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## EXEMPTIONS UNDER RTI ACT- A COMPARATIVE STUDY

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### ABSTRACT

Fundamental rights have been developed considering the existing natural rights to ensure that people can enjoy certain rights and freedoms for carrying out different functions. The right to freedom of speech and expression made available to citizens of India is one of the important rights provided to people which also includes the right to obtain different kinds of information and express your views and opinion on the same. The right to information has been discussed in this legal provision mentioned in the Constitution of India which was further made clear through the enactment of the Right to Information Act in 2005. It provided a complete mechanism for the fulfilment of functions concerning important information and data in different domains.

In this paper, the researcher focuses on the right to information legislation in different countries like UK and Mexico compared with the provisions in India along with the exemptions concerning the same. The researcher has analyzed the constitutional provisions and the provisions mentioned under the Right to Information Act, 2005 to understand how the right is made available to the citizens in India. The Freedom of Information Act in the UK and Mexico are analyzed and compared with that of India to deal with the different aspects of the right to information. The right to access different kinds of information from public authorities is also discussed by the researcher in this paper

where the provisions for the same in different countries are referred to.

### INTRODUCTION

The right to information made available to the citizens of a country is considered one of the important fundamental human rights which provides them with certain rights and freedoms. The main objective behind providing the right to information is to ensure that people can get the required information about different governmental functions and to facilitate transparency. The Right to Information Act has gained a lot of importance in recent times, especially with the introduction of new techniques in the information sector. It is important to see that the citizens have the right to know about various affairs of the government even though the right is not absolute.

In a democratic form of government like India, it is important to have transparency and accountability which can be ensured only through openness and knowledge to various governmental aspects. When there is greater exposure about the functioning and operations of the government, it becomes easier to enhance the functioning and make the administration more effective. Such openness is required to promote and encourage the overall honesty of the system and reduce instances of corruption and misuse of power<sup>459</sup>. In this digital era, transparency is considered one of the powerful safeguards against political and administrative actions in governmental functions.

### RIGHT TO INFORMATION ACT, 2005- AN OVERVIEW

The legislation concerning the protection of important information along with disclosing the information which needs to be brought to the notice of the people has been developed in various countries across the globe based on

<sup>459</sup> Sanyukta Moitra, Containing Corruption in India through Right to Information: An Analysis, 9 INDIAN J.L. & Just. 127 (2018).

different governmental operations. Right to Information puts forward a practical regime concerning the right made available to the citizens to ensure that access is provided whenever required<sup>460</sup>. In this post-independence era, RTI Act is considered one of the most progressive legislations in India which helps to harmonize the conflicting interests regarding technological aspects.

The RTI Act makes it mandatory to disclose any kind of information without withholding it unless and until it falls under the exempted categories of information mentioned under Section 8 (1) and (9) of the Act. The free flow of information is essential for the development of a functioning democracy where the right to information is considered the pioneer tool for promoting and protecting significant data and information. As per Section 2 (j) of the Act, the right to information is defined as the right to information which is accessible under this particular act and is either held by a public authority or is under the control of the same.

The practical regime of the right to information can be maintained and set out through the 2005 Act where enhanced security and accessibility are ensured. As transparency and accountability play an integral role in smooth functioning of society, it becomes important to maintain the same especially in public authority functions. The protection given to freedom of speech and expression through the Act helps to create a strong framework for enhanced functioning. This is an effective tool utilized for empowering the citizens in the country. The efforts of governmental organs and institutions in regulating information-based functions show the emerging significance of this particular right.

### RTI as a fundamental right

The right to Information is considered a fundamental right which is focused on providing clarity of the information to the citizens of India with enhanced access. The concept of the right to information gained power with the adoption of the Universal Declaration of Human Rights in 1948 where the right to seek and receive information was given importance. It has been said by various thinkers that information can be considered the currency of democracy which is critical for the development of a vibrant society. The genesis of the right to information law in India can be said to be through the landmark judgment *Mr Kulwal v. Jaipur Municipal Corporation*<sup>461</sup>, where it has been said that freedom of speech and expression implies the right to information as freedom can be used effectively through proper information and data.

In *Namit Sharma v. Union of India*<sup>462</sup>, it was held that the main objective behind the introduction of the act concerning the right to information is to ensure that the government is more transparent and accountable to the public. Through such legislation, it has become easier to obtain different kinds of information and data from the public authorities which helps in a better understanding of the different functions carried out by the authorities. One of the landmark judgments concerning the freedom of the press in India is *Bennett Coleman and Co v. Union of India*<sup>463</sup>, in which it was held that the right to information is included within the right to freedom of speech and expression given under Article 19 (1) (a) of the Constitution.

### COMPARATIVE ANALYSIS BASED ON SECTION 8 OF RTI ACT 2005

While dealing with the exemptions concerning RTI, it is important to consider the different grounds mentioned under Section 8 of the Act to understand the nature of information which can and cannot be disclosed to people. In

<sup>460</sup> Shalini Singh & Bhaskar Karn, The Implementation of Right to Information Act, 2005 in India, 4 J.L. POL'y & GLOBALIZATION 22 (2012).

<sup>461</sup> Mr. Kulwal v. Jaipur Municipal Corporation, AIR 1988 Raj 2

<sup>462</sup> Namit Sharma v. Union of India, 2013 (1) SCC 745

<sup>463</sup> Bennett Coleman and Co v. Union of India, AIR 1973 SC 106



*Sajjan Singh v. State Public Information Officer and Ors*<sup>464</sup>, it was held that denying copies of some pages in a Committee Report will be considered a justified act under Section 8 (1) (c) based on the ground that it is under the consideration of the cabinet. The important grounds mentioned under Section 8 of the Act are the following:

- **Access of Information**

Access to information is made available in different countries based on the functioning of the country to ensure proper regulatory systems in each domain. In India, access to information is limited only to citizens which are mentioned in the specific legislation. Whereas in UK and Mexico, access to information is not limited by residence or nationality which tells about the broad application of the laws. In Mexico, everyone is given access to information without any kind of discrimination on any grounds.

- **Contempt of Court**

Another important ground for exemption mentioned under Section 8 of the Act is contempt of court where in India the information which is specifically forbidden from being published by the courts or tribunals should not be made available to the citizens<sup>465</sup>. In the United Kingdom, a separate class of information called exempt information can be seen which includes the information held by the public authorities for which access cannot be provided to citizens. Unlike such restrictions, in the Mexican system, there is no provision mentioned concerning contempt of court in the Information Act. Such a restriction is not mentioned in the Mexican Act based on their rules and regulations.

- **International relations**

The information concerning international relations is often given utmost importance by most countries as it is integral for protecting the security of the country. In India, any information received in confidence from any foreign government is brought under the head of restricted information which cannot be made available to the citizens<sup>466</sup>. Whereas in the UK, the provision concerning international relations is more specific where it is said that any kind of information that might prejudice the relation with other states will not be entertained. Such information which may affect the relationship with other states, organizations, international courts, protection of interest abroad and so on cannot be made available to the public. Since Mexico played a very minor role throughout most of history, much emphasis was not given on the ground concerning international relations with others.

- **Third-party information**

In India, the restriction concerning third-party information is specified under Sub Section (1) (d) of the Act where the information concerning commercial confidence, trade secrets, intellectual property and so on are included. If such information is disclosed then the competitive position of the third parties gets harmed resulting in severe damages. In *Bhagwal Seth v. Bank of Baroda*<sup>467</sup>, it was held that the fiduciary relationship between the bank and its customers needs to be considered apart from commercial confidence to protect the interest of the third party. Whereas in UK and Mexico, the information concerning the third party which would cause harm to them if disclosed is not applicable as per the legal provisions

<sup>464</sup> *Sajjan Singh v. State Public Information Officer and Ors*, RLW 2009 (3) Raj 2660.

<sup>465</sup> Srijita Chakraborty, Exemptions under Right to Information Act, 2005: A Critical Analysis, 10 *Supremo Amicus* 317 (2019).

<sup>466</sup> Abdul Jabbar Haque, Right to Information in India: A Critical Appraisal, 5 *INDIAN J.L. & Just.* 99 (2014)

<sup>467</sup> *Bhagwal Seth v. Bank of Baroda*, Appeal No. CIC/PB/A/2008/00558

made concerning the right to information.

- **Privacy**

As personal information concerning individuals is always kept confidential, such information is put under the exemptions for respecting the privacy of individuals. In India, information concerning personal aspects which does not involve any kind of public interest is exempted from the right to information which is not disclosed on any ground.

### EXEMPTIONS UNDER RTI LEGISLATION- A COMPARISON

While dealing with the aspects concerning RTI, the national legal framework has been undergoing constant change and developments based on the changes in society utilizing novel methods in the technology sector. The information made available to a person based on a fiduciary relationship is one of the important grounds taken while dealing with disclosing information. As per Section 8 (1) (e) of the Act, it has been held that such an exception concerning fiduciary relationship will not be applied unless the competent authority is satisfied that the public interest of a larger group warrants the disclosure of the information. The enhanced monitoring and review carried out by different authorities have helped in understanding the changing aspects of this digital era.

- **India**

The important grounds for exemption from providing the information to the people is specified under Section 8 of the Right to Information Act, 2005 to ensure that reasonable restrictions are imposed regarding providing information. It has also been specified that such restrictions should not go beyond the reasonable restrictions mentioned under Article 19 (2) of the Indian Constitution. Even though the public authorities are bound to disclose the information to the people

as per the provisions mentioned under the Act, every piece of information cannot be disclosed due to the issues of national interest and security. While dealing with the exemptions under the information provisions, mainly Sections 8, 9 and 24 of the Act deal with the information which should not be conveyed to the people.

As per Section 8 of the Act, it has been mentioned that any information which affects the sovereignty, integrity and security of the country should not be disclosed under any ground. Such exemption provisions or exclusion clauses allow withholding certain types of information from the citizens which involves public interest. The information which deals with the infringement of copyright<sup>468</sup> is another exemption mentioned under Section 9 of the Act along with the aspects concerning intelligence or security organizations and any kind of information provided by them<sup>469</sup> are protected under the exemptions.

- **United Kingdom**

The Constitution of the United Kingdom can be confusing as most of the states have a written constitution which consists of all the supreme laws of the country. The UK does not have a constitutional bill of rights and the aspects concerning the right to information are not expressly mentioned in the Constitution. If the history of the right to information in the UK is analyzed, it is seen that either the courts or other bodies were in favour of the right to access information made available to the people. The European courts did not consider this right as freedom of expression which explains the delay in the incorporation of the right to

<sup>468</sup> Section 9, Right to Information Act 2005

<sup>469</sup> Section 24, Right to Information Act 2005

information in the UK<sup>470</sup>. The Freedom of Information Act, of 2000 was not passed in the UK until 2000 even when various countries had adopted the same to ensure the right to access people.

While dealing with the RTI law in the UK, various innovative measures are included in it where the idea of a publication scheme can be seen. After various efforts, the Freedom of Information Act came into force fully in 2005 to give the public the right to get the required information from public authorities. The provisions concerning the right to access information mentions that a request for information can be made to the concerned public authority<sup>471</sup> as per the need of the person. Even though there is no constitutional provision concerning the right to access unlike Mexico, the Freedom of Information Act, of 2000 provides various protections along with other exemptions.

- **Mexico**

One of the countries in Latin America which recognized and accepted the right to information law is Mexico where the law was implemented based on the unanimous decision of the chambers. The law was introduced in all 31 states in Mexico in 2002 based on the impact of the same on the citizens. As per Article 6 of the Constitution, the right to information was guaranteed to people by the state which later underwent various changes and amendments based on the changing circumstances. Various systems were established for accessing the information along with independent bodies to oversee various actions and functions of the authorities.

It has been specifically stated in the Mexican Constitution that all the information shall be public along with

the restrictions on the same based on public interest<sup>472</sup>. The Information Act, of 2002 and the Constitutional provisions providing enhanced protection to the citizens help to maintain transparency in governmental functions. The reasonable restrictions and exemptions are also considered to ensure that certain information which is of great significance to the public interest is withheld for the better security of the country. The principles of transparency and access to public information mentioned under Section 2 from Article 9 to 22 gives a clear idea about the right and freedom provided to the people on various grounds.

## CONCLUSION

The right to information Act which deals with the overall functioning of the government is one of the paths to making legislation which helps to bring the secrecy of the administration into the light. The democratic ideology can be promoted through this effective means which helps to fight against corruption and other such misuses of government. The access provided to information helps in empowering and encouraging the weaker sections of society to take effective measures concerning public policies and actions. Such actions are required for good governance which is characterized by political accountability, availability of freedom, efficiency and so on. The enactment of the RTI Act is solely focused on an open and transparent government which facilitates the citizens to seek and receive information making the administration more responsible and transparent.

<sup>470</sup> David E. Pozen, Freedom of Information beyond the Freedom of Information Act, 165 U. PA. L. REV. 1097 (2017)

<sup>471</sup> Section 1(1), Freedom of Information Act 2000

<sup>472</sup> Ritika Sharma & Tushant Sharma, Comparative Analysis of Right to Information between India and Mexico, 2 Supremo Amicus 303 (2017).

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