including, importantly on classification. A regulation was adopted by IFAI in June addressing a range of issues. All 31 Mexican states as well as Federal District (Mexico City) have also adapted right to information laws. In 2002, Article 6 of the constitution provided a simple guarantee of the right to information as follows: “Freedom of information will be guaranteed by the state.” However, a comprehensive amendment to Article 6, which was passed unanimously not only by both chambers of the Mexican Congress but also by the legislature of 16 states, significantly extended constitutional protection for the right to information. The new assurance provides, among other things, that all information shall be public, subject only to temporary restrictions on access restrictions on access for public interest reasons as established by law, although personal information shall be protected. Rapid systems for accessing information shall be put in place and these shall be overseen by independent bodies. Access to information systems at all levels and branches of government must be brought into line with this regulation within one year of its coming into force. After Sweden, it is probably the most detailed and comprehensive constitutional guarantee of the right to information in the world.

Implementation of the law has generally been positive. A study by the Open Society Justice Initiative suggests that the rate of ‘mute refusals’ was lower in Mexico than any other 13 countries surveyed. Mexico was also among the better performers in terms of the percentage of requests met with a positive response. Similarly, a report on IFAI and promoting a culture of transparency in Mexico at its very outset: “in the family of freedom of information laws globally, Mexico is a leader”.

### **3.3.3. UNITED STATES OF AMERICA**

The Constitution of the **United States of America** includes strong protection for the right to freedom of expression, albeit cast in negative terms by prohibiting Congress from passing any law restricting freedom of speech or of the press.<sup>307</sup> The United States Supreme Court has held that this does not “[mandate] a right to access government information or sources of information within government’s control.”

The United States RTI Law has a number of both strengths and weaknesses. It includes good provisions on fees, strong rules on the electronic provision of information and a number of good promotional measures, introduced recently. Weaknesses include rules on timely dispensation of information which may be dodged, permission to classify documents, which has expanded significantly in recent years, and the lack of an independent administrative oversight mechanism, including with the power to hear complaints about failures by public bodies to apply the rules properly.

### **3.3.4. SLOVENIA**

This Act oversees the procedure which ensures everyone free access to and re-use of public information held by state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors (hereinafter referred to as "the bodies"). The informative directory of the bodies referred to in the first passage of this Article shall be, based on the data of the Business register of the Republic of Slovenia published and regularly updated on the internet by the Ministry for Public Administration of Slovenia (hereinafter referred to as the "Ministry"). The aim of this Act is to ensure that the work of the bodies is public and open, and to enable natural and legal entities to exercise their right to acquire information held by public authorities. In order to achieve the aim of this Act, the bodies shall endeavor to inform the public on their activity to the greatest extent possible.

### **3.4. RIGHT TO ACCESS**

In **Mexico** the law provides generally in article 2 that all information held by the government may be accessed by individuals. Article 1 says that, which is to guarantee the right to access to information held by government, autonomous constitutional or other legal bodies, or any other federal entity. Article 4 elaborates six 'aims' of the law which are to ensure access to information through simple, expeditious procedures to promote transparent public administration, to promote public accountability, to improve the management of records, and to contribute to democratization and the rule of law in Mexico. Finally article 6 provides that when interpreting the law must be interpreted the law, the principle of transparency of public bodies must be favored. It also provides that the law must be interpreted in accordance with the

constitution, the Universal declaration of Human Rights and a number of international treaties, including the International Covenant on Civil and Political Rights, the principal UN human Rights treaty guaranteeing freedom of expression.

All “subjects compelled by the Law” (public bodies) includes:

- the federal executive branch and the federal public administration;
- the federal legislative branch, including the House of Deputies, the Senate, the Permanent Commission and other bodies;
- the federal judicial branch and the Council of the Federal Judicature;
- autonomous constitutional bodies;
- federal administrative tribunals; and
- Any other federal body.

In **United Kingdom**, the first provision is in, Section 1(1), provides that any person “making a request for information to a public authority is entitled” to be informed whether or not the body holds the information and if it does have the information ‘communicated’ to him or her. The right is made subject to a number of other provisions in the law, including:

- Any reasonable request by the body for further information in order to identify and locate the information
- The regime of exceptions;
- The payment of any fees; and
- An exception for vexatious or repeated requests (Section 1 (2) and (3)).

The Law does not include a section on purpose, although the long title refers generally to its purpose as being to “make provision for the disclosure of information held by public authorities”.

The Law also provides that the Secretary of State may add to or remove from the list of bodies in Schedule 1 subject to certain conditions (section 4), or more generally designate as public, bodies which “exercise functions of a public nature” or which provide contract services for a public body (section 5). A number of section 4 orders have been made. Finally, publicly-owned companies, defined as bodies wholly possessed by the Crown or a public body other than a government department, are also public bodies (section 6). The Law also provides that where a

body is designated as a public body only in relation to certain information, the obligation of disclosure is similarly restricted to that information (section 7).

There have been attempts recently, in the form of the MacLean Bill, to remove parliament from the ambit of the Law, but these were fiercely criticized and now appear to be dead. More encouragingly, a consultation was announced on 25 October 2007 to consider extending the scope of the Law to a wider range of private bodies performing public functions. The right to access information under the United Kingdom RTI Law is not limited by nationality or residence.

In **United States of America**, the law does not include an internal statement of purposes or general principles of interpretation. However, section 2 of the Electronic Freedom of Information Act Amendments of 1996 sets out a number of ‘findings and purposes’ including to ‘establish and enable enforcement of the right of any person to obtain access to archives of such agencies, subject to statutory exemptions, for any public or private purpose’ to ‘foster democracy by ensuring public access to agency records and information’ and to ‘maximize the usefulness of agency records and information collected, mainland, used, retained and disseminated by the federal government’. Subparagraph (a) (3) (A) of the law sets out the basic right of any person to request and receive information promptly from the bodies covered as long as the request meets certain basic conditions and subject to the provisions of the law.

The new OPEN Government Act adds a number of important ‘findings’, including that constitutional democracy depends on the informed consent of the governed, that “disclosure, not secrecy, is the dominant objective of the Act” and, significantly, that Congress should regularly review the Law to determine whether further changes are necessary to give effect not to the “need to know” but the “fundamental ‘right to know’” (section 2). This effectively gives recognition to the idea of the right to information as recognized under international law. There are no limits to lodging requests for information based on citizenship or residence, and foreigners do frequently use the RTI Law. This is somewhat limited by subparagraph (a)(3)(E), which states that no public body which is “an element of the intelligence community”, as defined by the National Security Act of 1947 (section 3(4)), shall make information available to a foreign government entity or representative.

In **Slovenia**, Access to public information and freedom of information (FOI) refer to the right of access to information held by public bodies also known as "right to know". Access to public information is considered of fundamental importance for the effective functioning of democratic systems, as it enhances governments' and public officials' accountability, boosting people participation and allowing their informed participation into public life. The fundamental premise of the right of access to public information is that the information held by governmental institutions is in principle public and may be concealed only on the basis of legitimate reasons which should be detailed in the law.

Access to public information is guaranteed by Article 39 of the Constitution that protects freedom of speech and right of access to public information. The constitutional right of access to public information is embodied in the Access to Public Information Act adopted in 2004. In Slovenia everyone has the right to obtain information of a public nature in which he/she has a well-grounded legal interest under the law, with the only exceptions provided by law. The Access to Public Information Act also empowers every citizen to enjoy the right enshrined by Article 44 of the Constitution to actively participate in the management of public affairs.<sup>22</sup>Slovenia has a good regulatory framework on access to public information. Slovenia's Access to Information Law is considered as one of the best in Europe.Slovenian Constitution was adopted in 1991, for the first time legally defined a right to access to public information.

### **3.5. EXEMPTIONS**

In **Mexico**, that includes a reasonably clear regime of exceptions, operated largely through system of classification, although there are number of potential loophole in the system. Article 14, information expressly required by another law to be confidential is one of the exceptions- commercial, industrial, tax, bank and fiduciary secrets established by law are specially mentioned- so that the prevailing secrecy regime is left in place. Article 13 provides for an exemption where disclosure of information 'could' lead to a negative result, but the standard of harm varies considerably, ranging from 'compromise', 'harm' or 'impair' to 'severely prejudice'.

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<sup>22</sup> Wikipedia-The Free Encyclopedia, Access to public information in Slovenia, [https://en.wikipedia.org/wiki/Access\\_to\\_public\\_information\\_in\\_Slovenia](https://en.wikipedia.org/wiki/Access_to_public_information_in_Slovenia)

Article 13 provides for specific exemptions for information the disclosure of which could:

- Compromise national or public security or defense;
- Impair ongoing negotiations or international relations including by divulging information provided on a confidential basis by other states or international organizations;
- Harm the country's financial or economic stability;
- Pose a risk to the life, security or health of an individual; or
- Severely prejudice law enforcement including the prevention or prosecution of crime, the administration of justice, the collection of taxes or immigration controls.

Article 14 adds to these exceptions provided by other laws (as detailed above), prior investigations, files relating to trials prior to a ruling, proceedings against civil servants prior to a ruling, and opinions, recommendations or points of view provided by officials as part of a deliberative process prior to the adoption of a final decision. These exceptions are problematical mainly because they lack harm tests but also because of their breadth.

Articles 18 and 19 also provide protection for private information. When private individuals provide information to public bodies, the latter must indicate what shall remain confidential (which they may do only where they have a legal right to classify it) and then this information may only be unconstrained with the consent of the individual who provided it. This is bolstered by Chapter IV of Section I, which is devoted to the protection of personal information, defined in Article 3(II) as information from which a physical person may be identified and concerning his or her "ethnic or racial origin, or referring to his physical, moral or emotional characteristics, his sentimental and family life, domicile, telephone number, patrimony, ideology and political opinions, religious or philosophical beliefs or convictions, his physical or mental state of health, his sexual preferences, or any similar information that might affect his privacy". Such information may not be disclosed without the consent of the individual concerned, although there are exceptions to this, for example for medical treatment or for purposes of exchanging the information between public bodies pursuant to the proper exercise of their powers. Chapter IV also gives a right to correct personal data (Articles 21 and 25).

In **United Kingdom**, RTI Law has a very broad regime of exceptions, referred to in the Law as exemptions, reflecting ongoing preoccupations with secrecy in government. Indeed, this is the real Achilles heel of the law, which is otherwise progressive. Most of the exceptions are rationally clear, but many are anything but slender and in some cases, they go well beyond what has been considered necessary in other countries.

There are three general exceptions, as well as some twenty specific ones. The three wide-ranging exceptions are for troublesome or repeated requests (section 14), information which is already reasonably accessible to the applicant, even though this involves payment (section 21), and information intended to be published, as long as it is reasonable not to disclose it pursuant to the request, even though no date of publication has been set (section 22). This latter is debatable inasmuch as it could be abused to delay disclosure beyond the normal timelines for responding to requests. The exceptions that are not similar to any other countries except their own are as follows:

- Information directly or indirectly supplied by or relating to a long list of security bodies and their oversight tribunals (section 23);
- Information the disclosure of which would, or would be likely, to prejudice relations between different administrations within the United Kingdom (section 28);
- Information the disclosure of which would, or would be likely, to prejudice the detection, prevention or prosecution of crime or the administration of justice generally (section 31);
- Information the disclosure of which would, or would be likely, to prejudice audit functions or the examination of the effectiveness of public bodies (section 33);
- Information covered by parliamentary privilege (section 34);
- Information relating to the formulation of government policy or ministerial communications; this ceases to apply to statistical information, but not other information, once the policy has been adopted (section 35);
- Information the disclosure of which would, or would be likely, to prejudice the collective responsibility of ministers or the free and frank provision of advice (section 36);
- Information relating to communications with Her Majesty (section 37)
- Information the disclosure of which would constitute a breach of confidence (section 41);
- legally privileged information (section 42);



- Trade secrets and information the revelation of which would, or would be likely, to partially the commercial interests of any person (section 43); and
- Information the disclosure of which is prohibited by any other law or European Community obligation (section 44).

In **United States of America**, the regime of exceptions has been rendered reasonably clear through juridical interpretation but it could be significantly improved upon. Subsection (d) provides that the law does not justify non-disclosure of information except as provided for in the Law and that it is not authority to withhold information from congress. In other words, the exception is comprehensive in the sense that no other exceptions are recognized. Significantly, however, paragraph (b) (3), the third exception, excludes from the ambit of the law all records which are exempt from disclosure by other statutes, as long as these laws leave no discretion as to non-disclosure or establish particular criteria for withholding information. These conditions would rule out some secrecy provisions but leave in place most secrecy law.

The first exception in subsection (b) shields all information which is explicitly classified as secret, under criteria established by an Executive Order, for purposes of national defense or foreign policy, as long as the material is in fact properly classified pursuant to that Executive Order. Classification is currently directed by Executive Order 13292 – Additional Amendment to Executive Order 12958, as Amended, Classified National Security Information, adopted by President Bush on 25 March 2003.<sup>328</sup> The Order does ensure some technical guarantees against extreme classification, including who may classify information (section 1.3), on what grounds (section 1.4) and for how long (section 1.5). In general, information may be classified under the Order only if its disclosure would cause damage to national security, but the disclosure of information provided by foreign governments is presumed to cause harm (section 1.1). The Order also prohibits classification of information in certain cases, for example to conceal violations of the law, to prevent embarrassment or to restrain competition (Section 1.7).

In **Slovenia**, if the applicant requests access to public information by way of informal (oral) request, the SNSA is obliged to ensure the applicant access to public information, except in the case of exceptions defined in the APIA (Article 6). If the SNSA sustains a request, it shall straightaway enable the applicant to get acquainted with the contents of the requested

information by way of submitting to him the information for consulting it on the spot or by ensuring him a transcript, a copy or an electronic record of such information or the re-use thereof. If the applicant requests that the information be submitted to him for the consultation on the spot, the SNSA shall ensure the applicant the consultation on the spot in such a manner that the applicant shall have enough time to get acquainted with its contents.

### 3.6. Table of Comparative Analysis

<b>Countries</b>	<b>India</b>	<b>United Kingdom</b>	<b>United States of America</b>	<b>Mexico</b>	<b>Slovenia</b>
<b>1. Constitutional Provision</b>	Not protected	Not protected	Not protected	Yes it is protected	Yes it is protected
<b>2. Legislation</b>	Right to Information Act, 2005	Freedom of Information Act, 2000	Freedom of Information Act, 1996	Information Act, 2002	Access to Public Information Act, 2003.
<b>3. Provisions for exemptions</b>	Section 8 has 3 sub sections and section 1 has 9 sub clauses.	Part II from Section 21-44 and also effects of the exemptions in part II under Section 2.	Part II section 2 of the Act.	Section 2 (Principles on Transparency and Access to Public Information) from Article 9 to Article 22.	Article 6 (Exceptions) of the Act.

**3.6.1. The following is the comparative analysis of exemptions of different countries under RTI Act:**

<b>Countries</b>	<b>India</b>	<b>United Kingdom</b>	<b>United States of America</b>	<b>Mexico</b>	<b>Slovenia</b>
<b>a. Access of Information</b>	Limited only to citizen	Not limited by residence or nationality	Not limited by nationality or residence but with exception	Everyone can access information without any discrimination	Information which would be pursuant to the act governing classified data that is defined as classified.
<b>b. Contempt of court</b>	Information which has been expressly forbidden to be published by any court or tribunal	Information held by a public authority is exempt information	Yes	There is no such provision as contempt of court in the Mexican Information Act.	Information acquired or drawn up for the purposes of criminal prosecution or in relation to criminal prosecution or misdemeanors procedure and the disclosure of which would prejudice the implementation of such procedure.

<b>c.International Relations</b>	Any information received in confidence from any foreign government	Any information that might prejudice the relation with other states or any international organization or international court or promotion or protection of interests abroad	Classified information regarding the foreign policy.	Mexico played a minor role through most of its history. Since 19 <sup>th</sup> century it focused on the United States, its northern neighbor, etc.	The foreign policy of the Republic of Slovenia is founded on the values of Slovenia's independence and statehood, the Constitution of the Republic of Slovenia, the values of the European Union and the principles of the Charter of the United Nations.
<b>d.Endangerment life or physical safety</b>	The information that could endanger the life or physical or safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.	N/A	The information that Could reasonably be expected to endanger the life or physical safety of any individual	N/A	N/A

<b>e.3<sup>rd</sup> party information</b>	Yes	Yes	No	No	No
<b>f. Impede the process of investigation</b>	The court cannot supervise the investigation by police of the ongoing investigate but can interdict the investigation in case police transgresses its statutory power to meet the ends of justice.	The investigation which the public authority has a duty to conduct with to being ascertained whether a person should be charged with an offence or when he is found guilty.	N/A	N/A	N/A
<b>g. Cabinet papers</b>	Yes	N/A	N/A	N/A	N/A
<b>h. Privacy</b>	Information relating to personal information which has no relationship to any public activity or interest.	This exists to protect people's right to privacy, whereas in Freedom of Information is about getting rid of unnecessary secrecy.	The privacy act was passed in 1974 to ensure the security of government documents increasingly kept on the citizens.	Public bodies are required to provide individuals access to their own information and details on the procedures for correcting that information.	The disclosure of personal data of which would constitute an infringement of the protection of personal data in accordance with the act governing the protection of personal data.

### 3.6.2. The exemptions that Right to Information Act 2005 of India lacks:

Countries	United Kingdom	United States of America	Mexico	Slovenia	India
<b>a. Defence</b>	The defence of the British Island or any colony or the capability or security of any relevant forces.	An executive order to be kept secret in the interest of national defense or any foreign policy.	N/A	Information which is pursuant to the Act governing classified data, is denoted with one of the two highest levels of secrecy;	N/A
<b>b. National Security</b>	Any information which directly or indirectly applies to the bodies like the security services, secret intelligence services, special forces, etc. a certificate is signed by the	Protects national security information that is classified under the procedural and substantive requirements of the current executive order on classification.	N/A	N/A	N/A

	minister of the Crown.				
<b>c. Health and Safety</b>	The endangerment of physical or mental health or endangerment of safety of any individual.	Protects information Personnel and Medical files and similar files the disclosure of which would constitute clearly unwarranted invasion of personal privacy.	N/A	N/A	N/A
<b>d. Parliamentary Functions</b>	Information is exempt information if exemption for the purpose of avoiding an infringement of the privileges of either House of Parliament i.e. both The House of Commons and The	There is separate House and Senate which is a complex with numerous committees handling a disparate array of topics presided over by elected officers.	The Mexican federal government has three branches: executive, legislative, judicial	The Slovenian Parliament is bicameral, composed of the National Assembly and the National Council	The Indian parliament has the functions to do the following things: law making powers, financial powers, control over the executive, amending powers, judicial functions,



	house of Lords.				electoral functions, and deliberative functions
<b>e. Environment Information</b>	The information would be exempt if the public authority holding to it would be so obliged but only for the exemptions contained in the regulations.	Protection geological and geophysical information and data, including maps, concerning wells.	N/A	The considered information related to environmental emissions, waste, dangerous substances in factory or information contained in safety report and also other information if the Environment Protection Act so Stipulates.	N/A

#### **4. SUGGESTIONS**

There are many exemptions to the act like the class exemptions, prejudice based exemptions and time limited exemptions and time based exemptions. These exemptions prevent the information from being received by the seeker. The exceptions should be minimized so that there is more transparency. However, following few suggestions are listed below to make the act more effective: -

- a) The imposition of penalty in case of breach of RTI Act by a CPIO should be made more imperative on at least second call or occasion. The aim should be to reduce the number of cases of absolver in case the information is not furnished by CPIO within specified period of time.
- b) An additional time barrier, may be 7 to 10 days be introduced in cases where information is not held by CPIO and transfer of application/seeking of is information is involved. The new rider shall be for furnishing interim status of information, being collected by CPIO, to applicant.
- c) Under seeing the scarce Government resources, a clause be introduced in RTI Act provisions, for making the subscribers intent of Public interest. A mandatory input in the format of RTI application itself, which is for seeking voluminous information/data. Aim is to curb number of applications filed, where no substantial public interest is served, but for nuisance value/waste of limited resources.

## 5. CONCLUSION

There can be no two views that right to information would lead to openness in the administration. The citizens would get information about various issues and it will thus promote transparency in the government, increasing the efficiency by making officers accountable and ultimately reducing the corruption, if not eliminating the totally. However, there is the other side of the coin. The state is trying to deny maximum information under the exemption clause of section 8 of the act. As it is seen in upcoming chapters IV and VI of this act, that the states took recourse to these exemptions frequently. Many of the cases of exceptions have been discussed in the following chapters, where an attempt is made to see whether these exceptions have legalized the secrecy or have expanded the power of the state. While right to information may have opened up some spheres, in others it has expended state some powers by legalizing secrecy on the grounds defined in the exception under section 8 of the act. Some theorists believe that the exception reveals the norm. The RTI filed by People's Union for Democratic Rights (PUDR) is a case in point, where the Delhi Government refused to give the details of the persons executed in Tihar prisons since 1947 in Delhi. This was rejected on the ground of information requested having prejudicial effect on the sovereignty and integrity of India. It is quite surprising that State is using the ground of exemption under clause (1) (a) of section 8 of the act. The executions have already been done and hence information about execution poses on no threat for the sovereignty and integrity India. The similar information was provided by the Inspector General of Prisons. Therefore, there is no case for the Delhi Government to deny information but it took recourse to exception clauses to deny information. The chapter V has shown that the exemptions given under section 8 have been used most of the time to deny information to the seeker of the information. Thus, it implies that secrecy is gaining grounds under the pretext of the exceptions given in the RTI Act.

The freedom of speech and expression is basic to and indivisible from democratic polity. As held by Supreme Court in the case Secretary, Ministry of information and broadcasting **Government of India vs. Cricket Association of Bengal**,<sup>23</sup> the right to free speech includes the right to impart and receive information. For ensuring right to free speech of the citizen of this country, it is necessary that the citizens have the benefit of plurality of views and range of

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<sup>23</sup>AIR 1995 SC 1236.

options on all public issues. Differences of opinions, views, and ideas are essential to enable the citizens to arrive at informed judgment on all issues touching them. Hence, right to know acquires greater importance to make available all the information required by the people to become informed citizens. RTI Act has become a tool in the hands of people. With the filing of an application they can have access to any information except the exemptions made in section 8 of the Act.

Indeed, if the bottlenecks in the functioning of the CIC are removed, it will be able to work effectively for enhancing the culture and practice of transparency and accountability.

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